

# BACK TO BUSINESS



REGULATION

## New law reflects digital age, leaving the old days behind

**Ordinance fits today's more highly regulated society and enhances corporate governance**

**Richard Harris**

Hong Kong's new Companies Ordinance is a study in the remarkable – it is progressive, changes some centuries-old company law concepts to suit the digital age and genuinely breaks new ground.

It is rare to be able to say that about new laws, not least ones labelled as unexcitingly as The Companies Ordinance, Chapter 622 of the Laws of Hong Kong.

The first company law for Hong Kong was governed by Ordinance No 1 of 1865, reflecting our history as a mercantile city. For its time, it was impressively good legislation that had taken a century to evolve in London. The last amendment to the law was in 1984, this being an improvement on the statute enacted in 1933.

The most eye-popping change is that the concept of the nominal value of shares has been eliminated.

In the old days in the securities industry, this value was always shorthand for the actual share that was being traded, but computers and security numbers have removed that function.

Nominal value is a rather archaic accounting concept, but it does represent a tiny slice of the value of a company. For accounting nerds, this sum will now be merged with the company's total share capital.

The other big change is that the memorandum of association, which described what a company did, is abolished and merged into the articles of association.

The articles are the constitutional document of the company, defining directors' and members' rights, appointment of officers and suchlike.

Companies have long been formed by taking the yellowing memorandum and articles of one company and using them as a template for a new one.

This move seeks to simplify how a company is governed while adding to the protections that company law provides to owners, shareholders and stakeholders.

The keeping and use of a com-



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mon seal – part of the famous “chop” process – has also become optional.

In old Hong Kong and today on the mainland, a chop is used to execute a document, as opposed to a signature. Hong Kong's role as a bridge between East and West meant that a chop could be used until recently, with obvious consequences if it was stolen or used fraudulently. I will miss it – if only nostalgically.

The great Italian industrialist Giovanni Agnelli was reputed to have said: “Every company

should have an odd number of directors. And three is too many.”

The new ordinance follows that, too. Every private company must have at least one director who is a natural person with a name and an identity number. Having a human being to chase is important to counter money laundering and tax evasion.

The new ordinance is intended to make it even easier for small companies to do business in Hong Kong.

Companies may dispense with annual general meetings by unanimous shareholder consent and can hold them with members at different locations using any technology. One measure dropped, after a public outcry, is a restriction on the publication of directors' names. The ordinance reads that a company may opt to register a society and in that case may not, govern or exercise any power, possible or otherwise, by or on behalf of the company, or by or on behalf of any director, officer or member, in contravention of the ordinance.

We may complain about regulation, but if we can apply it without making it difficult to navigate, then we are on the right track.

The new ordinance rings out an important reminder for company directors of their fiduciary and statutory duty before the law.

It makes them even more responsible, as it is no longer possible to run a company while having a stooge as an official director. The concept of shadow directors means that people closely connected with the business can be disciplined if the company gets it wrong.

I have seen that it is easy for directors or managers of a failing company to commit an offence under either companies or securities laws, almost unintentionally. The new ordinance should alert directors to be properly and constantly vigilant.

So three cheers to what is broadly a good piece of legislation. It may have taken six years to write, but the wait was worth it.

Richard Harris has built investment businesses across Asia and is founder of Port Shelter Investment Management in Hong Kong



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