



實施新《公司條例》

Implementing the New Companies Ordinance

實施新《公司條例》，令香港作為世界級商業中心的地位更形鞏固

The new Companies Ordinance reinforces Hong Kong's position as a world-class place to do business.

制訂規則

Rules



背景

自一九八四年起，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立法修訂的建議，大部分建議已經實施。

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公司法發展方面的經驗。

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。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負責。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在常委會之下成立，負責就公司法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在工作過程中，亦會考慮常委會以及由政府 and 香港會計師公會組成負責詳細審議《公司條例》的會計及審計條文的聯合作小組所提出的意見及推薦方案。

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。

The Background

Since 1984, the Government and the Standing Committee on Company Law Reform (SCCLR) have been reviewing 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 it satisfies the changing needs of the local business environment. The reviews of the Ordinance have resulted in a number of recommendations on various legislative amendments, some of which have been implemented.

The 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 the Legislative Council Panel on Financial Affairs, a comprehensive rewrite of the Companies Ordinance began in mid-2006. The rewrite of the Ordinance 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 under the SCCLR to help formulate proposals and recommendations concerning amendments to various areas of the law.

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 had 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 (LegCo) on 26 January 2011.

通過新《公司條例》

在《公司條例草案》提交立法會後不久，立法會於二零一一年二月成立法案委員會審議草案條文。經過44次合共超過120個小時的會議，委員會於二零一二年六月完成逐一審議草案條文的工作。在整個過程中，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。

新《公司條例》包含超過900項條文及11個附表，於二零一二年七月十二日在立法會獲得通過，並於二零一二年八月十日在憲報刊登。

法案委員會審議的重要課題，其中包括「人數驗證」、就核數師報告引入新罪行、新制訂「責任人」、取得董事住址及個人的完整身分識別號碼等資料、董事的謹慎責任、有關董事利益衝突的規則，以及擬備簡明報告的資格條件。法案委員會成員名單載於附錄D。

Passing of the New Companies Ordinance

Shortly after the Companies Bill was introduced into LegCo, a Bills Committee was formed by LegCo in February 2011 to scrutinise the Bill. After 44 meetings lasting a total of more than 120 hours, the Bills Committee completed its clause-by-clause scrutiny of the Companies Bill in June 2012. In the process, the Committee also considered over 850 Committee Stage Amendments, as well as near 700 consequential amendments that would be required to the existing law.

The new Companies Ordinance, which consists of more than 900 sections and 11 schedules, was passed by LegCo on 12 July 2012 and gazetted on 10 August 2012.

The key issues deliberated by the Bills Committee included, among others, the “headcount test”, the introduction of a new offence in respect of auditor’s report, the new formulation of “responsible person”, accessibility to information on residential addresses of directors and full identification numbers of individuals, directors’ duty of care, rules concerning directors’ conflict of interest and the qualifying conditions for simplified reporting. A list of members of the Bills Committee is at Appendix D.



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，每當經驗顯示有必要修訂《公司條例》及其他相關法例時，負責就《公司條例》及其他相關法例的修訂向財政司司長提供意見，以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周家明先生，他於二零一三年一月十一日接替資深大律師林雲浩先生，JP主席一職。本處為常委會提供秘書處服務。常委會二零一二至一三年度成員名單載於附錄E。

Standing Committee on Company Law Reform

The Standing Committee on Company Law Reform (SCCLR) was set up in 1984 as a non-statutory advisory body to advise the Financial Secretary on amendments to the Companies Ordinance and other related legislation when experience shows them to be necessary to meet the changing needs of local business environment. The SCCLR is currently chaired by Mr Anderson Chow, SC, who took up the chairmanship from Mr Godfrey Lam, SC, JP, on 11 January 2013. The Registry provides secretarial support to the SCCLR. A list of SCCLR members for 2012-2013 is shown in Appendix E.

