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Guide to Restriction on Corporate Directorship in Private Companies under Hong Kong New Companies Ordinance

The Hong Kong new Companies Ordinance was published in the Government Gazette in August 2012. It will become effective on 3 March 2014. From the Commencement Date, all the provisions in the Existing Ordinance will be repealed and replaced by provisions in the New Ordinance, except for the prospectus, and winding-up and insolvency provisions. These two areas will remain in the Existing Ordinance which will then be renamed the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The Securities and Futures Commission has indicated that it will lead the review of the prospectus regime and plans to move the prospectus regime into the Securities and Futures Ordinance (Cap 571). Separately, the Hong Kong Government has said the winding-up and insolvency regime will undergo a separate law review exercise.

This article aims to explain the requirements of the new Companies Ordinance regarding the appointment of individual director by private companies.

1. Introduction

The new Companies Ordinance ("the new CO") requires every private company to have at least one director who is a natural person, to enhance transparency and accountability.

The new CO effectively requires that all company registered on or after the commencement date of the new CO must appoint an individual director at the time of incorporation.

However, the new CO does not impose any restrictions on the nationality or residence of the individual directors. In other words, a person holding a passport issued by any countries and does not ordinarily reside in Hong Kong can still be appointed as director of a Hong Kong private company.

Section 456 of the new CO maintains the restriction on corporate directorship in public companies, companies limited by guarantee and private companies which are members of a group of companies of which a listed company is a member. This restriction, however, does not apply to other private companies which are required to have at least one director who is a natural person.

2. Penalty

Pursuant to section 458 of the new CO, the Registrar of Companies may direct a company to appoint a director who is a natural person in compliance with the requirement. If a company fails to comply with the direction, the company and every responsible person of the company commit an offence, and each is liable to a fine of \$100,000 and for a continuing offence, a further fine of \$2,000 for each day during the period.

3. Transitional Arrangements

For private companies registered under the Companies Ordinance (Cap. 32), there will be a grace period of 6 months after the commencement date of the new CO for the companies to comply with the new requirement.

In other words, those companies registered on or before 2 March 2014 under the Existing Ordinance and with corporate director only should appoint an individual to act as its director not later than 3 September 2014 so as to comply with the requirements of the new CO.

Appointments of new directors should be reported to the Registrar of Companies in the specified form within 15 days pursuant to section 645 of the new CO.