



公 司 註 冊 處  
COMPANIES REGISTRY

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16 January 2004

## **COMPANIES REGISTRY EXTERNAL CIRCULAR NO. 1 / 2004**

### **Companies (Amendment) Ordinance 2003**

#### **Introduction**

The Companies (Amendment) Ordinance 2003 (“the Amendment Ordinance”) was passed by the Legislative Council on 2 July 2003. According to the Commencement Notice published in the Gazette on 12 December 2003, the Amendment Ordinance will come into operation on 13 February 2004, except clause 67 [sections 158C(1)(a) and (b)] which will become operative at a later stage. The main purpose of these amendments is to implement the first phase of the recommendations made in “The Report of the Standing Committee on Company Law Reform on the Recommendations of a Consultancy Report of the Review of the Hong Kong Companies Ordinance” dated February 2000 and to make other improvements to the Companies Ordinance. This circular outlines the major changes brought about by the amendments.

#### **Major Changes**

##### **Formation of Companies**

2. Section 4(1) permits the formation of a company by one or more persons and section 4(4) prohibits the incorporation of a company limited by guarantee with a share capital. The introduction of one member companies has caused consequential amendments to sections 177(1)(c), 179(1) and 310(1), the addition of a new section 2(10) and the repeal of section 31 and the subheading immediately before that section.

## **Change of Company Name**

3. Section 22(1A) requires a local company to give notice of the change of name within 15 days after the passing of the special resolution changing its name in a specified form (Form NC2). The requirement for filing a printed copy of the special resolution with the Registrar of Companies (“the Registrar”) is removed. Consequential amendments have also been made to sections 22B and 117.

## **Alteration of the Memorandum of Association**

4. Sections 8, 25A(1) and 323 have been amended to restrict to private companies only, the right of dissenting members to resort to court to cancel any alteration to the objects clause or conditions in a company’s memorandum of association. Consequential amendments have also been made to section 177.

## **Effect of Memorandum and Articles of Association**

5. Section 23(1) clarifies the contractual position of a company and its members and of each other member and gives every member a personal right to enforce the terms of the Memorandum and Articles of Association.

## **Return of Allotments**

6. Section 45 has been amended to shorten the period for filing a Return of Allotments (Form SC1), the relevant contract and the Return of Particulars of a Contract Relating to Share Allotment (Form SC5) from 8 weeks to 1 month. In addition, the requirement to report the occupations or descriptions of the allottees in Form SC1 has been deleted. To simplify the filing requirement, a certified copy of the contract will be accepted in lieu of a duly stamped contract and a Form SC5 is no longer required to be adjudicated before delivery to the Registrar.

## **Increase and consolidation of share capital**

7. Section 54 requires the notice of consolidation of share capital, conversion of shares into stock etc. to be given in a specified form (Form SC11).

8. Section 55 has been amended to require a company to give notice of an increase in nominal share capital within 15 days after it takes effect and to remove the requirement for a printed copy of the resolution authorizing the increase to be filed with the Registrar.

## **Reduction of share capital**

9. Sections 58, 59 and 61 have been amended and a new section 61A has been added to streamline the procedures relating to reduction of share capital and to remove the requirement for court approval to a reduction of share capital if the sole purpose of the

reduction is to redesignate the nominal value of the shares to a lower amount. Five specific conditions must also be satisfied, namely: the company only has one class of shares; all issued shares are fully paid up and the amount of the net assets of the company is not less than its paid-up share capital; the reduction applies to and affects all shares equally; the amount arising from the reduction is not less than an amount representing the difference between the amount of the company's fully paid-up capital immediately before and after the reduction and the amount arising from the reduction is credited to the share premium account of the company. A new specified form 'Statement of Compliance on Reduction of Share Capital' (Form SC12) has been introduced under section 61A(1) for use where court confirmation is not required. Section 61(4) has been amended to provide for the Registrar to issue a certificate of registration of order and minute of reduction with a printed signature.

### **Duties of a company with respect to issue of certificates**

10. Section 70 has been amended to provide that companies other than private companies must complete transfers of shares and debentures and have certificates thereof ready for delivery within 10 business days after the date on which a transfer is lodged with the company.

### **Register of charges and particulars of receivers, managers and mortgagees in possession of charged properties**

11. Section 83(2) makes it clear that a certificate of registration of a charge may bear a printed signature of the Registrar and removes the requirement that the certificate must state the amount secured by the charge.

