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[20-000D] Directors

Last Reviewed: 14/08/2020

Essential to the functioning of a company is the appointment of the directors who are responsible for the company's overall management (¶20-300). A company's first directors are to be appointed by the founder members who sign the Articles (sec 2(1)); alternatively the first director can serve a Form NNC3 consenting to act as director; this form must be filed within 15 days of incorporation of the company (see sec 74(1) of Cap 622, and also sec 4 of Sch 2 of Cap 622). Subsequently, the directors normally retire by rotation and new directors are elected (see ¶20-330).

A company's directors are given extremely broad management powers to facilitate the day to day operation of the company (see ¶20-500 and following). In exercising those powers, however, the directors have an overriding duty at common law to act in what they believe to be the best interests of the company as a whole and for the purposes for which their powers are conferred. They must act bona fide within their powers and must not allow their personal interests to conflict with those of the company. This is known as the director's fiduciary duty (see further ¶20-390).

Apart for the common law duties, directors are also vested with statutory powers conferred by Cap 622 and other related legislation (see ¶20-410ff and ¶20-500ff). In addition, directors should observe the *Guide*

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[20-000E] Company secretary

Last Reviewed: 14/08/2020

Every company must have a company secretary who is the chief administrative officer of the company (secs 474 and 475, Cap 622). The appointment is usually made by the directors (121-120).

Generally a company secretary's duties, responsibilities and powers are broad. However, the company secretary is concerned only with the administration of the company, not its management (see 121-100).

The key question in connection with the company secretary is: to what extent can the company secretary bind the company? In general, the company is bound by both the secretary's actual authority and the secretary's ostensible authority, that is, the authority with which a company secretary is usually clothed (see 121-160).

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The appointment, duties and powers, remuneration, liability and resignation of company secretaries are dealt with at 121-100 and following.

A director may also be a company secretary provided he is not the sole director of the company. If there is only one natural person as director of a private company, then a body corporate may not be a company secretary whose sole director is also the sole director of the private company (see 175, Cap 622).

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[20-000L] Anti-money laundering

Last Reviewed: 14/08/2020

In line with Hong Kong's international commitments, the Legislative Council enacted legislation relating to anti-money laundering. The *Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615)* applies to "financial institutions" as defined in Sch 2 of that Ordinance. These include:

- authorised institutions (defined under the *Banking Ordinance (Cap 155)*, that is licensed banks, restricted licensed banks, and deposit taking companies);
- licensed corporations (referred to in secs 116 and 117 of the *Securities and Futures Ordinance (Cap 571)* and defined in sec 1 of Part 1 of Sch 1, referring to the licences required for 10 specific regulated activities);
- "authorised insurers" in respect of long-term business under the *Insurance Companies Ordinance*, and also appointed insurance agents or insurance brokers in relation to certain contracts. The *Insurance Companies Ordinance* was amended by the *Insurance Companies (Amendment) Ordinance No 12 of 2015*; however the amending ordinance has not yet come into force;
- licensed money services operators provided for in secs 29-42 of the *Anti-Money Laundering and Counter-Terrorist Financing (Financial Services) Ordinance*, and

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[21-140] Secretary's duties

Last Reviewed: 14 09 2020

A company secretary's duties can be quite far-ranging. The following is a list of the general duties of a secretary. This list is not exhaustive since the duties of secretaries will vary from company to company.

A company secretary should:

- carry out the functions of the chief ministerial and administrative officer of the company;
- have a clear understanding of the company's constituent documents (its memorandum and articles of association) and of the provisions of the *Companies Ordinance* in relation to the company, for example, as a private or public company;
- ensure that the necessary registers required to be kept are established and properly maintained;
- ensure that all returns required to be lodged with the Registrar of Companies are prepared and filed within the appropriate time limits;
- be familiar with the requirements of the Stock Exchange if the company's shares are listed;

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[21-200] Personal liability

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A company secretary who makes representations for the company outside the scope of his or her authority may be personally liable (see *Bishop v Balkis Consolidated Co* (1890) 25 QBD 512).

The secretary, as an officer of the company, may also be personally liable where he or she has signed, issued or authorised on behalf of the company any bill of exchange, promissory note, cheque or other eligible negotiable instrument on which the name of the company is not mentioned and which is not paid by the company.

