

鞏固法律基礎

Strengthening Legal Infrastructure



《2012年公司條例 (修訂附表8)令》

財政司司長在《二零一二至一三年度政府財政預算案》演辭中，建議取消向本地公司徵收股本註冊費。這項建議旨在鼓勵投資者在香港設立公司，並有助現有公司進行集資活動和擴展業務，藉此加強香港作為企業註冊地的競爭力。

《2012年公司條例(修訂附表8)令》於二零一二年三月十六日刊登憲報。該命令修訂《公司條例》(第32章)附表8第 部，令本地公司無須就下述各項事宜繳付股本註冊費：

- (a) 註冊成為公司時的名義股本額；
- (b) 公司成立為法團後增加的名義股本額；及
- (c) 公司以溢價發行股份時的股份溢價額。

有關修訂適用於就上述目的在二零一二年六月一日或之後向公司註冊處處長提交相關文件的公司。

Companies Ordinance (Amendment of Eighth Schedule) Order 2012

In his speech for the 2012-13 Budget, the Financial Secretary proposed the abolition of the levy on capital duty on local companies. This proposal is intended to enhance Hong Kong's competitiveness as a corporate domicile by encouraging investors to establish companies there, and help existing companies to raise capital and expand their businesses.

The Companies Ordinance (Amendment of Eighth Schedule) Order 2012 was subsequently published in the Gazette on 16 March 2012. It amends Part I of the Eighth Schedule to the Companies Ordinance (Cap. 32) so that no capital duty would be payable by local companies with share capital on the following:

- (a) The amount of the company's nominal share capital at the time of its incorporation;
- (b) Any increase in its nominal share capital following its incorporation; and
- (c) The amount of premium for an issue of shares at a premium.

These amendments apply to companies that lodge relevant documentation for the above purposes with the Registrar of Companies on or after 1 June 2012.

重寫《公司條例》

背景

上一次對《公司條例》作出大幅檢討和修訂時為一九八四年。自此，政府及公司法改革常務委員會(常委會)一直定期檢討《公司條例》，以更新其內容，目的是要加強本港的企業管治制度，確保符合本地營商環境不斷轉變的需要。

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，而我們一直都很清楚《公司條例》需要全面重寫。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，而重寫《公司條例》讓香港可參考全世界在這方面的經驗。

在立法會財經事務委員會的支持下，重寫《公司條例》的工作在二零零六年年中全面展開。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，負責重寫《公司條例》的工作。此外，由有關的專家和相關專業組織及規管機構代表組成的四個專責諮詢小組，負責就公司法的不同範疇協助制訂修訂建議和推薦方案。

Rewriting the Companies Ordinance

The Background

The last time the Companies Ordinance was substantially reviewed and amended was in 1984. Since then, the Government and the Standing Committee on Company Law Reform (SCCLR) have been reviewing the 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 it satisfies the changing needs of the local business environment.

Past reviews of the Ordinance have resulted in a number of recommendations about amending various sections, some of which have been implemented. This piecemeal approach to amending the Ordinance nevertheless has its limitations and it has been clear that a comprehensive overhaul of the Ordinance is needed. Moreover, many major common law jurisdictions have reformed their company law during the past two decades, and rewriting the Ordinance would offer an opportunity to make reference to such developments taking place around the world.

With the support of Legislative Council Panel on Financial Affairs, a comprehensive rewrite of the Ordinance began in mid-2006. It has been undertaken by a dedicated Companies Bill Team consisting of officers from the Financial Services and the Treasury Bureau and the Companies Registry. Four advisory groups consisting of experts in related fields and representatives of relevant professional and regulatory bodies were also set up specifically to help formulate proposals and recommendations concerning amendments to various areas of company law.

