The new Hong Kong Companies Ordinance

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公司註冊處 COMPANIES REGISTRY

The New Companies Ordinance

- Passed by the Legislative Council on 12 July 2012
- 12 pieces of subsidiary legislation –

  the legislative process completed on 17 July 2013
- commencement expected in March 2014

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Structure of the new Companies Ordinance

- 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 of the new Companies Ordinance

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

New Companies Ordinance - Four major objectives (1)

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

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New Companies Ordinance - Four major objectives (2)

- **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

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New Companies Ordinance - Four major objectives (3)

- **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

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New Companies Ordinance - Four major objectives (4)

- **Facilitating Business**
  - Streamlining procedures
  - Facilitating simplified reporting by SMEs
  - Facilitating business operations

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New Companies Ordinance - Four major objectives (5)

- **Modernising the Law**
  - Rewriting the law in simple and plain language
  - Abolishing Memorandum of Association
  - Retiring the concept of par value

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Highlights of Key Changes (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

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Highlights of Key Changes (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)

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Highlights of Key Changes (3)

- An escalating scale of annual registration fee is introduced for filing of annual returns by companies limited by guarantee
- Upon commencement of the new CO, companies limited by guarantee will be a specified category of companies
  - two directors are required
  - corporate director is not allowed
  - the annual return must be delivered together with a certified copy of the financial statements

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Highlights of Key Changes (4)

Reporting Exemption

- Under section 141D of Cap 32, a private company (other than a company which is a member of a corporate group and certain companies specifically excluded) may with the written agreement of all the shareholders prepare simplified accounts and directors' report in respect of one financial year at a time.
- Under the new CO, private or guarantee companies (other than certain companies specifically excluded) that qualify for simplified reporting are referred to as companies falling within the "reporting exemption" (Division 2 of Part 9 and Schedule 3).

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Highlights of Key Changes (5)

Reporting Exemption (Cont'd)

- a small private company / holding company of a group of small private companies meeting two of the following conditions in a financial year –
  - total revenue / aggregate total revenue not exceeding $100 million
  - total assets / aggregate total assets not exceeding $100 million
  - average employees / aggregate average employees not exceeding 100

(ss 359(1)(a), 361, 364, Schedule 3 section 1(1), (7), (8))

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Highlights of Key Changes (6)

Reporting Exemption (Cont'd)

- a private company / holding company of a group of eligible private companies meeting a higher size criteria (i.e. two of the following conditions in a financial year: total revenue / aggregate total revenue not exceeding $200 million, total assets / aggregate total assets not exceeding HK$200 million, and average employees / aggregate average employees not more than 100) and with 75% approval from members and no member objects.

  (ss 359(1)(c), (2), 360, 362, 365, Schedule 3 s 1(3), (10), (11))

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Highlights of Key Changes (7)

Reporting Exemption (Cont'd)

- Other private companies (not being a member of a corporate group) with unanimous members' written agreement (cf section 141D of Cap 32).

  (s 359(1)(b))
- A small guarantee company / holding company of a group of small guarantee companies with total revenue / aggregate total revenue not exceeding $25 million in a financial year.

  (ss 359(1)(a), (3), 363, 366, Schedule 3 s 1(5), (13))

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Highlights of Key Changes (8)

Reporting Exemption (Cont'd)

- For qualification in the first financial year –
  - Existing company – it is the size of the company in the first financial year after commencement of the new CO or the financial year immediately preceding that first financial year that counts (ss 361(2), 362(2), 363(2), 364(2), 365(2) and 366(2)).
  - Company formed and registered under the new CO – it is the size of the company in its first financial year that counts (ss 361(1), 362(1), 363(1), 364(1), 365(1) and 366(1)).
  - Qualification continues for subsequent financial years until disqualified.

Highlights of Key Changes (9)

Reporting Exemption (Cont'd)

- For qualification in subsequent financial years –
  - The company has to fall within the size criteria for 2 consecutive financial years before it would qualify for the reporting exemption (ss 361(3), 362(3), 363(3), 364(3), 365(3) and 366(3)).
  - Qualification continues for subsequent financial years until disqualified.

Highlights of Key Changes (10)

Reporting Exemption (Cont'd)

- no requirement to disclose auditor's remuneration in financial statements (s 380(3) and Schedule 4 Part 2)
- no requirement for financial statements to give a "true and fair view" (s 380(7))
- no requirement to disclose in the notes to financial statements the material interests of directors in transactions, arrangements or contracts of significance (s 23 of Companies (Disclosure of Information about Benefits of Directors) Regulation LN 35/2013)
- Subsidiary undertakings may be excluded from consolidated financial statements in accordance with applicable accounting standards (s 381(2))

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Highlights of Key Changes (11)

Reporting Exemption (Cont'd)

- no need to include the following disclosures in the directors' report -
  - business review (s 388(3)(a))
  - arrangements to enable directors to acquire benefits by the acquisition of shares or debentures
  - donations
  - directors' reasons for resignation or refusal to stand for re-election
  - material interests of directors in transactions, arrangements or contracts of significance entered into by a specified undertaking of a company (ss 3(3A), 4(3), 8(3) and 10(7) of Companies (Directors' Report) Regulation)

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Highlights of Key Changes (12)

Reporting Exemption (Cont'd)

- no requirement for auditor to express a "true and fair view" opinion on financial statements (s 406(1)(b))
- financial statements may be prepared in compliance with the Small and Medium-Sized Entity Financial Reporting Standard and Financial Reporting Framework issued or specified by HKICPA under the Companies (Accounting Standards (Prescribed Body) Regulation

- Audit of financial statements are still required for all companies, except dormant companies (s 447).

Highlights of Key Changes (13)

- **New Offence relating to Inaccurate Auditor's Reports [section 408]**
  - If the auditor is of the opinion that the financial statements of a company are not in agreement with its accounting records in any material respect or
  - If the auditor has failed to obtain all the information or explanations that are necessary and material for the purpose of the audit

    ➲ the auditor must state that opinion or fact in the auditor's report
  - The offence would be committed if the auditor in question knowingly or recklessly caused any of the two statements to be omitted from the auditor's report

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

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