

新《公司條例》 The new Hong Kong Companies Ordinance

公司註冊處處長鍾麗玲
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新《公司條例》 The New Companies Ordinance

- 於 2012 年 7 月 12 日獲立法會通過
Passed by the Legislative Council on 12 July 2012
- 12 項附屬法例於 2013 年 7 月 17 日完成立法程序
12 pieces of subsidiary legislation –
the legislative process completed on 17 July 2013
- 預計於 2014 年 3 月 3 日開始實施
Commencement expected on 3 March 2014

新《公司條例》的結構 Structure of the new Companies Ordinance

- 共有 21 部， 921 項條文 及 11 個附表
Divided into 21 Parts, comprising 921 sections and 11 Schedules
- 第 1 部 - 導言
Part 1 Preliminary
- 第 2 部 - 公司註冊處處長及公司登記冊
Part 2 Registrar of Companies and Companies Register
- 第 3 部 - 公司組成及相關事宜，以及公司的重新註冊
Part 3 Company Formation and Related Matters, and Re-registration of Company
- 第 4 部 - 股本
Part 4 Share Capital

新《公司條例》的結構 Structure of the new Companies Ordinance

- 第 5 部 - 關於股本的事宜
Part 5 Transactions in relation to Share Capital
- 第 6 部 - 利潤及資產的分派
Part 6 Distribution of Profits and Assets
- 第 7 部 - 債權證
Part 7 Debentures
- 第 8 部 - 押記的登記
Part 8 Registration of Charges
- 第 9 部 - 帳目及審計
Part 9 Accounts and Audit
- 第 10 部 - 董事及公司秘書
Part 10 Directors and Company Secretaries



新《公司條例》的結構 Structure of the new Companies Ordinance

- 第 11 部 – 董事的公平處事
Part 11 Fair Dealing by Directors
- 第 12 部 – 公司管理及議事程序
Part 12 Company Administration and Procedure
- 第 13 部 – 安排、合併及在進行收購和股份回購時強制購入股份
Part 13 Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
- 第 14 部 – 保障公司或成員的權益的補救
Part 14 Remedies for Protection of Companies' or Members' Interests
- 第 15 部 – 被除名或撤銷註冊而解散
Part 15 Dissolution by Striking Off or Deregistration

新《公司條例》的結構 Structure of the new Companies Ordinance

- 第 16 部 – 非香港公司
Part 16 Non-Hong Kong Companies
- 第 17 部 – 並非根據本條例組成但可根據本條例註冊的公司
Part 17 Companies not Formed, but Registrable, under this Ordinance
- 第 18 部 – 公司與外間的通訊
Part 18 Communications to and by Companies
- 第 19 部 – 調查及查訊
Part 19 Investigations and Enquiries
- 第 20 部 – 雜項條文
Part 20 Miscellaneous
- 第 21 部 – 相應修訂、過渡性條文及保留條文
Part 21 Consequential Amendments, and Transitional and Saving Provisions

新《公司條例》的結構 Structure of the new Companies Ordinance

- 12 項附屬法例

12 subsidiary legislation

《公司(公司名稱所用字詞)令》(第622A章)

Companies (Words and Expressions in Company Names) Order
(Cap 622A)

《公司(披露公司名稱及是否有限公司)規例》(第622B章)

Companies (Disclosure of Company Name and Liability Status) Regulation
(Cap 622B)

《公司(會計準則(訂明團體))規例》(第622C章)

Companies (Accounting Standards (Prescribed Body)) Regulation
(Cap 622C)



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《公司(董事報告)規例》(第622D章)

Companies (Directors' Report) Regulation (Cap 622D)

《公司(財務摘要報告)規例》(第622E章)

Companies (Summary Financial Reports) Regulation (Cap 622E)

《公司(修改財務報表及報告)規例》(第622F章)

Companies (Revision of Financial Statements and Reports) Regulation
(Cap 622F)

《公司(披露董事利益資料)規例》(第622G章)

Companies (Disclosure of Information about Benefits of Directors) Regulation
(Cap 622G)



