



Brief Introduction to the New Companies Ordinance

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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

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- 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
- Part 21 – Consequential Amendments, and Transitional and Saving Provisions



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



Initiatives ... (cont'd)

- 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



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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



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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



Initiatives ...

(cont'd)

- 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



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Reference

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



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Thank You!

