

# Company Records and Registers in Hong Kong

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A Practice Note outlining the statutory requirements to keep and maintain registers and other records for private limited companies incorporated in Hong Kong.

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Companies in Hong Kong must keep and maintain certain corporate registers (for example, register of members and register of directors) and other records (for example, minutes and resolutions). Awareness of the statutory requirements is important, since failure to comply with relevant legal duties may result in penalties for the directors or officers of the company, including civil or criminal sanctions.

This Note looks at the statutory requirements to keep and maintain corporate registers and other records for *private companies* in Hong Kong and the consequences of non-compliance. It also discusses requirements relating to location and inspection of corporate registers and records under Hong Kong law. It does not cover other records such as tax and accounting (or financial) records (for example, annual financial accounts).

In this Note, unless stated otherwise, references to:

- A *responsible person* includes, without limitation, the *directors* (including *shadow directors*), *officers* and managers of a company.
- A **company** refers to a private company formed and registered under the *Companies Ordinance* (Cap 622) (CO).

## Legal Framework

The legal framework for company records and registers in Hong Kong is contained in:

- The CO.
- The *Company Records (Inspection and Provision of Copies) Regulation (Cap 622I)* (Company Records Regulations).
- The *Business Registration Ordinance* (Cap 310).
- The *Inland Revenue Ordinance* (Cap 112).

## Form of Records and Registers

Company records means "any register, index, agreement, memorandum, minutes or other document required by the CO to be kept by a company, but does not include accounting records" (section 654, CO).

Under section 655(2) of the CO, company records may be:

- Kept in hard copy form or in electronic form. If the records are kept in electronic form, the company must ensure that they are capable of being reproduced in hard copy form (section 655(3), CO).
- Arranged in the manner that the directors of the company think fit.

Failure by the company to comply with this requirement is an offence for which the company and every responsible person is liable to a fine at level 3 (currently HKD10,000) (section 655(6), CO).

The company must also ensure that its company records adequately record for future reference the requisite information (section 655(1), CO). If a company fails to comply with this requirement, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 3 (currently HKD10,000) and, in the case of a continuing offence, to a further fine of HKD300 for each day during which the offence continues (section 655(5), CO).

## Main Mandatory Registers for Private Companies in Hong Kong

### Register of Members (Shareholders)

All companies incorporated in Hong Kong must maintain a register of members (section 627(1), (2), (3) and (4), CO). Under Hong Kong law, a member (shareholder) is one of the following:

- A founder member of the company.
- A person who agrees to become a member of the company and whose name is entered, as a member, in the company's register of members.

(Section 2(1), CO.)

### Content of Register of Members

Within two months after the company has received notice of the particulars concerned, a company must enter all of the following in the register of members:

- The names and addresses of its members.
- The date on which each person is entered in the register as a member.
- The date on which any person ceases to be a member.
- In the case of a company having a *share capital*:
  - the shares held by each member, distinguishing each share by its number so long as the share has a number; and
  - the amount paid or agreed to be considered as paid on the shares of each member.

(Section 627(1), (2), (3) and (4), CO.)

### Updating Register of Members

Where a person is to become a member pursuant to an allotment of shares by the company, the company must register the allotment of shares by entering the particulars in section 627(2) and (3) of the CO in the register of members as soon as practicable and in any event within two months after the date of the allotment (section 143(1), CO).

In addition, section 627(4) of the CO also requires a company to enter into the register of members the particulars required under section 627(2) and (3) within two months after the company has received notice of the particulars concerned.

If the number of members of a company falls to one, a statement that the company has only one member and the date of this occurrence must be entered in the register of members within 15 days of the date of such occurrence (section 629(1), CO). If the number of members of a company then increases from one to two or more members, a statement that the company has ceased to have one member and the date of this occurrence must similarly be entered in the register of members within 15 days of the date of such occurrence (section 629(2), CO).

If a company fails to comply with these requirements, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (sections 627(7) and 629(3), CO).

### Location of the Register of Members

The register of members can be either kept at the registered office of the company or any other place in Hong Kong (section 628(1), CO; section 3, Company Records Regulations).

If the register of members is kept anywhere other than at the company's registered office, the *Registrar of Companies* must be given notice (via *Form NR2*) of the place where it is kept (and any change in that place) within 15 days after the register is first kept at that place (section 628(2)-(4), CO). If the company fails to comply with this requirement, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (section 628(5), CO).

### Maintenance of Register of Members with the Registrar of Companies

Within one month after an allotment of shares by the company, the Registrar of Companies must be given notice (via *Form NSCI*), stating, among other things:

The number of shares allotted.

The name and address of each allottee.

If the company's issued share capital is increased as a result of the allotment, the amount of the increase.

Details of any shares allotted for consideration.

Details of any shares allotted credited as fully paid up.

(Section 142(1) and (2), CO.)