To avoid personal liability a company secretary should, whenever he or she enters into a contract on behalf of the company, be careful to sign in a representative capacity, that is:

For and on behalf of [the company]

[signed]

Secretary.

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[30-100] Eligibility for appointment

Last Reviewed: 28 06 2020

The *Companies (Winding-Up and Miscellaneous Provisions Ordinance (Cap 32)* disqualifies certain “persons” from being appointed as receivers and/or managers.

- A *body corporate* is disqualified from appointment as the receiver of a company’s property. Any body corporate which acts as a receiver is liable to a level 5 fine of HK\$50,000 (sec 297; Sch 12 of [Cap 32](#)).
- An *undischarged bankrupt* is disqualified from appointment as a receiver or manager on behalf of debenture holders. Any undischarged bankrupt who acts as a receiver or manager on behalf of debenture holders is guilty of an offence and may be liable to a maximum fine of HK\$150,000 and imprisonment for two years (sec 297A; Sch 12 of [Cap 32](#)).

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Where a company is being wound up by the court, the court, upon application, may appoint the Official Receiver to act as receiver on behalf of the debenture holders and other creditors of the company ([sec 298, Cap 32](#)).

Self-disqualification

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[40-200] Grounds for winding up

Last Reviewed: 28/06/2020

A company may be wound up by the court if:

- the company has by special resolution resolved that the company be wound up by the court;
- the company has not commenced its business within a year from its incorporation or suspends its business for a whole year;
- the company has no members;
- the company is unable to pay its debts;
- an event, if any, occurs on the occurrence of which the company's Memorandum or Articles of Association provide that the company is to be dissolved; or
- the court is of opinion that it is just and equitable that the company should be wound up (sec 177(1), Companies (Winding-Up and Miscellaneous Provisions) Ordinance (**Cap 32**); see *Lai Chi Keung v Wang Zhihua & Anor* 2018 HKCFI 867, [2018] 3 HKJR 5.

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[40-470] Provisional liquidators

Last Reviewed: 28 06 2020

A provisional liquidator may be appointed by the court at any time after the presentation of a winding-up petition and before a winding-up order is made (sec 193, Companies (Winding-Up and Miscellaneous Provisions) Ordinance (Cap 32)). Once a provisional liquidator is appointed no action can be continued or commenced against the company without the leave of the court.

The appointment by the court of a provisional liquidator may be made on application by the petitioner, a creditor, a contributory, the company, or any other persons entitled to present a petition for the winding up of the company.

The Official Receiver, where he/she is the provisional liquidator of a company, is empowered to appoint a person as a provisional liquidator in his or her place (sec 194(1)(b), Cap 32). [Top](#)

The court may make the appointment on such terms as it thinks fit if satisfied that sufficient grounds are shown in the application.

Provisional liquidators are commonly appointed to avoid the risk that directors or shareholders may dissipate assets or otherwise prejudice the position of creditors and/or contributories pending the making

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[55-200] Registration of non-Hong Kong companies

Last Reviewed: 28/06/2020

Within one month of establishing a place of business in Hong Kong, a non-Hong Kong company is required to file certain documents with the Registrar of Companies:

- a certified copy of the company's charter, statute, memorandum and articles of association or other document defining its constitution. If the original language of the documents is not written in English or Chinese, a certified translation in English or Chinese of the documents must be submitted. However, since 1 July 2000, the certified translation need not be accompanied by the original document;
- a list in the specified form of the particulars of the company's directors and secretary. Email addresses should be included. The kind of information to be provided in the list is stated under [sec 776\(4\)\(a\) of Companies Ordinance \(Cap 622\)](#); [Top](#)
- where the law of the place of incorporation requires the company to publish its accounts, or deliver copies of accounts for inspection, a certified copy of the latest published accounts of the company that comply with that law ([sec 789, Cap 622](#); and [sec 4\(1\)\(c\), the Companies \(Non-Hong Kong Companies\) Regulation \(Cap 622J\)](#));

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[55-220] Certification of documents

Last Reviewed: 28-06-2020

An non-Hong Kong company (i.e. a company incorporated outside Hong Kong) which establishes a place of business in Hong Kong must deliver to the Registrar of Companies for registration a certified copy of the charter, memorandum and articles of the company defining the constitution of the company, or if these documents are not written in the English or Chinese language, a certified translation in English or Chinese is required.

