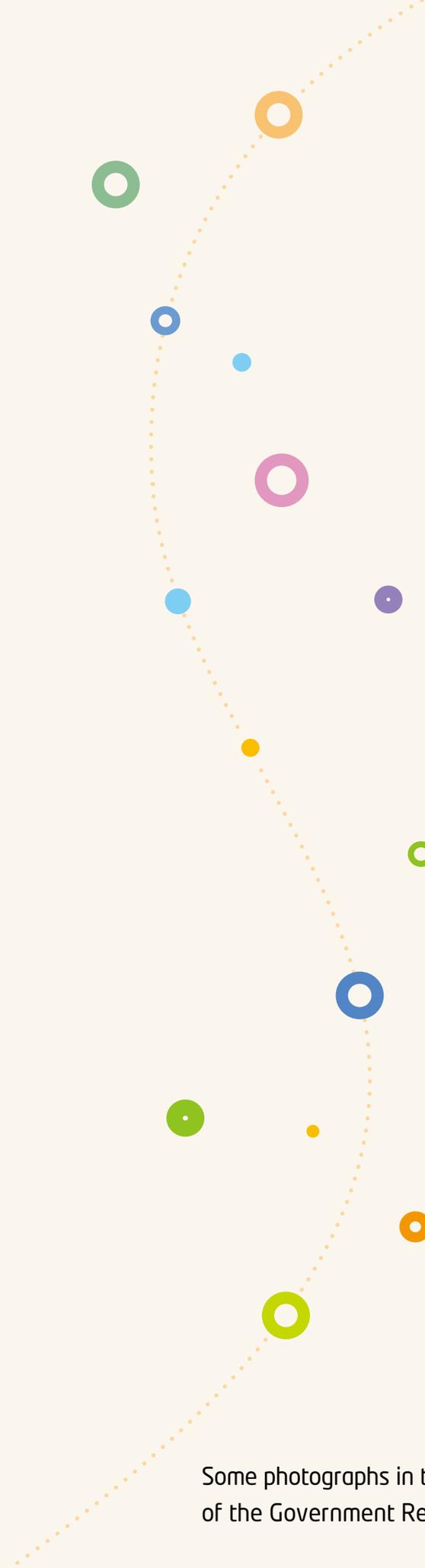


Study Report on
History of Company Incorporation in Hong Kong

香港公司註冊的歷史 — 研究報告





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Study Report on History of Company Incorporation in Hong Kong
- A Study Commissioned by the Companies Registry,
Hong Kong Special Administrative Region

by
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July 2013

Acknowledgements

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The Companies Registry (“the Registry”) administers and enforces the provisions of the Companies Ordinance and related ordinances. The Registry registers local and non-Hong Kong companies and documents required to be filed under the Companies Ordinance and related ordinances; de-registers defunct solvent private companies and provides the public with services and facilities for inspecting and obtaining company information kept by the Registry. The Registry also advises the Government on policy, regulatory and legislative issues regarding company law and related legislation, corporate governance and other matters affecting the commercial sector.

The Registry has always been fully committed to providing efficient, quality and cost-effective services to customers. In late February 2005, the Registry implemented the Integrated Companies Registry Information System which transformed its core business activities and enabled the delivery of 24x7 electronic search services through the Cyber Search Centre (www.icris.cr.gov.hk). The online search services have been well received by customers and more than 99 per cent of all company searches are conducted online. The roll-out of the company search mobile service (www.mobile-cr.gov.hk) in June 2012 marks another milestone in the technological enhancement of the Registry’s services.

With the introduction of the one-stop electronic company incorporation and business registration service at the e-Registry portal (www.eregistry.gov.hk) in March 2011, an electronic Certificate of Incorporation and Business Registration Certificate can normally be issued in one go in less than an hour after receipt of an application. In February 2012, the Registry extended its e-Filing services to include the submission of specified forms for reporting changes of company information (including changes of registered office address, directors/company secretaries and their particulars and share capital). The electronic service for submission of annual returns for local private companies and the Annual Return e-Reminder Service have been available since August 2012.

The new Companies Ordinance was passed by the Legislative Council on 12 July 2012. It modernises the legal framework for the operation of companies in Hong Kong, thereby increases Hong Kong’s competitiveness as an international business and financial centre. The implementation of the new Companies Ordinance will entail a number of new roles and functions for the Registry. The new Companies Ordinance will commence operation in 2014.



Foreword

Celebrating the 20th Anniversary of the Companies Registry

Charting a New Course

The year 2013 marks the 20th Anniversary of the establishment of the Companies Registry. To celebrate two decades of growth and achievements, it is high time that we review the history of company incorporation in Hong Kong since the enactment of the first Companies Ordinance in 1865 and the development of the Companies Registry over the years.

The administration of the registration of companies in Hong Kong dates back to 1865 when the first Companies Ordinance was enacted. A Companies Registry was established pursuant to the provisions of the Companies Ordinance 1865 and it was then administered by the Registrar of the Supreme Court. With the establishment of the office of the Registrar General under the Registrar General (Establishment) Ordinance in 1949, the functions of the Companies Registry were transferred from the Supreme Court to the Registrar General's Department. The Companies Registry was eventually established as an independent government department on 1 May 1993 with the Companies Registry trading fund established on 1 August in the same year. The Companies Registry then became one of the pioneer trading fund government departments.

Over the past two decades, the Companies Registry has undergone substantial changes in its operation and the delivery of its services. The more remarkable ones include the implementation of the Integrated Companies Registry Information System (ICRIS), provision of round-the-clock e-Search Services at the Cyber Search Centre and the e-incorporation,

e-Monitor, e-Reminder and e-Filing services at the e-Registry portal, the roll-out of Company Search Mobile Service and, most recently, the enactment of the new Companies Ordinance. These achievements transformed the company incorporation and registration processes and, more importantly, the corporate regulatory regime in Hong Kong.

Prior to the enactment of the Companies Ordinance 1865, the operation of companies that were incorporated elsewhere and established their offices in Hong Kong were governed by British law. The development of company law in Hong Kong during the period from 1865 to 1948 was marked by a series of amendments to the rules relating to the registration of companies, alteration of a company's objects and the requirement for a minimum number of persons to form a private company. In the 1950s and 1960s, the number of companies in Hong Kong rapidly increased and therefore it was of vital importance to review the company legislation. To this end, a Companies Law Revision Committee was set up in 1962 that carried out a painstaking legislative review process leading to the introduction of a series of Companies (Amendment) Bills and finally the Companies (Amendment) Ordinance 1984.

Hong Kong had established itself as a major industrial and commercial centre by the 1980s and the number of companies incorporated in Hong Kong was constantly on the rise. In 1984 the Standing Committee on Company Law Reform (SCCLR) was set up to review the Companies Ordinance on a regular basis in order to update its content, with the aim



of enhancing Hong Kong's corporate governance regime and ensuring that the Ordinance satisfies the changing needs of the local business environment. A thorough review of the Companies Ordinance was called for in 1994, which resulted in a number of amendments to the Companies Ordinance in the subsequent years.

A comprehensive exercise to rewrite the Companies Ordinance was launched in mid-2006. The main objectives of the new Companies Ordinance, which was passed by the Legislative Council on 12 July 2012, are to enhance corporate governance, ensure better regulation, facilitate business and modernise the law with a view to strengthening Hong Kong's competitiveness as a corporate domicile and enhancing its status as a major international business and financial centre. The implementation of the new Companies Ordinance in 2014 will open a new chapter in the development of company law in Hong Kong.

This year marks not only the 20th Anniversary of the Companies Registry, but also witnesses the over 100th Anniversary of 32 centenary companies that were incorporated in Hong Kong before 1 January 1913 and are still in operation. The number of companies incorporated in Hong Kong has been growing throughout the years in line with its economic development. By the end of March 2013, the total number of live local companies registered under the Companies Ordinance surpassed one million, to stand at 1,067,434. The number of local companies newly registered with the Companies Registry in 2012-13 also hit a record high of 162,777.

The Companies Registry strives to provide efficient, high quality and effective services to the public. The e-incorporation service, launched at the e-Registry in March 2011, enables users to complete the one-stop company incorporation and business registration procedures online within an hour.

In World Bank's Doing Business 2013 Report, Hong Kong was ranked sixth on "Starting a Business" and this has contributed to Hong Kong's overall ranking as the second best in the world on ease of doing business. I am glad that our efforts have been recognised both locally and internationally. We will enter a new era when an updated and modernised Companies Ordinance comes into operation next year. We will continue to work tirelessly to ensure that the services provided by the Companies Registry in Hong Kong remain on a par with the world's first-class registries, and reinforce Hong Kong's position as a world-class place to do business.

I would like to express my heartfelt thanks to Professor Say Goo and his team for their time and professional assistance in preparing this report. I hope that you will find the report informative and interesting.

Ms Ada LL Chung, JP
Registrar of Companies
Companies Registry
July 2013

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I. Introduction



Hong Kong has grown from a small fishing port when the colony was founded in 1842 to an international business and financial centre today. Over the past 170 years, the establishment of law and a legal infrastructure to facilitate the incorporation of companies as business vehicles in Hong Kong, the administration of such law and the incorporation system have provided a solid foundation for Hong Kong's development into an international financial and business centre. With changes to the law and the incorporation system over the years making it easier, faster and cheaper to incorporate companies while maintaining standards and integrity, Hong Kong has witnessed a tremendous growth in the incorporation of companies in the major sectors of the economy as well as in other related sectors. The number of companies incorporated has tracked the growth of the economy very closely. Many companies that were incorporated in the early days of the colony are still operating, and some have grown from small local companies into giant global conglomerates. We trace some of the history of the more notable companies in this report. They clearly demonstrate the success of Hong Kong as a location for company incorporation and doing business.

Hong Kong was occupied by the British on 26 January 1841. Although land sales had started in 1841 and trading houses from Guangdong and elsewhere soon appeared on the scene, relations between China and the Western powers remained tense until the end of the Second Opium War, when Britain acquired Kowloon and Stonecutters Island under the First Convention of Peking 1860. Back in the United Kingdom, the Joint Stock Companies Act, which recognised incorporation by mere registration, was not enacted until 1844 when its Companies Registry was also created. This was not done in Hong Kong



directly after the 1844 Act. However, in India, the Indian Companies Act was enacted in 1850 and the Anglicisation of company law then moved East from India to Hong Kong and the Australian colonies in order to serve the interest of the English companies in the colonies. In the United Kingdom, limited liability of companies only arrived with the Limited Liability Act 1855, which was quickly superseded by the Joint Stock Companies Act 1856. The 1856 Act was in turn consolidated into the Companies Act 1862.

Back in Hong Kong, after 1860, the colony developed apace, and a chamber of commerce was formed in 1861, with 62 foreign-owned banks and trading houses as the founding members. A small, but thriving, business community had been established. The early 1860s also saw a financial boom in India and the treaty ports in China, and businessmen in Hong Kong were highly optimistic about their future prospects. In July 1864, some of the leading members of the chamber of commerce formed a committee to found the first local bank, the Hongkong Bank, as a deed of settlement company. This may have been a

factor that led to the introduction of the Companies Ordinance 1865 in Hong Kong: the United Kingdom's 1862 Act provided the basis of the first Hong Kong Companies Ordinance. The Hongkong Bank was registered in August 1865 as a local company under the new ordinance, but re-emerged the next year as the Hongkong and Shanghai Banking Corporation under its own legislation, the Hongkong and Shanghai Bank Ordinance (No. 5 of 1866). However, most foreign houses, for example Dent & Co, Jardine Matheson & Co and Russell & Co, continued to trade in partnerships for an unexpectedly long time, despite the availability of registered companies and limited liability from 1865. Chinese businessmen in Hong Kong also preferred partnerships to registered companies until the 1950s. This was because registered joint stock companies were not recognised in Imperial China until 1904, and a form of limited partnership was known there.

With pressure from the Chinese General Chamber of Commerce, the Chinese Partnerships Ordinance 1911 was enacted in Hong Kong to provide for the



I. Introduction

registration of Chinese partnerships with limited liability. This was followed in 1912 by the Limited Partnerships Ordinance (Cap. 37) (which was based on the English Act of 1907) for non-Chinese partnerships. The Chinese Partnerships Ordinance was repealed in 1971, as only one Chinese partnership had been registered since 1936 and it was felt that the Limited Partnerships Ordinance provided a suitable framework for those partnerships which wished to limit the liability of their members. Unfortunately, when the Chinese Partnerships Ordinance was repealed, no action was taken to amend the Limited Partnerships Ordinance accordingly, to extend its scope to Chinese partnerships. Thus, the statistics in [Annex I](#) show that little use was made of limited liability companies until Hong Kong began to develop as a major commercial and financial centre in the 1950s.²

For a long time after the establishment of the colony, Hong Kong remained a small trading port. By 1864, a year before the Companies Ordinance 1865, the population was around 83,000. By 1911, after the New Territories had been leased to Britain under the Second Convention of Peking in 1898, the population was about 450,000. But the 1920s were a good time for Hong Kong and the civil war in China began in 1926. By the end of the 1920s, the population had grown to 840,000. At the end of the Second World War, the population of Hong Kong had dropped to 610,000. But the resumption of civil war in China led to a vast influx of migrants into Hong Kong, and by

1950 the population had grown to two million. During the following decade, Hong Kong took off as a major trader, sparked off by the Korean War, a construction boom to house the ever-growing population, and an increase in the manufacturing sector to supply the growing consumer markets of the United States of America and Europe. Further waves of immigrants from China arrived in 1956 and 1962, and by 1960 the population had grown to three million. Although local events affected confidence in the colony from time to time, for example, the 1952 riots in Kowloon and further riots in 1956, by 1962 the colony was booming, assisted by the Vietnam War. The number of companies in Hong Kong increased rapidly.³

As Hong Kong had become a significant industrial and commercial centre by 1960, the Companies Ordinance 1932 became outdated. Meanwhile, in the United Kingdom, the Jenkins Committee was about to report (in 1962) on the reform of the Companies Act in the United Kingdom. The Hong Kong government decided not to copy the English Act, but to set up the Companies Law Revision Committee in 1962 to revise the Companies Ordinance. The Committee was suspended to wait for what became the United Kingdom Companies Act 1967 when its chairman, the Registrar General, was tied up with matters relating to the bank collapses in early 1965. The Committee was reconstituted in 1968. However, the Committee then was diverted to consider whether legislation for the prevention of fraud in relation to investments was required as a result of the collapse of Investors

² Lawton & Tyler, Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong - Final Report (HKICS: April 2001), pp 1-5.

³ Ibid, pp 5-7.



Overseas Services and other funds. After its first report in 1971 on the Protection of Investors, which led to the Protection of Investors Ordinance 1974 and the Securities Ordinance 1974, the Committee was able to revert back to its work on company law, and published its second report on company law in 1973 with recommendations for changes to the law. Although some of the recommendations did result in amendments to the Companies Ordinance, most of them were not formalised in a White Paper until 1981 which resulted in the Companies (Amendment) Ordinance 1984. The 1984 Amendment Ordinance was largely based on the United Kingdom 1948 Consolidation Act.

By 1980, Hong Kong had become a major industrial and commercial centre with a population of over five million. In the United Kingdom, as a result of its joining the Common Market, its company legislation was influenced by European Community directives on matters irrelevant to Hong Kong. In 1984 a Standing Committee on Company Law Reform (SCCLR) was set up pursuant to the recommendation of the Second Report published by the Companies Law Revision Committee. Whilst the Standing Committee dealt with a wide variety of issues, and many of its recommendations led to amendments to the Companies Ordinance, it did not look at the ordinance overall. Since the Companies Ordinance was based on the United Kingdom 1948 Act, with many subsequent piecemeal amendments, by 1994, when Hong Kong had emerged as a significant international

financial centre, the then Financial Secretary, Sir Hamish Macleod, announced that the time had come for a thorough review of the ordinance, in order to ensure that it reflected “today’s business environment”. In November 1994, the government appointed Mr Ermanno Pascutto as the reviewer, and his Consultancy Report was published in March 1997. His report was in turn considered by the SCCLR, which issued a report on the consultancy report with many recommendations and two consultation papers on corporate governance reform. Many of the SCCLR’s recommendations resulted in amendments to the Companies Ordinance.⁴

A comprehensive exercise to rewrite the Companies Ordinance (Cap. 32) was launched in mid-2006, with the aim of modernising Hong Kong’s company law and further enhancing Hong Kong’s status as a major international business and financial centre. Following five rounds of public consultation and continuous exchanges with stakeholders over the years, the Companies Bill was finalised and introduced into the Legislative Council on 26 January 2011. A Bills Committee to scrutinise the Bill was formed under the chairmanship of the Honourable Paul Chan Mopu, MH, JP, in February 2011. After 44 meetings lasting a total of over 120 hours and consideration of over 200 papers or submissions, the Bills Committee completed its scrutiny of the Bill in June 2012. On 12 July 2012, the Companies Bill was passed by the Legislative Council.

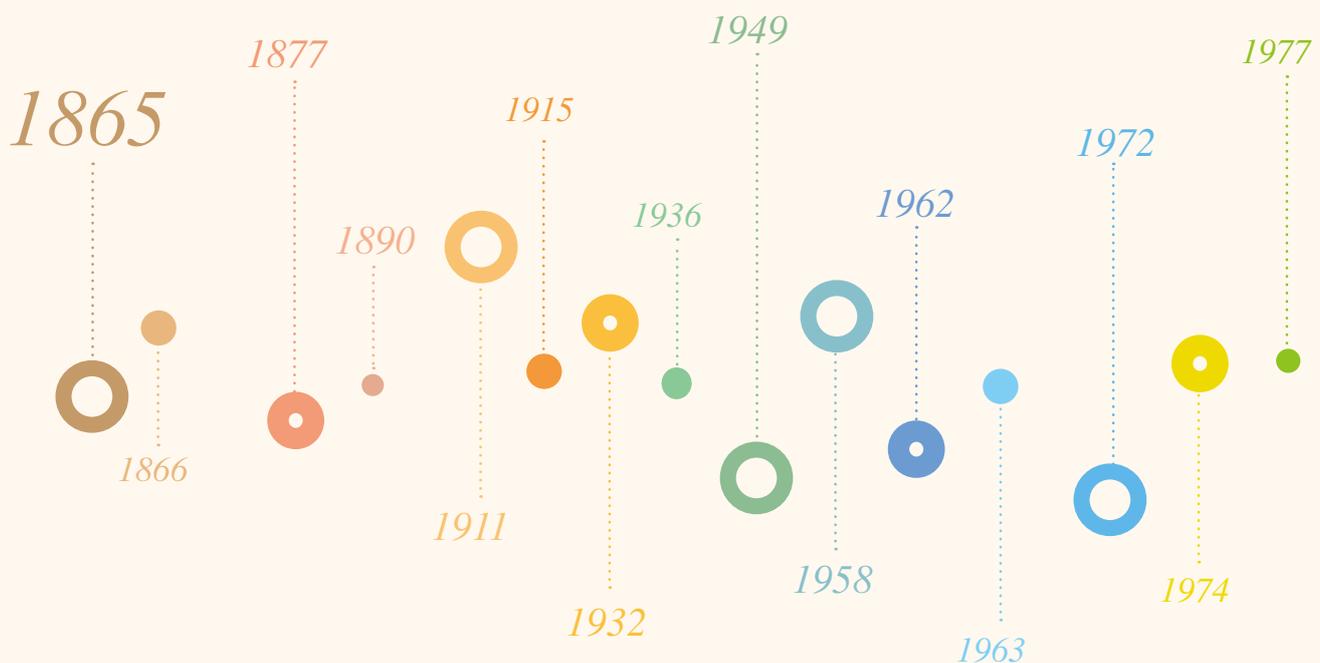
⁴ Lawton & Tyler, Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong - Final Report (HKICS: April 2001), pp 7-13.

II. Evolution of the legal framework for company incorporation

Although Hong Kong became a British colony in 1842, the history of company incorporation in Hong Kong did not begin until 1865, when the first Companies Ordinance was passed by the local legislature. Before 1865, there were no local companies in Hong Kong. Companies operating in Hong Kong at that time were foreign companies or other forms of business vehicles registered in other places. For example, Jardine Matheson was a partnership registered in Guangzhou in 1832, but moved its head office to Hong Kong in 1842. The company was formally registered in Hong Kong as a local company in 1906. Another example is A.S. Watson, which opened its first dispensary in Guangzhou in 1828 and extended its operations to Hong Kong in 1841. It was registered as a company in Hong Kong in 1886.

Before the Companies Ordinance 1865, companies

that were incorporated elsewhere and established their offices in Hong Kong were governed by British law, which was extended to the colony on 29 January 1841 by the proclamation (dated 2 February 1841) issued by Sir James John Gordon Bremer, Commander-in-Chief, and Captain Charles Elliot, Plenipotentiary, on the proviso that the British legislation was general and not purely local in nature, and not unsuited to the circumstances of Hong Kong and its inhabitants. For example, the Oriental Banking Corporation (headquartered in London with its first branch established in Hong Kong in 1845), and Standard Chartered Bank (which registered in the United Kingdom in 1853 and established its Hong Kong office in 1859) were among the first few banking corporations granted the right of issuance of bank notes in Hong Kong, and the operations of their Hong Kong offices were regulated by the United Kingdom laws to the extent that they were appropriate to the circumstances of Hong Kong and its inhabitants. Rules regarding company incorporation in the United



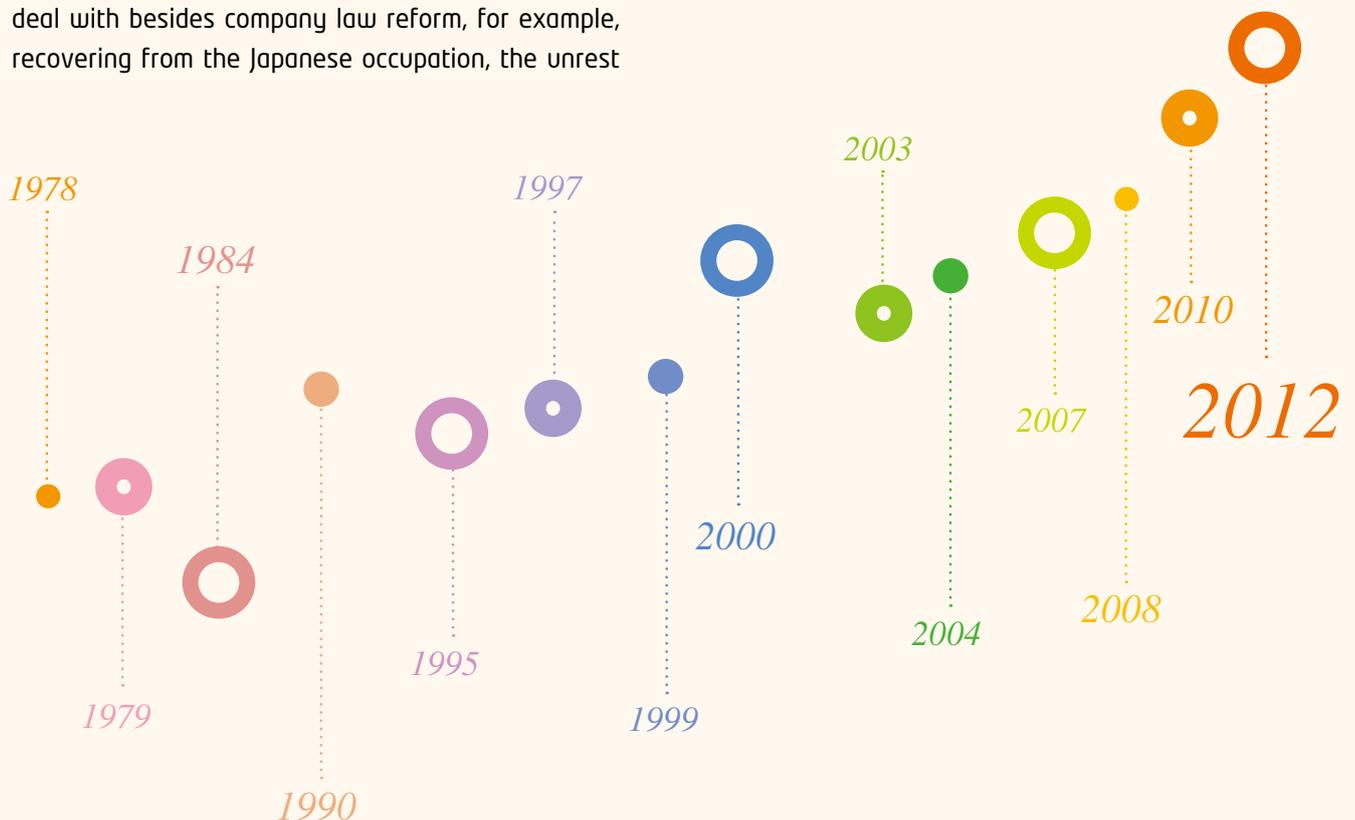
1860s 2010s

Kingdom therefore also took effect in Hong Kong, although there was no registration of companies in Hong Kong until 1865 when the first Companies Ordinance came into effect.