However, there is presently no requirement under the CO for a company to make any filing to the Registrar of Companies following a share transfer. Therefore, legal practitioners should be mindful that any information relating to the shareholdings of a company as stated in the company's latest annual return (or indeed, any subsequent filings relating to the company's share capital) filed with the Registrar of Companies may not be up to date.

The Registrar of Companies must be given notice of the location of the register of members (or any change in such location) (see *Location of the Register of Members*).

## Rectification of Register of Members

It is possible to correct errors in the register of members. A person aggrieved (whether a member or not), any member of the company or the company may make an application to the court to rectify a company's register of members if either:

- The name of any person is, without sufficient cause, entered in or omitted from the register of members.
- There is default or unnecessary delay in entering the fact that a person has ceased to be a member.

(Section 633(1), CO.)

A person who claims to be a person aggrieved must be someone who has a right to complain either because of something done or not done, whose name ought to be entered in or omitted from the register (*Peter Yip v Asian Electronics Ltd* [1998] 2 HKC 96).

## Register of Directors

All companies incorporated in Hong Kong must maintain a register of directors at its registered office or any other place in Hong Kong (sections 641(1) and (3), CO; section 3, Company Records Regulations).

If the register of directors is kept anywhere other than at the company's registered office, the Registrar of Companies must be given notice (via *Form NR2*) of the place where it is kept (and any change in that place) within 15 days after the register is first kept at that place (section 641(4)-(6), CO). The register of directors must include all of the following particulars of each director:

- Their full name and any former names and aliases (if any) (or in the case of a body corporate, the corporate name).
- Their residential address and correspondence address (or in the case of a body corporate, the registered or principal office address).
- Their Hong Kong identity card number or, if they do not have an identity card, their passport number and issuing country.

(Section 643, CO.)

However, a company may withhold particulars of the residential address of a director or the identity card or passport number of a director from a person who inspects or requests for a copy of the register of directors in accordance with the CO (section 644, CO).

If the company fails to comply with these requirements, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (section 641(7), CO).

Within 15 days after the appointment, cessation or change in the particulars of a director, the Registrar of Companies must be given notice (via *Form ND2A* or *Form ND2B*) of the details of such appointment, cessation or change (section 645, CO). Further, the Registrar of Companies must be given notice of the location of the register of directors (or any change in such location) (see *Location of the Register of Members*).

## Register of Company Secretaries

In Hong Kong, a company must also have a company secretary (section 474(1), CO). A register of *company secretaries* must also be kept at its registered office or any other place in Hong Kong (sections 648(3), CO; section 3, Company Records Regulations). The register of company secretaries must include all of the following particulars of each company secretary:

- Their full name and any former names and aliases (if any) (or in the case of a body corporate, the corporate name).
- Their correspondence address (or in the case of a body corporate, the registered or principal office address).
- Their Hong Kong identity card number or, if they do not have an identity card, their passport number and issuing country.

(Sections 648 and 650, CO.)

However, a company may withhold particulars of the identity card or passport number of a company secretary from a person who inspects or requests for a copy of the register of directors in accordance with the CO (section 651, CO).

If the company fails to comply with this requirement, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (section 648(7), CO).

Within 15 days after the appointment, cessation or change in the particulars of a company secretary, the Registrar of Companies must be given notice (via *Form ND2A* or *Form ND2B*) of the details of such appointment, cessation or change (section 652, CO).

## Register of Significant Controllers

Unless the company is a *listed company*, a significant controllers register containing the particulars of the significant controllers of the company must be kept at its registered office or any other place in Hong Kong (sections 653M(1), CO; section 3, Company Records Regulations). This applies even if the company does not have any significant controller (sections 653H(1) and (2), CO). The register of significant controllers must be made available for inspection on demand of any law enforcement officer, which includes the Companies Registry, the Customs and Excise Department, the Hong Kong Monetary Authority, the Hong Kong Police Force, the Immigration Department, the Inland Revenue Department, the Insurance Authority, the Independent Commission Against Corruption and the Securities and Futures Commission (sections 653B and 653X, CO).

A person has significant control over a company if one or more of the following conditions are met:

- The person holds, directly or indirectly, more than 25% of the issued shares in the company.
- The person holds, directly or indirectly, more than 25% of the voting rights of the company.
- The person holds, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company.
- The person has the right to exercise or actually exercises significant influence or control over the company.
- The person has the right to exercise or actually exercises significant influence or control over the activities of a *trust* or a firm that is not a legal person, but whose trustees or members satisfy any of the first four conditions in relation to the company.

(Section 653E, Schedule 5A, Part 1, CO.)

The register of significant controllers must include, among other things, the following particulars of each significant controller:

- Their full name and any former names and aliases (if any) (or in the case of a legal entity that is a company, the company's name).
- Their correspondence address (or in the case of a legal entity that is a company, the company's registered office address).
- In the case of a natural person, their Hong Kong identity card number or, if they do not have an identity card, their passport number and issuing country.
- In the case of a legal entity that is a company, the legal form, and the law that governs it, and the registration number (or equivalent) as stated in its certificate of incorporation (or equivalent).
- The date on which they became a significant controller of the company, and the nature of their control over the company.
- The name and contact details of one designated representative of the company to assist with the register of significant controllers. The representative must be:
  - a natural person resident in Hong Kong and a director, employee or member of the company;
  - an accounting professional;
  - a legal professional; or
  - a trust or company service provider licensee

(Section 653ZC, CO.)