附屬法例

我們的目標是要在二零一四年首季實施新《公司條例》。在此之前，我們需要制訂多項附屬法例，訂明有關行政、技術和程序事宜的規定，以實施新《公司條例》。繼二零一二年九月至十二月期間就條文擬稿進行兩個階段的公眾諮詢後，我們由二零一三年二月開始，分批向立法會提交了12項附屬法例。立法會成立了一個小組委員會（成員名單載於附錄F），負責審議有關的附屬法例，並於二零一三年七月前完成立法程序。該12項附屬法例載列如下：

- 《公司（公司名稱所用字詞）令》，指明所用字詞的清單，在公司名稱內使用該等字詞須事先獲得批准；
- 《公司（披露公司名稱及是否有限公司）規例》，規管在公司辦事處及其通訊文件等展示及披露公司名稱；

Subsidiary Legislation

Our aim is to bring the new Ordinance into operation in the first quarter of 2014. Prior to that, we need to enact various pieces of subsidiary legislation to provide for the administrative, technical and procedural matters for the implementation of the new Ordinance. Following two phases of public consultation on the draft provisions between September and December 2012, we introduced 12 pieces of subsidiary legislation into LegCo by batches beginning from February 2013. A subcommittee was set up by LegCo to scrutinise the subsidiary legislation (please refer to Appendix F for its membership) and completed the legislative processes by July 2013. These 12 pieces of subsidiary legislation are as follows :-

- Companies (Words and Expressions in Company Names) Order to prescribe a list of words and expressions, the use of which in a company's name would require prior approval;
- Companies (Disclosure of Company Name and Liability Status) Regulation to regulate the display and disclosure of company names at a company's office and in its communication documents, etc.;

- 《公司（會計準則（訂明團體））規例》，訂明香港會計師公會為發出或指明公司財務報表須符合的會計準則的團體；
- 《公司（董事報告）規例》，列明須載於董事報告的資料；
- 《公司（財務摘要報告）規例》，訂明有關財務摘要報告的詳細規定；
- 《公司（修改財務報表及報告）規例》，訂明有關公司自發修改財務報表及相關報告文件的事宜；
- 《公司（披露董事利益資料）規例》，列明資料披露的規定詳情，包括有關董事服務薪酬，以及在財務報表附註內載列惠及董事的交易等資料；
- 《公司（章程細則範本）公告》，制訂三套章程細則範本供公司自願採用；
- Companies (Accounting Standards (Prescribed Body)) Regulation to specify the Hong Kong Institute of Certified Public Accountants as the body for issuing or specifying accounting standards with which financial statements must comply;
- Companies (Directors' Report) Regulation to set out the information to be contained in a directors' report;
- Companies (Summary Financial Reports) Regulation to provide for the detailed requirements concerning summary financial reports;
- Companies (Revision of Financial Statements and Reports) Regulation to provide for matters concerning the voluntary revision of financial statements and relevant reporting documents by a company;
- Companies (Disclosure of Information about Benefits of Directors) Regulation to set out the detailed disclosure requirements for information on payments relating to a director's services and dealings in favour of directors in the notes to financial statements;
- Companies (Model Articles) Notice to prescribe three sets of model articles for companies to adopt at their volition;



- 《公司紀錄（查閱及提供文本）規例》，訂明有關索閱由公司備存的公司紀錄的安排；
- 《公司（非香港公司）規例》，述明各項為實施新《公司條例》第16部的詳細程序事宜；
- 《公司（費用）規例》，指明各項向公司註冊處處長繳付的費用及雜項費用；及
- 《公司（不公平損害呈請）法律程序規則》，訂明有關不公平損害呈請法院法律程序的規則。
- Company Records (Inspection and Provision of Copies) Regulation to prescribe the arrangements relating to access to company records kept by companies;
- Companies (Non-Hong Kong Companies) Regulation to provide for the detailed procedural matters for implementation of Part 16 of the new Companies Ordinance;
- Companies (Fees) Regulation to set out the fees payable to the Registrar of Companies and miscellaneous fees; and
- Companies (Unfair Prejudice Petitions) Proceedings Rules to provide for the procedural rules for court proceedings in respect of unfair prejudice petitions.



新《公司條例》

新《公司條例》旨在達至四個主要目的，就是要加強企業管治、方便營商、確保規管更為妥善及使公司法例現代化，進一步提升香港作為主要國際商業和金融中心的競爭力。以下段落簡介新《公司條例》部分主要新猷及修改。

The new Companies Ordinance

The new Companies Ordinance aims to achieve four main objectives, namely to enhance corporate governance, facilitate business, ensure better regulation and modernise the law, thereby strengthening Hong Kong's competitiveness as a major international business and financial centre. The ensuing paragraphs highlight some of the major initiatives and changes which the new Ordinance will bring about.