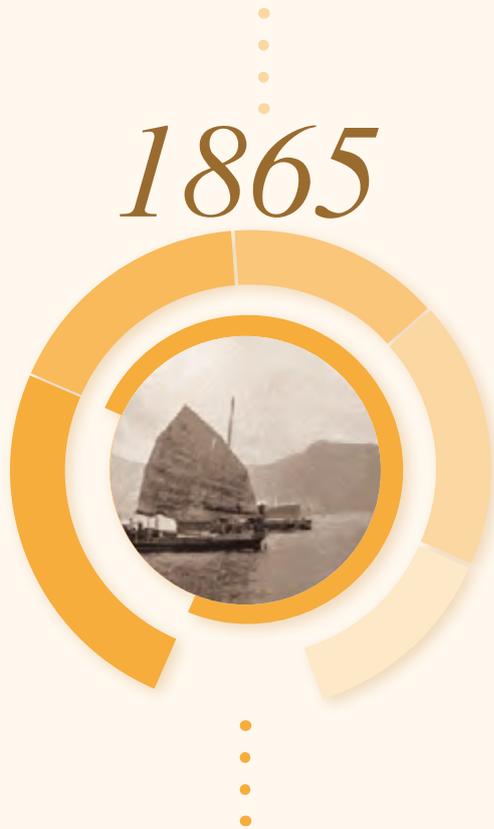
The development of company law in Hong Kong can be divided into three distinct periods. The first covered the years from 1865 to 1948, the second from 1948 to 1984 and the third essentially reflects the position since 1984. During the first period, company law reform in Hong Kong largely took the form of following the most up-to-date English legislation. Thus, the 1862 Act was followed by the 1865 Ordinance, the 1908 Act by the 1911 Ordinance and the 1929 Act by the 1932 Ordinance. However, after 1932, Companies Ordinance in Hong Kong ceased to keep pace with developments in the United Kingdom, as Hong Kong had other more urgent matters to deal with besides company law reform, for example, recovering from the Japanese occupation, the unrest

in the Mainland and finding a role for itself during the Korean and Vietnam wars. Nevertheless, the genesis of the current framework is the Companies Ordinance 1865 which mirrored the United Kingdom Companies Act 1862, the latter representing the consolidation of legislative changes in England through the preceding 20 years.

The legislation relating to the incorporation of companies and related matters (i.e., the filing formality) is contained in Part I of the Companies Ordinance. This Part prescribes the procedures and requirements involved in incorporation, the content of memorandum and articles of association, their statutory form and registration. As will be seen below, very little of real substance in this Part has changed since its original formulation in 1865. Nevertheless, a few changes are worth noting, as listed below.



II. Evolution of the legal framework for company incorporation



The Companies Ordinance 1865 was formed on the basis of the 1862 Act in the United Kingdom. The transplanted was primarily for the benefit of British business rather than local business, and the adoption of the legislation was important for the maintenance of investment by English companies in the colony. Despite the obvious social, cultural and economic differences between Hong Kong and England in 1865, the English legislation was adopted practically verbatim. The early 1860s witnessed a financial boom in the treaty ports in China, and businessmen in Hong Kong were highly optimistic about Hong Kong's future prospects. In a sense, the passing of the 1865 Ordinance was an inevitable event, given the times. In that year, the first Companies Ordinance in Hong Kong came into operation, with Part I concerning the constitution and incorporation of companies.

The minimum number of persons who could combine their capital to carry on a particular business, required for the incorporation of a joint stock company was 7. It was stated that any 7 or more persons associated for

any lawful purpose could, by subscribing their names to a memorandum of association, and otherwise complying with the requirements of this ordinance in respect of registration, form an incorporated company, with or without limited liability. It was also prohibited to register companies with identical or resembling names.

Two kinds of limited liability were provided for under the ordinance. One was to limit their liability to the amount unpaid on the shares respectively held by them, i.e. a company limited by shares. The memorandum of association of such a company should contain certain prescribed information, such as the name of the proposed company, with the word "limited" appearing at the end of the name. The second type of limited liability was to the amount that the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up, i.e. a company limited by guarantee. There is also a third form of company, i.e. a company having no limit placed on the liability of its members, or an unlimited company.

The memorandum had to be signed by each subscriber. The memorandum included a covenant to observe all of the conditions of the memorandum. Certain matters in the memorandum, such as the increase of capital or the division of its capital into shares, could be altered by its members under certain circumstances.

Once the memorandum of association and the articles of association were registered, the Registrar must certify that the company was incorporated. A copy of the memorandum of association and the articles of association must be forwarded to every member at his request with the payment of a certain fee.

The company could also change its name. The Registrar of Companies must enter the new name of the company in the Register in place of the old name, and must issue a certificate of incorporation on change of name that reflected the new circumstances.

1860s 2010s

1866



In those days, companies formed for the purpose of conducting banking business were often incorporated by a special ordinance; for example, the Hongkong and Shanghai Banking Corporation Limited was incorporated under Ordinance No. 5 of 1866. Such special ordinances often contained special provisions that were not found in the Companies Ordinance, and the banking corporations were therefore not to be affected by the general provisions in the Companies Ordinance. Thus, it was made clear in the 1866 amendment that nothing in the Companies Ordinance 1865 applied to or affected such corporations.

Furthermore, Ordinance No. 3 of 1866 provided the rules for the registration of companies existing at the time of the commencement of the Companies Ordinance 1865 or thereafter formed under any other ordinances or Letters Patent. A series of documents were required to be delivered to the Registrar of Companies prior to the registration of such companies, although the lists vary according to the nature of the companies.

1877



The changes to the law authorised the Governor to direct a charitable company (i.e. "a limited company for non-profit purpose, such as for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it was the intention of such association to apply any profits or other income of the association, in promoting its objects, and prohibited the payment of any dividend to the members of the association") to be registered with limited liability without adding the word "Limited" to its name. However, a number of conditions and regulations could be imposed in the licence granted by the Governor in return for the privilege of limited liability.

II. Evolution of the legal framework for company incorporation

1890



For the first time in the history of Hong Kong, a company was permitted to alter its objects (or purposes) as stated in its memorandum of association or deed of settlement. This followed an earlier ordinance, The Hongkong Land Investment and Agency Company Limited Ordinance 1890, passed on 9 April 1890, which allowed The Hongkong Land Investment and Agency Company Limited to transact business elsewhere than in the Colony and to extend its powers of investments, which it was unable to do under its articles of association. This 1890 Amendment Ordinance followed *mutatis mutandis* the Companies Act which was then passing through the Imperial Parliament on the subject. Generally speaking, the objects of a company are stated in a clause contained in the memorandum of association for the company regarding its general commercial objects. The scope of business of a company is confined by the objects of the company, and, where the business activity of a company falls outside its objects (i.e. ultra vires), the transaction conducted will be void. Hence, the objects clause (i.e. the clause that sets out the purposes) of a company defines the scope of the company for doing business. Before this amendment, alteration of this clause was forbidden.

The ultra vires doctrine is intended for the benefit of the members and creditors of a company, who are entitled to be secure in the knowledge that if the company extends its business beyond the permitted objects, any contracts made will be void and incapable of ratification by the company.

The amendment in Ordinance No. 25 of 1890 allowed a company to alter its objects by special resolution. However, such alteration was subject to the confirmation of the court on petition by the company. The ordinance set out a list of circumstances under which the proposed alteration might be confirmed, such as to carry on the business more economically or more efficiently; to attain its main purpose by new or improved means; to enlarge or change the local area of its operation; to carry on certain business or businesses which under existing circumstances might conveniently or advantageously be combined with the business of the company; or to restrict or abandon any of its objects. In addition, the company was required to deliver the court's confirmation order to the Registrar of Companies within a certain period of time. The company could be liable to pay a fine for default of such delivery.

1911



In 1911, a new Companies Ordinance was promulgated. This ordinance followed the 1908 Act in the United Kingdom. In essence, it revised a large part of the previous Companies Ordinance 1865.

Large partnerships consisting of more than 20 persons for providing financial services, such as banking, were prohibited under this ordinance. It was stated that to carry on the business of banking or any other business that had for its objects the acquisition of gain, a company rather than a partnership had to be formed and registered under the Companies Ordinance 1911 or other special ordinance or charter.

In terms of private companies, the minimum number of persons required to form a private company was reduced from 7 to 2 persons. The lower threshold for the establishment of a private company facilitated the incorporation of such companies and resulted in a mild increase in the number of newly incorporated companies in the next two decades (1910s -1920s).

The ordinance also included a few changes regarding the memoranda of companies limited by guarantee. For example, the memorandum must state that the liability of the members was limited, and if the company had a share capital, the memorandum must also state the amount of

share capital registered and the division of the capital into shares of a fixed amount; each subscriber must take at least one share; and each subscriber must state against his name the number of shares he took.

In the case of an unlimited company, if the company had a share capital, each subscriber must take at least one share; and state the number of shares he took.

This ordinance also extended the time limit for the delivery of alteration of objects to the court from 15 days to 28 days and increased the fine for default from a penalty not exceeding \$50 to one not exceeding \$100 for every day's default.

It also allowed the alteration of articles of association by a company by special resolution subject to the conditions contained in its memorandum.

The effect of the memorandum and articles of the company was also made clear in the new law. It was stipulated that the memorandum and articles would bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member. In addition, any money payable by any member to the company under the memorandum or articles would be a debt due from him to the company in the nature of a speciality debt.

The penalty that a company was liable to pay for failing to send to the members, at their request, a copy of the memorandum and of the articles was reduced from a fine not exceeding \$25 to one not exceeding \$10.

A restriction on not-for-profit companies was imposed by the new law. It was stated that a company formed not for profits could not hold more than two acres of land without the licence of the Governor. The Governor could by licence empower any such company to hold lands in such quantity, and subject to such conditions, as he might think fit.

Some new provisions as to companies limited by guarantee were introduced in the new law. It was stipulated that for new companies limited by guarantee, only members could participate in the divisible profits of the company. In addition, any provision purporting to divide the undertaking of the company into shares or interest would be treated as a provision for share capital, notwithstanding that the nominal amount or number of the shares or interests was not specified thereby.

II. Evolution of the legal framework for company incorporation



1915

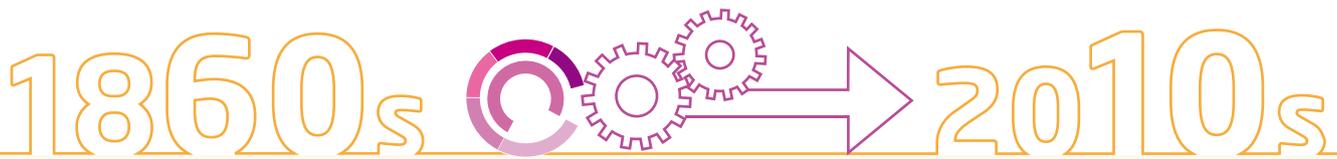
A number of amendments were made to the 1911 Ordinance under Ordinance No. 31 of 1915. The bill was complementary to the China (Companies) Order-in-Council 1915 issued by His Majesty-in-Council, and together they were intended to increase the control over Hong Kong companies which carried on business in China. There were two types of Hong Kong company: those that were managed from Hong Kong and those that were managed from a location in China. The former were termed in the Order-in-Council and the 1915 Amendment Ordinance “Hongkong China Companies”, and the latter “China Companies”.⁵

In the case of Hongkong China Companies, the Colonial Government and Courts had territorial jurisdiction and effective control over the company through its directors and officers in Hong Kong, whatever their nationality. In the case of China Companies, as their directors and officers were resident outside the British Dominions, there was no effective control over the company, unless some of its directors and officers were of British nationality, because the jurisdiction of the Supreme Court for China, which existed at the time, was in general confined to British subjects and protected persons. It was this difficulty which led to the enactment of the Order-in-Council and the 1915 Ordinance.⁶

For China Companies limited by shares, the solution adopted was to require that the majority of its directors and its auditors be British subjects, and that only a British subject could be appointed to act as liquidator of such

5 Section 2, Ordinance 31 of 1915.

6 Legislative Council meeting dated 2 December 1915, Hong Kong Hansard pp 90-91.



a company, or as receiver or manager on behalf of the debenture holders, except with the sanction of the Court. Furthermore, their shares must be issued either as fully paid up or upon the term that they be fully paid up within three months after allotment, to avoid the difficulty of recovering calls from persons of non-British nationality in China. In the comparatively rare case of companies limited by guarantee, such companies were not allowed to operate without the consent of the Minister, who could as a condition of this consent require that only a British subject could be a member, or that any member who was not a British subject had to give security for insuring the payment of the amount for which he would be liable under the guarantee.

The Order-in-Council also provided that the jurisdiction conferred by the Hong Kong Companies Ordinances upon any Court in Hong Kong could be exercised by the Supreme Court for China, and that that jurisdiction would be exercised in conformity with the provisions of the Hong Kong Companies Ordinances. The Order-in-Council and 1915 Ordinance together provided that in all matters relating to a Hongkong China Company, the jurisdiction of the Supreme Court of Hong Kong and of the Supreme Court for China were concurrent and mutually auxiliary, and proceedings could be transferred from one Supreme Court to the other. They could also enforce each other's orders in all matters relating to China Companies.⁷

At the same time, a register of companies at Shanghai was established, where all documents relating to China Companies would be filed and fees paid. All acts

undertaken by or before the Registrar at Shanghai had the same validity as if they had been undertaken by or before the Registrar of Companies in Hong Kong.⁸ All documents required by the Companies Ordinance to be filed with the Registrar of Companies were required, in the case of a China Company, to be filed with the Registrar at Shanghai, and a copy of all such documents, in the case of a Hongkong China Company, had to be filed with the Registrar at Shanghai.⁹ All fees which a company was required to pay to the Registrar of Companies was, in the case of a China Company, to be paid to the Registrar at Shanghai.¹⁰

The address in the Colony at which the registered office of the company was to be situated was no longer required to be stated in the memorandum; it was enough if it was stated that "The registered office of the company will be situated in Victoria, Hong Kong". So one could not find out the address of the registered office of a company by inspection of its memorandum.

An additional restriction on the name of the company was stipulated in the laws. To prevent improper use of the word "British", it was stated that the name of the company should not include the word "British" except with the permission of the Governor. However, a China Company could be registered under a name which included the word "British" without any such permission, because a China Company would now have a real and substantial British character under the new law.¹¹

7 Ordinance 31 of 1915, s 5.

8 Ibid, s 3(2).

9 Ibid, s 3(3).

10 Ibid, s 3(4).

11 Ibid, at 92.

II. Evolution of the legal framework for company incorporation

1932



The purpose of the 1932 Ordinance was to consolidate and amend company law with a view to bringing it into line with that prevailing in England. It followed the Companies Act 1929 very closely, although it was also necessary to incorporate special local provisions taken from the existing ordinances, e.g. provisions for China companies within the limits of the China Orders-in-Council. This ordinance was the last occasion on which Hong Kong law directly followed a consolidation made in the United Kingdom.

The Companies Ordinance 1932 made a number of amendments to the 1911 Ordinance:

Firstly, the memorandum and articles of association had to be printed in the English language.

Secondly, a company was allowed to alter its memorandum to enable it to sell or dispose of the whole or any part of the undertaking of the company, or to amalgamate with any other company or body of persons. A member of the company was not bound by an alteration made in the memorandum or articles after he became a member, if the alteration required him to take or subscribe for more shares than he already had, or increased his liability to contribute to the share capital of, or otherwise to pay money to, the company, unless he agreed in writing to be thus bound.

A company that issued after the date of the alteration any copies of the memorandum which were not in accordance with the alteration would be liable to a fine not exceeding \$10 for each copy so issued.

A company not having a share capital was required, according to the new rule, to give notice to the Registrar of Companies of the increase in the number of members in the company. The company and every officer of the company who was in default of compliance would be liable to a fine.

A number of statutory forms of memorandum and articles were also provided for different companies, such as a company limited by shares, a company limited by guarantee and not having a share capital, a company limited by guarantee and having a share capital, and an unlimited company having a share capital, in the Tables in the First Schedule to the ordinance.

A new power was given to the Registrar of Companies to order a change of name where the company inadvertently registered under a name in conflict with the requirements of the ordinance. With some exceptions, certain words were not allowed to be used in a company name, for example, "Chamber of Commerce", "Building Society", "Royal", "Imperial", "Municipal", "Chartered", "Co-operative", and "British".

An association formed under a licence from the Governor for promoting charitable objects without the word "Limited" in its name might be regulated by such conditions and regulations stated in the licence, and such conditions and regulations should be inserted in the memorandum and articles, or in one of those documents, if the Governor so directed.

Changes of corporate form were permitted. An unlimited company could be registered under the ordinance as a limited company, and a company already registered as a limited company could re-register.

The definition of member was provided in the ordinance: it stated that the subscribers of the memorandum of a company would be deemed to have agreed to become members of the company, and on its registration would be entered as members in its register of members.

The meaning of "private company" was also stipulated in the ordinance, as well as the circumstances in which a company ceased to be a private company.

It was further provided that the number of members in a company must not be reduced below the legal minimum (which was 2), and if the company carried on business for more than 6 months when the number of members was so reduced, every person who was a member of the company during that time would be severally liable for the payment of the whole debts of the company contracted during that time, and could be severally sued for them.

1936



The words “savings”, “trust”, or “trustee” were not allowed to be used in the name of a company, unless the consent of the Governor to such registration had been obtained. This was to prevent a company being registered with the name “Savings Bank” or “Savings Society” without any intention of conducting its business on the principles governing Trustee Savings Bank in England, or registered with the word “Trust” or “Trustee” in its name without being subject to conditions imposed on public companies registered as Trust Companies.¹²

1949



The 1949 Amendment Ordinance was introduced to allow companies incorporated outside the Colony to acquire, hold and dispose of immovable property without, as was at the time necessary, obtaining the consent of the Governor-in-Council for so doing. The requirement of consent was thought to be irksome to foreign companies, and had entailed application to and scrutiny by the Governor-in-Council on each occasion. It followed a similar provision in the United Kingdom, which had since been repealed in 1947. This change in the 1949 Ordinance was intended to bring the law of the Colony into line with that then existing in the United Kingdom.

The opportunity was also taken to delete from the principal ordinance all references to China Companies and Hong Kong China Companies as a result of the registration of such companies under Proclamation No. 27 and the regulation made thereunder.¹³

12 Legislative Council meeting dated 19 March 1936, Hong Kong Hansard p 45.

13 Legislative Council meeting dated 12 January 1949, Hong Kong Hansard pp 6-7.

II. Evolution of the legal framework for company incorporation

1958



As mentioned above, the 1932 Ordinance allowed a company formed for charitable purpose to hold no more than two acres of land without the licence of the Governor. The 1958 Ordinance changed this by providing that such company could not hold land at all in the Colony except with a licence granted by the Governor. This was intended to prevent the accumulation of excessive areas of land in the hands of charitable bodies and thereby to ensure that the best use and development be made of such land as was available in the Colony, as the land shortage was notorious. Another important reason for the change was to do with revenue, as these corporations never died and therefore land held by them never became liable to estate duty.¹⁴

Furthermore, the 1958 amendment enlarged the meaning of "charitable purpose". Under the previous law of 1932, charitable purpose was defined as being for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members. However, the 1958 revision made it clear that charitable purpose included purposes such as the relief of poverty, the advancement of art, education, learning, literature, science or research, the making of provision for the cure or mitigation or prevention of, or for the care of persons suffering from or subject to, any disease or infirmity or disability affecting human beings (including the care of women before, during and after childbirth), the advancement of religion, any ecclesiastical purpose, the promotion of the moral, social and physical well-being of the community, or any other purpose beneficial to the community not falling under any of the preceding paragraphs. In addition, "land" was defined as including any estate or interest in land, buildings, messuages and tenements of whatsoever nature or kind.

¹⁴ Legislative Council meeting dated 25 June 1958, Hong Kong Hansard pp 209-217.

1962



The Companies Law Revision Committee was set up to consider and make recommendations as to the revision of company legislation. After the Registrar General got tied up with the banking collapses in 1965, the Committee was suspended for a short period of time, but was reconstituted in 1968. With the work of this Committee, company law revision in Hong Kong entered a new era. Unlike the previous revision of the 1932 Ordinance, Hong Kong had become a significant industrial and commercial centre, and its company law was planned to have its own features rather than being a direct copy of practice in the United Kingdom.

1963



While the Companies Law Revision Committee was working on the full-scale revision of the Companies Ordinance, which would inevitably take a long time, certain important changes were made to the law separately from the revision. The most important change made in this year was the introduction of provisions for the alteration of objects without the court's confirmation and power to the Financial Secretary to appoint an inspector to investigate the affairs of a company in certain circumstances based broadly on the United Kingdom's Companies Act 1948. Before the change, a company was allowed to alter its objects in the memorandum only if it was confirmed by the court. The new law dispensed with the need for confirmation by the court in every case. However, a change in the company's object was subject to challenge before the courts. The application must be made within 21 days after the date on which the resolution altering the company's objects was passed.

II. Evolution of the legal framework for company incorporation

1972



The Companies (Amendment) Bill 1972 was the first of several bills which were designed to give effect to the recommendations of the Report of the Companies Law Revision Committee on the Protection of Investors. Its object was to lay down a better legal framework for the presentation of prospectuses, when shares or other securities were offered for sale to the public. Hong Kong's financial sector was buoyed up by the strength of its economy and the confidence it engendered in local and overseas investors. The rapid growth of the economy led to the establishment of three other exchanges in the late 1960s and early 1970s and the rising share prices and volume in the stock market had outperformed those of most other world markets. But the process of rapid growth brought its own problems. Concern and worry, because its high price-earnings ratio and low dividend yield had reached a highly speculative stage, being out of proportion to what was generally regarded as a reasonable level even in the most promising economy in other countries, led to public opinion urging the government to enact legislation to control or regulate the operation of the market in order to protect investors. This bill was part of a programme designed to bring more order and efficiency into the conduct of trading in securities of all kinds, thereby providing greater protection for the interests of the investing public.

The bill was based on the recommendations contained in Chapter 8 of the Companies Law Revision Committee's report. This chapter covered the requirements for the issue in Hong Kong of prospectuses of companies registered either there or overseas. The Companies Ordinance

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as it stood at the time was based very largely on the United Kingdom Companies Act of 1929. Since then, the 1948 Companies Act had been passed in the United Kingdom, following recommendations made by the Cohen Committee, and in 1962 the Jenkins Committee Report was produced. This report reviewed the workings of, and recommended changes to, the 1948 Companies Act and the 1958 Prevention of Fraud (Investments) Act. Both the 1948 Companies Act and the Jenkins Committee Report contained a number of provisions or recommendations concerning prospectuses, and most of these were included in the 1972 Bill, together with a number of points which were added by the Hong Kong Government as a result of its own experience. The whole of this bill, together with the substantive ordinance, constituted what was, in the then Financial Secretary, Sir Haddon-Cave's view, "probably one of the most up to date pieces of legislation on prospectuses in the world today".¹⁵

Clause 2 extended the existing definition of "prospectus" to include documents which did not actually offer shares or debentures, but were calculated to invite offers from the public. Clause 3 amended Section 30 to correspond with the United Kingdom Act of 1948 to include provisions as to criminal liability for untrue statements in statements in lieu of prospectuses, which were similar to those provided for untrue statements in prospectuses. Clause 5 amended Section 38 of the Companies Ordinance to provide that every prospectus was to be in English, with a Chinese translation, and that it should include the information prescribed in the Third Schedule. Clause 6 prohibited the

publication of an abridged prospectus (by new Section 38B) and inclusion in a prospectus of an expert's statement unless he consented in writing (new Section 38C). It also inserted a new Section 38A which empowered the Registrar of Companies to issue a certificate of exemption having effect to relax the provisions of the Third Schedule if, in his opinion, strict compliance would be irrelevant or unduly burdensome in particular circumstances. Section 38D provided, among other things, that the whole prospectus was to be lodged with the Registrar of Companies before issue to the public. The responsibility for providing the Chinese translation rested entirely with the sponsors of the issue and, if it gave an inadequate or misleading impression of the English version, the Registrar of Companies could refuse to accept it. However, registration of a prospectus did not mean that the share issue was endorsed by the Government in any way whatsoever as a sound investment. It merely meant that the prospectus concerned had met all the statutory requirements for publication.¹⁶

Clause 7 repealed and replaced Section 40 relating to civil liability for mis-statements in prospectuses, so as to correspond with Section 43 of the United Kingdom Act. It made directors and promoters of prospectuses as well as experts quoted in them liable to pay compensation to subscribers in cases where false or misleading statements were made in prospectuses and Clause 8 established criminal liability for such offences. Clause 18 provided for the regulation of the prospectuses of foreign companies in much the same way as those of Hong Kong companies.

