



# The new Hong Kong Companies Ordinance

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## 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



## 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



## 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



## 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

## New Companies Ordinance - Four major objectives (4)

### ➤ Facilitating Business

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





## New Companies Ordinance - Four major objectives (5)

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### ➤ Modernising the Law

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



## Highlights of Key Changes (1)

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- 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

## 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)



## Highlights of Key Changes (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.



## Highlights of Key Changes (4)

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- An escalating scale of annual registration fee is introduced for the 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



## Highlights of Key Changes (5)

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### 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



## Highlights of Key Changes (6)

- 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



## Highlights of Key Changes (7)

### e-communication

- Part 18 sets out the rules for communications to and by companies;
- Communication in electronic form to or by a company can be made only with the recipient's consent;
- Unless otherwise specified, the information is deemed to have been received at the end of 48 hours, except where the contrary is proved;
- Allows a company to communicate with its members by means of website.







## Looking Forward

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- 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](http://www.cr.gov.hk) for updates



# Thank You

Companies Registry : [www.cr.gov.hk](http://www.cr.gov.hk)