

For information

**Subcommittee on Subsidiary Legislation Made
under the New Companies Ordinance**

Supplementary Information arising from the Meeting on 20 June 2013

Purpose

This paper provides supplementary information on matters arising from the ninth meeting of the subcommittee on 20 June 2013.

Submission by the Hong Kong Institute of Directors

2. We note the Institute's views on the subsidiary legislation made for the implementation of the new Companies Ordinance ("CO"). As regards the Institute's specific comments on the third batch of subsidiary legislation being scrutinised by the subcommittee, our responses are set out below –

(a) Companies (Model Articles) Notice

By virtue of section 5 of this Notice, the three sets of model articles will not result in any changes to the articles of existing companies which have adopted the standard articles in Table A in the First Schedule to the existing CO. The Companies Registry will endeavour to raise stakeholders' awareness of this point in the upcoming publicity programme for the implementation of the new CO.

(b) Companies (Non-Hong Kong Companies) Regulation

In the consultation draft of this Regulation, section 3 contained several provisions which set out the particulars of an authorised representative of a non-Hong Kong company to be provided when the non-Hong Kong company applies for registration. However, the provisions concerned are found to be redundant as section 776(4)(c) of the primary legislation of the new CO has prescribed the same requirement. We have accordingly excluded such provisions in the course of finalising this Regulation.

Companies (Model Articles) Notice

Alternate Directors

3. All the three sets of model articles contain articles concerning alternate directors¹. A director may appoint (i) another director of the company or (ii) any person other than a director of the company as his/her alternate (hereafter referred to as “internal alternate” and “external alternate” respectively). The model articles treat both an internal alternate and an external alternate equally, except that the appointment of the latter must be approved by resolution of the directors (article 30(1)). Other than that, the model articles do not in substance distinguish external alternates from internal alternates in terms of their rights, responsibilities and powers.

4. Under article 18, the adoption of a director’s written resolution requires the signature of *all* directors who would have been entitled to vote on the resolution at a directors’ meeting. It is appropriate to subject a written resolution to such a requirement since there is no directors’ meeting for the minority to persuade the majority to change their position in the course of decision-making. Our intention is that, for an external alternate, he is only allowed to sign for one of his appointors. For an internal alternate, he is only allowed to sign for himself or for one of his appointors. This would ensure that sufficient minds are being put to the issue to be resolved by written resolution.

5. Likewise, for the counting of quorum, an alternate director (whether internal or external) is to be counted once only. The intention is to ensure that a single alternate director cannot alone constitute a quorum for a director’s meeting and make decisions in the absence of other minds. The specific reference to external alternate in article 31(3) is to make it clear that an external alternate may be counted towards quorum and may sign a written resolution, as unlike an internal alternate, it may not be clear that he/she has such rights.

6. Finally, alternate directors and proxies are two different concepts. A person appointed by a director to act in his/her place as director is referred to in the model articles (and commonly in registered articles of companies) as an “alternate director”. The term “proxy” is used in the

¹ These refer to (i) articles 30 to 32 in Schedule 1 (for public companies limited by shares); (ii) articles 28 to 30 in Schedule 2 (for private companies limited by shares); and (iii) articles 26 to 28 in Schedule 3 (for companies limited by guarantee) to the Notice. Unless otherwise stated, the article references in paragraphs 3 to 7 of this paper are those in Schedule 1 of the Notice.

CO (and commonly in registered articles) to refer to persons appointed by members to act in their place at members' general meetings. In the model articles, the articles concerning proxies are only applicable to the procedures on general meetings.

7. We note that Members supported the intention as explained above but there were some comments on the drafting of the relevant provisions. Having further considered the relevant views, we propose to amend article 31(4) and the equivalent provisions in the model articles for private companies limited by shares and companies limited by guarantee (i.e. article 29(4) in Schedule 2 and article 27(4) in Schedule 3 respectively). Please refer to Annex for the proposed amendments.

Miscellaneous Textual Amendments

8. Separately, we have also reviewed the Chinese text of the Notice and would propose minor textual amendments to articles 16(6)(b), 54, 66(1)(a), 67(2)(a), 69(7)(b) and 78(2)(b) of Schedule 1 (as well as their equivalent provisions (if any) in Schedules 2 and 3) for improving consistency and to better align with the English text. The proposed amendments are confined to the Chinese text only. They have also been set out in the Annex.

Way Forward

9. Subject to Members' agreement, the Administration would move a motion for seeking LegCo's approval of the proposed amendments to the Companies (Model Articles) Notice at the Council sitting of 17 July 2013.

