

Hong Kong Trustees' Association Limited ("Association")

Amendment of Articles of Association ("AA")

Summary of key changes

Clause/Article Number	Suggested Amendments	Reason for amendments
Existing Clauses 1 to 7 in the Memorandum and of Association ("MOA"), except for Clause 2	These clauses have been moved to the body of the AA.	<p>The Companies Ordinance (Cap 622 of the Laws of Hong Kong) ("NCO") abolished the MOA in the AA of a company. All existing clauses in the MOA would have been deemed automatically transferred to the AA as from 3 March 2014 if no amendment is made in the AA of the company.</p> <p>If a company will amend its AA, all the clauses in the existing MOA should be migrated to the body of the AA.</p>
Existing Clause 2 of MOA	We have deleted this clause.	There is no requirement under the NCO to state the registered office in the AA. The deletion also enhances flexibility so that there is no need to amend the registered office as and when it changes at a future point in time.
Subscriber information in the MOA	We have removed the information as duplicated information is found at the back of the AA.	Consequential change after the migration of the MOA to the AA.
Article 1 - definition	A new definition of the Companies Ordinance is inserted.	To update the Chapter number of the NCO.
Article 2	We have updated this article to reflect the relevant Model Articles applicable to guaranteed company which the Association is.	The various tables under the previous Companies Ordinance have been replaced with the Model Articles.
Articles 3 to 8	Migrated from the existing MOA .	Consequential change as a result of the automatic migration of provisions in the existing MOA to AA under the NCO.

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Article 4(z)	<p>To insert under Article 4:</p> <p>(z) To encourage and enable, by guidance, the Members of the Association to comply with all applicable and desirable legislation, regulations, and guidance in Hong Kong relating to the conduct of their business in the ambit of the trustee industry in Hong Kong and, to the extent permitted by law, monitor and regulate the practices of such Members of the Association with a view to promoting the objects of the Association and in the interests of the trustee industry in general.</p>	Per your request.
Article 22	We have incorporated the relevant sections of the NCO relevant to holding of AGM.	The NCO has amended the rules on holding of AGM and exempt sole member company from holding AGM.
Article 23	We have removed the term extraordinary general meeting from this article.	Under the NCO, all members meeting are general meetings which include annual general meetings. The term extraordinary general meeting is made redundant.
Article 24	We have removed the term extraordinary general meeting, updated the relevant section of the law and incorporated additional provisions to make this article more complete.	Same comment above.
Articles 25 and 26	We have amended these articles to allow the flexibility of holding general meetings in more than one place. We have	<p>The NCO specifically permits a company to hold general meetings in more than one place. We have added this flexibility.</p> <p>The NCO has removed the term "special business"</p>

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	<p>also removed the term special business which is no longer a term used under the NCO.</p> <p>We have also made some drafting changes to maintain consistency.</p>	<p>so that there is no distinction made in the businesses transacted at AGM.</p>
Article 27	<p>We have made drafting changes to facilitate interpretation.</p>	
Article 28	<p>We have amended the language to describe the businesses usually transacted at the AGM referred to previously under the old law as ordinary business.</p>	<p>Refer to our comment under Article 25. There is no distinction between ordinary and special business under the new law.</p>
Article 29	<p>We have added a new article, for the sake of completeness, to cover situation where meetings will be held in more than one place. We have also specified that meeting can be held via electronic means.</p>	<p>The NCO has specific provisions that allow a company to hold meetings via electronic means.</p> <p>Whilst this is not found in the predecessor Companies Ordinance, it is not uncommon to see AA of a company providing such a flexibility. The NCO has formally codified and give legal recognition to this existing common practice.</p>
Article 30	<p>We have amended this article to provide for the increase of the quorum for general meetings from 6 to 10 members as requested.</p>	<p>Per your request.</p>
Article 36	<p>We have added the new requirement to record results of poll.</p>	<p>Section 594 of the NCO requires that if the vote at any general meeting is made by poll, the Association has to record the results of the poll in the minutes of proceedings of that general meeting.</p>

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Article 39	<p>We have re-written this article to give flexibility to the company to follow this article to pass written resolutions of members without following the statutory procedures. We have also added flexibility by allowing members to signify agreement to the written resolutions, as an added option to physically signing the written resolutions.</p>	<p>The NCO has prescribed statutory procedures for a company to pass written resolutions of members. Effectively, directors have to circulate the resolutions to the members first and the members must within a prescribed circulation period of 28 days sign, or otherwise signify agreement to, the written resolution.</p> <p>The NCO however also allows a company not to follow the statutory procedures provided that all members consent to the written resolutions.</p> <p>Based on our experience, most companies would not want to restrict themselves to the prescribed circulation period. Further, the mandatory circulation of the resolutions by the directors has also proven to be time consuming and administratively onerous generally. Most companies welcome the flexibility of allowing members to signify agreement to the written resolutions without having to physically sign the written resolutions. This is particularly useful when a company has members present at different geographical locations.</p> <p>The suggested changes have intentionally not dealt with the exact procedures how members can signify agreement. Each company should devise its own policy that is acceptable to its own standard of internal control or corporate governance practice.</p> <p>Please also refer to our comments on Article 77 relating to the potential issue of signifying agreement to the resolutions.</p>
Article 46	<p>We have made the changes to give effect to your specific request to remove the maximum threshold of member of the Executive Committee which the company may appoint.</p>	<p>Per your request.</p>