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- 《公司(章程細則範本)公告》(第622H章)
Companies (Model Articles) Notice (Cap 622H)
- 《公司紀錄(查閱及提供文本)規例》(第622I章)
Company Records (Inspection and Provision of Copies) Regulation (Cap 622I)
- 《公司(非香港公司)規例》(第622J章)
Companies (Non-Hong Kong Companies) Regulation (Cap 622J)
- 《公司(費用)規例》(第622K章)
Companies (Fees) Regulation (Cap 622K)
- 《公司(不公平損害呈請)法律程序規則》(第622L章)
Companies (Unfair Prejudice Petitions) Proceedings Rules (Cap 622L)

四個主要目的 Four major objectives (1)

- 加強企業管治
Enhancing Corporate Governance
- 確保規管更為妥善
Ensuring Better Regulation
- 方便營商
Facilitating Business
- 使公司法例現代化
Modernising the Law



四個主要目的 Four major objectives (2)

- **加強企業管治 Enhancing Corporate Governance**
 - 加強董事的問責性
Strengthening the accountability of directors
 - 提高股東在決策過程中的參與程度
Enhancing shareholder engagement in the decision-making process
 - 改善公司資料的披露
Improving the disclosure of company information
 - 加強對股東的保障
Fostering shareholder protection
 - 加強核數師的權利
Strengthening auditors' rights



四個主要目的 Four major objectives (3)

- **確保規管更為妥善 Ensuring Better Regulation**
 - 確保公眾登記冊的資料準確無誤
Ensuring the accuracy of information on the public register
 - 改善押記登記制度
Improving the registration of charges scheme
 - 加強對公司自願撤銷註冊的規管
Enhancing the regulation of the voluntary deregistration of companies
 - 加強執法制度
Improving the enforcement regime

四個主要目的 Four major objectives (4)

➤ 方便營商 Facilitating Business

- 簡化程序
Streamlining procedures
- 便利中小企擬備簡明報告
Facilitating simplified reporting by SMEs
- 方便營商
Facilitating business operations



四個主要目的 Four major objectives (5)

➤ 使法例現代化 Modernising the Law

- 以淺白的語言文字重寫法例
Rewriting the law in simple and plain language
- 廢除組織章程大綱
Abolishing Memorandum of Association
- 廢除股份面值概念
Retiring the concept of par value of shares

主要改變簡介(1) Highlights of Key Changes (1)

廢除所有公司的組織章程大綱 Abolition of the memorandum for all companies

- 原有公司 –
在緊接新條例生效前，原有公司的組織章程大綱內所載的條件須視為該公司的章程細則的條文，但以下情況除外：任何述明法定股本及股份面值的條件須視為已被刪除(第98條)。
Existing Companies –
A condition of the memorandum of an existing company immediately before commencement of the new Companies Ordinance is deemed to be regarded as a provision of that company's articles of association, except that any such condition setting out authorised share capital and the par value of shares are to be regarded as deleted (Section 98).

主要改變簡介(2) Highlights of Key Changes (2)

廢除所有公司的組織章程大綱 Abolition of the memorandum for all companies

- 原有公司 –
任何其他條例/文件等對組織章程大綱的所有提述，均為對章程細則的提述(第98條)。
Existing Companies –
All references in any other ordinances / documents etc. to memorandum is a reference to articles of association (Section 98).



主要改變簡介(3) Highlights of Key Changes (3)

- 截至 2013年10月31日
As at 31 October 2013
 - ◆ 本地公司有67,380 名法團董事
67,380 corporate directors for local companies
 - ◆ 佔本地公司董事總數約3.6 %
About 3.6% of the total number of directors of local companies

主要改變簡介(4) Highlights of Key Changes (4)

- 新《公司條例》規定私人公司須有最少一名董事為自然人
[第457條]
(原有公司在新條例生效後有6個月的寬限期)
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 for existing companies)



主要改變簡介(5) Highlights of Key Changes (5)

擔保有限公司

Companies Limited by Guarantee

- 就擔保有限公司提交周年申報表所繳付的每年登記費用引入遞增式收費。

An escalating scale of annual registration fee is introduced for filing of annual returns by companies limited by guarantee.



