

**Part 1**  
**Preliminary**  
**Division 1**

**Short Title and Commencement**

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Companies Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**History**

This Ordinance replaces the Companies Ordinance, No 39 of 1932 (subsequently 'Cap 32'), in so far as it relates to the core or 'pure' company law provisions (i.e., incorporation and operation of companies) in the earlier Ordinance. The provisions remaining in Cap 32, mostly relating to the winding-up of companies, remain in force and Cap 32 is re-titled the Companies (Winding-Up and Miscellaneous Provisions) Ordinance ('C(WUMP)O') as from 3 March 2014, the commencement date of Cap 622 (see LN 163/2013). Some of the provisions in C(WUMP)O will be amended as part of the Improvement of Corporate Insolvency Law Exercise and those amendments are expected to be enacted in 2015/2016. See further Note to s 47.

Cap 622 is the culmination of the work of the Companies Ordinance Rewrite initiated by the Hong Kong Government. The first three Companies Ordinances of 1865, 1911 and 1932 respectively, followed on quite soon after their UK sources (the 1865 Ordinance was based on the UK Companies Act 1862, the 1911 Ordinance was based on the UK Companies Act 1908 and the 1932 Ordinance was based on the UK Companies Act 1929). But there was no consolidation after the 1932 Ordinance to follow the UK consolidations. This was partly to do with the fact that until the latter part of the 1960s, Hong Kong was commercially a comparatively quiet backwater, only then developing as a result of the US involvement in Vietnam. Hong Kong was still recovering from the Second World War and the Japanese occupation when the UK Companies Act 1948 consolidation was enacted. In 1962, a Companies Law Revision Committee ('the CLRC') was set up and it started looking at the Companies Ordinance, but it was diverted by the Administration to look at the need for securities legislation after some bank and securities scandals. The CLRC produced a report on the Protection of Investors in 1971, which led to the Protection of Investors Ordinance 1974 and the Securities Ordinance 1974. The CLRC then reverted to its review of the Companies Ordinance, and in 1973, published its Report on Company Law.

The Report led to a White Bill – the Companies (Amendment) Bill 1980 – most of which led to the Companies (Amendment) Ordinance



1984, which was called by one commentator<sup>1</sup>, using the analogy of Chairman Mao's Great Leap Forward of 1958 to 1961, the 'great leap forward to 1948' (i.e., Hong Kong was catching up with the UK 1948 consolidation). Two of the several issues in the 1973 Report which did not appear in the 1984 amendments were a statutory statement of directors' duty of care (clause 155B) and disclosure of directors' and substantial shareholders' beneficial interests in shares. The final recommendation in the Report was that a Standing Committee on Company Law ('SCCLR') should be established.

Consequently, the SCCLR met for its first meeting on 31 May 1984. It is a part-time body made up of ex officio members representing relevant government departments and ordinary members from the professional bodies, commercial interests and academia.<sup>2</sup> It is influential and its recommendations have been generally accepted by the government and enacted in due course. But until recently, it had tended to be re-active and dealt with specific issues, rather than looking at the Companies Ordinance as a whole. The SCCLR has recently issued its 29<sup>th</sup> Annual Report.<sup>3</sup>

In his Budget speech on 2 March 1994, the Financial Secretary then, Sir Hamish Macleod, appointed Mr Ermanno Pascutto to review the Companies Ordinance (the 'CO'). The Consultancy Report on the Review of the CO 1997 ('the Pascutto Report') favoured the North American Business Corporations Act model. Public consultation was not favourable and no further action followed. It is worth noting that the 1997 additions in the CO, vide ss 5A to 5C on ultra vires, copied the Canadian Business Corporations Act 1982 provisions on ultra vires, but that came from recommendations in the 1992 SCCLR Ninth Report. Subsequently the SCCLR began its own review of the Pascutto Report, which resulted in the Report of the SCCLR on the Pascutto Report February 2000 (the Overall Review of the CO) ('ORCO'). This Report recommended restructuring and rewriting of the CO and urged a full review of the CO.<sup>4</sup>

1 See C Bates 'Companies (Amendment) Ordinance 1984', Part 1 in (1985) 15 HKLJ 167.

2 See [www.cr.gov.hk/en/standing/committe.htm](http://www.cr.gov.hk/en/standing/committe.htm)

3 See [www.cr.gov.hk/en/standing/reports.htm](http://www.cr.gov.hk/en/standing/reports.htm)

4 On the historical background to Hong Kong Companies legislation up to the publication of the Pascutto Report see Lawton and Tyler, *Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong*, Research Report April 2001, Hong Kong Institute of Company Secretaries (the Report is published on the HKICS website under Publications – Research Papers); see also Goo, *Study Report on History of Company Incorporation in Hong Kong*, July 2013, celebrating the 20<sup>th</sup> anniversary of the Companies Registry (the Report is published on the Companies Registry website under Publications and Press Releases – Reports).