¹⁵ Legislative Council meeting dated 1 November 1972, Hong Kong Hansard pp 83-85.

¹⁶ Ibid.

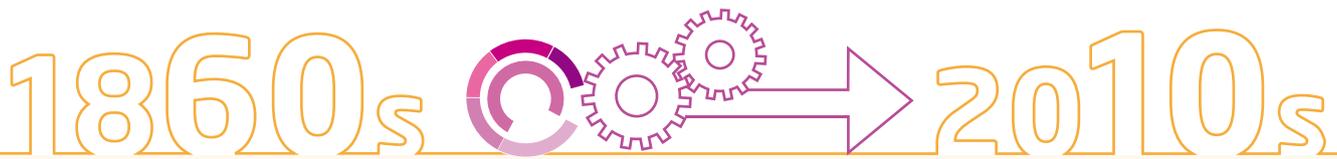
II. Evolution of the legal framework for company incorporation

1974

The Companies (Amendment) Bill 1974 was the first of a series of bills designed to give effect to the recommendations of the second report of the Companies Law Revision Committee. This report, which was tabled at the Legislative Council on 1 August 1973, covered an extremely wide range of subjects in the general field of company law. The Government was of the view that to attempt to implement the Committee's recommendations all at once, in the form of a completely rewritten Companies Ordinance, would have been a lengthy, complicated and altogether too formidable task. It decided, therefore, to start by implementing in this bill the Committee's recommendations on company accounts and directors' reports, which must be filed with the Companies Registry, as the accounts provisions of the ordinance, being more or less self-contained, could be brought up to date comparatively easily.

The existing provisions of the Companies Ordinance relating to company accounts and directors' reports were almost identical with those of the United Kingdom Companies Act of 1929. The Companies Law Revision Committee studied the changes made by the United Kingdom Companies Acts of 1948 and 1967, together with a number of other changes recommended by the Jenkins Committee on Company Law Reform, but which had not yet been the subject of legislation in the United Kingdom. In passing, the Committee noted that there was no part of company law in which more sweeping changes had been made in United Kingdom than the statutory provisions relating to company accounts.

Clause 12 amended Section 123 of the principal ordinance by requiring a company's balance sheet and profit and loss account to give a true and fair view of the state of its affairs and of its profit or loss by, inter alia, being drawn up in accordance with the requirements of the Tenth Schedule. This gave effect to equivalent provisions to those in the United Kingdom Companies Act 1948, which set out in general terms the objectives and the standard of disclosure required, whilst prescribing certain specific information that must be given. A new Section 124 further required a holding company to prepare group accounts dealing with



the profit and loss of the company and its subsidiaries. Group accounts must, under Section 125, be consolidated accounts comprising a consolidated balance sheet of the holding company and subsidiaries and a consolidated profit and loss account.

As for directors' reports, a new Section 129D in Clause 12 required the attachment to a company's balance sheet of a comprehensive directors' report which must include, inter alia, details on the state of its affairs, its profit and loss, its principal activities, its proposed dividend, transfers to reserves, changes in fixed assets, issues of shares and debentures and the list of its directors, together with any other matters necessary to help its shareholders better understand the state of its affairs.

Clause 13, which introduced the new Section 141, made radical changes in the matters required to be stated in the auditors' report. Hitherto, the auditors could simply state a true and correct view according to the best of their information and the explanations given to them, and as shown by the books of the company. In the view of the Companies Law Revision Committee, this was not enough to ensure that a full picture was presented of the company's affairs, and the Committee pointed out that, in the United Kingdom, it had been held that if a company's affairs were incompletely revealed by its books, the auditors might nevertheless feel that they were entitled to certify that the balance sheet had been properly drawn up if it accorded with the books. Under the new section, the auditors' report had to state whether, in the auditors' opinion, the accounts had been properly prepared in accordance with the provisions of the ordinance and whether, in their opinion, the accounts provided a true and fair view of the company's position.¹⁷

The Companies (Amendment) (No. 2) Bill 1974 amended the principal ordinance to provide for the priority of severance payments by employers to employees.

The Companies (Amendment) (No. 3) Bill 1974 was introduced to prohibit the unauthorised use of the Hong Kong Tourist Association's name, in either English

or Chinese. This was not prohibited at the time, and experience had shown that it should be. For example, an association operating in the tourist trade had been using a Chinese name similar to the Chinese name used by the Hong Kong Tourist Association, which could have led to some confusion. The amended Section 20 made the unauthorised use of the name of the association or any name closely resembling that of the association an offence.¹⁸

The Companies (Amendment) (No. 4) Bill 1974 amended only Section 20 of the Companies Ordinance by improving the existing provisions that regulated the use of names by companies. Under the existing law, no company could be registered by a name which was identical to one by which a company in existence was already registered, or so nearly resembled an existing name as to be calculated to mislead or deceive. Clause 2(a) of this bill added a provision which similarly prohibited the use of the name of a company incorporated outside Hong Kong which had complied with the requisite part of the Companies Ordinance allowing companies incorporated outside Hong Kong to carry on business in Hong Kong. In addition, it sought to prohibit the use of a name identical with that of a body corporate, incorporated or established under an ordinance. At the time, the Companies Ordinance continued to prohibit the registration of companies by certain names without the consent of the Governor, such as names which included the words "Royal", "Imperial", "Municipal", "Chartered", "Co-operative", "British", "Savings", "Trust", and "Trustee". By clause 2(b) of the bill, it was proposed to add the word "Kaifong" to this list.

The power of the Governor to allow or refuse to allow the use of such names was, however, delegated to the Registrar General, who carefully examined each application to establish whether the use of one of these names would be misleading if allowed, and exercised his discretion accordingly. As the use of the word "Kaifong" in a company name was open to very obvious abuse, it was the Government's view that the ordinance should be amended to restrict its use.¹⁹

17 Legislative Council meeting dated 3 July 1974, Hong Kong Hansard pp 973-976.

18 Legislative Council meeting dated 31 July 1974, Hong Kong Hansard pp 1077-1078.

19 Legislative Council meeting dated 13 November 1974, Hong Kong Hansard p 161.

II. Evolution of the legal framework for company incorporation

1977

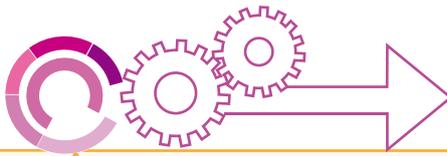


The new Section 20A of the Companies Ordinance 1977 established a system of name reservation, either for a newly incorporated company or for a new name for an existing company. The reservation period was three months from the making of the application, with power to the Registrar to extend for a further period of three months. This was repealed in 1990 by Section 4 of the Companies (Amendment) Ordinance 1990 (Ordinance No. 60 of 1990).

1978



The Companies (Amendment) Bill 1978 allowed existing companies already formed for charitable purpose using the word "Limited" to dispense with the word "Limited" in their names.

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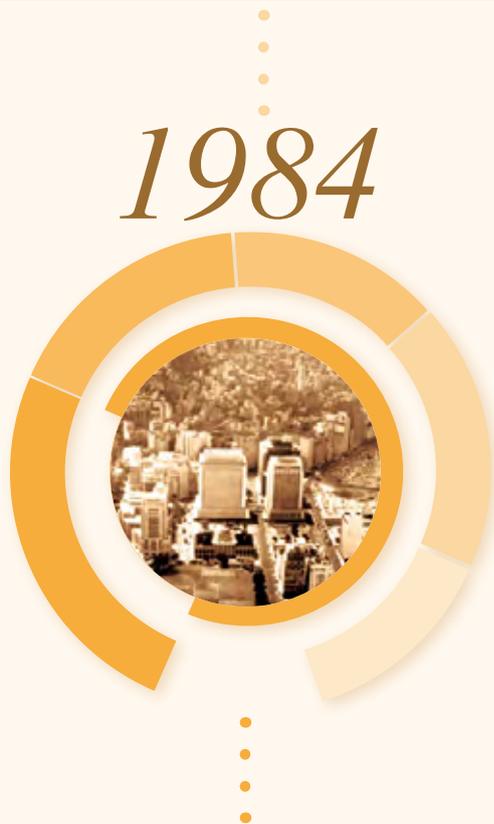
1979



In the Companies (Amendment) Bill 1979, Section 71A was introduced to provide statutory protection for listed public companies against claims for damages arising out of their replacing lost share certificates. Prior to this, the only statutory provision governing the issue of replacement share certificates was Section 14 of the Companies (Reconstruction of Records) Ordinance, which provided that the registered holder of shares, or someone claiming so to be, might apply to a company for the issue of a new share certificate when he no longer had the original. If the company then issued a new one, it was indemnified against all loss subsequently incurred by any person by reason of its having done so. But Section 14 applied only to companies incorporated before 25 December 1941. In the knowledge that they were not covered by a statutory indemnification, companies incorporated after December 1941 were left to decide themselves whether they wished to issue replacement certificates. In most cases, they were reluctant to do so unless the applications were covered by an indemnity from a bank or some other form of guarantee. In its second report, the Companies Law Revision Committee recommended that the protection in Section 14 of the Companies (Reconstruction of Records) Ordinance be extended to all companies. After consulting the Federation of Share Registrars and the Exchange Banks Association, the government concluded that only listed public companies should be covered, because the number of cases involving lost share certificates in respect of private or non-listed public companies was small, and identifying the rightful owners of their shares was rarely a problem.²⁰

²⁰ Legislative Council meeting dated 17 October 1979, Hong Kong Hansard pp 73-74.

II. Evolution of the legal framework for company incorporation



By 1980, Hong Kong was a major industrial and commercial centre. With so much corporate activity, Hong Kong clearly needed a more up-to-date company law than its 1932 model. The Companies (Amendment) Bill 1984 continued the law reform journey which had commenced in 1974 when a programme of legislation was initiated to implement the recommendations of the Companies Law Revision Committee Second Report published in April 1973. As a result, the Companies Ordinance was amended again in 1984, which was seen as great progress, but only in the sense that the 1984 Hong Kong legislation was to catch up with the United Kingdom's 1948 consolidation.²¹ With the passage of the 1984 Bill, the Standing Committee on Company Law Reform was established to react to particular and discrete points of law put to it by the Registrar of Companies or other members of the public.

The major amendments in the Companies (Amendment) Ordinance 1984 were as follows:

Prior to the amendment, there were discussions regarding the proposal that every company should have certain

specified powers except to the extent that they were excluded expressly or by implication by its memorandum. These powers were intended to be merely ancillary powers exercisable in the course of carrying on a company's business, and were not its objects. This was to make a distinction between the objects of the company and powers by which a company achieved those objects. Thus, a major feature of the change was the creation of the Seventh Schedule to the ordinance, which contained a list of powers automatically included in a company's memorandum unless expressly excluded or modified by the memorandum or articles. For example, Clause 1 of the Seventh Schedule allowed a company to carry on any other business which would enhance the value of any of the property or rights of the company. Furthermore, Clause 26 empowered the company to do all such other things as were incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

The amended ordinance also contained a new Table A.

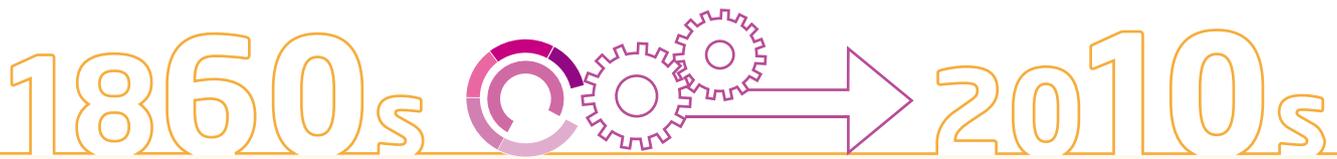
The minimum number of persons required for the incorporation of a public company was reduced to 2. Before the amendment, the minimum number of persons required for the incorporation of such company was set at 7, even though the minimum number of persons required for the incorporation of a private company had already been reduced from 7 to 2 in 1911.

The definition of a company limited by shares was changed slightly. It was provided that where the memorandum of the company stated that the liability of the members was limited, the company was deemed to be a company limited by shares.

The memorandum was no longer required to bear the same stamp as if it were a deed. However, the witness who attested the signature should sign his name and state his occupation and address in legible form.

The company could not alter the memorandum except as allowed by the express provision in the ordinance. There were two minor amendments to the power to object to an alteration of the objects of the company. Under the new law, application could be made to the court to annul the alteration by holders of 5% instead of 15% of the nominal

²¹ C Bates, "Companies Amendment Ordinance 1984-I", (1985) 15 Hong Kong Law Journal 167.



value of the issued shares or of the company's debenture holders. Debenture holders would continue to have power to apply to the court only if the terms of their debentures entitled them to object to such alterations. Secondly, such application could be made within 28 days instead of 21 days after the alteration was made. The notice of the special resolution for the alteration of the objects must be duly given to all of the members of the company. The resolution might abandon or restrict any of the objects or adopt any new lawful object.

It was required that the memorandum after alteration should be certified as correct by an officer of the company. However, the range of the default fine for the company and every officer for failing to deliver notice of the alteration of the company's object to the shareholders was deleted.

A new Subsection 13(1A) was added to state that a company could not make any alteration or addition in its articles which was inconsistent with any special rights attached to a class of shares (i.e. class rights) in the company.

Section 19 of the Companies Ordinance, as amended by the 1984 Ordinance, provided for the re-registration of unlimited companies as limited companies, and required that a special resolution be passed and an application lodged with the Registrar together with the required documents.

Section 22A was added, giving the Registrar power to require a company to abandon a name by which the nature of the activities of the company was misleading and was likely to cause harm to the public. Before the amendment, the Registrar in Hong Kong did not have a power similar to that of the Registrar of Companies in the United Kingdom, who had a general power to refuse any name which in his opinion was undesirable: there had been a debate as to whether to incorporate a similar power into the Companies Ordinance in Hong Kong. However, the power regarding the undesirability of company names was not adopted in Hong Kong. Rather, the new Section 22A gave the Registrar powers in respect of misleading names.

The insertion of Section 25A was another important breakthrough in the laws. It was trite law that the memorandum of association was unalterable except as

provided by the ordinance, but the articles of association were freely alterable by special resolution. It was therefore possible to render unalterable a provision normally contained in the articles by including it in the memorandum. A new Section 25A was introduced in the amendment to provide that a company could amend by special resolution any provisions contained in its memorandum which could have been contained in its articles. The fine for the company and every officer for failing to provide copies of the updated memorandum and articles after alteration to the members upon request was increased from \$25 to \$5,000. Members but not debenture holders were given power to apply to the court to overrule the alteration. This section also applied to companies registered before the commencement of these amendments.

Section 28A was added to prohibit a company from being a member of its holding company, and any allotment or transfer of shares in a company to its subsidiary would be void. This section did not apply to pre-existing arrangements and was subject to various exceptions.

Section 31 was amended to provide that the liability for carrying on business without having at least 2 members for more than 6 months was changed from the payment of the whole debts of the company contracted during that time to the payment of the debts of the company contracted during the period or that part of it. This section was repealed in 2003, when the minimum number of members was further reduced to one.

A new Section 32A was added to regulate matters concerning pre-incorporation contracts. In principle, a company could not contract until it had been incorporated, and it is a basic principle of Hong Kong company law that it can only act through the powers of management vested in its directors. The new rule stipulated that before a company was incorporated, the promoters or persons who purported to act on behalf of the company could enter into contracts either in the name of or on behalf of the company. The company could ratify the contract to the same extent as if it had already been incorporated at that time, and as if the contract had been entered into on its behalf by an agent acting without its authority.

II. Evolution of the legal framework for company incorporation

1990



A number of amendment ordinances were passed this year. The Companies (Amendment) (No. 2) Ordinance 1990 (Ordinance No. 17 of 1990) was enacted to implement a new system of keeping company documents on microfilm which could be inspected by the public on payment of a fee.

The incorporation fee was increased from 600 to 1,000 dollars from 1 April 1990 under the Companies (Amendment) (No. 3) Ordinance 1990 (Ordinance No. 28 of 1990).

In determining whether one name was the same as another, Section 20(3) was added under Companies (Amendment) (No. 5) Ordinance 1990 (Ordinance No. 60 of 1990) to provide that certain words were disregarded such as "company", "company limited", "limited", "unlimited", "public limited company", etc. Besides this, a few rules regarding the change of company names were added in Section 22. A new Section 22B was also added to empower the Governor (now the Chief Executive of Hong Kong Special Administrative Region) to specify words or expressions which required his approval before they could be included in a company name. Section 22C was also added, which required the Registrar to keep an index of company names which contained the name of every company incorporated in Hong Kong, as well as the name of every oversea company incorporated outside Hong Kong with a place of business in Hong Kong. The Governor could require that any other class of body (whether incorporated or not) also be listed on the index of company names.

The Companies (Amendment) Ordinance 1990 (Ordinance No. 7 of 1990) added the Twelfth Schedule to the Companies Ordinance. The fines and terms of imprisonment for offences under the Ordinance were taken out of the substantive sections and put into the Schedule.

1995



Companies (Amendment) Ordinance 1995 (Ordinance No. 83 of 1995) initiated the use of Chinese in corporate documents in Hong Kong. Before this amendment, it was established as a general rule that corporate documents should be printed in English. Starting from this amendment, the company's memorandum and articles of association could be printed in either English or Chinese.

In addition, the Registrar could pre-print his signature on the certificate of incorporation.

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1997



With the handover of Hong Kong to China, a major amendment to the Companies Ordinance in 1997 was the renaming of relevant government bodies that appeared in the Ordinance, for example, “Governor” was renamed “Chief Executive”. The Chinese words “有限公司” were added to the end of the name of a company where a Chinese name was used.

In addition, problems regarding the objects clause were addressed in the 1997 amendments. The existing Section 5(1) was repealed and substituted by new Subsections 5(1) and 5(1A), which basically means that companies are no longer required to set out objects in their memoranda, apart from a Section 21 company. A new Section 5A expressly confers on a company “the capacity and the rights, powers and privileges of a natural person”. This means that companies shall now have unlimited capacity to enter into any transaction that a natural person may so enter. Section 5B then provides that if a company has objects, it should not go beyond those objects, and should a company enter into a transaction beyond its objects, a shareholder can obtain an injunction to restrain such conduct. But if the transaction has already been entered into, that transaction is not invalid by reason of it being beyond the objects. Section 5C further abolished the common law doctrine of constructive notice, by providing that an outsider shall not be presumed to know any matter (including company objects) merely because of its being disclosed in the memorandum or articles kept by the Registrar or a return of resolution lodged with the Registrar. These sections partially abolished the doctrine of ultra vires in Hong Kong.

In determining whether one name is the same as another, Section 20(3), as added by the Companies (Amendment) (No.5) Ordinance 1990 (see above under 1990), was amended by the Companies (Amendment) Ordinance 1997 to add the Chinese words and expressions “公司”, “有限公司”, “無限公司” and “公眾有限公司”.

II. Evolution of the legal framework for company incorporation

1999

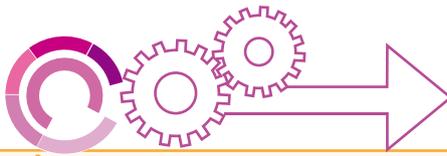


A new statutory procedure to deregister defunct solvent private companies was introduced by the Companies (Amendment) Ordinance 1999.

2000



A Section 21 company that wanted to alter its memorandum or articles was no longer required to give the same notice to the Registrar relating to the proposed alteration as it was required to give to its members. (Note: such alteration could only be made if approved by the Registrar).

1860s  2010s

2003



The Companies (Amendment) Ordinance 2003 was passed on 2 July 2003 and came into operation on 13 February 2004 (except Sections 158C(1)(a) and (b) relating to index of directors which became operative at a later stage).

The amendment allowed one person to form a company as opposed to the previous minimum of 2 (Section 4). Statistics show that after this amendment to allow the formation of one-member companies, most companies incorporated in Hong Kong have been one-member companies, which indicate that the one-member company in Hong Kong is a popular business vehicle.

Another important change was the prohibition of the formation of a company limited by guarantee with a share capital (Section 4(4)).

Prior to the amendment, an application could be made to the court to annul an alteration of company's objects or conditions in the memorandum, for both public and private companies. Under the new law, this is restricted to private companies (Sections 8(1) and 25A).

Section 23 was also amended to make it clear that the memorandum and articles shall have effect as a contract between the company and each member and between a member and each other member. Before this amendment, in the case of *Ng Kin Kenneth v HK Football Association Ltd* [1994] 1 HKC 734, it was held that, under Section 23, whilst articles did in fact constitute a contract between the company and its members in respect of their ordinary rights as members, the contractual force given to the articles of association was limited to those provisions which were envisaged for disputes between the company and its members. Thus, where the articles, from the words used, envisaged disputes between members, they were not enforceable by the company against its members. This amendment made it clear that the members and the company could bring legal proceedings to enforce any of the provisions of the memorandum and articles which may have been breached by any party to this statutory contract. The amended section was applied in the case of *Yung Siu Ying v Hong Kong Sailing Federation* (2010) HKCU 254.

II. Evolution of the legal framework for company incorporation



2004

Ordinance 30 of 2004 which took effect on 11 July 2008 made a number of amendments to the ordinance: “Subscriber” was substituted by “founder member” in the ordinance.

Exceptions were made to the attestation requirement stipulated in Section 12. Prior to this, the articles were required to be signed by each subscriber in the presence of a witness who shall attest the signature by signing his name and stating his occupation and address in legible form. Under the amendment, it was stipulated that where the articles were delivered to the Registrar in the form of an electronic record and each founder member had authenticated his signature in such manner as the Registrar might direct, the attestation requirement would not apply. The attestation requirement was removed by a further amendment in 2010 (12 of 2010, Section 5).

Prior to the 2004 amendment which took effect on 11 July 2008 (30 of 2004, Section 2), incorporation was undertaken by delivering the memorandum and the articles to the Registrar for registration. From 11 July 2008, registration has been undertaken by delivering an incorporation form to the Registrar for registration together with copies of the memorandum and articles certified to be a true copy of the original by a founder member. The requirement of certification by a founder member was, however, removed by an amendment in 2010 (12 of 2010, Section 7).

The incorporation form must be in the specified form containing specified particulars as required by a new Section 14A, such as the name of the company, the address of its registered office, a statement as to whether it was limited by shares, by guarantee or unlimited, etc. Further particulars to be included were added in 2010 (12 of 2010, Section 6):

- (i) if the company is limited by guarantee, the number of members with which the company proposes to be registered on its incorporation;
- (ii) if a director who is not a signatory of the incorporation form does not make a statement of consent and age, a statement by the signatory that the non-signatory director has given consent and attained the age of 18;
- (iii) a statement that the company’s memorandum and articles have been duly signed; and
- (iv) a statement that the contents of copies of the memorandum and articles are the same as the original.

1860s 2010s

2007



Major amendments to the provisions concerning non-Hong Kong companies took effect on 14 December 2007 with the commencement of Schedule 2 to the Companies (Amendment) Ordinance 2004. The main purpose of the amendments was to modernise the registration regime for “oversea companies” (renamed “non-Hong Kong companies”), while enhancing the disclosure requirements of these companies.

2008



A number of amendments made in 2004 (see above under 2004) took effect this year.

II. Evolution of the legal framework for company incorporation

2010



After the implementation of the Companies (Amendment) Ordinance 2010 (Ordinance No. 12 of 2010) on 10 December 2010, the Registrar was given new powers to enhance enforcement against abuses of the company name registration system, including the power to act upon a court order under Section 22(3B) to direct a company to change its infringing name and, under Section 22AA, the power to replace that name with the company's registration number if it fails to comply with the Registrar's direction to change name. The same power to replace the name of a company is given to the Registrar where a company fails to comply with a direction to change its name which is too similar to that of another company on the register; gives the impression that the company is connected with the Central People's Government or the Government of the Hong Kong Special Administrative Region; or where the use of the name constitutes a criminal offence; or is offensive or contrary to the public interest.

Pursuant to the new Section 18A, as added by Ordinance No. 12 of 2010, Section 10, which came into force on 21 February 2011, each consent to act given by a director for the purpose of Section 14A in relation to a company intended to be incorporated must be delivered to the Registrar in the specified form not later than 14 days after the date of incorporation of the company.

