

ALERT OF THE MAJOR CHANGES WITH THE IMPLEMENTATION OF THE NEW COMPANIES ORDINANCE (CAP 622)

Introduction
<ul style="list-style-type: none">➤ With effect from 3 March 2014, the New Companies Ordinance (Cap 622), ('the New CO') will be implemented. Majority of the current Companies Ordinance (Cap 32), ('the Existing CO') will be replaced by the New CO. The Existing CO will be renamed as "Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) afterward.➤ This alert highlights the major changes with the implementation of the New CO for your attention:
1. Directors
<ul style="list-style-type: none">❑ With the implementation of the New CO, every private company must have at least 1 director who is a natural person.❑ A grace period of 6 months after the implementation of the New CO is provided for existing companies to comply with the new requirement.❑ Hence, the minimum requirements to maintain a private company in Hong Kong are as follows (except the articles of association states otherwise):<ul style="list-style-type: none">a. at least 1 director who is a natural personb. at least 1 memberc. at least 1 company secretary (either a Hong Kong resident or a company with Hong Kong address)d. the registered office should locate in Hong Kong
2. Personal Data
<ul style="list-style-type: none">❑ Correspondence addresses of natural secretaries are required.
3. Share Capital
<ul style="list-style-type: none">❑ The par value concept is abolished.❑ The existing share premium account and capital redemption reserve account become part of the company's share capital.
4. Annual Returns
<ul style="list-style-type: none">❑ The deadlines for the filing of annual returns are as follows:<ul style="list-style-type: none">a. private company - within 42 days from the anniversary of the company's incorporation date.

- b. **public company** - within 42 days after 6 months after the end of the company's accounting reference period.
- c. **guarantee company** - within 42 days after 9 months after the end of the company's accounting reference period.

5. Accounts and Reports

- A company fall within **reporting exemption** may prepare **simplified** financial statements and directors' reports. Example: a small private company is qualified for simplified reporting if it satisfies **any 2** of the following conditions:
 - a. **total annual revenue** does **not exceed HKD100 million**
 - b. **total assets** does **not exceed HKD100 million**
 - c. average **number of employees** during the financial year does **not exceed 100**
- Other than companies fall within reporting exemption or wholly owned subsidiaries, or a special resolution has been passed, a directors' report for a financial year must contain a **business review** that consists of:
 - a. a fair review of the company's business
 - b. a description of the principal risks and uncertainties facing the company
 - c. particulars of important events affecting the company that have occurred since the end of the financial year
 - d. an indication of likely future development in the company's business.
- If a director fails to take all reasonable steps to prepare financial statements, the director is liable to a **fine of HKD300,000**. If a director **wilfully** fails to take all reasonable steps to prepare financial statements, the director is liable to a **fine of HKD300,000** and to **imprisonment for 12 months**.

6. Meetings

- Time to hold Annual General Meetings ('AGMs'): General Rule: 9 months after the end of its accounting reference period
 - a. If accounting reference period is shortened:
 - i. 9 months after the end of its accounting reference period
 - ii. Or 3 month after the directors' resolution has been made
 - iii. Whichever is the later
 - b. First accounting reference period longer than 12 months:
 - i. 9 months after the anniversary of the incorporation date
 - ii. Or 3 month after the end of that accounting reference period
 - iii. Whichever is the later
- Companies are not required to hold AGMs if the company has **only 1 member**.
- Companies may dispense with the holding of AGMs by **unanimous**

shareholders' consent.

- ❑ A general meeting can be held at **more than 1 location** by using any technology, which allows 'listen', 'speak' and 'vote'.

7. Common Seal

- ❑ The keeping and use of a common seal becomes **optional**.