In 2000 the SCCLR began the Corporate Governance Review ('CGR'). The Consultation Paper on Phase I of the CGR dealing with Directors, Shareholders and Corporate Reporting was published in July 2001.

In March 2001, the Financial Services Bureau had proposed implementation of the SCCLR's CGR recommendations by a series of Companies (Amendment) Ordinances and the Rewrite of the CO. The Consultation Paper on Phase II of the CGR was published in June 2003. The Companies (Amendment) Ordinance 2003 implemented some recommendations of the ORCO.

The Joint Working Group of the Government and the Hong Kong Institute of Certified Public Accountants ('JWG') was established in 2002 to review the Accounting and Auditing provisions of the Companies Ordinance.

The Final Recommendations of Phase II of the CGR were published in January 2004 followed by the Companies (Amendment) Ordinances 2004 and 2005 to implement the CGR recommendations.

In July 2004, the Financial Services Bureau went to the LegCo Panel on Financial Affairs to press for a Rewrite of the Companies Ordinance.

In November 2005, the UK Company Law Reform Bill was introduced into the UK Parliament.

On 13 January 2006, the LegCo Finance Committee gave the go ahead to the CO Rewrite and so the Rewrite began mid-2006 with Phase I (i.e. the CO excluding winding-up and other 'not pure' Company Law provisions). Through the Rewrite, it was proposed that a large White Bill (as in 1980) would be introduced into LegCo in Q3 2010. But the Companies Registry could not delay certain technical matters, e.g. e-incorporation and e-filing. Therefore, an interim Bill to cover these and other topical matters was proposed. This became the Companies (Amendment) Ordinance No 12 of 2010.

The Financial Reporting Council Ordinance (No 18 of 2006, now Cap 588) established the Financial Reporting Committee to investigate suspected irregularities of audits of listed companies. The Consultation Paper on Accounting and Auditing Provisions of the CO with questions raised by the JWG for public consultation was published in March 2007.

## CO Rewrite – Objective and Guiding Principles

### Objective

To ensure that company law in Hong Kong is as up-to-date as possible in order to enhance Hong Kong's competitiveness and attractiveness as a major international financial and business centre.

### Principles

- Catering for SMEs – 'think small first'
- Modernising and clarifying the Law



- Enhancing corporate governance
- Enhancing shareholder engagement in the decision-making process
- Complementing Hong Kong's role as international business centre
- Encouraging the use of information technology
- Plain drafting and improved layout of the new CO
- Providing flexibility for future updating : use of schedules and subsidiary legislation
- Not seeking to compete with BVI etc and benchmark Hong Kong against jurisdictions such as UK, Australia, and Singapore.

#### *Those involved in the Rewrite*

1. The Companies Bill Team ('CBT'), representing FSB and CR<sup>5</sup>;
2. Advisory Groups ('AGs') – JWG, referred to above, published Consultation Paper on Accounting and Auditing March 2007 and Conclusions (March 2008) covering, inter alia, accounting records and accounts, directors' report and directors' remuneration report, summary financial report, auditing provisions, exemptions, Tenth and Twelfth Schedules and standard-setting process;

---

Advisory Group 1: capital, capital maintenance, charges etc

---

Advisory Group 2: company formation, registration, administration etc

---

Advisory Group 3: directors, conflicts of interest etc

---

Advisory Group 4: investigations, offences, administrative warnings, compounding offences etc.

3. Department of Justice ('DoJ') – Civil Division: Commercial Unit CO Rewrite Team ('CORT');
4. DoJ – Law Drafting Division ('LDD');
5. *External consultant* – Law academic from the National University of Singapore.

#### *The process*

Papers for AGs were prepared by the CBT. Recommendations were then proposed by the various AGs, which were then forwarded to the SCCLR for review.

<sup>5</sup> See CO Rewrite website 'About Us—Organisation Chart' at [www.fsb.gov.hk/fsb/co\\_rewrite/eng](http://www.fsb.gov.hk/fsb/co_rewrite/eng)

#### *Public consultation*

Consultation Documents were issued on:

1. Accounting and Auditing, March 2007, and Conclusions, March 2008, see Co Rewrite website;
2. Company Names, Directors' Duties, Corporate Directorship and Registration of Charges, April 2008, and Conclusions, December 2008, see CO Rewrite website;
3. Share Capital, the Capital Maintenance Regime and Statutory Amalgamation Procedure, June 2008, and Conclusions, February 2009, see CO Rewrite website.