1860s  2010s

2012



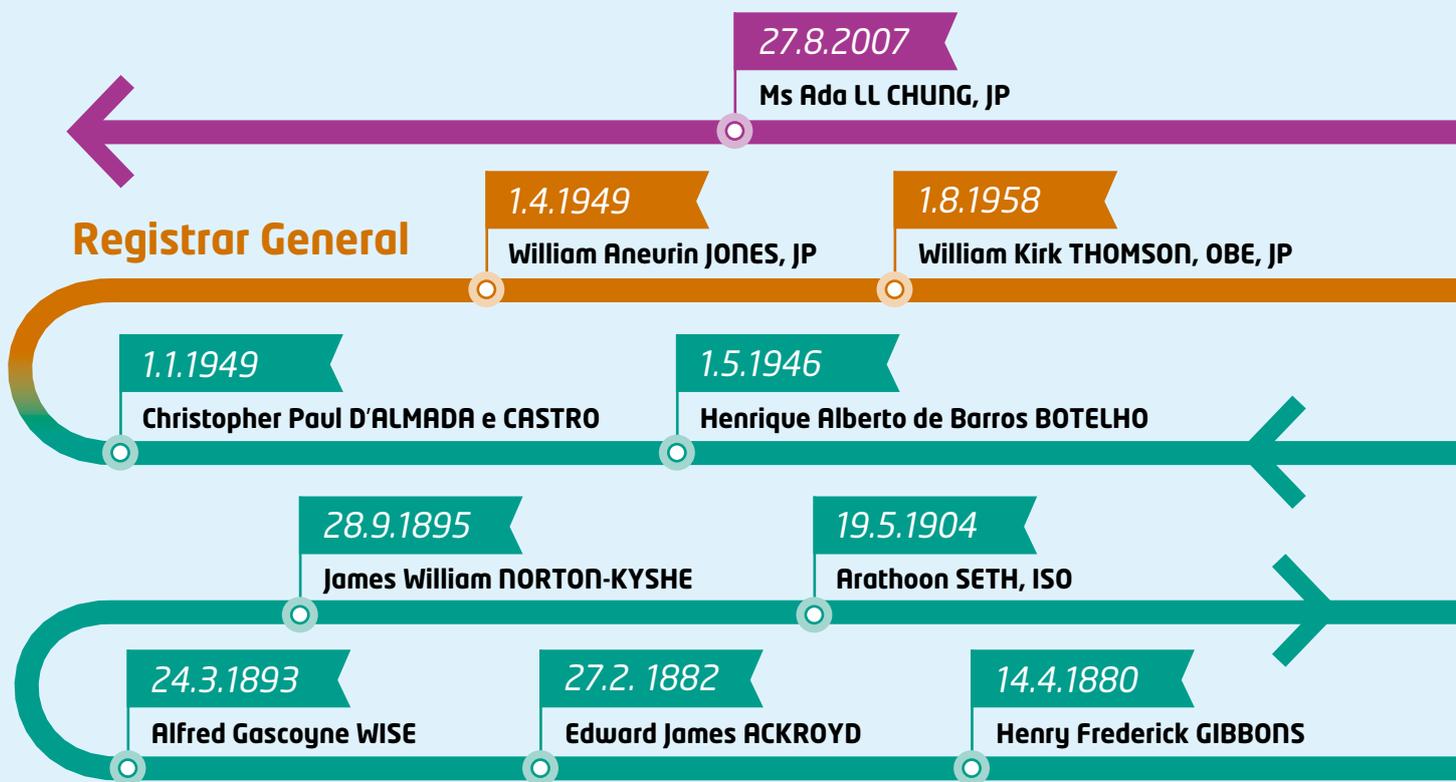
On 12 July 2012, the Legislative Council passed the Companies Bill, which was subsequently published in the Gazette on 10 August 2012 as the new Companies Ordinance (Ordinance No. 28 of 2012). The new Companies Ordinance (CO) will be brought into operation after enactment of the relevant subsidiary legislation, tentatively scheduled for the first quarter of 2014.

The new CO, which consists of 921 sections and 11 schedules, brings the Hong Kong company law fully up to date, reinforces Hong Kong's position as a world-class location in which to do business and provides a modernised legal framework for the incorporation and operation of companies in Hong Kong. The new CO aims to achieve four main objectives: enhance corporate governance, ensure better regulation, facilitate business and modernise the law. A summary of the major initiatives introduced to achieve these objectives is set out in [Annex II](#).

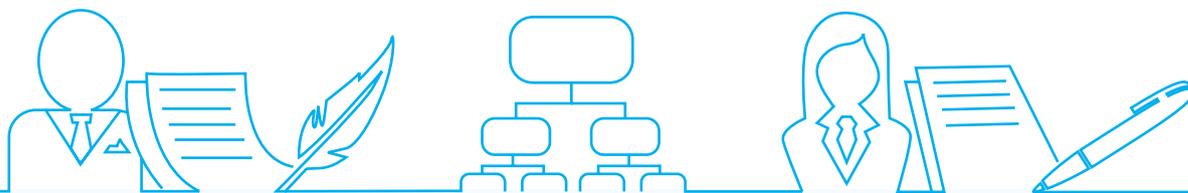
Authorities or departments responsible for the administration of the Companies Ordinance and the registration of companies and documents

The administration of the registration of companies in Hong Kong dates back to 1865 when the first Companies Ordinance was enacted. According to Part VI of the Companies Ordinance 1865, the Governor could from time to time appoint a Registrar and such other officers and servants for the registration of companies under this Ordinance. But as the number of newly incorporated companies was very small in the early years and continued to be small (below 100 per year) until 1946, the Registrar of Companies was a position held also by the Registrar of the Supreme Court. On 29 April 1865, William Hastings Alexander,²² as Registrar of the Supreme Court, was gazetted the first Registrar of Companies under Ordinance No. 1 of 1865. Simultaneously, a Companies Registry was also established under the Companies Ordinance 1865 and administered by the

Registrar of the Supreme Court assisted by a Deputy Registrar. This continued to be the case until 1949, when the office of the Registrar General, situated in the Supreme Court building, was established by the Registrar General (Establishment) Ordinance (Chapter 100 of the Laws of Hong Kong). The new department was responsible for a number of other types of registration, e.g. birth, death and marriage, as well as the functions of the Companies Registry which was transferred from the Supreme Court. The ordinance authorised a Registrar General *ex officio* to exercise all of the powers, privileges and discretions from time to time vested in, and to discharge the duties from time to time required to be performed by, the Registrar of Companies. Also, deputies may be appointed to assist the Registrar General in the performance of his duties. William Aneurin Jones, JP



²² However, in Norton-Kyshe's History of Laws and Courts of Hong Kong, it is said that on 28 April 1865, Mr. Frederick Sowley Huffam was gazetted as Registrar of Companies (Vol II, p 82).

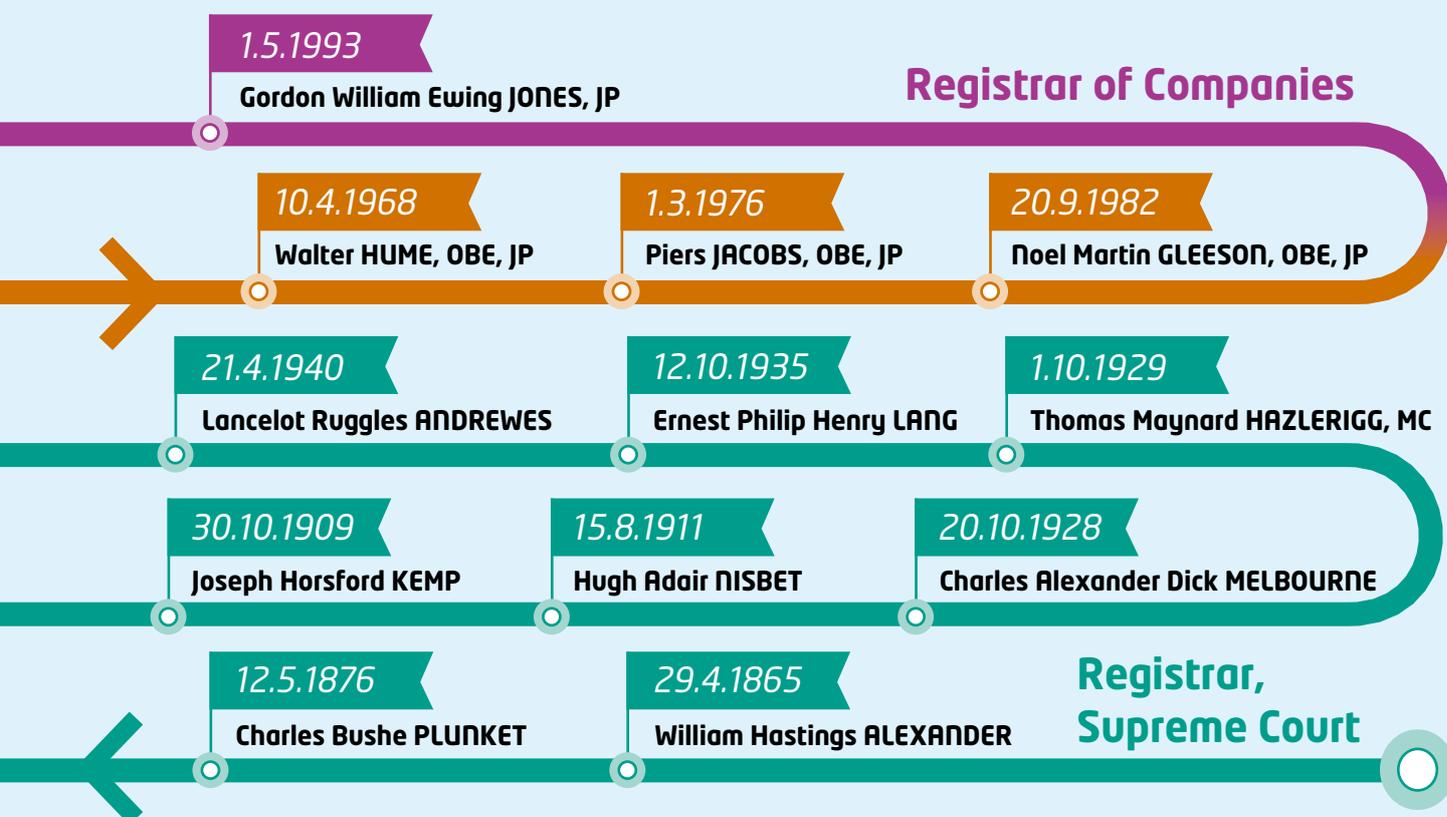


was appointed as the first Registrar General in 1949. The Companies Registry was then a department established under the Registrar General and was composed of two assistant registrar clerks. A re-organisation of the Registrar General's department in 1969 created three divisions: the Commercial and Personal Division included the Companies Registry. The Department was again restructured in 1983 into the Land Office, Commercial Division, Insurance Division, and the Official Receiver's Office.

Following enactment of the Registrar General (Establishment) (Transfer of Functions and Repeal) Ordinance, the Companies Registry and Land Registry were created as independent agencies on 1 May 1993 and the Registrar General's Department ceased

to exist from that date. On 1 August 1993, the Companies Registry commenced business as a Trading Fund, one of the first two government departments to do so. The Companies Registry has been responsive to the rapid changes occurring in the commercial world. It is financially self-sufficient and commercially viable, although the Secretary for Financial Services (now the Secretary for Financial Services and the Treasury) continues to have policy responsibility for all aspects of the services provided by the Registry. Among other matters, the Registry is in charge of the primary function of providing arrangements to allow the promoters of companies, limited partnerships, and trust companies to easily incorporate their enterprises.

Below is a list of the Registrars of Companies since 1865:

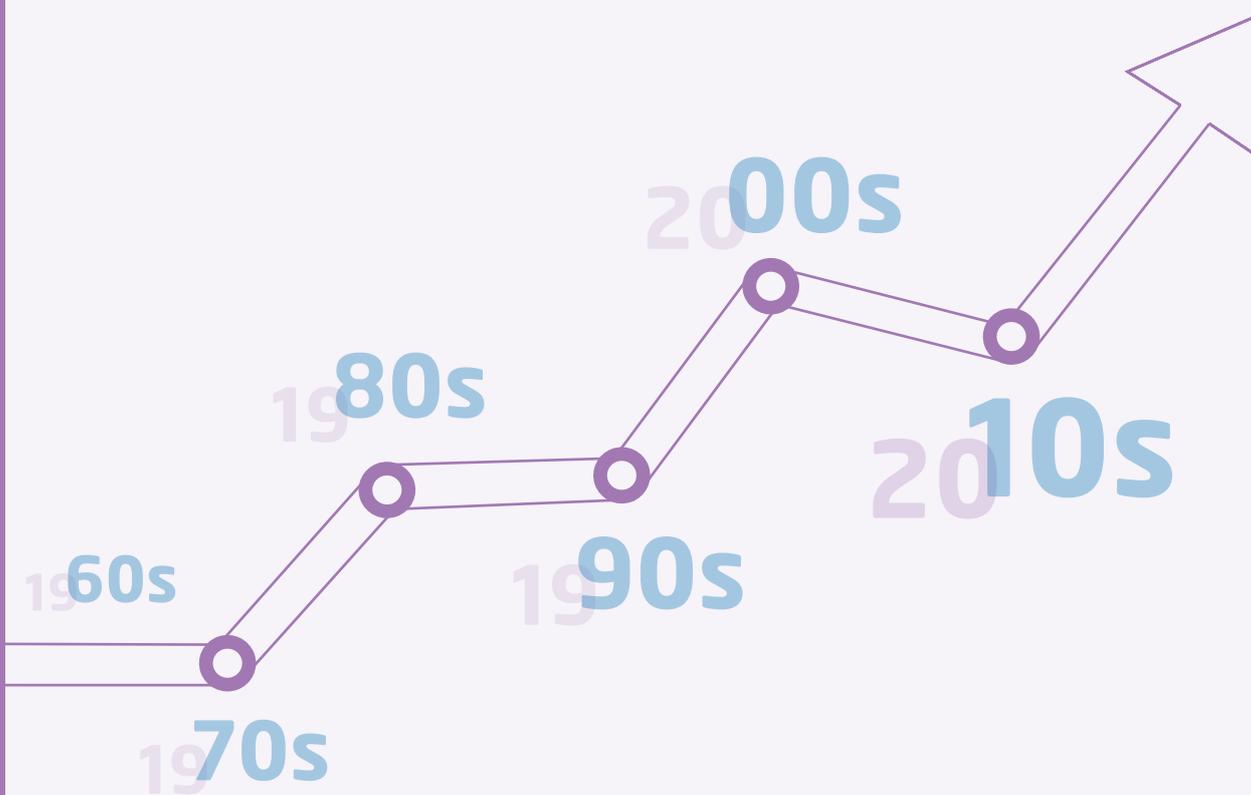


IV. Analysis of statistics of companies incorporated

1. Correlation between the number of companies incorporated and GDP

Statistics relating to the number of companies newly incorporated and Gross Domestic Product (GDP) in Hong Kong since 1961 were collected. As shown in **Charts I and II**, the number of companies in Hong Kong has been growing in line with Hong Kong's economic development. From the 1960s, the number of companies newly incorporated in Hong Kong entered into a high-growth period. It is quite obvious that the increase in the number of companies incorporated in Hong Kong is coupled with the economic take-off after the 1960s. The charts show that the number of companies newly incorporated in Hong Kong is almost synchronised with fluctuations in the GDP: from the 1960s to 1997, the number of

companies incorporated experienced continuous growth; however, after the 1997 Asian financial crisis, the economy in Hong Kong stumbled, during which the number of companies incorporated also declined slightly. With the gradual recovery of the economy, the number of companies incorporated in Hong Kong increased again. After entering the new century, the annual number of companies incorporated in Hong Kong has increased steadily. In particular, in the financial years since 2007-08, more than 100,000 companies have been incorporated in Hong Kong annually. Overall, it is observed that the number of companies incorporated in Hong Kong changes along with the economic development.



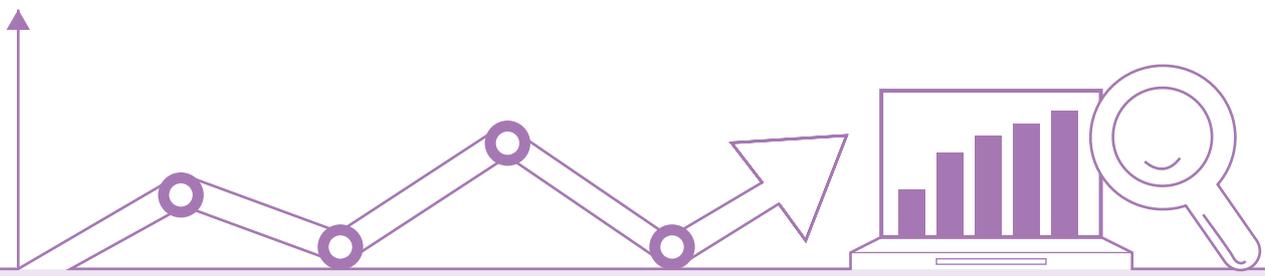
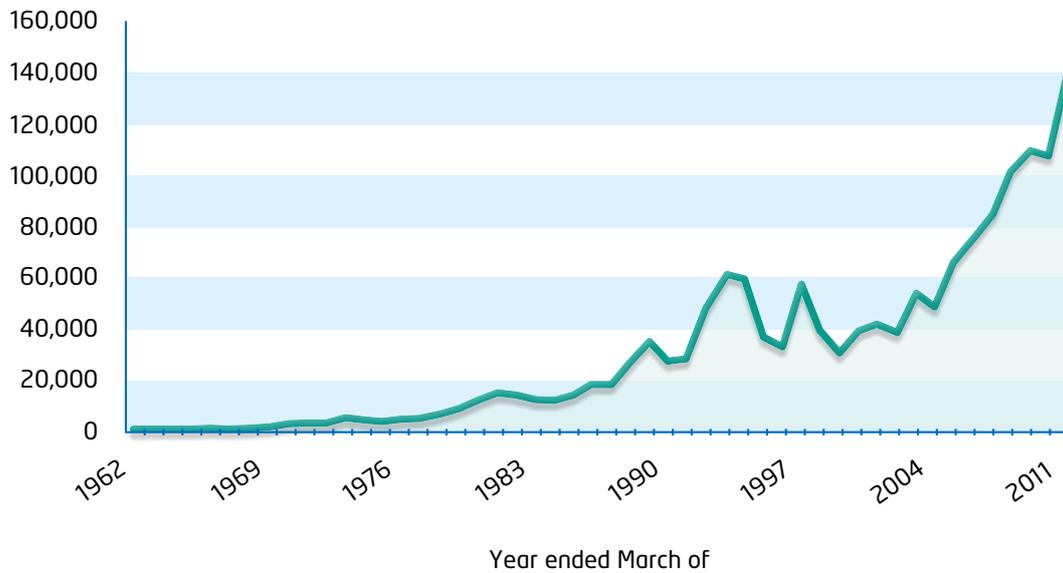


Chart I

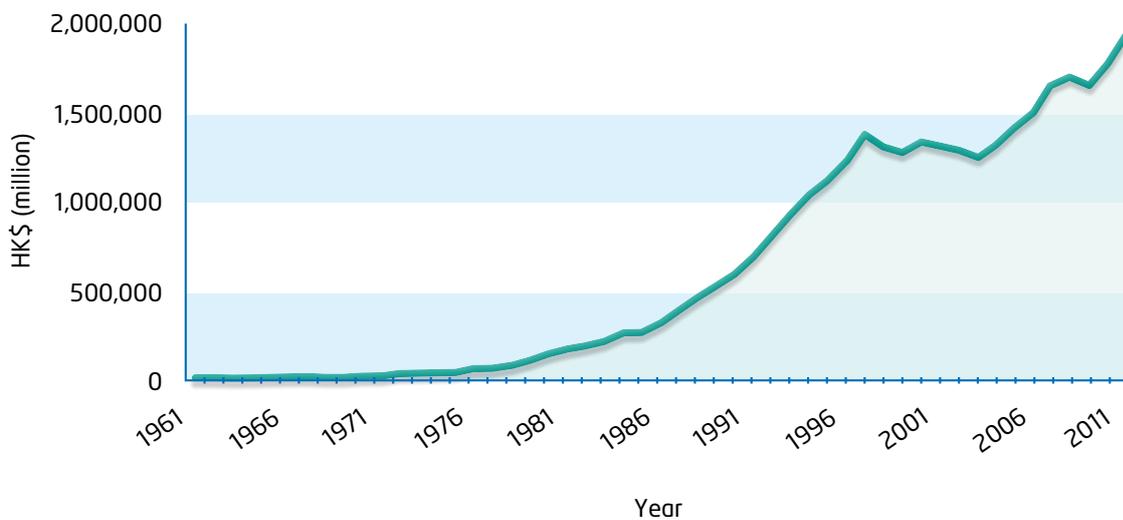
Number of Companies Newly Incorporated in Hong Kong



Note: Figures were obtained from Annual Reports of the Companies Registry.

Chart II

GDP of Hong Kong at Current Market Prices



Note: Figures were obtained from the website of the Census and Statistics Department.

IV. Analysis of statistics of companies incorporated

2. Statistics of company incorporations (1865-2012)

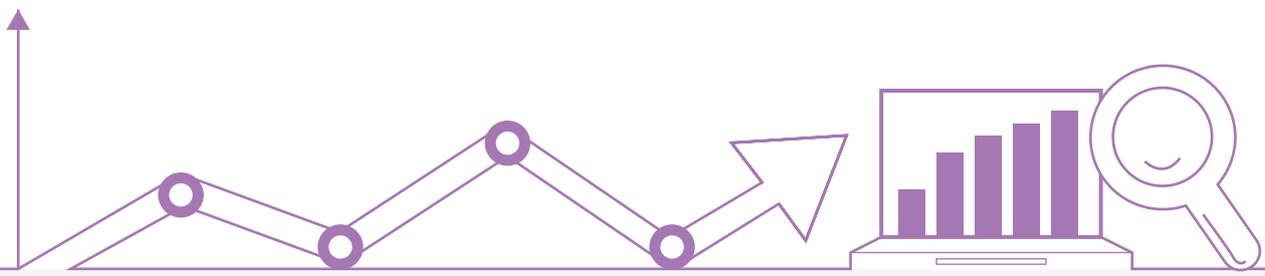
In addition to **Chart I**, a panoramic picture of the statistics of company incorporations is shown in **Annex I**: Number of companies incorporated in Hong Kong (1865-2012). These statistics were retrieved from the Companies Registry and the annual reports of the Registrar General's Department and the Companies Registry. We searched for records of companies incorporated from 1865, when the first Companies Ordinance was adopted in Hong Kong, to 1946, a year after World War II. From 1946 to 1992, the statistics are taken from the annual reports of the Registrar General's Department, and from 1993 to 2012, the annual reports of the Companies Registry. By combining the statistics for these three periods, we created the table in **Annex I**. In this table, the annual net increase of number of companies on the register, the total number of companies on the register, and the number of newly incorporated companies each year are listed. The full statistics in this table provide an opportunity to examine the trends in company incorporation in Hong Kong.

From 1865 to around the 1910s, company incorporation was not very popular in Hong Kong, with only a single-digit number increase each year. The financial year ending March 1911 was the first time that 11 new companies were incorporated in Hong Kong, opening up a new period of company incorporation in the history of Hong Kong. During the following three decades, the number of newly incorporated companies continued to grow in double digits. By the year ending March 1941, a total number

of more than 1,000 companies had been incorporated in Hong Kong. The Japanese Occupation from 1942 to 1945 led to the suspension of the Companies Registry, so no new companies were registered during that period.

