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企業監管展新章 New Chapter in Corporate Regulation

(這單
第2(3)
法律)

《公司條例》

COMPANIES ORDINANCE

第 622 章

CHAPTER 622

(本行本根據《1990 年法例 (活頁版) 條例》
第 2(3) 條印行，並切合 2013 年 4 月 25 日的
情況。)

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香港法例第622章新《公司條例》（下稱「新條例」）於二零一四年三月三日生效，為香港的企業監管揭開新的一頁。

新條例包含21個部分，合共921項條文，11個附表及12項附屬法例，為香港公司的註冊及運作提供了一個現代化的法律框架，鞏固香港作為主要國際商業和金融中心的地位，並提升香港作為營商地的競爭力。

新條例取代舊有《公司條例》（第32章）（下稱「舊有條例」）關於公司的成立及運作的條文。新條例一經實施，這些條文即告廢除，而舊有條例中不被廢除的條文（即主要為關於招股章程和公司無力償債的條文）則保留在第32章內。新條例實施後，第32章改稱為《公司（清盤及雜項條文）條例》。

新條例的主要目的，是加強企業管治、方便營商、確保規管更為妥善，以及使香港的公司法例現代化。為達至這些目的的主要新猷簡介如下：

The commencement of the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong ("the new Ordinance"), on 3 March 2014 marks a new chapter in Hong Kong's corporate regulation.

The new Ordinance, which consists of 21 parts, 921 sections, 11 Schedules and 12 pieces of subsidiary legislation, provides a modernised legal framework for the incorporation and operation of companies in Hong Kong and strengthens Hong Kong's status as a major international business and financial centre. It also reinforces Hong Kong's competitiveness as a place to do business.

The new Ordinance replaces those provisions in the old Companies Ordinance, Cap. 32 ("the old Ordinance") governing the formation and operation of companies, which were repealed upon the commencement of the new Ordinance. The provisions of the old Ordinance which are not repealed and which relate mainly to prospectuses and corporate insolvency remain in Cap. 32, which is renamed the Companies (Winding up and Miscellaneous Provisions) Ordinance.

The main objectives of the new Ordinance are to enhance corporate governance, facilitate business, ensure better regulation and modernise Hong Kong's company law. Some key initiatives for achieving the objectives are highlighted below.





加強企業管治

加強董事的問責性

舊法例載有條文禁止所有公眾公司及與某上市公司屬同一集團的私人公司，委任法人團體為其董事，而其他私人公司則無此限制。新條例規定，除原有限制外，私人公司最少須有一名董事為自然人。

為向董事提供清晰的指引，新條例亦規定董事有責任以合理水平的謹慎、技巧及努力行事，並訂出一套混合客觀及主觀的準則，以釐定應達到的標準。

提高股東在決策過程中的參與程度

為加強股東的權利，新條例有關要求以投票方式表決的最低人數規定，由佔總表決權的10% 下調至5%。此外，如指定條件已予遵從，傳閱成員就周年成員大會作出的陳述書及提出的決議的費用，會由公司承擔。

Enhancing Corporate Governance

Strengthening the accountability of directors

There were provisions in the old law prohibiting 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 was no restriction for other private companies. The new Ordinance requires, on top of these restrictions, that private companies must have at least one director who is an individual.

To provide clear guidance to directors, the new Ordinance also stipulates that a director has duty to exercise reasonable care, skill and diligence, and sets out a mixed objective and subjective test in the determination of the standard.

Enhancing shareholder engagement in the decision making process

To enhance the right of shareholders, the threshold for demanding a poll is lowered from 10 per cent to 5 per cent of the total voting rights under the new Ordinance. In addition, the expenses of circulating members' statements or proposed resolutions for annual general meetings ("AGMs") will be borne by the company if certain specified conditions are met.

改善公司資料的披露

新條例規定公眾公司及不符合擬備簡明報告資格的私人公司，須擬備更詳盡的董事報告，而該報告須包括具分析性及前瞻性的「業務審視」。

修訂「人數驗證」

凡涉及收購要約或回購股份而作出的公開要約的計劃，包括私有化計劃，「人數驗證」的規定被新規定所取代。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%。

加強對股東的保障

新條例擴大不公平損害補救的範圍，以涵蓋「擬作出或不作出的作為」，藉此消除不明確情況，即有關成員可否就只是在建議階段的行動，或只是揚言作出或不作出某些作為的情況，提出有關不公平損害的訴訟。法院可批予的補救，其範圍亦擴至包括作出命令，禁制公司擬作出的作為，或規定公司作出其擬不作出的作為。

為避免出現利益衝突，新條例擴大董事受禁貸款及類似交易的範圍，以涵蓋更多與董事有關連的實體。新條例亦規定公司須獲成員的批准，才可訂立董事受僱於公司的保證年期超過或可超過三年的合約。

Improving the disclosure of corporate information

The new Ordinance requires public companies and companies which are not qualified for simplified reporting to prepare a more comprehensive directors' report which includes an analytical and forward-looking business review.

