
New Developments

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 the 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 the 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 workload 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.

Latest Developments

With effect from 1 March 2018 all trust and company service providers have to be registered with the Registrar of Companies. Hong Kong incorporated companies have to maintain significant controllers register and to appoint designated representatives to assist the law enforcement officers on the inspection of this register.

See Chapter 3 Anti-Money Laundering and Regulation of Trust or Company Service Providers and Chapter 11 Significant Controllers Register

On 6 April 2018, the Companies (Amendment) Bill 2018 was gazetted which aim to clarify certain sections of the CO.

See Section ¶1-010 of the Overview chapter

Chapter 1

An Overview of the Hong Kong Companies Ordinance (Cap 622)

Companies (Amendment) Bill 2018 (“Bill”)	¶11-010
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¶11-010 Companies (Amendment) Bill 2018 (“Bill”)

On 6 April 2018, the Companies (Amendment) Bill 2018 was gazetted. It aims to amend the *Companies Ordinance (Cap 622)* (“CO”) and its subsidiary legislation; to expand the types of companies within the reporting exemption; and to provide for miscellaneous and related matters.

If this Bill is enacted, the following amendments will come into effect:

- a. Variation of class rights (Subdivision 1 and Subdivision 2 of Division 7 of Part 4)

If full consent is obtained, application to Court to set aside the resolutions so passed to approve the variation would not be allowed.

- b. Reporting exemption in Section 359

Non-Hong Kong body corporate is also entitled to the exemption if the relevant criteria can be satisfied.

- c. Mixed group

Section 366A will be added after Section 366 to provide for mixed group to be qualified for reporting exemption. The mixed group could comprise of:

(i)

- a small private company;
- a non-Hong Kong body corporate that would have been qualified as a small private company had it been incorporated under the CO;
- an eligible private company; or
- a non-Hong Kong body corporate that would have been qualified as an eligible private company had it been incorporated under the CO.

(ii)

- a small guarantee company; or
- a non-Hong Kong body corporate that would have been qualified as a small guarantee company had it been incorporated under the CO.

d. Accounting reference period

A new Section 368(1A) will be added to specify that when a dormant company ceases to be dormant, its accounting reference period will begin on the date the company ceased to be a dormant company and ends on its primary accounting reference date.

e. Annual General Meeting for a company ceased to be dormant

A new Section 369(1)(b)(iv) will be inserted to specify that when a dormant company ceased its dormancy, an annual general meeting has to be held on:

- (A) a date specified by the directors, which must fall within 18 months after the date the company ceased to be a dormant company; or
- (B) if no date is specified before the last day of the month in which the anniversary of the company's incorporation first occurs after the company ceased to be a dormant company, the last day of the month.

See New Developments chapter

¶1-020 Pending Developments and Suggested Changes

1. The *Companies Ordinance (Cap 622) (CO)* does not define who could be a shareholder or member. In the past, the old precedents that only a natural person or body corporate could be a shareholder or member had been followed.

Section 653A defines legal entity (a) means a body of persons, corporate or unincorporated, that is a legal person under the law that governs it; but (b) does not include a specified entity.

Section 653D refers to a registrable legal entity as follows:

A legal entity is a registrable legal entity of an applicable company if the entity (a) is a member of the company; and (b) has significant control over the company.

In the significant controllers register, only the first layer of shareholder(s) i.e. shareholders whose names appear in the register of members and the ultimate significant controller(s) have to be inserted therein.

Given the foregoing:

- (i) What is the definition of a legal person?
- (ii) Can unincorporated bodies be registered as shareholders?
- (iii) Can partnerships formed under the *Partnership Ordinance (Cap 38)* or *Limited Partnerships Ordinance (Cap 37)* be registered shareholders?
- (iv) If there is a change in one or more partners in the partnerships mentioned in (iii), is there any legal requirement for the incoming and outgoing partners to go to the Stamp Office to assess whether stamp duty is payable on the change of partners?

Suggestion: A definition of shareholder should be included in Section 2 to state that only a natural person or body corporate could be a registered shareholder of a company with share capital. Section 9 may also need to include the same definition.

See ¶11-020 B Who is a Significant Controller?

2. Is a written resolution deemed to be a vote by show of hands or by poll?

On a share buy-back, Section 246(2) states that if the special resolution is proposed as a written resolution, a member holding shares to which the resolution relates is not an eligible member for the purposes of Subdivision 2 of Division 1 of Part 12 (written resolution) in respect of those shares.

If the member holds some shares which are not subject to the share buy-back, does it mean that the voting rights of those shares are disabled?

