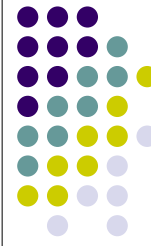


# 《公司條例草案》 Companies Bill

方便營商  
Business facilitation

確保規管更為妥善  
Ensuring better regulation



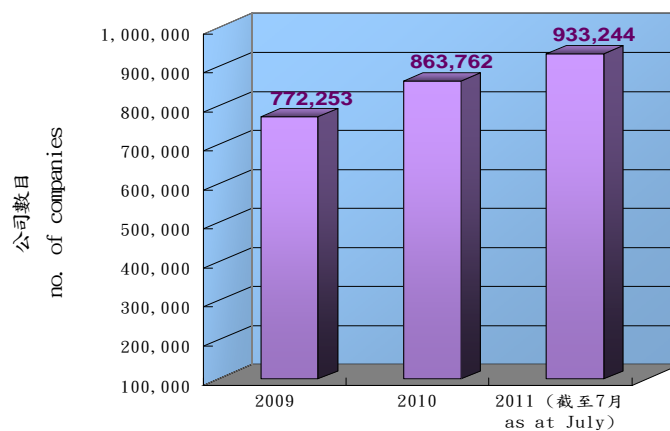
公司註冊處處長鍾麗玲  
Ms. Ada Chung  
Registrar of Companies  
20.8.2011

1

## 在登記冊上的本地公司 Number of companies on register



2009年至2011年7月 2009 to July 2011

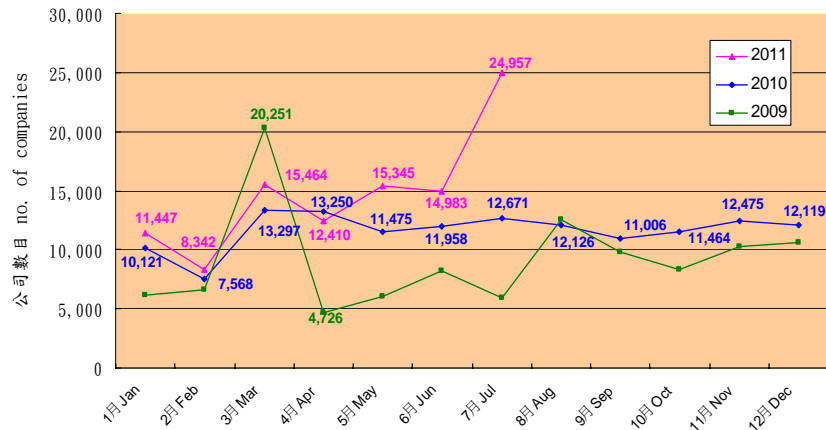


2

## 新公司成立數目 Number of local companies incorporated



2009年至2011年7月 2009 to July 2011

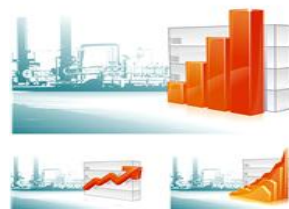


3

## 方便營商(1) Business facilitation (1)



- 簡化程序 Streamlining procedures
  - 公司可在取得股東一致同意的情況下無須舉行周年成員大會。Allowing companies to dispense with AGMs by unanimous shareholders' consent.
  - 就簡單個案，訂立處長以行政方式把已解散公司恢復註冊的新程序，而無須使用法院程序。Introducing a new procedure of "administrative restoration" of a dissolved company by the Registrar in straight-forward cases without the need for recourse to the court.



4

## 方便營商(2) Business facilitation (2)



- 簡化程序 Streamlining procedures
  - 引入不經法院的減少股本程序作為另一選擇。Introducing an alternative court-free procedure for reduction of capital.
  - 這個程序以償付能力測試作為依據，會較快捷而且費用較低，所有公司都可採用。Based on the solvency test which would be faster and cheaper and can be utilised by all companies.
  - 為債權人和股東設有足夠保障。舉例來說，減少股本須得到並非該項決議所關乎的股東通過特別決議支持；公司須刊登公告通知債權人。Adequate safeguards to protect creditors and shareholders. For example, supported by a special resolution passed by disinterested shareholders; publication of notice to alert creditors.