(Section 653I, Schedule 5B, CO.)

A company is required to take reasonable steps to identify its significant controllers and issuing notices to any person who the believes to be a significant controller (section 653P, CO). The Companies' Registry has given examples of reasonable steps that a company may take, including reviewing all documents and information available, such as the company's register of members, articles of association, statement of capital, shareholders' agreements or other relevant covenants or agreements.

If the company knows, or has reasonably cause to believe, that it has no significant controller, or if it has a significant controller but has not been able to identify such person, the company must note this in its register of significant controller. (section 653I, Schedule 5C, CO).

If the company fails to comply with these requirements, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (section 653H(4), CO).

## Register of Charges

All companies incorporated in Hong Kong, and all non-Hong Kong companies registered under Part 16 of the CO, must maintain a register of charges and copies of all instruments creating a charge (defined in section 334) required to be registered under Part 8 of the CO. That register must be kept at its registered office or any other place in Hong Kong (sections 351, 352, and 353, CO; section 3, Company Records Regulations).

A company must enter all of the following in its register of charges:

- Every charge specifically affecting property of the company.
- Every *floating charge* on the whole or part of the company's property or *undertaking*.
- The amount secured by the charge.
- A description of the property charged.
- Except in the case of *securities* to bearer, the names of the persons entitled to the charge.

(Sections 352(2) and 353(2), CO.)

Any failure by the company to keep copies of all instruments creating a charge required to be registered under the CO pursuant to section 351 or to keep a register of charges pursuant to sections 352 or 353 (as the case may be), constitutes an offence, and the company, and every responsible person of the company, is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (section 351(7); section 352(3); section 353(4), CO).

In addition, if an *officer* of the company knowingly and wilfully authorises or permits the omission of an entry required to be made in the register of charges, the officer commits an offence and is liable to a fine at level 5 (currently HKD50,000) (section 352(4); section 353(5), CO).

Within one month after the date on which a charge is created, the Registrar of Companies must be given notice (via *Form NMI*) of the details of such charge, together with a certified copy of the instrument (if any) creating or evidencing such charge (sections 335 and 336, CO). Any failure to do so constitutes an offence, and the company, and every responsible person of the company, is liable to a fine at level 5 (currently HKD50,000) and, in the case of a continuing offence, to a further fine of HKD1,000 for each day during which the offence continues (section 337, CO).

## Register of the Holders of the Debentures or Debenture Stock

If the company has issued a series of *debentures* (including bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company), or any debenture stock, that are not transferrable by delivery, the company must keep a register of the holders of the debentures or debenture stock (section 308, CO), and the register must be kept at the company's registered office or any other place in Hong Kong (section 309, CO; section 3, Company Records Regulations).

A company must enter all of the following in the register of debenture holders as soon as practicable and in any event within two months after the date of allotment of such debentures or debenture stock:

- The name and address of each holder of debentures or debenture stock.
- The amount of debentures or debenture stock held by each holder.
- The date on which each person is entered in the register as a holder of debentures or debenture stock.

- The date on which any person ceases to be a holder of debentures or debenture stock.

(Sections 308 and 317, CO.)

Further, within one month after an allotment of debentures or debenture stock by the company, the Registrar of Companies must be given notice (*Form NDB1*) of the details of such debenture or debenture stock (section 316, CO).

If a company fails to comply with these requirements, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 4 (currently HKD25,000) and, in the case of a continuing offence, to a further fine of HKD700 for each day during which the offence continues (sections 308(3), 309(5), 316(3) and 317(2), CO).

## Other Mandatory Records

In Hong Kong, certain other registers must be kept depending on the company type or business activity undertaken, as follows:

### Accounting Records.

The accounting records must be kept in sufficient detail in compliance with sections 373 and 376 of the CO and must be kept at the company's registered office or any other place in Hong Kong that the directors think fit and must be open to inspection by the directors at all times without charge (section 374(1), CO). The company must preserve these accounting records for seven years after the end of the financial year to which the accounting records relates (section 377, CO).

A director of a company who fails to take all reasonable steps to secure compliance with the above requirements commits an offence and is liable to a fine of HKD300,000 (sections 374(4) and 377(3), CO).

A director of a company who wilfully fails to take all reasonable steps to secure compliance with the above requirements commits an offence and is liable to a fine of HKD300,000 and to imprisonment for 12 months (sections 374(5) and 377(4), CO).

### Copies of Any Contract or Agreement Relating to a Buy-Back of the Company's Shares

Copies of any contract or agreement relating to a *buy-back* of the company's shares (or, if the contract or agreement is not in writing, a written memorandum of its terms) must be kept at the registered office or any other place in Hong Kong for a period of ten years beginning on the day on which the buy-back of all shares under the contract is completed or the day on which the contract otherwise terminates (section 237(2) and (3), CO).

