
NEW DEVELOPMENTS

¶12-000 New Companies Ordinance

On 12 July 2012 the new Companies Ordinance (“CO”) was enacted by the Legislative Council with an effective date of implementation contingent on the passing of further subsidiary legislations. This new piece of legislation consists of 921 sections and 11 schedules. With the subsequent enactment of the 12 subsidiary legislations, the CO became effective on 3 March 2014.

The CO’s salient features include:

- Some of the existing guidelines of the Companies Registry (“CR”) are now written into law, which makes it possible for CR to have a wider scope of enforcement over those officers and companies not in compliance with the new CO.
- The powers and responsibilities of the Registrar of Companies are defined more clearly and in much greater detail thus giving the Registrar greater enforcement powers over officers and companies breaching the law.
- The Memorandum of Association is no longer required for incorporation of companies. Model Articles of Association may be adopted by companies. If a company does not wish to use the Model Articles, tailored-made articles of association can be used for incorporation.
- Greater transparency on who is making management decisions. There must be at least one natural person appointed to the board of directors although corporate directors can still be appointed for private companies.
- Director’s duty to exercise reasonable care, skill and diligence is now written into law. Directors’ liabilities and indemnity provisions are more clearly defined. Procedures for directors to declare interests are laid down in the new CO. It remains to be seen if CR will take action if there are complaints from any member or third parties to CR on their board of directors breaching their duty of care, fair dealing or non-compliance of certain sections of the new CO.
- Shares will no longer have par value. It is no longer necessary to determine whether the shares are issued at discount or at a premium. However, the board still needs to consider whether the issued price is fair to avoid any complaints from shareholders.
- Additional contribution to issued shares will be feasible.
- The unofficial practice of redenomination of capital from one currency to another has been written into law.

- Annual general meeting can be dispensed with. On the other hand, procedures and timeline for circulation of written resolutions of members are defined clearly giving the members more rights in making decisions for their companies.
- Simplified reporting is feasible for small to medium sized companies (“SMEs”). This could minimise the reporting workloads of SMEs. On the other hand, public and larger private companies are required to prepare more comprehensive reports and business review
- The rights to have access to information from a greater number of people and duties of auditors are defined in length. Indemnification given to auditors for negligence, default, breach of duty or breach of trust is invalid.
- Amalgamation can be arranged for companies within a group subject to the directors of the amalgamating company making a solvency statement and follow the procedures in the new CO. Amalgamation can be vertical, i.e. a holding company with its subsidiaries; or horizontal, i.e. two or more fellow subsidiaries. Sections on scheme of arrangement are abolished. This could minimise the time and costs for group restructuring.

The new CO changes the regulatory regime. How strict the CR will be in enforcing the laws will remain to be seen. For company secretaries, strict compliance should always be the rule of the game.

STATUTORY BOOKS

¶25-010 Introduction

It is compulsory for a company to maintain certain information under the CO. The information is available to the general public in some cases and only to members and creditors of the company in others.

The information may be kept and maintained at:

- the registered office of the company;
- the principal place of business of the company; or
- such other place as the directors may approve if proper notices are filed with the Registrar of Companies.

The term “book and paper” includes accounts, deeds, writings and documents.

“Document” includes summons, notice, order and other legal process and registers.

It is the duty of the directors and secretaries of the company to ensure that the company's statutory and non-statutory books are properly established, maintained and up-to-date. Officers of a company are personally liable for failure to maintain statutory books and may be liable on conviction to penalties and default penalties under the CO.

Law: sec 351, 627, 628, 641, 648 and 657, *Companies Ordinance (Cap 622)*

¶25-050 Company records

The following must be maintained by each company:

- (where debentures have been issued) register of debenture holders (sec 308 and 309);
- register of charges and copies of all charging instruments (sec 351 to 354);
- register of members (sec 627 and 628);
- written records of sole member (sec 617, 618 and 621), if applicable;
- minute books (sec 418, 482, 618 and 621);
- written records of sole director (sec 483C), if applicable;
- register of directors and secretaries (sec 641, 648 and 657);
- accounting records (sec 373, 374 and 377).

The following registers are required for listed companies:

- register of directors' and chief executives' interests and short position (*Securities and Futures Ordinance* sec 336);
- register of interests in shares and short positions of substantial shareholders (*Securities and Futures Ordinance* sec 336);

In addition to the statutory books, it is usual for a company to maintain the following non-statutory books:

- register of transfers;
- register of important documents (containing for example the Articles of the company, the company lease, licences issued by the relevant authorities relating to the company's business, etc.).

For information which is not kept by making entries in a bound book but in any other manner, the following must be observed:

- reasonable precautions must be taken to guard against falsification and facilitate the discovery of falsifications; and
- proper facilities must be provided to enable the register, index, minute book or books of account to be inspected.

¶25-100 Checklist of contents of statutory books

<i>CO Section No (unless otherwise stated)</i>	<i>Type of statutory book & contents</i>
627, 628 and 630	<p>Register of members to be kept either in Chinese or English language</p> <p>The register must contain:</p> <ul style="list-style-type: none"> • the name and address of each member; • if the company has a share capital, the number of shares held by each member (distinguished by share numbers, if any, or by the number of certificates, if any) and the amount paid (or agreed to be considered as paid) on the shares held by each member; • the date on which each person was entered as member; • the date on which a person ceased to be a member. <p>Note 1: If all the issued shares of the company or all the shares within one particular class are fully paid up, distinguishing number is not necessary (sec 136).</p> <p>Note 2: All entries relating to a person can be destroyed 10 years after that person ceased to be a member (sec 627(5)).</p> <p>Note 3: Particulars required to be made into the register must be made within 2 months.</p> <p>Index of members (if members exceed 50 unless the register constitutes an index) (sec 630).</p>

<i>CO Section No (unless otherwise stated)</i>	<i>Type of statutory book & contents</i>
<i>Securities and Futures Ordinance sec 336</i>	<p>Register of directors' and chief executives' shareholdings and Register of substantial shareholders etc.</p> <ul style="list-style-type: none"> • All notifications made by parties pursuant to Pt XV of the <i>Securities and Futures Ordinance</i> and received by the company have to be kept either in the register of directors and executives or register of substantial shareholders. • Entries must be in chronological order. • Once notification is received, the register(s), as the case may be, must be updated within 3 business days. • If the register does not constitute an index, an index must be made to enable information to be readily found against those persons whose names appear in the register. • The company shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index. • The registers have to be kept for 6 years after a company ceases to be a listed corporation.
641 and 643	<p>Register of directors and secretaries to be kept either in Chinese or English language</p> <p><i>Directors</i></p> <p>The register of directors must contain with respect to each director:</p> <ul style="list-style-type: none"> • present forename and surname; • any alias; • any former forename and surname; • usual residential address; • the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him; • in the case of a body corporate, its corporate name and registered or principal office (applicable to private company only other than one within a group of companies of which a listed company is a member).