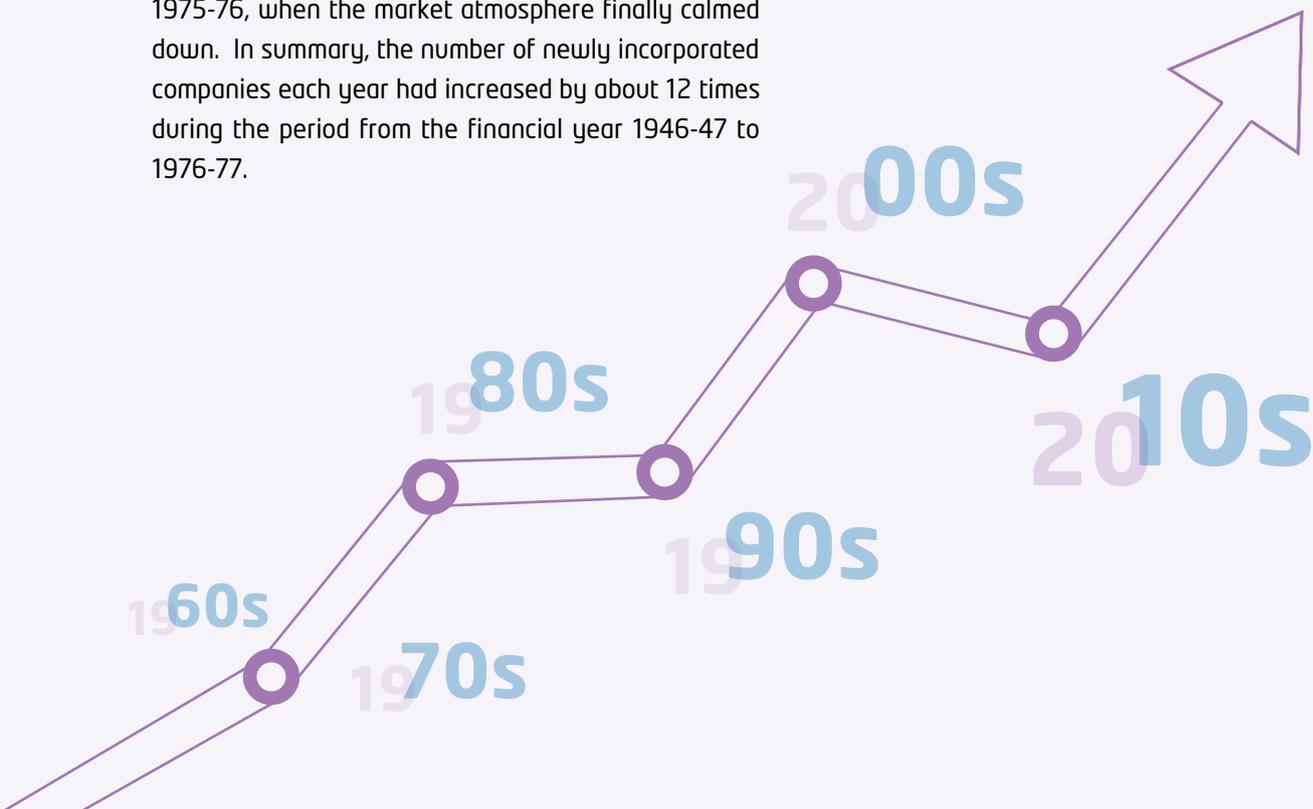
Chart III shows the trend in company incorporations after the Second World War. The number of new companies incorporated and the total nominal capital of new companies are shown on the chart by the two curves. In general, the number of new companies incorporated in Hong Kong and the nominal capital of new companies coincide with each other, except for a period from December 1973, when the drop in nominal capital is sharper than the decline of number of companies incorporated, owing to the stock market slump.

From financial year 1946 to 1960, the number of newly incorporated companies increased to three digits annually following the recovery of the economy. During the 1960s, the number grew from 694 to 2,812. The early 1960s saw keen interest in Hong Kong on the part of overseas companies and United States mutual funds, real estate funds and other investments. The year 1964-65 was a little eye-catching, in that the two lines experienced a small jump. However, this ascending trend was hit hard in 1967-68, possibly because of the Great Riots in that year. After this destructive event, the number of companies incorporated experienced



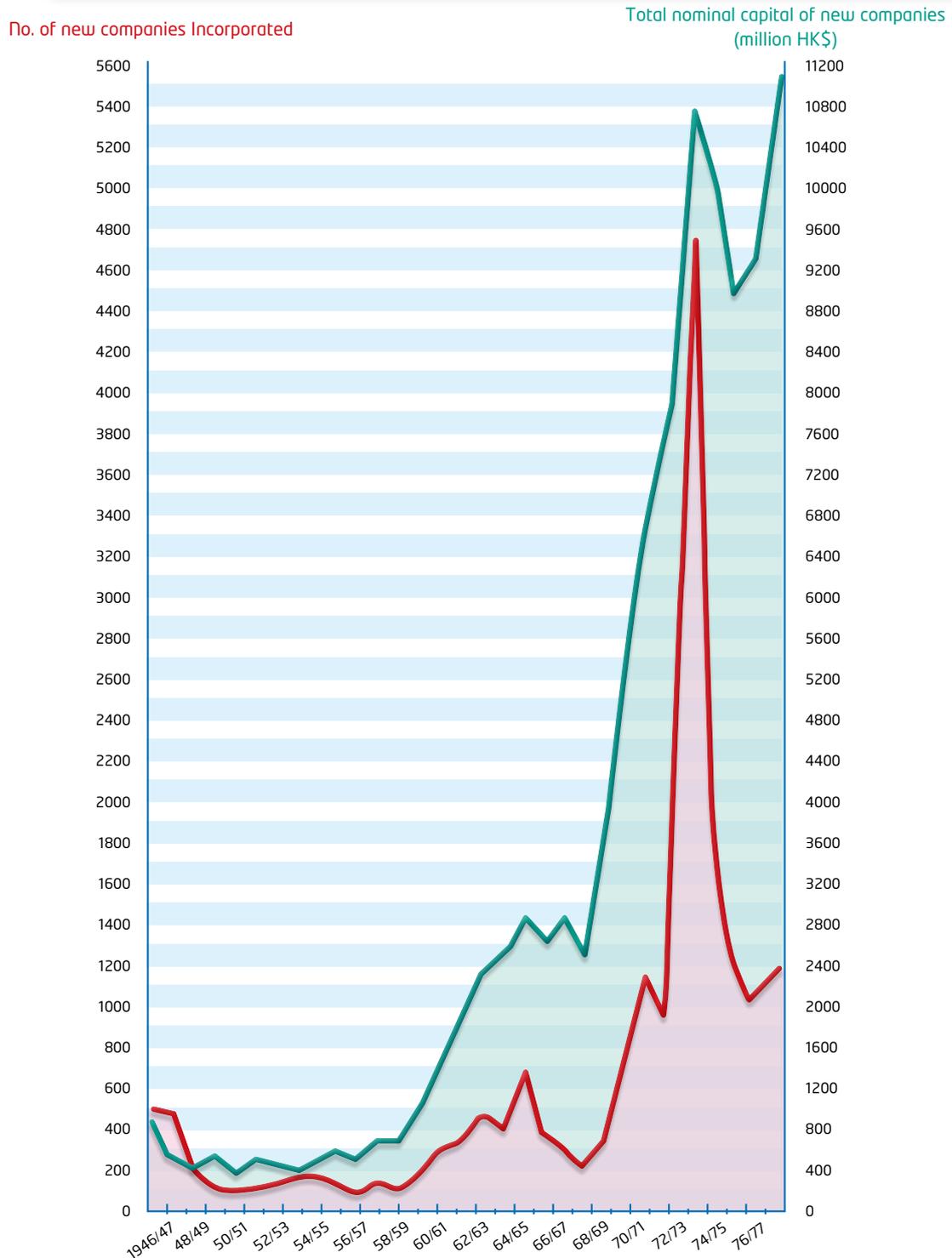
another resurgence. Interestingly, although by late 1969 the bubble had burst with the collapse of Investor Overseas Services (IOS) and other funds, well known at the time, the number of incorporations continued to grow. From 1967-68 to 1972-73, the number of newly incorporated companies increased more than four times, and the nominal capital of new companies increased remarkably, representing a huge rise after the post-war period. This gratifying trend, nevertheless, was foiled again in 1973 when a stock market slump brought about a five-year doldrums. On 23 December, 1973, the Hang Seng Index fell from 1775 to 150, representing one of the greatest market slumps in the history of Hong Kong. With the burst of the economic bubble, the number of companies incorporated decreased drastically, and the nominal capital of newly incorporated companies fell even more swiftly. This decline did not change until 1975-76, when the market atmosphere finally calmed down. In summary, the number of newly incorporated companies each year had increased by about 12 times during the period from the financial year 1946-47 to 1976-77.

The years from 1959 to 1975 are particularly noteworthy owing to the great fluctuations showed in the chart. Actually, the years around the beginning of the 1960s marked an important milestone in the whole history of company incorporation in Hong Kong. Compared with 1958-59, the number of newly incorporated companies almost doubled in financial year 1960-61. This provides clear evidence that Hong Kong businessmen were gradually becoming 'company-minded', and it was probably now true to say that few new enterprises of any magnitude were not launched as limited companies.

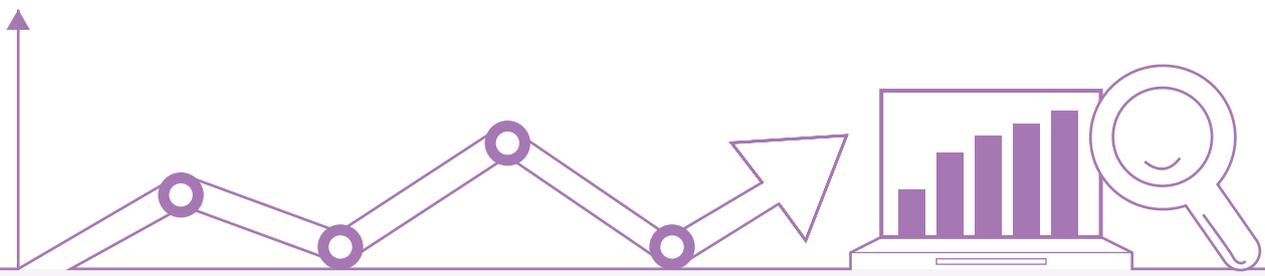


IV. Analysis of statistics of companies incorporated

Chart III **Company Incorporations: Post-war Trends**



Source: Registrar General's Department Annual Report 1976-77



The period after the 1970s is also worth mentioning, the statistics for which is shown in [Annex I](#). Moving into the 1980s, the number of companies incorporated in Hong Kong continued to rise steadily. The number of newly incorporated companies made a historical breakthrough in the year ending March 1980 when it reached the 10,000 mark. Moreover, from financial year 1979-80 to 1986-87, the number consistently totalled more than 10,000 per year. This coincided with the opening up of the Chinese economy in 1978. In the financial year ending March 1988, the number, for the first time, exceeded 27,000 per year. Although this number wobbled a little through the 80s, the general trend appeared to be increasing. The reason for the growth in numbers of companies being incorporated during this period was different from that for the previous period. With the adoption of the opening up and reform policy in China in 1978, Hong Kong became a platform for the introduction of foreign investments. At that time, various tax-favoured policies were being introduced in China in order to attract foreign investments. To make use of the favourable policies towards foreign investments, some mainland people transferred their capital to Hong Kong and incorporated their business there. When these Hong Kong incorporated companies did business in China, they were then regarded as foreign investors and enjoyed the favourable treatment that came along with this. It was obvious that company incorporation in Hong Kong brought about a great deal of benefit to mainland businessmen. As a result, the number of companies incorporated in Hong Kong increased greatly through the years.

The number of incorporations declined a little in the years 1982-83 and 1983-84 when there were

political uncertainties surrounding the negotiation between the governments of China and Britain concerning the future of Hong Kong. However, after the 1984 Joint Declaration between the two countries, with the uncertainties removed, the number went back up and continued to rise for the next five years. There was a dip in the year ending March 1990, possibly owing to the wave of mass emigration, the tougher regulation proposed by the Securities Review Committee in its Hay Davison Report (May 1988) and the fast-approaching handover in 1997. But the figure recovered in the following three years.

In the 1990s, the number of companies incorporated in Hong Kong annually fluctuated to quite a large extent. It increased greatly from 28,862 in 1990-91 to 48,163 in 1991-92 reaching a peak at 61,685 in 1992-93. It then declined slightly in 1993-94 to 59,784 and experienced a large drop in 1994-95 and 1995-96. This might be because of the measures introduced by the government to curb property prices in June 1994 and the slowdown in the economy of China, which had an impact on the property and related sectors. Also in 1996-97 and 1997-98, there were a large number of company dissolutions owing to striking off action taken by the Registrar against defunct companies under Section 290A (repealed in 1999). There was a brief return of confidence in 1996 on the eve of the handover, which saw the number of newly incorporated companies increase to 58,011 in 1996-97, but with the Asian Financial Crisis, the number declined from 1997-98. There was a short spell of recovery in 1999-2000 which saw the number of newly incorporated companies increasing slightly back up to 39,506, resulting in a net increase of 24,270. Despite the ups and downs during this

IV. Analysis of statistics of companies incorporated

period, the total number of companies on the register remained high: from 272,883 in 1990-91 to close to half a million in 1999-2000.

Lawton & Tyler's Final Report on Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong, comparing the number of incorporated companies and the population

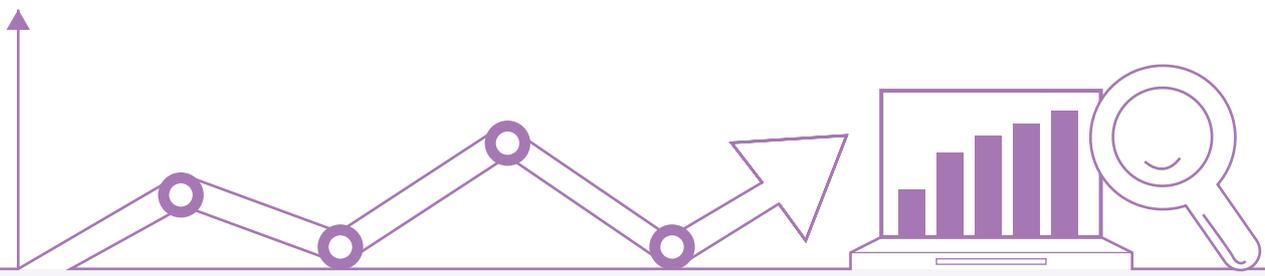
(based on figures available in 1994), indicated that in Hong Kong there was one company for every 12.7 people, whereas in Australia and New Zealand the comparable figures were 1:21.5 and in Great Britain 1:57.6. This represents clear evidence that Hong Kong had become a highly incorporated society by then, partly due to the convenient procedure for incorporation and partly due to the position of Hong Kong as a free port for conducting business.

Table I

Comparison of Population with Number of Incorporated Companies

Country	Approximate Population	Total Companies	Listed Companies	Number of Population per Company
Britain	56,400,000	979,000	2,000	57.6
Singapore	2,800,000	100,000	240	28.0
Hong Kong	5,600,000	440,000	500	12.7
Malaysia	18,000,000	275,000	427	65.5
New Zealand	3,350,000	163,000	1,030	20.6
Australia	17,712,700	825,000	1,145	21.5
Southern Africa	31,000,000	178,439	670	173.7

Source: Hong Kong Institute of Chartered Secretaries.
(The figures are those available to the compiler in the autumn of 1994.)



Readers will recall the huge growth of corporate insolvency and personal bankruptcy as a result of the Asian Financial Crisis and the collapse of the property market from which it took Hong Kong more than seven years to recover. Together with the introduction of the statutory procedures to deregister defunct solvent private companies in 1999, the picture from 2001-2004 showed a period of adjustment. While the number of newly incorporated companies in 2000-01 continued to rise to 41,498, the number of company dissolutions also continued to rise, and surpassed the number of newly incorporated companies in 2001-04, resulting in a net decrease of between 4,305 companies in 2001-02 and 3,327 in 2003-04, even though as many as 53,549 companies were newly incorporated in 2002-03. Matters took a dramatic turn in 2004-05, with the number of newly incorporated companies reaching 66,466 for the first time in the history of Hong Kong. Since then, the number of new incorporation has consistently continued to rise, to 75,817 in 2005-06, 84,545 in 2006-07, and reaching the 100,000 milestone at 101,512 in 2007-08 and 109,416 in 2008-09. This huge turnaround was due to the gradual recovery of the economy in Hong Kong and the closer relationship between Mainland China and Hong Kong (for example the Individual Visit Scheme that began on 28 July 2003 and the Mainland and Hong Kong Closer Economic

Partnership Agreement (CEPA), signed on 29 June 2003, which allows all goods of Hong Kong origin to be imported into the Mainland tariff-free, and Hong Kong service suppliers to enjoy preferential treatment in entering into the Mainland market in various service areas), as well as the introduction of one-member companies from February 2004, which made incorporation ever easier. Statistics from the annual reports of the Companies Registry show that from 2004 to 2007, around 70-80% of newly incorporated companies are one-member companies. This period also coincided with the recovery of the property market, and many investors bought shelf companies through which to hold property.

Whilst large number of companies continued to be dissolved between 2004-05 and 2008-09,²³ as Hong Kong continued to adjust to the structural changes in the economy, there was a healthy sizable net increase of companies incorporated during that period, with the total number of companies operating in Hong Kong reaching a record high of 968,665 in 2011-12 and the annual incorporation number being maintained at above 100,000 per year. Hong Kong has now become an ideal location for company incorporation in the Far East.

²³ According to Companies Registry Annual Report 2008-2009, from 2003-2009 (first 6 months), there have been 12,731 companies liquidated and more than 130,000 companies deregistered at the Companies Registry.

IV. Analysis of statistics of companies incorporated

Table II

Companies as Proportion of Businesses

Year Ended 31 March	Number of Businesses	Number of Companies	Companies as Proportion of Business
1961	68,045	4,342	6.38 %
1965	103,938	8,638	8.31 %
1970	138,268	15,848	11.46 %
1975	181,754	36,228	19.93 %
1980	248,282	70,863	28.54 %
1985	353,482	134,318	38.00 %
1990	465,221	247,620	53.23 %
1991	484,443	272,883	56.33 %
1992	552,065	316,096	57.26 %
1993	579,962	373,406	64.38 %
1994	630,357	429,070	68.07 %
1995	636,312	457,994	71.98 %
1996	629,111	474,451	75.42 %
1997	638,249	486,997	76.30 %
1998	633,071	469,176	74.11 %
1999	614,646	474,761	77.24 %
2000	615,958	499,031	81.02 %
2001	624,987	512,357	81.98 %
2002	625,996	508,052	81.16 %
2003	661,438	504,246	76.23 %
2004	672,275	500,919	74.51 %
2005	694,332	525,447	75.68 %
2006	735,169	555,745	75.59 %
2007	766,299	604,993	78.95 %
2008	820,767	667,144	81.28 %
2009	884,296	732,961	82.89 %
2010	945,134	791,347	83.73 %
2011	1,060,196	886,371	83.60 %
2012	1,134,032	968,665	85.42 %

Note:

In compiling this table, reference has been made to:

1. Lawton & Tyler, Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong - Final Report (HKICS: April 2001);
2. Annual Reports of the Inland Revenue Department; and
3. Annual Reports of the Companies Registry.

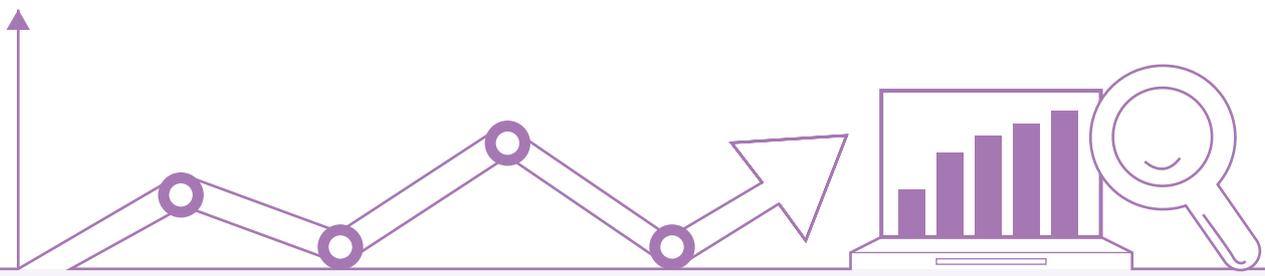


Table II shows the number of companies as a proportion of the number of businesses. It is obvious from the table that companies did not become the major form of business until 1990. This is quite late, in the sense that only after 125 years of the introduction of the first Companies Ordinance in Hong Kong did companies become the majority form in Hong Kong.

Table III shows, since 1947, events in Hong Kong, China and the world, some of which undoubtedly affected business confidence. New registrations decreased during several periods. At least for the period from 1980s onwards, any decrease can be interpreted as a reaction to external events, some international, some relating to China, and some local, affecting business confidence. The events column indicates events which might have had an impact on business confidence and discouraged company incorporation.

One point in the events column worth noting is in relation to listed companies. The number of listed companies is quite static in the 1970s and 1980s. The breakthrough came in 1991 and 1998. In addition, a very important but disturbing trend for companies to re-domicile (that is, re-incorporate in another jurisdiction, such as Bermuda, the Cayman Islands, etc.) started in 1988, partly as a result of the debate arising out of the Report of the Securities Review Committee (the Hay Davison Report). The Committee was set up shortly after the October 1987

Stock Market crash as a reaction to the suspension of trading of the Stock Exchange of Hong Kong. The report was published in the middle of 1988 and recommended a wholly new structure for the Hong Kong securities industry, from a state of under-regulation to a state of anticipated over-regulation, with a powerful supervisory body, which in the event was to be the Securities and Futures Commission. Many commentators considered that the report went too far in its enthusiasm for regulation. This fear of over-regulation, together with the approach of 1997, triggered the trend for re-domiciling Hong Kong incorporated companies to jurisdictions where regulation was less onerous. New or proposed legislation on disclosure of the beneficial ownership of shares and new insider dealing legislation also fed this fear.

In 1989, 37 listed companies re-domiciled. By the end of 1993, of the 450 so-called domestic listed companies, 255 were incorporated overseas, although their principal activities were in Hong Kong. By the end of 1998, there were 680 listed companies, of which only 200 were Hong Kong incorporated. The situation was not unique (many stock markets list domestic companies incorporated offshore), but the size of the problem was. Offshore incorporation was not just an issue for privacy and anonymity. Shelf company vendors reckoned that they sold many more offshore companies than Hong Kong companies. British Virgin Islands (BVI) international business companies (IBCs) were the most popular up until 2001.

IV. Analysis of statistics of companies incorporated

Table III

Companies Registration Figures		
Year Ended 31 March	Total Company Registration	New Registration
		Events
1947	1,529	427
1948	1,797	279
1949	2,008	229
1950	2,255	276
1951	2,278	186
1952	2,440	248
1953	2,521	229
1954	2,629	202
1955	2,805	250
1956	2,618	284
1957	2,791	260
1958	3,045	353
1959	3,322	351
1960	3,732	491
1961	4,342	694
1962	5,191	910
1963	6,209	1,149
1964	7,354	1,251
1965	8,638	1,420
1966	9,761	1,286
1967	10,970	1,428
1968	11,889	1,215
1969	13,372	1,868
1970	15,848	2,812
1971	18,993	3,461

Events

Hong Kong Stock Exchange Limited established.

Registrar General's Department established.

Riots in Kowloon and Tsuen Wan.

Property market collapsed.

Peony House West Block Scheme of arrangement.

Part XI companies 547 (54 new) (companies registered under Part XI of the Companies Ordinance (i.e. non-Hong Kong companies)). Bank failures.

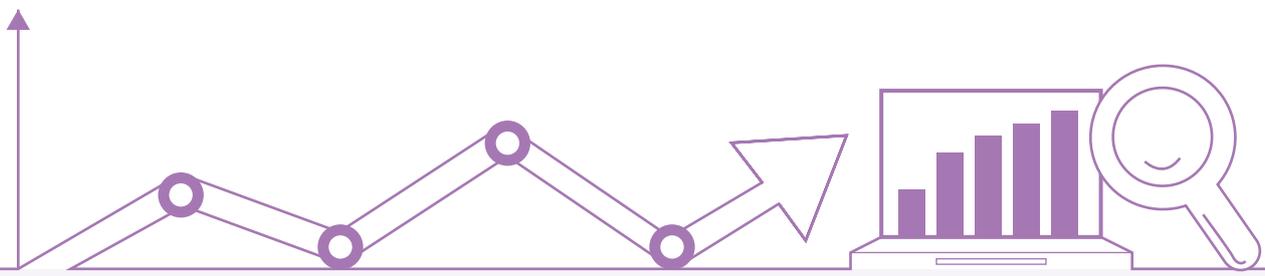
Star Ferry riots.

Disturbances.

60 listed companies.

Far East Exchange opened.

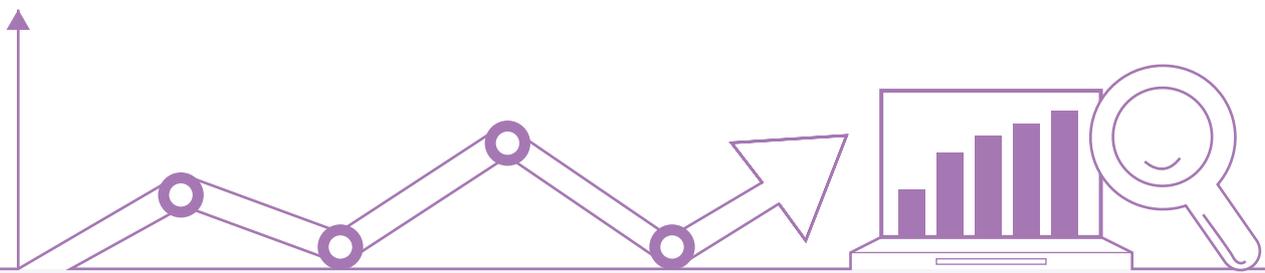
Kam Ngan Stock Exchange opened.



