

# Preface

## The New Companies Ordinance

The commencement of the new Companies Ordinance, Chapter 622 of the Laws of Hong Kong, on 3 March 2014 will herald a new era for Hong Kong's company law.

The new Companies Ordinance ("the New Ordinance"), which consists of 21 Parts, 921 sections and 11 Schedules is, I believe, one of the longest and most complex pieces of legislation ever enacted in Hong Kong.

The New Ordinance will replace the core provisions of the existing Companies Ordinance (Chapter 32 of the Laws of Hong Kong) governing the formation and operation of companies, which will be repealed upon the commencement of the New Ordinance. The remaining provisions of the existing Companies Ordinance, which primarily cover corporate insolvency, winding up, disqualification of directors, receivers, managers and prospectuses, will not be repealed but will remain intact in the existing Ordinance, which will be renamed the Companies (Winding up and Miscellaneous Provisions) Ordinance when the New Ordinance comes into operation.

By way of history, with the support of the Panel on Financial Affairs of the Legislative Council ("LegCo"), the comprehensive rewrite of the Companies Ordinance began in mid-2006. Since then, 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. In addition to the Standing Committee on Company Law Reform, which contributed significantly throughout the process, four advisory groups and a joint Working Group formed by

the Government and the Hong Kong Institute of Certified Public Accountants<sup>1</sup> were set up to review the law, consider and formulate proposals and recommendations concerning amendments to various areas of the law.

Following five rounds of public consultations and continuous discussions with relevant stakeholders over the years, including the holding of a series of public forums and seminars, the Companies Bill ("the Bill") was finalised and introduced into the LegCo on 26 January 2011.

Owing to the multiplicity and complexity of the issues involved, it took the Bills Committee more than 16 months to scrutinise the Bill and deliberate on the proposed initiatives, policy considerations and drafting technicalities. After 44 meetings lasting a total of more than 120 hours, the Bills Committee completed its clause-by-clause scrutiny of the Bill in June 2012. In the process, the Committee also considered over 850 Committee Stage Amendments, as well as nearly 700 consequential amendments that were required for other laws of Hong Kong.

The more controversial issues deliberated by the Bills Committee included, among others, the "headcount test", clarification of the standard of directors' duty of care, rules concerning directors' conflicts of interests, the introduction of a new offence in respect of omissions in auditor's report and a new formulation of "responsible person" to lower the prosecution threshold, accessibility to information on residential addresses of directors and full identification numbers of individuals and the qualifying conditions for simplified reporting.

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<sup>1</sup> Lists of Members of the Standing Committee on Company Law Reform and the five Advisory Groups are provided in Annex 1.

The passage of the New Ordinance on 12 July 2012 marked the culmination of more than six years' hard work and I was honoured to be among the team who witnessed the completion of this enormously challenging project.

The major objectives of the New Ordinance are to enhance corporate governance, ensure better regulation, facilitate business and modernise the law<sup>2</sup>. We believe that the New Ordinance brings the legal framework for the operation of companies in Hong Kong in line with modern international standards and ensures the infrastructure of Hong Kong's company law will continue to best serve the needs of Hong Kong as an international commercial and financial centre. It also reinforces Hong Kong's competitiveness as a place to do business.

The New Ordinance will come into operation on 3 March 2014. To facilitate the implementation of the New Ordinance, we introduced 12 pieces of subsidiary legislation<sup>3</sup> on technical and procedural matters into the LegCo in early 2013. A Subcommittee was set up by the LegCo to scrutinise the subsidiary legislation in February 2013. Having held a series of meetings to examine the provisions clause by clause, the Subcommittee concluded its work in June 2013, with the entire legislative process completed in July 2013.

The rewrite of the company law has been a tremendous challenge for all involved. As the Registrar of Companies, I must record my heartfelt thanks to all who have contributed to the process including, in particular, members of the legislature,

members of the Standing Committee on Company Law Reform, our five advisory groups, the advisory and drafting teams of the Department of Justice and all those who responded to our consultations for their valuable inputs, active participation and unfailing support.

Last but not least, I am also very much indebted to the great efforts, perseverance and hard work of members of the Companies Bill Team, without whom we would not have been able to resolve all the difficulties and teething problems on the way and accomplish the project as scheduled.

The publication of this booklet, which contains the highlights of each of the 21 Parts of the New Ordinance, seeks to promote understanding of the new legislation and prepare readers for the transition to the new regime. I hope you find the materials contained in this booklet informative and useful.

An electronic copy of the highlights can be found in the "New Companies Ordinance" section of the website of the Companies Registry at [www.cr.gov.hk](http://www.cr.gov.hk). The section also contains comprehensive information on the New Ordinance, including a Table of Origin and a Table of Destination cross-referencing provisions of the New Ordinance and the existing Companies Ordinance.

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<sup>2</sup> A list of Major Initiatives introduced under the New Ordinance is provided in Annex 2.

<sup>3</sup> A list of the 12 pieces of subsidiary legislation is at Annex 3.