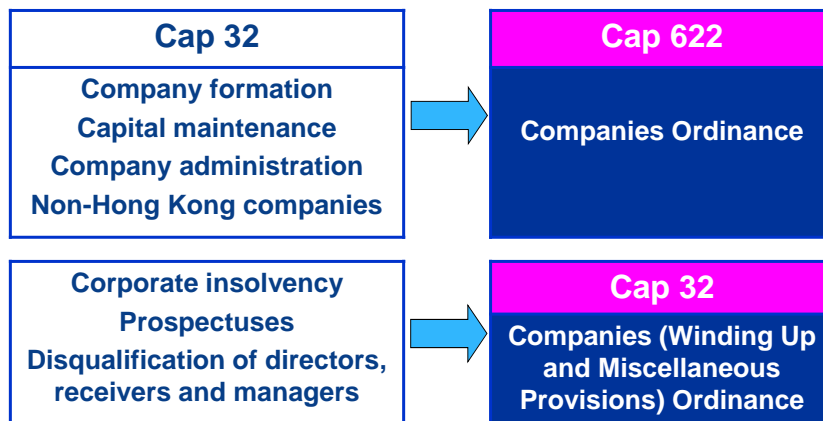


The Companies Ordinance Turns Two

Ms Ada Chung
Registrar of Companies
2.3.2016



The Change



Four major objectives

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



New Initiatives to enhance corporate governance

- Private company to have at least one individual acting as director
- More effective rules to deal with directors' conflicts of interest
- Empowering auditors to require a wider range of persons to provide information / explanation
- Public companies and other companies not qualified for simplified reporting to prepare business review
- Clarified the standard of director's duty of care, skill and diligence



New Initiatives to facilitate business

- Abolishing the memorandum of association
- Making the use of a common seal optional
- Facilitating small and medium-sized enterprises to prepare simplified financial statements
- Alternative court-free procedure for the reduction of a company's capital
- New administrative procedure for the restoration of companies
- New court-free procedure for amalgamation of wholly-owned intra group companies



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Implementation efforts



- Hotline - more than 60,000 enquiries were handled between January and August 2014.
- Seminars or briefing sessions - the CR organised and participated in more than 70 seminars or briefing sessions
- Thematic section on new Companies Ordinance on the Companies Registry's website, www.cr.gov.hk



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Transition arrangements - forms

- 83 new forms for use under the new Companies Ordinance (Chapter 622) and 9 new forms for use under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32)
- In the first week of implementation of the new CO, the usage rate of new forms for incorporation of companies was over 99%, and the usage rate of other forms also reached almost 100% upon the expiry of the three- month transition period.



Transition arrangements – other statistics

- Around 57% of the new companies incorporated electronically adopted the sample articles of association provided at the e-Registry (www.eregistry.gov.hk)
- Around 98% of those companies which reduced their share capital adopted the alternative court-free procedure
- Around 54% of the restoration cases dealt with under the new court-free procedure
- 26 groups of companies undergone the new court-free amalgamation procedure



- According to the World Bank's Doing Business Report 2016, Hong Kong ranks first in protecting minority investors worldwide.



- Hong Kong ranks fourth in the ease of starting a business, primarily because we have streamlined the incorporation process by abolishing the memorandum of association and removing the mandatory requirement of having a common seal.



Outstanding Service Award

- Companies Registry was awarded the Gold Prize of the Departmental Service Enhancement Award in the Civil Service Outstanding Service Award Scheme 2015 in recognition of our efforts in implementing and promoting the new Ordinance to foster Hong Kong's competitiveness as a place to do business



Implementation issues – annual return

- The annual return of a public company or a guarantee company is required to be delivered, together with certified true copies of the relevant financial statements, directors' report and auditor's report, within 42 days after the company's return date, that is, six months (for a public company) or nine months (for a guarantee company) after the end of the company's accounting reference period.
- External circular on "Delivery of Annual Returns under the Companies Ordinance" issued on 31 July 2015.
- A simple and user-friendly Annual Return e-Reminder service is available free of charge at our e-Registry (www.eregistry.gov.hk).



Implementation issues – common seal

- Common seal is now optional.
- Under section 127, a company may, without using a seal, execute a document by having it signed by its officers or in the case of a company with only one director, the sole director. This section applies even if the company has kept a seal. A company may execute a deed by having it signed as provided in section 127 and expressed to be executed as a deed and delivering it as a deed.
- Documents affecting land e.g. assignments, may be executed in accordance with the new Ordinance without the use of a seal. However, if the company executes a document under its common seal, the use of the seal must be in accordance with its articles.



Implementation issues – business review

- Public companies and companies not falling within the reporting exemption are required to prepare, as part of the directors' report, a more analytical and forward looking business review which must contain, among others, a description of the principal risks and uncertainties facing the company and information relating to environmental and employee matters that have a significant impact on the company.
- A private company that does not fall within the reporting exemption need not prepare a business review if it has members' approval of a special resolution passed by 75% of its members. The special resolution must be passed at least six months before the end of the financial year to which the directors' report relates.



Looking forward

- The legislative process for introducing open-ended fund companies has already started. The Securities and Futures (Amendment) Bill 2016 was introduced into the Legislative Council in January 2016 to lay down the framework for the new regime.
- Full range of electronic search services on mobile platform.
- Further amendment of the Companies Ordinance?



Thank You!

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