



The New Hong Kong Companies Ordinance 3<sup>rd</sup> March 2014  
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The New Companies Ordinance (NCO) of Hong Kong seeks to reform and restructure business company law, which has not been majorly re-hauled for 20 years. This legislation has been under construction since 2006 and according to Professor K C Chan (Secretary for Financial Services and the Treasury) it will provide a “modernised framework for the operation and incorporation of companies in Hong Kong and enhance competition.”

The NCO covers all the areas regulated under the old Ordinance (Cap. 32), except the disqualification of directors, prospectus regime and the winding-up of insolvency provisions.

Much of the NCO legislation concerns reform and modernisation of the legal framework. However the NCO also contains a number of measures that will radically change the business community in Hong Kong.

Out-dated and unnecessary business procedures have been addressed in the NCO, which is in part, a creation of public consultations and discussions. The main NCO procedures that will modernise and facilitate business are below:

- **Abolishment of Memorandum of Association**- Companies will no longer be required to have a memorandum of association, instead an article of association will now suffice.
- **Abolishment of Annual General Meetings**- Companies will now have the option of dispensing with AGMs, subject to unanimous shareholders’ consent.
- **Abolishment of Par Value shares**- It is now no longer a requirement for companies to have to authorise capital or give their shares a par value.
- **Court Free Procedures**- Companies will now be able to partake in a court free system for amalgamations of wholly owned companies.
  - Similarly a company may now reduce its share capital without going to court, subject to members’ approval and the provision of a solvency statement.
- **Simplified Reporting**- Certain companies, which meet new specified size criteria, are now permitted to provide simplified financial statements.
- **Electronic Adjustment**- Companies now have the option of completing deals electronically, with no need of a seal.
  - Furthermore companies are now permitted to hold their GMs in multiple locations with the assistance of technology.

The NCO does not only concern reform, but contains landmark legislation that will directly challenge the current balance of power in companies in HK. Greater accountability and expectations are bestowed on directors, while shareholders are bequeathed more control and influence. The rights of the auditors are also strengthened by the NCO.

### **For Directors the main changes are:**

- The requirement that every private company have at least one director who is a natural person.
- Clarification in the statute of directors' duty of care, skill and diligence so as to provide clearer guidance for directors.
- Public companies and the larger private companies (that do not qualify for simplified reporting) now need to prepare a more comprehensive directors' report, which includes an analytical and forward-looking "business review," although private companies are allowed to opt out by special resolution.
- The NCO also has created more effective rules to deal with directors' conflicts of interests.

### **For Shareholders the main changes are:**

- Reduced threshold requirement for members to demand a poll from 10% to 5% of total voting rights.
- Requiring disinterested shareholders' approval in cases where shareholders' approval is required for transactions of public companies and their subsidiaries.
- Extending the scope of unfair prejudice for shareholders.

### **Auditors are now empowered to obtain information and explanations from:**

- Any person holding or accountable for any accounting records of a company.
- Any past or present officer of the company at a time to which the relevant case relates.
- Any such person in a company's Hong Kong and subsidiary undertakings.
- Better regulation will also be ensured by means of the accuracy of information on the public register which will now be more stringently policed. Furthermore the NCO has a reformed registration of charges scheme.

On the whole, the introduction of the NCO has been seen as a positive step for Hong Kong and its economy, which will retain its no 1 world position for trade freedom. However, although most of the new legislation is simple to understand, some of the new laws are more open to interpretation and so it will be interesting to see how different businesses apply these new laws.

The NCO came into effect on 3rd March, but a 6 month grace period for businesses to meet the new requirements has been given. A dedicated thematic section on the NCO has been set up on the Registry's website for more specific information. Furthermore, for enquiries, a dedicated hotline has been set up **(31422822)** which is open from Monday to Saturday 9:00 a.m. to 8:00 p.m. Email enquiries can be sent to [cr.nco@cr.gov.hk](mailto:cr.nco@cr.gov.hk).

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