Modifying the "headcount test"

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.

Fostering shareholder protection

The scope of the unfair prejudice remedy is extended to cover proposed acts and omissions, so as to remove the uncertainty as to whether a member can bring an action for unfair prejudice where a course of action is only at the proposal stage, or where there is only a threat to do or not to do something. The remedies that may be granted by the Court are also extended to cover an order restraining the proposed act or requiring the doing of an act that the company has proposed not to do.

To avoid potential conflict of interests, the new Ordinance expands the prohibition on loans or similar transactions with directors to cover a wider category of entities connected with a director. It also provides that the approval of members must be obtained for any contracts under which the guaranteed term of employment of a director with the company exceeds or may exceed 3 years.

方便營商

簡化程序

為了方便營商，多個程序已予簡化：

- 在新條例下，只有一名成員的公司無須舉行周年成員大會，而其他公司可藉全體成員通過決議以免除舉行周年成員大會。
- 新條例為同一集團內的全資附屬公司的合併訂立不經法院的合併程序。新條例亦就減少股本引入以償付能力測試作為依據的不經法院程序，作為另一選擇。
- 在新條例下，所有公司（而非只有私人公司）都獲准從資本中撥款回購股份，但必須符合償付能力規定。而對於公司或其附屬公司提供資助以購入公司股份的限制，已予簡化及放寬。

Facilitating Business

Streamlining procedures

With the aim of facilitating business various procedures have been streamlined:

- Under the new Ordinance, single member companies are not required to hold AGMs and other companies may dispense with the requirement to hold AGMs by passing a resolution of all members.
- A new court-free regime for amalgamation of wholly-owned intra-group companies is introduced in the new Ordinance and an alternative court free procedure based on the solvency test has been introduced for the reduction of capital.
- Under the new Ordinance, all companies, not just private companies, are allowed to fund share buy-backs out of capital subject to the solvency test, and the restrictions on a company or any of its subsidiaries providing financial assistance for the purchase of shares in the company are streamlined and relaxed.



便利擬備簡明報告

為減輕公司的合規成本，並同時適切地維持公司財務報告的透明度，新條例納入新條文，便利更多中小企擬備簡明財務報告及簡明董事報告。

方便營商

新法例讓公司自行選擇是否使用法團印章，從而簡化公司簽立文件的方式。新法例亦准許公司使用電子科技在多於一個地點舉行成員大會。

新條例亦載明新條例批准或規定向公司作出或由公司作出的通訊的規則。

Facilitating simplified reporting

To save compliance costs while maintaining an appropriate level of transparency in a company's financial reports, new provisions have been introduced to facilitate more small and medium-sized companies to prepare simplified accounts and directors' reports.

Facilitating business operations

The new law simplifies the mode of execution of documents by making the use of a common seal optional and permits a general meeting to be held at more than one location using electronic technology.

The new Ordinance also sets out the rules governing communications that are authorised or required under the new Ordinance to be made to or by companies.



確保規管更為妥善

確保公司登記冊的資料準確無誤

新條例釐清公司註冊處處長（下稱「處長」）在文件登記及備存登記冊方面的權力，包括更正公司登記冊內的在排印或文書方面的錯誤、加上註釋，以及規定公司須解決任何互相抵觸之處或提供最新的資料。

加強執法制度

為加強執法，如處長有理由相信任何行為涉及提供任何虛假或誤導陳述的罪行，處長獲賦予取得文件或資料作調查的新權力。新條例亦加強獲委任的審查員調查公司事務的調查權力。

此外，新條例引入「責任人」的新定義，把檢控公司高級人員違反新條例任何條文的門檻降低，以針對舊法例下蓄意行為之外的故意或罔顧行為。

為鼓勵公司遵從法規並善用司法資源，新條例賦予處長就指明罪行以繳款代替檢控的新權力，該等罪行一般針對公司所犯簡單、輕微的規範性罪行。

改善押記的登記

為加強透明度，提交押記作登記的期限由五個星期縮短至一個月。此外，記錄押記的文書的經核證副本須提交以作登記及供公眾查閱。第三方會被視作對已登記的押記文書內的所有條款有法律構定的知悉。

Ensuring Better Regulation

Ensuring the accuracy of information on the Companies Register ("the Register")

The new Ordinance clarifies the powers of the Registrar of Companies ("the Registrar") in relation to the registration of documents and keeping of the Register. In particular, the Registrar may rectify typographical or clerical errors, make annotations, and require a company to resolve any inconsistency or provide updated information.