Suggestion: Under the former *Companies Ordinance (Cap 32)*, it seems that a written resolution is deemed to be a vote by show of hands. This should be clarified in the CO.

See ¶10-340 Reduction of Capital

Section 596(2) stipulates that in the case of a company limited by guarantee, the company's articles may require that a proxy must be a member of the company.

Section 588(1)(b) states that every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

Section 588(2) states that if a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.

(1)(b) does not specify that an individual cannot be appointed by more than one member as proxy. If the individual represents 2 or more members as proxy, how should the hands be counted?

Suggestion: Delete 'a proxy must be a member of the company'.

See ¶7-090 Voting by Show of Hands

3. Section 491(1)(b) refers to a company limited by guarantee that is a subsidiary of a public company.

Section 9 defines a company limited by guarantee as follows:

- (a) It does not have a share capital; and
- (b) The liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of it being wound up.

Section 380 requires consolidated financial statements to be prepared. Given the provisions of Section 9, can consolidated financial statements be prepared? Can a company limited by guarantee be a subsidiary of a public company? Will the answer be different if the company limited by guarantee is registered as a charity with the Inland Revenue Department pursuant to Section 88 of the *Inland Revenue Ordinance (Cap 112)*?

Suggestion: Delete 'that is a subsidiary of a public company'. It may also be appropriate to review the whole Division 2 of Part 10 of the CO as the aforementioned deletion would result in having all the private companies fall under this section.

See Chapter 9 Accounts, Annual Returns & Auditors

4. Can a company limited by guarantee be the sole member of another company limited by guarantee?

Suggestion: This should be clarified as this would determine whether Group of Small Guarantee Companies under Section 366 of the CO could be constituted.

See ¶6-050 Fair Dealing by Directors

5. Although not expressly stated in the CO, the board of directors is responsible for the management of a HK incorporated company while the rights and obligations of its members are defined in the CO and its articles of association.

On striking off, Section 744(2)(c) states that a letter must be addressed – If there is no officer of the company whose name and address are known to the Registrar, to each founder member whose name and address are known to the Registrar.

In the incorporation form and in the articles of association, the name and address of each founder member are stated therein. It should be noted that a founder member can be changed any time after incorporation either by the transfer of share(s) (for companies with share capital) or by resignation / termination pursuant to the articles of association (for companies limited by guarantee). What is the rationale of writing to each of them? What are the obligations of a founder member under the CO?

Suggestion: Deletion of the requirement to send letter to the founder member.

See ¶13-070 Striking Off

6. Principle 11 of *A Guide on Directors' Duties* published by the CR in March 2014 states that the directors have a duty to keep accounting records.

In the CO, the members of a company are entitled to receive audited financial statements and / or summary financial report.

Section 578 Resolution Requiring Special Notice seems to indicate that special notice has to be given by a member to the company.

Section 360(5) requires a special notice to be given to a proposed resolution on reporting exemption.

Without full knowledge of the financial status of the company, how could a member know that the company qualify for exemption? Why the board of directors could not have the power to propose the resolution to the members at a general meeting?

Suggestion: Delete the requirement on 'special notice'. Then the board of directors could propose the relevant resolution.

See the Notes section in ¶9-010 Reporting Exemption

7. On de-registration. Section 750(2)(e) states that the company's assets do not consist of any immovable property situate in Hong Kong (HK); and (f) if the company is a holding company, none of its subsidiary's assets consist of any immovable property situate in HK.

These 2 subsections are some of the criteria for de-registration application. What is the reason for permitting a HK incorporated company to apply for de-registration if it still has asset(s) or subsidiary(ies) outside of HK? How could the assets or subsidiaries be dealt with if the company is de-registered?

Suggestion: Delete 'situate in Hong Kong' in both Section 750(e) and Section 750(f). NDR1 will then have to be amended accordingly.

See ¶13-080 Deregistration of Defunct, Solvent Company

8. NSC17 Solvency Statement is for the directors of a company to confirm the solvency pursuant to Section 216(1) and Section 259(1).

Section 206(3)(a) states that the Solvency Statement must be in the specified form.

There is no reference as to the filing of the Solvency Statement nor the filing period. If the directors have signed this Statement but insist in not filing it with the Companies Registry (CR), will they be prosecuted? If the answer is in the affirmative, pursuant to which section(s) of the CO can the CR take legal proceedings against the directors?

Suggestion: A new section requiring the filing of the Solvency Statement within a specified time and with penalty section for failing to comply should be inserted in the CO. The specified form will need to be amended accordingly.

