



The new Companies Ordinance An Overview

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1



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 on 3 March 2014



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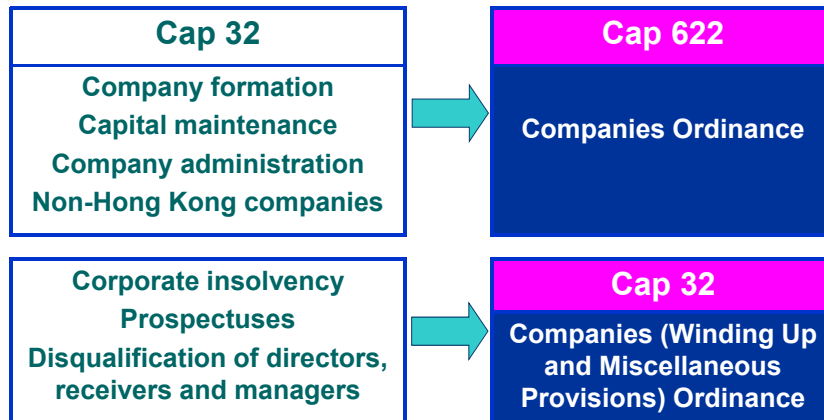
Commencement of
New Companies Ordinance
in **March 2014**



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2

The Change



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



Structure of the new Companies Ordinance

- Part 7 Debentures
- Part 8 Registration of Charges
- Part 9 Accounts and Audit
- Part 10 Directors and Company Secretaries
- Part 11 Fair Dealing by Directors
- Part 12 Company Administration and Procedure



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5



Structure of the new Companies Ordinance

- 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



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6



Structure of the new Companies Ordinance

- 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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7



Structure of the new Companies Ordinance

- 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)



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8



Structure of the new Companies Ordinance

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

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

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)



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9



Structure of the new Companies Ordinance

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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10



Four major objectives

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



Highlights of Key Changes (1)

Abolition of the memorandum for all companies

- For 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**).

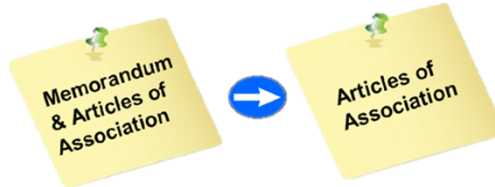


Highlights of Key Changes (2)

Abolition of the memorandum for all companies (Cont'd)

- For 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**).



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13



Highlights of Key Changes (3)

Abolition of the memorandum for all companies (Cont'd) Mandatory Articles

- Every company is **required** to have articles on the following :
 - Company name (**section 81**)
 - If the company has a licence to dispense with the use of the word “limited” in its name – objects (**section 82(1)**)
 - A statement that the liability of members is limited or unlimited, as the case may be (**section 83**)
 - Details of liabilities / contributions of members (**section 84**)
 - Capital and initial shareholding on formation (**section 85**)
- These mandatory articles comprise information previously set out in the memorandum



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14



Highlights of Key Changes (4)

Abolition of the memorandum for all companies (Cont'd)

Optional Articles

- Any company other than one with a licence to dispense with the use of the word “limited” in its name **may** state objects (**section 82(2)**)
- A company **may** state the maximum number of shares that a company may issue



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15



Highlights of Key Changes (5)

Abolition of the memorandum for all companies (Cont'd)

Model Articles / Bespoke Articles

- For additional regulation, all companies may use bespoke articles or may adopt all or any of the Model Articles prescribed by the Financial Secretary for the type of company to which it belongs (**sections 78 and 79**)
- Companies (Model Articles) Notice (Cap. 622H) prescribes Model Articles for:
 - (1) public company limited by shares (Schedule 1)
 - (2) private company limited by shares (Schedule 2)
 - (3) guarantee company (Schedule 3)



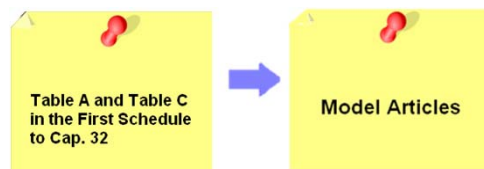
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16

