

鞏固法律與運作架構

STRENGTHENING THE LEGAL AND OPERATIONAL FRAMEWORK

遵從法規與執法

本處作為企業規管機構的目標，是在促進公司遵從法規及有效執法的基礎上，確保香港穩佔首要金融中心的地位。

為達到這個目標，本處以傳票方式，循簡易程序檢控未有履行《公司條例》所訂責任的失責公司，有關責任包括提交周年申報表和帳目、申報註冊辦事處地址的更改及董事和秘書資料的更改。

此外，本處在重寫《公司條例》的工作中，考慮採取其他措施，鼓勵公司履行申報責任，有關建議將載於在二零零九年年中以後發表的新條例草案擬稿內，以徵詢公眾意見。同時，本處亦透過宣傳及其他行政措施，提高公司遵從法規的意識。在二零零七至零八年度，本處推出免費的提交周年申報表電子提示服務，客戶可以收到提交周年申報表的電郵通知書。

下表列出與遵從法規及執法工作有關的主要統計數字：—

Compliance and Enforcement

Our goal as a corporate regulator is to ensure that Hong Kong's position as a leading financial centre is properly underpinned by a culture of regulatory compliance and effective enforcement.

To this end, the Registry issues summonses for summary prosecution against companies in default of their obligations under the Companies Ordinance, including the filing of annual returns and accounts, reporting changes of registered office addresses and changes in particulars of directors and secretaries.

As part of the Companies Ordinance Rewrite Exercise, the Registry is also considering the introduction of other measures to encourage compliance with the reporting obligations. Details of these proposals will be included in a draft bill which is planned to be issued for public consultation after mid-2009. The Registry also promotes corporate compliance by raising levels of awareness through various educational and administrative measures. During 2007-08, a free Annual Return e-Alert subscription service was launched through which our customers may receive automatic email reminders for the filing of annual returns.

The table below provides some key statistics on compliance and enforcement: —

	2005-06	2006-07	2007-08
準時提交周年申報表的公司所佔百分比 Percentage of companies filing annual returns on time	84.6%	83.3%	83.5%
發出的傳票數目 Numbers of summonses issued	4,207	6,089	6,135
被定罪的個案總數 Total number of convictions	1,739	2,338	2,154
罰款總額 Total fines awarded	\$10,340,365	\$13,497,429	\$14,218,990

在二零零七至零八年度，市民及其他政府部門就涉嫌違反《公司條例》而向本處提出的投訴有425宗，較上年度減少18.3%，二零零六至零七、二零零五至零六年度的投訴分別有520及391宗。投訴大多涉及公司名稱、申請撤銷註冊的不營運私人公司提供虛假或誤導性資料、公司未有申報註冊辦事處地址、未有提交周年申報表及其他法定申報表，以及未有在指明表格或申報表提供準確的資料。

公司法改革常務委員會

公司法改革常務委員會(常委會)是在一九八四年成立的非法定委員會，成員由財政司司長委任。常委會現任主席為資深大律師余若海先生，成員包括相關政府部門、規管機構、學術界、會計師、商人、公司秘書和律師的代表。公司註冊處為常委會提供秘書處服務，而常委會的主要職能是定期檢討《公司條例》，以確保香港的公司法配合規管機構和商界不斷轉變的需要。在二零零七至零八年度，常委會共召開八次會議，審議多項修訂《公司條例》的建議。此外，常委會成員亦以傳閱文件的方式，審議八份載有多項公司法改革建議的文件。

常委會將在二零零八年下半年出版第24號年報，闡述二零零七至零八年度的工作。

In 2007-08, the Registry received 425 complaints from members of the public and other government departments regarding alleged breaches of the Companies Ordinance. This represents a decrease of 18.3 per cent from the previous year. 520 and 391 complaints were received in the years 2006-07 and 2005-06 respectively. The majority of the complaints related to issues concerning company names, false or misleading information relating to applications for deregistration of defunct private companies, failure to report registered office addresses, failure to file annual returns and other statutory returns and failure to provide accurate information in specified forms or returns.

