



Lessons from lockdown

#02

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Company record keeping

Hong Kong law requires companies to keep copies of certain documentation and sufficient records of all business transactions. Documents must also be made available for inspection, including to shareholders and auditors.

These requirements have proved a challenge for some companies during lockdown, when many offices are closed and people's movements restricted.

In this article, we set out an overview of:

- some practical tips for companies on keeping records and ensuring their ready accessibility;
- what records are required to be maintained by a company in Hong Kong; and
- record keeping for audit in Hong Kong.

Practical Tips

During the recent Covid-19 pandemic, businesses have sought to continue to operate whilst people work both flexibly and remotely and this has highlighted the importance of enabling remote access to documents. This is particularly important where the documents are needed in relation to statutory filings given the potential penalties, all of which we look at in further detail in this article.

A key consideration for companies now is to allow for continued access to documents in order to ensure compliance with these obligations, and at the same time maintain adequate security whilst people continue to work from home. The measures set out here should help companies to comply going forwards.

- Keep electronic copies of all records in a shared drive/file (adequately secured), so that they can be easily accessed as required (as permitted under section 655(2)(a) of the CO).
- Routinely scan receipts into a shared location (where folders are themed), ensuring adequate control and security – this also guards against the risk that the ink may fade away.
- Consider using online or cloud-based book-keeping software.
- Discuss with your Company Secretary whether it holds your company records electronically, to allow faster and easier access for auditors.
- Ensure maintenance of adequate risk management and internal controls.
- Ensure anyone with access to shared files receives IT/cybersecurity training and keep logs of training records.
- Have in place procedures for proper and adequate reporting of the company's affairs and operations, which should be reviewed periodically – listed companies are required to have such procedures in place, but it is also recommended for non-listed companies.

Requirement to keep company books and records

Private companies

The Companies Ordinance (Cap. 622) (the **CO**) requires that private companies keep records of the following:

- resolutions (including written resolutions) and minutes of meetings of members: for at least 10 years from the date of the resolution, meeting or decision (section 618(1) and 618(2)

of the CO). A member of a company is entitled, on request and without charge, to inspect these, and on payment of a prescribed fee, to be provided with a copy (as detailed below);

- former members: for at least 10 years from the date on which the person ceased to be a member of the company (section 627(5) of the CO); and
- a number of registers, as set out in the table below:

REGISTER	SECTION OF THE CO	RIGHT TO INSPECT AND REQUEST A COPY
Register of debenture holders	Section 308	Any member or a person who is registered in the register as a debenture holder (without charge), or any other person on payment of a prescribed fee, is entitled to inspect the register. Any person, on request and on payment of a prescribed fee, is entitled to be provided with a copy of the register of debenture holders of a company, or any part of it.
Register of charges	Section 352	Any member or creditor (without charge), or any other person on payment of a prescribed fee, is entitled to inspect the register.
Register of particulars not required to be contained in notes to financial statements	Section 384	Any member is entitled to inspect (without charge) and, on payment of a prescribed fee, be provided with a copy of the register.
Register of members	Section 627	Any member (without charge), or any other person on payment of a prescribed fee, is entitled to inspect the register. Any person is entitled to be provided with a copy of the register (or any part of it) on payment of a prescribed fee.
Register of directors	Section 641	Any member (without charge), or any other person on payment of a prescribed fee, is entitled to inspect the register. Any person is entitled to be provided with a copy of the register (or any part of it) on payment of a prescribed fee.
Register of company secretaries	Section 648	Any member (without charge), or any other person on payment of a prescribed fee, is entitled to inspect the register. Any person is entitled to be provided with a copy of the register (or any part of it) on payment of a prescribed fee.
Register of significant controllers	Section 653H	A person whose name is entered in the significant controllers register of a company as a significant controller of the company is entitled, without charge, to inspect the register and, on payment of a prescribed fee, to be provided with a copy of the register, or a part of it.

All of these records must be kept at either the company's registered office or another place in Hong Kong (pursuant to the Company Records (Inspection and Provision of Copies) Regulation (Cap. 622I) (the **Regulation**)). The prescribed fee that a company may charge for inspection of company records is currently set at HK\$50 (section 6 of the Regulation).