#### *Drafting*

After a consideration of public response and also the SCCLR's views, the CBT prepared Draft Drafting Instructions ('DDIs') for the draftsmen.

As a general rule, DDIs usually undergo several or many drafts through a series of revisions and meetings. They had to be cleared by the DoJ CORT before clearance was obtained by the Permanent Secretary for Financial Services and the Treasury. Only then would the LDD start drafting.

In mid-2009, the timetable for the Companies Bill had to be amended because of the need for an interim Companies (Amendment) Bill dealing with e-incorporation and e-filing in the Companies Registry, owing to the fact that the Registry's systems had been improved and were ready to be implemented, and the Registrar could not risk waiting for the main Bill. Work on the main Bill was somewhat delayed by the interim Bill being gazetted on 22 January 2010, which became the Companies (Amendment) Ordinance 2010, passed on 15 July 2010. The proposal for a White Bill was replaced by a public consultation on the Companies Bill, which took place in two instalments and consisted of draft provisions with an Explanatory Statement explaining the relevant Parts of the Bill. The first instalment was published in late December 2009 and the second instalment in mid-May 2010.<sup>6</sup> A blue Bill was prepared in the light of the responses to the Consultations, and in accordance with the Standing Committee's advice.

The Companies Bill 2011 was gazetted on 14 January 2011 and introduced into LegCo (first reading of the Bill) on 26 January 2011.

The Bill contained 21 Parts, 921 sections and 11 Schedules.

The first LegCo Bills Committee meeting was held on 25 February 2011 and the final meeting on 5 June 2012.

In total, 44 meetings were held amounting to over 120 hours of discussion.

<sup>6</sup> See CO Rewrite website for Consultation Papers and Consultation Conclusions.



The Bill was passed on 12 July 2012. It was assented to by the Acting CE, and gazetted on 9 August 2012.<sup>7</sup>

#### Commencement of Cap 622

The Companies Ordinance (Commencement) Notice 2013 (LN 163 of 2013) was published on 21 October 2013. It provided for the main part of the Ordinance to come into operation on 3 March 2014.<sup>8</sup> The following are the provisions of the Ordinance which came into operation on that date:

1. Parts 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19 and 21;
2. Part 2 except –
  - (a) section 27(3), (4), (5) and (6) in so far as it relates to a director or reserve directors;
  - (b) sections 47, 49, 50, 51 and Subdivision 2 of Division 7;
3. Part 12 except –
  - (a) section 643(1)(a)(ii), (2)(b) and (3)(b) in so far as it relates to a correspondence address; and
  - (b) sections 643(5), 644, 645(5), 647(4) and (5), 651 and 657(2)(g);
4. Part 16 except sections 791(4) and 802(4) and (5);
5. Part 20 except section 908;
6. Schedules 1, 3, 4, 5, 7, 9 and 10;
7. Schedule 2 except section 3(1)(a)(iii) and (2);
8. Schedule 6 except sections 3 and 4;
9. Schedule 11 except section 115.

The excepted sections are excluded, at least for the time being, because of the controversy that arose over these specified sections after the passing of the Ordinance by LegCo on 12 July 2012. In early 2013, objection to the withholding and protection of directors' residential addresses and full ID numbers was made by media associations (who claimed, *inter alia*, that the provisions would impede investigative journalism) and others. Such complaints had not been made when the proposals had originally been put out for public consultation. In the circumstances, the Administration, in order to avoid delaying the implementation of the rest of the Ordinance, agreed that the provisions would not be brought into operation with the rest of the Ordinance, but would be re-considered following the commencement of the rest of the Ordinance.

<sup>7</sup> For Derivation tables: see Companies Registry website – New Companies Ordinance – Provisions – Reference Tables: The New CO – Table of Origin and From CO (Cap 32) to new CO – Table of Destination.

For Briefing Notes on each Part of the new CO and on the Subordinate Legislation: see Companies Registry website – New Companies Ordinance.

<sup>8</sup> See Companies Ordinance (Commencement) Notice 2013, LN 163 of 2013.

#### Subordinate legislation

One of the principles of the Companies Ordinance Rewrite was to provide flexibility for future updating by the use of schedules and subsidiary legislation. The intention was to put as much administrative, procedural and technical detail as possible into the subordinate legislation, because such details are more likely to be changed than basic principles, and it is easier to effect changes of subordinate legislation than of primary legislation.

There will be, initially at least, 12 pieces of subordinate legislation to the new CO. This is considerably more than the former Companies Ordinance (Cap 32), for which there were only 6 pieces of subordinate legislation, excluding those pieces dealing with disqualification of directors and prospectus related matters and the Companies (Winding-up) Rules (Cap 32H).