Standing Committee on Company Law Reform

The Standing Committee on Company Law Reform (SCCLR) is a non-statutory committee established in 1984. Appointments to the SCCLR are made by the Financial Secretary and it is currently chaired by Mr Benjamin YU, Senior Counsel. Its membership comprises representatives of relevant government departments, regulators, academics, accountants, businessmen, company secretaries and lawyers. The Registry provides secretarial support to the SCCLR, whose principal function is to review the Companies Ordinance on a regular basis to ensure that Hong Kong's company law meets with the changing needs of both the regulators and the business community. During 2007-08, the SCCLR had eight meetings and considered a wide range of proposals to amend the Companies Ordinance. In addition to meetings, eight papers on various company law reform proposals were circulated to SCCLR members for consideration.

The SCCLR will publish its 24th Annual Report on its work in 2007-08 in the latter half of 2008.

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制定法例

《財務匯報局條例》

《公司(修訂帳目及報告)規例》

《財務匯報局條例》(第588章)第62、63及66條在《公司條例》(第32章)加入新訂的第141E及336A條，以便引入修訂帳目及報告的新法定機制。該條例於二零零七年四月二十日開始實施。此外，《公司(修訂帳目及報告)規例》亦於二零零七年四月二十日生效，該規例就新訂的第141E及336A條的適用範圍作出規定。

《2003年公司(修訂)條例》

《2003年公司(修訂)條例》第67條於二零零八年七月十一日生效，該條文把公司註冊處處長備存的董事索引的範圍擴大，以包括私人公司備任董事的資料。《2003年公司(修訂)條例》的所有其他條文已於二零零四年二月十三日生效。

《2004年公司(修訂)條例》

《2004年公司(修訂)條例》附表2的修訂旨在把非香港公司的註冊制度現代化，有關修訂於二零零七年十二月十四日開始實施。《2004年公司(修訂)條例》餘下有關推出新的法團成立表格供本地公司使用的條文，已於二零零八年七月十一日生效。

《2007年公司條例 (修訂附表8)令》

《2007年公司條例(修訂附表8)令》的修訂旨在調整非香港公司須繳付的存檔費，以及引入向這些公司發出註冊證明書的新費用。該項命令於二零零七年十二月十四日與《2004年公司(修訂)條例》附表2的相應條文一併生效。

Legislation

Financial Reporting Council Ordinance

Companies (Revision of Accounts and Reports) Regulation

Sections 62, 63 and 66 of the Financial Reporting Council Ordinance (Chapter 588), which introduced a new statutory regime for revision of accounts and reports by adding new sections 141E and 336A to the Companies Ordinance (Chapter 32), commenced on 20 April 2007. The Companies (Revision of Accounts and Reports) Regulation, which provides for the application of new sections 141E and 336A, also became effective on 20 April 2007.

Companies (Amendment) Ordinance 2003

Section 67 of the Companies (Amendment) Ordinance 2003, which expands the scope of the index of directors kept by the Registrar to include details of reserve directors of private companies, took effect on 11 July 2008. All other provisions contained in the Companies (Amendment) Ordinance 2003 had already commenced operation on 13 February 2004.

Companies (Amendment) Ordinance 2004

Schedule 2 to the Companies (Amendment) Ordinance 2004, which aims to modernise the registration regime for non-Hong Kong companies, came into operation on 14 December 2007. The remaining provisions in the Companies (Amendment) Ordinance 2004 relating to the introduction of new incorporation forms for local companies took effect on 11 July 2008.

Companies Ordinance

(Amendment of Eighth Schedule) Order 2007

The Companies Ordinance (Amendment of Eighth Schedule) Order 2007, which contains amendments to restructure the filing fees for non-Hong Kong companies and introduce a new fee for the issue of certificates of registration in respect of such companies became effective on 14 December 2007, together with the corresponding provisions contained in Schedule 2 to the Companies (Amendment) Ordinance 2004.

《2008年公司條例 (修訂附表8)令》

《2008年公司條例(修訂附表8)令》訂明查閱根據《2004年公司(修訂)條例》附表2第14A條新推出的法團成立表格的新費用，該項命令於二零零八年七月十一日與《2004年公司(修訂)條例》的相應條文一併生效。

重寫《公司條例》

隨著由財經事務及庫務局和公司註冊處人員組成的公司條例草案專責小組成立，重寫《公司條例》的工作(重寫條例工作)已於二零零六年年中展開。法律諮詢及草擬工作主要由律政司的律師提供協助，而有關股本及債權證、利潤及資產的分發和押記的條文，則由一名外聘的法律顧問提供意見。