為加強對股東的保障，新《公司條例》擴大不公平損害補救的範圍、引入更有效的規則來處理董事的利益衝突，以及規定追認董事的行為必須獲無利益關係的股東批准。其中一項與此有關而又較具爭議性的課題，是與一般所說的「人數驗證」有關的。根據這項規定，「通過決議安排計劃的票數，須為出席該會議且有投票的成員中佔大多數同意」。在新條例下，有關收購要約或回購股份而作出的公開要約，包括私有化計劃，「人數驗證」的規定由新規定所取代。新規定述明，反對通過有關計劃的決議的票數，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，才可能會被着令支付訟費。

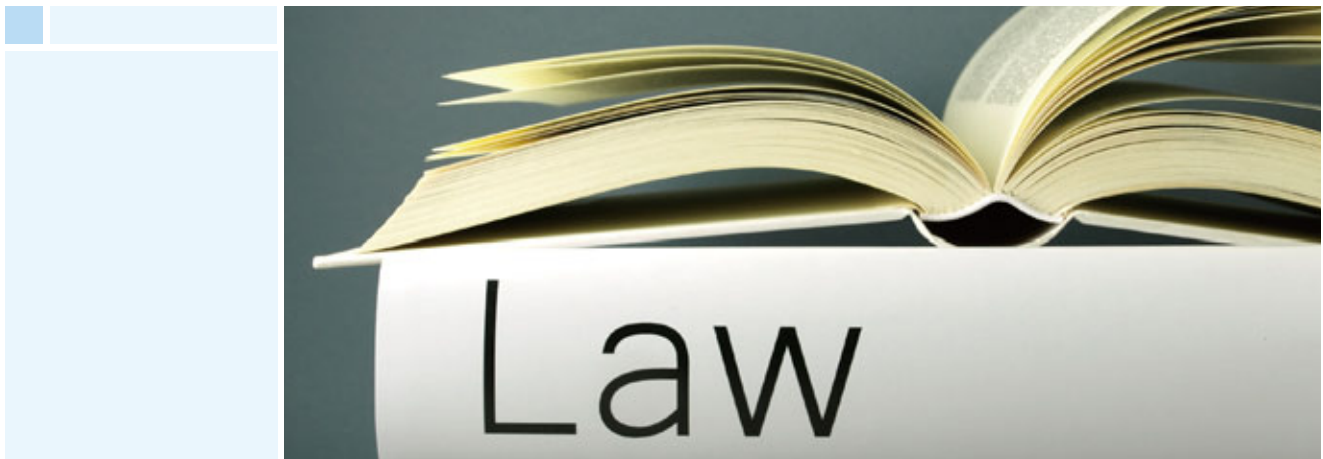
現行《公司條例》下並沒有關於董事有責任以謹慎、技巧及努力行事的條文，而普通法在香港這方面的情況亦非清晰。新《公司條例》釐清董事須以謹慎、技巧及努力行事的責任標準，在法例中以法定陳述方式，為董事提供明確的指引。新條文要求董事以合理水平的謹慎、技巧及努力行事，並訂出一套混合客觀及主觀準則，以釐定應達到的標準。

To foster shareholder protection, the new Ordinance expands the scope of unfair prejudice remedy, introduces more effective rules to deal with directors' conflicts of interests and requires the conduct of directors to be ratified by disinterested shareholders' approval. One of the more controversial issues involved in this respect is in relation to the so-called "headcount test", pursuant to which a majority in number of members present and voting is required for a resolution to approve a scheme of arrangement. Under the new Ordinance, for a takeover offer or general offer to buy back shares, including a privatisation scheme, the headcount test is replaced by a new requirement that the number of votes cast against a resolution to approve the scheme must not be more than 10 per cent of the votes attached to all disinterested shares. The new provision also provides that a dissenting member might be ordered to pay legal costs only if his or her opposition to the scheme was considered to be frivolous or vexatious.

Under the existing Companies Ordinance, there is no provision on directors' duty of care, skill and diligence and the common law position in Hong Kong is not entirely clear. The new Ordinance clarifies the standard of directors' duty of care, skill and diligence by introducing a statutory statement in the law to provide guidance to directors. The new provision stipulates that a director must exercise reasonable care, skill and diligence and sets out a mixed objective and subjective test in the determination of the standard.

