



The New Companies Ordinance

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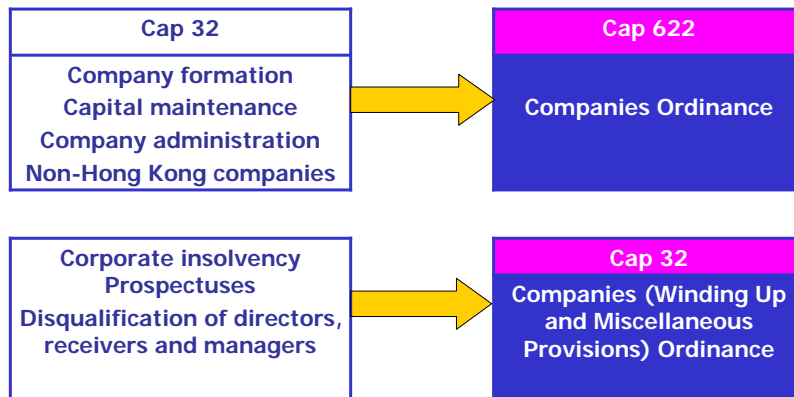
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The New Companies Ordinance

- Passed by the Legislative Council on 12 July 2012
- 12 pieces of subsidiary legislation –
the legislative process completed on 17 July 2013
- commencement expected on 3 March 2014

The Change



Structure of the new Companies Ordinance (1)

- 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 (2)

- 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



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Structure of the new Companies Ordinance (3)

- **12 subsidiary legislation**
 - Companies (Words and Expressions in Company Names) Order (Cap 622A)
 - Companies (Disclosure of Company Name and Liability Status) Regulation (Cap 622B)
 - Companies (Accounting Standards (Prescribed Body)) Regulation (Cap 622C)
 - Companies (Directors' Report) Regulation (Cap 622D)
 - Companies (Summary Financial Reports) Regulation (Cap 622E)
 - Companies (Revision of Financial Statements and Reports) Regulation (Cap 622F)



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Structure of the new Companies Ordinance (4)

■ 12 subsidiary legislation

- Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap 622G)
- Companies (Model Articles) Notice (Cap 622H)
- Company Records (Inspection and Provision of Copies) Regulation (Cap 622I)
- Companies (Non-Hong Kong Companies) Regulation (Cap 622J)
- Companies (Fees) Regulation (Cap 622K)
- Companies (Unfair Prejudice Petitions) Proceedings Rules (Cap 622L)



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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



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)

- As at 30 September 2013
 - ◆ 67,340 corporate directors for local companies
 - ◆ About 3.6% 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)

- 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



Streamlining types of companies that may be formed (1)

Under Cap. 32, 8 different types of company can be formed:

- Private company limited by shares
- Non-private company limited by shares
- Private company limited by guarantee without share capital
- Non-private company limited by guarantee without share capital
- Private unlimited company with share capital
- Non-private unlimited company with share capital
- Private unlimited company without share capital
- Non-private unlimited company without share capital



Streamlining types of companies that may be formed (2)

Under the new CO:

- Unlimited companies without share capital are abolished (there are none registered and there are unlikely to be such registered in the future)
- Companies limited by guarantee, whether private or non-private, are amalgamated will become a separate category of companies. It will generally be treated in the same way as public companies, e.g. they will all be required to file accounts
- Non-private companies become “public companies”, which mean companies other than private companies or guarantee companies



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Streamlining types of companies that may be formed (3)

Under the new CO:

- 5 types of companies may be formed
 - ◆ a public company limited by shares
 - ◆ a private company limited by shares
 - ◆ a public unlimited company with share capital
 - ◆ a private unlimited company with share capital
 - ◆ a company limited by guarantee without a share capital
- The Companies Registry will inform all existing private companies limited by guarantee of their new obligations under the new CO by issuing a letter to them



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Application of new CO provisions to first financial year [s 358]

- **The requirements in the new CO** in relation to accounting records [ss 373, 374, 376 & 377], simplified reporting [s 359], financial statements [ss 379 & 436], directors' report [s 388], laying reporting documents before AGM [s 429], summary financial report [s 439] and revision of financial statements [s 449] **apply to a financial year that begins on or after commencement of the new CO.**
- **Corresponding requirements in Cap 32 continue to apply** in relation to books of account, accounts, directors' report, laying of accounts before AGM, summary financial report and revision of accounts **for a financial year beginning before commencement of the new CO** [Schedule 11 ss 76, 77, 78, 83, 84 and 107(2)].