重寫條例工作規模龐大，因此分兩個階段進行。第一階段處理那些影響超過69萬間現存公司運作的《公司條例》核心條文。《公司條例草案》暫定分為22個部分，《公司條例》中有關招股章程的部分會由證券及期貨事務監察委員會在另行檢討時處理。第二階段處理《公司條例》中關於清盤及無力償債的條文，這些條文主要由破產管理署管理。

重寫條例工作採用三層諮詢架構。為監督整項重寫工作，當局已成立一個由財經事務及庫務局常任秘書長(財經事務)出任主席的督導委員會，而公司法改革常務委員會(常委會)則負責就重寫期間產生的所有主要建議和推薦方案，向督導委員會提供意見。常委會獲得四個由相關專業組織和利益相關團體的代表組成的專責諮詢小組提供協助，四個諮詢小組的職權範圍如下：—

Companies Ordinance (Amendment of Eighth Schedule) Order 2008

The Companies Ordinance (Amendment of Eighth Schedule) Order 2008, which introduces new search fees for the new incorporation forms provided under section 14A of Schedule 2 to the Companies (Amendment) Ordinance 2004, took effect on 11 July 2008 together with the corresponding provisions in the Companies (Amendment) Ordinance 2004.

Rewrite of the Companies Ordinance

The Companies Ordinance Rewrite Exercise (the Rewrite) commenced in mid-2006, and a Companies Bill Team, comprising staff of the Financial Services and the Treasury Bureau and the Registry, was established. While legal advisory and law drafting support is principally provided by counsels of the Department of Justice, an external legal consultant has been commissioned to advise on the provisions regarding share capital and debentures, distribution of profits and assets and charges.

In view of the extensive nature of the Rewrite, the entire exercise has been divided into two phases. Phase I covers the core company law provisions which affect the daily operation of over 690,000 live companies. The Companies Bill will tentatively comprise 22 parts. Those parts of the Companies Ordinance regarding prospectuses will be dealt with in a separate review by the Securities and Futures Commission. Phase II of the exercise will cover the winding-up and other insolvency-related provisions in the Companies Ordinance which are mainly administered by the Official Receiver's Office.

A three-tier consultative structure has been adopted for the Rewrite. To oversee the entire process, a Steering Committee, chaired by the Permanent Secretary for Financial Services and the Treasury (Financial Services), has been formed within the administration. The Steering Committee is advised by the Standing Committee on Company Law Reform (SCCLR) on all major proposals and recommendations arising from the Rewrite. The SCCLR, in turn, is supported by four dedicated Advisory Groups, the members of which comprise representatives from relevant professional bodies and stakeholders. The remit of the four Advisory Groups is as follows: —

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諮詢小組(1) — 關於股本及債權證、利潤及資產的分發、押記的登記及公司重組的條文

諮詢小組(2) — 關於公司的組成、註冊、重新註冊、剔除名稱和撤銷註冊，以及公司會議和行政的條文

諮詢小組(3) — 關於董事和高級人員的條文

諮詢小組(4) — 關於審查、調查、罪行及懲罰的條文

Advisory Group 1 — share capital and debentures, distribution of profits and assets, registration of charges and company restructuring provisions

Advisory Group 2 — company formation, registration, re-registration, striking-off, de-registration, meetings and administration provisions

Advisory Group 3 — provisions relating to directors and officers

Advisory Group 4 — inspection, investigation and offences and punishment provisions

第一階段重寫條例工作在二零零六年年中展開之後，公司條例草案專責小組的工作穩步取得進展。在徵詢諮詢小組的意見期間審議的建議關乎《公司條例》大部分條文，佔新的《公司條例草案》核心條文接近四分之三，有關的諮詢工作已大致完成。

除了諮詢常委會和諮詢小組外，當局亦進行專題公眾諮詢，就《公司條例》的複雜課題蒐集公眾的意見和建議。常委會和諮詢小組就相關課題推薦的方案已納入公眾諮詢範圍。

有關會計及審計條文的第一輪公眾諮詢在二零零七年第二季結束，諮詢總結已於二零零八年三月發表，並載於本處網站，供公眾查閱。

第二輪諮詢在二零零八年四月進行，涵蓋的專題包括公司名稱、董事職責、法團出任董事及押記的登記；在二零零八年六月底展開的第三輪公眾諮詢涵蓋的專題包括股本、資本保存及法定合併程序。

Since the commencement of Phase I of the Rewrite in mid-2006, the work of the Companies Bill Team has been progressing steadily. Consultation with the Advisory Groups, which have considered the proposals concerning a substantial part of the provisions of the Companies Ordinance accounting for nearly three-quarters of the core provisions of the new Companies Bill, is near completion.

