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## Guide to Abolition of Par Value in Hong Kong New Companies Ordinance

### 1. Introduction

The new Hong Kong Companies Ordinance (the “New CO”) was passed by the Legislative Council on 12 July 2012. The last major review and amendment of the existing Companies Ordinance (Cap 32) (the “Existing Ordinance”) was undertaken in 1984. The majority of the provisions of the Existing Ordinance originated from the UK Companies Act 1929 and the statute was generally felt in need of overhaul.

From the Commencement Date, the concept of authorised capital and nominal value has been abolished. All company shares will cease to have a nominal or par value, whether issued before or after the Commencement Date. Any provisions in a company's constitution which state the amount of the company's authorised capital and the nominal or par value of its shares will be regarded to have been deleted from the constitution. The nominal or par value amount of issued shares, together with the amounts standing in credit to the share premium account and the capital redemption reserve, will form the share capital.

### 2. Abolition of Par Value

#### (1) Summary of Changes

Under the existing legislation, companies' shares have a par value (also known as the nominal value), representing the minimum price at which such shares can generally be issued.

The new CO adopts a mandatory system of no-par value for shares. The no-par system will apply to all shares of Hong Kong incorporated companies whether issued before or after the commencement date of the new CO.

#### (2) Implications for Practice

With the removal of par value, the concept of authorized capital, as distinct from issued share capital, no longer applies. The new CO states that the amount of authorized capital set out in an existing company's constitutional documents is deemed to be deleted.

If shareholders so wish, they may pass a special resolution to amend the company's articles of association to specify a maximum number of shares that may be issued (and that maximum number may then be changed by way of ordinary resolution). The effect of this is to constrain the directors' ability to issue shares, in a way similar to the existing constraint of authorized capital.

Under the new CO, there is no legislative control over the setting of the issue price of shares. This will be determined by the directors (who must abide by their fiduciary duties when setting the issue price).

### 3. Transitional Provisions

#### (1) Summary of Changes

The purpose of the transitional provisions in Schedule 11 to the new CO is to ensure that existing companies are not obliged to take action to change their existing share capital and constitutional documents to conform with the no-par regime. Although labelled as "transitional", these provisions apply indefinitely.

For contracts, resolutions, trust deeds and other documents executed before the commencement date of the new CO, any express or implied reference to par or nominal value will be deemed to be a reference to nominal value immediately before the commencement date.

From the commencement date, any amount in the share premium account and any amount in the capital redemption reserve will simply become part of the company's share capital. The current permitted uses of share premium will, however, be preserved for any such amounts in the share premium account immediately before the commencement date.

Various miscellaneous transitional provisions in Schedule 11 aim to provide for a smooth transition to the no-par regime. One of the provisions states that the liability of a shareholder for calls in respect of money remaining unpaid on shares issued before the commencement date (whether on account of the nominal value of the shares or by way of premium) is not affected by the fact that the share ceases to have a nominal value.

#### (2) Implications for Practice

Notwithstanding the transitional provisions, companies should consider amending their articles of association to reflect the abolition of the par value regime.

In respect of existing contracts that refer to par value, whilst the transitional provisions will be effective in a domestic setting, they may not necessarily be applied by a foreign court - particularly if the proper law of the contract in question is not Hong Kong law. Such contracts should be reviewed to determine whether to ask counterparties to make amendments.

Companies wishing to utilise the transitional provisions relating to permitted uses of share premium should maintain on-going records of the balance of the former share premium account.

Despite the absence of share premium, merger relief will continue to be available. Under the existing legislation, any premium on the consideration shares issued by the acquiring company is not required to be credited to the share premium account (instead being dealt with by a merger reserve accounting entry). Under the new CO, the amount required to be

recorded as share capital in respect of the consideration shares issued by the acquiring company will instead be the subscribed capital attributable to the acquired shares (and we expect a similar merger reserve accounting entry to be made to reflect any excess in value of the acquired shares over the subscribed capital attributable to them).

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