



新《公司條例》(第622章) The New Companies Ordinance (Cap 622)

概覽 An Overview

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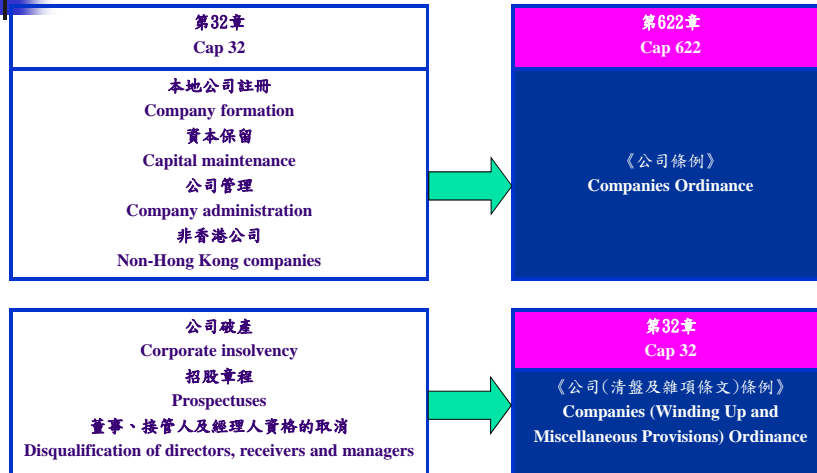


新《公司條例》 The New Companies Ordinance

- 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



新《公司條例》的結構 Structure of the new Companies Ordinance (1)

- 共有 21 部， 921 項條文 及 11 個附表
Divided into 21 Parts, comprising 921 sections and 11 Schedules
- 第 1 部 - 導言
Part 1 Preliminary
- 第 2 部 - 公司註冊處處長及公司登記冊
Part 2 Registrar of Companies and Companies Register
- 第 3 部 - 公司組成及相關事宜，以及公司的重新註冊
Part 3 Company Formation and Related Matters, and Re-registration of Company
- 第 4 部 - 股本
Part 4 Share Capital

新《公司條例》的結構

Structure of the new Companies Ordinance (2)

- 第 5 部 - 關於股本的事宜
Part 5 Transactions in relation to Share Capital
- 第 6 部 - 利潤及資產的分派
Part 6 Distribution of Profits and Assets
- 第 7 部 - 債權證
Part 7 Debentures
- 第 8 部 - 押記的登記
Part 8 Registration of Charges
- 第 9 部 - 帳目及審計
Part 9 Accounts and Audit
- 第 10 部 - 董事及公司秘書
Part 10 Directors and Company Secretaries



新《公司條例》的結構

Structure of the new Companies Ordinance (3)

- 第 11 部 - 董事的公平處事
Part 11 Fair Dealing by Directors
- 第 12 部 - 公司管理及議事程序
Part 12 Company Administration and Procedure
- 第 13 部 - 安排、合併及在進行收購和股份回購時強制購入股份
Part 13 Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
- 第 14 部 - 保障公司或成員的權益的補救
Part 14 Remedies for Protection of Companies' or Members' Interests
- 第 15 部 - 被除名或撤銷註冊而解散
Part 15 Dissolution by Striking Off or Deregistration

新《公司條例》的結構

Structure of the new Companies Ordinance (4)

- 第 16 部 – 非香港公司
Part 16 Non-Hong Kong Companies
- 第 17 部 – 並非根據本條例組成但可根據本條例註冊的公司
Part 17 Companies not Formed, but Registrable, under this Ordinance
- 第 18 部 – 公司與外間的通訊
Part 18 Communications to and by Companies
- 第 19 部 – 調查及查訊
Part 19 Investigations and Enquiries
- 第 20 部 – 雜項條文
Part 20 Miscellaneous
- 第 21 部 – 相應修訂、過渡性條文及保留條文
Part 21 Consequential Amendments, and Transitional and Saving Provisions



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新《公司條例》的結構

Structure of the new Companies Ordinance (5)