As soon as the Companies Bill 2011 was passed by LegCo on 12 July 2012, the Companies Bill team commenced work on the subordinate legislation to Cap 622. Twelve pieces of subordinate legislation were prepared at the end of 2012 and in early 2013, public consultation was sought in two phases, and the SCCLR was consulted. The subordinate legislation was gazetted in three batches in early 2013 and each batch was tabled at the Legislative Council for negative vetting.

The 12 pieces of subordinate legislation are:

1. Companies (Words and Expressions in Company Names) Order (Cap 622A) (LN 7 of 2013)
2. Companies (Disclosure of Company Name and Liability Status) Regulation (Cap 622B) (LN 8 of 2013)
3. Companies (Accounting Standards (Prescribed Body)) Regulation (Cap 622C) (LN 9 of 2013)
4. Companies (Directors' Report) Regulation (Cap 622D) (LN 10 of 2013) (as amended by Resolution of the Legislative Council (LN 47 of 2013))
5. Companies (Summary Financial Reports) (Cap 622E) (LN 11 of 2013) (as amended by Resolution of the Legislative Council (LN 48 of 2013))
6. Companies (Revision of Financial Statements and Reports) Regulation (Cap 622F) (LN 34 of 2013) (as amended by the Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 (LN 75 of 2013))
7. Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap 622G) (LN 35 of 2013) (as amended by the Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013 (LN 76 of 2013))



**Part 3**  
**Company Formation and Related Matters,**  
**and Re-registration of Company**  
**Division 1**

**Company Formation**  
**Subdivision 1**  
**General Requirements for Formation**

**66. Types of companies**

**Only the following companies may be formed under this Ordinance—**

- (a) a public company limited by shares;**
- (b) a private company limited by shares;**
- (c) a public unlimited company with a share capital;**
- (d) a private unlimited company with a share capital;**
- (e) a company limited by guarantee without a share capital.**

**History**

This section is derived from ss 4(2) and (4) and 29 of the former Companies Ordinance (Cap 32).

For equivalent provisions:

- 1. UK: Companies Act 2006, ss 3 to 5;
- 2. Australia: Corporations Act 2001, s 112;
- 3. Singapore: Companies Act (Chapter 50), ss 17 and 18.

**Overview**

The section sets out the different types of companies that may be formed under Cap 622. It restates the position in Cap 32 immediately before the repeal of Part 1 of Cap 32 (i.e., reflects the amendment in s 4(4) in 2003 prohibiting companies limited by guarantee with a share capital) and clearly indicates that a company limited by guarantee without a share capital is a separate type of company.

For definitions of limited and unlimited companies and company limited by guarantee (see ss 7 to 10) and of private and public companies (see ss 11 and 12).

**67. Formation of company**

**(1) Any one or more persons may form a company by—**

- (a) signing the articles of the company intended to be formed;**  
**and**
- (b) delivering to the Registrar for registration—**
  - (i) an incorporation form in the specified form; and**
  - (ii) a copy of the articles.**

**(2) A company may only be formed for a lawful purpose.**



## History

This section is derived from ss 4(1), 12(1)(c), 14A(1) and 15(1) of the former Companies Ordinance (Cap 32).

For equivalent provisions:

1. UK: Companies Act 2006, s 7;
2. Australia: Corporations Act 2001, s 117;
3. Singapore: Companies Act (Chapter 50), ss 17, 19, 20A.

## Overview

The section sets out the requirements for the formation of a company. For company articles, see Division 2 ss 75 to 99. For the incorporation form, see ss 68 to 70.

The Registrar is not required to register a company which is being formed for an unlawful purpose and where the registration of such a company takes place, this registration may be quashed.<sup>1</sup>

On the rectification of documents filed with the Companies Registry see External Circular 1/2009, noting in particular para 5, stating the circumstances where an amended document may be rejected: see now ss 35 and 36. Registration is an essential step towards the incorporation of a company and the issue of a certificate of incorporation. The effect of registration is dealt with by s 73, while s 72 deals with the effect of a certificate of incorporation.

For transitional and saving arrangements for pending applications for company formation on commencement of Cap 622 on 3 March 2014 see Cap 622, Schedule 11 s 3 (the relevant provisions of the former Ordinance (Cap 32)) continue to apply to the pending application).

## Note

In Hong Kong and many other jurisdictions, one person-private or proprietary companies have been recognised for some time now.

Allowing for one member/one director companies reflects the reality of corporate life where many small companies are in effect controlled by one member and one director, who is usually the same person. This would remove the unjustified liability which was imposed upon the quiescent or inactive member or director who was a member and/or director merely for reasons of form.