主要改變簡介(6) Highlights of Key Changes (6)

- 新《公司條例》實施後，擔保有限公司會成為一特定類別的公司 -
Upon commencement of the new Companies Ordinance, companies limited by guarantee will be a specified category of companies -
 - ◆ 須有兩名董事
two directors are required
 - ◆ 法人團體不可擔任董事
corporate director is not allowed
 - ◆ 周年申報表須連同財務報表，董事報告及核數師報告的經核證副本一併交付
the annual return must be delivered together with a certified copy of the financial statements, director's report and auditor's report

主要改變簡介(7) Highlights of Key Changes (7)

改善押記的登記制度 Improving the registration of charges

- ❑ 更新須予登記的押記清單。
Updating the list of registrable charges.
- ❑ 規定押記文書的經核證副本須予以登記及讓公眾查閱。
Requiring a certified copy of the charge instrument to be registrable and available for public inspection.



主要改變簡介(8) Highlights of Key Changes (8)

在提交報告方面獲豁免 Reporting Exemption

- 根據第32章第141D條，私人公司(屬於法團集團成員的公司及特別予以豁免的某些公司除外)如獲全體股東書面同意，可就某財政年度擬備簡明帳目及董事報告。
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.

主要改變簡介(9) Highlights of Key Changes (9)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd)

- 根據新條例，符合資格擬備簡明報告的**私人或擔保公司**(特別予以豁免的某些公司除外)是指「在提交報告方面獲豁免」的公司(第9部第2分部及附表3)。

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).

主要改變簡介(10) Highlights of Key Changes (10)

在提交報告方面獲豁免(續) Reporting exemption (Cont'd)

第32章 Cap 32

第141D條私人公司
Section 141D
private
companies

新條例 New CO



¹ 規定須於15日內向處長交付決議的文本作登記。(第622(1)(e)、(f)及(2)條)

¹ A copy of the resolution is required to be delivered to the Registrar for registration within 15 days. (section 622(1)(e), (f) and (2))

主要改變簡介(11) Highlights of Key Changes (11)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd) 資格準則 Qualifying criteria

	小型私人公司/集團 Small private company / group	合資格私人公司/集團 Eligible private company / group	小型擔保公司/集團 Small guarantee company / group
收入總額/收入總額的總數 Total / aggregate total revenue	不超過1億元 Not exceeding \$100m	不超過2億元 Not exceeding \$200m	不超過2,500萬元 Not exceeding \$25m
資產總額/資產總額的總數 Total / aggregate total assets	不超過1億元 Not exceeding \$100m	不超過2億元 Not exceeding \$200m	無限制 No limit
僱員/僱員總人數 Employees/aggregate employees	不超過100人 Not exceeding 100	不超過100人 Not exceeding 100	無限制 No limit
成員批准 Members' approval	不需要 ² Not required ²	獲得最少75%的成員批准，而在財政年度完結前的6個月，沒有成員反對。 At least 75% of members' approval and no objection from a member 6 months before the end of the financial year	不需要 ² Not required ²



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²按規模自動符合資格
² Automatic qualification based on size

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主要改變簡介(12) Highlights of Key Changes (12)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd)

- 小型私人公司/小型私人公司集團的控權公司，須於某財政年度符合以下條件的其中兩項 –

a small private company / holding company of a group of small private companies meeting two of the following conditions in a financial year –

- ◆ 收入總額/收入總額的總數不超過1億元

total revenue / aggregate total revenue not exceeding \$100 million



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主要改變簡介(13) Highlights of Key Changes (13)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd)

- ◆ 資產總額/資產總額的總數不超過1億元
total assets / aggregate total assets not exceeding \$100 million
- ◆ 僱員/僱員總人數不超過100人
(第359(1)(a) & (2)、361、364條、附表3第1(1)、(7)、(8)條)
employees / aggregate employees not exceeding 100
(ss 359(1)(a) & (2), 361, 364, Schedule 3 section 1(1), (7), (8))

