

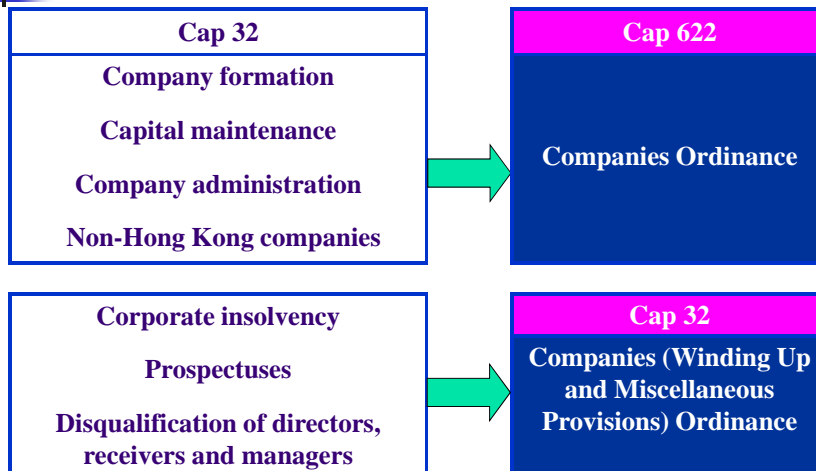


# The new Companies Ordinance an Overview

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Registrar of Companies  
9.4.2014



## The Change



## Four major objectives

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



## Modernising the law (1)

### Abolishing par value of shares

- Adopting a mandatory system of no-par for all companies with a share capital.
- Relevant concepts such as authorised share capital and share premium are abolished.
- 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.

## Modernising the law (2)

### Abolition of the memorandum for all companies

- Companies incorporated under the old Companies Ordinance –  
A condition of the memorandum of an existing company immediately before commencement of the new Companies Ordinance is 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 regarded as deleted (Section 98).

## Modernising the law (3)

### Abolition of the memorandum for all companies

- Companies incorporated under the old Companies Ordinance –  
All references in any other ordinances / documents etc. to memorandum are references to articles of association (Section 98).





## Facilitating Business (1)

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### Streamlining procedures

- Allowing companies to dispense with AGMs by unanimous shareholders' consent.
- Introducing a court-free statutory amalgamation procedure for wholly owned intra-group companies.
- Introducing a new administrative restoration procedure for a company dissolved by the Registrar.



## Facilitating Business (2)

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### Facilitating Business Operations

- Making the use of a common seal optional.
- Permitting a general meeting to be held at more than one location using electronic technology.
- Setting out the rules governing communications to and by companies in electronic form.

## Facilitating Business (3)

### Simplified Reporting

- A small private company / holding company of a group of small private companies meeting two of the following conditions will be qualified automatically for simplified reporting –
  - ◆ (i) total revenue / aggregate total revenue of not more than HK\$100 million; (ii) total assets / aggregate total assets of not more than HK\$100 million; (iii) no more than 100 employees / aggregate employees
- Members' approval will be required for larger private companies and groups of larger private companies.

## Enhancing Corporate Governance (1)

### Strengthening the accountability of directors

- Requiring a private company to have at least one individual acting as director.
- There is a grace period of six months for companies incorporated under the old Ordinance.
- Clarifying directors' duty of care, skill and diligence.
- Both objective and subjective elements will be taken into account.





## Enhancing Corporate Governance (2)

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### Enhancing shareholder engagement in the decision-making process

- Introducing a comprehensive set of rules for proposing and passing a written resolution.
- Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.



## Enhancing Corporate Governance (3)

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### Improving the disclosure of company information

- 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.
- Directors to disclose material interest in transaction, arrangement or contract of significance, and for public companies, material interest of connected entities as well.

## Enhancing Corporate Governance (4)

### Fostering shareholder protection

- 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.
- Introducing more effective rules to deal with directors’ conflicts of interests.