Highlights of Key Changes (6)

Abolition of the memorandum for all companies (Cont'd)

- Model Articles replace Table A and Table C in the First Schedule to Cap. 32
- The Model Articles will apply by default if no additional articles are filed by the company or even if filed in so far as the registered articles do not exclude or modify the Model Articles (**section 80**)



Highlights of Key Changes (7)

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 were abolished.
- Deeming provisions to ensure that contractual rights defined by reference to par value and related concepts are not affected by the abolition of par (**sections 35 to 41 of Schedule 11**). The deeming provisions should save considerable work, expense and time for companies and reduce the possibility of disputes.



Highlights of Key Changes (8)

Abolition of par value

A company was incorporated under the old CO. As at 2 Mar 2014 the company has issued 10 shares with a par value of \$1 per share.

	2 Mar 2014	3 Mar 2014
Share capital	10	14
Share premium	3	nil
Capital redemption reserve	1	nil
Retained profits	2	2
Total equity	16	16



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19



Highlights of Key Changes (9)

Retiring the concept of par

- **Share capital:** The full proceeds of a share issue are credited to share capital under the new regime and become the company's share capital. The notion of issued or paid capital continue to be relevant even after the abolition of par value, and it then includes the amount previously credited to the share premium account. In other words, it represents the total amount that the company actually receives from its shareholders as capital contribution.
- **Share premium account:** With the abolition of par value, "share premium" no longer exists. There is a deeming provision in the new CO to provide for the amalgamation of the existing share capital amount with the amount in the company's share premium account (**section 37 of Schedule 11**).



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20



Highlights of Key Changes (10)

Retiring the concept of par (Cont'd)

- The permitted uses of share premium existing on the date of commencement of the new CO are preserved, e.g., to pay up shares which are issued as bonus shares (**section 38 of Schedule 11**). For this purpose, the company should continue to maintain records of the balance of the former share premium account.
- **Capital redemption reserve**
 - On the commencement date of the new CO, any amount standing to the credit of the company's capital redemption reserve becomes part of the company's share capital (**section 37 of Schedule 11**).



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21



Highlights of Key Changes (11)

Retiring the concept of par (Cont'd)

Alteration of share capital

- A company has greater flexibility to alter its share capital in a no-par environment, e.g. a company is able to capitalise its profits without issuing new shares and to allot and issue bonus shares without increasing its share capital (**section 170**).
- Companies continue to be able to effectively consolidate and subdivide shares. Whilst there is no nominal amount to be divided for no-par shares, a similar result to subdivision can be achieved by increasing the number of shares. The process of consolidating shares into a smaller number should be considerably simplified where there are no par values to contend with. The number of shares will just reduce with no visible effect on the share capital (**section 170(2)(e)**).



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22



Highlights of Key Changes (12)

- **As at 31 December 2013**
 - 67,370 corporate directors for local companies
 - About 3.55% of the total number of directors of local companies
- The new Companies Ordinance requires at least one individual to be a director of a private company (**section 457**)
(grace period of 6 months from commencement for companies incorporated under the old Companies Ordinance)



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23



Highlights of Key Changes (13)

Companies Limited by Guarantee

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



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24



Highlights of Key Changes (14)

- Upon commencement of the new Companies Ordinance, companies limited by guarantee become a specified category of companies -
 - at least two directors are required
 - corporate director is not allowed
 - the annual return must be delivered together with a certified copy of the financial statements, director's report and auditor's report



Highlights of Key Changes (15)

- Types of companies which can be formed under the new Companies Ordinance are:-
 - Public company limited by shares
 - Private company limited by shares
 - Company limited by guarantee without share capital
 - Public unlimited company with share capital, and
 - Private unlimited company with share capital





Highlights of Key Changes (16)

Improving the registration of charges

- Updating the list of registrable charges.
- Requiring a certified copy of the charge instrument to be registrable and available for public inspection.
- Registration period shortened to a month.



27



Highlights of Key Changes (17)

Facilitating Simplified Reporting

- Facilitating more 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.



28



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



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29



Thank You

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30