Although the fact that one person may form an incorporated company (as opposed to a corporation) reflects business reality, it reveals an unfortunate (although no doubt entirely unintended) confusion between the terms 'corporation' (the essence of which is a separate legal personality) and 'company' (which merely means a group of persons associated with each

other). The very first words of Grant's *Practical Treatise on the Law of Corporations* (Butterworths, 1850) 'In no branch of the law is it of more importance to set out with correct and definite ideas of principles, than in that which relates to corporations' are salutary because a company of merchants is one thing and an incorporated company of merchants is quite another – in Grant's words, 'something altogether distinct from the aggregate of the individual members'. Hong Kong's first Companies Ordinance (No 1 of 1865), titled An Ordinance for the Incorporation, Regulation and Winding-up of Trading Companies and other Associations, provided that any seven or more persons associated for any lawful purpose might form an incorporated company and thereupon be a body corporate, whereas today's Ordinance provides that merely one person may, for any lawful purpose, form an incorporated company and become a body corporate. The Ordinance may no longer require those desiring incorporation to be associated with each other, but the very meaning of the word 'company' does, something which sits uneasily with the concept of a sole member company, whereas there is no similar objection to the concept of a sole member corporation.

## 68. Content of incorporation form

### (1) An incorporation form must—

- (a) in relation to the company intended to be formed, contain the particulars and statements specified in section 1 of Schedule 2;
  - (b) in relation to each founder member of the company, contain the particulars specified in section 2 of Schedule 2;
  - (c) in relation to each person who is to be a director of the company on the company's formation, contain—
    - (i) the particulars specified in section 3 of Schedule 2; and
    - (ii) the statement specified in section 4 of Schedule 2;
  - (d) in relation to each person who is to be the company secretary, or one of the joint company secretaries, of the company on that formation, contain the particulars specified in section 5 of Schedule 2;
  - (e) contain the statements specified in section 7 of Schedule 2; and
  - (f) contain the statement of compliance specified in section 70(1).
- (2) If the company intended to be formed is a company limited by shares or an unlimited company, the incorporation form must also contain the statement specified in section 8 of Schedule 2.

## History

This section is derived from s 14A of the former Companies Ordinance (Cap 32).

<sup>1</sup> See *R v Registrar of Companies, ex parte Attorney-General* [1991] BCLC 476 ('Lindi St Clair (Personal Services) Ltd').



For equivalent provisions:

1. UK: Companies Act 2006, s 9 (application for registration);
2. Australia: Corporations Act 2001, s 117 (application for registration);
3. Singapore: Companies Act (Chapter 50), ss 19, 20A.

### Overview

See Schedule 2 for Content of Incorporation Form. Note that in s 3, Particulars of director (subss (1)(iii) and 2) correspondence address, have not been commenced because of the controversy over protection of directors' residential address and full ID card numbers: see Note to s 47.

The incorporation form has had a remarkable development. It was introduced by the Companies (Amendment) Ordinance 2004, but only came into operation as from 11 July 2008. It made substantive changes to the documentation and procedures on the incorporation of companies.

In particular, it became necessary to state the intended address of the company's registered office in Hong Kong. The registered office clause in the memorandum of association of a company merely stated that the registered office was in Hong Kong. Also, since the first directors and secretary had to be named in the incorporation form, there was no need for the former specified Form D1. Nor, since the incorporation form included the statement of compliance required by former s 18(2) was there any need for a separate statement of compliance. The further expansion of the incorporation form by s 6 of the Companies (Amendment) Ordinance 2010 to include consents to act of directors etc further improved the process of incorporation. The purpose of stating the number of members in the case of a company limited by guarantee is for the payment of the fee under the Companies (Fees) Regulation, Schedule 1 Part 2 Items 1 to 5. The number does not need to be the anticipated membership number, but can be the number of the founder members. The number may be increased subsequently and on such increase a further fee will be payable. There has been a change from the position under the former CO where the equivalent provisions in the Eight Schedule Part 11 assumed that the number of members could be stated as 'unlimited'.

With the abolition of the memorandum of association by Cap 622, the development of the incorporation form is completed.

For forms of incorporation form, see Companies Registry Specified Forms NC1 and NC1G.

### 69. Signing of incorporation form

**An incorporation form must be signed by the founder member named in the form or, if 2 or more founder members are named, by any one of those members.**

### History

This section is derived from s 14A(3) of the former Companies Ordinance (Cap 32).