12. Section 85 streamlines the registration procedure concerning the satisfaction and release of property from a charge and widens the scope of the section to cover cases where the whole of the property or undertaking charged has been released from a charge or has ceased to form part of the company's property or undertaking. Furthermore, an application for entering a memorandum of satisfaction on the register under this section is required to be made in a new specified form 'Memorandum of Satisfaction or Release of Property from Charge' (Form M2) introduced under this section.

13. The new section 87 includes the requirements for the persons who appoint receivers or managers and for mortgagees entering into possession of charged properties to notify the Registrar of this fact in the specified forms (Forms M3 and M5) within 7 days after the effective date. The identity card or passport numbers of the receivers or managers and of the mortgagees entering into possession of charged properties are also required to be provided. If there are any changes in the particulars filed with the Registrar, notification of such changes should be given in the new specified form M7 within 14 days after the date of the change. Receivers, managers or mortgagees are also required to file notifications of

ceasing to act or going out of possession of charged properties, as the case may be, in the respective specified forms (Forms M4 and M6) within 7 days.

### **Register of Members**

14. The requirement in section 95(1)(a) for a company to enter the occupations or descriptions of members of the company in the company's register of members has been repealed. A new section 95A requires a company, the number of whose members falls to one or increases to two or more, to record that fact in the company's register of members.

### **Quorum where the company has only one member**

15. Section 114AA provides that one member constitutes a quorum for a meeting of a company having only one member.

### **Circulation of members' resolution**

16. Section 115A(2) reduces the threshold for shareholders' proposals to 2<sup>1</sup>/<sub>2</sub>% of the voting rights or 50 members.

### **Written record where the company has only one member**

17. Section 116BC provides for a sole member taking a decision that may be taken by a company in general meeting and that has effect as if agreed by the company in general meeting to provide the company with a written record of that decision within 7 days.

### **Directors**

18. A number of provisions relating to 'Directors' have been amended as follows:-

- (a) Section 2(1) has been amended to contain a general definition of a 'Shadow Director' which includes someone who can influence a majority of the directors. Consequential amendments resulting from the definition have been made to sections 49BA(10)(b), 109(5), 158(10)(a), 168C(2), 271(3), 341, 344A(7) and 351(2).
- (b) Section 153A(1) permits a private company to have only one director.
- (c) Section 153A(6) provides that, where a private company has only one member and that member is the sole director of the company, the company may in general meeting nominate a natural person who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of his death.
- (d) Section 153B provides that an alternate director is the agent of the director who appoints him and provides that a director shall be vicariously liable for

torts committed by his alternate. Section 153C provides that a written record of a decision of the sole director of a private company shall be sufficient evidence of that decision.

- (e) Section 154 prohibits the sole director of a private company and certain bodies corporate from being the secretary of the company.
- (f) Section 157B(1) provides that a director may be removed by an ordinary resolution instead of a special resolution notwithstanding any provision in the company's constitution.
- (g) A new section 157D(4) has been added to state the definition of 'director' to include a reserve director and a person deemed to be a director under section 153A(8). A new specified form 'Notification of Resignation of Reserve Director' (Form D8) has been introduced for use by the resigning reserve director to notify the Registrar of his resignation pursuant to section 157D.
- (h) Section 158(4) has been amended to include the requirements for a company to notify the Registrar of the nomination of a reserve director in the specified form within 14 days from such nomination and of any changes in the reserve director in the specified form within 14 days from the occurrence of the change. The new specified forms introduced for these purposes are 'Notification of Reserve Director (Nomination/Cessation)' (Form D5) and 'Notification of Change of Particulars of Reserve Director' (Form D7).
- (i) Section 158(5) has been amended to add the explicit requirements for the consent to act as director to be delivered to the Registrar in a specified form (Form D3).
- (j) A new section 158(5A) has been added to require the person who is nominated as a reserve director to sign and deliver to the Registrar, within 14 days from the nomination, a statement in the specified form (Form D6) that he has accepted his nomination and has attained the age of 18 years.
- (k) Sections 157H, 157I, 157J and 161B, which relate to the prohibition, with limited exceptions, against a company making a loan to or providing security for a loan to a director and reporting thereon, extend the meaning of a loan to cover more modern forms of credit and make consequential changes to the related reporting requirements.
- (l) Section 162B requires a company that has only one member, who is also a director of the company, to record in a written memorandum the terms of any oral contract that the company enters into with that member.