主要改變簡介(14) Highlights of Key Changes (14)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd)

- 符合較高規模準則的合資格私人公司/合資格私人公司集團的控權公司(即於某財政年度符合以下條件的其中兩項:收入總額/收入總額的總數不超過2億元;資產總額/資產總額的總數不超過2億元;以及僱員人數/僱員總人數不超過100人),並獲得75%的成員批准,以及沒有成員反對。
(第359(1)(c)、(2)、360、362、365條、附表3第1(3)、(10)、(11)條)
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 employees / aggregate 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))

主要改變簡介(15) Highlights of Key Changes (15)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd)

- 其他私人公司（不屬法團集團的成員）須獲得全體成員的書面同意（參閱第32章第141D條）。
（第359(1)(b)條）
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))

主要改變簡介(16) Highlights of Key Changes (16)

在提交報告方面獲豁免(續) Reporting Exemption (Cont'd)

- 小型擔保公司／小型擔保公司集團的控權公司，於某財政年度的收入總額／收入總額的總數不超過2,500萬元。
（第359(1)(a)、(3)、363、366條、附表3第1(5)、(13)條）
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))

主要改變簡介(17) Highlights of Key Changes (17)

在提交報告方面獲豁免(續)

Reporting Exemption (Cont'd)

- 就首個財政年度符合資格而言 –
For qualification in the first financial year –
 - ◆ 原有公司 – 視乎公司在新條例生效後的首個財政年度或緊接首個財政年度的對上一個財政年度的規模而定 (第361(2)、362(2)、363(2)、364(2)、365(2)及366(2)條)。
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)).

主要改變簡介(18) Highlights of Key Changes (18)

在提交報告方面獲豁免(續)

Reporting Exemption (Cont'd)

- ◆ 根據新條例組成及註冊的公司 – 視乎公司在其首個財政年度的規模而定 (第361(1)、362(1)、363(1)、364(1)、365(1)及366(1)條)。
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)).
- ◆ 公司在其後的財政年度繼續符合資格，直至喪失該資格為止。
Qualification continues for subsequent financial years until disqualified.

主要改變簡介(19) Highlights of Key Changes (19)

在提交報告方面獲豁免(續)

Reporting Exemption (Cont'd)

- 就其後的財政年度符合資格而言 –
For qualification in subsequent financial years –
 - ◆ 公司須於連續兩個財政年度符合有關規模準則，才可在緊接的財政年度符合在提交報告方面獲豁免的資格(第361(3)、362(3)、363(3)、364(3)、365(3)及366(3)條)。
The company has to fall within the size criteria for 2 consecutive financial years before it would qualify for reporting exemption for the immediately following financial year (ss 361(3), 362(3), 363(3), 364(3), 365(3) and 366(3)).

主要改變簡介(20) Highlights of Key Changes (20)

□ 關於不實的核數師報告的新罪行 [第408條] New Offence relating to Inaccurate Auditor's Reports [section 408]

- ◆ 如按核數師的意見，公司的財務報表與公司的會計紀錄在事關重要的方面並不吻合或
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
- ◆ 如公司的核數師沒有取得所有對審計工作而言屬必需及事關重要的資料或解釋，
If the auditor has failed to obtain all the information or explanations that are necessary and material for the purpose of the audit

主要改變簡介(21) Highlights of Key Changes (21)

➤ 該核數師須在核數師報告內述明該意見或事實。
the auditor must state that opinion or fact in the auditor's report

- ◆ 有關核數師如明知或罔顧後果地導致該兩項陳述的任何一項沒有載於核數師報告內，即屬犯法。
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

未來路向 Looking Forward

- 將會發信給所有公司
Letters will be sent to all companies
- 將會發出資料小冊子、對外通告、指引
Information pamphlets, External Circulars, Guidelines will be issued
- 繼續舉辦新《公司條例》講座
Seminars on the new Companies Ordinance will continue to be conducted
- 設立熱線解答查詢
Hotline will be set up for answering enquiries
- 瀏覽本處網頁查看最新資訊 - www.cr.gov.hk
Visit the CR's website for updates



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