

# A Brief Update on the New Companies Ordinance (Ord. No. 28 of 2012)

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## The New Companies Ordinance

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- Passed by the Legislative Council on 12 July 2012
- 21 parts, comprising 921 sections and 11 schedules
- 13 pieces of subsidiary legislation – currently being drafted
- Commencement expected in 2014 after enactment of subsidiary legislation



## Major Objectives of the Companies Ordinance (1)

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### ➤ Enhancing Corporate Governance

- Strengthening the accountability of directors
- Enhancing shareholder engagement in the decision-making process
- Improving the disclosure of company information
- Fostering shareholder protection
- Strengthening auditors' rights



## Major Objectives of the Companies Ordinance (2)

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### ➤ Ensuring Better Regulation

- Ensuring the accuracy of information on the public register
- Improving the registration of charges scheme
- Enhancing the regulation of the voluntary deregistration of companies
- Improving the enforcement regime



## Major Objectives of the Companies Ordinance (3)

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### ➤ Facilitating Business

- Streamlining procedures
- Facilitating simplified reporting particularly by SMEs
- Facilitating business operations



## Major Objectives of the Companies Ordinance (4)

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### ➤ Modernising the Law

- Retiring the concept of par value
- Removing the power to issue share warrants
- Better protection of personal data
- Rewriting the law in simple and plain language



## Some Changes to Note (1)

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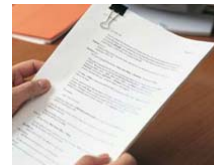
- Abolition of Memorandum of Association for **all** companies [section 67 and section 98]
- Abolition of Par Value of Shares for **all** companies [section 135]
- Requiring at least one natural person be a director of a private company [section 457] (grace period of 6 months from commencement)



## Some Changes to Note (2)

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- All public and large private companies / guarantee companies to prepare as part of the director's report a business review [section 388 and schedule 5]
  - Large private companies may opt out if so approved by special resolution



## Some Changes to Note (3)

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- Business Review includes:
  - ◆ a fair review of company's business
  - ◆ Indication of likely future development in the company's business



## Some Changes to Note (4)

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- ◆ details of company's environmental policies and performance and the company's compliance with the relevant laws and regulations that have a significant impact on the company
- ◆ an account of the company's key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends



## Some Changes to Note (5)

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- Clarification in the Ordinance of the directors' duty of care, skill and diligence [section 465]
  - Clause 465(1) and (2) of the new Companies Ordinance
    - “ (1) A director of a company must exercise reasonable care, skill and diligence



## Some Changes to Note (6)

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- (2) Reasonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with –
  - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
  - (b) the general knowledge, skill and experience that the director has.”

## Some Changes to Note (7)

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- A dual objective and subject standard
  - ◆ In deciding whether there is any breach of the duty, a director's conduct is compared to the standard that would be exercised by a reasonably diligent person having the knowledge etc. as set out in section 465(2)
  - ◆ Section 465(2)(a): objective limb
  - ◆ Section 465(2)(b): subjective limb



## Looking Forward

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- CR will be hosting further seminars for stakeholders on the new Ordinance



Thank You

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