Improving the enforcement regime

To improve enforcement, a new power of enquiry is given to the Registrar to obtain documents or information where there is reason to believe that any conduct relating to an offence of providing false or misleading statement has taken place. The investigatory powers of inspectors appointed to investigate the affairs of companies are also enhanced.

The threshold for breach of any provision of the new Ordinance by an officer of the company has been lowered through the introduction of a new definition of "responsible person", which targets intentional or reckless conduct rather than willful conduct as under the old law.

To encourage compliance and to optimise the use of judicial resources, the new Ordinance introduces a new power for the Registrar to compound specified offences, generally confined to straightforward and minor regulatory offences committed by companies.

Reforming the registration of charges

To improve transparency, the period for submitting charges for registration has been shortened from five weeks to one month. Further, a certified copy of the instrument documenting the charge will have to be filed and registered for public search. Third parties will be deemed to have constructive notice of the terms of the charge as registered.

使法例現代化

以淺白的語文重寫法例

新條例以淺白的語文編寫。一些條文亦重新排列，使其先後次序更符合邏輯和便於使用，從而令新條例更易於閱讀和理解。

廢除組織章程大綱

新條例已廢除所有公司的組織章程大綱。對於根據《舊有公司條例》註冊的公司（下稱「原有公司」），先前載於章程大綱的條件，須視為載於公司章程細則的條文，與法定股本及股份面值有關的條文除外，因為在新條例下該等條文視為已被刪除。根據新條例申請註冊成立的公司，則只需提交法團成立表格及章程細則。

章程細則範本

為方便成立公司，《公司（章程細則範本）公告》（第 622H 章）提供三套獨立的章程細則範本，分別適用於公眾股份有限公司、私人股份有限公司及無股本的擔保有限公司。公司可選擇採納為其公司所屬類別而訂明的章程細則範本的全部或任何條文，作為公司的章程細則。

廢除股份面值

為符合國際趨勢，新條例廢除股份面值，並強制所有公司採用無面值股份制度，相關的概念如「法定股本」、「股份溢價」及「面值」等不復存在。廢除面值概念簡化了會計記項，並讓公司在改動股本結構方面有更大靈活性。

Modernising the Law

Rewriting the law in simple and plain language

The new Ordinance is written in simple and plain language. We have modernised the language and re-arranged the sequence of some of the provisions in a more logical and user-friendly order, so as to make the new Ordinance more readable and comprehensible.

Abolishing the memorandum of association

The memorandum of association has been abolished for all companies. For companies registered under a former Companies Ordinance ("existing companies"), the conditions in the memorandum are deemed to be contained in the articles of association, except for those relating to authorised share capital and par value, which are regarded as deleted for all purposes. For companies which apply to be incorporated under the new Ordinance, they need to submit their incorporation form and articles of association only.

Model articles of association

To facilitate the setting up of companies, the Companies (Model Articles) Notice (Cap. 622H) provides three standalone sets of model articles of association for public companies limited by shares, private companies limited by shares and companies limited by guarantee respectively. Companies may choose to adopt all or any of the provisions of the model articles prepared for the type of companies to which they belong.

Abolishing par value

In line with international trends, the new Ordinance abolishes the par value of shares and migrates to a mandatory no-par regime for all companies. As a result, relevant concepts such as "authorised share capital", "share premium" and "nominal value" no longer exist. Retiring the concept of par value simplifies accounting entries and gives companies greater flexibility in structuring their share capital.

簡化公司類別

新條例簡化了可組成的公司類別，由舊條例的八類簡化至五類，而擔保有限公司則歸類為獨立的公司類別。

在新條例下可組成的五類公司為：

- 公眾股份有限公司
- 私人股份有限公司
- 無股本的擔保有限公司
- 有股本的公眾無限公司
- 有股本的私人無限公司

有關新條例的詳盡資料，請瀏覽公司註冊處網頁 (www.cr.gov.hk) 內「新《公司條例》」一欄。

Streamlining the types of companies

The new Ordinance streamlines the types of companies that can be formed from eight types under the old law into five types, with companies limited by guarantee categorised as a separate type of companies.

The 5 types of companies that can be formed under the new Ordinance are:-

- Public company limited by shares
- Private company limited by shares
- Company limited by guarantee without share capital
- Public unlimited company with share capital, and
- Private unlimited company with share capital

Comprehensive information about the new Ordinance are available at the “New Companies Ordinance” section on the Companies Registry’s website at www.cr.gov.hk.