- (m) Section 165 clarifies the scope of indemnities which a company may provide for its officers and auditors by stating that provisions in a company's articles or a contract granting exemptions or indemnities to its officers or auditors against liability for negligence, default, breach of duty or breach of trust to the company or a related company are void and permits a company to purchase insurance to cover liabilities to the company or other parties except fraud which an officer or auditor may incur in certain specified circumstances. The insurance cover may include legal expenses incurred in defending any proceedings taken against officers and auditors for negligence, default, breach of duty and breach of trust, including fraud.

### **Definitions relating to Director's Disqualifications**

19. The definition of a shadow director in section 2(1) has been incorporated into section 168C together with the expanded definition of "a company" for the purposes of Part IVA only. This has necessitated a consequential amendment to section 199(6)(a).

### **Inability to pay debts**

20. Sections 178 and 327 respectively permit the increase in the minimum amount of debt below which a petition for winding up cannot be presented from \$5,000 to \$10,000 or such other amount as may be prescribed by the Financial Secretary.

### **Statutory Declarations**

21. In order to simplify the filing requirements for statutory declarations to be delivered under various provisions in the Companies Ordinance, the Amendment Ordinance has implemented the following amendments:-

- (a) Section 18(2) has been amended to replace the statutory declaration of compliance by a statement of compliance in the specified form (Form NC1A).
- (b) Section 47E(6) has been amended so that directors are required to make a statement in the specified forms (Forms SC7 and SC8) in place of a statutory declaration before financial assistance is given by the company for the acquisition of its own shares or of the shares in its holding company. Consequential amendments have also been made to sections 47F, 47G and 48. The amended section 47F(1) removes the requirement to report in the specified forms the occupation of the persons to whom the financial assistance is to be given.
- (c) Section 49K(3) has been amended so that the company's directors are only required to make a statement in the specified form (Form SC10), instead of a

statutory declaration, before the special resolution approving the payment out of capital is passed. Consequential amendments to sections 49J, 49L, 49M and 49Q have also been made.

- (d) Sections 233 and 228A have been amended to replace the statutory declarations by a certificate of solvency (Form W1) and a statement of voluntary winding up in case of inability to continue business (Form W2) respectively.
- (e) Section 300B(2) has been amended to replace the requirement for an affidavit to verify the statement of affairs required to be submitted to the receiver by a statement in writing (Form RC2).
- (f) Section 333B(1) has been amended to replace the requirement for a statutory declaration by a statement in writing where an authorised representative no longer wishes to accept service of process and notices on behalf of an overseas company.
- (g) Section 344A has been amended to remove the requirement for a statutory declaration. A company needs only pass a special resolution to commence or cease its dormant status.

### **Requirements for documents delivered for filing**

22. Section 346(1) and the Companies (Requirements for Documents) Regulation have been repealed. New section 346(1) requires that every document delivered to the Registrar shall be in either the English or Chinese languages and in compliance with the requirements specified by the Registrar. The Registrar has specified the general requirements for documents filed under the Companies Ordinance and a notice has been published in the Gazette on 16 January 2004. The new requirements will take effect from 13 February 2004. The detailed requirements are specified in the Requirements for Documents Guidelines 2004. The Guidelines can be downloaded from the Companies Registry's Homepage on the Internet (Website : <http://www.info.gov.hk/cr/>), obtained at 13<sup>th</sup> and 14<sup>th</sup> floors of the Queensway Government Offices or by fax through the Registry's Enquiry Hotline (2234 9933) with effect from 13 February 2004.

23. Sections 347, 348, 348B(b) and 348D have been amended to take account of the new requirements introduced in relation to the delivery, processing, registration and storage of documents, records and information in electronic form.

