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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 17 July 2013

**Three proposed resolutions under the
Interpretation and General Clauses Ordinance**

The Secretary for Financial Services and the Treasury will move, at the Council meeting of 17 July 2013, three proposed resolutions under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the following three items of subsidiary legislation:

- (a) Companies (Model Articles) Notice, published in the Gazette as Legal Notice No. 77 of 2013 (**Appendix 1**);
- (b) Company Records (Inspection and Provision of Copies) Regulation, published in the Gazette as Legal Notice No. 78 of 2013 (**Appendix 2**); and
- (c) Companies (Non-Hong Kong Companies) Regulation, published in the Gazette as Legal Notice No. 79 of 2013 (**Appendix 3**).

The President has directed that they be printed in the terms in which they were handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the three proposed resolutions is in **Appendix 4**.

3. As directed by the President, there will be a **joint debate** on the three proposed resolutions but they will be **put to vote separately**.


(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

Interpretation and General Clauses Ordinance

Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

Companies (Model Articles) Notice

Resolved that the Companies (Model Articles) Notice, published in the Gazette as Legal Notice No. 77 of 2013 and laid on the table of the Legislative Council on 29 May 2013, be amended as set out in the Schedule.

Schedule

Amendments to Companies (Model Articles) Notice

1. **Schedule 1 amended (model articles for public companies limited by shares)**
 - (1) Schedule 1, Chinese text, contents—
 - Repeal**
 - “54. 代委任代表的成員，執行代表委任”
 - Substitute**
 - “54. 代委任代表的成員，簽立代表委任文書”。
 - (2) Schedule 1, Chinese text, article 16(6)(b)—
 - Repeal**
 - “本公司或”
 - Substitute**
 - “本公司”。
 - (3) Schedule 1, article 31—
 - Repeal paragraph (4)**
 - Substitute**
 - “(4) An alternate director must not be counted or regarded as more than one director for determining whether—
 - (a) a quorum is participating; or
 - (b) a directors’ written resolution is adopted.”.
 - (4) Schedule 1, Chinese text—
 - Repeal article 54**
 - Substitute**

“54. 代委任代表的成員，簽立代表委任文書

如代表通知書未經認證，它須隨附書面證據，證明簽立有關代表委任文書的人，有權代作出有關委任的成員，簽立該文書。”。

- (5) Schedule 1, Chinese text, article 66(1)(a)—

Repeal

“個別”

Substitute

“分開的”。

- (6) Schedule 1, Chinese text, article 67(2)(a)—

Repeal

“個別”

Substitute

“分開的”。

- (7) Schedule 1, Chinese text, article 69(7)(b)—

Repeal

“正式手續”

Substitute

“正式轉讓手續”。

- (8) Schedule 1, Chinese text, article 78(2)(b)—

Repeal

“正式手續”

Substitute

“正式轉讓手續”。

2. Schedule 2 amended (model articles for private companies limited by shares)

- (1) Schedule 2, Chinese text, contents—

Repeal

“50. 代委任代表的成員，執行代表委任”

Substitute

“50. 代委任代表的成員，簽立代表委任文書”。

- (2) Schedule 2, Chinese text, article 17(6)(b)—

Repeal

“本公司或”

Substitute

“本公司”。

- (3) Schedule 2, article 29—

Repeal paragraph (4)**Substitute**

“(4) An alternate director must not be counted or regarded as more than one director for determining whether—

(a) a quorum is participating; or

(b) a directors' written resolution is adopted.”。

- (4) Schedule 2, Chinese text—

Repeal article 50**Substitute****“50. 代委任代表的成員，簽立代表委任文書**

如代表通知書未經認證，它須隨附書面證據，證明簽立有關代表委任文書的人，有權代作出有關委任的成員，簽立該文書。”。

- (5) Schedule 2, Chinese text, article 61(1)(a)—

Repeal

“個別”

Substitute

“分開的”。

- (6) Schedule 2, Chinese text, article 62(2)(a)—

Repeal

“個別”

Substitute

“分開的”。

3. Schedule 3 amended (model articles for companies limited by guarantee)

- (1) Schedule 3, Chinese text, contents—

Repeal

“49. 代委任代表的成員，執行代表委任”

Substitute

“49. 代委任代表的成員，簽立代表委任文書”。

- (2) Schedule 3, Chinese text, article 16(6)(b)—

Repeal

“本公司或”

Substitute

“本公司”。

- (3) Schedule 3, article 27—

Repeal paragraph (4)**Substitute**

“(4) An alternate director must not be counted or regarded as more than one director for determining whether—

(a) a quorum is participating; or

(b) a directors' written resolution is adopted.”.