- 12 項附屬法例
12 subsidiary legislation
 - 《公司(公司名稱所用字詞)令》(第622A章)
Companies (Words and Expressions in Company Names) Order (Cap 622A)
 - 《公司(披露公司名稱及是否有限公司)規例》(第622B章)
Companies (Disclosure of Company Name and Liability Status) Regulation (Cap 622B)
 - 《公司(會計準則(訂明團體))規例》(第622C章)
Companies (Accounting Standards (Prescribed Body)) Regulation (Cap 622C)



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新《公司條例》的結構

Structure of the new Companies Ordinance (6)

《公司(董事報告)規例》(第622D章)

Companies (Directors' Report) Regulation (Cap 622D)

《公司(財務摘要報告)規例》(第622E章)

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

《公司(修改財務報表及報告)規例》(第622F章)

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

《公司(披露董事利益資料)規例》(第622G章)

Companies (Disclosure of Information about Benefits of Directors)
Regulation (Cap 622G)



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新《公司條例》的結構

Structure of the new Companies Ordinance (7)

《公司(章程細則範本)公告》(第622H章)

Companies (Model Articles) Notice (Cap 622H)

《公司紀錄(查閱及提供文本)規例》(第622I章)

Company Records (Inspection and Provision of Copies) Regulation
(Cap 622I)

《公司(非香港公司)規例》(第622J章)

Companies (Non-Hong Kong Companies) Regulation (Cap 622J)

《公司(費用)規例》(第622K章)

Companies (Fees) Regulation (Cap 622K)

《公司(不公平損害呈請)法律程序規則》(第622L章)

Companies (Unfair Prejudice Petitions) Proceedings Rules
(Cap 622L)



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四個主要目的 Four major objectives (1)

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



四個主要目的 Four major objectives (2)

- 使法例現代化 Modernising the Law
 - 以淺白的語言文字重寫法例
Rewriting the law in simple and plain language
 - 廢除組織章程大綱
Abolishing Memorandum of Association
 - 廢除股份面值概念
Retiring the concept of par value of shares



四個主要目的 Four major objectives (3)

- > 確保規管更為妥善 **Ensuring Better Regulation**
 - 確保公眾登記冊的資料準確無誤
Ensuring the accuracy of information on the public register
 - 改善押記登記制度
Improving the registration of charges scheme
 - 加強對公司自願撤銷註冊的規管
Enhancing the regulation of the voluntary deregistration of companies
 - 加強執法制度
Improving the enforcement regime



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四個主要目的 Four major objectives (4)

- > 加強企業管治 **Enhancing Corporate Governance**
 - 加強董事的問責性
Strengthening the accountability of directors
 - 提高股東在決策過程中的參與程度
Enhancing shareholder engagement in the decision-making process
 - 改善公司資料的披露
Improving the disclosure of company information
 - 加強對股東的保障
Fostering shareholder protection
 - 加強核數師的權利
Strengthening auditors' rights



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四個主要目的 Four major objectives (5)

- 方便營商 **Facilitating Business**
 - ▣ 簡化程序
Streamlining procedures
 - ▣ 便利中小企擬備簡明報告
Facilitating simplified reporting by SMEs
 - ▣ 方便營商
Facilitating business operations



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 (續)

Abolishing par value of shares (cont'd)

- 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，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 such a company immediately before commencement of the new Companies Ordinance is deemed 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 Modernising the law (4)

廢除所有公司的組織章程大綱 (續) Abolition of the memorandum for all companies (cont'd)

- 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).



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.

A screenshot of the NAR1 (Annual Return) form for companies limited by guarantee. The form is titled 'Annual Return' and includes various sections for providing company information, such as the company name, address, and details of directors and shareholders. The form is presented in a structured, tabular layout.

確保規管更為妥善

Ensuring better regulation (2)

擔保有限公司 (續)

Companies limited by guarantee (cont'd)

- 新《公司條例》實施後，擔保有限公司成為一特定類別的公司 -
Upon commencement of the new Companies Ordinance, companies limited by guarantee became a specified category of companies -
 - ◆ 最少須有兩名董事
at least two directors are required
 - ◆ 法人團體不可擔任董事
corporate director is not allowed
 - ◆ 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
the annual return must be delivered together with a certified copy of the financial statements, directors' report and auditor's report



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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 registrable and available for public inspection.