<i>CO Section No (unless otherwise stated)</i>	<i>Type of statutory book & contents</i>
648	<p>Note 1: If a body corporate is the director, its incorporation number should be obtained if it is incorporated in Hong Kong in order to complete the specified forms reporting its appointment as director and any subsequent changes thereof.</p> <p>Note 2: A person to be appointed as a director of a company listed in Hong Kong has to disclose his other directorships in listed companies whether listed in Hong Kong or overseas for the past 3 years in accordance with Main Board Listing Rules 13.51(2).</p> <p>Note 3: If the company has only one member and that member is the sole director, the particulars of the reserve director (if any) must also be entered therein.</p> <p><i>Company secretaries</i></p> <p>The register of secretaries must contain with respect to each company secretary:</p> <ul style="list-style-type: none"> • present forename and surname; • any former forename and surname; • any alias; • the number of his identity card (if any) or, in the absence of such number, the number and the issuing country of any passport held by him; • the correspondence address (if the company secretary is a natural person, the correspondence address can be the registered office address of the company); • in the case of a body corporate, its corporate name and registered or principal office where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars. <p>Note 1: As the company secretary should ordinarily be resident in Hong Kong, it is normally expected that an individual acting as company secretary of a company should have identity card. If none, care must be made to check if that person meets with the “ordinarily resident” requirement.</p> <p>Note 2: If the company secretary is a body corporate, it must either be incorporated or having a principal place of business in Hong Kong. Therefore, the incorporation or registration number should be available. (sec 474(4)).</p>

¶135-200 Employees' shares

Employees' shares may be issued to employees if authorised by the articles of the company. The shares are usually issued as an incentive to employees to give them a sense of participation in the success of the company.

¶135-250 Founders'/management shares

Founders' shares are normally offered in limited numbers to the founders or promoters of a company. They usually carry very large voting rights in comparison to the value and also entitle the holder to a large portion of the company's surplus profits after dividends have been paid to other classes of shares. Founders' shares are usually issued in family-controlled companies and are issued as an incentive or recognition of the holder's status in the company.

¶135-300 Stock

Shares cannot be converted into stock.

Law: sec 138, *Companies Ordinance (Cap 622)*

A company, having previously converted shares into stock, may reconvert the stock into shares pursuant to sec 174 and 175.

¶135-400 Difference between shareholder and member

A member of a company is:

- the person deemed to be a member of the company by virtue of his being a founder member to its articles;
- every other person who agrees to become a member and whose name is entered in the company's register of members.

On the basis of this definition, a member is not necessarily a shareholder (e.g. where a company has no share capital) as defined in sec 9 of the CO. Nor is a shareholder necessarily a member (e.g. where a person buys shares but is not registered in the register of members). Thus, while the terms "shareholder" and "member" are often used interchangeably, e.g. a shareholders' meeting is also referred to as a members' meeting, the two are not synonymous.

Please refer to ¶115-850 ("Fair dealing by directors") for discussion on Part 11 of the CO.

Substantial shareholder

The duty to disclose substantial shareholdings in listed company is contained in a separate Ordinance, the *Securities and Futures Ordinance (Cap 571)*. A shareholder is obliged to make a disclosure when:

- an acquisition or disposal takes his interests above or below the notifiable interest; and
- there is a 1% change above the notifiable interest.

The “notifiable interest” is taken to be 5% of the issued voting share capital of the company or if the company has more than one class of voting shares, it is 5% of the class in question.

A substantial shareholder is required to give notice in writing to the company and the HKEx stating:

- his name and address;
- full particulars of the voting shares in the company in which he has an interest, including the name of the registered holder of the shares;
- full particulars of each such interest; and
- reason for disclosure.

The notice must be given within three business days next following the day on which the duty to disclose arises.

Law: Part XV, SFO (Cap 571)

ALLOTMENT AND ISSUE OF SHARES

¶135-500 Share application procedures

Founder shares

For incorporation purposes, founder members of the articles of a company must state therein, opposite to their respective names, the number of shares that they have agreed to take.

Founder shares are deemed to have been allotted on the date of incorporation. Companies adopting the model articles for private companies limited by shares (“model articles”) should ensure that the consideration for the founder shares are paid on or before the incorporation of the companies.

Please refer to ¶17-400 for Sample Articles for private companies limited by shares.

Post incorporation

Private limited company

The application procedure is relatively easy. Only existing members or persons approved by the directors of the company may apply. A simple share application form should be completed, signed by the applicant and sent to the company secretary or the board of directors together with the requisite payment within a specified timeframe.

Unless the shares are to be allotted to existing members on a pro-rata basis, allotment mandate, i.e. shareholder resolution conferring on the board of directors authority to allot shares, must have been obtained from existing members. Companies adopting the model articles could only issue fully paid shares. Therefore, consideration for the shares should be received on or before allotment.

It has not been specified in sec 141(1) the type of resolution to be passed. Unless specified in the articles of association to the contrary, the company may consider passing an ordinary resolution to authorise the directors to allot shares.

Law: sec 140 and 141, *Companies Ordinance (Cap 622)*

Specimen letter of application for shares for a private company

<p>Name of Company Hong Kong Date Dear Sir We, (full name of company), hereby apply for (number) shares in your company for a total cash consideration of (amount). A cheque for payment of the subscription amount is attached herewith for your action. Should the aforementioned number of shares be allotted to us, we agree to abide by the articles of association of your Company and authorize your Company to enter our name into the register of members. Yours faithfully (name of company)</p>

¶35-600 Checklist for allotment and issue of shares

The following list includes some of the usual matters that have to be considered before shares are allotted and issued:

- (1) Are the shares to be issued to the founder member? If not, there should be a written application for the shares and the agreed price should be stated clearly therein.
- (2) Check the articles of the company on the specific requirements for allotment of shares. Have the relevant resolutions authorising the board of directors to allot shares been passed in general meeting?
- (3) Are there any restrictions on allotment? If not, allot the shares.
- (4) If the shares to be issued are of a certain class (e.g. preference shares), the articles of the company should provide for the issue of such shares.