If a company contravenes section 237(2) or section 237(3) of the CO, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 5 (HKD50,000) and, in the case of a continuing offence, to a further fine of HKD1,000 for each day during which the offence continues (section 237(6), CO).

### Copies of Management Contracts

A company must keep copies of any management *contract* (or, if it is not in writing, a written memorandum of its terms) for at least one year after the date of termination or expiry of the contract (as applicable) and make it available for inspection during that time (section 543(4), CO).

A management contract is one entered into by a company pursuant to which all of the following criteria are satisfied:

- A person (which includes a *body corporate*) undertakes the management and administration of the whole or any substantial part of any business of the company.



- The contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company.

(Section 543(1), CO.)

If the company fails to comply with section 543(4) of the CO, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 3 (currently HKD10,000) (section 543(6), CO).

## Minute Books (Records of Shareholder and Director Meetings and Resolutions) and other Records

### Minutes of Members' Meetings

Minutes of all *members'* meetings and written resolutions of the members must be kept and retained at its registered office or any other place in Hong Kong (sections 619(1), CO; section 3, Company Records Regulations) for at least ten years from the date of the meeting or passing of the written resolution (section 618(1) and (2), CO).

If a company fails to comply with these requirements, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 5 (currently HKD50,000) and, in the case of a continuing offence, to a further fine of HKD1,000 for each day during which the offence continues (sections 618(3) and 619(5), CO).

### Minutes of Directors' Meetings

Minutes of all *directors'* meetings and written resolutions of the directors must be kept for at least ten years from the date of the meeting or the date of the passing of the written resolution (section 481(1) and (2), CO).

If a company fails to comply with this requirement, the company, and every responsible person of the company, commits an offence, and each is liable to a fine at level 5 (currently HKD50,000) and, in the case of a continuing offence, to a further fine of HKD1,000 for each day during which the offence continues (section 481(3), CO).

### Business Registration Ordinance (Cap 310)

Under section 12(1) of the *Business Registration Ordinance* (Cap 310) (BRO) a valid business registration certificate must be displayed at the company's place of business. If the company has a branch, then a valid branch registration certificate must be displayed at the branch to which such certificate relates (section 12(2), BRO).

Any *person* (including a company) who fails to display a valid business registration certificate or a valid branch registration certificate as required under section 12(1) or section 12(2) of the BRO commits an offence, and will be liable to a fine at level 2 (currently HKD5,000) and to imprisonment for one year (section 15(1)(g), BRO).

### Inland Revenue Ordinance (Cap 112)

Under section 51C(1) of the *Inland Revenue Ordinance* (Cap 112) (IRO), every *person* (including a company) that carries on a trade, profession or business in Hong Kong is required to keep sufficient records in the English or Chinese language of the income and expenditure to enable the assessable profits of such trade, profession or business to be readily ascertained. These records must be retained for a period of not less than seven years after the *completion* of the transactions, acts or operations to which they relate.

According to section 51C(3) of the IRO, "records" is defined as including all or any of the following:

- Books of account (whether kept in a legible form, or in a non-legible form by means of a computer or otherwise) recording receipts and payment, or income and expenditure.
- Vouchers, bank statements, invoices, receipts and such other documents as are necessary to verify the entries in the books of account.

Without limiting the generality of the above definition of "records," the records required to be kept and retained pursuant to section 51C(1) of the IRO, in respect of any trade, profession or business carried on during any year of assessment by any person (including a company), include all or any of the following:

- A record of the assets and liabilities of the person in relation to that trade, profession or business.
- A record of all entries from day-to-day of all sums of money received and expended by the person in relation to that trade, profession or business and the matters in respect of which the receipt and expenditure take place.
- Where that trade, profession or business involves dealing in goods:
  - a record of all goods purchased and of all goods sold in the carrying on of that trade, profession or business (except those sold in the course of cash retail trading customarily conducted in a trade, profession or business of the kind of which that trade, profession or business is one) showing the goods and the sellers and buyers in sufficient detail to enable the Commissioner of Inland Revenue to readily verify the quantities and values of the goods and the identities of the sellers and buyers; and all invoices relating thereto; and
  - statements (including quantities and values) of trading stock held by the person: (a) at the end of each year of assessment; or (b) where the Commissioner of Inland Revenue is satisfied that the accounts of such trade, profession or business are made up to a day other than 31 March, on that day in the year of assessment, and all records of stocktakings from which any such statement of trading stock has been prepared.
- Where that trade, profession or business involves the provision of services, records of the services provided in sufficient detail to enable the Commissioner to readily verify the entries referred to in section 51C(4)(b) of the IRO.

(Section 51C (4), IRO.)

Any *person* (including a company) who, without reasonable excuse, fails to comply with the requirements of *section 51C* of the IRO commits an offence and is liable on conviction to a fine at level 6 (currently HKD100,000) and the court may order the person to do the act which they have failed to do within a specified time (section 80(1A), IRO).