- (4) Schedule 3, Chinese text—

Repeal article 49**Substitute****“49. 代委任代表的成員，簽立代表委任文書**

如代表通知書未經認證，它須隨附書面證據，證明簽立有關代表委任文書的人，有權代作出有關委任的成員，簽立該文書。”。

Interpretation and General Clauses Ordinance

Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

Company Records (Inspection and Provision of Copies) Regulation

Resolved that the Company Records (Inspection and Provision of Copies) Regulation, published in the Gazette as Legal Notice No. 78 of 2013 and laid on the table of the Legislative Council on 29 May 2013, be amended as set out in the Schedule.

Schedule

Amendment to Company Records (Inspection and Provision of Copies) Regulation

- Section 11 amended (provision of copy of company records)**
Section 11(1)—
Repeal
“5 business days”
Substitute
“10 business days”.

Interpretation and General Clauses Ordinance

Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1))

Companies (Non-Hong Kong Companies) Regulation

Resolved that the Companies (Non-Hong Kong Companies) Regulation, published in the Gazette as Legal Notice No. 79 of 2013 and laid on the table of the Legislative Council on 29 May 2013, be amended as set out in the Schedule.

Schedule

Amendments to Companies (Non-Hong Kong Companies) Regulation

1. **Section 4 amended (documents to accompany application for registration)**

Section 4(4)(a), Chinese text—

Repeal

“本條例第 776(4)條規定須”

Substitute

“根據本條例第 776(4)條”。

2. **Section 9 amended (particulars to be contained in annual return)**

(1) Section 9(1)(h)(i), Chinese text, after “姓名”—

Add

“或名稱”。

(2) Section 9(1)(k), Chinese text—

Repeal

“本條例第 788(1)條規定須”

Substitute

“根據本條例第 788(1)條”。

3. **Section 14 amended (documents to accompany a return under section 791 of Ordinance)**

Section 14(2)(a), Chinese text—

Repeal

everything after “的話))”

Substitute

“在上述更改後的經核證副本，或對該公司的組織作出規定的其他文書在上述更改後的經核證副本；或”。

(Translation)

**Speech by the Secretary for Financial Services and the Treasury
at the Meeting of the Legislative Council on 17 July 2013**

**Three Resolutions under Section 34(2) of the
Interpretation and General Clauses Ordinance**

**Amendments to Companies (Model Articles) Notice,
Company Records (Inspection and Provision of Copies) Regulation
and Companies (Non-Hong Kong Companies) Regulation
(L.N. 77 to 79 of 2013)**

President,

In May this year, we tabled the third batch of subsidiary legislation made under the new Companies Ordinance (“CO”) (28 of 2012) at the Legislative Council. The relevant subcommittee of the Legislative Council has put forward some suggestions to amend three pieces of subsidiary legislation under this batch. The Administration agreed with these suggestions and is going to move three motions at today’s Council meeting to give effect to such amendments. The subcommittee has also completed the scrutiny of a set of court rules made by the Chief Justice under the new CO, which is subject to positive vetting procedure. I will soon move another motion to seek this Council’s approval of the set of court rules.

**First Motion : Amendment to Companies (Model Articles) Notice
(L.N. 77 of 2013)**

2. I now move the first of the three motions for amending the subsidiary legislation, which seeks to amend the Companies (Model Articles) Notice. Under the new CO, every company shall put in place a set of articles to specify the arrangements for its internal management. The Companies (Model Articles) Notice has prescribed three sets of model articles for adoption by different types of companies to be incorporated under the new CO. Same as the practice under the existing CO (Cap.32), a company may adopt, at its own volition, any relevant articles having regard to its own need. These model articles are intended for facilitating the incorporation of companies rather than imposing mandatory regulatory requirements.

