

鞏固法律基礎 STRENGTHENING THE LEGAL INFRASTRUCTURE



遵從法規與執法

本處其中一項主要職能，是確保公司及其高級人員按時履行《公司條例》規定的責任，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。多年來，本處主要透過向未有履行提交文件責任的失責公司提出檢控，履行這項職能。在二零零八至零九年度，檢控政策檢討委員會就檢控政策進行檢討。這個由公司註冊處處長擔任主席的委員會認為，鑑於二零零八年下半年經濟逆轉，本處除了提出檢控外，可以在宣傳教育方面投放更多資源，以鼓勵公司遵從規定。本處於是推出一項試驗計劃，以發出「提交文件通知書」鼓勵公司在本處提出檢控前提交周年申報表。試驗計劃的要點如下：—

失責公司可在本處發出「提交文件通知書」的日期起計28天內，就其失責行為作出補救

如公司在28天期限屆滿後仍沒有提交尚欠的周年申報表，本處便會以傳票方式提出檢控

試驗計劃推出後，有42.7%的公司在收到要求遵從規定的通知書後提交周年申報表存檔。

Compliance and Enforcement

One of the main functions of the Registry is to ensure timely compliance by companies and their officers with 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. This has been achieved over the past years primarily through the taking of prosecution actions against companies in default of their filing obligations. In 2008-09, the prosecution policy was reviewed by the Prosecution Policy Review Committee. In view of the economic downturn in the latter half of 2008, the Committee, which is chaired by the Registrar of Companies, considered that other than prosecution, more resources could be devoted to education and publicity campaigns to encourage compliance. As a result, a pilot scheme on issuing "Notices to File" was launched to encourage filing of annual returns before any prosecution action. A brief summary of the pilot scheme is as follows: —

- Defaulting companies are allowed 28 days from the dates of the "Notices to File" to remedy their defaults
- Summonses will only be issued for prosecution if annual returns remain outstanding upon the expiry of the 28 days' period

Under the pilot scheme, 42.7 per cent of companies had filed their annual returns after receiving the notices requesting compliance.

下表列出與遵從法規及執法工作有關的主要統計數字：—

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

	2006-07 本地 Local	2007-08 本地 Local	2008-09 本地 Local		非香港* Non-HK*
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	83.3%	83.5%	85.2%	81.4%	
發出的傳票數目 Numbers of summonses issued	6,089	6,135	5,194		
被定罪的個案總數 Total number of convictions	2,338	2,154	1,407		
罰款總額 Total fines awarded	\$13,497,429	\$14,218,990	\$14,443,555		

* 當《2004年公司(修訂)條例》附表2的有關修訂在二零零七年十二月十四日生效後，非香港公司必須提交詳盡的周年申報表存檔。

* A non-Hong Kong company was required to file a full annual return after the commencement of the relevant provisions in Schedule 2 to the Companies (Amendment) Ordinance 2004 on 14 December 2007.

在二零零八至零九年度，市民及其他政府部門就指稱違反《公司條例》而向本處提出的投訴有533宗，較上年度增加25.4%。下表列出過去三年的投訴個案數目：—

In 2008-09, the Registry received 533 complaints from members of the public and other government departments regarding alleged breaches of the Companies Ordinance. This represents an increase of 25.4 per cent from the previous year. The table below shows the number of complaints for the past three years: —

	2006-07	2007-08	2008-09
投訴個案數目 Number of complaints	520	425	533

投訴大多涉及公司名稱、申請撤銷註冊的不營運而有償債能力的私人公司提供虛假或誤導性資料、公司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。

The majority of the complaints related to company names, false or misleading information relating to applications for deregistration of defunct solvent private companies, failure to file annual returns and other statutory returns and failure to provide accurate information in specified forms or returns.

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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諮詢組織，負責定期檢討《公司條例》，以確保香港的公司法配合本地營商環境不斷轉變的需要。公司註冊處為常委會提供秘書處服務，而常委會的現任主席為資深大律師余若海先生。在二零零八至零九年度，常委會共召開五次會議，審議多項修訂和重寫《公司條例》的建議。除了上述會議外，常委會委員曾傳閱六份文件，審議所載述的多項公司法改革建議。

常委會將在二零零九年下半年出版第25號年報，闡述二零零八至零九年度的工作。

制定法例

《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》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。

Standing Committee on Company Law Reform

The Standing Committee on Company Law Reform (SCCLR) is a non-statutory advisory body formed in 1984 to review the Companies Ordinance on a regular basis to ensure that our company law meets with the changing needs of the local business environment. The Registry provides secretarial support to the SCCLR, which is currently chaired by Mr Benjamin YU, Senior Counsel. During 2008-09, the SCCLR had five meetings and considered a wide range of proposals to amend and rewrite the Companies Ordinance. In addition to the above meetings, six papers on various company law reform proposals were circulated to SCCLR members for consideration.

The SCCLR will publish its 25th Annual Report on its work in 2008-09 in the latter half of 2009.