See ¶10-340 Reduction of Capital

9. NNC1 / NNC1G seem to indicate that only a natural person or body corporate could be appointed as company secretary. Section 474(3) refers to a firm and partners of the firm as the first joint company secretaries of the company. Should the CO or the specified forms be followed?

Section 474(2) states that a natural person or a body corporate must either be resident or incorporated / registered in HK. There is no reference to residency in Section 474(3). Could foreign registered partnerships be appointed as company secretary?

Could sole proprietorship be appointed as named secretary? This is not apparent from NNC1 / NNC1G nor in Section 474(2).

See Question 2 of the Chapter: Regulation of Trust or Company Service Providers

Suggestion: The relevant specified forms should be revised to include partnership. In the CO, it should also be specified that the partnership should be professional partnership e.g. accountants / lawyers registered in Hong Kong.

See ¶5-010 Appointment of Company Secretary and Forms NNC1 & NNC1G

10. Section 795(1) requires the authorised representative to deliver a notice of dissolution to the Registrar. In NN14, Director / Company Secretary / Manager / Authorised Representative / Liquidator can sign the form. If the form is signed by a person other than the authorised representative, is the requirement under Section 795 fully complied with?

Suggestion: The specified form should be revised to be in line with the CO. The power of director / company secretary / manager usually ceases on commencement of liquidation. The power of liquidator should also cease on the completion of the liquidation.

See ¶14-100 Obligations of a Non-Hong Kong Company Registered in Hong Kong

11. Section 613 requires a resolution to be passed to dispense with the holding of an annual general meeting. Section 622(g) requires the resolution passed under Section 613 to be filed with the CR.

However, a resolution passed under Section 613 could be revoked by passing another resolution under Section 614. Is the resolution passed under Section 614 required to be filed with the CR? If not, why not?

Suggestion: A new section should be included to provide for the filing of resolution revoking the dispensation of holding an annual general meeting.

Filing of the resolutions both for dispensation with the holding of an annual general meeting and for subsequent revocation of the previously passed resolution should be applicable to public companies only to minimise the filing workload of SMEs.

See ¶7-130 Annual General Meeting

12. Section 840 to Section 842 refers to the appointment of inspectors to investigate the company's affairs. NIN1 is the notice of appointment as inspector to the Registrar of Companies. The CO is silent on the changes of inspector i.e. resignation / termination / death of inspector. If such changes occur, is there any requirement to notify

the Registrar in order that the general public can be aware of such changes through a search in the website of the CR?

Suggestion: The relevant sections should be re-written to provide for the reporting of changes in inspectors and the Companies Registry to provide for specified forms.

See ¶13-030 Notification Requirements

13. Section 473 Ratification of Conduct by Director Involving Negligence, etc.

(3) If such a resolution is proposed at a meeting, every vote in favour of the resolution by a member who –

- (a) is a director in respect of whose conduct the ratification is sought;
- (b) is an entity connected with that director; or
- (c) holds any shares in the company in trust for that director or entity,

is to be disregarded.

Does the Section 473(3) mean that if such person votes against the resolution, the vote(s) so cast will be counted? Does this affect the percentage of votes for and against the resolution?

Section 217 Special Resolution: Exercise of Voting Rights

(2) if the special resolution is proposed at a meeting, the resolution is not effective if –

- (a) any member of the company holding shares to which the resolution relates exercises the voting rights carried by any of those shares; and
- (b) the resolution would not have been passed if the member had not done so.

Comparing Section 473(3) and Section 217(2), please advise if the differences as to how the votes are counted and the percentages of votes cast for and against the resolution.

Suggestion: There should only be one vote counting system in a single piece of legislation. The Legislative Council should decide which one to use. The system adopted in Section 473(3) is not in line with the Listing Rules of the HK Stock Exchange.

See ¶6-050 Ratification of Conduct and Note 3 of ¶10-340 Reduction of Capital

14. Since the inception of the CO, authorised share capital has been abolished. Section 170(f) cancel shares –
- (i) That, at the date the resolution for cancellation is passed, have not been taken or agreed to be taken by any person; or
 - (ii) That have been forfeited.

What are the shares referred to in Section 170(f)(i)?

Suggestion: Section 170(f)(i) be deleted.

See ¶10-320 Alteration of Share Capital

15. Section 206 Solvency Statement

2(b) takes into account all the liabilities of the company (including contingent and prospective liabilities).

What are the liabilities envisaged as prospective liabilities?

