

**HONG KONG COMPANIES  
ORDINANCE UPDATE**

The Hong Kong Companies (Amendment) Ordinance 2003 will come into operation on 13 February 2004. It seeks to enhance the protection of shareholders' rights, update the requirements regarding directorships, simplify filing requirements, and facilitate electronic processing at the Companies Registry, in anticipation of the introduction of the new Integrated Companies Registry Information System (ICRIS).

This memorandum summarises the major changes introduced by the Amendment of which clients need to be aware.

**Single Member and Director**

- A private company may now have only one director and one shareholder.
- A sole director of a private company may not be the secretary of that company.
- A body corporate cannot serve as the secretary if the sole director is the only director of that body corporate.

**Shadow Director**

A "shadow director" is defined as a person in accordance with whose directions or instructions the directors or a majority of the directors of the company are accustomed to act. Furthermore, all provisions of the Ordinance governing directors also apply to shadow directors.

**Manager**

A "manager" is defined as a person who, under the immediate authority of the Board of Directors, exercises managerial functions. All provisions of the Ordinance governing an "officer" also apply to a "manager".

**Reserve Director**

A "reserve director" is defined as the person, who, in a private company where the sole director is the sole member of the company, is nominated in general meeting to act in the place of the sole director in the event of his death.

**Indemnity**

A company will be permitted to indemnify any of its officers or auditors against any liability incurred by them in defending any civil or criminal proceedings and to obtain insurance for them to cover their liabilities to the company or incurred in defending proceedings relating to such liabilities.

**Company Limited by Guarantee**

A company limited by guarantee can be incorporated. However, a company limited by guarantee with a share capital may no longer be incorporated.

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An alternate director is deemed to be the agent of the director he represents. A director is vicariously liable for torts committed by his alternate.

**Removal of Director**

A director may be removed by an ordinary resolution of members instead of a special resolution.

**Shareholders' Rights**

The threshold for shareholders' proposals has been reduced from 5% of voting rights or 100 members to 2.5% of voting rights or 50 members.

**Loan to Directors**

The Amendment has extended the prohibition against a company making a loan to a director, or providing a guarantee or security for such a loan, to other forms of credit. Consequential changes to the related reporting requirements in the Ordinance also have been introduced.

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