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

公司註冊處 COMPANIES REGISTRY

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

公司註冊處 COMPANIES REGISTRY

New Companies Ordinance - Four major objectives (1)

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

公司註冊處 COMPANIES REGISTRY

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

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)

- **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)

- 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)

- **<u>As at 31 August 2013</u>**
  - 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)

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.

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Highlights of Key Changes (4)

- 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)

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

- 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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Thank You

Companies Registry : www.cr.gov.hk

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