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Article 47	<p>We have changed the description of ordinary general meeting to annual general meeting.</p> <p>Note that similar changes have also been made elsewhere throughout the AA where this term appears.</p>	<p>The existing term itself is confusing and such term is not recognized under the predecessor Companies Ordinance although we understand the practical consideration behind taking this approach.</p> <p>As the NCO has made the term "extraordinary general meeting" redundant, we do not think there is a need to continue using this incongruous term.</p>
Article 77	<p>We have amended this article on the same basis of amending Article 39 relating to passing written resolutions of members.</p>	<p>Generally, the law only has provisions regulating proceedings of members meetings. Proceedings of directors meetings are typically governed by either the company's bespoke AA or the model articles (Table A under the predecessor Companies Ordinance or the Model Articles under NCO).</p> <p>The NCO introduced the flexibility of allowing members to signify agreement to written resolutions. We have suggested that such flexibility be extended to directors proceedings.</p> <p>Note however that this is only an additional option which can be invoked when needed. It does not however mean that all directors should signify agreement without signing on the resolutions. We caution that in certain situations where the resolutions are required for use in other jurisdiction which only accepts signed resolution, an unsigned resolution but duly signified agreement thereto in accordance with local law may give rise to validity issue and potential challenge under foreign law.</p>
Article 81	<p>We have incorporated an option for the company to sign documents as a deed without using the common seal.</p> <p>Although the law does not require the board approval when the statutory execution provisions are invoked, for internal control reason we have</p>	<p>Sections 127 and 128 of the NCO introduced the statutory execution provisions to allow a company to execute documents requiring the use of its seal or a deed, without the use of the common seal provided that the prescribed person or persons under law sign on the document.</p> <p>The statutory provisions have not prescribed for the requirement of prior board approval. It is therefore a matter of internal governance whether a board approval is also required.</p>

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	provided that board approval is still required if deeds are to be signed without the use of the common seal.	Please note that these provisions denote an alternative option to sign a deed. If a document is required to be signed as a deed, and the seal will be used, the provision in Article 80 of the AA must be followed.
Articles 82 to 86	We have updated these provisions to reflect the new terminologies on certain terms used in the AA. We have also added new provisions to allow the company to keep accounting records either in hard copy or electronic form.	Subdivision 2 of Division 4 of Part 9 of the NCO deals with accounting records. We have updated the AA consistent with those provisions. The financial terms of balance sheet and profits and loss accounts have also been amended under the NCO.
Article 89	We note that this article is dated and have updated it to be consistent with the NCO. As requested, we have also incorporated provisions to permit sending notices to, or communicating with, members by electronic means or via website.	Section 828 to 834 of the NCO deals with communication with members by the Association. Our amendment reflects, and are consistent with, the provisions of the NCO. To the extent that any social media or mobile communication system is an information system that can general record in digital form which can be transmitted within an information system or from one information system to another; and stored in an information system or other medium, it is arguable that the term “electronic means” should be sufficient broad to cover any communication through any of the aforementioned systems. On this basis, we have not suggested to amend this article to specifically mention the social media and mobile communication systems.
Articles 90 to 92	We have amended this Article and simplified the language to reflect the current legal positon.	The current article relating to indemnity is dated. NCO has narrowed the restriction to provision of indemnity to directors only whereas in the past such restriction extends to directors and officers. The NCO has also not changed the previous position that a company can indemnify a director out of its assets provided effectively that the liability is not

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		<p>(a) a fine in criminal proceeding or a penalty arising from non-compliance with any regulatory rules;</p> <p>(b) incurred, inter alia, as a result of defending a criminal proceeding or civil proceeding in which he is convicted or judgment is entered against him; or</p> <p>(c) incurred in connection with a relief application where relief is declined by the Court.</p> <p>Section 469 of the NCO introduced relaxation to allow a company to indemnify directors against third party claims. This new provision is not found in the predecessor Companies Ordinance. In the past such indemnity against third party claims was addressed under common law. The NCO has clarified the position.</p> <p>The NCO also restates the previous position allowing a company to take out insurance to cover directors liabilities including those liabilities that are not able to be paid directly out of the funds or assets of the company.</p>
Subscriber page (the last page)	To remove the inconsistency with the NCO, we have made a note next to the “MOA” to explain the redundancy of the MOA under the new law.	This part contains historical information relating to the subscribers as at the date of incorporation of the Association which should and must not be changed. Hence, no change has been made save as the incorporation of the clarification note.