### Overview

A 'founder member' means a person who signs on the company's articles for the purposes of s 67(1) (or, in relation to an existing company a person who subscribed to or signed on the company's memorandum of association): s 2(1).

For e-incorporation and signature requirements for documents delivered to the Registrar in the form of an electronic record, see the Companies Registry information pamphlets obtainable on the Registry website at [www.cr.gov.hk](http://www.cr.gov.hk).

### 70. Statement of compliance to be contained in incorporation form

- (1) The statement specified for the purposes of section 68(1) (f) is a statement certifying that—
  - (a) all the requirements of this Ordinance in respect of the registration of the company intended to be formed have been complied with; and
  - (b) the information, statements and particulars contained in the incorporation form are accurate and consistent with those in the company's articles.
- (2) The Registrar may accept the statement of compliance as sufficient evidence that all the requirements of this Ordinance in respect of the registration of the company have been complied with.

### History

This section is derived from s 18(2) and (3)(a), (b) of the former Companies Ordinance (Cap 32).

For equivalent provisions:

1. UK: Companies Act 2006, s 13;
2. Australia: Corporations Regulations 2001, Appendix 1;
3. Singapore: Companies Act (Chapter 50), s 19(2).

### Overview

For signing of the incorporation form, including the statement of compliance, see s 69.



## Subdivision 2

### Incorporation of Company

#### 71. Issue of certificate of incorporation on registration

- (1) On registering an incorporation form and a copy of the articles delivered under section 67(1)(b), the Registrar must issue a certificate of incorporation certifying that the company—
  - (a) is incorporated under this Ordinance; and
  - (b) is a limited company or an unlimited company.
- (2) A certificate of incorporation must be signed by the Registrar.

#### History

This section is derived from s 16(1) of the former Companies Ordinance (Cap 32), s 16(1).

For equivalent provisions:

1. UK: Companies Act 2006, s 15;
2. Australia: Corporations Act 2001, s 119;
3. Singapore: Companies Act (Chapter 50), s 19(4).

#### Overview

The process of incorporation is completed upon the issue by the Registrar of Companies of a certificate of incorporation.

For the conclusiveness of the certificate, see s 72. For the effect of the certificate, see s 73.

#### 72. Conclusiveness of certificate of incorporation

A certificate of incorporation is conclusive evidence that—

- (a) all the requirements of this Ordinance in respect of the registration of the company have been complied with; and
- (b) the company is registered under this Ordinance.

#### History

This section is derived from s 18(1) of the former Companies Ordinance (Cap 32).

For equivalent provisions:

1. UK: Companies Act 2006, s 15(3);
2. Australia: Corporations Act 2001, s 1274(7A);
3. Singapore: There does not seem to be an equivalent.

#### Overview

The certificate of incorporation is conclusive also as to the date of incorporation.<sup>2</sup>

<sup>2</sup> *R v Registrar of Joint Stock Companies, exp More* [1931] 2 KB 197 (CA).

The conclusiveness of the certificate of registration of a charge seems to have caused more litigation: see s 344(4).

#### 73. Effect of incorporation

- (1) On and after the date of incorporation stated in the certificate of incorporation, the founder members, and any other persons who may from time to time become the company's members, are a body corporate with the name stated in the certificate or, if a change of name has effect under section 107, 110, 770 or 772, with the new name.
- (2) On and after the date of incorporation, the body corporate is capable of exercising all the functions of an incorporated company, and has perpetual succession.
- (3) On and after the date of incorporation, the founder members, and any other persons who may from time to time become the company's members, are liable to contribute to the assets of the company in the event of the company being wound up as is mentioned in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32).

#### History

This section is derived from s 16 of the former Companies Ordinance (Cap 32).

For equivalent provisions:

1. UK: Companies Act 2006, s 16;
2. Australia: Corporations Act 2001, ss 119;
3. Singapore: Companies Act (Chapter 50), s 19(5).

#### Overview

The separate legal identity of a company has been well established by the courts.<sup>3</sup>

<sup>3</sup> See further, *China Ocean Shipping Co v Mitsui Bussan Kaisha Ltd* [1995] 3 HKC 123 (CA). Also see generally *Choi Sik-tong & Ors v Cheung Oi-wah et al* [1985] HKLR 200, [1985] HKCU 21 (CA).