In addition, every person (including a company) who is the owner of land or buildings or land and buildings situated in Hong Kong must keep sufficient records in the English or Chinese languages of the *consideration* (in money or money's worth) payable or deemed to be payable to him or her, to his or her order or for his or her benefit on or after 1 April 1983 in respect of the right of use of that land or buildings, or land and buildings to enable the assessable value of that land or buildings, or land and buildings to be readily ascertained. Such records must be retained for not less than seven years after the completion of the transactions, acts or operations to which they relate (section 51D(1), IRO).

Under section 80(1) of the IRO, any person (including a company) who, without reasonable excuse, fails to comply with the requirements of section 51D(1) of the IRO commits an offence and is liable on conviction to a fine at level 3 (currently HKD10,000), and the court may order the convicted person to do the act which he or she has failed to do within a specified time.

## Location and Inspection of Registers and Records

### Location of Records and Registers

In general, Hong Kong companies must keep records and registers at their registered office (or in the case of a registered non-Hong Kong company, at their principal place of business in Hong Kong) or at any other place in Hong Kong (section 3, Company Records Regulations). If the records and registers are kept anywhere other than at the company's registered office or principal place of business in Hong Kong (as the case may be), the Registrar of Companies must be given notice of the place where it is kept (and any change in that place) within a prescribed time pursuant to the CO.

### Inspection and access to Records and Registers

#### Access by Members

Under the CO, *members of private companies* generally have certain statutory rights of access to the records and documents of the company. However, it is not uncommon for members (and minority shareholders especially) to try to negotiate more favourable contractual rights of access and inspection for inclusion in the company's *articles* of association or shareholders' agreement. A shareholders' agreement can also provide for certain records and documents to be made available to the company's members (or certain members or specified classes of members) which would not otherwise be available to them under the CO, such as monthly or quarterly accounts, business plans and forecasts. Depending on the bargaining power of a member, the member may also negotiate for an observer role at board meetings of the company, which would give the member greater access to information about the company's affairs than would ordinarily be the case. However, an observer may not be a director or be bound by fiduciary duties that normally apply to a director.

A (non-exhaustive) summary of the main access and inspection rights of a member of a company under the CO is set out in the table below. Since a member's information right may be stipulated by *contract*, practitioners should also check the articles of association of the company and any other relevant documents such as the shareholders agreement (if any).

Companies Ordinance (Cap 622)	Right of member to inspect and access records
Section 97	<b>Articles of association.</b> A company must, on request of a member of the company, provide, without charge, an up-to-date copy of the company's articles of association within seven days after it receives the request.
Section 237(4) and (5)	<b>Buy-back contracts.</b> Where a <i>private company</i> has entered into a buy-back contract or agreement, the company must make the copy of such contract or agreement or (if it is not in writing) a written memorandum of its terms available for inspection by its members during business hours without charge. Note that the company can, by resolution, impose reasonable restrictions on the making available of the copy or memorandum for inspection, as long as not less than two hours per day are allowed for inspection.
Section 310(1) and (4)	<b>Register of debenture holders.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect the register of <i>debenture</i> holders (if any) in accordance with the Company Records Regulations.

	<p>A member is also entitled, on request and on payment of the prescribed fee, to be provided with a copy of the register of debenture holders (or any part of it) in accordance with the Company Records Regulations.</p>
Section 355	<p><b>Register of charges.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with the Company Records Regulations:</p> <p>The copies of all instruments creating a charge required to be registered under Part 8 of the CO and kept by the company under section 351(1).</p> <p>The register of charges kept by the company under section 352(1).</p>
Sections 430(1), 435(1), and 612(1)(b)	<p><b>Financial statements.</b> A member is entitled to a copy of the company's reporting documents for each financial year including the annual (audited) financial statements, auditors' report and directors' report, and the company must provide such reporting documents to every member at least 21 days before the relevant annual general meeting in respect of that financial year (or otherwise within seven days after a demand is made by a member (or such member's personal representative)).</p>
Sections 544(1) and (2).	<p><b>Management contracts.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with the Company Records Regulations, a copy of a management contract (or a written memorandum thereof) kept by the company under section 543.</p> <p>A member is also entitled, on request and on payment of a prescribed fee, to be provided with a copy of the management contract or memorandum in accordance with the Company Records Regulations.</p>
Section 620	<p><b>Shareholders resolutions.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect, in accordance with the Company Records Regulations, the records kept by the company under section 618 (that is, minutes of members' meetings and members' written resolutions).</p> <p>A member is also entitled, on request and on payment of a prescribed fee, to be provided with a copy of any of those records in accordance with the Company Records Regulations.</p>
Section 631(1) and (3)	<p><b>Register of members.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect the register of members (and the index of members' names if the company has more than 50 members), in accordance with the Company Records Regulations.</p>