現行《公司條例》禁止所有公眾公司及屬某個有上市公司為成員的公司集團的成員的私人公司，委任法人團體為其董事，而其他私人公司則沒有限制。新《公司條例》規定，除現行限制外，私人公司至少須有一名董事為自然人，以提高透明度及問責性。新條例實施後會有6個月的遵從法規寬限期。

The existing Companies Ordinance prohibits all public companies, as well as private companies which are members of a group of companies of which a listed company is a member, from appointing a body corporate as their director. There is no restriction for other private companies. The new Ordinance requires, on top of the current restrictions, that private companies must have at least one director who is a natural person to enhance transparency and accountability. There will be a grace period of 6 months after the commencement of the new Ordinance for compliance.



為減輕公司的合規成本，但同時要維持公司財務報告適當的透明度，新條例引入新條文，自動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，亦可擬備簡明財務報告及簡明董事報告。

To save compliance costs while maintaining an appropriate level of transparency in a company's financial reports, new provisions have been included in the new Ordinance to automatically 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 sizes do not exceed a higher threshold, provided that members holding 75 per cent of the voting rights so resolve and no member objects.

為確保規管更為妥善，新《公司條例》把公司高級人員違反規定的檢控門檻降低，引入「責任人」的新概念，以取代現行所制訂的「失責高級人員」的規定。根據新制訂的規定，責任人是指公司的高級人員授權、准許或參與違反有關條文、規定、指示、條件或命令，或授權、准許或參與不遵從有關規定、指示、條件或命令。新制訂的規定，其作用是無須證明高級人員「故意」行事違反有關規定。

With a view to ensuring better regulation, the new Ordinance has lowered the threshold for contravention by officers of companies by introducing a new concept of "responsible person" to replace the current formulation of an "officer in default". Under the new formulation, a responsible person is an officer of a company who authorises or permits, or participates in a contravention or failure. The effect of the new formulation is that it will no longer be necessary to prove that the officer acted "wilfully" in breaching the relevant requirement.

新《公司條例》亦引入新的罪行，關乎核數師法定責任下在核數師報告內作出兩項指明的陳述，即核數師認為財務報表與會計紀錄在事關重要的方面並不吻合，以及他未能為審計工作取得必需及事關重要的資料或解釋。經過法案委員會及立法會全體會議廣泛審議後，相關條文獲立法會通過成為新《公司條例》第408條，該條訂明任何人如明知或罔顧後果地導致規定須載於核數師報告的陳述沒有載於該報告內，即屬犯罪。

為使公司法例現代化，新條例廢除所有公司股份的面值。相關的概念例如票面值及股份溢價亦予廢除，並加入推定條文，確保現行文件中藉提述面值或相關概念訂定的合約權利，不會因改行無面值制度而受到影響。新制度簡化會計記項，讓公司在重整股本結構方面有較大靈活性，以符合相若司法管轄區的國際趨勢。

The new Ordinance also introduces a new offence in respect of an auditor's statutory duty to make two specified statements in an auditor's report, i.e. that the auditor is of the opinion that the company's financial statements are not in agreement with the accounting records in any material respect, and that he fails to obtain the necessary and material information or explanations for the purpose of the audit. After extensive deliberation in both the Bills Committee and at the full Council meeting, the relevant provision was passed by LegCo to become section 408 of the new Ordinance, under which a person commits an offence if the person knowingly or recklessly causes a required statement to be omitted from the auditor's report.

With a view to modernising the law, the new legislation abolishes par value for shares of all companies. Relevant concepts such as nominal value and share premium are also abolished, and deeming provisions are included to ensure that contractual rights defined by reference to par value and related concepts in existing documentation will not be affected by the abolition of par value. The new regime simplifies the accounting entries and provides more flexibility for companies in structuring their capital. This is in line with international developments in comparative jurisdictions.