5

## 方便營商(3) Business facilitation (3)



- 方便擬備簡明報告 Facilitating simplified reporting
  - 小型私人公司和小型擔保公司可擬備簡明財務報告和簡明董事報告。Facilitating small private companies and small guarantee companies to prepare simplified financial and directors' reports.
  - “小型私人公司”和“小型集團”的準則 - 符合以下條件的任何兩項：Criteria for “small private company” and “small group” – satisfies any two of the following conditions:
    - 全年總收入不超過港幣5,000萬元。Total annual revenue of not more than HK\$50 million.
    - 總資產不超過港幣5,000萬元。Total assets of not more than HK\$50 million.
    - 僱員不超過50人。No more than 50 employees.

6

## 方便營商(4) Business facilitation (4)



- 方便擬備簡明報告 Facilitating simplified reporting
  - “小型擔保公司”或作為“小型擔保公司集團”母公司的擔保公司(全年總收入不得超過港幣2,500萬元)，亦符合擬備簡明報告的資格。“A small guarantee company” or a guarantee company that is the holding company of a “group of small guarantee companies” (total annual revenue must be not more than HK\$25 million) is also qualified for simplified reporting.
  - 使有關財務摘要報告的條文更易於使用，並把條文的適用範圍擴大至包括所有公司。 Making the summary financial report provisions more user-friendly and extending their application to all companies.

7

## 方便營商(5) Business facilitation (5)



- 方便通訊 Facilitating communication
  - 列明公司以電子形式與外間通訊的規則。 Setting out the rules governing communications to and by companies in electronic form.
  - 如公司的章程細則或成員決議許可，公司可透過網站與其成員通訊。 Communication through website must be permitted by articles or by members' resolution.



8

## 方便營商(6) Business facilitation (6)



- 方便通訊 Facilitating communication
  - 接收者如在公司要求同意的28天內不回覆，即被視為同意。Recipient deemed to agree if he / she does not respond to the company's request for consent within 28 days.
  - 接收者如給予最小7天通知，可取消有關同意。Recipient may revoke consent by giving at least 7 days' notice.
  - 接收時間- 48小時或公司的章程指明的較長期間。Time of receipt – 48 hours or such longer period as specified in articles.

9

## 方便營商(7) Business facilitation (7)



- 加強對個人資料的保障 Better protection of personal data
  - 目前公司的董事及公司秘書須向公司註冊處提供他們的住址及身分證明文件號碼，作成立公司及註冊之用。At present, directors and company secretaries are required to provide their residential addresses and ID numbers to the Companies Registry for incorporation and registration purposes.
  - 在條例草案下，公司秘書無須再披露他們的住址。就董事而言，條例草案規定須提供住址外，亦須提交通訊地址。住址備存於公司註冊處的保密紀錄，取覽須受限制。而通訊地址則載於公開的公司登記冊上。Under the Bill, company secretaries are no longer required to disclose their residential addresses. For directors, the Bill requires the provision of correspondence address in addition to residential address, so that the director's residential address could be kept in a confidential record of the CR subject to restricted access while the correspondence address will be shown on the public register.

10

## 方便營商(8) Business facilitation (8)



- 加強對個人資料的保障 Better protection of personal data
  - 有關公司的債權人或成員或任何其他有充分利害關係的人士可向法院申請，命令處長披露受保護資料，從而取覽有關資料。 A creditor, member or any other person having a sufficient interest may have access to the protected information by applying to court for an order for disclosure of the protected information.
  - 至於現有紀錄中的董事和公司秘書住址及身分證明文件號碼，只會在經申請及繳付費用後才不再讓公眾查閱。 As for existing record, the residential addresses and ID numbers of directors and secretaries will be withheld from public inspection upon application and payment of a fee.

