

新《公司條例》 The new Companies Ordinance

概覽 an Overview

公司註冊處處長鍾麗玲
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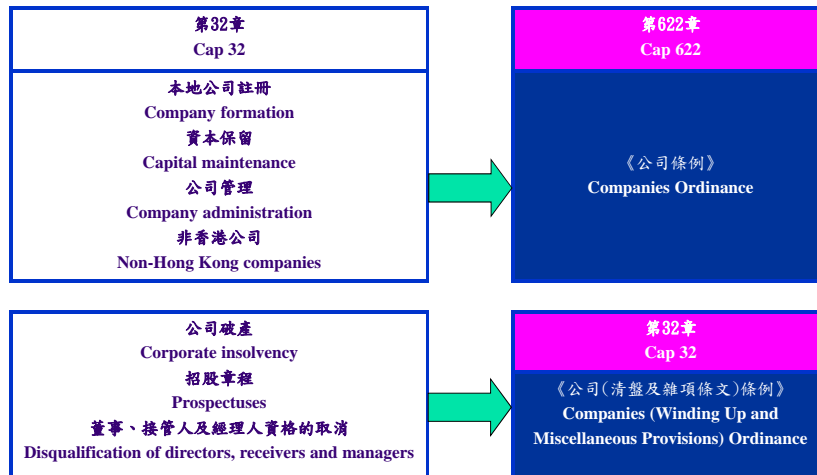


新《公司條例》 The New Companies Ordinance

- 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
- 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

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



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

- 根據舊《公司條例》成立為法團的公司 – 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)。

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 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).



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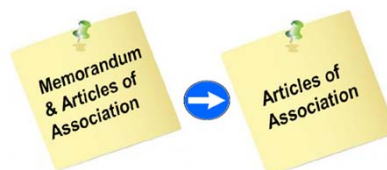
使法例現代化 Modernising the law (4)

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

- 根據舊《公司條例》成立為法團的公司 – 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)。

Companies incorporated under the old Companies Ordinance –

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



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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.



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方便營商 Facilitating Business (2)

方便營商

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.



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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小型私人公司/小型私人公司集團的控權公司須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 will be qualified automatically for simplified reporting –
 - ◆ (i) 收入總額/收入總額的總數不超過港幣一億元；(ii) 資產總額/資產總額的總數不超過港幣一億元；(iii) 僱員/僱員總人數不超過100人
(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
- 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 larger private companies.



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方便營商 Facilitating Business (4)

在提交報告方面獲豁免 - 資格準則

Reporting Exemption - 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* Not required*	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* Not required*

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



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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 companies incorporated under the old law.



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.



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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.



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安排計劃 – 人數驗證

Scheme of Arrangement - Headcount Test (1)

- 舊《公司條例》的人數驗證

Headcount test in old Companies Ordinance

- ◆ 有關計劃須獲出席會議「代表成員的四分之三(以價值計算)……」(「股份價值驗證」)「的大多數」(「人數驗證」)通過。計劃即使已通過股份價值驗證及人數驗證，法院仍可酌情不予認許。

The scheme has to be approved by “a majority in number” (“headcount test”) “representing three-fourths in value of the members...” (“share value test”) present and voting at the meeting. Court still has discretion whether or not to sanction scheme even if both tests are satisfied.



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安排計劃 – 人數驗證

Scheme of Arrangement - Headcount Test (2)

- ◆ 上市公司亦須符合《公司收購及合併守則》第2.10(b)條的規定，即反對計劃的票數，不得超過無利害關係的股份投票權的10%。

Listed companies must also satisfy rule 2.10(b) of the Code on Takeovers and Mergers, i.e. number of votes cast against the scheme must not be more than 10% of the votes attaching to disinterested shares.

- 鑑於電訊盈科有限公司一案，人數驗證予以檢討。案中有證據顯示有股東拆細股份。

The headcount test was reviewed in the light of *Re PCCW Ltd* case where there was evidence of share splitting.

- 人數驗證抵觸「一股一票」的原則。

Headcount test inconsistent with “one share one vote” principle.



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安排計劃 – 人數驗證

Scheme of Arrangement - Headcount Test (3)

- 中央結算及交收系統內上市公司大部分股份，均以香港中央結算(代理人)有限公司的名義登記，人數驗證未能反映股東意願。

Most shares in listed companies within the Central Clearing and Settlement Scheme (CCASS) are registered in the name of HKSCC Nominees Ltd. The headcount test does not serve to reflect the views of shareholders.

- 回購股份的公開要約，或收購要約的成員安排計劃，「人數驗證」的規定，由「反對票佔無利害關係股份表決權不超過10%」的這項規定所取代。

For members' scheme of arrangement involving a general offer to buy back shares or a takeover offer, the headcount test is replaced by the requirement that the votes cast against the scheme do not exceed 10% of the total voting rights attached to all disinterested shares.



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安排計劃 – 人數驗證

Scheme of Arrangement - Headcount Test (4)

- 其他成員計劃仍會保留人數驗證的規定，但法院獲賦予酌情權，可不施行驗證。

The headcount test is retained for other members' schemes but the Court is given a discretion to dispense with the test in special circumstances.

- 在反對計劃的成員提出的反對屬瑣屑無聊或無理纏擾的情況下，法院方可飭令其支付訟費。

Court may order costs against a member only if his opposition to the scheme is frivolous or vexatious.



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

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 (2)

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 (3)

改善執法制度 Strengthening the enforcement regime

- 以“責任人”的新表述方式降低檢控高級人員違反規定的門檻。
Lowering the threshold for prosecuting contravention by officers through a new definition of “responsible person”.
- 在舊《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 old 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 (4)

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



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多謝各位 Thank You

公司註冊處 Companies Registry :

www.cr.gov.hk

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