公司條例草案專責小組在工作過程中，亦會考慮常委會以及政府和香港會計師公會組成的聯合作小組所提出的意見及推薦方案。該工作小組負責詳細審議《公司條例》的會計及審計條文。

經過多年來五輪公眾諮詢，以及與相關持份者不斷交流意見，《公司條例草案》終於定稿，並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。經過44次會議合共超過120小時，委員會於二零一二年六月完成逐一審議草案條文的工作。委員會亦審議超過850項委員會審議階段修正案，以及接近700條對現行法例的相應修訂。《公司條例草案》委員會成員名單載於附錄D。

In its work, the Companies Bill Team also took into account the views and recommendations of the SCCLR and a Joint Working Group formed by the Government and the Hong Kong Institute of Certified Public Accountants that has closely scrutinised the accounting and auditing provisions.

Following five rounds of public consultation and continuous exchanges with stakeholders concerned over the years, the Companies Bill was finalised and introduced into the Legislative Council on 26 January 2011.

A Bills Committee was formed under the chairmanship of the Honourable Paul Chan Mo-po, MH, JP, in February 2011 to scrutinise the Bill. After 44 meetings lasting a total of more than 120 hours, the Committee completed its clause-by-clause scrutiny of the Companies Bill in June 2012. The Committee also considered over 850 Committee Stage Amendments, as well as near 700 consequential amendments that will be required to the existing law. A list of the members of the Bills Committee on Companies Bill is provided in Appendix D.

立法會正在審議《公司條例草案》
The Companies Bill is being scrutinised
by the Legislative Council



新《公司條例》的主要特色

新《公司條例》包含超過900項條文及11個附表，目的是要令規管香港公司的法律架構現代化，使符合現代的國際標準，進一步提升香港作為主要國際商業和金融中心的競爭力。新條例的四個主要目的是要加強企業管治、確保規管更為妥善、方便營商及使公司法例現代化。為達致這些目的而提出的一些主要新猷載於附錄E。

我們在重寫《公司條例》時，參考了其他相類似的普通法司法管轄區，尤其是英國、澳洲及新加坡在公司法發展方面的經驗。目的是要確保我們的制度繼續符合國際常規，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。

此外，《公司條例草案》亦有考慮本地商界的特殊需要和情況，例如，若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。在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。

Main Features of the new Companies Ordinance

Consisting of more than 900 sections and 11 schedules, the new Companies Ordinance is intended to modernise the legal framework for companies in Hong Kong by bringing it into line with modern international standards, thereby increasing the city's competitiveness as a major international business and financial centre. The four main objectives of the new Ordinance are to enhance corporate governance, ensure better regulation, facilitate business, and modernise the law. The major initiatives introduced to achieve these objectives are set out in Appendix E.

Rewriting the Companies Ordinance has involved making reference to and benchmarking Hong Kong's existing legislation against developments in company law in other comparable common law jurisdictions, particularly the United Kingdom, Australia and Singapore. The aim has been to ensure that Hong Kong's regime will remain in line with international norms, and that it will be able to benefit from precedent cases in other common law courts.

Moreover, the distinct needs and circumstances of the local business community have been taken into account in the Companies Bill. One example is that the approval of disinterested shareholders would be required for certain transactions that involve the directors (or their connected entities) of public companies and their subsidiaries. This requirement is regarded as necessary for fostering shareholder protection, given the large number of family-controlled public companies in Hong Kong.

一般所說的「人數驗證」，即「通過決議收購要約或回購股份而作出的公開要約，包括私有化計劃的票數，須為出席該會議且有投票的成員中佔大多數同意」這項規定由新規定所取代。新規定述明，反對通過某項協議安排的決議的票數，不得超過附於所有無利害關係股份的表決權的10%。新條文亦述明，反對計劃的成員如被視為瑣屑無聊或無理取鬧，才可能會被著令支付訟費。

為減輕公司的合規成本，但同時要適當地維持公司財務報告的透明度，我們建議引入新條文，准許符合指定規模準則的公司擬備簡明財務報告及簡明董事報告。不符合指定規模準則的較大型私人公司，其規模如沒有超出一個更高的門檻，只要獲持有75%表決權的成員通過決議，而且沒有其他成員反對，則亦可擬備簡明財務報告及簡明董事報告。

新條例將於所有附屬法例獲通過後實施。

The so-called "headcount" test - in which a majority in number of members present and voting is required for a resolution to approve a takeover offer or general offer to buy back shares, including a privatisation scheme - would be replaced by a new requirement that the number of votes cast against a resolution to approve such a scheme must not be more than 10 per cent of votes attached to all disinterested shares. The new provision would also provide that a dissenting member might be ordered to pay legal costs only if his or her opposition to the scheme was deemed frivolous or vexatious.