After allotment and issue, the following matters must be considered:

- (1) Has the prescribed Form NSC1 (Return of allotments) been filed with the Registrar of Companies? If shares are allotted for consideration other than cash, the particulars must be stated therein.
- (2) Have the share certificates been issued?
- (3) Has the register of members been updated?

The register of members should be updated within 2 months once the allotment or transfer has been made and the share certificate has been issued. This includes the updating of the index to the register of members, if applicable.

It is important to keep the register of members updated and accurate as the register is the primary proof of those matters that need to be inserted therein unless evidence is available to prove otherwise. Details of a member could be destroyed 10 years after that person ceased to be a member.

Law: sec 142, 144 and 627, *Companies Ordinance (Cap 622)*

¶35-650 Restrictions on allotment

Before issuing shares to an applicant, it is prudent to ascertain whether there are any applicable restrictions. The following are some examples of restrictions on allotment.

Limit on the number of shareholders

Ensure that the 50-member limit for a private company or any other limit in number of shareholders in the company's articles does not prevent shares from being issued to the applicant. Employees or former employees who hold shares in the company are not counted in the 50-member limit.

Law: sec 11, *Companies Ordinance (Cap 622)*

Rights of pre-emption (private companies only)

Do the articles of the private company contain restrictions on the allotment or sale of shares to persons other than its existing shareholders? Can the shares be sold to an outside party without the approval of the other shareholders?

Conditions for allotment of shares offered to the general public

Section 42 of the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* prohibits the allotment of any shares of a company offered to the public unless:

- (a) the minimum subscription has been subscribed;
- (b) the sum payable on application for the shares so subscribed has been received by the company. If payment is made by cheque, the amount is considered paid and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that cheque will not be paid.

The minimum subscription must be reckoned excluding any amount payable otherwise than in cash.

The amount payable on application on each share must not be less than 5% of the nominal amount of the share.

- Annual general meeting can be dispensed with. On the other hand, procedures and timeline for circulation of written resolutions of members are defined clearly giving the members more rights in making decisions for their companies.
- Simplified reporting is feasible for small to medium sized companies ("SMEs"). This could minimise the reporting workloads of SMEs. On the other hand, public and larger private companies are required to prepare more comprehensive reports and business review
- The rights to have access to information from a greater number of people and duties of auditors are defined in length. Indemnification given to auditors for negligence, default, breach of duty or breach of trust is invalid.
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The new CO changes the regulatory regime. How strict the CR will be in enforcing the laws will remain to be seen. For company secretaries, strict compliance should always be the rule of the game.

ADMINISTRATION

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¶12-010 Companies Registry, Business Registration Office and Stamp Office

The Companies Registry ("CR") is the government body responsible for the registration of companies, limited partnerships, trust companies and registered trustees. It is also the place to register documents required by the various Ordinances governing these enterprises. The Business Registration Office ("BRO") is the government body responsible for issuing business registration certificates to businesses.

To shorten the time required by companies to apply for the certificate of incorporation and business registration certificate ("BRC"), the CR is now responsible for issuing BRCs to newly incorporated companies. The application form for BRCs is attached in the NNC1 or NNC1G forms as the case may be.

The Stamp Office ("SO") is responsible for assessing and collecting the stamp duty on those instruments and properties which are liable to pay stamp duty under the *Stamp Duty Ordinance (Cap 117)* ("SDO"). The Commissioner of the Inland Revenue Department and all staff working in the SO are responsible for the administration of the SDO.

The law relating to companies and businesses is found in the *Companies Ordinance (Cap 622)* ("CO"), the *Companies Regulations*, the *Business Registration Ordinance (Cap 310)* and other related legislation.

The Registrar of the Companies ("Registrar"), any Deputy or Assistant Registrar, and other officers and employees of the CR are responsible for the administration of the CO. The Commissioner of The Inland Revenue Department, other officers and employees of the BRO are responsible for the administration of the *Business Registration Ordinance*.

The main functions of the CR are the following:

- registration of companies, limited partnerships, trust companies, registered trustees and body corporates formed by *Special Ordinance*;
- providing information on registered companies and facilities for electronic searches;
- ensuring compliance with the relevant legislation; and
- advising the Hong Kong SAR Government on policies and legislative issues regarding company law and related legislation.

The functions and authority of the Registrar are now clearly defined in Part 2 of the CO. They are:

- To specify form to be used for filing with the CR. (Sec 23 of the CO)
- To issue guidelines for the purpose of indicating the manner in which the Registrar proposes to perform any function or exercise any power; or to provide guidance on how certain provisions of the CO should be operated. It should be noted that guidelines do not have legal binding effect and can be revised or amended as the Registrar may deem appropriate. (Sec 24 of the CO)
- To authenticate documents in any manner the Registrar may deem appropriate. (Sec 25 of the CO)
- To determine, with the approval of the Financial Secretary, the fees chargeable in respect of the performance of certain functions or services. (Sec 26 of the CO)

Address and telephone directory

The CR is located at:

12/F to 15/F

Queensway Government Offices

Queensway

Hong Kong

Enquiry hotline: 2234 9933

Telephone: 2867 2600 / 2867 2604

Fax number: 2596 0585

Website address: www.cr.gov.hk

The BRO is located at:

4/F Revenue Tower

5 Gloucester Road

Wanchai

Hong Kong

Telephone: 187 8088

Fax number: 2824 1482

Website address: www.ird.gov.hk

Stamp Office is located at:

3/F, Revenue Tower

5 Gloucester Road,

Wanchai

Hong Kong

Telephone: 2594 3201

Fax number: 2519 6740

The following are some useful contact numbers:

Business Registration Office	
General enquiry	187 8088
Apply for Business Registration/Exemption from Business Registration	2594 3149
Change of Business Registration Particulars	2594 3145
Exemption from payment of Business Registration Fee & Levy	2594 3130
Others	2594 3146
Companies Registry	
General enquiry	2867 4507
Change of company name	2867 2587
Receipt of documents and registration fees	2867 2600
Receipt of applications and fees in relation to Money Lenders licences	2867 2634
Registration of local and non-Hong Kong companies	2867 2587
Registration of general documents	2867 4579
Registration of documents relating to charges and liquidation	2867 2578

Companies Registry

Deregistration	2867 4699
Money Lenders licences	2867 2634
Company search	2867 2571

Opening hours**Business Registration Office**

Monday to Friday	8:15 am to 5:30 pm
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Cashiers

Monday to Friday	8:45 am to 5:00 pm
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Companies Registry

Monday to Friday	8:30 am to 12:45 pm and 1:45 pm to 5:45 pm
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Cashiers

Monday to Friday	8:45 am to 12:30 pm and 2:00 pm to 5.00 pm
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LODGMET OF DOCUMENTS WITH COMPANIES REGISTRY

"Responsible person" is introduced in the CO. Any person who is involved in the contravention of or failed to comply with a requirement, direction, condition or order will be liable. It is, therefore, imperative that any person involved in advising companies in the compliance of the CO should comply strictly with all the filing requirements as stipulated in the CO.

Law: sec 3, *Companies Ordinance (Cap 622)*

¶12-100 Method of lodgment

All forms and returns may be lodged with the CR as follows:

- by delivery over the counter at CR's office;
- by post;
- by depositing the documents in the box placed at the Deck Floor of Queensway Government Office on Saturdays. This arrangement enables those documents with filing deadline falls on a Saturday to meet the deadline; and
- by electronic submission.

¶12-150 Forms**Businesses**

Forms relating to businesses can be obtained from the BRO or downloaded from the website: www.ird.gov.hk

Companies

Prescribed forms can be downloaded from the website: www.cr.gov.hk. CD-ROMs can also be purchased from the CR.

¶12-250 Signature on documents

Except where the Ordinance or the *Companies Regulations* states otherwise, any document lodged with the CR shall be signed by a director or secretary of the company, or, in the case of a non-Hong Kong company, by a director/secretary, manager or the authorised representative of the non-Hong Kong company in Hong Kong. If documents are submitted through electronic submission, a digital signature is required.

Certification and translation of documents

Any document which needs to be certified for submission to the CR under Part XI of the *Companies Ordinance* or any document which needs to be translated should be certified or translated in accordance with the guidelines issued by the CR.

¶12-400 Fees for lodgment

The fees for lodgment of documents are prescribed in the *Companies (Fees) Regulation*. The prescribed fees must be paid to the Registrar of Companies at the time the document is lodged. Please refer to ¶13-600 for a list of the prescribed fees payable to the Registrar of Companies.

Fees may be paid in cash or by cheque made payable to "The Government of Hong Kong Special Administrative Region" or "Companies Registry".

¶12-450 Time for lodgment

Documents must be lodged within the prescribed period as provided in the CO.

¶12-500 Refusal to register documents

In Subdivision 2 of Division 4 of the CO, the Registrar of Companies has the authority to refuse to register any document if she is of the view that the document is unsatisfactory as defined in section 31 of the CO in that:

- the information contained in the document is not capable of being reproduced in legible form;

- the document is neither in English nor Chinese and a certified translation in English or Chinese is not attached thereto;
- the requirements as specified by the Registrar from time to time and for the time being in sec 32 of the CO are not complied with;
- the document does not comply with the requirements of the CO;
- the document is not delivered in accordance with the agreement relating to electronic means;
- the appropriate fee for filing of the document is not paid on submission of the document to the CR;
- the required signature to the document is either incomplete or missing;
- the information contained in the document is either internally inconsistent or inconsistent with the information already available to the CR;
- the information contained in the document is either invalid or done without the authority of the company.

The Registrar can set a period during which the any person responsible for filing the document has to comply with the directions of the Registrar including but not limited to:

- producing any other document to enable the Registrar to determine whether the document is unsatisfactory;
- amending the document in the appropriate manner with or without a supplementary document;
- applying to the court for any order or direction;
- any other directions issued by the Registrar.

Law: sec 36, *Companies Ordinance (Cap 622)*

If the Registrar refuses to register a document, a notice of the refusal must be sent to the person responsible for filing the document. It is now specified that a period beginning on the date on which the document was delivered to the Registrar and ending on the fourteenth day after the date on which the notice of refusal is sent to the person, will not be subject to the calculation of daily penalty.

Law: sec 38, *Companies Ordinance (Cap 622)*

The period for resubmission of documents returned from the CR is now clearly defined. Special attention should, therefore, be made on this time period to minimise the total daily penalty for failure to file the document within the statutory time limit as specified in the CO.

INFORMATION SERVICES

¶12-700 Electronic search services

The General Public can access the following information and/or documents from the electronic search services at the CR homepage:

- (1) Names of companies already registered;
- (2) Company particulars;
- (3) Director index;
- (4) Register of charges;
- (5) Register of disqualification orders; and
- (6) Copies of documents registered with the CR for each company.

This information, and/or documents can be downloaded from the Companies Registry at the prescribed fee (except item (1) which is free of charge).

Copies certified by the CR can also be ordered through this service. Certified documents can be collected from the CR normally three hours after payment of the prescribed fees.

Information can also be downloaded from the CR Public Search Centre.

¶12-900 Internet online service

The CR's homepage is at www.cr.gov.hk. The homepage contains information on:

- the CR's aims, vision and mission statement;
- organisation and distribution of business;
- offices of the CR;
- major services;
- major fees under the CR;
- performance pledge;
- code on access to information;
- complaint procedures;
- list of handouts;
- list of circulars; and
- press release and message from the CR, etc.

3-200 How to obtain certified copies of business registration documents from the BRO

The government website offers a free service for business registration number enquiries. Enquiries can be made through the following web-link:

www.gov.hk/en/business/registration/businesscompany/

If certified copies are required, they can be obtained through:

1) In person at the BRO which is located at 4/F, Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong during office hours.