	A member is also entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of members (or any part of it) in accordance with the Company Records Regulations.
Section 642(1) and (3)	<p><b>Register of directors.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect the register of directors in accordance with the Company Records Regulations.</p> <p>A member is also entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register of directors (or any part of it) in accordance with the Company Records Regulations.</p>
Section 649(1) and (3)	<p><b>Register of company secretaries.</b> A member is entitled, on request made in the prescribed manner and without charge, to inspect the register of <i>company secretaries</i> in accordance with the Company Records Regulations.</p> <p>A member is also entitled, on request and payment of the prescribed fee, to be provided with a copy of the register of company secretaries (or any part of it) in accordance with the Company Records Regulations.</p>
Section 653W.	<p><b>Significant controllers register.</b> Normally, only Hong Kong law enforcement officers are permitted to inspect a company's significant controllers register. However, a member may request to inspect the significant controllers register if they are entered in the significant controllers register as having significant control over the company.</p> <p>A member who has significant control over a company is entitled, on request made in the prescribed manner and without charge, to inspect the significant controllers register in accordance with the Company Records Regulations. A member is also entitled, on request made in the prescribed manner and payment of a prescribed fee, to be provided with a copy of the significant controllers register (or any part of it) in accordance with the Company Records Regulations.</p>

Under section 11 of the Company Records Regulations, if a person who is entitled, under a relevant provision, to be given a copy of a company record (or any part thereof) and has submitted a request and paid the prescribed fee in accordance with section 12 of the Company Records Regulations, the company must comply with such request within ten business days after the date of receipt of the request or payment (whichever is later).

#### Shareholder Inspection of Company Records Pursuant to a Court Order: Section 740

On application by at least five members of the company, or the number of members that represents at least 2.5% of the voting rights of all the members having a right to vote at the company's general meetings at the date of application (each an applicant), the court may make an order for all or any of the following:

- Authorising a person who is the applicant or one of the applicants to inspect any record or document of the company.
- Authorising a person who is not the applicant or one of the applicants to inspect any record or document of the company on behalf of the applicant or applicants.

For an order to be made under section 740(1) of the CO, the court must be satisfied that the application was made in good faith and for a proper purpose. As the court will consider the availability of alternative recourse in its deliberation, minority shareholders who are directors or have representative directors on the boards should exercise their directors' right to inspect before making an application under section 740 (See *Morning Ray Investment Co Ltd v Jinhui International Enterprise Ltd* [2022] HKCFI 926).

If an order is made, the court has a wide discretion under section 740(4) of the CO to make any other order that it thinks fit, including all or any of the following:

- An order requiring the company or any of its *officers* to produce any record or document to the person.
- An order specifying the record or document that may be inspected by the person.
- An order requiring the applicant to pay the expenses reasonably incurred by the company in the inspection.
- An order permitting the person or, if the person is not the applicant, the applicant to disclose any information obtained as a result of the inspection to any other person specified in the order.

If the court makes an order authorising a person to inspect a record or document, the person may, unless the court otherwise orders, make copies of the record or document.

Note that a section 740 order does not authorise:

- A person to inspect any company record or document which contains information that is subject to legal professional privilege (section 742, CO).
- The collection, retention or use of *personal data* in contravention of the *Personal Data (Privacy) Ordinance* (Cap 486) (section 743, CO).

Under section 741(4), of the CO a person who has been given court authorisation (authorised person) under section 740(1) to inspect a record or document of a company is, unless otherwise ordered by the court, prohibited from using any information obtained from the inspection for any purpose other than the purpose for which the inspection was applied for. A contravention of this prohibition is an offence, punishable:

- On conviction on indictment to a fine of HKD150,000 and imprisonment for two years.
- On summary conviction to a fine at level 5 (currently HKD50,000) and imprisonment for six months.

(Section 741(5). CO.)

In addition, section 741(2) stipulates that an authorised person or applicant to whom any information is disclosed must not, without the company's prior written consent, disclose any information to any person who is not an applicant. However, there are limited exceptions to this rule (section 741(3)) which allow disclosure to a person (other than an authorised person or applicant) if the disclosure is either:

- Required with a view to the institution of, or otherwise for the purpose of, any criminal proceedings.
- Permitted in accordance with a court order made under section 740(1) or section 740(4).

- Permitted in accordance with law or a requirement made under law.

### Inspection of Company Records in Electronic Form

"Electronic form" means in the form of an electronic record (section 655(7), CO). An "electronic record" means a record generated in digital form by an information system, which can be any of the following:

- Transmitted within an information system or from one information system to another.
- Stored in an information system or other medium.

(Section 2, CO.)

If a company is under any duty under the CO to allow inspection of its company records and such records are kept in electronic form, the company can satisfy its duty by allowing inspection of either:

- A reproduction of the record (or relevant part thereof) in hard copy form (that is, in paper or other similar form).
- The record (or relevant part thereof) by electronic means if requested by the person inspecting the record.

(Section 655(4), CO.)

