



The new Companies Ordinance - A Brief Update

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The New Companies Ordinance

- Passed by the Legislative Council on 12 July 2012
- 12 pieces of subsidiary legislation –
legislative process completed on 17 July 2013
- commencement expected in March 2014





New Companies Ordinance - FOUR major objectives

- Enhancing Corporate Governance
- Ensuring Better Regulation
- Facilitating Business
- Modernising the Law



Some Key Changes Affecting Directors (1)

- Abolition of Memorandum of Association for **all** companies [section 67 and section 98]
 - ◆ Articles of Association is the constitutional document of a company
- Abolition of Par Value of Shares for **all** companies [section 135]
 - ◆ Relevant concepts such as nominal value and share premium will be abolished

Some Key Changes Affecting Directors (2)

As at 31 August 2013

- ◆ 68,050 corporate directors for local companies
- ◆ About 3.7 % of the total number of directors of local companies
- The new Companies Ordinance requires at least one natural person to be a director of a private company [section 457]
(grace period of 6 months from commencement)



Some Key Changes Affecting Directors (3)

Directors' duty of care, skill and diligence

- A director of a company must exercise reasonable care, skill and diligence, i.e. care, skill and diligence that would be exercised by a reasonable 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 Key Changes Affecting Directors (4)

Facilitating Simplified Reporting

- Facilitating SMEs to prepare simplified financial and directors' reports:
 - ◆ a private company that qualifies as a “small private company” and the holding company of a group of companies that qualifies as a “group of small private companies” will qualify for simplified reporting [sections 359(1)(a) & 361; sections 359(2) & 364]
- Making the summary financial reporting provisions more user-friendly and extending their application to all companies



Some Key Changes Affecting Directors (5)

- Requiring directors' reports prepared by public companies and large private / guarantee companies to include an analytical and forward-looking “**business review**” [section 388 and Schedule 5]
 - ◆ provide useful information for shareholders
 - ◆ requirement to include information relating to environmental and employee matters with significant effect on the company
 - ◆ private companies may opt out by special resolution



Some Key Changes Affecting Directors (6)

- Expanded the prohibition on loans or similar transactions to cover a wider category of persons connected with a director
- Members' approval as a general exception to loan transaction i.e. relaxation in respect of public companies



Some Key Changes Affecting Directors (7)

- Prohibition on loss of office payments extended to cover:
 - ◆ payments to an entity connected with the director, and
 - ◆ payments to a person made at the direction of, or for the benefit of, the director or an entity connected with the director



Some Key Changes Affecting Directors (8)

- New provisions requiring members' approval for directors' employment contracts exceeding 3 years
- Disinterested members' approval is required for public companies



Looking Forward

- Letters will be sent to all companies
- Information pamphlets, External Circulars, Guidelines will be issued
- Seminars on the new CO will continue to be conducted
- Hotline will be set up for answering enquiries
- Visit the CR's website at www.cr.gov.hk for updates





Thank You

Companies Registry : www.cr.gov.hk