Year Ended 31 March	Total Company Registration	New Registration	Events
1972	22,514	3,953	Kowloon Stock Exchange opened.
1973	27,530	5,389	Part XI companies 843 (97 new). 260 listed companies.
1974	32,278	5,050	Securities Ordinance and Protection of Investors Ordinance enacted.
1975	36,228	4,439	First oil crisis.
1976	40,194	4,613	295 listed companies.
1977	45,240	5,543	
1978	51,232	6,862	
1979	59,667	9,261	
1980	70,863	11,907	262 listed companies.
1981	85,133	15,162	
1982	99,149	14,850	Sino-British talks on the future of Hong Kong.
1983	110,862	12,679	Part XI companies 1,740 (235 new).
1984	121,477	11,986	Second oil crisis. Companies (Amendment) Ordinance.
1985	134,318	14,080	
1986	150,551	17,990	Part XI companies 2,122 (257 new).
1987	166,807	18,722	276 listed companies.
1988	190,935	27,024	Trading at Hong Kong Stock Exchange suspended. Securities Review Committee established.
1989	223,054	34,548	Securities and Futures Commission established. Re-domiciling trend (37 listed companies re-incorporated offshore).
1990	247,620	27,371	
1991	272,883	28,862	Gulf War. 357 listed companies (year end).
1992	316,096	48,163	Securities (Disclosure of Interests) Ordinance and Securities (Insider Dealing) Ordinance came into force. 413 listed companies (year end).
1993	373,406	61,685	Part XI companies 3,284 (560 new).

IV. Analysis of statistics of companies incorporated

Year Ended 31 March	Total Company Registration	New Registration	Events
1994	429,070	59,784	Companies Registry as a trading fund department established on 1 August 1993. Property Market depressed. Offshore incorporations (e.g. British Virgin Islands). Part XI companies 3,648 (517 new).
1995	457,994	36,775	500,000 th certificate of incorporation issued to the Hong Kong Blind Union on 8 December 1994.
1996	474,451	33,570	583 listed companies at year end (200 Hong Kong Incorporated). Part XI companies 4,429 (583 new).
1997	486,997	58,011	Part XI companies 4,683 (new 655). 658 listed companies (638 domestic, of which 397 incorporated overseas and 39 China enterprises, and 20 foreign). Asian Financial Crisis. Property Market collapsed.
1998	469,176	39,016	Part XI companies 5,159 (new 711). 680 listed companies at year end (only 200 Hong Kong incorporated). Downturn in economy in Hong Kong.
1999	474,761	30,705	Compulsory winding up orders increased by 66 per cent to 763 (459 for 1998).
2000	499,031	39,506	
2001	512,357	41,498	
2002	508,052	38,692	September 11 attacks in the United States of America.
2003	504,246	53,549	Outbreak of severe acute respiratory syndrome (SARS).
2004	500,919	48,463	Closer Economic Partnership Arrangement (CEPA). Individual Visit Scheme. Property market started to recover. The Securities and Futures Ordinance came into operation on 1 April 2003, marking the beginning of an important chapter of Hong Kong's securities and futures regulation.



Year Ended 31 March	Total Company Registration	New Registration	Events
2005	525,447	66,466	CEPA Supplement.
2006	555,745	75,817	1,000,000 th certificate of incorporation issued to Asian Society for Traumatic Stress Studies Limited on 7 October 2005. CEPA Supplement.
2007	604,993	84,545	CEPA Supplement.
2008	667,144	101,512	CEPA Supplement. Global Financial Crisis.
2009	732,961	109,416	CEPA Supplement. Global stimulus packages.
2010	791,347	107,416	CEPA Supplement.
2011	886,371	143,797	1,500,000 th certificate of incorporation issued to Youth Elderly Care Movement Limited on 1 September 2010. CEPA Supplement. Quantitative Easing II of the United States of America.
2012	968,665	139,366	CEPA Supplement.

Note:

In compiling this table, reference has been made to:

1. Lawton & Tyler, Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong - Final Report (HKICS: April 2001); and
2. Statistics available in the Companies Registry.

IV. Analysis of statistics of companies incorporated

3. The first ten local companies which appear on the records of the Companies Registry

The nature of the first few companies established in Hong Kong provides hints to the future economic development of Hong Kong. An investigation into the first ten companies reveals that five of them were insurance companies and two were related to the shipping industry. Surprisingly, most of these companies had a very long history and were not dissolved until very recently. In fact, some of them are still active (such as The Hong Kong and Whampoa Dock Company Limited) or even listed on the stock exchange (such as The Hongkong and Shanghai Hotels, Limited). Such examples clearly show the importance of the financial sector and the shipping industry in the economic development of Hong Kong.

1

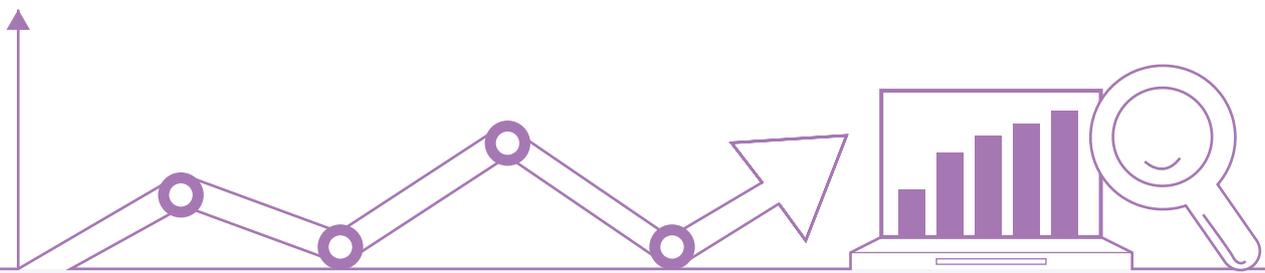
The first company was The British Traders' Insurance Company Limited, incorporated on 12 October, 1865. Interestingly, this was also the first insurance company established in Hong Kong, revealing the importance of the insurance industry in Hong Kong's economy. It was also a company that had a very long history in Hong Kong. From 1865 to 2003, the company thrived and was sustained through several rounds of economic downturn. This company was voluntarily wound up by its members in 2003.

2

The second company, The Hong Kong Canton & Macao Steamboat Co. Ltd., was in the shipping industry. This company also had a relatively long history, although not as long as the first one: it was dissolved in 1958.

3

The third company was The Hongkong and Shanghai Hotels, Limited which was incorporated in 1866 in the name of The Hongkong Hotel Company Limited. As a matter of fact, this is also the company with the longest history in Hong Kong today. It is still active and listed on the stock exchange (stock code: 00045). With its business spread to Asia, the United States of America and Europe, the



development of the company epitomises the growth of the food and service industry in Hong Kong.

4

The fourth company, The Hong Kong and Whampoa Dock Company Limited, was also in the shipping industry. It was founded in 1863 and registered as a private company in 1866 by Douglas Lapraik and Thomas Sutherland. It was once among the largest dockyards in Asia, but was heavily bombarded by Japanese aircraft on the eve of the Japanese occupation of Hong Kong. It was merged with Hutchison International Limited in 1977 to form Hutchison Whampoa Limited, and listed in January 1978 (stock code: 00013).

5

The fifth company was The Hong Kong Fire Insurance Company Limited. It was established in 1868 but dissolved in 2004.

&

6

The sixth was The China Fire Insurance Company Limited. It was incorporated in 1870 but dissolved in 1956. With similar members sitting on their boards, these two companies were among the first to provide fire insurance services to the public.

7

The seventh company was the China Sugar Refining Company, Limited. It was incorporated in 1878 but dissolved in 1933.

8

The eighth company was The Hongkong Ice Company Limited. It was a private company incorporated in 1880 and dissolved in 1919.

9

The ninth company was The Man On Insurance Company Ltd., incorporated in 1881 and dissolved in 1955.

10

The tenth company was HSBC Insurance (International) Limited. It was incorporated in 1881 and dissolved in 2000. In 1881, when this company was incorporated, it was registered as The Canton Insurance Office Limited. In 1953 it was renamed the Lombard Insurance Company Limited and in 1996 renamed again as HSBC Insurance (International) Limited.

IV. Analysis of statistics of companies incorporated

4. Notable examples of companies with a long history still operating in Hong Kong

32 companies that were incorporated before 1 January 1913 (centenary companies) are still in operation. In addition to those mentioned below, there are other notable cases such as The Hong Kong Club which was registered in 1885 as a guarantee company, AXA General Insurance Hong Kong Limited, registered in 1889 as a public company, The "Star" Ferry Company

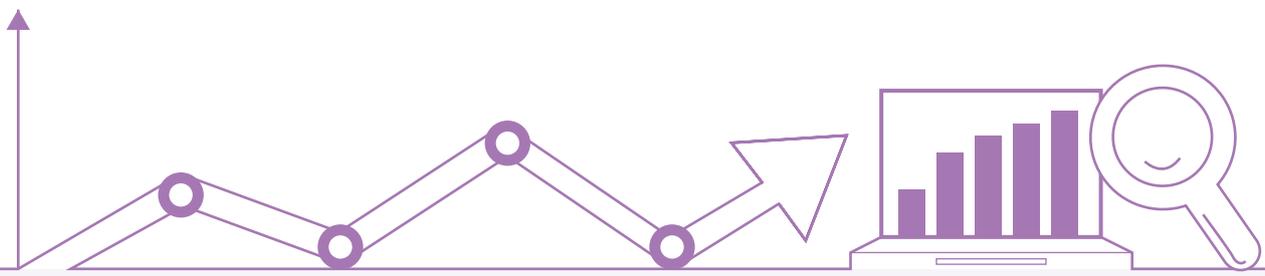
Limited, registered in 1898 as a private company, The Law Society of Hong Kong, registered in 1907 as a guarantee company, and The Hong Kong Golf Club, registered in 1911 as a guarantee company. We describe here some of the more notable examples.

Watsons

A.S. Watson has a history dating back to 1828 in Guangzhou, China as a dispensary, and its operations extended to Hong Kong in 1841 with the establishment of the Hong Kong Dispensary. In 1886, with the expansion of its business from pharmacy to soft drinks in Hong Kong, A.S. Watson & Company, Limited was incorporated as a private company in Hong Kong. This incorporation proved to be a successful experiment. By 1895, A.S. Watson was operating 35 stores and produced about 300 dispensary, toiletry and perfumery lines. Thereafter, A.S. Watson & Company Limited became a subsidiary of the Hutchison Group in 1963, and a wholly owned subsidiary of Hutchison Whampoa Limited in 1981. A.S. Watson has now become an international retail and manufacturing corporate group whose business operates worldwide. The Group operates retail stores running the gamut from health and beauty, luxury perfumeries and cosmetics to food, electronics, fine wine and airport retail arms. It is also an established player in the beverage industry, and remains a subsidiary of Hutchinson Whampoa (source: A. S. Watson website: <http://www.aswatson.com/>).

Hong Kong and Whampoa Dock

The company was founded by Douglas Lapraik and Thomas Sutherland in 1863 to acquire docks and repair yards at Whampoa, on the Pearl River in China, and the then newly constructed dry docks at Aberdeen on Hong Kong Island. The company was incorporated as a private company in Hong Kong in 1866 in the name of The Hong Kong and Whampoa Dock Company Limited. For over a century, the company ran one of the largest dry-docking, ship repair and shipbuilding operations in the Far East, survived two world wars and, at its peak, handled an average of 25 vessels per week. By 1960 it was servicing the ships of no fewer than 23 nationalities and 9 navies. The company first ventured into property development in 1969. In 1970, the company acquired a majority shareholding in China Provident Company Limited, long established as a leading wharf and warehouse operator on Hong Kong Island. In 1977, the company merged with Hutchison International Limited to form Hutchison Whampoa Limited and the company's business became predominantly property-orientated, with an expanded management structure that included marketing and estate management divisions, while the container terminal business was transferred to Hong Kong International Terminals Limited (source: Hutchison Whampoa Property website: <http://www.hwpg.com/>).



Jardine Matheson Holdings

The history of Jardine Matheson Holdings can be traced back to a partnership established by Dr. William Jardine and James Matheson in Guangzhou in 1818. Two years before the East India Company lost its monopoly over British trade with China, William Jardine and James Matheson entered into formal partnership as a private firm of Jardine, Matheson & Co. in 1832. In 1842, the firm built their first substantial house and established their head office in Hong Kong, heralding an era of increased prosperity and expansion. In 1906, the company was incorporated in Hong Kong as a local company.

Throughout the history of Hong Kong, Jardines have played a large part in all of the affairs of the colony. In June 1850, David Jardine was one of the first two unofficial members of the Legislative Council. Hong Kong was the head office of the Company, and, on many occasions, the managing directors were members of both the legislative and executive councils of the government. The firm was closely connected with every phase of Hong Kong's development. Many of the essential services such

as shipping, wharves and warehouses, railways, property, etc. that are presently in operation owe their inception to the firm. The Indo-China Steam Navigation Company Limited had its head office in Hong Kong. The chairmanship of the boards of directors of The Hongkong Land Investment and Agency Company, Limited, Hongkong & Kowloon Wharf & Godown Co Ltd, The "Star" Ferry Company Limited, and Hongkong Tramways Limited, were always held by the managing director of Jardines in Hong Kong.

The Jardine Matheson Group is still very much active in Hong Kong, being one of the largest conglomerates in Hong Kong. Several landmarks in present day Hong Kong are named after the firm and the founders, Jardine and Matheson, for example Jardine's Bazaar, Jardine's Crescent, Jardine's Bridge, Jardine's Lookout, Yee Wo (Jardine's Chinese name) Street, Matheson Street, Jardine House and the Noon-day Gun, evidencing the great influence of the group in the history of Hong Kong (source: http://en.wikipedia.org/wiki/Jardine_Matheson_Holdings).

IV. Analysis of statistics of companies incorporated

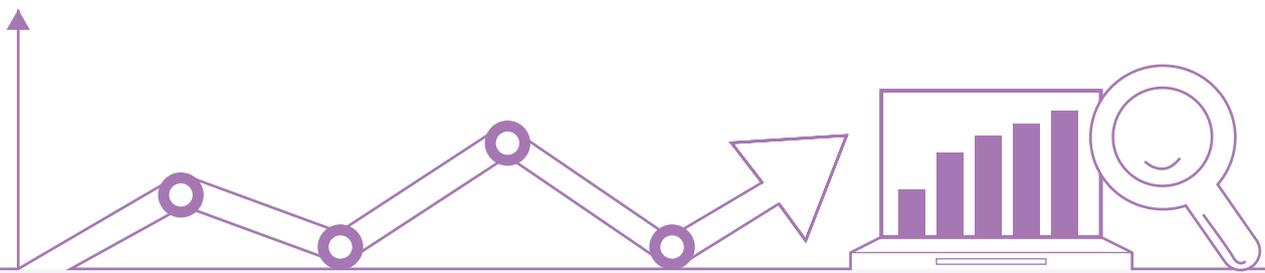
5.

Companies starting as small businesses but becoming large companies with many subsidiaries incorporated in Hong Kong

Cheung Kong Group

The development of the Cheung Kong Group epitomises the development of the Hong Kong economy. In 1950, Li Ka Shing established the Cheung Kong Plastic Factory. In 1964, this factory was restructured and incorporated into Cheung Kong Industrial Company Limited, whose major business was the manufacturing of plastic flowers. With his growing financial strength gained from this business, Li Ka Shing decided to move his investment into the property industry in Hong Kong. During the 1960s, the number of properties registered under the Cheung Kong Industrial Company Limited kept increasing. In 1971, Li Ka Shing established the Cheung Kong Real Estate Company Limited, which was renamed Cheung Kong (Holdings) Limited in 1972. The incorporation of this company symbolised the creation of a real estate empire by Li. In the same year, Cheung Kong (Holdings) Limited was listed on the stock exchange and boosted by investors immediately. Through its investment in the property industry and fund-raising

in the stock markets, Cheung Kong (Holdings) Limited expanded rapidly and caught the attention of local and overseas capitalists. By the end of the 1970s, the eminence of Cheung Kong (Holdings) Limited in the property industry in Hong Kong had been confirmed. Later, Cheung Kong (Holdings) Limited extended its reach into other industries and purchased Hutchison Whampoa Limited and Hong Kong Electric Holdings Limited. In the years thereafter, Li continued to restructure, diversify and internationalise his business. Cheung Kong Group, flagshipped by Cheung Kong (Holdings) Limited, is now one of Hong Kong's leading multinational conglomerates. Members of the Cheung Kong Group include Cheung Kong (Holdings) Limited, Hutchison Whampoa Limited, Power Assets Holdings Limited, Cheung Kong Infrastructure Holdings Limited, CK Life Sciences Int'l., (Holdings) Inc., Hutchison Telecommunications Hong Kong Holdings Limited, Hutchison Harbour Ring Limited and TOM Group Limited. (source: Feng Bangyan, Xianggang Huazi Caituan (1841-1997) [Chinese-established Consortium in Hong Kong (1841-1997)], Hong Kong: Joint Publishing Press, 1997).



Hongkong and Shanghai Banking Corporation

The achievement of the Hongkong and Shanghai Banking Corporation (HSBC) represents the development of the banking industry in Hong Kong. Founded in March 1865 by Thomas Sutherland, HSBC was the first bank headquartered in Hong Kong to finance the growing trade between China and Europe. At its birth, the bank was operated on “sound Scottish banking principles”. Branches in Shanghai and Japan were established subsequently. Later, under the management of Thomas Jackson as the chief manager, the bank expanded its business into other parts of Asia such as Thailand, the Philippines and Singapore in the late 19th century. By the 1870s, HSBC became the largest bank in Hong Kong. The Japanese invasion forced the bank to move its headquarter to London. After the invasion, the headquarters of the bank moved back to Hong Kong in 1946. The 1950s to 1980s witnessed the bank’s international expansion and business diversification. In 1965, the bank purchased a controlling block of Hang Seng Bank of Hong Kong and in 1972 formed a merchant banking arm, Wardley Limited. With the growing diversification of the business, the next milestone in the development of HSBC was the

creation of the HSBC Group. In 1991, HSBC Holdings plc was established to act as the parent company to the group, with its shares quoted on both the London and Hong Kong stock exchanges. Later, the group acquired Midland Bank in the United Kingdom in July 1992, making it one of the largest banking and financial services organisations in the world. As part of the takeover conditions for the purchase of Midland Bank, HSBC Holdings plc was required to move its world headquarters from Hong Kong to London, which it did in 1993. The 1990s have seen further expansion and consolidation of the various businesses of the HSBC Group, such as the establishment of a joint venture in the United States of America, the formation of a new subsidiary in Brazil, the acquisition of Roberts Group in Argentina, and the share purchase in Mexico’s Group Financiero Serfin. In 1999, HSBC Holdings plc acquired a controlling interest in Seoul Bank, one of the largest commercial banks in South Korea. Now, the HSBC Group comprises a unique range of banks and financial service providers around the globe. In February 2008, HSBC was named as the world’s most valuable banking brand by The Banker Magazine (source: Feng Bangyan, Xianggang Yingzi Caituan (1841-1996) [British-established Consortium in Hong Kong (1841-1996)], Hong Kong: Joint Publishing Press, 1996).

IV. Analysis of statistics of companies incorporated

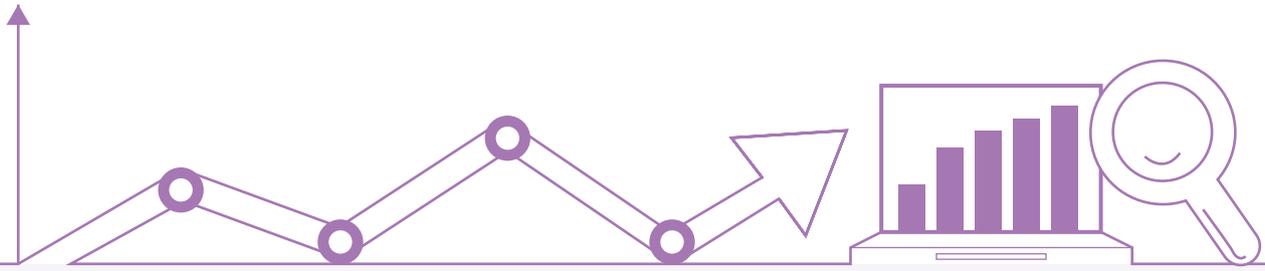
Hutchison Whampoa Limited

The development of Hutchison Whampoa Limited tells another story of the evolution of Hong Kong companies. Hutchison Whampoa was originally two companies founded in the 19th century, Hong Kong and Whampoa Dock, as mentioned above, and Hutchison International. The latter was formerly named Robert Walker & Co. in 1860 and taken over by John D. Hutchison and renamed John D. Hutchison & Co. in 1873. It was not until 1965, when Colonel Sir Douglas Clague became the chair of the board, that the company was renamed Hutchison International Limited and became a dazzling star in the local markets. In the few years following the renaming of the company, Hutchison International Limited, under the leadership of Sir Douglas, took over a number of businesses in Hong Kong, such as Watsons. In particular, Hutchison International Limited gained a controlling interest in the Hong Kong and Whampoa Dock in 1969 and laid down the foundation for the development of Hutchison Whampoa Limited thereafter.

Although the company had a portfolio of valuable real estate interests in docks and retail ventures, during the stock market slump in 1972-1973, Hutchison

International Limited was hit hard. Hutchison International Limited and Hong Kong and Whampoa Dock merged into Hutchison Whampoa Limited in 1977, forming one of the biggest corporate groups in Hong Kong. By 1979, Hutchison Whampoa Limited had recovered its vital force and got back on track. On 25 September 1979, Li Ka Shing and HSBC made an agreement regarding the takeover of Hutchison Whampoa by Cheung Kong (Holdings) Limited. Thereafter, the company became one of the members of the Cheung Kong Group.

Hutchison Whampoa, as a leading international corporation, has a diverse array of businesses, ranging from ports, property and hotels, retail, energy, infrastructure, investments, to telecommunications. It is now among the largest companies listed on the main board of the Hong Kong Stock Exchange. Flagship companies include Hutchison Port Holdings, Hutchison Whampoa Properties, A.S. Watson, Cheung Kong Infrastructure and Hutchison Telecom (sources: Feng Bangyan, Xianggang Yingzi Caituan (1841-1996) [British-established Consortium in Hong Kong (1841-1996)], Hong Kong: Joint Publishing Press, 1996; and Hutchison Whampoa Limited, <http://www.hutchison-whampoa.com/>)



Swire Group

The development of the Swire Group is a representation of the gradual expansion of foreign investment in Hong Kong. The Swire Group was started by John Swire as a modest Liverpool import-export company in the early years of the 19th century. In the 1860s, John Swire initiated trading business with China. In 1866, a partnership with R.S. Butterfield, Butterfield & Swire, was established in Shanghai with its core business in trading. On 1 May 1870, a Hong Kong branch of Butterfield & Swire was opened. From its establishment, the Hong Kong branch was positioned as being as important as the Shanghai office. In 1900, Butterfield & Swire founded the Taikoo Dockyard Company in Hong Kong, which was registered in Hong Kong in 1940 as The Taikoo Dockyard and Engineering Company of Hong Kong Limited and listed on the Hong Kong Stock Exchange in 1959 (stock code: 0019). So, with the passage of time, the Hong Kong branch gradually became the regional headquarters of the group in the Far East for the development of its shipping business and, after around 70-80 years of development, by the time of World War II, Swire Group had developed into a diversified enterprise group.

After a series of acquisitions, the company was restructured and renamed Taikoo Swire Limited in 1973 and Swire Pacific Limited in 1974. At the same time, Butterfield and Swire (Hong Kong) Limited was renamed John Swire & Sons (H.K.) Limited, which remained as the privately owned parent company of Swire Pacific. By then, Hong Kong Swire Group had become a diversified enterprise group with John Swire & Sons (H.K.) Limited as the controlling company and Swire Pacific Limited as the listed flagship. In addition, the Hong Kong Swire Group had become an important backbone of the British Swire Consortium. In 2009, Swire Pacific ranked second in Wall Street Journal's list of Most Admired Companies in Hong Kong, while its subsidiary, Cathay Pacific, ranked first, meaning that the group's business dominated the top two spots of the list (sources: Feng Bangyan, Xianggang Yingzi Caituan (1841-1996) [British-established Consortium in Hong Kong (1841-1996)], Hong Kong: Joint Publishing Press, 1996; http://en.wikipedia.org/wiki/Swire_Group)

IV. Analysis of statistics of companies incorporated

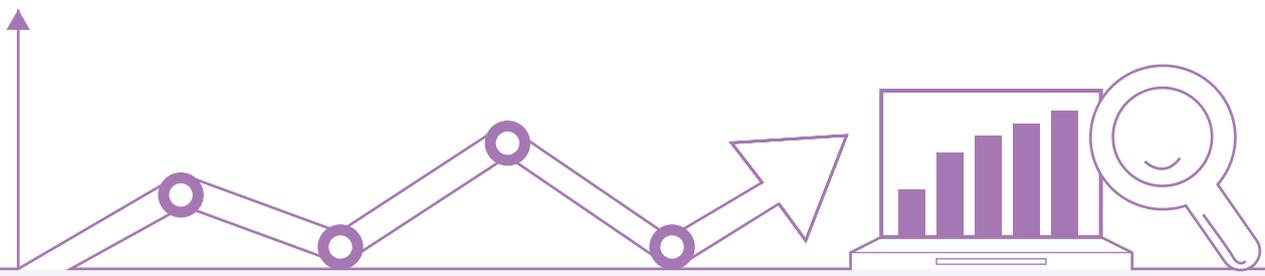
6. Corporate migration and corporate groups

As a free port with more than 170 years of history, it is not surprising to find that the business cycle in Hong Kong has included a large number of corporate migrations in and out of the area. In general, corporate migration has been influenced by the political atmosphere surrounding Hong Kong, and the economic interaction between Hong Kong and Mainland China. At different stages of its development, different types of company with different backgrounds had migrated in and out of Hong Kong. The outbreak of the Opium War in 1840 led to the inception of modern Hong Kong and the birth of the British consortium. During the early colonial period, British companies landing in Hong Kong gained the first pot of gold.

