

新《公司條例》 The new Companies Ordinance

概覽 an Overview

18.2.2014

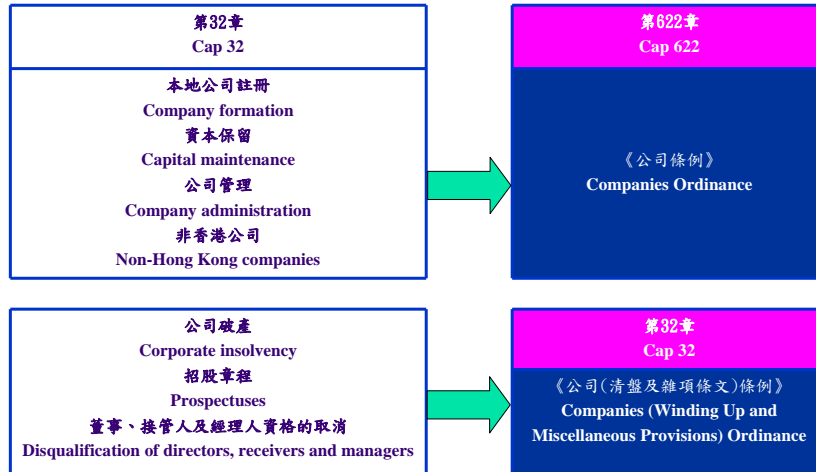


新《公司條例》 The New Companies Ordinance

- 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
- 2014 年 3 月 3 日開始實施
Commencement on 3 March 2014



修改 The Change



四個主要目的 Four major objectives

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



使法例現代化 Modernising the law (1)

廢除股份面值

Abolishing par value of shares

- 強制所有有股本的公司採用無面值股份制度。
Adopting a mandatory system of no-par for all companies with a share capital.
- 股份面值已引起一些實際問題，例如有誤導之嫌，阻礙籌集新資本及使會計制度過分複雜。
Par value gives rise to practical problems, such as giving misleading information, inhibiting raising of new capital and unnecessarily complicating the accounting regime.

使法例現代化 Modernising the law (2)

廢除股份面值

Abolishing par value of shares

- 相關的概念例如法定股本及股份溢價將予以廢除。
Relevant concepts such as authorised share capital and share premium will be abolished.
- 推定條文以確保藉提述面值及相關概念訂定的合約權利不會因廢除面值而受到影響。推定條文可為公司節省大量工作、開支及時間，也減低出現爭議的可能性。
Deeming provisions to ensure that contractual rights defined by reference to par value and related concepts will not be affected by the abolition of par. The deeming provisions will save considerable work, expense and time for companies and reduce the possibility of disputes.

使法例現代化 Modernising the law (3)

廢除所有公司的組織章程大綱

Abolition of the memorandum for all companies

- 現有公司 –
在緊接新條例生效前，現有公司的組織章程大綱內所載的條文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文須視為已被刪除(第98條)。

Existing Companies –

A condition of the memorandum of an existing company immediately before commencement of the new Companies Ordinance is 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).

使法例現代化 Modernising the law (4)

廢除所有公司的組織章程大綱

Abolition of the memorandum for all companies

- 現有公司 –
任何其他條例/文件等對組織章程大綱的所有提述，均為對組織章程細則的提述(第98條)。

Existing Companies –

All references in any other ordinances / documents etc. to memorandum is a reference to articles of association (Section 98).



方便營商 Facilitating Business (1)

簡化程序

Streamlining procedures

- 公司可在取得股東一致同意的情況下無須舉行周年成員大會。
Allowing companies to dispense with AGMs by unanimous shareholders' consent.
- 為同一集團內的全資附屬公司的合併訂立新的不經法院的法定合併程序。
Introducing a court-free statutory amalgamation procedure for wholly owned intra-group companies.
- 訂立處長以行政方式把已解散公司恢復註冊的新程序。
Introducing a new administrative restoration procedure for a company dissolved by the Registrar.

方便營商 Facilitating Business (2)

Facilitating Business Operations

- 讓公司自行選擇是否使用法團印章。
Making the use of a common seal optional.
- 准許公司使用電子科技在多於一個地點舉行成員大會。
Permitting a general meeting to be held at more than one location using electronic technology.
- 列明以電子形式向公司作出或由公司作出通訊的規則。
Setting out the rules governing communications to and by companies in electronic form.

方便營商 Facilitating Business (3)

簡明報告 Simplified Reporting

- 自動符合資格擬備簡明報告的私人公司及私人公司集團 –
Private companies and groups of private companies meeting the following criteria will be qualified automatically for simplified reporting –
 - (i) 全年收入總額不超過港幣一億元；(ii) 資產總額不超過港幣一億元；(iii) 僱員人數不超過100人(三者符合其二)
(i) total annual revenue of not more than HK\$100 million; (ii) total assets of not more than HK\$100 million; (iii) no more than 100 employees (two out of three criteria)
- 較大型的私人公司及私人公司集團，則需獲成員批准
Members' approval will be required for larger private companies and groups of private companies.

加強企業管治 Enhancing Corporate Governance (1)

加強董事的問責性 Strengthening the accountability of directors

- 規定所有私人公司最少須有一名個人董事。
Requiring a private company to have at least one individual director.
- 原有公司有六個月寬限期。
There is a grace period of six months for existing companies.



