For information
27 February 2013

Sub-committee on Subsidiary Legislation Made under the New Companies Ordinance

Supplementary Information arising from the Meeting on 21 February 2013

Purpose

This paper provides supplementary information in response to Members' requests at the first meeting of the subcommittee on 21 February 2013.

Companies (Disclosure of Company Name and Liability Status) Regulation

Display of registered name at registered office etc.
(c.f. items (a), (b)(iii), (c) and (d) of LC Paper No. CB(1)610/12-13(01))

2. The requirement for a company to display its name at its registered office and every other place where it carries on business is an existing requirement under section 93(1)(a) of the existing Companies Ordinance (CO). It seeks to ensure that the registered office and other places of business of the company are identifiable by any party dealing with it. This is in the interest of the party dealing with the company as it provides a means for recognising the company and its liability status. The company legislation in the United Kingdom[1] and Australia[2] also contain requirements on this front.

3. Section 3 of the Regulation provides that the requirement to display a registered name applies to a business venue. Section 2(1) of the Regulation defines "business venue" as an office or place, other than the registered office, where the company carries on business and is open to the public. The meaning of "open to the public" is to be given its ordinary meaning and "public" is used in a relative sense to denote any persons outside the immediate circle of those involved in the running and operation of the company. If a venue is not intended to be open to the

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1 Sections 3 and 4 of the Companies (Trading Disclosures) Regulations 2008.

2 Section 144(1) of the Australia Corporations Act 2001.

public, it will not become one open to the public merely by the fact that it has been visited by unsolicited guests, or that it has only been visited by solicited guests on very rare occasions.

4. Section 2 of the new CO has provided for a meaning of the term "manager" which refers to a person performing managerial function under the directors' immediate authority but does not include a receiver or manager of the company's property. As in various instances in the new CO (e.g. sections 45(1)(a)(vi) and 348), section 3(5) of this Regulation refers to "receiver or manager of the property", i.e. it is excluded from the meaning of "manager" in section 2 of the new CO. We believe that the meaning is clear when the provision is read in context.

5. As regards the enforcement position concerning the display of registered name at the company's registered office or other place of business, officers from the Companies Registry ("CR") carry out site inspection as and when any non-compliance comes to their attention, mainly through complaints received from members of the public. In the past three years, a total of 16 complaints were received and the CR has issued 24 summonses, with the amount of fines imposed within a range of $2,500 to $6,000 (including the daily default fine) in each case. The CR intends to maintain the current enforcement approach in enforcing the requirement on this front under the new CO.

Disclosure of registered name in communication documents and transaction instruments
(c.f. items (a), (b)(i) and (ii) of LC Paper No. CB(1)610/12-13(01))

6. Section 4 of the Regulation imposes an obligation on a company to state its registered name in communication documents and transaction instruments. The reason for requiring that the company name be set out in these official documents is to ensure that parties in business know exactly who they are dealing with and that they are dealing with companies with limited liability. The terms "communication documents" and "transaction instruments" are defined in section 2 of the Regulation, the coverage of which are identical to the types of documents and instruments listed in section 93(1)(c) of the existing CO.

7. Insofar as the coverage of "business letter" in "communication documents" is concerned, it refers to business letters of an official nature. In other words, "communication documents" will not include casual exchanges between a company's officer and another party.

8. By virtue of section 2(2) of the Regulation, the obligation to disclose the registered name and liability status of a company on communication documents and transaction instruments apply to such materials in hard copy form, electronic form or any other form. It follows the approach in the new CO with the intent being to clarify the law that documents and instruments in electronic form are treated on par with their hard copy counterparts. Despite it being more common for business parties to engage in causal exchanges in electronic form, the section concerned does not have the effect of expanding the scope to cover such casual exchanges. Whether the relevant requirement applies depends on whether the communication document is of an official nature.

Permitted abbreviation in a company's registered name
(c.f. item (e) of LC Paper No. CB(1)610/12-13(01))

9. Under section 94 of the existing CO, "Coy." is a permitted abbreviation in place of "Company" for the purpose of display or disclosure of the company's registered name. The permission to use this abbreviation, together with others, has been restated in section 6 of the Regulation. As there could be companies adopting the abbreviation in the display of registered names at present, revoking the permission would cause inconvenience to such companies. We therefore propose to retain the permission for usage of "Coy." in the Regulation.

Companies (Directors' Report) Regulation

Disclosure of information relating to debentures
(c.f. item (f) of LC Paper No. CB(1)610/12-13(01))

10. Section 129D(3)(k) of the existing CO provides that a directors' report shall contain information about arrangements subsisting at the end of or at any time in the financial year entered into by (i) the company; (ii) a subsidiary undertaking of the company; (iii) a parent company of the company; and (iv) a subsidiary undertaking of the company's parent company, with an object of enabling directors of the company to acquire benefits by means of acquisition of shares in, or debentures of, the company or any other body corporate.

11. Section 3 of the Regulation basically restates the above except the requirement in respect of debentures. This has been suggested on the grounds that debentures are only one of the many ways that a company borrows funds, and it follows that there is no need to make

special provision for the disclosure of information in relation to debentures in a directors' report. We note that the corresponding subsidiary legislation in the United Kingdom no longer features such requirements[3]. On the other hand, the requirement is still present in the Australia Corporations Act 2001[4]

12. On a related note, section 129D(3)(g) and (h) has provided for the disclosure of the class of and amount involved in any shares and debentures issued by the company respectively. We have re-stated the requirement concerning the issue of shares in section 5 of the Regulation whereas, by the same token as mentioned in paragraph 11 above, the requirement concerning the issue of debentures has not been re-stated.

13. Regarding the disclosure requirements for listed companies on this front, under Paragraph 28(5) of Appendix 16 to the Listing Rules, the annual report of a listed issuer (whether or not it is incorporated in Hong Kong) shall include disclosures required under section 129D of the existing CO. In addition, a debenture arrangement of a listed company (or its subsidiary) to enable its directors to benefits by means of the acquisition of the debentures of the company or any other body corporate, or an arrangement involving the listed company (or its subsidiary) issuing debentures to its directors, may constitute a connected transaction under the Listing Rules. The applicable requirements include disclosure of the transaction by way of an announcement and reporting its details in the issuer's next published annual report.

14. The financial statements of a company contain information on, among others, the liability of the company. Section 316 of the new CO provides that a company must, within one month after an allotment of debentures, provide a return to the Registrar of Companies for registration. The return must state the amount allotted, the particulars of each allottee and the date of allotment and redemption in a specified form. The return is available for inspection on the Companies Register. A company must also maintain a register of debenture holders containing the names of debenture holders and the amount of debentures held by each holder, and make available the register for inspection in accordance with section 310 of the new CO.

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[3] Schedule 5 of the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 and Schedule 7 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008.

[4] Section 300(11)(d) of the Australia Corporations Act 2001.

Advice Sought

15. Members are invited to note the contents of this paper and provide comments on the matters.

Financial Services and the Treasury Bureau
Companies Registry
25 February 2013