## Ensuring better regulation (1)

### Companies Limited by Guarantee

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



## Ensuring better regulation (2)

### Improving the registration of charges

- Updating the list of registrable charges.
- Requiring a certified copy of the charge instrument to be registered for public inspection.



## Ensuring better regulation (3)

### Strengthening the enforcement regime

- 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.
- Empowering the Registrar to compound specified offences so as to optimise the use of judicial resources.





## Ensuring better regulation (4)

### Strengthening the enforcement regime

- Lowering the threshold for prosecuting contravention by officers through a new definition of “responsible person”.
- “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.
- 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.



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## Implementation

- Letters have been sent to all companies
- Information pamphlets, External Circulars, Guidelines have been issued
- A series of seminars on the new Companies Ordinance have been conducted
- Hotline set up for answering enquiries
- Visit the CR's website for briefing materials - [www.cr.gov.hk](http://www.cr.gov.hk)



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## Public Consultation on Open-ended Fund Companies



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## What is an OFC (1)

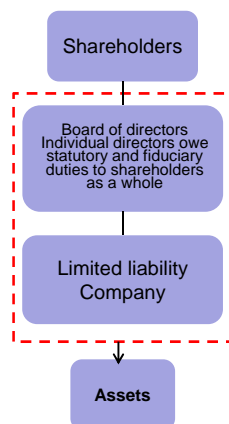
- An **open-ended collective investment scheme** –
  - ◆ in corporate form
  - ◆ with limited liability
  - ◆ with variable share capital
- To serve as an **investment fund** and manage investments for the benefit of its shareholders
- An **additional legal structure** to complement the existing unit trust structure

## What is an OFC (2)

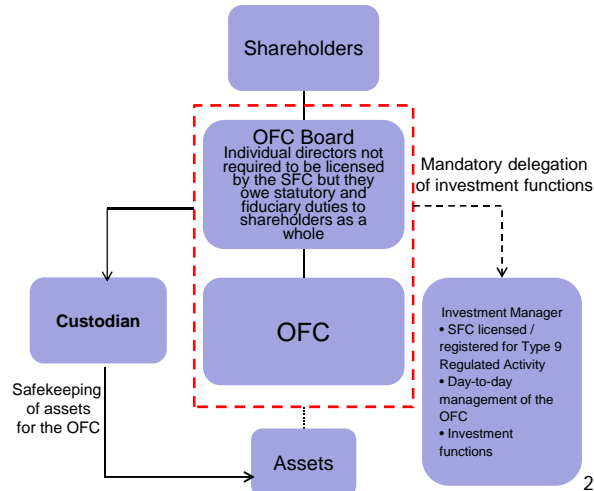
- May be set up as a **public or private fund**
- OFC shareholders -
  - ◆ do not have day-to-day management rights or control over the underlying assets
  - ◆ have the right to participate in the income/profits arising from the management of and transactions in the fund property (via distributions)
- OFC shares are typically priced at net asset value

## Proposed Structure

### Limited Liability Company



### Proposed OFC Structure





## Key Benefits of OFCs

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- Variable share capital to meet shareholder application/redemption requests
- Corporate form with legal personality
- Shareholder liability will be limited to their shares in the OFC
- Streamlined procedures for termination
- Familiar structure to other fund jurisdictions, particularly those not familiar with trust law



## Regulators

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### SFC

- Responsible for registration approval and regulation
- To approve appointment and replacement of key operators (e.g. custodian)
- To license/register investment managers
- Vested with enforcement powers

### Companies Registry

- Responsible for incorporation of OFCs and administering the relevant statutory corporate filings for public access

### Official Receiver's Office

- Responsible for administering compulsory winding-up procedures



## Way Forward

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- Three-month public consultation until **19 June 2014**
- FSTB, SFC, CR and relevant departments will work on the details of the proposed OFC regime having regard to the comments received



## Thank You

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

Hotline: 3142 2822

Enquiry email: [cr.nco@cr.gov.hk](mailto:cr.nco@cr.gov.hk)