Suggestion: Delete 'and prospects' in Section 206(2)(a) and '(including contingent and prospective liabilities)' in Section 206(2)(b).

See ¶10-340 Reduction of Capital

16. Section 2 defines associated company in relation to a body corporate as

- (a) a subsidiary of the body corporate
- (b) a holding company of the body corporate; or
- (c) a subsidiary of such a holding company.

Section 469(2)(iv) 3rd line refers to an associated company of the associated company.

Will there be a limit on the liability of the director under the foregoing Section?

Suggestion: Delete 'of the associated company' in the third line of Section 469(2)(iv).

See ¶6-050 Indemnity of Directors

17. Section 142 Return of Allotment

2(d)(i) must state the amount paid or regarded as paid on each share and the amount (if any) remaining unpaid or regarded as remaining unpaid on each share.

NSC1 has columns for unpaid shares.

Companies (Model Articles) Notice (Cap 622H) Schedule 2 in respect of Model Articles for Private Companies Limited by Shares (Model Articles) restrict the allotment of shares to fully paid shares (Article 56 refers).

Only one founder member is required to sign on NNC1. If there is an oversight of this 'fully paid up' requirement in the Model Articles and one or more founder members had not paid up the shares and subsequently refused to pay up the shares, the shares so issued cannot be called up or forfeited.

Suggestion: Amend the Model Articles to permit the issue of unpaid shares with sections on calling of shares and forfeiture for non-payment of calls.

See ¶4-180 Articles of Association

18. Article 28(b) of the Model Articles states that:

If an alternate is removed by resolution of the directors, the company must as soon as practicable give notice of the removal to the alternate's appointor.

This means that if a dissident director appoints an alternate to attend a board meeting, the board of directors can, immediately after the meeting proceeds to business, pass the resolution to remove the alternate. The alternate will then have no change to have his / her opinion heard and also recorded in the minutes of the proceedings of the meeting.

This was a new arrangement under the new *Companies Ordinance (Cap 622)*. What was the rationale behind giving the board more power over individual directors?

Suggestion: Delete Article 28(b).

See ¶6-080 Resignation of a Director

19. Article 28(1) A director (*appointor*) may appoint as an alternate any other director, or any other person approved by resolution of the directors.

If the Board of Directors does not pass a resolution to approve the appointment, then the appointment of alternate will be invalid. This

might deprive the appointor to have an alternate to attend and speak at board meetings.

Suggestion: Delete 'approved by resolution of the directors' and substitute therefor the word 'as alternate'.

See ¶6-080 Resignation of a Director

20. Article 15 of the Model Articles states that:

A director who is also an alternate director has an additional vote on behalf of an appointor who -

- (a) is not participating in a directors' meeting; and
- (b) would have been entitled to vote if he or she were participating in it.

This means that a person who is not a director will only have one vote irrespective of the fact that he or she may be appointed by two or more directors as alternate to attend a directors' meeting.

Why a director is entitled to have additional vote(s)?

Suggestion: Delete Article 15.

21. NA2 requires all types of companies to notify the Companies Registry (CR) of the resignation of auditors. An audit has to be done on an annual basis. Why does the appointment of new auditors not have to be filed with the CR to give the general public a full picture of the changes of auditors?

Suggestion: Section 417 be applicable to public companies only to minimise the filing burdens of SMEs. A further section should be written into the CO to require the reporting of appointment of new auditors made by public companies. CR is required to design a new specified form for this purpose.

See ¶9-120 Appointment of Auditor

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Chapter 2

Administration

Companies Registry, Business Registration Office and Stamp Office	¶12-010
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LODGEMENT OF DOCUMENTS WITH COMPANIES REGISTRY

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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 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. (Section 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. (Section 24 of the CO)
- To authenticate documents in any manner the Registrar may deem appropriate. (Section 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. (Section 26 of the CO).

With effect from 1 March 2018, the Registrar is also responsible for the administration of the Registry for Trust or Company Service Providers ("TCSP"), a new Registry established pursuant to the *Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615)* ("AMLO").

See Chapter 3 Anti-Money Laundering and Regulation of Trust or Company Service Providers
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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
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
Cashiers	
Monday to Friday	8:45 am to 5:00 pm
Companies Registry	
Monday to Friday	8:30 am to 12:45 pm and 1:45 pm to 5:45 pm
Cashiers	
Monday to Friday	8:45 am to 12:30 pm and 2:00 pm to 5.00 pm

LODGEMENT 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: section 3, *Companies Ordinance (Cap 622)*

¶2-020 Method of Lodgement

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.