- One can obtain a duplicate Business Registration Certificate from the BRO after completing form IRBR 37 and paying HK\$20. The documents will be available for collection after 11:00 am on the next working day. One can also obtain an extract of information on the Business register in respect of a particular business. The extract is made up of a copy of the original application for registration submitted by the business operator and an amendment history showing all the amendments that have been made to the particulars set out in the original application. If one wishes to obtain an extract of information of the business or any of its branches, they should complete form IRBR 37; and pay HK\$27.

- Collection of the document will be after 11 am the next working day. Members of the public have been advised not to make enquiries on businesses that have ceased to be carried out for 10 years or more as the records for the above businesses may have been removed.

2) Credit cards. Documents should be collected in person from BRO on the following day after 11 am.

Fees to be paid to the Registrar of Companies as specified in the Companies (Fees) Regulation

1) By a company having a share capital

	Fees (HK\$)
(a) For registration of company having share capital together with incorporation form and articles of association under sec 67 of the CO	\$1,720
(b) For re-registration of unlimited company as limited company together with the specified form and articles of association under sec 130 of the CO	\$1,720
(c) For registration of a company not formed, but registration, together with the specified form and a copy of every constitutional document under sec 807(1)(a), (2) and (3)(a) of the CO	\$1,720

	Fees (HK\$)
(d) For registration of a company limited by guarantee whose number of members as stated in the incorporation form does not exceed 25	\$170
For registration of a company whose number of members as stated in the incorporation form exceeds 25, but does not exceed 100	\$340
(i) For registration of a company whose number of members as stated in the incorporation form exceed 100; and	\$340
(ii) For every additional 50 members or less after the first 100	\$20
subject to a maximum fee of	\$1,025
(e) For registration of a company limited by guarantee under sec 807(1)(b) if the number of members stated in the specified form referred to in sec 807(2) does not exceed 25	\$170
For registration of a company if the number of members stated in the specified form exceeds 25 but does not exceed 100	\$340
(i) For registration of a company whose number of members as stated in the incorporation form exceed 100, and	\$340
(ii) For every additional 50 members or less after the first 100	\$20
Subject to a maximum fee of	\$1,025
(f) Annual registration fee (to be paid on delivery of annual return under sec 662(1) of the CO for a private company having a share capital:	
(i) if delivered within 42 days after the anniversary of incorporation;	\$105
(ii) if delivered more than 42 days after but within 3 months after the anniversary of incorporation;	\$870
(iii) if delivered more than 3 months after but within 6 months after the anniversary of incorporation;	\$1,740
(iv) if delivered more than 6 months after but within 9 months after the anniversary of incorporation;	\$2,610
(v) if delivered more than 9 months after the anniversary of incorporation.	\$3,480

Failure to comply with the direction will render the company and every responsible officer liable to a fine at level 6 and a further daily fine of HK\$2,000 for continuous default.

Law: sec 476, *Companies Ordinance (Cap 622)*

¶17-800 Remuneration

There is no specification in the CO of a minimum or maximum remuneration which may be paid to a secretary. The quantum of remuneration is a matter of agreement between the company and the secretary.

In a winding-up, a company secretary in full-time employment of the company will have priority over unsecured creditors of the company in respect of unpaid remuneration up to the time of liquidation. However, such remuneration must be due to him as wages or salary under a contract of service.

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CONDUCT OF MEETINGS

¶120-010 Provisions governing meetings

The conduct of meetings of a company is regulated by the rules contained in the Ordinance (Part 12), the Articles of Association of the company and any other rules and regulations that may be applicable to the company. In the absence of express written regulation, the common law applies. As the Model Articles in 622H could be modified to suit the needs of different companies, the articles of each company must be reviewed carefully on the procedures before a meeting is convened and held.

¶120-050 Convening meetings

"Convene" means "to cause to come together". In order for a meeting to be valid, the following conditions must be met:

- it must be properly convened (i.e. it must be convened by the proper person, the notice must be properly drafted and served, the length of notice must be adequate, etc.);
- it must be properly constituted (i.e. there must be a quorum and chairperson, etc.);
- it must be properly conducted (i.e. the manner in which a motion is proposed and voted on, the manner in which resolutions are passed, adjournments, etc.);
- its proceedings must be minuted and the minutes kept in safe custody for the purpose in accordance with the Ordinance.

¶120-100 Notice

Notice of the various types of general meetings and directors' meetings are dealt with specifically under their separate headings.

In general, notices should be carefully drafted. The notice must state the place, date and time for the meeting and the nature of the business to be transacted. If it is to be held by electronic means, the notice should expressly state so. It must give sufficient information to enable the recipient to decide whether or not to attend the meeting and specify that a resolution is to be passed as a special resolution. In practice, the proposed resolution is set out in the notice with the words "proposed to be passed as an ordinary resolution" or "proposed to be passed as a special resolution".

Particular regard must be had to the different lengths of notice period required in different circumstances, both under the Ordinance and the Articles.

Notice period for:

- annual general meeting is 21 days at least; and
- in any other case, 14 days for a limited company and 7 days for a unlimited company at least.

Articles of Association could set a longer period for calling meeting and members can also consent to shorter notice.

It should be noted that if a material fact is not disclosed in the notice, any resolution passed at the meeting called may be invalid and will not be binding on any member who did not attend the meeting.

Law: sec 571, *Companies Ordinance (Cap 622)*

Communication from a company to its members can be done in the following manners:

- by electronic means provided that the company has received confirmation from members of their consent and their respective electronic address and such consent has not been revoked;
- by means of website provided that the company notifies the members in advance of the availability of the documents or information in the website and the members have not revoked their consent to receiving documents through website; or
- in hard copy form.

Law: part 18 and sec 573, *Companies Ordinance (Cap 622)*

If the document is sent by hard copy, it can be sent either by hand or by post. If sent by post, the document is deemed to be received on the 2nd business day as defined in sec 824 after the document is sent unless a different service period is defined in other relevant documents, e.g. Articles of Association.

Law: sec 824, *Companies Ordinance (Cap 622)*

Model articles in 622H have not specified the period when notice is deemed to be served by post. Therefore, the period specified in sec 824 should prevail unless the relevant articles have been amended.

Accidental omission to give notice to any person entitled to receive notice is to be disregarded for determining whether notice has been duly given.

