Brief Introduction to the New Companies Ordinance

Ms Kitty Tsui
Companies Registry
September 2012

Background on the Rewrite of the Companies Ordinance

- One of the lengthiest and most complicated pieces of legislation
- Last substantially reviewed and amended in 1984
- Phased approach to the rewrite exercise
  - Companies Bill (CB) – Provisions affecting operation of live companies
  - Winding-up and insolvency-related provisions will be dealt with under the modernisation of corporate insolvency law exercise
  - Separate review of provisions on prospectuses by the Securities and Futures Commission
Background … (cont’d)

- Mid-2006 – Launch of Rewrite, in consultation with the Standing Committee on Company Law Reform and five working groups (including Joint Government / HKICPA Working Group to Review the Accounting and Auditing Provisions of the Companies Ordinance)
- 2007 to 2008 – Three topical public consultations
  - Accounting and Auditing Provisions
  - Companies Names, Directors’ Duties, Corporate Directorship and Registration of Charges
  - Share Capital, the Capital Maintenance Regime and Statutory Amalgamation Procedure
- 2009 to 2010 – Two rounds of public consultation on the draft CB
- 26 January 2011 – Introduction of the CB into Legislative Council (LegCo) for First and Second Readings
- 12 July 2012 – Third Reading, CB passed by LegCo
- 10 August 2012 – Gazette of the new Companies Ordinance (new CO)

Structure of the new CO

- Divided into 21 Parts, comprising 921 sections and 11 Schedules

- Part 1 – Preliminary
- Part 2 – Registrar of Companies and Companies Register
- Part 3 – Company Formation and Related Matters, and Re-registration of Company
- Part 4 – Share Capital
- Part 5 – Transactions in relation to Share Capital
- Part 6 – Distribution of Profits and Assets
- Part 7 – Debentures
- Part 8 – Registration of Charges
- Part 9 – Accounts and Audit
- Part 10 – Directors and Company Secretaries
Structure ... (Cont’d)

Part 11 – Fair Dealing by Directors
Part 12 – Company Administration and Procedure
Part 13 – Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
Part 14 – Remedies for Protection of Companies’ or Members’ Interests
Part 15 – Dissolution by Striking Off or Deregistration
Part 16 – Non-Hong Kong Companies
Part 17 – Companies not Formed, but Registrable, under this Ordinance
Part 18 – Communications to and by Companies
Part 19 – Investigations and Enquiries
Part 20 – Miscellaneous

Four major objectives of the new CO

- Enhancing corporate governance
- Ensuring better regulation
- Business facilitation
- Modernising the law
Initiatives to achieve the objectives (a summary)

- **Enhancing accountability of directors**
  - At least one natural person as director for private companies
  - Clarifying in the statute directors’ duty of care, skill and diligence

- **Enhancing shareholder engagement in decision-making process**
  - Companies to bear expenses of circulating members’ statements and proposed resolutions for Annual General Meetings (AGMs)
  - Threshold for members to demand a poll reduced from 10% to 5% of the total voting rights

- **Improving disclosure of company information**
  - Public and large private companies and large guarantee companies to prepare “business review” including information on e.g. environmental and employee matters of significant impact

- **Fostering shareholder protection**
  - Introducing more effective rules to deal with directors’ conflicts of interests, including expanding the requirement for seeking shareholders’ approval to cover directors’ employment contracts which exceed 3 years
  - Requiring disinterested shareholders’ approval in cases where shareholders’ approval is required for transactions of public companies and their subsidiaries
  - Replacing the “headcount test” with a not more than 10% disinterested voting requirement for privatisations and specified schemes of arrangement, while giving the court a new discretion to dispense with the test (in cases where it is retained) for members’ schemes
Initiatives … (cont’d)

- **Strengthening auditors’ rights**
  - Power to require a wider range of persons (e.g. officers Note of a company’s Hong Kong subsidiary) to provide information and explanation reasonably required in auditors’ performance of duties

  *Note* An “officer” means a director, manager or company secretary

- **Ensuring accuracy of information on the public register**
  - Clarifying and enhancing the powers of the Registrar of Companies (the Registrar) powers regarding keeping of the register including rectifying typos or clerical errors, requiring companies to resolve inconsistency, etc
  - Requiring companies to notify change of its capital structure to ensure information on the register is up-to-date

Initiatives … (cont’d)

- **Enhancing regulation of voluntary deregistration of companies**
  - 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

- **Strengthening the enforcement regime**
  - New power for the Registrar to obtain documents or information for ascertaining whether any misconduct, that would constitute certain offences relating to giving false or misleading statement, has taken place
  - Empowering the Registrar to compound specified offences so as to optimise the use of judicial resources
Initiatives … (cont’d)

- **Streamlining procedures**
  - Allowing companies to dispense with AGMs by unanimous shareholders’ consent
  - Introducing an alternative court-free procedure for reduction of capital based on a solvency test

- **Facilitating simplified reporting**
  - Facilitating private companies and guarantee companies to prepare simplified financial and directors’ reports
  - Making the summary financial report provisions more user-friendly and extending their application to all companies

- **Facilitating business operation**
  - Permitting a general meeting to be held at more than one location
  - Setting out the rules governing communications to and by companies in electronic form
Initiatives … (cont’d)

- **Rewriting the law in modern plain language**
  - The new CO is written in modern-day drafting language to make it more user-friendly. There will be some footnotes and examples designed to assist readers’ understanding

- **Retiring the concept of par value**
  - Adopting a mandatory system of no-par for all companies with a share capital and retires the par value of shares, in line with international trends and to provide companies with more flexibilities in structuring their share capital

- **Better protection of personal data**
  - Introducing new provisions for withholding residential addresses and full identity card/passport numbers from public inspection in order to foster the protection of personal data

---

Reference

- Companies Registry External Circular No. 5/2012
  (available at www.cr.gov.hk)
Thank You!