Apart from consultation with the SCCLR and the Advisory Groups, topical public consultations are conducted to gauge public views and comments on complex issues of the Companies Ordinance. The recommendations of the SCCLR and the Advisory Groups on relevant issues are incorporated for public consultation.

The first round of public consultation regarding the accounting and auditing provisions of the Companies Ordinance was completed in the second quarter of 2007. The relevant consultation conclusions were issued in March 2008. They are available on the Registry's website for public access.

The second consultation, covering issues in relation to company names, directors' duties, corporate directorship and registration of charges, was launched in April 2008 whereas the third round of public consultation, covering topics relating to share capital, capital maintenance and a statutory amalgamation procedure, was launched in late June 2008.

公司條例草案專責小組因應常委會和諮詢小組提出的寶貴意見，並考慮到專題公眾諮詢期間蒐集的意見，已著手擬備條例草案擬稿，以便在二零零九年年中以後再進行公眾諮詢。當局會考慮對條例草案擬稿的意見並適當地納入新的《公司條例草案》內，預計可在二零一零年第三季向立法會提交新的《公司條例草案》。

檢討《公司條例》的會計及審計條文

由政府 and 香港會計師公會組成的聯合作小組(聯合作小組)在二零零二年三月成立，負責徹底檢討《公司條例》的會計及審計條文。經過接近六年的努力，檢討工作已大致完成。聯合作小組就會計紀錄及帳目、董事報告書、董事酬金報告書、核數師的權利及責任等課題提出的建議，已提交常委會審議及確認。二零零七年三月二十九日，當局根據聯合作小組的建議，就改革《公司條例》會計及審計條文的立法建議發表諮詢文件，徵詢公眾意見。諮詢期於二零零七年六月二十九日結束，諮詢結果於二零零八年三月二十六日公布。結果顯示大部分建議都獲得大多數回應者的支持，然而也有頗多回應者就某些建議提出反對或保留意見，當局於是撤回或修改有關建議，包括把查閱公司會計紀錄的權利擴大至經理及公司秘書，以及規定董事須在董事報告書內聲明已向核數師披露所有相關核數資料。當局現正根據公眾諮詢結果為會計及審計條文定稿，然後納入二零零九年年中以後發表的條例草案擬稿以諮詢公眾。

With the valuable advice of the SCCLR and the Advisory Groups and taking into account the feedback received during the topical public consultations, the Companies Bill Team has embarked on the preparation of a draft bill for further public consultation after mid-2009. Comments on the draft bill will be considered and incorporated, where appropriate, in new Companies Bill. It is expected that the new Companies Bill will be introduced into the Legislative Council in the third quarter of 2010.

Review of the Accounting and Auditing Provisions of the Companies Ordinance

The Joint Working Group (JWG) between the Government and the Hong Kong Institute of Certified Public Accountants was established in March 2002 to undertake a comprehensive review of the accounting and auditing provisions of the Companies Ordinance. After nearly six years' work, the review was substantially completed. JWG's recommendations on various issues relating to accounting records and accounts, directors' report, directors' remuneration report, auditors' rights and responsibilities, etc. were submitted to the SCCLR for consideration and endorsement. On the basis of the recommendations of the JWG, a consultation paper was published on 29 March 2007 to consult the public on legislative proposals to reform the accounting and auditing provisions in the Companies Ordinance. The consultation period ended on 29 June 2007 and the consultation outcome was released on 26 March 2008. The outcome revealed that the majority of the respondents supported most of the proposals. Nevertheless, a substantial number of respondents objected to or had reservations about a few proposals. Consequently, the Administration withdrew or modified those proposals, which include a proposed extension of the right to inspect a company's accounting records to managers and company secretaries, and a proposed requirement for directors to declare in their reports that all relevant audit information has been disclosed to the auditors. The proposals on the accounting and auditing provisions are being finalised in the light of the outcome of the public consultation. The finalised provisions will find their way into a draft bill for public consultation after mid-2009.