Law: sec 579, *Companies Ordinance (Cap 622)*

Special notice

Where special notice of a resolution is required under the CO, the resolution is not effective unless notice of the intention to move it has been given to the company not less than 28 days before the meeting at which it is moved, and the company must give its members notice of any such resolution at the same time and in the same manner as it gives notice. If it is not practicable for the company to give notice to its members as aforesaid, the company has to notify its members at least 14 days before the meeting by:

- advertising in a newspaper circulating generally in Hong Kong; or
- in any other manner as permitted by its Articles of Association.

If a meeting is called for a date 28 days or less, the notice is deemed to have been properly given.

Law: sec 578, *Companies Ordinance (Cap 622)*

Ordinary resolutions

An ordinary resolution is a resolution which requires a simple majority consent votes, i.e. 50% + 1 vote. Unless specified in the CO or in the Articles of Association, a resolution can be referred to as an ordinary resolution.

Law: sec 562, 563 and 571, *Companies Ordinance (Cap 622)*

Special resolutions

For the special resolution to be passed, it must have the majority approval of at least 75% votes. The notice of meeting must include the text of the resolution and also specify that the resolution is to be proposed as a special resolution.

Law: sec 564, *Companies Ordinance (Cap 622)*

Counting of notice period

When counting the notice period, clear days must be excluded, which means the date of the meeting and date when notice is deemed to be served is not counted. Counting of the notice period should also include the number of days when notice is deemed to be served.

In the case between the Securities and Futures Commission and the Stock of Exchange of Hong Kong Limited, the Judgment stated that clear days' notice has to be given.

Case: HCMP003225/1991

To whom notice is given

Notice of general meeting must be given to:

- every member who is entitled to attend and vote at the meeting;
- every director;
- every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, if the company has been notified of such entitlement; and
- the auditor or auditors if the number of auditors is more than one for the time being of the company.

For a listed company, notice has to be given to those members not entitled to vote at the meeting.

Law: sec 574 and 575, *Companies Ordinance (Cap 622)*

¶20-150 Place

Meeting can be held in more than one place. If this is the case, the principal place of the meeting and the other place or places have to be clearly stated in the notice of meeting.

Law: sec 576, *Companies Ordinance (Cap 622)*

¶20-200 Quorum

A quorum is the minimum number required to attend a meeting for the meeting to be valid. The articles may prescribe any number to form a quorum.

If the company has only one member, the quorum for meeting will be one. If the member is a body corporate, its representative will constitute a quorum at the meeting.

In any other cases, the quorum shall be 2 unless specified otherwise in the Articles of Association.

Law: sec 585, *Companies Ordinance (Cap 622)*

¶20-250 Corporate representatives

A body corporate may, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at:

- a general meeting in the capacity of member;
- a creditors or debenture holders meeting under the CO or any other laws.

The authorisation can be for a particular meeting or on a continuous basis until revoked by the body corporate.

A certificate executed by the corporation is *prima facie* evidence of the appointment or revocation of a representative. For a specimen certificate, see ¶23-400.

Law: sec 606, *Companies Ordinance (Cap 622)*

¶20-300 Chairperson

A chairperson is the person who presides over a meeting. Unless the Articles of the company make other provisions, any member elected by the members at a meeting may be chairperson of the meeting.

The directors can appoint a director to chair the directors meetings. Additional appointment of deputy or assistant chairperson can also be made. Article 11 of the model articles for private companies limited by shares provides that if the chairperson, the deputy or assistant chairperson is not present within 10 minutes after the time appointed for the meeting, or is unwilling to act, the members present must elect one of their numbers to the chair.

Article 13 of the aforementioned model articles confer on the chairperson a casting vote in the event of equality of votes.

The chairperson's powers are contained in the Articles and these usually allow him to:

- determine if a meeting is properly convened, constituted and conducted;
- ensure that the proposed business of the meeting is transacted in the order set out in the agenda;
- ensure that the meeting proceeds in an orderly fashion, control discussions and deal with participants who do not comply with regulations of the meeting;
- adjourn meetings and put questions raised by members for discussion;
- put questions to a vote, demand a poll and declare the results of voting;
- postpone the discussion of certain matters;
- signing of the minutes as evidence of the proceedings of the meetings.

Law: sec 482, 590, 591(2)(c), 592, *Companies Ordinance (Cap 622)*

¶20-350 Motions

A motion is a proposal placed for consideration before a meeting. The motion, when approved, becomes a resolution.

A motion is moved by a "proposer". Except for formal motions (i.e. motions which interrupt discussion on some matter or which are designed to postpone proceedings), a motion does not require a "seconder" unless so provided in the Articles. In practice, the chairperson usually asks for a seconder to test the support for the motion. If it is clear that there is lack of support for the motion, the chairperson may proceed with the next business on the agenda.

A properly framed motion should:

- be stated clearly;
- within the ambit of the notice or business in hand;
- if required in the Articles, be in writing and signed;
- comply with the provisions of the CO and the Articles.

A motion which has been put to the meeting can only be withdrawn with the approval of the meeting. Once the question has been put for decision, the motion cannot be withdrawn.

Table of formal motions

Object of motion	Form of motion	Who may move or second
To bring discussion of a motion to the vote	"That the question be now put to vote"	Any person entitled to vote who has not moved, seconded, or spoken on the original motion. If the motion to vote is passed, the original motion must be put to the vote immediately. If the motion to vote is not passed, discussion continues on the original motion.
To defer a vote being taken on the original motion	"That the question not be put to motion"	Any person entitled to vote who has not moved, seconded, or spoken on the original motion. If the motion to defer is passed, the original motion cannot be considered further at the same meeting. If the motion to defer is not passed, the original motion must be put to the vote immediately.
Proceed to next business	"That the meeting proceed to the next business"	Any person entitled to vote who has not moved, seconded, or spoken on the original motion. If the motion to proceed is passed, the original motion cannot be considered further at the same meeting. If the motion to proceed is not passed, discussion on the original motion continues.
To adjourn the debate	"That the debate on this subject be adjourned"	Any person entitled to vote and who has not moved, seconded or spoken on the original motion. If the motion to adjourn is passed, discussion of subject matter is adjourned but the meeting continues. If the motion to adjourn is not passed, discussion on the original motion continues.
To adjourn the meeting	"That the meeting be adjourned until (date)"	Any person entitled to vote and who has not moved, seconded or spoken on the original motion. If the motion to adjourn is passed, the meeting is adjourned to the specified meeting date. If the motion is not passed, meeting continues.

