

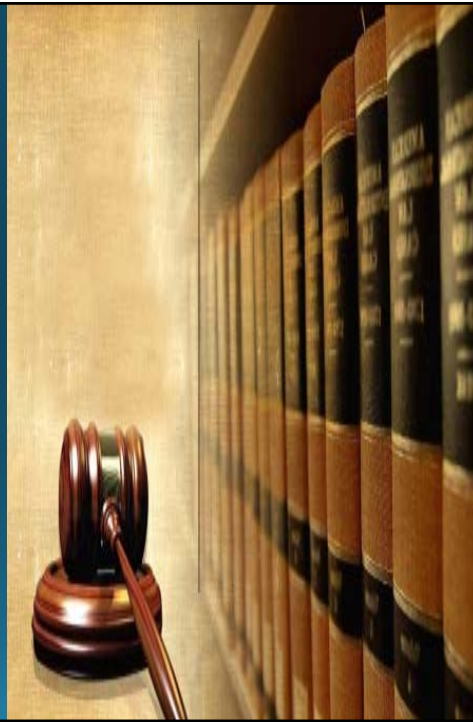


CORPORATE LAW REFORM: “USER-FRIENDLINESS” AND CORPORATE GOVERNANCE

Focus

1. Doing Business
2. Corporate Structure
3. Mergers and Acquisitions
4. Corporate Governance

Introduction of Regulators



Ada Chung

- She has been heavily involved in the Companies Ordinance Rewrite project since her appointment as the Registrar of Companies in 2007. She led her team in planning and preparing for the implementation of the new legislation in March 2014.
- She led the team in enhancing the IT infrastructure of the Registry. They introduced the e-Registry in early 2011, successfully launched e-incorporation of companies in March 2011 and e-filing of company information in February 2012.
- She is also the Treasurer of the Corporate Registers Forum, an international association of Registrars.

Hong Kong

Hong Kong has rewritten its corporate law, the new Companies Ordinance, as of 3 March 2014. The new Companies Ordinance is focused on corporate governance, facilitating business, better regulation and modernizing the law.

In World Bank's Doing Business Report 2015, Hong Kong is ranked the world's No. 3 in the ease of doing business and No. 8 in starting a business.

How did the other countries fair in the World Bank's Doing Business Report 2015?

Table 1: Ease of Doing Business (189 Countries)

<u>Country</u>	<u>Ranking</u>
Singapore	1
Hong Kong	3
Korea	5
Japan	29
Czech Republic	44
Vietnam	78
China	90
Philippines	95
Indonesia	114
India	142
Myanmar	177

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How did the other countries fair in the World Bank's Doing Business Report 2015?

Table 2: Starting a Business (189 Countries)

<u>Country</u>	<u>Ranking</u>
Singapore	6
Hong Kong	8
Korea	17
Japan	83
Czech Republic	110
Vietnam	125
China	128
Indonesia	155
India	158
Philippines	161
Myanmar	189

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On the first topic, Doing Business:

□ Reduction of the cost of doing business in general

<u>Country</u>	<u>Panelists' Rating</u>	<u>World Bank's Ranking</u>
Indonesia	10	114
Myanmar		177
China	9	90
Japan		29
Singapore		1
Hong Kong	8	3
Korea		5
Czech Republic	7	44
Vietnam		78
India	6.5	142
Philippines	6	95

On the first topic, Doing Business:

❑ Simplification of registration requirements

Country	Panelists' Rating	World Bank's Ranking
China	10	128
Indonesia		155
Myanmar		189
Singapore		6
Japan	9	83
Philippines	8	161
Hong Kong	7	8
India	6.5	158
Czech Republic	6	110
Vietnam		125
Korea	5	17

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On the first topic, Doing Business:

❑ Corporate reportorial requirements

Country	Panelists' Rating
China	10
Indonesia	9
Hong Kong	8
India	
Korea	7
Japan	6
Philippines	
Myanmar	5
Vietnam	
Czech Republic	4
Singapore	3

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Hong Kong - Doing Business

Simplification of Registration Requirements

Ada Chung

- The Companies Registry has introduced electronic incorporation for companies since March 2011.
- In straightforward cases, companies may now be incorporated online in less than an hour.
- Since February 2012, electronic filing of company information has been introduced.
- On 3 March 2015, a full scale electronic filing service covering 84 specified forms for filing with the Companies Registry was launched.
- Time required for processing and registration of e-forms by system is less than 24 hours.