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拓展計劃

過去數年，本處致力進行一項持續發展計劃，以擴展本處所提供公共服務的性質和範圍，其中一項主要措施是分階段實施「公司註冊處綜合資訊系統」（綜合系統），以取代舊有電腦系統，改革本處的核心業務，並協助本處邁向無紙運作模式。

公司註冊處綜合資訊系統

綜合系統第一階段在二零零五年二月二十八日投入運作後，改革了本處的核心業務。現時，本處把收到的所有紙張文件轉換成數碼影像，綜合系統會按照預先訂定的規則，把文件影像傳送給適當的組別處理，以便本處人員輸入資料，進行系統核證，或以聯線方式審閱資料。文件一經登記，公眾差不多可以即時查閱其影像紀錄。在綜合系統第一階段的運作模式下，新的操作程序可大大縮短處理和登記文件所需的時間、更快捷地更新和披露公司資料、加強資料的保安和完整性，以及提高生產力和降低運作成本。客戶現時可在網上查閱本處資料庫備存的最新公司資料，以及一億多文件的數碼影像。本處的電子查冊服務深受商界歡迎，客戶給予很高的評價。此外，本處亦設有服務組，每周七天、全日二十四小時提供服務。目前，在網上查閱公司資料的比率超過98%。

本處已完成對系統進行主要提升工程，以配合《2003年公司(修訂)條例》和《2004年公司(修訂)條例》就備任董事索引，非香港公司註冊及法團成立表格實施的新規定。此外，本處已外聘顧問進行可行性研究，審議和界定綜合系統第二階段的範圍、特點和功能，該項研究已於二零零七年九月完成。顧問建議本處著手進行第二階段計劃，包括以電子方式註冊成立公司和提交文件存檔。本處預計綜合系統第二

Development Programme

Over the past years, the Registry has embarked on a continuous development programme to expand the nature and scope of services to the public. One of the major initiatives was the phased implementation of the Integrated Companies Registry Information System (ICRIS) which replaced the previous computer systems, transformed our core business activities and facilitated the Registry to head towards a paperless operation.

Integrated Companies Registry Information System

The implementation of Phase I of ICRIS on 28 February 2005 has transformed the Registry's core business activities. All paper documents submitted to the Registry are now converted into digitised images after receipt. Document images are routed to the processing sections in accordance with the pre-defined rules to facilitate data entry, system verification and online scrutiny by staff. Image records of documents are almost instantly available for public search after registration. The new operational procedures under Phase I of ICRIS have led to a significant reduction in the time taken to process and register documents, more timely updating and disclosure of company information, enhanced data security and integrity and improved productivity at reduced operating costs. Customers can now conduct company searches over the internet on current data and over 100 million digitised images of company documents kept in the Registry's database. Our electronic search services have received overwhelming support from the business community and very positive feedback from customers. A helpdesk service is also available on a 24-hour basis every day. At present, over 98 per cent of company searches are conducted online.

The Registry has completed some major enhancements to the system to cater for the new requirements relating to the index of reserve directors, non-Hong Kong companies and incorporation forms which were introduced in the Companies (Amendment) Ordinance 2003 and Companies (Amendment) Ordinance 2004. In addition, the Registry engaged an external consultant to undertake a feasibility study to review and define the scope, features and functionalities of Phase II of ICRIS. The study was completed in September 2007. The consultant recommended that the Registry should proceed with Phase II, which would include

階段可於二零一零至一一年度分期推行。

the implementation of electronic incorporation of companies and filing of documents. We envisage that Phase II of ICRIS will be implemented by stages in 2010-11.

隨著綜合系統第一階段的實施，本處的工作量亦因為經濟增長而迅速增加，尤以公司註冊成立和公眾查冊為然。為確保綜合系統能夠有效地支援本處的運作，並提供高效率的公共服務，本處在二零零八年進行了一項主要的系統提升工程，以提高系統的儲存量及處理資料的能力。

Concomitant with the implementation of Phase I of ICRIS, there has been a rapid increase in the workload of the Registry (particularly in company incorporations and public search owing to growth of the economy). To ensure that the system can effectively support the Registry's operations and provide an efficient public service, we have carried out a major system upgrade in 2008 to increase the storage and processing capacity of the system.