120-400 Voting

Voting is the method used in a meeting to decide whether it will accept or reject a motion. Voting may be carried out by:

- assent (i.e. saying "yes" or "no");
- show of hands;
- poll;
- ballot;
- division;
- acclamation.

The most commonly used methods in practice are voting by show of hands, by poll and by acclamation.

Voting by assent

Members vote on the motion by saying "yes" or "no". The Articles of most companies provide that a resolution put to vote at a general meeting must be decided by a show of hands unless a poll is demanded in accordance with the articles. The chairperson must take care not to dispose of motions by oral assent in contravention of the Articles.

Voting by show of hands

This is the method of voting to be used in the absence of provision to the contrary and is the most common form of voting provided for in the Articles of most companies. The chairperson first asks all those in favour of the motion to raise their hands and after the number is recorded, he asks all who are against to do the same.

Note:

- a member or proxy has one vote only, irrespective of the number of shares which he holds, unless the Articles provide otherwise. The relevant section has not specified if the vote of a person who is a member and also a proxy will only be counted as one vote. It should be noted that Articles of companies limited by guarantee may require that a proxy must be a member of the company;
- if a member appoints more than one proxy, the proxies so appointed are not entitled to vote by show of hands. Notice of termination the proxy's authority should be received by the company before the commencement of the meeting or the adjourned meeting; OR before the time appointed for the taking of the poll if the poll was demanded more than 48 hours before the taking thereof;
- if a member attends and vote at the meeting, this will revoke the appointment of proxy for the same meeting;

Note: A branch business registration certificate must be in place for the business name. Application is to be made to the Business Registration Office by completing and signing Form 1(d).

SHARE CAPITAL & DIVIDENDS

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¶135-010 What is a share?

A share is the interest of a shareholder in a company measured in monetary terms. It represents a percentage or fraction of the capital of the company. A shareholder's participation in the company, in terms of liability and dividends while the company is a going concern, as well as the distribution of its assets on winding up, depends on the number of shares he holds in the company. The ownership of shares carries rights and obligations defined by the CO and the articles of the company. Shareholders are collectively the owners of a company.

Generally, "share" is a share in the capital of a company. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company.

Law: sec 134, *Companies Ordinance (Cap 622)*

Accordingly, the laws relating to personal property apply to shares and equitable interests in shares may be created and dealt with. Shares may be of different types, conferring different rights on their holders.

Nominal value

Shares do not have nominal value.

Law: sec 135, *Companies Ordinance (Cap 622)*

Market value

The market value of a share is the actual value of the share.

In a private company, market value is usually calculated on the basis of the net tangible assets of the company or its earnings over the total number of shares (price earnings ratio).

If the shares of a company are traded on the HKEx, the market value of the shares is determined by, amongst other things, supply and demand.

CLASSES OF SHARES

¶135-050 Introduction

The articles of the company regulate the types or classes of shares a company may issue and the rights attached to each class of share, e.g. voting rights, rights to receive dividends and to receive capital in the event of a winding up.

The main classes of shares that may be issued are described below.

¶135-100 Ordinary/equity shares

Ordinary shares give holders control over the company. Ordinary shareholders are effectively the owners of the company, having the full right to vote. They are entitled to dividends and return of capital after preference shareholders. In the event of liquidation, ordinary shareholders rank after all liabilities of the company are paid.

¶135-150 Preference shares

Preference shares give preferential rights to their holders to:

- a fixed and cumulative dividend; and
- a return of capital.

No preference shares may be issued unless the articles of the company set out the rights of holders of those shares in relation to other shares with respect to:

- repayment of capital;
- participation in surplus assets and profits;

- cumulative or non-cumulative dividends;
- voting; and
- priority of repayment of capital and dividend.

Preference shares generally carry neither voting rights nor rights to participate beyond a specified amount in any distribution, whether by way of dividend, or on redemption, in a winding up or otherwise.

Cumulative and non-cumulative preference shares

Cumulative preference shares give the shareholder a dividend at a fixed rate throughout the life of the company. If the company does not have sufficient profits in a particular year to meet the fixed dividend payments, the deficit is made up in later years. The articles of the company may provide that holders of cumulative preference shares be entitled to voting rights when dividends are in arrears.

For non-cumulative preference shares, dividends need only be paid in the years when the company has sufficient profits to enable the fixed rate to be paid. The company does not have an obligation to meet the deficit in the following years. Holders of non-cumulative preference shares usually have no voting rights.

Redeemable preference shares

Redeemable preference shares are shares that give:

- the holders the right to be repaid their capital; or
- the company the right to repay the capital within a specified period or after a specified time.

The redemption price to be paid by the company is set between the company and the shareholders on the issue of the shares. To protect the interests of creditors, redeemable preference shares cannot be redeemed:

- except out of profits which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of redemption; and
- unless they are paid up.

If shares are to be redeemed out of capital, the relevant provisions of Part 5 of the CO should be complied with.

Convertible preference shares

Convertible preference shares are preference shares that carry the option of being converted to any other class of shares at the option of the holder.

¶ 35-200 Employees' shares

Employees' shares may be issued to employees if authorised by the articles of the company. The shares are usually issued as an incentive to employees to give them a sense of participation in the success of the company.

¶ 35-250 Founders'/management shares

Founders' shares are normally offered in limited numbers to the founders or promoters of a company. They usually carry very large voting rights in comparison to the value and also entitle the holder to a large portion of the company's surplus profits after dividends have been paid to other classes of shares. Founders' shares are usually issued in family-controlled companies and are issued as an incentive or recognition of the holder's status in the company.

¶ 35-300 Stock

Shares cannot be converted into stock.

Law: sec 138, *Companies Ordinance (Cap 622)*

A company, having previously converted shares into stock, may reconvert the stock into shares pursuant to sec 174 and 175.

¶ 35-400 Difference between shareholder and member

A member of a company is:

- the person deemed to be a member of the company by virtue of his being a founder member to its articles;
- every other person who agrees to become a member and whose name is entered in the company's register of members.

On the basis of this definition, a member is not necessarily a shareholder (e.g. where a company has no share capital) as defined in sec 9 of the CO. Nor is a shareholder necessarily a member (e.g. where a person buys shares but is not registered in the register of members). Thus, while the terms "shareholder" and "member" are often used interchangeably, e.g. a shareholders' meeting is also referred to as a members' meeting, the two are not synonymous.