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Hong Kong - Doing Business

Simplification of Registration Requirements

Ada Chung

- Simplified procedure for starting business by:
 - ✓ *removing common seal requirement*
 - ✓ *abolishing memorandum of association*
- Simplified financial statements and directors' reports for companies that meet specified size criteria
- BUT where public interest requires, a comprehensive and forward-looking business review, including information relating to environmental and employee matters, must be included in directors' report
- Dispense with annual general meetings by obtaining unanimous members' consent
- Legislative reform to establish and implement a scripless securities market

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CORPORATE STRUCTURE



Hong Kong – Corporate Structure

Ada Chung

Open-Ended Fund Company Structure

- Expand the legal structure for investment fund vehicles by introducing a new open-ended fund company structure

Capital Restructuring

- Alternative court-free procedure for reducing capital based on a solvency test
- All companies may now purchase their own shares out of capital, subject to a solvency test.

MERGERS AND ACQUISITIONS



Hong Kong – Mergers and Acquisitions

Ada Chung

- The new law provides a court-free statutory amalgamation procedure for wholly owned intra-group companies
- In 2014, 10 groups of companies have undergone intra-group amalgamation using the new procedure

CORPORATE GOVERNANCE



On the fourth topic, Corporate Governance:

Compliance with regulations governing corporate behavior vis à-vis other private parties

<u>Country</u>	<u>Panelists' Rating</u>
Hong Kong	9
Philippines	
Japan	8
Vietnam	7
India	6
China	5
Indonesia	
Myanmar	
Singapore	
Czech Republic	3
Korea	1

On the fourth topic, Corporate Governance:

Compliance with regulations with respect corporate governance

<u>Country</u>	<u>Panelists' Rating</u>
China	9
Korea	
Philippines	
Czech Republic	8
India	
Indonesia	7
Vietnam	
Hong Kong	6
Japan	
Singapore	
Myanmar	5

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On the fourth topic, Corporate Governance:

Governance structure reform on just the board of directors

<u>Country</u>	<u>Panelists' Rating</u>
Philippines	10
Korea	9
Singapore	8
Czech Republic	7
India	
Vietnam	
Hong Kong	6
China	5
Japan	
Indonesia	4
Myanmar	3

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On the fourth topic, Corporate Governance:

Governance Structure Overhaul

Country	Panelists' Rating
China	8
Japan	
Philippines	
Czech Republic	7
Hong Kong	
India	
Vietnam	6
Singapore	4
Indonesia	3
Myanmar	
Korea	2

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On the fourth topic, Corporate Governance:

Minority Shareholder Rights

Country	Panelists' Rating
Vietnam	9
China	8
Czech Republic	
Hong Kong	
Korea	
Philippines	7
Singapore	
India	5
Japan	
Myanmar	3
Indonesia	2

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Hong Kong – Corporate Governance *Board of Directors*

Ada Chung

- Public companies have been prohibited from appointing corporate directors since 1984.
- The new Companies Ordinance requires every private company to have at least one natural person to act as director
- The new Companies Ordinance strengthens the enforcement regime in relation to the liabilities of officers by:
 - lowering the threshold for prosecution
 - extending it to cover reckless acts (concept of “responsible person”)
 - extended the scope of the unfair prejudice remedy to cover proposed acts and omissions

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Hong Kong – Corporate Governance *Board of Directors*

Ada Chung

- Directors of public companies must disclose material interests of entities they are connected with
 - Material interests includes not only contracts but *transactions* and *arrangement*
- Directors’ employment contracts exceeding three years must be approved by the shareholders
- Prohibition on payments to directors or former directors for loss of office includes payments to an entity connected with the director and payments to a director of the holding company
- Clarified the standard of the duty of care, skill and diligence of directors

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Hong Kong – Corporate Governance *Shareholder Rights*

Ada Chung

- The new law enhances shareholder engagement in the decision-making process:
 - reduces the threshold requirement from 10% to 5% of the total voting rights for members to demand a poll
- Disinterested shareholders' approval is required in cases where shareholders' approval is required for transactions of public companies and their subsidiaries
- The “headcount test” for privatization and takeover schemes is also removed to prevent abuse

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Hong Kong – Corporate Governance

Ada Chung

Disclosures

- Auditors may require a wider range of persons to provide information or explanations

Insolvency Law

- Modernize and improve corporate insolvency and winding-up regime

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