### Access by Directors

The *directors* owe a common law and statutory duty to the company to exercise reasonable care, skill and diligence (section 465(1), CO). Under section 465(2) of the CO, "reasonable care, skill and diligence" means the care, skill and diligence that would be exercised by a diligent person with both:

- The general knowledge, skill, and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company.
- The general knowledge, skill, and experience that the director has.

In principle, therefore, it is primarily for the directors to ensure that they have sufficient information about the company, so that they can perform their functions properly and effectively and discharge their *fiduciary duties* to the company.

In addition, sections 374 and 375 of the CO prescribe that a company's accounting records must be open to inspection by the directors at all times without charge, and a company must allow its director to make a copy of its accounting records in the course of inspection.

As officers of the company and members of the board, the directors will usually have greater access to the company's records and documents in comparison to the *members* of the company. Sometimes the company's *articles* of association and shareholders' agreement (if any) will also provide for the contractual rights of the directors in respect of the company records, documents and information, as well as any special rights of access and inspection.

### Access by the Public

Members of the public usually have access to information that is publicly available. In this regard, any person may conduct a company search at the *Companies Registry* and obtain copies of documents filed in respect of a company on payment of the prescribed fee. A company search can be carried out online via the e-Search services at the e-Services Portal of the *Companies Registry*.

There are certain statutory provisions in the CO which, in principle, permit any "person" (which is broadly defined to include any public body and any body of persons, corporate or unincorporated; see *section 3, Interpretation and General Clauses Ordinance* (Cap 1)) to request from a company, in the prescribed manner and on payment of the prescribed fee, to inspect, or be provided with a copy of, certain registers of a company in accordance with the Company Records Regulations. Those registers are the:

- Register of *debenture* holders (section 310(3) and (4), CO).
- Register of charges (note that section 355(3) of the CO only allows inspection of the register of charges and there is no provision allowing a person to request for a copy of the register).
- Register of members (section 631(2) and (3), CO).
- Register of *directors* (section 642(2) and (3), CO).
- Register of *company secretaries* (section 649(2) and (3), CO).

## Disclosures to Members

Under the CO, companies must disclose certain matters to their members on an annual basis (such as in the company's annual (audited) financial statements, auditors' report and directors' report) and make certain filings at the Companies Registry on the occurrence of certain events such as share repurchases, reductions in *share capital*, variations on share class rights and redemptions, amalgamations and *liquidations*. For further information on the required disclosures in these situations, see:

- *Practice Note, Share buy-backs by unlisted companies.*
- *Practice Note, Financial assistance for the acquisition of a company's shares.*
- *Practice Note, Share capital.*

## Data Protection and Company Records and Registers

A company may collect, handle and use personal data where doing so is required to meet legal obligations under the CO, BRO, IRO, and other relevant statutory provisions, and provided that it complies with the data protection principles and other legal requirements under the *Personal Data (Privacy) Ordinance* (Cap 486).

## Duration of Keeping Registers and Minute Books

Generally, minute books must be maintained for at least ten years. Other records such as accounting records and business records must be maintained for at least seven years. In relation to the register of members, all entries relating to a person who has ceased to be a member may be destroyed after ten years from the date of cession.



With respect to other registers, there is no specific statutory requirement, but note that a company has the legal obligation to ensure that its company records adequately record for future reference all information required by the CO in relation to the company (section 655(1), CO).

## Safeguarding Records and Registers

The board of directors of the company, the company secretary and every responsible person of the company is responsible for safekeeping of the statutory records and registers and for taking adequate steps to facilitate the discovery of, and for taking adequate precautions to guard against, falsification of records and registers (section 656, CO).

In a majority of cases, the errors in registers and records which are kept internally by the company may be amended by the board of directors of the company. However, with respect to any information which has been notified to the Registrar of Companies and published on the register maintained with the Companies Registry, the Registrar of Companies may, on application by the company, rectify a typographical or clerical error only. For any other corrections, the company must apply to the Court for an order to direct the Registrar of Companies to rectify such error.

## Annual Compliance Obligations

Companies in Hong Kong must file an annual return every year, and there are also other mandatory event-based filings required under the CO.

### Annual Return

A private non-dormant company must, in respect of every year (except its year of incorporation), deliver to the Companies Registry for registration an annual return which complies with section 664 of the CO within 42 days after the company's return date (section 662(1), CO). The company's return date is, in respect of a particular year, the anniversary date of the company's incorporation in that year.

A *public company* or a *company limited by guarantee* must, in respect of every financial year, deliver to the Companies Registry for registration an annual return which complies with section 664 of the CO within 42 days after the company's return date (section 662(3), CO). The company's return date is, in respect of a particular year:

- In the case of a public company, the date that is six months after its accounting reference period.
- In the case of a company limited by guarantee, the date that is nine months after the end of its accounting reference period (section 662(4), CO).

Section 368 of the CO defines accounting reference period.