For more recent cases on piercing the corporate veil see *Peregrine Investments Holdings Ltd v Asian Infrastructure Fund Management Co Ltd LDC* [2003] 1 HKLRD 209, on appeal [2004] 1 HKLRD 598 (CA); *Toptrans Ltd v Delta Resources Co Inc* [2005] 1 HKLRD 635; *Liu Hon Ying v Hua Xin State Enterprise (Hong Kong) Ltd* [2003] 3 HKLRD 347, [2003] HKCU 706; *Lee Thai Lai v Wong Chung Kai* [2004] HKLRD (Yrbk) 151, [2003] HKCU 1368; *Lee Sow Keng v Kelly McKenzie Ltd* [2004] 3 HKLRD 517, [2004] HKCU 904 (CA); *Re Landune International Ltd* [2005] 4 HKLRD 46, [2005] HKCU 964; on appeal [2006] 1 HKLRD 39, [2006] 1 HKC 517 (CA) (appeal dismissed); *Re Zhu Kuan (Hong Kong) Co Ltd* [2007] 4 HKLRD 1, [2007] HKCU 1010; *Centaline Property Agency Ltd v Cyberspeed Technology Co Ltd* [2007] 4 HKLRD 745, [2007] HKCU



**Part 17**  
**Companies not Formed, but Registrable,**  
**under this Ordinance**  
**Division 1**  
**Preliminary**

**806. Interpretation**

**In this Part—**

*constitutional document* (章程文件), in relation to an eligible company, means—

- (a) an Ordinance constituting or regulating the company; or
- (b) a non-statutory constitutional document of the company;

*eligible company* (合資格公司) means a company—

- (a) formed after 1 May 1865 in pursuance of an Ordinance other than this Ordinance or a former Companies Ordinance; or
- (b) otherwise constituted after that date according to law;

*non-statutory constitutional document* (不屬法定的章程文件), in relation to an eligible company, means any deed of settlement, or other instrument, constituting or regulating the company.

**History**

Part 17 (Companies not Formed, but Registrable, under this Ordinance) of this Ordinance contains provisions relating to companies not formed under this Ordinance or a former Companies Ordinance but eligible to be registered under this Ordinance.

There is no significant change to the former Companies Ordinance (Cap 32) introduced under Part 17. Part 17 mainly restates, with some modifications, Part IX of Cap 32, which provided for the registration of companies which were/had been formed in pursuance of any Ordinance other than Cap 32 or a former Companies Ordinance. The sequence of the provisions in Part IX of Cap 32 is re-arranged in a more logical and user-friendly order. The archaic provisions on ‘joint stock company’ under ss 310 to 312 of Cap 32 have been removed.<sup>1</sup>

Section 806 is a new section. There was no definition section in Part IX of the former Companies Ordinance (Cap 32).

<sup>1</sup> See generally the comments on Part 17 in the Draft Companies Bill First Phase Consultation Paper, December 2009, which can be found on the CO Rewrite website at [www.fstb.gov.hk/fsb/co\\_rewrite/](http://www.fstb.gov.hk/fsb/co_rewrite/)



## Division 2

### Registration of Eligible Companies

#### 807. Registrar may register eligible company

- (1) The Registrar may, on application by an eligible company, register the company as—
  - (a) an unlimited company; or
  - (b) a company limited by guarantee.
- (2) An application for the purposes of subsection (1) must be in the specified form.
- (3) An application for the purposes of subsection (1) must be accompanied by—
  - (a) a copy of every constitutional document of the eligible company; and
  - (b) in the case of an application for registration as a company limited by guarantee, a copy of the resolution that complies with section 810(2).
- (4) A registration under subsection (1) is not invalid by reason only of it having taken place with a view to the eligible company being wound up.

#### History

This section is derived from ss 310(1) and 313 of the former Companies Ordinance (Cap 32).

The equivalent provision in the UK is s 1040 of Companies Act 2006. There are no equivalent provisions in Australia and Singapore.

#### Overview

This section provides that an eligible company may be registered as an unlimited company or a company limited by guarantee. The expression 'eligible company' is defined in s 806 as a company formed after 1 May 1865 pursuant to an ordinance other than this Ordinance, or any previous Companies Ordinance (namely the Companies Ordinance of 1865, 1911 or 1932: see s 2 definition of 'former Companies Ordinance') or otherwise constituted after that date according to law.

Under section 310 of the former Companies Ordinance (Cap 32), a joint stock company with limited liability might register as a company limited by shares. However, as the detailed provisions on the registration of joint stock companies are repealed, it is no longer possible to register such a company as a company limited by shares under the new Companies Ordinance.

Many eligible companies would like to register under the Companies Ordinance to avail themselves of the procedure of winding up under the Companies (Winding up and Miscellaneous Amendments) Ordinance (Cap 32), but this intention is no ground for refusing registration. On the

contrary, s 807(4) clearly states that the registration of a company is valid even if effected for the purpose of winding up.

To register, companies are required to apply in the specified form (NNC 5) and deliver to the Registrar a copy of the instrument constituting or regulating the company (see the s 806 definition of 'constitutional document').