With the transformation of Hong Kong into a re-export harbour, British companies extended their investment into many major sectors of the economy in Hong Kong, such as shipping, storage, banking, property, hotel and other public utilities, and gradually developed into corporate groups. With its business across all areas of Hong Kong, the British Consortium earned its position as one of the major economic supporting powers in Hong Kong. In particular, after the establishment of the People's Republic of China, the British Consortium lost its substantive investment in the Mainland and had to migrate its business to Hong Kong. Consequently, the number of companies migrating to Hong Kong increased. However, the Cultural Revolution in China affected their confidence

in the future of Hong Kong. Some of them took a pessimistic attitude towards their investment in Hong Kong or even migrated overseas to seek other investment opportunities. This trend was exacerbated from 1988, the result of a combination of a number of factors including the debate arising out of the tougher regulations proposed by the Securities Review Committee in its Hay Davison Report published in May 1988 and the fast-approaching 1997 handover. In the transitional period prior to the handover, British consortia were quick to find strategic solutions for their future developments. Some of them sped up the deployment of internationalisation strategies by relocating their listed companies to overseas or even fully withdrawing from Hong Kong. As a result, these companies became overseas multinational companies in Hong Kong, transferring their profits and assets to overseas to reduce their investment risks in Hong Kong.

The beginning of the 20th century also saw the migration to Hong Kong of companies controlled by overseas Chinese businessmen. At that time, with decades of experience operating in difficult business environments overseas, the overseas Chinese in North America, Australia and South East Asia, with their first pots of gold earned overseas, decided to migrate to Hong Kong for further development. Their investments, in addition to the shipping and property industries, expanded into retail stores, banks, and the pharmaceutical manufacturing and sales sectors.



A number of corporate groups were therefore established. The most well-known examples were the Sincere and Wing On department stores, which migrated from Australia. In the 1930s, Sincere, Wing On, etc. had developed into diversified enterprise groups. They were no doubt among the first modern Chinese enterprise groups in Hong Kong.

Later, companies from Mainland China also migrated to Hong Kong. This wave of corporate migration continued through the first half of the 20th century. Wealthy people with a considerable scale of business continued to establish their businesses in Hong Kong. Some of them followed the development model of starting a business in the trade and shipping industry, then expanding into the property sector. The most famous examples include the Fung Ping Shan family group, Hoi Oi Chow family group, Zoeng Zuk San family group and Fung Hon Chu family group. Others sprung up in the financial industry, for example, Hang Seng Bank, established by Lam Bing Yim, Ho Sin Hang, Leung Chik Wai and Sheng Chun Lin, which was later developed into the largest Chinese-established banking group.

The Chinese-established corporate groups were often tied in with family relationships. One such corporate group was the Chow brothers. Chow Wing Tai, the father of three sons, Chow Siu Kei, Chow Jam Kiu and Chow Coek Fan, was one of the earliest business

immigrants from Mainland China. At the end of the 19th century, the three brothers established their own companies, incorporating insurance, property, shipping and banking companies, amongst others. At the turn of the century, the business managed by the Chows had no doubt reached the size of the modern family consortium. The Chows were one of the first few family controlled corporate groups in Hong Kong.

In the middle of the 20th century, Chinese-established companies migrating from overseas and Mainland China had played a key role in the development of Hong Kong. Particularly, during the Korean War period, entrepreneurs migrating from Shanghai brought a great deal of capital, equipment, technologies, and management talents to Hong Kong, and the number of Chinese-established companies experienced a wave of proliferation. For example, Li & Fung, a company established by Fung Hon Chu in 1906 with its major business in exporting Chinese products, moved its headquarters to Hong Kong in 1949, a move that turned out to be a success. In April 1973, the company was listed on the stock exchange (stock code: 0494) with 113 times oversubscription. In addition, some companies established in South-East Asia migrated to Hong Kong during the 1960s to 1970s, seeking opportunities to further their businesses during Hong Kong's golden development period. Such companies have also grown into corporate groups with the spread of their businesses and expansion.

IV. Analysis of statistics of companies incorporated

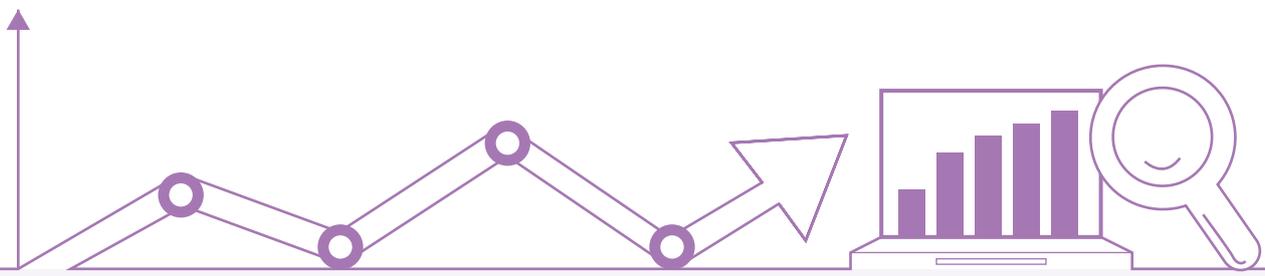
7. Representative examples of companies in the major sectors of the economy in Hong Kong

Trading

Li & Fung is one of the trading companies that migrated to Hong Kong in the first half of the 20th century because of warfare in the Mainland. Founded in Guangzhou in 1906, Li & Fung was the first Chinese-established trading firm to undertake foreign trade in China. Initially, its products were mainly exported to the United States of America. From the 1920s, Li & Fung started to diversify its business through the establishment of craftwork factories, storage, and the purchase of agency rights of other companies. In 1937, the headquarters of Li & Fung in Guangzhou were closed owing to the Japanese occupation. Consequently, Li & Fung moved to Hong Kong and was incorporated as a private company. The migration proved to be a success. In the 1940s



to 1950s, the business of Li & Fung was concentrated on re-exporting, which brought considerable profits to the company. Later, while anchoring its base firmly in the trading industry, Li & Fung progressed to diversifying its business into different areas such as property, storage, shipping and finance. After the listing of the company in 1973, Li & Fung continued to strengthen its traditional business in the trading industry by extending its sales networks to overseas markets. Up till the privatisation of Li & Fung Limited in 1989, it was the fastest growing trading company during that period. The company has changed its name and is now known as Fung Holdings (1937) Limited. In addition to its traditional trading business, it has also established strong market networks in other areas such as retail, wholesale and the property markets. Its subsidiary Li & Fung Limited (a non-Hong Kong company incorporated in Bermuda) was listed on the Hong Kong Stock Exchange in 1992 (stock code: 0494). The company has become a multinational conglomerate driving strong growth in three distinct core businesses: export sourcing through Li & Fung Limited, distribution through Integrated Distribution Services Group Limited, and retailing through Convenience Retail Asia Limited, Trinity Limited and other privately held entities (sources: Feng Bangyan, Xianggang Huazi Caituan (1841-1997) [Chinese-established Consortium in Hong Kong (1841-1997)], Hong Kong: Joint Publishing Press, 1997; and Li & Fung website: <http://www.lifunggroup.com/>).



Banking

By now, the banking sector has become one of the pillar industries in Hong Kong. In addition to HSBC and Hang Seng Bank, Bank of China and Bank of East Asia are two representative examples of the development of the banking sector in Hong Kong.



The Bank of China was formerly known as the Treasury Bank, the first state bank in China. On 14 March 1903, the 30th year of the reign of Emperor Guangxu of the Qing Dynasty, Yi Kuang (a minister of the Qing Dynasty) addressed a petition to the emperor for “opening of the Treasure Bank to promote silver coins”. After over a year of preparation, the Treasure Bank, the first national bank in Chinese history, was established in Beijing in August 1905. In 1906, the Hu Ministry (ministry of finance, taxation and civil affairs) was renamed the Duzhi Ministry (ministry of finance), and in February 1908, the Treasure Bank was renamed the Bank of Great Qing with the function of a central bank. By 1911, the Bank of Great Qing had set up 35 branches in China’s provincial capital cities and port cities, becoming the largest bank in the late Qing Dynasty. On 2 February 1912, the Bank of Great Qing Shanghai Branch closed for liquidation. On 5 February 1912, the Bank of China celebrated

its foundation at No. 3, Hankou Road, Shanghai, the site of the former Bank of Great Qing, and started operation.

The history of the Bank of China in Hong Kong can be traced back to as early as 1917 when a branch of the bank was opened in Hong Kong. This event also marked the entry of state-owned Chinese banks into the then colony’s banking sector. By 1949, when the People’s Republic of China was established, there were branches of 15 state-owned Chinese banks in Hong Kong, plus branches of nine Mainland-incorporated banks that were public-private joint ventures. In addition, the Chinese government established the Po Sang Bank in 1949 and Nanyang Commercial Bank in 1950. Both of these were incorporated in Hong Kong.

IV. Analysis of statistics of companies incorporated

In 1952, the nine public-private banks (Sin Hua Bank Limited, China & South Sea Bank, Kincheng Banking Corporation, China State Bank Limited, The National Commercial Bank Limited, Yien Yieh Commercial Bank, Young Brothers Banking Corporation, Wo Sang Bank and National Industrial Bank of China) were grouped into the Joint Office of Joint Public-Private Banks. The Hong Kong branches of the last three of these nine were closed in 1954 when their parent companies were shut down by the central government, and management of the remaining six public-private banks was transferred to the Hong Kong and Macau Regional Office of the Bank of China in 1958. The Bank of China later took over management of the Hong Kong branches of Kwangtung Provincial Bank, Hua Chiao Commercial Bank Limited and the Bank of Communications.

In June 1975, the Bank of China increased the capital of the public-private banks. As all of the new capital originated from the Chinese government, private ownership in the public-private banks was substantially reduced, in some cases to less than 1%.

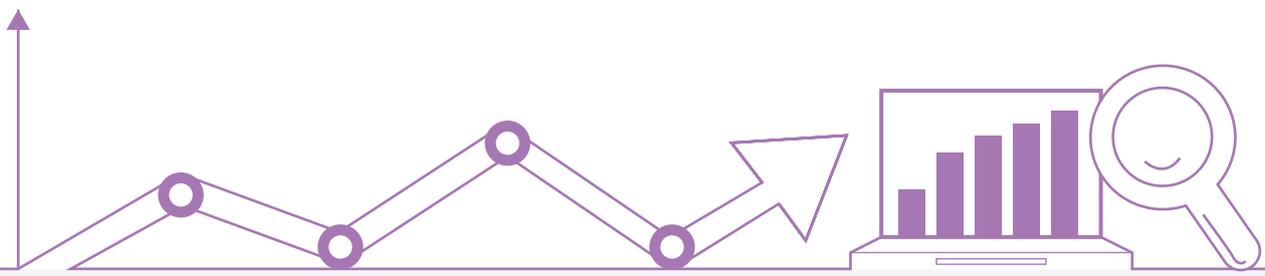
The 14 banks were rebranded as part of the Bank of China Group in the 1980s, after a common IT platform was established. Treasury and foreign currency exchange operations were also centralised. However, the individual banks retained their own management.

The Hong Kong branch of the Bank of Communications broke off from the Bank of China Group in 1998. The Bank of China Group started to restructure its operations in 1999 in preparation for an initial public

offering. All minority shareholders (except those of Chiyu) were bought out by the Bank of China. Formal plans for a restructuring received the approval of the People's Bank of China and were launched in January 2001.

The restructuring saw all operations of the Mainland-incorporated group members merged into Po Sang Bank, which was then immediately renamed Bank of China (Hong Kong) Limited. Hong Kong incorporated Panyang Commercial Bank and Chiyu Banking Corporation became subsidiaries of Bank of China (Hong Kong) Limited. Legislation was required for the merger, as Hong Kong does not allow mergers via the pooling of interests, a common procedure used in the United States of America. The Bank of China (Hong Kong) Limited (Merger) Ordinance was approved by the Legislative Council of Hong Kong on 12 July 2001, and the merger was completed on 1 October 2001.

Bank of China (Hong Kong) Limited (BOCHK) was incorporated on 1 October 2001 to run as a licensed bank, whilst BOC Hong Kong (Holdings) Limited was incorporated in Hong Kong on 12 September 2001 to hold the entire equity interest in BOCHK. BOC Hong Kong (Holdings) Limited is listed on the Stock Exchange of Hong Kong and as American Depositary Receipts in the United States of America under the symbol BHKLY. BOC Hong Kong (Holdings) Limited is a constituent of the Hang Seng Index. Its listing in July 2002 was the first international stock listing by a Mainland China bank; until that time, other Mainland Chinese bank listings were done in the domestic "A-share" market (source: [http://en.wikipedia.org/wiki/Bank_of_China_\(Hong_Kong\)](http://en.wikipedia.org/wiki/Bank_of_China_(Hong_Kong)) and <http://www.boc.cn>).



The development of the Bank of East Asia reflects another story of the growth of banks with family ties in Hong Kong. The Bank of East Asia was founded in Hong Kong in 1918. Its establishment was supported by the most powerful Chinese merchants at that time, with the influence of people familiar with the operation of western banking. With the backing of Chinese trading firms and business companies, the bank built up an extensive business network in Hong Kong, which helped to consolidate its success later. Early in its development, the Bank of East Asia was dedicated to the establishment of an international network of business agencies. At the end of the 1920s, agents of the Bank of East Asia had extended to China, Japan, the Philippines, Singapore, India, Australia, United Kingdom, France, the United States of America, etc., and subsidiaries had been established in Shanghai, Guangzhou and Saigon. In the local

Hong Kong market, the Bank of East Asia also gained advantages by joining a number of banking associations. By 1935, the Bank of East Asia had developed into the most stable and strong Chinese-established bank in South China. The Japanese occupation led to the takeover of the bank by the Japanese army. After the war, the Bank of East Asia started to reopen its business and re-establish an overseas agency network. Through the adoption of a prudent management policy, the bank kept on expanding stably. In 1965, the bank was ranked as A by the Hong Kong Exchange Banks' Association. The bank is now listed on the Stock Exchange of Hong Kong (stock code: 0023) (source: Feng Bangyan, Xianggang Huazi Caituan (1841-1997) [Chinese-established Consortium in Hong Kong (1841-1997)], Hong Kong: Joint Publishing Press, 1997).

IV. Analysis of statistics of companies incorporated

Equity Market

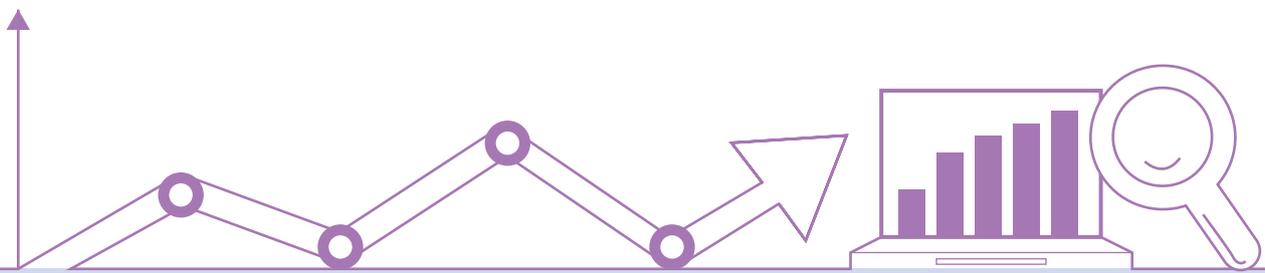
The evolution of Hong Kong Exchanges and Clearing Limited (HKEx) represents the history of the development of the financial market in Hong Kong.

The history of securities exchange began formally in the late 19th century with the first establishment in 1891 of the Association of Stockbrokers in Hong Kong, although informal securities exchanges had been known to take place since 1861. The Association was re-named the Hong Kong Stock Exchange in 1914. This was predominantly the main exchange for Hong Kong, despite co-existing with other exchanges at different points in time. The second exchange, the Hong Kong Stockbrokers' Association, was incorporated in 1921. The two exchanges merged to form the Hong Kong Stock Exchange (HKSE) in 1947 and re-established the stock market after the Second World War. After a series of mergers and acquisitions, HKSE remained the core. From 1947 to 1969, the exchange monopolised the market. The rapid growth of the Hong Kong economy led to the establishment of three other exchanges: the Far East Exchange in 1969, the Kam Ngan Stock Exchange in 1971, and the Kowloon Stock Exchange in 1972.

Pressure to strengthen market regulation and to unify the four exchanges led to the incorporation of The Stock Exchange of Hong Kong Limited in 1980. The four exchanges ceased business on 27 March 1986 and the new exchange commenced trading through a computer-assisted system on

2 April 1986. Prior to the completion of the merger with Hong Kong Futures Exchange Limited (HKFE) in March 2000, the Unified Stock Exchange had 570 participant organisations. HKEx was formed on 6 March 2000 by a merger of its three main constituent companies: the Stock Exchange of Hong Kong Limited (SEHK), and Hong Kong Futures Exchange Limited (HKFE) demutualised and, together with Hong Kong Securities Clearing Company Limited (HKSCC), merged under a single holding company, HKEx. The company itself was listed on its own exchange (stock code: 00388), the HKSE. The Hong Kong Government is the single largest shareholder in HKEx, and has the right to appoint six of the 13 directors to the Board. With a total market capitalisation of over US\$2.633 trillion as of 31 October 2012, the HKEx is ranked fifth in the world by market capitalisation of listed companies (source: HKEx website: <http://www.hkex.com.hk/>).





Property

The New World Development Company Limited, a Hong Kong-based company active in property, infrastructure, services and telecommunications, was established in 1970 by Cheng Yu Tung and Ho Sin Hang. The company has been listed on the Hong Kong Stock Exchange since 1972 (stock code: 00017). In the early stages of its development, the company concentrated its business mainly in the property industry through direct investment and acquisition. For example, in 1973, the company bought a piece of land from Swire Group at a price of 113 million Hong Kong dollars for the construction of the New World Centre. In the same year, the company acquired the Hip Hing Construction Company Limited. In 1975, the company completed the development of City One Shatin. Similar construction projects and acquisitions took place in the following years. Now, New World Development has become a constituent stock of the benchmark Hang Seng Index. After 40 years of operations, the Group has expanded from its original property business to include four core businesses, including property and hotel, infrastructure, service and department stores in Hong Kong, Macau and Mainland China. The Group is also involved in direct investment and a number of other businesses (source: Feng Bangyan, Xianggang Huazi Caituan (1841-1997) [Chinese-established Consortium in Hong Kong (1841-1997)], Hong Kong: Joint Publishing Press, 1997; <http://www.nwd.com.hk/>).

Another representative property company in Hong Kong is the Sun Hung Kai Enterprises Company Limited. In 1963, the company was incorporated by Kwok Tak Seng, Fung King-hei and Lee Shau Kee. Initially, the company, in order to satisfy the need

for multi-storey industrial buildings for small and medium enterprises, adopted the policy of stratified selling by instalment in the development of multi-storey industrial buildings. However, the three major founders of the company decided to split in the early 1970s. Kwok Tak Seng decided to continue his business in the property sector, so Sun Hung Kai Properties Limited was established and publicly listed in 1972 (stock code: 00016). The company's main operation was in property investment. After the listing, the company expanded its business and scale of capital swiftly by issuing new shares and purchasing the shares of other companies. By purchasing the real estates from other businessmen during financial downturns, the company accumulated a number of properties and transformed them into valuable properties in Hong Kong. In 1978, when the economy recovered in Hong Kong, the company sold out its blocks at much higher prices. With its successful operation in the property market, the company became one of the ten largest listed companies in Hong Kong (source: Feng Bangyan, Xianggang Huazi Caituan (1841-1997) [Chinese-established Consortium in Hong Kong (1841-1997)], Hong Kong: Joint Publishing Press, 1997).



V ■ Interesting incidents or issues relating to company incorporation over the years

Registration of similar names

A number of cases have concerned the registration of similar names. In *Computer Land Ltd v Registrar of Companies* [1986] HKC 49, Computer Land Ltd (Company A) was a company incorporated in Hong Kong in 1979, and Computerland Corp (Company B) was an American company incorporated in the US in the early 1970s and registered in Hong Kong as an oversea company under the Companies Ordinance in 1980. Company B then applied for the reservation of company names "Computerland Corp of California (China) Ltd" and "Computerland Corp of America (China) Ltd", and the Registrar reserved these two names. Company A contended that the reservation was improper, but the Registrar rejected the argument. In the judicial review commenced by Company A, the court held that the Registrar had fully borne in mind the provision of Section 20(1) (a) of the Companies Ordinance. There was no likelihood of deception between the applicant's name and the proposed names sought to be reserved by Company A in view of all of the surrounding circumstances. The addition of "Corp" in "Computerland Corp of California (China) Limited" made it sufficiently distinctive from "Computer Land Limited".

In *Land Power Intl Holdings Ltd v Inter-land Properties (HK) Ltd* [1995] 2 HKC 146, the appellants were a major group of real estate companies whose Chinese names started with the words "Chi Yip [志業]" International. The

respondent company was also a real estate company named "Chi Yip [志業]" Real Property HK Ltd. The appellants complained about the respondent's use of "Chi Yip [志業]" as the first two characters of its name, and applied for an interlocutory injunction to restrain the respondent from carrying on its business under that name. The appellants reckoned that the words "Chi Yip [志業]" gave rise to the effect that the respondent was passing itself off as being connected or associated with the appellants. The issue was around whether the respondent had used the words "Chi Yip [志業]" in such a way that would likely cause confusion and deceive the trade and the public into the belief that the respondent was a member of the appellants' group.

The court held that the characters "Chi Yip [志業]" were descriptive words in common use, and that the respondent's use of the further two characters "real property" could differentiate the two names sufficiently to avoid confusion. Furthermore, all of the appellants except one used the word "International" in conjunction with "Chi Yip [志業]" as part of their trade names. The respondent, on the other hand, did not use "International" but "Real Property" with "Chi Yip [志業]" as part of its trade name. Such distinguishing features made it impossible to hold that the respondent was passing off its business as that of any of the appellants.



Piercing the corporate veil

A number of cases involved the court piercing the corporate veil, i.e. denying the shareholder the privilege of limited liability by treating the company and its shareholders as one (for example *A-G v Chan Nai Keung, Daniel* [1988] 1 HKLR 70, [1987] 2 HKC 41; *China Ocean Shipping Co v Mitrans Shipping Co Ltd* [1995] 3 HKC 123; *Good Profit Development Ltd v Leung*

Hoi [1993] 2 HKLR 176, [1992] 2 HKC 539; *Concorde Construction Co Ltd v Colgan Co Ltd (No 2)* [1984] HKC 253; *Bakri Bunker Trading Co Ltd v Owners and persons interested in the ship "Neptune"* [1986] HKLR 345; *L Derochemont SA v Kent International Films Ltd* [1987] 2 HKC 271; *Good Profit Development Ltd v Leung Hoi* [1993] 2 HKLR 176, [1992] 2 HKC 539.

Place of business

There has also been an issue concerning what constitutes a place of business for a company. In *Elsinct (Asia Pacific) Ltd v Commercial Bank of Korea Ltd* [1994],³ HKC 365 a writ was served on the Commercial Bank of Korea (C Bank) at the office of its wholly owned subsidiary, which had a sign indicating that it was the representative office of the C Bank. C Bank argued that its activities there were of a non-business nature which included research, promotion and participation in meetings concerning international banking, and it had no bank account in Hong Kong, did not offer banking facilities in Hong Kong and did not pay tax in Hong Kong. It was held that C Bank's activities there did not create any legal obligations between potential customers and the representative office, and that therefore

the representative office was not a place of business, and so the service of writ there on C Bank was invalid.

More recently, in *Kam Kwan Sing v Kam Kwan Lai* (2012) HCCW 154/2010, the court held that where the parent company was incorporated overseas, in order for it to establish a place of business in Hong Kong, it was not sufficient to hold shares in a company that ran a business in Hong Kong or to hold meetings in Hong Kong: evidence of concrete business activities carried out by the parent company at a particular location in Hong Kong was needed. It was not possible to treat the affairs of its subsidiaries as those of the parent company.