If any company fails to deliver an annual return in accordance with the requirements of section 662 of the CO, the company, and every responsible person, commits an offence and each is liable to a fine at level 5 (currently HKD50,000) and, in the case of a continuing offence, to a further fine of HKD1,000 for each day during which the offence continues (section 662(6), CO).

If convicted of such offence, the magistrate may, in addition to any penalty that may be imposed under section 662(6) of the CO, order that the person shall, within a time specified in the order, do the act which that person has failed to do (section 662(7), CO). A breach of a section 662(7) order is itself an offence, punishable by a fine at level 5 (currently HKD50,000) and, in the case of a continuing offence, to a further fine of HKD1,000 for each day during which the offence continues (section 662(8), CO).

## Form, signature and filing requirements

The annual return must be in the prescribed form (that is, via *Form NARI*). The annual return can be filed online (see the *Hong Kong Government: Companies Registry*).

Unlike *public companies* and *companies limited by guarantee*, *private companies* are not required to deliver their financial statements to the Companies Registry together with an annual return (see Part 2 and Part 3, Schedule 6, CO).

The annual return must be signed by a *director* or by the *company secretary*.

### Contents of Annual Return

Under section 664 and Schedule 6 of the CO, the annual return must include all of the following:

- The company name, its registered number and business name (if any).
- The type of company (for example, *private company*, *public company*, or *company limited by guarantee*).
- The company's registered office address.
- The date to which the company makes up the return.
- The particulars of the total amount of the indebtedness of the company in respect of all *mortgages* and *charges* that:
  - are required to be registered with the *Registrar of Companies* under the CO; or
  - would have been required to be so registered if created after 1 January 1912.
- In the case of a company having a *share capital*:
  - particulars relating to *members* and share capital of the company; and
  - if the company has converted any of its shares into stock and given notice of the conversion to the Registrar of Companies, the amount of stock held by each of the existing members.
- In the case of a company not having a share capital, except for a company registered with an unlimited number of members, the number of members of the company.
- If any company records are kept at a place other than the company's registered office, the address of that place and the records that are kept there.
- Particulars with respect to:
  - any person who, at the date of the return, is a *director* or reserve director of the company; and
  - any person who, at that date, is a *company secretary* of the company, which are required under the CO to be included in the registers of directors or company secretaries.

## Event-Based Filings at the Companies Registry

The CO also requires certain filings or registration to be made at the Companies Registry upon the occurrence of certain events. They include, but are not limited to, the following:

- Any change in company name (section 107(2)).
- Changes to the registered office address of the company (section 658(3)).
- Any alteration of the company's articles of association (sections 88(5), 89, and 96).
- Any allotments of shares (section 142(1)).
- Any allotment of debentures of debenture stock (section 316).
- The occurrence of any share redemptions or buy-backs (section 270(1)).
- Any alterations to the company's *share capital* under section 170, such as an increase of share capital without any allotment of shares, a capitalisation of profits (whether with or without any share allotment and issuance), the allotment and issuance of any bonus shares, a conversion of shares into a smaller or larger number of shares and a share cancellation (section 171(1)).
- Any variation in the rights attached to the company's shares (section 184(1)).
- Any reduction in the company's share capital by way of a *special resolution* supported by a solvency statement (sections 224 and 225 and, in relation to the directors' solvency statement, see sections 216(1) and 259(1)).
- Any reduction in the company's share capital (confirmed by the court) (section 230).
- The creation of any specified charge (defined in section 334) which is registrable under the CO (sections 335(1), 336(1), 338(2), 339(3), 340(2), and 342(2)).
- Changes to the *directors* due to any appointment or cessation, as well as any change in the particulars of the directors (section 645(1) and (4)).
- Changes to the reserve directors (if any) due to any appointment or cessation, as well as any change in the particulars of the reserve directors (section 645(2) to (4) inclusive).
- Changes to the *company secretary* due to any appointment or cessation, as well as any change in the particulars of the company secretary (section 652(1) and (2)).
- Changes to the location of the company's statutory registers and company records, such as copies of the instruments creating charges and management contracts (sections 309(2) and (3), 351(4) and (5), 354(1) and (2), 385(2) and (3), 471(4), 543(5), 619(2) and (3), 628(2) and (3), 641(4) and (5), 648(4) and (5), 653M(2) and (3), and 653N(1) and (2)).
- Approval of any amalgamation proposal (section 684(1)(a)).
- Certain *special resolutions* of the company in accordance with section 622, such as special resolutions relating to:
  - an alteration of the company's articles of association; and
  - a *voluntary winding up* pursuant to section 228(1)(a) of the *Companies (Winding Up and Miscellaneous Provisions) Ordinance* (Cap 32).

There is presently no requirement under the CO for a company to make any filing to the Companies Registry following a share transfer. Therefore, legal practitioners should be mindful that any information relating to the shareholdings of a company as stated in the company's latest annual return (or indeed, any subsequent filings relating to the company's share capital) may not be up to date.

All filings to the Registrar of Companies must be made in the prescribed form. Forms can be obtained from the [Companies Registry](#) website.

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