

For Information

Legislative Council Panel on Financial Affairs

Amalgamation of Companies under the New Companies Ordinance

Purpose

This paper briefs Members on the provisions under the new Companies Ordinance (“CO”) (Cap.622) concerning the amalgamation¹ of companies.

New CO Provisions which are Relevant to Amalgamation of Companies

2. As in the case under the existing CO (Cap.32), amalgamation of companies can be effected through a court-sanctioned scheme of arrangement. Division 2 of Part 13 of the new CO sets out the provisions in relation to schemes of arrangement, including the requirement for seeking members’ approval, the Court’s power to sanction schemes, the effect of the schemes, the subsequent filing requirements, etc.

3. Specifically for wholly-owned intra-group companies incorporated in Hong Kong, the new CO has introduced a new court-free regime to enhance the ease of amalgamations. Division 3 of Part 13 of the new CO sets out the provisions in relation to the new regime, including the scope of the application of the provisions, the procedures which the directors of the companies have to follow, the effect of amalgamation, the Court’s power to intervene, etc.

¹ Amalgamation is a legal process by which the undertaking, property and liabilities of two or more companies merge and are brought under one of the original companies or a newly formed company and their shareholders become the shareholders of the new or amalgamated company.

4. Both Divisions 2 and 3 of Part 13 of the new CO are applicable to authorised institutions which are companies. However, for amalgamation involving authorised institutions, the Hong Kong Monetary Authority advised that it will need to satisfy that adequate and legally effective arrangements have been or will be made with respect to the assets and liabilities of the relevant authorised institutions. This is to ensure that the interests of depositors remain fully protected, and that the business of the authorised institutions will continue to be conducted in a prudent manner. The Hong Kong Monetary Authority expects the authorised institutions to discuss their amalgamation plans with it in advance. Authorised institutions should seek their own legal advice on their individual amalgamation plans in assessing whether it is appropriate to effect the amalgamation through the provisions under the new CO or other legal means (for example, a private member's bill).

Effect of Amalgamation under Division 3 of Part 13 of the New CO

5. After amalgamation under the new court-free regime set out in Division 3 of Part 13 of the new CO, each amalgamating company ceases to exist as an entity separate from the amalgamated company, and the amalgamated company succeeds to all the property, rights and privileges, and all the liabilities and obligations, of each amalgamating company (section 685(3)). In other words, if Company A and Company B amalgamate and continue to exist in the form of the surviving entity Company B, Company B becomes the same legal person as both Company A and Company B.

6. Universal succession is a legal concept under civil law systems. It provides for the artificial continuance of a person by another, and all the rights and liabilities of the former person are automatically transferred to and vested in the latter. Amalgamation under Division 3 of Part 13 of the new CO is similar to the concept of universal succession in the sense that the amalgamated company is the same legal entity as the amalgamating companies. Apparently there is a difference between the two concepts as far as transfer of rights and liabilities is concerned. There is no such transfer for amalgamation under Division 3 of Part 13 of the new CO (since the amalgamated company is the same legal entity as the amalgamating companies, the amalgamated company succeeds to the

rights and liabilities of all the amalgamating companies without the need for any transfer), while universal succession involves such a transfer by operation of law.

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7. This paper is for Members' information.

**Financial Services and the Treasury Bureau
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