The Regulation also provides that:

- records must be made available for inspection by any person entitled to inspect those records (as set out in the table above) during business hours. The company can impose reasonable

restrictions by way of resolution on what those hours are, provided that at least two hours per day are allowed for inspection (section 7);

- a company must permit any person entitled to inspect those records to make a copy of the whole or any part of those records in the course of inspection (section 8);
- the company must, within 10 business days after the date of receipt of a valid request to be provided with a copy of the whole or any part of any company records of a company or payment (whichever is the later), provide the copy to the person making the request (section 11(1));

- the copy must be provided in electronic or hard copy form, as requested (section 11(2)); and
- the company may charge the prescribed fee for providing a copy of company records (for registers, \$5 per 10 entries for the first 2000 entries and \$1 per 100 entries thereafter; and for non-register records, \$5 per page, in each case together with any reasonable costs to be incurred by the company in delivering the copy to the person requesting it) (section 12).

There is no obligation on companies to hold their records in hard copy. The CO expressly provides that company records and accounting records may be kept in electronic form, though they must ensure that the records are capable of being reproduced in hard copy form.

Public companies

The above record keeping requirements under the CO are also applicable to Hong Kong incorporated companies that are listed on The Stock Exchange of Hong Kong Limited (**Stock Exchange**).

Stock Exchange listed companies incorporated overseas (for example, Cayman Islands, Bermuda or the People's Republic of China) are required to comply with the same requirements for keeping books and records as those incorporated in Hong Kong and, if applicable, make available for inspection of those records, in accordance with the laws of its place incorporation.

Additionally, Hong Kong listed companies (regardless of their place of incorporation) are required under the Rules governing the Listing of Securities on the Stock Exchange (the **Listing Rules**) to display various documents after publication of certain primary documentation (such as a listing document, prospectus or circular). This additional documentation includes their constitutional documents, material contracts, directors' service contracts, valuation and expert reports, audited accounts and previous transaction circulars, and these must be displayed for a reasonable period (usually not less than 14 days) after the publication of the primary documentation. Such documents must be made available:

- in electronic format on the Stock Exchange's website;
- on the listed company's website; and
- in a printed format for physical inspection at a place in Hong Kong (eg the listed company's office or the office of its legal advisor)^(Note).

Note

The Stock Exchange published a consultation paper in July 2020 in which it proposed to change the document display requirements under the Listing Rules so that, if the proposal goes forward, listed companies would only be required to display documents in electronic format on the Stock Exchange's website and the listed company's website. Making available the documents in printed format for physical inspection would not be necessary.

Listed companies are also required to disclose financial information by way of periodic results announcements and reports, and directors of listed companies must take reasonable steps to ensure the financial information disclosed is true, accurate, complete and not misleading or deceptive (Main Board Rule 2.13(2) of the Listing Rules).

It is important for listed companies to have adequate and effective risk management and internal control systems in place to ensure proper keeping of books and records to ensure that the information disclosed and documents displayed are accurate and complete, and the audit of such financial information is based on complete and accurate underlying books and records. The directors' responsibility statement must include the accuracy and completeness of information in listing documents (Paragraph 2 of Appendix 1A to the Main Board Rules).

Accounting Records

Section 51C of the Inland Revenue Ordinance (Cap 112) (the **IRO**) requires every person and company carrying on a trade, profession or business in Hong Kong to keep sufficient records (in English or Chinese) of its income and expenditure to enable the assessable profits to be assessed. Pursuant to the CO (section 373(2)) these accounting records must be sufficient to:

- show and explain the company's transactions;
- disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and
- enable the directors to ensure that the financial statements comply with the CO.

In particular, the accounting records must contain: (a) the daily entries of all money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and (b) a record of the company's assets and liabilities (section 373(3) of the CO).