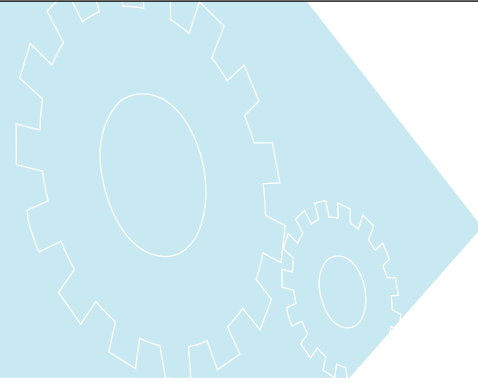
Legislation

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.



《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7條推出的新的法團成立表格的新查冊費用，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。

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 7 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.

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重寫《公司條例》

隨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。在二零零八至零九年度，公司條例草案專責小組全力進行重寫工作，以期在二零零九年年末發表《公司條例草案》擬稿，徵詢公眾意見。

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750,000間現存公司運作的《公司條例》核心條文，而第二階段處理《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。

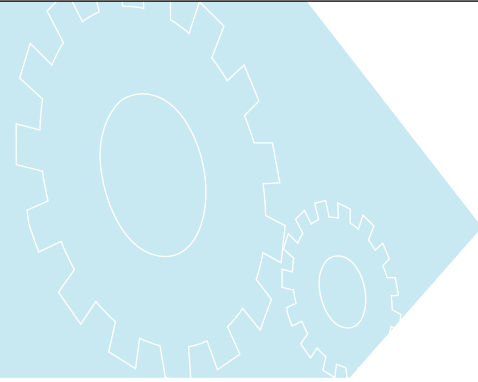
在重寫條例期間，公司條例草案專責小組曾徵詢負責就《公司條例》的不同範疇協助制訂修訂建議和推薦方案的四個諮詢小組的專業意見，並且曾考慮在二零零二年三月成立的政府和香港會計師公會檢討《公司條例》會計及審計條文聯合工作小組，以及公司法改革常務委員會所提出的推薦方案。為監督整項工作進行，當局成立了一個由財經事務及庫務局常任秘書長(財經事務)出任主席的督導委員會。自二零零七年以來，當局就多個富爭議性的課題進行了三輪公眾諮詢。第一輪諮詢總結於二零零八年六月發表，第二和第三輪諮詢總結分別於二零零八年十二月及二零零九年二月發表。當局透過這些諮詢把富爭議性的課題加以整理，然後進行深入

Rewrite of the Companies Ordinance

The Companies Ordinance Rewrite Exercise (the "Rewrite") commenced in mid-2006, following the establishment of a dedicated Companies Bill Team comprising staff of the Financial Services and the Treasury Bureau and the Registry. In 2008-09, the Companies Bill Team has worked full steam ahead with a view to issuing a draft Companies Bill for public consultation in late 2009.

In view of the extensive nature of the Rewrite, the entire exercise has been divided into two phases. Phase I covers the core provisions under the Companies Ordinance which affect the daily operation of over 750,000 live companies and Phase II will cover the winding-up and other insolvency-related provisions which are mainly administered by the Official Receiver's Office.

In the process, expert advice and inputs were sought from four Advisory Groups specifically set up to assist in formulating amendment proposals and recommendations in various areas of company law. Recommendations from the Joint Working Group between the Government and the Hong Kong Institute of Certified Public Accountants, which was established in March 2002 to review the accounting and auditing provisions of the Companies Ordinance and the SCCLR, were also considered. 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. Three rounds of public consultation have been conducted on various controversial issues since 2007. The conclusions for the first consultation were issued in June 2008 and the latter two in December 2008 and February 2009 respectively. Through these consultations, controversial issues were distilled and thoroughly discussed and debated.



的討論和辯論。重寫條例工作所得出各項建議的主要目的是加強董事的問責性、提高透明度及加強公司的資料披露、加強核數師的權利、加強保障股東和方便營商。重寫《公司條例》的一些主要建議載於附錄D。

為配合「公司註冊處綜合資訊系統」(綜合系統)第二階段在二零一零至一一年度實施，當局將會向立法會提交《公司(修訂)條例草案》，藉此提出修訂法例。修訂條例草案的目的包括提出立法建議，就以電子方式註冊成立公司和提交文件存檔，以及提供一站式公司註冊及商業登記服務訂定條文。我們亦建議精簡公司名稱的註冊制度，以便加快成立公司的程序，並賦權公司註冊處處長把沒有遵從處長的更改名稱指示的公司更名為其公司註冊編號。修訂條例草案預計可於二零一零至一一年度制定成為法例。

The proposals in the rewrite mainly aim to strengthen the accountability of directors, improve the transparency and disclosure of company information, strengthen auditors' rights, foster shareholder protection and business facilitation. Some major proposals are summarised in Appendix D.

To tie in with the launch of Phase II of the Integrated Companies Registry Information System (ICRIS) in 2010-11, legislative amendments will be introduced, in the form of a Companies (Amendment) Bill, into the Legislative Council. The Amendment Bill will seek to introduce, among other things, legislative proposals to provide for electronic incorporation of companies and filing of documents as well as one-stop service for company incorporation and business registration. We also propose to streamline the company name registration system with a view to expediting the company incorporation process and empowering the Registrar of Companies to change the name of a company to its company registration number if it fails to comply with the Registrar of Companies' direction of change of name. It is expected that the Amendment Bill will be enacted in 2010-11.