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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 (續)

Strengthening the enforcement regime (cont'd)

- 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(續)

Strengthening the enforcement regime (cont'd)

- 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 (7)

改善執法制度(續)

Strengthening the enforcement regime (cont'd)

- 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.

加強企業管治

Enhancing Corporate Governance (1)

委任自然人為董事

Appointment of natural person as director

- 規定所有私人公司最少須有一名董事為自然人(第457條)。
Requiring a private company to have at least one natural person to act as a director (section 457).
- 根據舊《公司條例》成立為法團的公司有6個月寬限期。
There is a grace period of 6 months for companies incorporated under the old Companies Ordinance.



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加強企業管治

Enhancing Corporate Governance (2)

董事有責任以謹慎、技巧及努力行事

Directors' duty of care, skill and diligence

- 舊《公司條例》沒有關於董事有責任以謹慎、技巧及努力行事的條文，而香港普通法在這方面的情況亦非完全清晰。
There is no provision in the old Companies Ordinance on the directors' duty of care, skill and diligence. The common law position in Hong Kong is not entirely clear.
- 在新《公司條例》下，董事須以合理水平的謹慎、技巧及努力行事，即指任何合理努力並具備以下條件的人在行事時會有的謹慎、技巧及努力—
Under the new Companies Ordinance, a director must exercise reasonable care, skill and diligence, i.e. the care, skill and diligence that would be exercised by a reasonably diligent person with —



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加強企業管治

Enhancing Corporate Governance (3)

董事有責任以謹慎、技巧及努力行事(續)

Directors' duty of care, skill and diligence (cont'd)

- ◆ 可合理預期任何人在執行有關董事就有關公司所執行的職能會具備的一般知識、技巧及經驗(「客觀準則」)；及
the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (“objective test”); and
- ◆ 該董事本身具備的一般知識、技巧及經驗(「主觀準則」)(第465條)。
the general knowledge, skill and experience that the director has (“subjective test”) (section 465).

加強企業管治

Enhancing Corporate Governance (4)

與董事的貸款交易

Loan Transactions with directors

- 擴大公眾公司及其附屬公司受禁貸款及類似交易的範圍，以包括更多與董事有關連的人。例如成年子女、同居者、父母。
For public companies and their subsidiaries, the prohibitions on loans and similar transactions are expanded to cover a wider category of persons connected with a director. For example, adult children, cohobitees, parents.
- ◆ 關連實體包括家庭成員、有同居關係的人士、有聯繫的法人團體、指明類別的信託人及合夥人(第486條)。
Connected entity includes family members, person in cohobitation relationship, associated body corporate, specified categories of trustee and partner (section 486).

加強企業管治

Enhancing Corporate Governance (5)

與董事的貸款交易(續)

Loan Transactions with directors (cont'd)

- 公眾公司及其附屬公司須獲無利益關係成員的批准，才可進行貸款或類似交易（第496(2)(b)(ii)條）。

Disinterested members' approval of loan or similar transaction is required in the case of public companies and their subsidiaries (section 496(2)(b)(ii)).

- ◆ 有關人士：包括有關董事、有關連實體，以及以信託方式，為該等人士／該等實體持有公司股份的人士。

Interested parties: includes the relevant directors, connected entities and any person who holds any shares in the company in trust for these persons/entities.



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加強企業管治

Enhancing Corporate Governance (6)

與董事的貸款交易(續)

Loan Transactions with directors (cont'd)

- 舊《公司條例》的刑事制裁已刪除。於新《公司條例》的民事後果包括以下 -

The criminal sanction in the old Companies Ordinance was removed. Under the new Companies Ordinance, civil consequences include -

- ◆ 交易可由公司提出要求而致使無效，但有例外情況；及
voidable at company's instance, with exceptions ; and
- ◆ 董事及其他人有責任向公司就獲得的收益作出交代(第513條)。
directors and others liable to account to company any gain made (section 513).