A company intending to register as a company limited by guarantee must also provide a copy of the resolution declaring the amount of the guarantee to the Registrar.

#### 808. General restrictions on Registrar's power to register

- (1) If the liability of the members of an eligible company is limited by an Ordinance or otherwise according to law, the Registrar must not register the company under this Part.
- (2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless—
  - (a) if the company has an English name only—
    - (i) the name by which the company is to be registered has "Limited" as the last word of that name; and
    - (ii) a Chinese equivalent of it that the company may use has "有限公司" as the last 4 Chinese characters of the equivalent;
  - (b) if the company has a Chinese name only—
    - (i) the name by which the company is to be registered has "有限公司" as the last 4 Chinese characters of that name; and
    - (ii) an English equivalent of it that the company may use has "Limited" as the last word of the equivalent; or
  - (c) if the company has both an English name and a Chinese name—
    - (i) the English name by which the company is to be registered has "Limited" as the last word of that name; and
    - (ii) the Chinese name by which the company is to be registered has "有限公司" as the last 4 Chinese characters of that name.

#### History

This section is derived from ss 310(1)(b), (c) and 317 of the former Companies Ordinance (Cap 32).

For the equivalent provisions in the UK, this section may be compared with s 687 of the Companies Act 1985 (UK). There were equivalent provisions in the Companies Act 1985 Chapter II ss 680 to 690, which were repealed by the Companies Act 2006, s 1295 and Schedule 16.



**Overview**

Sections 808 to 810 set out the requirements and restrictions regarding registration.

Section 808(1) makes it clear that a company whose members' liability is limited by an Ordinance or otherwise according to law will not be registered under this Part.

Section 808(2) provides that once registered, the word 'Limited' shall form part of the name of the company, and any Chinese equivalent of the name shall contain the appropriate Chinese characters. This section allows for official use of the Chinese language, in addition to the English language. It provides for three situations:

1. the word 'Limited' shall form part of the name of the company, and any Chinese equivalent of the name shall contain the appropriate Chinese characters;
2. where the situation is the other way round, the appropriate expression in Chinese prescribed by s 317 must be registered as part of the company's name and its English equivalent must contain the word 'Limited';
3. where the name of the company is in both English and Chinese, both the word 'Limited' and the appropriate expression in Chinese must be registered as part of the company's name in English and Chinese respectively.

**809. Registrar must not register without members' assent**

- (1) The Registrar must not register an eligible company under this Part as an unlimited company unless there is assent to the registration by a majority of the members present at a general meeting of the company convened for the purpose.
- (2) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless there is assent to the registration by at least 75% of the members present at a general meeting of the company convened for the purpose.
- (3) For the purposes of this section, in computing a majority, or 75%, of the members where a poll is demanded, the number of votes to which each member is entitled according to the eligible company's regulations must be taken into account.
- (4) In this section, a reference to a member present at a general meeting is—
  - (a) a reference to a member present in person; or
  - (b) if proxies are allowed by the eligible company's regulations, a reference to a member present by proxy.

**History**

This section is derived from s 310(1)(e)–(f) and (2) of the former Companies Ordinance (Cap 32).

For the equivalent provision in the UK, see Companies (Companies Authorised to Register) Regulations 2009/2437, reg 3.

**Overview**

A company cannot register in pursuance of s 809 unless it has the assent of a majority of the members present in person, or by proxy, (where proxies are allowed), at a general meeting summoned for this purpose.

In computing the majority on any poll taken under this section, regard must be had to the number of votes to which each member is entitled according to the regulations of the company.

**810. Registrar must not register without resolution declaring amount of guarantee**

- (1) The Registrar must not register an eligible company under this Part as a company limited by guarantee unless the members pass a resolution that complies with subsection (2).
- (2) The resolution must declare that each person who is a member of the eligible company undertakes that if the company is wound up while the person is such a member, or within one year after the person ceases to be such a member, the person will contribute an amount required of the person, not exceeding a specified amount, to the company's assets—
  - (a) for the payment of the company's debts and liabilities contracted before the person ceases to be such a member;
  - (b) for the payment of the costs and expenses of winding up the company; or
  - (c) for the adjustment, among the contributories, of their rights.
- (3) For the purposes of subsection (1), it is irrelevant whether the resolution is passed before, on or after the commencement date of this Division.

**History**

This section is derived from s 310(1)(g) of the former Companies Ordinance (Cap 32).

**Overview**

A company's application for registration as a company limited by guarantee must be accompanied by a resolution declaring that each member accepted the liability involved in the guarantee and providing for the adjustment of the rights of the contributories among themselves.