## **Other amendments in relation to the specification of new specified forms**

24. In addition to the new or revised specified forms already mentioned in the preceding paragraphs, other amendments to the relevant provisions which result in the introduction of new specified forms are as follows:-

- (a) Sections 128(5)(b) and (5A)(b) have been amended to provide for the use of a specified form to present the statement of particulars of subsidiaries (Form AC1).
- (b) Sections 129(5)(b) and (5A)(b) have been amended to provide for the use of a specified form to present the statement of particulars of shareholdings in non-subsidiary companies (Form AC2).
- (c) Section 151 has been amended to require the notification of appointment of an inspector and the notification of submission of final report of the inspector to be given to the Registrar in the specified forms (Form IN1 and Form IN2).
- (d) Section 195 has been amended to require a person other than the Official Receiver who is appointed as the provisional liquidator or liquidator in a winding up of a company by the court to notify the Registrar of his appointment and to provide his identity card or passport number in the specified form (Form W3).
- (e) Sections 228A and 253 have been amended to require provisional liquidators and liquidators to notify the Registrar of their appointments in the specified form (Form W3) within 14 days and 21 days respectively after the effective date and to provide their identity card or passport numbers on the form. Furthermore, notification of any change in the particulars of provisional liquidators and liquidators filed with the Registrar and of their ceasing to act are also required to be delivered in the specified forms (Forms W4 and W5) within 14 days and 21 days respectively.
- (f) Section 226A has been amended to introduce a specified form (Form W6) for presenting the Certificate of Release of Liquidator by the Official Receiver or the liquidator.

## **Introduction of New and Revised Specified Forms**

25. With effect from 13 February 2004, a new set of specified forms, which include a total of 25 new and 25 revised specified forms as set out in the **Annex**, will be available for purchase as individual forms at the 14<sup>th</sup> floor of the Queensway Government Offices. Alternatively, these forms may be downloaded from the Companies Registry's Homepage on the Internet (Website: <http://www.info.gov.hk/cr/>). The whole set of the specified forms in



CD-ROM will also be available for purchase at the above address in early February 2004. Samples of the new and revised forms will be available for inspection on the 14<sup>th</sup> floor of Queensway Government Offices nearer the commencement date.

26. Companies having a stock of old forms (except those related to statutory declarations or affidavits) may continue to use them during a transitional period of two months with suitable amendments. Please refer to the **Annex** for details of the transitional period.

### **Enquiries**

27. Any enquiries concerning this Circular should be directed to Ms P Y Keung, Assistant Registry Manager (Registration) at 2867 4562 or Ms D Y Luk, Assistant Registry Manager (Customer Service) at 2867 4570.

G W E JONES  
Registrar of Companies

Ref : CR/HQ/8/1/58 XVI  
CR/HQ/1/50/15 II

**Companies Registry Specified Forms**  
**Introduced under the Companies (Amendment) Ordinance 2003**

<b>I. New specified forms introduced consequential to the legislative amendments in the Companies (Amendment) Ordinance 2003</b>			
<b>Form No.</b>	<b>Nature of Form</b>	<b>Section Reference</b>	<b>Transitional Period</b>
AC1	Statement of Particulars of Subsidiaries	128(5)(b) & (5A)(b)	N.A.
AC2	Statement of Particulars of Shareholdings in Non-Subsidiary Companies	129(5)(b) & (5A)(b)	N.A.
D5	Notification of Reserve Director (Nomination/Cessation)	158(4) & (4A)	N.A.
D6	Acceptance of Nomination as Reserve Director	158(5A)	N.A.
D7	Notification of Change of Particulars of Reserve Director	158(4)	N.A.
D8	Notification of Resignation of Reserve Director	157D(2) Proviso	N.A.
IN1	Notification of Appointment of Inspector	151	N.A.
IN2	Notification of Submission of Final Report of Inspector	151	N.A.
M2	Memorandum of Satisfaction or Release of Property from Charge	85	N.A.
M3	Notification of Mortgagee Entering into Possession of Property	87(2) & (6)	N.A.
M4	Notification of Mortgagee Going out of Possession of Property	87(4)(b) & (6)	N.A.
M5	Notification of Appointment of Receiver or Manager	87(1) & (6)	N.A.
M6	Notification of Receiver or Manager Ceasing to Act	87(4)(a) & (6)	N.A.
M7	Notification of Change of Particulars of Receiver, Manager or Mortgagee in Possession of Property	87(5) & (6)	N.A.
NC1A	Statement of Compliance on Incorporation of a Company	18(2)	N.A.
NC2	Notification of Change of Company Name	22(1A)	N.A.
SC12	Statement of Compliance on Reduction of Share Capital	61A(1)	N.A.
W1	Certificate of Solvency	233(1)	N.A.
W2	Statement of Voluntary Winding Up in Case of Inability to Continue Business	228A(1)	N.A.

