

制定法例與規管任務

Legislation and Regulation



《2010年公司(修訂)條例》

除了關於採用無紙化方式持股的第7部之外，《2010年公司(修訂)條例》(修訂條例)已於二零一零至一一年度實施。修訂的主要目的在於：

加快公司名稱的審批程序，並賦權公司註冊處處長指示公司依據法院的命令或在其他指明情況下更改其名稱；
賦權處長可在公司沒有遵從更改名稱的指示時，以該公司的註冊編號取代其名稱；

擴大法定衍生訴訟的適用範圍至涵蓋多重衍生訴訟，准許指明法團的有關連公司的成員代表該指明法團提出法定衍生訴訟；

便利公司通過電子方式(包括公司網站)向處長以外的任何人作出通訊；
簡化公司成立的程序；
方便以電子方式向公司註冊處申請成立公司及提交公司文件存檔；
方便提交公司註冊處存檔的文件以數碼簽署或通行密碼簽署；及
賦權處長以電子紀錄形式發出證明書。

修訂條例第7部載列有關無紙化持股和進行股份及債權證轉讓的修訂，該等修訂將於香港推行無紙化市場之後實施。

Companies (Amendment) Ordinance 2010

The Companies (Amendment) Ordinance 2010 (Amendment Ordinance), with the exception of Part 7, which provides for paperless holding of shares, was implemented in 2010-11. The main purposes of the amendments include:

- expediting the company name approval process and empowering the Registrar of Companies to direct a company to change its name pursuant to a court order or under other specified circumstances;
- empowering the Registrar to replace a company name with the company's registration number if the company in question fails to comply with the Registrar's direction to change its name;
- expanding the scope of statutory derivative actions to cover multiple derivative actions, by allowing a member of a related company of a specified corporation to bring a statutory derivative action on behalf of the specified corporation;
- facilitating companies to communicate with any person other than the Registrar through electronic means, including company websites;
- streamlining the procedure for company incorporation;
- facilitating electronic company incorporation and the electronic filing of documents with the Companies Registry;
- facilitating the signing of documents to be filed with the Registry using digital signatures or passwords; and
- empowering the Registrar to issue certificates in the form of electronic records.

Part 7 of the Amendment Ordinance, which contains amendments relating to the paperless holding and transfer of shares and debentures, will be implemented on the introduction of a scripless market in Hong Kong.

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《公司條例草案》

上一次對《公司條例》作出較大幅檢討和修訂時為一九八四年。過去二十年，公司法改革常務委員會及政府進行了數次大規模的檢討，目的是使《公司條例》現代化和改善本港的企業管治制度。這些檢討提出了多項修訂各條文的建議，其中一些建議已經實施。然而，作出小規模修訂的做法有其限制。《公司條例》需要全面重寫，使香港的公司法現代化，以進一步提升香港作為主要國際商業和金融中心的地位。此外，許多主要的普通法司法管轄區在過去二十年已改革當地的公司法。重寫《公司條例》讓香港可參考全世界在公司法發展方面的經驗，以加強本港的競爭力。本處獲得立法會支持，在二零零六年年中展開全面重寫《公司條例》的工作。

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已經成立，負責重寫《公司條例》的工作。此外，還有四個由有關的專家和相關專業組織代表組成的專責諮詢小組亦已成立，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。公司條例草案專責小組亦會考慮公司法改革常務委員會所提出的意見及推薦方案，以及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提出的推薦方案。經過多年來五輪公眾諮詢，以及多個論壇和研討會上的討論，《公司條例草案》已經定稿，並已於二零一一年一月二十六日提交立法會。負責審議草案條文的法案委員會於二零一一年二月成立，由陳茂波議員，MH，JP出任主席。審議工作仍在進行中。法案委員會委員名單載於附錄D。

《公司條例草案》有四個主要目標，分別是加強企業管治、確保規管更為妥善、方便營商及

The Companies Bill

The Companies Ordinance (CO) was last substantially reviewed and amended in 1984. Over the past two decades, the Standing Committee on Company Law Reform and the Government have conducted several major reviews with a view to modernising the CO and upgrading our corporate governance regime, resulting in recommendations to amend various sections. Some of those recommendations have been implemented. However, this piecemeal approach has limitations. A comprehensive rewrite of the CO was needed to modernise our company law and further enhance Hong Kong's status as a major international business and financial centre. In addition, many major common law jurisdictions have reformed their company law over the past two decades. Rewriting the CO promised to allow us to leverage the developments in company law taking place around the world and enhance our competitiveness. With the support of the Legislative Council, a comprehensive rewrite was launched in mid-2006.