Records must be kept in Hong Kong, in either hard copy or electronic form, and kept for at least seven years (section 51C(1) of the IRO). Failure to do so is an offence (sections 373(5) and 373(6) of the CO and section 80(1A) of the IRO). Companies incorporated overseas carrying on a business in Hong Kong (and therefore registered with the Hong Kong Inland Revenue Department (the **IRD**)) are subject to the same record keeping requirements under the IRO as Hong Kong companies.

This requirement helps directors with financial planning and filing accurate annual returns and tax returns. Businesses providing goods and services have additional obligations in respect of records that must be kept. Further information on this can be found here, on the [IRD website](#).

The IRO also imposes requirements in relation to filing timely and accurate returns (including financial account information returns) and retention of records. Failure to maintain proper accounting records in accordance with the IRO is an offence, and there are penalties against any person who without reasonable excuse:

- makes an incorrect return;
- makes an incorrect statement;
- gives any incorrect information; or
- fails to furnish a return in time (all under section 80(2) of the IRO); or
- fails to comply with the relevant record-keeping requirements (section 80(1A) of the IRO).

Audit requirements

All companies must deliver an annual return (NAR1 for a local limited company, NN3 for a registered non-Hong Kong company) to the Registrar of Companies (the **Registrar**) in respect of every financial year. This applies to both local and foreign companies (an incorporated subsidiary or registered branch) other than those which have been declared dormant.

For public companies and companies limited by guarantee, these must be accompanied by certified true copies of financial statements, the auditors' report and the directors' report.

Private companies are also required to prepare such financial statements and reports, send copies to every member at least 21 days before the date of an annual general meeting, and lay these documents before the company in the general meeting. They are not required to file these documents with the Companies Registry (unless they are required to publish their accounts or make them available for public inspection by the law of its place of incorporation or registration, in which case a certified copy of the latest published accounts for a period of at least 12 months will need to be filed with the Companies Registry (section 789(2) of the CO)).

Companies must also file a Profits Tax Return (PTR) for each respective year when conducting business. The company accounts must be prepared and submitted to a Certified Public Accountant to be audited and filed with the IRD, together with supporting documents (including the auditor's report).

An auditor must obtain all the information or explanations that are necessary and material for the purpose of the audit, and it is an offence under the CO if they do not do so (section 408(1)). Therefore, they will need to inspect the company's books and records, including any resolutions which the directors and members of the company have passed in the relevant financial year.

Importance of record keeping/sanctions

In addition to the specific offences highlighted above, it is an offence:

- to knowingly or recklessly give information to the Registrar that is false or misleading in a material way (section 750(6) of the CO); and
- if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of the CO, a person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular (section 895(1) of the CO).

Any person who does so is liable on conviction on indictment to a fine (currently HK\$300,000) and to imprisonment for 2 years or on summary conviction to a fine at level 6 (currently HK\$100,000) and to imprisonment for 6 months.

Record-keeping is particularly important for listed companies as they risk public penalties (and loss of reputation). Penalties can apply both to the company itself and its directors, because a director of a listed company is required, upon his/her appointment, to undertake to the Stock Exchange to comply with and use his/her best endeavours to procure that the company complies with the requirements of all securities laws and regulations in force in Hong Kong that apply to the company. If a listed company fails to comply with these requirements, its directors may be in breach and subject to penalties such as disqualification from acting as a director of listed companies.

Conclusion

Timely access to the required documents is a matter not only of good corporate governance but also a key consideration for risk management, for the reasons set out above. Failure to provide the necessary information can lead to penalties and even shareholder action. The recent period of restrictions and lockdown have tested the abilities of many companies' compliance functions and highlighted where revised measures for document management are needed.

Companies that have effectively implemented measures such as those set out above and that have adapted well to having their employees work from home should find it easier to meet their regulatory obligations going forward, even beyond current restrictions on working arrangements.

Effective record keeping, particularly of electronic records, also goes beyond compliance considerations – it is also an important factor in potential corporate transactions. For example, where any level of due diligence is to be conducted on the company, whilst virtual data rooms can allow for the work to be conducted remotely, having the required documents in electronic format and ready to be uploaded quickly could prove crucial in a time-sensitive transaction.

RPC frequently advises its clients on corporate governance issues – please do get in touch with us if you would like to discuss how we can help.

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