11

## 方便營商(9) Business facilitation (9)



- 簡化程序 Streamlining procedures
  - 就集團內部全資附屬公司之間的合併引入不經法院的新法定合併程序。 Introducing a new court-free statutory amalgamation procedure for wholly-owned intra-group companies.
- 方便營商 Facilitating business operation
  - 容許公司使用影音科技在多於一個地點舉行成員大會。 Permitting a general meeting to be held at more than one location by using audio-visual technology.

12

## 方便營商(10) Business facilitation (10)



- 廢除股份面值 Abolishing par value of shares
  - 強制所有有股本的公司採用無面值股份制度。 Adopting a mandatory system of no-par for all companies with a share capital.
  - 股份面值已引起多個實際問題，例如有誤導之嫌，阻礙籌集新資本及使會計制度過分複雜。 Par value gives rise to practical problems, such as giving misleading information, inhibiting raising of new capital and unnecessarily complicating the accounting regime.
  - 強制性的制度對所涉各方來說，執行會較簡易；假如採用非強制性的制度，就須同時執行兩套法律制度，不但增加成本，而且令制度更複雜。 A mandatory system would be simpler for all concerned while an optional no-par system would require legislating for and administering two parallel legal systems, thus necessitating additional costs and complexity.

13

## 方便營商(11) Business facilitation (11)



- 廢除股份面值 Abolishing par value of shares
  - 立法引入無面值制度。 Express provisions for the migration to no-par regime.
  - 相關的概念例如面值及股份溢價將予以廢除。 Relevant concepts such as nominal value and share premium will be abolished.
  - 推定條文以確保藉提述面值及相關概念訂定的合約權利不會因廢除面值而受到影響。推定條文可為公司節省大量工作、開支及時間，也減低出現爭議的可能性。 Deeming provisions to ensure that contractual rights defined by reference to par value and related concepts will not be affected by the abolition of par. The deeming provisions will save considerable work, expense and time for companies and reduce the possibility of disputes.

14

## 確保規管更為妥善(1) Ensuring better regulation (1)



- 確保公共登記冊的資料準確無誤 Ensuring accuracy of information on the public register
  - 釐清及加強公司註冊處處長備存登記冊方面的權力，包括更正排印及文書的錯誤，要求公司解決互相抵觸之處等。 Clarifying and enhancing the Registrar of Companies's powers regarding keeping of the register including rectifying typos or clerical errors, requiring companies to resolve inconsistency, etc.
- 加強對公司自願撤銷註冊的規管 Enhancing regulation of voluntary deregistration of companies
  - 申請人必須證實有關公司不是任何法律程序的一方，以及有關公司在香港沒有不動產，以減低撤銷註冊程序可能被濫用的機會。 Applicant to confirm that the company is not a party to any legal proceedings and that it has no immovable property in Hong Kong, so as to minimise any potential abuse of the procedure.

15

## 確保規管更為妥善(2) Ensuring better regulation (2)



- 確保公司披露股本結構的最新資料 Ensuring disclosure of up-to-date information on capital structure
  - 股本說明是一間公司在某一時刻的總認購資本的“定格速寫”。 A statement of capital is a “snapshot” of a company's total subscribed capital at a particular point in time.
  - 條例草案規定公司須在其股本有變動時，例如在公司配發股份或獲准更改股本的情況下，將股本說明交付公司註冊處。 The Bill requires a company to deliver to the Companies Registry such a statement whenever there is a change to its capital, e.g. where there is an allotment of shares or a permitted alteration of share capital.

16



## 確保規管更為妥善(3) Ensuring better regulation (3)



- 改善押記的登記制度 Improving the registration of charges
  - 更新須予登記的押記的清單。 Updating the list of registrable charges .
  - 規定押記文書的核證副本須予以登記及讓公眾查閱。 Requiring a certified copy of the charge instrument to be registrable and available for public inspection .