A dedicated Companies Bill Team comprising officers from the Financial Services and the Treasury Bureau and the Companies Registry was established to undertake the rewriting. Four advisory groups, comprising experts in related fields and representatives from relevant professional bodies, were also specifically set up to help formulate the proposals and recommendations for amendments to various areas of company law. The Companies Bill Team also took into account the views and recommendations of the Standing Committee on Company Law Reform and the recommendations made by the Joint Working Group of the Government and the Hong Kong Institute of Certified Public Accountants on accounting and auditing provisions. After five rounds of public consultation and numerous discussions at a series of public forums and seminars over the years, a Companies Bill was finalised and introduced into the Legislative Council on 26 January 2011. A Bills Committee chaired by the Honourable Paul Chan Mo-po, MH, JP was formed in February 2011 to scrutinise the provisions in the Bill, and the work of the Bills Committee is underway. A list of the members of the Bills Committee is provided in Appendix D.

The Companies Bill has aims to achieve four main purposes: to enhance corporate governance, to ensure better regulation, to facilitate business,

使公司法例現代化。為達致這些目標而建議的一些重要措施載於附錄E。當部分新條文通過成為法例之後，本處便要肩負起新的角色及職能。

我們在重寫《公司條例》時，參考了其他國際商業及金融中心的普通法司法管轄區(例如英國、澳洲及新加坡)在公司法發展方面的經驗，以確保我們建議的制度符合國際標準，並確保我們可以從其他普通法司法管轄區的法院案例中獲益。我們在提出建議之前，亦有考慮本地市場的特殊需要和情況，例如，由於意見紛紜，與其倣效英國和澳洲的做法把董事責任全面編纂為成文法則，我們建議只在法例中澄清董事謹慎行事的標準。此外，我們亦建議，如屬公眾公司及其附屬公司，涉及董事或其關連實體的某些交易，規定須得到沒有利益關係的股東的批准。雖然這項法定規定或會比某些普通法司法管轄區較為嚴格，但考慮到不少本港的公眾公司是由家族操控，為了令股東權益更有保障，這項規定實屬必要。

草案共有909條條文及10個附表。除了實質條文及過渡性條文之外，還會包括經諮詢政府決策局及部門後草擬的有關其他條例的相應修訂。此外，亦會草擬規則及規例，以配合《公司條例草案》的實施。

and to modernise the law. The notable measures proposed to achieve these purposes are set out in Appendix E. Some of the new provisions, when enacted, will lead to new roles and functions to be assumed by the Registry.

In the rewrite of the CO, we have made reference to and benchmarked ourselves against the company law developments in other major common law jurisdictions with internationally active business and financial sectors, such as the United Kingdom, Australia and Singapore, to ensure that our proposed regime is in line with international standards and that we will be able to benefit from precedent cases in other common law courts. We have also taken into account the special needs and circumstances of the local market in arriving at our proposals. For example, given the diversity of views on the issue, rather than comprehensively codifying the duties of directors, as in the United Kingdom and Australia, we propose that only the standard for directors' duty of care should be clarified in the statute. We also propose to require the approval of disinterested shareholders for certain transactions involving directors or their connected entities in the case of public companies and their subsidiaries. Although this statutory requirement may be more stringent than in some other common law jurisdictions, we consider it necessary for fostering shareholder protection given the large number of family-controlled public companies in Hong Kong.

The Bill has a total of 909 clauses and 10 schedules. Apart from the substantive provisions and transitional provisions, consequential amendments to other ordinances will be provided for in consultation with government bureaux and departments. Rules and regulations to facilitate the implementation of the Companies Bill will also be drafted.