To save compliance costs while maintaining an appropriate level of transparency in a company's financial reports, new provisions have been proposed to allow companies that meet specified size criteria to prepare simplified financial statements and directors' reports. Larger private companies that do not meet the specified size criteria would also be entitled to prepare simplified reports if their size does not exceed a higher threshold, provided that members holding 75 per cent of the voting rights so resolve and no member objects.

The new Ordinance will be implemented after passing of all subsidiary legislation.



鞏固法律基礎 Strengthening Legal Infrastructure

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》，以確保能切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，JP。本處為常委會提供秘書處服務。常委會二零一一至一二年度成員名單載於附錄F。常委會在二零一一至一二年度召開了一次會議，並將於二零一二年下半年發表第28號年報。

遵從法規與執法

公司註冊處處長致力保持公司登記冊的完整性，因此，在香港註冊成立的公司按時履行《公司條例》相關條文所規定的責任至為重要。為確保公司遵從法規，本處會對違規公司提出檢控或採取其他適當措施。

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 it meets the changing needs of the local business environment. The SCCLR is currently chaired by Mr Godfrey Lam, SC, JP. It receives secretarial support from the Registry. A list of SCCLR members for 2011-12 is given in Appendix F. The SCCLR held one meeting during 2011-12, and it will publish its 28th Annual Report in the latter half of 2012.

Compliance and Enforcement

The Registrar of Companies strives to maintain the integrity of the Companies Register. It is therefore of the utmost importance that companies incorporated or registered in Hong Kong comply with their obligations under the relevant provisions of the Companies Ordinance and in a timely manner. The Registry ensures that this is done by prosecuting or taking other appropriate measures in cases of non-compliance.



在二零一一至一二財政年度，本地公司提交周年申報表的遵從比率達88%，而非香港公司的遵從比率則達94%。兩個數字均與前一年相若。

本處完成一項特別行動，向遲交周年申報表及帳目的擔保有限公司，發出催辦通知書。約45%的公司收到催辦通知書後補交申報表存檔，而52%的公司未有就失責情況作出補救，本處已採取行動把他們從登記冊中剔除。

本處大部分的檢控個案，均是對未有提交周年申報表或其他公司文件的公司採取法律行動。然而，本處亦著重其他方面的執法工作。過去一年，本處向公司及其高級人員提出檢控的罪行包括：未有舉行周年大會、在處長發出有關指示後未有更改公司的名稱、就撤銷公司註冊的申請提供虛假資料，以及未有妥善註冊而以有限公司的名義營業。本處在有需要時會聯同其他規管機構執法。

During the financial year 2011-12, 88 per cent of local companies complied with the requirement to file annual returns, whereas 94 per cent of non-Hong Kong companies did so. Both figures are similar to those of the previous year.

The Registry completed a special exercise that involved sending reminders to companies limited by guarantee that were late in filing their annual returns and accounts. About 45 per cent of those companies filed their outstanding annual returns after receiving the reminder, whereas 52 per cent of them failed to remedy the default, and action was taken to strike them off the register.

Most of the prosecutions undertaken by the Registry were legal actions against companies that failed to file annual returns or other company documents. However, the Registry also emphasises enforcement efforts in other areas. During the past year, the Registry instituted proceedings against companies and their officers for offences such as failure to hold annual general meetings, failure to comply with the Registrar's directions to change names, providing false information in applications for deregistration, and carrying on business in the name of a limited company that has not been duly incorporated. The Registry cooperated with other regulators whenever necessary.