17

## 確保規管更為妥善(4) Ensuring better regulation (4)



- 改善執法制度 Strengthening the enforcement regime
  - 賦予處長取得文件或資料的新權力，以確定有關公司曾否提供虛假或具誤導性的陳述。 New power for the Registrar to obtain documents or information for ascertaining whether any offence relating to giving false or misleading statement has taken place.
  - 賦權處長可就指明的罪行准以繳款代替檢控，以善用司法資源。 Empowering the Registrar to compound specified offences so as to optimise the use of judicial resources.



18

## 確保規管更為妥善(5) Ensuring better regulation (5)



- 改善執法制度 Strengthening the enforcement regime
  - 以繳款代替檢控的機制只適用於簡單及輕微的規管罪行，而這些罪行是可從客觀及可靠的證據中輕易察覺到的。Confine the compounding regime to straightforward, minor regulatory offences that are easily detectable from objective reliable evidence.
  - 條例草案附表7載列這些罪行，包括法團印章未刻有公司名稱、不恰當使用法團印章、沒有提交周年申報表及沒有交付帳目等罪行。Schedule 7 of the Bill sets out the offences. These cover failure to engrave company name on the common seal, improper use of the common seal, failure to file annual returns and failure to deliver accounts .

19

## 確保規管更為妥善(6) Ensuring better regulation (6)



- 改善執法制度 Strengthening the enforcement regime
  - 以“責任人”的新表述方式降低高級人員違反規定的門檻。Lowering the threshold for contravention by officers through a new definition of “responsible person”.
  - 在《公司條例》下，“失責高級人員”如明知而故意授權或准許違規行為，須承擔刑事責任。此一舉證責任很高，因為“故意”須為蓄意的行為。The Companies Ordinance attributes criminal liability to an officer in default if he knowingly and wilfully authorizes or permits the default. The evidential burden is very high as “wilfulness” requires a deliberate act.

20

## 確保規管更為妥善(7) Ensuring better regulation (7)



- 改善執法制度 Strengthening the enforcement regime
  - 條例草案訂明“責任人”是指公司的高級人員，而該人授權、准許或參與違規或失責行為。“Responsible person” is to be defined in Bill as an officer of a company who authorizes or permits or participates in the contravention or failure.
  - “沒有採取一切合理步驟防止[違反有關規定]”的一句已從建議的表述方式中刪去。The proposed formulation of “failing to take all reasonable steps to prevent [the contravention]” has been dropped.
  - 新表述方式將降低檢控門檻，高級人員的責任擴大至須對罔顧後果（但不包括疏忽）的作為和不作為負責。The effect of the new formulation is to lower the prosecution threshold to extend liability to reckless acts or omissions by officers, but not negligence.

21

## 確保規管更為妥善(8) Ensuring better regulation (8)



- 改善執法制度 Strengthening the enforcement regime
  - 根據新表述方式，犯罪意圖為實際知情、故意漠視本身責任或罔顧後果。The mens rea required under the new formulation will be actual knowledge, wilful blindness or recklessness.
  - 高級人員不會由於疏忽或無心之失而須負刑事責任。Officers will not be criminally liable for negligence or inadvertence.
  - 條例草案中向“責任人”施加法律責任的罪行主要屬規管性質，大部分（超過 93%）為循簡易程序定罪及可判處罰款的罪行。The offences under the Companies Bill which attribute liability to “responsible persons” are for the most part regulatory in nature and the majority (over 93%) are summary offences punishable by fine.

22

## 確保規管更為妥善(9) Ensuring better regulation (9)

---



- 改善執法制度 Strengthening the enforcement regime
  - 加強財政司司長委任的審查員的調查權力，例如要求協助調查的人保存紀錄或文件，以及藉法定聲明核實陳述。 Enhancing investigatory powers of an inspector appointed by the Financial Secretary, e.g. requiring a person under investigation to preserve records and to verify statements by statutory declaration.
  - 提供更有效的保障措施，把調查及查訊取得的資料保密，並加強對舉報人的保障。 Better safeguards for confidentiality of information obtained in investigations and enquiries and better protection of informants.