法案委員會正在審議《公司條例草案》
The Bills Committee was scrutinising the Companies Bill

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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》，以確保能配合本地營商環境不斷轉變的需要。常委會的現任主席為資深大律師林雲浩先生，他自二零一一年二月一日起接替資深大律師余若海先生，SBS，JP出任主席一職。公司註冊處為常委會提供秘書處服務。常委會二零一零至一一年度成員名單載於附錄F。

在二零一零至一一年度，常委會共召開四次會議，審議多項與公司法改革有關的建議。常委會將在二零一一年下半年發表第27號年報。

遵從法規與執法

良好的企業管治及按時履行遵從法規的責任對建立有效的規管架構，以及改善香港的營商環境以提升競爭力至為重要。除了致力促進企業管治及依賴懲罰和檢控確保遵從法規之外，本處亦採取溫和及便利營商的措施，鼓勵公司遵從法規。

近年，本地公司根據《公司條例》的規定提交周年申報表的整體遵從比率維持在一個高水平。二零零九至一零年度及二零一零至一一年度的遵從比率均為89%。儘管如此，為進一步推動及鼓勵公司遵從法規，在本處提出檢控前提交周年申報表，本處自二零零九年起展開兩項大型行動。

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 CO on a regular basis to ensure that it meets the changing needs of the local business environment. The SCCLR is currently chaired by Mr Godfrey Lam, SC, who took up the chairmanship from Mr Benjamin Yu, SBS, SC, JP on 1 February 2011. The Registry provides secretarial support to the SCCLR. A list of SCCLR members for 2010-11 is in Appendix F.

During 2010-11, the SCCLR held four meetings and considered a number of proposals relating to company law reform. The SCCLR will publish its 27th Annual Report in the latter half of 2011.

Compliance and Enforcement

Good corporate governance and timely compliance are of paramount importance in building up an effective regulatory environment and making Hong Kong a better and more competitive place to do business. In addition to promoting corporate governance and relying on sanctions and prosecutions to ensure compliance, the Registry has also employed soft and business-friendly measures to encourage compliance.

The overall rate of compliance in the filing of annual returns by local companies under the Companies Ordinance has remained high in recent years. A compliance rate of 89 per cent was recorded in 2009-10 and 2010-11. Despite this, the Registry has undertaken two major exercises since 2009 to further promote and encourage the filing of annual returns before any prosecution action is taken.

在二零零九年，本處展開一項特別行動，向未有提交周年申報表及帳目的失責擔保有限公司（擔保公司），發出催辦通知書。這項行動分三個階段進行，涉及約3,000間擔保公司。由於其中一些牽涉的擔保公司是接受市民捐款或政府資助的獲豁免繳稅慈善團體，因此必須確保這些擔保公司根據《公司條例》的規定，準時申報及披露公司資料。本處預期，這項行動最後一個階段將於二零一一年年中結束。至目前為止，約43%的失責公司在收到催辦通知書後補交申報表存檔。至於餘下的公司，本處會視乎適當情況採取檢控或剔除註冊的行動。

在二零一一年三月，本處進行了另一項特別行動，以鼓勵公司提交周年申報表。在是次行動中，本處共發出超過67,000封通知書給未有提交二零一零年周年申報表的失責私人公司。

本處持續加強對違反《公司條例》非涉及提交文件罪行的執法。過去一年本處提出檢控的罪行包括在處長發出有關指示後未有更改公司的名稱、未有舉行周年大會、未有將公司名稱緊附於其處所外面，以及未有在單據上方註明公司名稱及其成立為法團的地方。此外，三名公司董事被成功檢控就撤銷公司註冊的申請提供虛假資料。本處會在適當情況下向香港警方尋求協助。

In 2009, the Registry commenced a special exercise to send reminder letters to companies limited by guarantee (guarantee companies) that were in default of filing their annual returns and accounts. The exercise was conducted in three phases and covered around 3,000 guarantee companies. As some of the guarantee companies involved are tax-exempt charities that receive donations from the public or Government subvention, it is particularly important to ensure the timely reporting and disclosure of company information required under the Companies Ordinance. We envisage that the final phase of the exercise will be completed in mid-2011. So far, about 43 per cent of the companies in default filed their outstanding returns after receiving reminders from the Registry. Prosecution or striking-off actions were taken as appropriate for the balance.

In March 2011, the Registry conducted the second round of a special exercise to encourage the filing of annual returns. In the exercise, over 67,000 notices were issued to private companies which were in default of filing their 2010 annual returns.

The Registry has continued to step up its enforcement efforts in respect of non-filing offences under the Companies Ordinance. In the past year, it has instituted prosecutions for failure to comply with the Registrar's direction to change names, failure to hold annual general meetings, failure to affix a company name on the outside of premises, and failure to state a company's name and place of incorporation in its bill-heads. Three company directors were also prosecuted and convicted of offences for giving false information in connection with applications to deregister companies. The Registry enlists the assistance of the Hong Kong Police in appropriate cases.