Accounting reference period (1)

- The financial year is the period by reference to which the company's financial statements are to be prepared [s 379(1)].
- S 367 provides for the determination of a company's **first financial year** and subsequent financial years by reference to its **accounting reference period**.
- A company's first financial year after the commencement of the new CO begins on the first day of its first accounting reference period and ends on the last day of that period [s 367(1)].
- For an existing company, the first accounting reference period begins on the day immediately following the end date of the company's accounts for the financial year immediately before the commencement of the new CO and ends on the first anniversary of that date [ss 368(1), 369(1) to (4)].



Accounting reference period (2)

- **Examples - Commencement date of new CO : 3 March 2014**

Company A

- ◆ Current financial year : 1 April 2013 to 31 March 2014
- ◆ End date of company's accounts prepared under Cap 32 : 31 March 2014
- ◆ Company's first accounting reference period under the new CO :
1 April 2014 to 31 March 2015

Company B

- ◆ Current financial year : 1 January 2014 to 31 December 2014
- ◆ End date of company's accounts prepared under Cap 32 :
31 December 2014
- ◆ Company's first accounting reference period under the new CO:
1 January 2015 to 31 December 2015



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Accounting reference period (3)

- For a company formed and registered under the new CO, the first accounting reference period begins on the incorporation date and ends on –
 - ◆ a date specified by the directors falling within 18 months after the company's incorporation; or
 - ◆ if no such date is specified, the last day of the month of the first anniversary of the company's incorporation [ss 368(2), 369(5) to (7)].
- Every subsequent accounting reference period is the period of 12 months from the end of the previous accounting reference period [s 368(3)].



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Auditor's rights (1)

- **Auditor's rights to information**
 - ◆ S412 empowers auditors to require information and explanation for the performance of their duties from a wider range of persons –
 - (a) an officer of the company
 - (b) a HK incorporated subsidiary of the company
 - (c) an officer or auditor of such a subsidiary
 - (d) a person holding or accountable for the accounting records of the company or such a subsidiary
 - (e) any of the above persons or subsidiary at the time to which the information or explanation relates



Auditor's rights (2)

- ◆ The auditor of a holding company may require the company to obtain information or explanation from its subsidiary undertaking that is not a HK incorporated company, an officer or auditor of such a subsidiary undertaking and a person holding or accountable for the accounting records of such a subsidiary undertaking.
- **Auditor's rights in relation to general meetings and written resolutions [ss 411, 555, 559, 575]**
 - ◆ S 575 requires a company to give notice of or any other document relating to a general meeting to the auditor at the same time as the notice or document is given to its members.
 - ◆ S 559 requires the company to send to the auditor notice of the fact that a written resolution is passed.



Auditor's rights (3)

- Outgoing auditor's statement of circumstances
 - ◆ Under s 425(1), the auditor's duty to make a statement of circumstances connected with the cessation of office is extended to situations where the auditor is removed from office and where a retiring auditor is not reappointed.
 - ◆ Currently, such a requirement only applies to a resigning auditor (s 140A Cap 32).
 - ◆ A company is not bound to circulate the statement if the Court is satisfied that the auditor has abused the use of the statement or is using the statement to secure needless publicity for defamatory matter [s 427].



Auditor's rights (4)

- ◆ The auditor must deliver a copy of the statement to the Registrar for registration within the prescribed time [ss 426(5) and 427(5)].
- Outgoing auditor may provide information to incoming auditor [s 414]
 - ◆ A person who is or has been an auditor of a company does not contravene any duty in law by reason only that the person gives information of which he became aware in the capacity of auditor to another person —
 - (a) who is an auditor of the company;
 - (b) who has been appointed as auditor of the company but whose term of office has not yet begun; or
 - (c) to whom the company has offered the position as auditor but who has not yet been appointed.



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 [section 408]



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Summary financial reports

- Summary financial report provisions are extended to all companies except those that prepare simplified financial statements [s 438]
 - ◆ Currently summary financial report provisions apply to listed companies only (ss 141CA to 141CG Cap 32)
 - ◆ Unless prohibited [s 446], companies have a choice of sending to its members a copy of the summary financial report instead of reporting documents [ss 439, 441, 442]
 - ◆ Companies (Summary Financial Reports) Regulation Cap 622E replaces Companies (Summary Financial Reports of Listed Companies) Regulation Cap 32M.



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Revision of financial statements

- Voluntary revision of financial statements and reports [ss 449 & 450](cf section 141E Cap 32)
 - ◆ Prescribed requirements set out in Companies (Revision of Financial Statements and Reports) Regulation Cap 622F which replaces Companies (Revision of Accounts and Reports) Regulation Cap 32N.
 - ◆ Basic principle – provisions relating to original documents apply to revised documents.



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