V. Interesting incidents or issues relating to company incorporation over the years

Company seal

There was also an issue about the use of company seals. In *On Hong Trading Co Ltd v Bank of Communications* (2000) HCMP 3099 of 1999, a mortgage was signed by the directors of a company, and sealed with a rubber chop. It was held that where a deed had to be executed by a Hong Kong company, it could only do so validly if it used its common seal, which by

Section 93 of the Companies Ordinance had to be a metallic seal; a rubber stamp was not sufficient.

(Note: To facilitate business operations, the keeping and use of a common seal becomes optional under the new Companies Ordinance scheduled to be implemented in the first quarter of 2014.)

Validity of additional provisions in the articles of association

In *Lee Tak, Samuel v Chou Wen-hsien and others* [1982] HKLR 350, the articles of association of a company contained inter alia an additional clause providing that the office of a director could be vacated in certain circumstances including "if he is requested in writing by all his co-directors to resign". One of the directors received such a notice duly signed by all seven of his co-directors and in due course

issued a writ against them and the company as the 8th defendant, seeking a declaration that the notice was null and void. It was held that apart from the required statements, a company may include in its articles any provision that it considered desirable for the regulation of its internal administration. Thus, the notice issued in pursuance of the additional clause was valid.



Mitigation of the ultra vires doctrine

The company memorandum used to contain an objects clause. Under the doctrine of ultra vires, a company could not enter into activities that were beyond the objects clause. In order to mitigate the harshness of the ultra vires doctrine, drafters of company memoranda often used the following devices to ensure as broad and unfettered a corporate capacity as possible:

- (a) By listing a wide variety of objects (often extending for pages) with a concluding clause indicating that each clause was to be treated as a “separate and independent object” and not to be construed restrictively as ancillary to any other clauses (e.g. *Pearl Island Hotel Ltd v Li Ka-yu et al* [1988] 2 HKLR 87);
- (b) By including a “subjective objects” clause which authorised the company or its directors to enter into any transactions

ancillary to the company’s business which the directors from time to time thought advantageous (e.g. *European Asian Bank v Reicar Investments Ltd* [1988] 1 HKLR 45);

- (c) By listing what were essentially powers of a company (e.g. to grant pensions to former directors) as the company’s objects.

However, the Companies (Amendment) Ordinance 1997 (Ordinance No. 3 of 1997) partially abolished the doctrine of ultra vires by providing that it was no longer compulsory for a company (other than a Section 21 company) to state its objects. Such a company may state its objects in its memorandum. It further provides that a company has the capacity and the rights, powers and privileges of a natural person. Thus, as long as the company does not state its objects, any transactions entered into by the company will not be ultra vires.

VI. Cost and speed of incorporation in Hong Kong over the years

Cost of company incorporation in Hong Kong

The fees to be paid to the Registrar of Companies on incorporation of a company vary according to the type of company. In general, the fees payable by companies are stated in the Schedule to the Companies Ordinance, which is subject to amendment by the Financial Secretary by order published in the Gazette (for example, Companies Ordinance 1865, Table B of the First Schedule; Companies Ordinance 1932, the Ninth Schedule; and the current Companies Ordinance, the Eighth Schedule). In the Companies Ordinance 1865, the registration fee of a company having a share capital was set at \$50, as stated in Table B of the First Schedule. The fee remained unchanged for 90 years until it was revised to \$100 in 1955. Thereafter, the registration fee was progressively increased to \$300 in 1975, \$600 in 1983, \$1,000 in 1990, \$1,300 in 1993 and \$1,450 in 1994. In 1996, a lodgment fee of \$270 was introduced and the registration fee was revised to \$1,310. The registration fee was subsequently revised to \$1,425 with the lodgment fee increased to \$295 in 1997.²⁴ There has been no change in the

registration fee and the lodgment fee since then. When compared with the Companies Ordinance 1932, there are now fees for other registration matters, such as the registration of a prospectus and annual registration fee on delivery of an annual return, etc. There was also a fee for name reservation when the name reservation system was still in place. With effect from 1 June 2012, the capital fee levied on local companies having share capital has been abolished.

Prior to the abolition of the capital fee on 1 June 2012, the fees for the incorporation of a local company having share capital included the registration fee of \$1,425, the lodgment fee of \$295, plus the capital fee of \$1 for every \$1,000 or part of \$1,000 of the nominal share capital. The scale for calculating the capital fee was based on the amount of nominal capital, subject to a maximum of \$30,000 nominal share capital. Therefore, a total of \$1,721 had to be paid for an application where the share capital was \$1,000. If the application was not approved, the

24 LN 457 of 1997.



applicant could apply for a refund of \$1,425 of the registration fee and the capital fee, but the lodgement fee of \$295 was non-refundable.

The registration fee for incorporating a local limited company not having share capital is calculated according to the number of members stated in the articles of association of the company, similar to the previous scaling system adopted for the determination of the capital fee for the registration of a company having a share capital. At present, the registration fee is \$170 (for 25 or fewer members), \$340 (for more than 25 but not exceeding 100 members), and an additional \$20 for every 50 members or fewer after the first 100 members. The registration fee is subject to a maximum fee of \$1,025.

The fees to be paid for company incorporation in Hong Kong are competitive compared to those in Singapore. In Singapore, the registration fees of a

company composed of two parts: the name approval fee and registration fee. The name approval fee is set at SG\$15, while the registration fees vary according to the nature of the company. For the registration of a company limited by shares, the registration fee is set at SG\$300, and for the registration of a company limited by guarantee, the registration fee is set at SG\$600. At the current exchange rate, it costs about HK\$1,890 to incorporate a company limited by shares and about HK\$3,780 to incorporate a company limited by guarantee in Singapore. The cost of company incorporation in Singapore is, therefore, a little higher than that in Hong Kong. In the United Kingdom, there are three ways to incorporate a company. Through electronic filing by a formation agent, the standard fee is £13 (about HK\$158); for the web incorporation service, the standard fee is £15 (about HK\$182); for paper filing, the standard registration fee is £40 (about HK\$486).

Speed of company incorporation in Hong Kong

In line with the enhancement of the efficiency of the Companies Registry, the speed of company incorporation in Hong Kong has also been accelerated. In 1994, it took 7 working days to incorporate a company in Hong Kong. In 1997, the target time was 6 working days, which was satisfactorily fulfilled. From 2008, the achieved target service standard was 4 working days if all requirements were satisfied.

With the launch of the electronic incorporation of companies in March 2011, incorporation of companies in Hong Kong can now be completed online in an hour, which greatly accelerates the speed of company incorporation and enhances the position of Hong Kong as an international business centre.

VII. Contribution of the Companies Registry to the incorporation process and company registration

Contribution of the Companies Registry to the incorporation process

The Companies Registry has striven to provide its customers with efficient, cost-effective and quality services and facilities to incorporate companies.

As mentioned above, the Companies Registry has continued to enhance, develop and upgrade the service for company incorporation. The time needed for incorporating a company in Hong Kong has been greatly reduced as a result of the Companies Registry's continuous efforts in reviewing internal procedures and making the best use of modern technology. The Companies Registry has also pushed through relevant legislative amendments which

streamlined the incorporation requirements, e.g. the introduction of bilingual specified forms.

In addition, the Companies Registry has cooperated with other government departments to shape the types and quality of service to be delivered. For example, from 1 December 2008, a one-stop service for company incorporation and business registration has been provided with the concerted effort of the Companies Registry and the Inland Revenue Department. A person incorporating a company in Hong Kong, after obtaining the company's certificate of incorporation at the Companies Registry, can immediately submit an application for business

Further improvements to company registration system

To improve the efficiency of company incorporation, the Companies Registry formally launched the e-Incorporation Service on 18 March 2011. With the introduction of this new service, registered users of the 24-hour internet portal, the "e-Registry", can complete the one-stop company incorporation and business registration procedures online within an hour. With the launch of this system, company incorporation is more convenient and faster, and this strengthens the competitiveness of Hong Kong in the global business world.

In the World Bank's Doing Business 2013 Report, Hong Kong ranked sixth on "Starting a Business" internationally and this has contributed to Hong Kong's overall ranking as the second best in the world on ease of doing business. Hong Kong's ranking in this indicator also reflects the World Bank's recognition of the Companies Registry's on-

going efforts to expedite the process of company incorporation.

In February 2012, the Registry has extended its e-Filing services to include the submission of the more commonly filed specified forms for reporting changes of company information (including changes of registered office address, directors/company secretaries and their particulars and share capital) at the e-Registry. The electronic service for submission of annual returns for local private companies and the Annual Return e-Reminder Service have been available since August 2012.

Following the passage of the Companies Bill on 12 July 2012, an updated and modernised Companies Ordinance will come into operation upon the enactment of all subsidiary legislation, tentatively scheduled for the first quarter of 2014. The new



registration at the Receipt and Despatch Centre of the Business Registration Office set up on the Registry's premises. The related business registration certificate can be collected on the next working day, or the applicant can opt to receive it by post. Without a doubt, such collaboration greatly facilitates the process of starting a business in Hong Kong.

A one-stop company and business registration service has been available since 21 February 2011 upon the implementation of the relevant provisions of the Companies (Amendment) Ordinance 2010 and the Business Registration (Amendment) Ordinance 2010. Under the one-stop service, any person who

applies for incorporation of a local company or registration of a non-Hong Kong company under the Companies Ordinance will be deemed to have made a simultaneous application for business registration. Upon approval of an application for company incorporation or registration, the Registrar will issue a Certificate of Incorporation/Registration and a Business Registration Certificate simultaneously.



Companies Ordinance will facilitate the conduct of business and enhance Hong Kong's competitiveness and attractiveness as a major international business and financial centre. The implementation of the new Companies Ordinance will entail a number of new roles and functions for the Companies Registry. These will include, for example, a new regime for compounding certain specified offences, rather than prosecuting such breaches, and a new system to enhance transparency in the registration of charges. The Registrar of Companies will also have wider regulatory powers to safeguard the register's integrity. In addition, new filing requirements will involve, for example, the submission of a statement of capital every time a company's capital structure is changed, and notices of the redenomination of share capital.

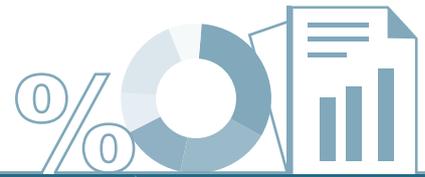
The Companies Registry aims to make the transition to the new regime as smooth as possible. The new

Companies Ordinance contains detailed transitional provisions to ensure that this is the case. Where there are major changes - for example, the abolition of par value for shares and the abolition of the memorandum of association - the new legislation has detailed deeming provisions to ensure that existing companies can make the transition to the new regime without difficulty.

In readiness for the new regime, the Companies Registry is overhauling its information systems and reviewing its policies, forms and operational procedures. It will embark upon a comprehensive publicity campaign and educational programme in 2013-14 to ensure that the business community is aware of the changes that will result from the implementation of the new Companies Ordinance.

Annex I : Number of companies incorporated in Hong Kong (1865-2012)

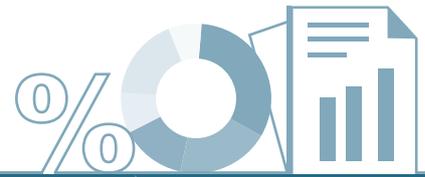
Year Ended March of	Total Number of New Incorporations	Total Number of Companies on Register	Net Increase / Decrease (-)
1866	3	3	3
1867	1	4	1
1868	0	4	0
1869	1	5	1
1870	1	6	1
1871	0	6	0
1872	0	6	0
1873	0	6	0
1874	0	6	0
1875	0	6	0
1876	0	6	0
1877	0	6	0
1878	1	7	1
1879	0	7	0
1880	0	7	0
1881	2	9	2
1882	1	10	1
1883	1	11	1
1884	2	13	2
1885	0	13	0
1886	2	15	2
1887	3	18	3
1888	1	19	1
1889	6	25	6
1890	3	28	3
1891	1	29	1
1892	3	32	3
1893	1	33	1
1894	0	33	0
1895	1	34	1
1896	1	35	1
1897	3	38	3
1898	1	39	1
1899	3	42	3
1900	3	45	3
1901	4	49	4
1902	4	53	4



Year Ended March of	Total Number of New Incorporations	Total Number of Companies on Register	Net Increase / Decrease (-)
1903	6	59	6
1904	5	64	5
1905	5	69	5
1906	4	73	4
1907	7	80	7
1908	8	88	8
1909	6	94	6
1910	7	101	7
1911	11	112	11
1912	8	120	8
1913	8	128	8
1914	15	143	15
1915	20	163	20
1916	32	195	32
1917	31	226	31
1918	22	243	17
1919	27	260	17
1920	50	301	41
1921	45	329	28
1922	69	371	42
1923	67	402	31
1924	98	482	80
1925	75	520	38
1926	32	513	-7
1927	49	518	5
1928	50	538	20
1929	70	569	31
1930	56	587	18
1931	64	601	14
1932	91	656	55
1933	92	717	61
1934	83	752	35
1935	67	745	-7
1936	54	738	-7
1937	64	772	34
1938	73	823	51
1939	94	900	77

Annex I : Number of companies incorporated in Hong Kong (1865-2012)

Year Ended March of	Total Number of New Incorporations	Total Number of Companies on Register	Net Increase / Decrease (-)
1940	86	973	73
1941	84	1,051	78
1942	55	1,100	49
1943	0	1,100	0
1944	0	1,100	0
1945	0	1,100	0
1946	4	1,104	4
1947	427	1,529	425
1948	279	1,797	268
1949	229	2,008	211
1950	276	2,255	247
1951	186	2,278	23
1952	248	2,440	162
1953	229	2,521	81
1954	202	2,629	108
1955	250	2,805	176
1956	284	2,618	-187
1957	260	2,791	173
1958	353	3,045	254
1959	351	3,322	277
1960	491	3,732	410
1961	694	4,342	610
1962	910	5,191	849
1963	1,149	6,209	1,018
1964	1,251	7,354	1,145
1965	1,420	8,638	1,284
1966	1,286	9,761	1,123
1967	1,428	10,970	1,209
1968	1,215	11,889	919
1969	1,868	13,372	1,483
1970	2,812	15,848	2,476
1971	3,461	18,993	3,145
1972	3,953	22,514	3,521
1973	5,389	27,530	5,016
1974	5,050	32,278	4,748
1975	4,439	36,228	3,950
1976	4,613	40,194	3,966



Year Ended March of	Total Number of New Incorporations	Total Number of Companies on Register	Net Increase / Decrease (-)
1977	5,543	45,240	5,046
1978	6,862	51,232	5,992
1979	9,261	59,667	8,435
1980	11,907	70,863	11,196
1981	15,162	85,133	14,270
1982	14,850	99,149	14,016
1983	12,679	110,862	11,713
1984	11,986	121,477	10,615
1985	14,080	134,318	12,841
1986	17,990	150,551	16,233
1987	18,722	166,807	16,256
1988	27,024	190,935	24,128
1989	34,548	223,054	32,119
1990	27,371	247,620	24,566
1991	28,862	272,883	25,263
1992	48,163	316,096	43,213
1993	61,685	373,406	57,310
1994	59,784	429,070	55,664
1995	36,775	457,994	28,924
1996	33,570	474,451	16,457
1997	58,011	486,997	12,546
1998	39,016	469,176	-17,821
1999	30,705	474,761	5,585
2000	39,506	499,031	24,270
2001	41,498	512,357	13,326
2002	38,692	508,052	-4,305
2003	53,549	504,246	-3,806
2004	48,463	500,919	-3,327
2005	66,466	525,447	24,528
2006	75,817	555,745	30,298
2007	84,545	604,993	49,248
2008	101,512	667,144	62,151
2009	109,416	732,961	65,817
2010	107,416	791,347	58,386
2011	143,797	886,371	95,024
2012	139,366	968,665	82,294

Notes: 1. Statistics from 1866 to 1955 were based on the information in the database of the Companies Registry.

2. Statistics from 1956 to 2012 were gathered from the Annual Reports of the Registrar General's Department and the Companies Registry.

Annex II : The New Companies Ordinance - Major Initiatives¹

MEASURES FOR ENHANCING CORPORATE GOVERNANCE

Strengthening the Accountability of Directors

- Restricting the appointment of corporate directors by requiring every private company to have at least one natural person to act as director, to enhance transparency and accountability.
- Clarifying in the statute the directors' duty of care, skill and diligence with a view to providing clear guidance to directors.

Enhancing Shareholder Engagement in the Decision-Making Process

- Introducing a comprehensive set of rules for proposing and passing a written resolution.
- Requiring a company to bear the expenses of circulating members' statements relating to the business of, and proposed resolutions for, Annual General Meetings, if they are received in time to be sent with the notice of the meeting.
- Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.

Improving the Disclosure of Company Information

- Requiring public companies and the larger (i.e., companies that do not qualify for simplified reporting) private companies² and guarantee companies³ to prepare a more comprehensive directors' report which includes an analytical and forward-looking "business review", whilst allowing private companies to opt out by special resolution. The business review will provide useful information for shareholders. In particular, the requirement to include information relating to environmental and employee matters that have a significant effect on the company is in line with international trends to promote corporate social responsibility.

1 The Companies Bill was passed by the Legislative Council on 12 July 2012. The new Companies Ordinance would come into operation after the enactment of over 10 subsidiary legislation.

2 Under the new Ordinance, a private company is regarded as small if it satisfies any two of the following conditions: (a) total annual revenue of no more than HK\$ 100 million; (b) total assets of no more than HK\$ 100 million; and (c) no more than 100 employees.

3 Under the new Ordinance, a guarantee company is regarded as small if its total annual revenue does not exceed HK\$ 25 million.



Fostering Shareholder Protection

- Introducing more effective rules to deal with directors' conflicts of interests, including expanding the requirement for seeking shareholders' approval to cover directors' employment contracts which exceed three years.
- Requiring disinterested shareholders' approval in cases where shareholders' approval is required for transactions of public companies and their subsidiaries.
- Requiring the conduct of directors to be ratified by disinterested shareholders' approval to prevent conflicts of interest and possible abuse of power by interested majority shareholders in ratifying the unauthorised conduct of directors.
- Replacing the "headcount test" with a not more than 10% disinterested voting requirement for privatisations and specified schemes of arrangement, while giving the court a new discretion to dispense with the test (in cases where it is retained) for members' schemes.
- Extending the scope of the unfair prejudice remedy to cover "proposed acts and omissions", so that a member may bring an action for unfair prejudice even if the act or omission that would be prejudicial to the interests of members is not yet effected.

Strengthening Auditors' Rights

- Empowering an auditor to require a wider range of persons, including the officers of a company's Hong Kong subsidiary undertakings and any person holding or accountable for the company or its subsidiary undertakings' accounting records, to provide information or explanation reasonably required for the performance of the auditor's duties. The offence for failure to provide the information or explanation is extended to cover officers of the company and the wider range of persons.

Annex II : The New Companies Ordinance - Major Initiatives

MEASURES FOR ENSURING BETTER REGULATION

Ensuring the Accuracy of Information on the Public Register

- Clarifying the powers of the Registrar of Companies (the Registrar) in relation to the registration of documents, such as specifying the requirements for the authentication of documents to be delivered to the Companies Registry (the Registry) and the manner of delivery, and withholding the registration of unsatisfactory documents pending further particulars.
- Clarifying the Registrar's powers in relation to the keeping of the register, such as rectifying typographical or clerical errors, making annotations and requiring a company to resolve any inconsistency or provide updated information.
- Providing a statutory basis for applications to court for removing information from the register that is inaccurate, forged or derived from anything invalid, ineffective or done without the authority of the company.
- Requiring a company to deliver to the Registry a return, including a statement of capital, whenever there is a change to its capital structure, to ensure that the public register contains up-to-date information on a company's share capital structure.

Improving the Registration of Charges

- Revising the list of registrable charges, such as expressly providing that a charge on an aircraft or any share in an aircraft is registrable, and removing the requirement to register a charge for the purpose of securing an issue of debentures.
- Replacing the automatic acceleration of the repayment obligation with a choice given to the lender as to whether the secured amount is to become immediately payable when a charge is void due to non-compliance with the registration requirements.
- Requiring a certified copy of the charge instrument (in addition to the prescribed particulars of the charge) to be registered and available for public inspection, to provide more detailed information to those who search the register.
- Shortening the period for delivery to the Registrar of the charge instrument and the prescribed particulars from five weeks to one month, to reduce the period during which the charge is not visible on the register.
- Requiring written evidence of satisfaction/release of a charge to accompany a notification to the Registrar for registration of the satisfaction/release, thus making such documents available for public inspection.



Refining the Scheme for Deregistration of Companies

- Imposing three additional conditions for the deregistration of defunct companies, namely that the applicant must confirm that the company is not a party to any legal proceedings and that

neither the company nor its subsidiary has any immovable property in Hong Kong, to minimise any potential abuse of the deregistration procedure.

Improving the Enforcement Regime

- Enhancing the investigatory powers of an inspector, for example, by requiring a person under investigation to preserve records or documents and to verify statements made by statutory declaration.
- Providing better safeguards to ensure the confidentiality of information obtained in investigations and enquiries and for the better protection of informers.
- Providing new powers for the Registrar to obtain documents or information to ascertain whether any conduct that would constitute an offence in relation to the provision of false or misleading statement to the Registrar has taken place.
- Strengthening the enforcement regime in relation to the liabilities of officers of companies for the companies' contravention of provisions in the new Ordinance, including lowering the threshold for prosecuting a breach or contravention and extending it to cover reckless acts through a new definition of "responsible person".
- Introducing a new offence in relation to inaccurate auditor's reports. The offence would be committed if the auditors in question knowingly or recklessly caused two important statements to be omitted from the auditor's report.
- Empowering the Registrar to compound specified offences to optimise the use of judicial resources. Compoundable offences are generally confined to straightforward, minor regulatory offences committed by companies that are punishable by a fine.

Annex II : The New Companies Ordinance - Major Initiatives

MEASURES FOR FACILITATING BUSINESS

Streamlining Procedures

- Allowing companies to dispense with Annual General Meetings by unanimous shareholders' consent.
- Introducing an alternative court-free procedure for reducing capital based on a solvency test.
- Allowing all types of companies (rather than just private companies, as in the current Companies Ordinance (Cap.32)) to purchase their own shares out of capital, subject to a solvency test.
- Allowing all types of companies (whether listed or unlisted) to provide financial assistance to another party for the purpose of acquiring the company's own shares or the shares of its holding company, subject to a solvency test.

Under the current Companies Ordinance, subject to certain specified exceptions, there is a broad prohibition on the giving of financial assistance to purchase the company's own shares.

- Introducing a new court-free statutory amalgamation procedure for wholly owned intra-group companies.
- Streamlining the procedures for the restoration of dissolved companies by court order.
- Introducing a new administrative restoration procedure for a company dissolved by the Registrar in straightforward cases, without the need for recourse to the court.

Facilitating Simplified Reporting

- Facilitating SMEs to prepare simplified financial and directors' reports along the following lines:
 - a private company (with the exception of a bank/deposit-taking company, an insurance company or a stockbroker) will automatically qualify for simplified reporting if it qualifies as a "small private company".
 - the holding company of a group of companies that qualifies as a "group of small private companies" will also qualify for simplified reporting.
 - a private company that is not a member of a corporate group may adopt simplified reporting with the agreement of all the members.

- Allowing small guarantee companies and groups of small guarantee companies, which have a total annual revenue of not more than \$25 million, to qualify for simplified reporting.
- A private company or a group of private companies which is not qualified as a "small private company" or a "group of small private companies" respectively may prepare simplified reports if it meets a higher size criteria and if the members holding 75% of the voting rights so resolve and no member objects.
- Making the summary financial reporting provisions more user-friendly and extending their application to companies in general (rather than confining them to listed companies, as in the current Companies Ordinance).



Facilitating Business Operations

- Making the use of a common seal optional and relaxing the requirements for a company to have an official seal for use abroad.
- Permitting a general meeting to be held at more than one location using electronic technology.
- Setting out the rules governing communications to and by companies in electronic form.

MEASURES FOR MODERNISING THE LAW

Abolishing Par Value for Shares

- Adopting a mandatory system of no-par for all companies with a share capital as par value is an antiquated concept that may give rise to practical problems, such as inhibiting the raising of new capital and unnecessarily complicating the accounting regime.

Removing the Power to Issue Share Warrants

- Removing the power of companies to issue share warrants to bearers. Share warrants are rarely issued by companies nowadays and are undesirable from the perspective of anti-money laundering because of the lack of transparency in the recording of their ownership and the manner by which they are transferred.

Clarifying the Rules on Indemnification of Directors against Liabilities to Third Parties

- Clarifying the rules on the indemnification of directors against liabilities to third parties in order to remove the uncertainties at common law.