The requirements for certifying documents submitted under the provisions of Part 16 of the *Companies Ordinance (Cap 622)* (Cap 622) are set out in *sec 775 of Companies Ordinance (Cap 622)*. Accordingly, a document shall be deemed to be certified as a true copy if it is duly certified as such:

(i) in the company's place of incorporation by:

- an official of the government of that place to whose custody the original of the document is committed;
- a notary public practising in that place;
- a lawyer practising in that place;

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[55-450] Circulation of prospectus

Last Reviewed: 28/06/2020

The restrictions on prospectuses apply in respect of all foreign corporations, i.e. whether or not they have established a place of business in Hong Kong. These restrictions support similarly strong provisions found in the *Protection of Investors Ordinance*, which prohibit even the mere possession of an offer document if it is not otherwise permitted. Any attempt to require an applicant for shares or debentures to waive compliance is void and share application forms in connection with public offers or invitations must be accompanied by a prospectus which has been duly registered.

However, [sec 342\(5\)](#) of the Companies (Winding-Up and Miscellaneous Provisions) Ordinance ([Cap 32](#)) provides that the prospectus requirements of [sec 342](#) are not applicable in respect of issues of shares or debentures in a company which are made solely to its existing holders (even if those holders will have the right to renounce their entitlement in favour of others). Neither are the prospectus requirements applicable to issues of shares or debentures which are in all respects uniform with shares or debentures already issued and listed on the Stock Exchange of Hong Kong.

Furthermore, and as is the case in [sec 38\(3\)](#) of [Cap 32](#) in respect of Hong Kong incorporated companies, the requirement for a share application form to be accompanied by a duly registered prospectus does not

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[120-040] Relief Measure for Specific Sectors

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


The Government will provide support under the Anti-Epidemic Fund of HK\$51 billion (First round: HK\$30 billion, Second Round: HK\$21 billion).

The second round of Anti-epidemic fund will support the below items:

Tutorial Schools	SME Exchange participants and Securities and Futures Commission ("SFC") licensees	Non-profit making organizations running various heritage and open space projects
School-related service providers(e.g. lunchbox providers, school bus drivers and nannies, etc.)	Licensed estate agents and salespersons	Aviation industry Top
Registered sport coaches	Passenger transport sector	Catering outlets
Interest class instructors to social service centres	Cinemas, design hub at PMQ and printing and publishing sector	Eleven types of business ordered to close
Private refuse collectors	Travel & Tourism industry	
Local primary producers	Construction-related enterprises	

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[120-020] Tax Relief Measures

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Tax deadlines will be extended, which including the filing of tax returns, tax payment, filing of objections and holdover applications; and responding to enquiries.

Profits Tax

- Reduction of 2019/20 profits tax payable by 100%, subject to a ceiling of HK\$20,00
- The tax payment deadline will be deferred by 3 months for the year of assessment 2018/19 due in April, May and June 2020
- Proposed to offer a profits tax exemption to qualifying ship lessors and qualifying ship leasing manager at a 50% profits tax concession in future years. For details, please refer to ¶17-075 – Concessionary rate of tax for qualifying shipr lessors and qualifying ship leasing manager
- Providing tax concessions to qualified carried interest issued by private equity funds in Hong Kong, subject to fulfilment of certain requirements

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[90-018] Recent regulatory changes and anticipated changes

Last Reviewed: 28/06/2020

Since the end of 2016, several major amendments to legislation, or the introduction of extension of existing regulations, have been enacted and come into force, or enacted pending implementation, or have been considered by Consultation Papers. These are matters relevant to:

- (a) amendment to existing anti-money laundering (“AML”) and counter terrorist funding (“CTF”) legislation;
- (b) the introduction of a regime of “manager-in-charge” for licensed companies under the *Securities and Futures Ordinance*;
- (c) the insertion of additional conditions into the licence of money lenders; and the registration of intermediaries introducing borrowers to money lenders;
- (d) proposals to regulate transparency of beneficial ownership of companies; and
- (e) proposals for the regulation of cross-boundary movement of physical currency.

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[90-008] Companies Ordinance (Exemption of Companies and Prospectuses From Compliance with Provisions) (Amendment) Notice 2003 effective

Last Reviewed: 28 06 2020

Commentary Affected by 990-008

Affects Paragraphs 96-070

New Developments for 990-008

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