¶2-030 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.

¶2-040 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 CO or any document which needs to be translated should be certified or translated in accordance with the guidelines issued by the CR.

¶2-050 Fees for Lodgement

The fees for lodgement 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 ¶2-100 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".

¶2-060 Time for Lodgement

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

¶12-070 Refusal to Register Documents

In Subdivision 2 of Division 4 of the CO, the Registrar 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 section 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; or
- 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; or
- any other directions issued by the Registrar.

Law: section 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: section 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

¶12-080 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.

¶12-090 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 releases and messages from the CR, etc.

¶12-100 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:

- (1) In person at the BRO located on 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

(I) 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 section 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 section 130 of the CO.	\$1,720

		Fees (HK\$)
(c)	For registration of a company not formed, but registration, together with the specified form and a copy of every constitutional document under section 807(1)(a), (2) and (3)(a) of the CO.	\$1,720
(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 section 807(1)(b) if the number of members stated in the specified form referred to in section 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 section 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; or	\$2,610
	(v) if delivered more than 9 months after the anniversary of incorporation.	\$3,480

		Fees (HK\$)
(g)	Annual registration fee (to be paid on delivery of annual return under section 662(3) of the CO) for a public company:	
	(i) if delivered within 42 days after the company's return date;	\$140
	(ii) if delivered more than 42 days after but within 3 months after the company's return date;	\$1,200
	(iii) if delivered more than 3 months after but within 6 months after the company's return date;	\$2,400
	(iv) if delivered more than 6 months after but within 9 months after the company's return date; or	\$3,600
	(v) if delivered more than 9 months after the company's return date.	\$4,800
	For a public company, the company's return date is 6 months after the end of the accounting reference date.	
(h)	Annual registration fee (to be paid on delivery of annual return under section 662(3) of the CO) for a company limited by guarantee:	
	(i) if delivered within 42 days after the company's return date;	\$105
	(ii) if delivered more than 42 days after but within 3 months after the company's return date;	\$870
	(iii) if delivered more than 3 months after but within 6 months after the company's return date;	\$1,740
	(iv) if delivered more than 6 months after but within 9 months after the company's return date; or	\$2,610
	(v) if delivered more than 9 months after the company's return date.	\$3,480
	For a company limited by guarantee, the company's return date is 9 months after the end of its accounting reference date.	
(i)	Registration of charge:	
	– charge document;	\$340
	– memorandum of satisfaction.	\$190

(II) By a non-Hong Kong Company to which Part 16 applies:

		Fees (HK\$)
(a)	For the issue of a certificate of registration or a fresh certificate of registration under section 777(4)(a), 779(1)(b), 783(3) (b) or 785(5)(c) of the CO.	\$1,425

		Fees (HK\$)
(b)	For lodging of an application and accompanying documents delivered under section 776 of the CO.	\$295
(c)	Annual registration fee (to be paid on delivery of return under section 788 of the CO)	
	(i) if delivered within 42 days after the anniversary of registration;	\$180
	(ii) if delivered more than 42 days after but within 3 months after the anniversary of registration;	\$1,200
	(iii) if delivered more than 3 months after but within 6 months after the anniversary of registration;	\$2,400
	(iv) if delivered more than 6 months after but within 9 months after the anniversary of registration;	\$3,600
	(v) if delivered more than 9 months after the anniversary of registration.	\$4,800
(d)	Registration of charge	
	(i) Charge document	\$340
	(ii) Memorandum of satisfaction.	\$190
(e)	For Registering	
	(i) under Part 8 of the CO any specified charge described in section 334 of the CO created by, or a charge existing on property acquired by, a company or a registered non-Hong Kong company	\$340
	(ii) notification under section 345(4) of the CO regarding the satisfaction, release or cessation of the whole or part of the debt secured by a registered charge	\$190
	(iii) the appointment of a receiver or manager, or a mortgagee's entering into possession, under section 348(3) or 349(3) of the CO.	\$40
(f)	Lodgement fee for special resolution for change of name under section 107(2) or 770(2) of the CO.	\$240
(g)	Fee for issuing a certificate of incorporation of change of name under section 107(3) or 770(3) of the CO.	\$55
	Fee for application to the Registrar for approval for the use of a name under section 100(2) of the CO.	\$850
	Fee for a licence to dispense with "Limited" under section 103 of the CO.	\$4,475
	Fee for lodging of an application for a licence to dispense with "Limited" under section 103 of the CO.	\$4,650
(h)	Application fee for deregistration of a defunct solvent company under section 750 of the CO.	\$420