加強企業管治 Enhancing Corporate Governance (2)

加強董事的問責性 Strengthening the accountability of directors

- 釐清董事須以謹慎、技巧及努力行事的責任。
Clarifying directors' duty of Care, Skill and Diligence.
- 客觀及主觀因素均會考慮。
Both objective and subjective elements will be taken into account.

加強企業管治 Enhancing Corporate Governance (3)

提高股東在決策過程中的參與程度 Enhancing shareholder engagement in the decision-making process

- 訂立一套有關提出和通過書面決議的詳盡規則。
Introducing a comprehensive set of rules for proposing and passing a written resolution.
- 把成員要求以投票方式表決的規定由佔總表決權的10%減至5%。
Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.

加強企業管治 Enhancing Corporate Governance (4)

改善公司資料的披露

Improving the disclosure of company information

- 規定公眾公司及不符合資格擬備簡明報告的公司須擬備「業務審視」，但私人公司如獲成員批准可選擇不擬備。
Requiring public companies and companies that do not qualify for simplified reporting to prepare Business Review, but private companies can opt out with members' approval.
- 董事須披露重要交易、安排或合約中具相當份量的利害關係，披露範圍在公眾公司更包括有關連實體。
Directors to disclose material interest in transaction, arrangement or contract of significance, and for public companies, material interest of connected entities as well.

加強企業管治 Enhancing Corporate Governance (5)

加強對股東的保障

Fostering shareholder protection

- 就公司進行私有化計劃的「人數驗證」，由「反對票佔不超過10%的無利害關係股份表決權」這項規定所取代。
Replacing the "headcount test" in privatisation schemes with the requirement that the votes cast against the scheme do not exceed 10% of the voting rights attached to all disinterested shares.
- 引入更有效的規則以處理董事可能出現的利益衝突。
Introducing more effective rules to deal with directors' conflicts of interests.

確保規管更為妥善 Ensuring better regulation (1)

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.



確保規管更為妥善 Ensuring better regulation (2)

- 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 -
 - ◆ 須有兩名董事
 - ◆ 法人團體不可擔任董事
 - ◆ 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

Upon commencement of the new Companies Ordinance, 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, directors' report and auditor's report

確保規管更為妥善 Ensuring better regulation (3)

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 registered for public inspection.



確保規管更為妥善 Ensuring better regulation (4)

改善執法制度 Strengthening the enforcement regime

- 賦予公司註冊處處長取得文件或資料的新權力，以確定有關公司曾否提供虛假或具誤導性的陳述。
New power for the Registrar of Companies to obtain documents or information for ascertaining whether any offence relating to giving false or misleading statement has taken place.
- 賦權處長可就指明的罪行准以繳款代替檢控，以善用司法資源。
Empowering the Registrar to compound specified offences so as to optimise the use of judicial resources.



確保規管更為妥善 Ensuring better regulation (5)

改善執法制度

Strengthening the enforcement regime

- 以繳款代替檢控的機制只適用於簡單及輕微的規管罪行。
Confine the compounding regime to straightforward and minor regulatory offences.
- 新《公司條例》附表7載列這些罪行，包括沒有向公司註冊處處長交付擔任董事的書面同意、沒有提交周年申報表及沒有交付帳目等罪行。
Schedule 7 of the new Companies Ordinance sets out the offences. These cover failure to deliver directors' written consents to act to the Registrar of Companies, failure to file annual returns and failure to deliver accounts etc.

確保規管更為妥善 Ensuring better regulation (6)

改善執法制度

Strengthening the enforcement regime

- 以“責任人”的新表述方式降低高級人員違反規定的門檻。
Lowering the threshold for contravention by officers through a new definition of “responsible person”.
- 在現行《公司條例》下，“失責高級人員”如明知而故意授權或准許違規行為，須承擔刑事責任。此一舉證責任很高，因為“故意”須為蓄意的行為。
The existing Companies Ordinance attributes criminal liability to an officer in default if he knowingly and wilfully authorises or permits the default. The evidential burden is very high as “wilfulness” requires a deliberate act.

確保規管更為妥善 Ensuring better regulation (7)

改善執法制度

Strengthening the enforcement regime

- 新《公司條例》訂明“責任人”是指公司的高級人員，而該人授權、准許或參與違規或失責行為。
“Responsible person” is defined in new Companies Ordinance as an officer of a company who authorises or permits or participates in the contravention or failure.
- 新表述方式將降低檢控門檻，高級人員的責任擴大至須對罔顧後果（但不包括疏忽）的作為和不作為負責。
The effect of the new formulation is to lower the prosecution threshold to extend liability to reckless acts or omissions by officers, but not negligence.

實施新《公司條例》 Implementation

- 已經發信給所有公司
Letters have been sent to all companies
- 已經發出資料小冊子、對外通告、指引
Information pamphlets, External Circulars, Guidelines have been issued
- 舉辦一系列新《公司條例》講座
A series of seminars on the new Companies Ordinance have been conducted
- 設立熱線解答查詢
Hotline set up for answering enquiries
- 瀏覽本處網頁查看簡介 - www.cr.gov.hk
Visit the CR's website for briefing materials





多謝各位
Thank You

公司註冊處 Companies Registry :

www.cr.gov.hk

Hotline 熱線: 3142 2822

Enquiry email 資訊電郵: cr.nco@cr.gov.hk