Please refer to ¶ 15-850 ("Fair dealing by directors") for discussion on Part 11 of the CO.

Substantial shareholder

The duty to disclose substantial shareholdings in listed company is contained in a separate Ordinance, the *Securities and Futures Ordinance (Cap 571)*. A shareholder is obliged to make a disclosure when:

- an acquisition or disposal takes his interests above or below the notifiable interest; and
- there is a 1% change above the notifiable interest.

The "notifiable interest" is taken to be 5% of the issued voting share capital of the company or if the company has more than one class of voting shares, it is 5% of the class in question.

A substantial shareholder is required to give notice in writing to the company and the HKEx stating:

- his name and address;
- full particulars of the voting shares in the company in which he has an interest, including the name of the registered holder of the shares;
- full particulars of each such interest; and
- reason for disclosure.

The notice must be given within three business days next following the day on which the duty to disclose arises.

Law: Part XV, SFO (Cap 571)

ALLOTMENT AND ISSUE OF SHARES

¶35-500 Share application procedures

Founder shares

For incorporation purposes, founder members of the articles of a company must state therein, opposite to their respective names, the number of shares that they have agreed to take.

Founder shares are deemed to have been allotted on the date of incorporation. Companies adopting the model articles for private companies limited by shares ("model articles") should ensure that the consideration for the founder shares are paid on or before the incorporation of the companies.

Please refer to ¶7-400 for Sample Articles for private companies limited by shares.

Post incorporation

Private limited company

The application procedure is relatively easy. Only existing members or persons approved by the directors of the company may apply. A simple share application form should be completed, signed by the applicant and sent to the company secretary or the board of directors together with the requisite payment within a specified timeframe.

Unless the shares are to be allotted to existing members on a pro-rata basis allotment mandate, i.e. shareholder resolution conferring on the board of directors authority to allot shares, must have been obtained from existing members. Companies adopting the model articles could only issue fully paid shares. Therefore, consideration for the shares should be received on or before allotment.

It has not been specified in sec 141(1) the type of resolution to be passed. Unless specified in the articles of association to the contrary, the company may consider passing an ordinary resolution to authorise the directors to allot shares.

Law: sec 140 and 141, *Companies Ordinance (Cap 622)*

Specimen letter of application for shares for a private company

Name of Company

Hong Kong

Date

Dear Sir

We, (full name of company), hereby apply for (number) shares in your company for a total cash consideration of (amount). A cheque for payment of the subscription amount is attached herewith for your action.

Should the aforementioned number of shares be allotted to us, we agree to abide by the articles of association of your Company and authorize your Company to enter our name into the register of members.

Yours faithfully

(name of company)

¶35-600 Checklist for allotment and issue of shares

The following list includes some of the usual matters that have to be considered before shares are allotted and issued:

- (1) Are the shares to be issued to the founder member? If not, there should be a written application for the shares and the agreed price should be stated clearly therein.
- (2) Check the articles of the company on the specific requirements for allotment of shares. Have the relevant resolutions authorising the board of directors to allot shares been passed in general meeting?
- (3) Are there any restrictions on allotment? If not, allot the shares.
- (4) If the shares to be issued are of a certain class (e.g. preference shares), the articles of the company should provide for the issue of such shares.

After allotment and issue, the following matters must be considered:

- (1) Has the prescribed Form NSC1 (Return of allotments) been filed with the Registrar of Companies? If shares are allotted for consideration other than cash, the particulars must be stated therein.
- (2) Have the share certificates been issued?
- (3) Has the register of members been updated?

The register of members should be updated within 2 months once the allotment or transfer has been made and the share certificate has been issued. This includes the updating of the index to the register of members, if applicable.

It is important to keep the register of members updated and accurate as the register is the primary proof of those matters that need to be inserted therein unless evidence is available to prove otherwise. Details of a member could be destroyed 10 years after that person ceased to be a member.

Law: sec 142, 144 and 627, *Companies Ordinance (Cap 622)*

¶35-650 Restrictions on allotment

Before issuing shares to an applicant, it is prudent to ascertain whether there are any applicable restrictions. The following are some examples of restrictions on allotment.

Limit on the number of shareholders

Ensure that the 50-member limit for a private company or any other limit in number of shareholders in the company's articles does not prevent shares from being issued to the applicant. Employees or former employees who hold shares in the company are not counted in the 50-member limit.

Law: sec 11, *Companies Ordinance (Cap 622)*

Rights of pre-emption (private companies only)

Do the articles of the private company contain restrictions on the allotment or sale of shares to persons other than its existing shareholders? Can the shares be sold to an outside party without the approval of the other shareholders?

Conditions for allotment of shares offered to the general public

Section 42 of the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* prohibits the allotment of any shares of a company offered to the public unless:

- (a) the minimum subscription has been subscribed;
- (b) the sum payable on application for the shares so subscribed has been received by the company. If payment is made by cheque, the amount is considered paid and received by the company if a cheque for that sum has been received in good faith by the company and the directors of the company have no reason for suspecting that cheque will not be paid.

The minimum subscription must be reckoned excluding any amount payable otherwise than in cash.

The amount payable on application on each share must not be less than 5% of the nominal amount of the share.

Other conditions include:

- The company or its promoters must hold, on trust for the applicants, all application moneys paid prior to allotment on account of shares offered to the public.
- If a prospectus has not been issued, shares may not be allotted unless a statement in lieu of prospectus has been lodged with the Registrar of Companies three days before the first allotment.

Law: sec 42 and 43, *Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)*

¶35-700 Return of allotments

When a company makes any allotment of its shares, the company is required to lodge with the Registrar a return of allotment in the prescribed Form NSC1 within one month of the allotment.

Failure to file Form NSC1 renders the company and every responsible person for a fine at level 4 and a further daily fine of HK\$700 for continuous default.

Application can be made to the Court to extend the one month period which may be granted if:

1. the Court is satisfied that the failure was accidental or inadvertent; or
2. it is just and equitable to extend the period.

The extension of period will extinguish the liability of those in breach of the one month period.

Law: sec 142, *Companies Ordinance (Cap 622)*