Financial Services and the Treasury Bureau
Companies Registry
25 June 2013

Proposed Amendments to Companies (Model Articles) Notice

(Note : Except for article 31(4) of Schedule 1, article 29(4) of Schedule 2 and article 27(4) of Schedule 3, the amendments to other provisions are confined to Chinese text only)

Schedule 1 Model Articles for Public Companies Limited by Shares

16. 利益衝突的補充條文

- (6) 本公司的董事可以是下述公司的董事或其他高級人員，亦可以在其他情況下，在下述公司中具有利益 —
- (a) 本公司發起的公司；或
 - (b) 本公司或作為股東或以其他身分於其中具有利益的公司。

31. Rights and responsibilities of alternate directors

- (4) ~~No An~~ alternate director ~~may~~ **must not be counted or regarded** as more than one director for ~~the purposes mentioned in paragraph (3) determining whether—~~
- (a) a quorum is participating; or
 - (b) a directors' written resolution is adopted.

31. 候補董事的權利與責任

- (4) 就第(3)款所述的事情而言，不得將候補董事算作多於1名董事。在 —
- (a) 斷定參與會議的董事是否達到法定人數時；或
 - (b) 斷定董事書面決議是否獲採納時，
- 同一名候補董事，不得算作或被視為多於 1 名董事。

54. 代委任代表的成員，簽立執行代表委任文書

如代表通知書未經認證，它須隨附書面證據，證明簽立執行有關代表的委任文書的人，有權代作出有關該項委任的成員，簽立執行該文書項委任。

66. 綜合股份證明書

- (1) 成員可以向本公司提出書面要求，要求 —
- (a) 以一份綜合證明書，取代該成員的分開的個別證明書；或
 - (b) 以分開的 2 份或多於 2 份代表該成員所指明的股份比例的證明書，取代該成員的綜合證明書。

67. 作替代的股份證明書

- (2) 某成員如有權獲發作替代的證明書，並行使此權利，則 —
- (a) 可同時行使獲發單一證明書、分開的個別證明書或綜合證明書的權利；

- (b) 須將遭塗污或破損的須予替代的證明書，歸還予本公司；及
- (c) 須遵從董事所決定的、在證據、彌償及支付合理款項方面的條件。

69. 執行公司的留置權

- (7) 凡某董事或公司秘書作出法定聲明，聲明自己是董事或公司秘書，以及某股份已於指明的日期售出，以體現本公司的留置權，該聲明即 —
 - (a) 對所有聲稱有權擁有該股份的人而言，屬該聲明所述事實的確證；及
 - (b) 在本《章程細則》或法律規定的任何其他正式轉讓手續獲符合的前提下，構成該股份的妥善所有權。

78. 沒收股份後的程序

- (2) 凡某董事或公司秘書作出法定聲明，聲明自己是董事或公司秘書，以及某股份已於指明的日期遭沒收，該聲明即 —
 - (a) 對所有聲稱有權擁有該股份的人而言，屬該聲明所述事實的確證；及
 - (b) 在本《章程細則》或法律規定的任何其他正式轉讓手續獲符合的前提下，構成該股份的妥善所有權。

Schedule 2 Model Articles for Private Companies Limited by Shares

17. 利益衝突的補充條文

- (6) 本公司的董事可以是下述公司的董事或其他高級人員，亦可以在其他情況下，在下述公司中具有利益 —
 - (a) 本公司發起的公司；或
 - (b) 本公司或作為股東或以其他身分於其中具有利益的公司。

29. Rights and responsibilities of alternate directors

- (4) ~~No An alternate director may be counted or regarded as more than one director for the purposes mentioned in paragraph (3), determining whether—~~
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 - (b) 斷定董事書面決議是否獲採納時，同一名候補董事，不得算作或被視為多於1名董事。

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- (1) 成員可以向本公司提出書面要求，要求 —
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- (2) 某成員如有權獲發作替代的證明書，並行使此權利，則 —
- (a) 可同時行使獲發單一證明書、分開的個別證明書或綜合證明書的權利；
 - (b) 須將遭塗污或破損的須予替代的證明書，歸還予本公司；及
 - (c) 須遵從董事所決定的、在證據、彌償及支付合理款項方面的條件。

Schedule 3 Model Articles for Companies Limited by Guarantee

16. 利益衝突的補充條文

- (6) 本公司的董事可以是下述公司的董事或其他高級人員，亦可以在其他情況下，在下述公司中具有利益 —
- (a) 本公司發起的公司；或
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