3. The subcommittee generally welcomed the three sets of model articles. While the subcommittee did not have difficulties with the intention in respect of the provisions relating to alternate directors, it proposed to refine the drafting of the provisions concerned to facilitate users to precisely understand the detailed arrangements. Meanwhile, the Administration has reviewed other provisions and noted that certain provisions in the Chinese text may need some refinements to improve consistency between the Chinese and English versions. In this regard, this motion proposes a number of textual amendments without changing the intention underlying the provisions concerned. The proposed amendments were agreeable to the subcommittee and I hope that Members will support the motion.

**Second Motion : Amendment to Company Records (Inspection and Provision of Copies) Regulation
(L.N. 78 of 2013)**

4. The second motion seeks to amend the Companies Records (Inspection and Provision of Copies) Regulation. This regulation was made pursuant to sections 356 and 657 of the new CO. It prescribes the arrangements for access to company records kept by companies, including the requirements concerning the place for keeping records, the inspection of records and the provision of copies of records.

5. This Regulation stipulates the timeframe for the provision of copies of company records by a company. Under section 11(1), a company is required to provide the copies within five business days after the date of receipt of a request or payment. The requirement seeks to minimise the compliance burden to the company while facilitating the obtaining of copies of company records by the requestor within a reasonable period.

6. During the scrutiny of this Regulation, the subcommittee expressed concern that small and medium-sized enterprises might not be able to comply with the statutory requirement due to insufficient manpower. The subcommittee reached a consensus that the statutory timeframe should be extended to ten business days. This motion seeks to amend the relevant provision in light of such a consensus.

**Third Motion : Amendment to Companies (Non-Hong Kong Companies) Regulation
(L.N. 79 of 2013)**

7. The Companies (Non-Hong Kong Companies) Regulation was made pursuant to sections 804 and 805 of the new CO. It provides for detailed procedural matters relating to non-Hong Kong companies ("NHKCs") for the implementation of the relevant provisions in Part 16 of the new CO, e.g. detailed requirements on the documents to be submitted upon the registration of NHKCs and the delivery of annual returns.

8. During the scrutiny of this Regulation, the subcommittee offered comments on the drafting and technical aspects of certain provisions of the Chinese text. In this regard, we have agreed to make minor amendments to those provisions to improve their drafting and to better align with the English text. The amendments, which have been agreed by the subcommittee, will not change the intention underlying the provisions concerned.

Closing Remarks

9. President, should the four motions under my name be passed today, this Council would have completed the scrutiny of the three batches of 12 pieces of subsidiary legislation made under the new CO. I would like to take this opportunity to thank Hon WONG Ting-kwong, who served as the Chairman of the subcommittee, other members of the subcommittee, as well as staff of the Legislative Council secretariat. During the past six months, they have provided many valuable comments and suggestions for refining the provisions. The completion of the scrutiny of the 12 pieces of subsidiary legislation would signify an important move towards the target of bringing into force the new CO in the first quarter of next year. In the coming few months, we will continue with various preparatory work, including preparing a commencement notice for the new Ordinance and updating the provisions in the relevant Schedules in respect of consequential amendments in the fourth quarter of this year. I look forward to continuing our joint endeavour with Members in concluding the final stage of the legislative exercise for the implementation of the new CO, with a view to establishing and strengthening Hong Kong's position as an international business and financial centre.

(Moving of the first motion)

10. I move that the first motion under my name, as printed on the Agenda in respect of the subsidiary legislation made under the new CO

for amending the Companies (Model Articles) Notice tabled at this Council on 29 May 2013, be approved. I would appeal to Members' support for this motion. Thank you, Chairman.

* * * *

(Moving of the second motion)

11. I move that the second motion under my name, as printed on the Agenda in respect of the subsidiary legislation made under the new CO for amending the Company Records (Inspection and Provision of Copies) Regulation tabled at this Council on 29 May 2013, be approved. Thank you, Chairman.

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(Moving of the third motion)

12. I move that the third motion under my name, as printed on the Agenda in respect of the subsidiary legislation made under the new CO for amending the Companies (Non-Hong Kong Companies) Regulation tabled at this Council on 29 May 2013, be approved. Thank you, Chairman.

**Financial Services and the Treasury Bureau
10 July 2013**