新條例亦廢除公司需有組織章程大綱。組織章程細則會包含組織章程大綱先前所載的大部分條文。

新《公司條例》的主要新猷載於附錄G。

此外，新《公司條例》的其中一項新猷，就是包含查閱公司登記冊上董事個人資料新安排的條文，旨在就滿足公眾取得資料的需要和保障私隱兩者之間作出合理平衡。新安排於二零零九年的公眾諮詢後引入，並於二零一二年經法案委員會審議後獲立法會通過。可是，當我們正為實施細節制訂附屬法例作定稿時，部分持份者及社會某些界別在二零一三年首季，就有關議題發表不同及新的意見。由於牽涉複雜的法律、私隱及運作方面的課題，加上立法會財經事務委員會在二零一三年四月八日的會議上提出討論，當局會優先處理必要的工作，以便新條例如期於二零一四年首季實施，其後才考慮有關新查閱安排的事宜。因此，新條例有關新查閱安排的條文不會納入生效日期公告內。

The new Ordinance also abolishes the need for a company to have a memorandum of association. The articles will contain most of the provisions previously set out in a memorandum.

The major initiatives introduced by the new Companies Ordinance are set out in Appendix G.

As one of the initiatives, the new Ordinance also contains provisions on a new arrangement for the inspection of personal information of directors on the Companies Register, which seeks to strike a reasonable balance between satisfying public need to access information and protecting privacy. The new arrangement was introduced after public consultation in 2009 and was approved by LegCo after deliberation by the Bills Committee in 2012. However, some stakeholders and certain sectors of the community expressed diverse and new comments on the issue in the first quarter of 2013 as we were finalising the subsidiary legislation to provide for implementation details. In view of the complex legal, privacy and operational issues involved, and following discussion with the LegCo Panel on Financial Affairs at its meeting on 8 April 2013, the Administration will accord priority to the tasks necessary for commencing the new Ordinance in the first quarter of 2014 as scheduled, and consider the matters relating to the new inspection arrangement thereafter. Accordingly, the provisions in the new Ordinance concerning the new inspection arrangement will not be included in the commencement notice.



實施新條例的準備工作

本處致力令相關持份者順利過渡至新制度，而新《公司條例》將會包含詳盡的過渡性條文，以確保達至這個目標。儘管新條例會帶來重大變革，例如廢除股份面值或廢除組織章程大綱，但新條例亦有詳盡的推定條文，以確保現有公司可輕易過渡至新制度。

本處現正提升資訊系統，並檢討我們的政策、表格及工作程序，為新制度作好準備。本處現正設計新的數據庫及工作流程，以配合新程序、新服務及新公司類別。新《公司條例》實施下將有超過90份指明表格。我們已展開全面的宣傳活動，並會在接近生效日期前加強宣傳，以確保我們的持份者得悉新條例所帶來的轉變。我們會舉辦一連串的簡介會，並會發出通函給超過一百萬間註冊公司，公布新條例的主要修改。本處的辦事處及網頁亦會提供資料小冊子及單張，供市民索閱及瀏覽。

為完成實施新《公司條例》的立法工作，當局會於二零一三年第四季：

- 制訂生效日期公告，落實實施新條例的相關條文；及
- 更新新條例的附表，其中包括訂明在有需要時為新制訂的法例作出相應修訂。

此外，本處會確保員工為實施新《公司條例》作好準備。在新條例實施之前，我們會舉辦內部簡報會，講解新的法定規定及程序。

本處會不遺餘力確保順利過渡。

Preparing for the Implementation

The Registry aims to make the transition to the new regime as smooth as possible. The new Ordinance contains detailed transitional provisions for this purpose. Where there are major changes – for example, the abolition of par value for shares or 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 Registry is overhauling its information systems and reviewing its policies, forms and operational procedures. New database and workflows are being designed to accommodate new procedures, new services and new categories of companies. Over 90 forms would be specified for the implementation of the new Ordinance. A comprehensive publicity campaign has been launched and will intensify towards the commencement date to ensure that our stakeholders are aware of the changes brought about by the new Ordinance. A series of seminars will be organised and circular letters will be issued to over one million registered companies to publicise the major changes. Information booklets and pamphlets will also be available at the Registry's offices and website for public access.

To conclude the legislative work for implementation of the new Ordinance, in the fourth quarter of 2013, the Administration will –

- make a commencement notice for bringing the relevant provisions of the new Ordinance into operation; and
- update the Schedules to the new Ordinance to provide for, among others, consequential amendments to newly-enacted legislation as necessary.

Meanwhile, the Registry will ensure that its staff are ready for implementing the new Ordinance. Internal briefing sessions on the new statutory requirements and procedures will be organised before the new law comes into operation.

The Registry will spare no efforts in ensuring a smooth transition.