

# The new Companies Ordinance

## An Overview

9. 5. 2014



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## The New Companies Ordinance

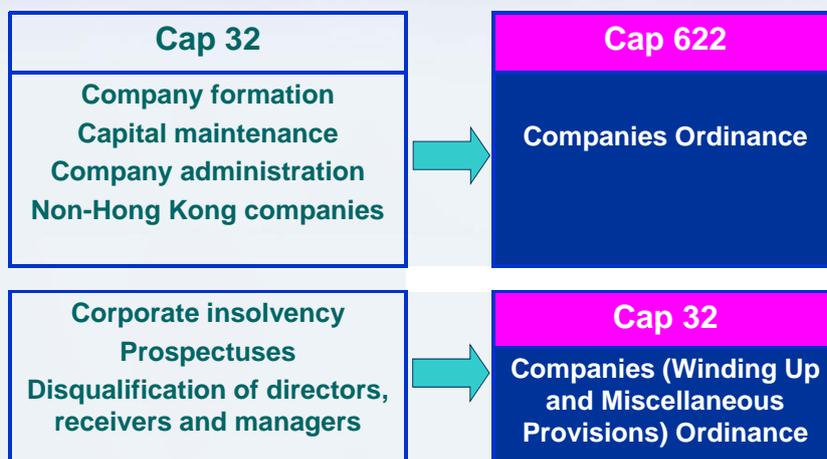
- ❑ Passed by the Legislative Council on 12 July 2012
- ❑ 12 pieces of subsidiary legislation – the legislative process completed on 17 July 2013
- ❑ Commencement on 3 March 2014



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## 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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## 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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## 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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## 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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## 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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## 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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## Four major objectives

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



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## 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).



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## 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).



## 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



## 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



## Highlights of Key Changes (5)

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

#### Model Articles / Bespoke Articles

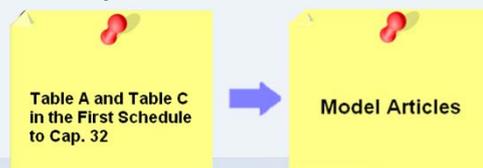
- For additional regulation, all companies may use bespoke articles or may adopt all or any of the Model Articles prescribed by the Financial Secretary for the type of company to which it belongs (**sections 78 and 79**)
- Companies (Model Articles) Notice (Cap. 622H) prescribes Model Articles for:
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



## 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**)



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## Highlights of Key Changes (7)

- 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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## Highlights of Key Changes (8)

### Companies Limited by Guarantee

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



## Highlights of Key Changes (9)

- 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 (10)

- 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



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## Highlights of Key Changes (11)

### 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.



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## Highlights of Key Changes (12)

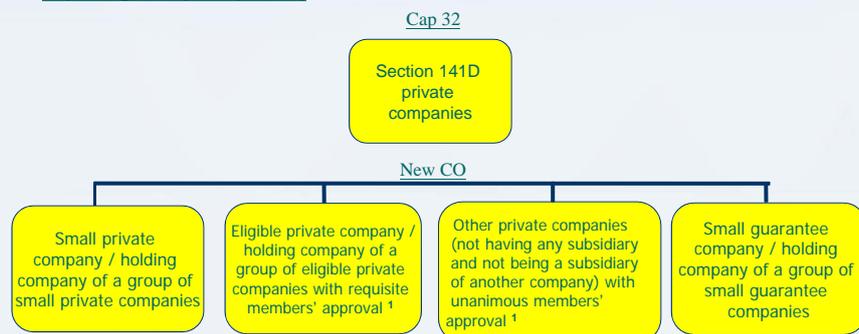
### Reporting Exemption

- 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.
- 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).



## Highlights of Key Changes (13)

### Reporting exemption (Cont'd)



<sup>1</sup> 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))



## Highlights of Key Changes (14)

### Reporting Exemption (Cont'd) Qualifying criteria

	Small private company / group	Eligible private company / group	Small guarantee company / group
Total / aggregate total revenue	Not exceeding \$100m	Not exceeding \$200m	Not exceeding \$25m
Total / aggregate total assets	Not exceeding \$100m	Not exceeding \$200m	No limit
Employees/aggregate employees	Not exceeding 100	Not exceeding 100	No limit
Members' approval	Not required <sup>2</sup>	At least 75% of members' approval and no objection from a member 6 months before the end of the financial year	Not required <sup>2</sup>

<sup>2</sup> Automatic qualification based on size



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## Highlights of Key Changes (15)

### Reporting Exemption (Cont'd)

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

- ◆ total revenue / aggregate total revenue not exceeding \$100 million
- ◆ total assets / aggregate total assets not exceeding \$100 million
- ◆ employees / aggregate employees not exceeding 100

(ss 359(1)(a) & (2), 361, 364, Schedule 3 section 1(1), (7), (8))



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## Highlights of Key Changes (16)

### Reporting Exemption (Cont'd)

- 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))



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## Highlights of Key Changes (17)

### Reporting Exemption (Cont'd)

- 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))

- 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))



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## Highlights of Key Changes (18)

### Reporting Exemption (Cont'd)

- For qualification in the first financial year –
  - ◆ Company incorporated under the old CO – 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)).



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## Highlights of Key Changes (19)

### Reporting Exemption (Cont'd)

- ◆ 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)).
- ◆ Qualification continues for subsequent financial years until disqualified.



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## Highlights of Key Changes (20)

### Reporting Exemption (Cont'd)

- For qualification in subsequent financial years –
  - ◆ 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)).



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## Highlights of Key Changes (21)

### 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



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## Highlights of Key Changes (22)

- ❑ 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
- ❑ Companies Registry has issued an External Circular on section 408 on 24 February 2014.



## 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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