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加強企業管治

Enhancing Corporate Governance (7)

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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加強企業管治

Enhancing Corporate Governance (8)

加強對股東的保障

Fostering shareholder protection

- 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, for example –
 - ◆ 董事受僱用的保證年期超過3年須獲成員批准。如屬公眾公司，須獲無利益關係成員的批准（第532及534條）。
Members' approval is required for directors' employment for a guaranteed term exceeding 3 years. For public companies, disinterested members' approval is required (sections 532 & 534).



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加強企業管治

Enhancing Corporate Governance (9)

加強對股東的保障 (續)

Fostering shareholder protection (cont'd)

- ◆ 就失去職位而作出付款的禁制，其範圍擴大至包括向董事或與前董事有關連的實體作出的付款，以及向控股公司的董事作出的付款（第516(3)及521(2)條）。

The prohibitions on payments for loss of office are extended to cover payment to entity connected with director or former director and to payment to director of holding company (sections 516(3) & 521(2)).

- 加強核數師的權力及引入新刑責。
Strengthening auditors' powers while introducing a new offence.



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方便營商

Facilitating Business (1)

方便營商及簡化程序

Facilitating business operations and streamlining procedures

- 讓公司自行選擇是否使用法團印章。
Making the use of a common seal optional.
- 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.
- 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.



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方便營商 Facilitating Business (2)

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) not 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 private companies.



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方便營商 Facilitating Business (3)

周年申報表 Annual Returns

- 私人公司 –
Private companies –
 - ◆ 交付周年申報表登記的規定並沒有改變。
No changes in the requirement to deliver Annual Return for registration.
 - ◆ 申報表日期是公司成立為法團的周年日。
Date of return : anniversary of the date of a company's incorporation.
 - ◆ 交付期限：周年申報表須於申報表日期後的 42 日內交付。
Time for delivery : within 42 days after the date of return.
 - ◆ 唯一改變：在新《公司條例》下，以「資料並無改變的證明書」交付的周年申報表 (表格AR3)經已作廢，不會獲接納登記。
Only difference : Under the new Companies Ordinance, no more Form AR3 – Certificate of no change.



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方便營商 Facilitating Business (4)

周年申報表 (續) Annual Returns (cont'd)

- 公眾公司-
Public companies –
 - ◆ 公眾公司須就每個財政年度而非每個公曆年交付周年申報表登記。
Annual Return should be delivered for registration in respect of each financial year instead of a calendar year.
 - ◆ 周年申報表須於公司的申報表日期後的42日內交付。申報表日期是公司的會計參照期結束後的6個月屆滿之日。
Annual Return is to be delivered within 42 days after the company's return date, i.e. 6 months after the end of the company's accounting reference period.
 - ◆ 就根據舊《公司條例》成立為法團的公眾公司而言，新規定適用於在新《公司條例》生效日期(即2014年3月3日)當日或之後開始的首個財政年度，以及其後的所有財政年度(附表11第121(1)(b)條)。
For a public company incorporated under the old Companies Ordinance, the new requirements only apply to the first financial year of the company that begins on or after the commencement date of the new Companies Ordinance and all subsequent financial years (section 121(1)(b) of Schedule 1).



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方便營商 Facilitating Business (5)

周年申報表 (續) Annual Returns (cont'd)

- 擔保有限公司-
Companies limited by guarantee –
 - ◆ 擔保有限公司須就每個財政年度而非每個公曆年交付周年申報表登記。
Annual Return should be delivered for registration in respect of each financial year instead of a calendar year.
 - ◆ 周年申報表須於公司的申報表日期後的42日內交付。申報表日期是公司的會計參照期結束後的9個月屆滿之日。
Annual Return is to be delivered within 42 days after the company's return date, i.e. 9 months after the end of the company's accounting reference period.
 - ◆ 就根據舊《公司條例》成立為法團的擔保有限公司而言，新規定適用於在新《公司條例》生效日期(即2014年3月3日)當日或之後開始的首個財政年度，以及其後的所有財政年度(附表11第121(1)(b)條)。
For a guarantee company incorporated under the old Companies Ordinance, the new requirements apply to the first financial year of the company that begins on or after the commencement date of the new Companies Ordinance and all subsequent financial years (section 121(1)(b) of Schedule 1).



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多謝各位

Thank You

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