W3	Notification of Appointment of Liquidator or Provisional Liquidator	195(a), 228A(10) & 253(1)(b)	N.A.
W4	Notification of Change of Particulars of Liquidator or Provisional Liquidator	228A(12) & 253(3)	N.A.
W5	Notification of Liquidator or Provisional Liquidator Ceasing to Act	228A(11)(b) & 253(2)(b)	N.A.
W6	Certificate of Release of Liquidator	226A(1)	N.A.
<b>II. Specified forms revised consequential to the legislative amendments in the Companies (Amendment) Ordinance 2003</b>			
<b>Form No.</b>	<b>Nature of Form</b>	<b>Section Reference</b>	<b>Transitional Period</b>
RC2	Statement of Affairs	300A(1)(b) & 300B	N.A.
SC1	Return of Allotments	45(1)	2 Months
SC4	Notification of Increase in Nominal Share Capital	55(1) & (2)	2 Months
SC7	Statement of Financial Assistance for the Acquisition of Shares	47E(6)	N.A.
SC8	Statement of Financial Assistance for the Acquisition of Shares (By a Majority of Directors of a Holding Company)	47E(6)	N.A.
SC10	Statement of Redemption or Purchase of Shares out of Capital	49K(3), (5) & 49M(4)	N.A.
<b>III. Other new or revised specified forms</b>			
<b>Form No.</b>	<b>Nature of Form</b>	<b>Revision Highlights</b>	<b>Transitional Period</b>
AR1	Annual Return	<ul style="list-style-type: none"> <li>♦ Re-instatement of the requirement for mandatory submission of details of shareholders</li> <li>♦ Addition of a new section for stating the particulars of reserve director</li> </ul>	2 Months
AR2	Annual Return – Certificate of No Change (Company having a share capital and not being a private company)	♦ Enhancement of layout and presentation	2 Months
AR3	Annual Return – Certificate of No Change (Private Company having a share capital)	-Ditto-	2 Months
A1	Notification of Removal of Auditor	-Ditto-	2 Months

D1	Notification of First Secretary and Director	♦ Addition of new boxes for voluntary submission of email address of director/secretary	2 Months
D2	Notification of Changes of Secretary and Directors	♦ Re-specification of the form for exclusive use by oversea companies after expiration of the transitional period	2 Months (for local companies)
D2A	Notification of Change of Secretary and Director (Appointment/Cessation)	♦ Introduced for use by local company in replacement of Form D2 for reporting the appointment or cessation of secretary/director ♦ Addition of new boxes for indicating the reason of ceasing to act and for voluntary submission of email address of director/ secretary ♦ Addition of new boxes for indicating whether the director/alternate director being appointed or ceasing to act holds other directorship, including alternate directorships, in the company.	N.A.
D2B	Notification of Change of Particulars of Secretary and Director	♦ Introduced for use by local company in replacement of Form D2 for reporting the changes of particulars of secretary/director ♦ Addition of new boxes for voluntary submission of email address of director/ secretary	N.A.
D3	Consent to Act as Director or Alternate Director	♦ Enhancement of layout and presentation	2 Months

D4	Notification of Resignation of Secretary and Director	<ul style="list-style-type: none"> <li>♦ Enhancement of layout and presentation</li> <li>♦ Addition of new boxes for indicating whether the resigning director/alternate director still holds other directorship, including alternate directorships, in the company.</li> </ul>	2 Months
DR1	Application for Deregistration of a Defunct Private Company	-ditto-	2 Months
R1	Notification of Situation of Registered Office	♦ Addition of boxes for indication of the type of notification and voluntary submission of email address of the company	2 Months
R2	Notification of Location of Registers	♦ Enhancement of layout and presentation	2 Months
RC3	Receiver or Manager's Abstract of Receipts and Payments	-ditto-	2 Months
SC2	Return by a Company Purchasing its Own Shares	-ditto-	2 Months
SC3	Notification of Application to the Court for the Cancellation of a Special Resolution (Regarding Redemption or Purchase of Shares out of Capital)	-ditto-	2 Months
SC5	Return of Particulars of a Contract Relating to Share Allotment	-ditto-	2 Months
SC6	Statement of Payable Share Commission	-ditto-	2 Months
SC9	Notification of Application to the Court for the Cancellation of a Special Resolution (Regarding Financial Assistance for the Acquisition of Shares)	-ditto-	2 Months
SC11	Notification of Change of Share Capital Structure	-ditto-	2 Months
U1	Application for Re-registration as a Limited Company	-ditto-	2 Months