

New Companies Ordinance Update

Ms Ellen Chan
Deputy Principal Solicitor (Company Law Reform)

18 May 2019

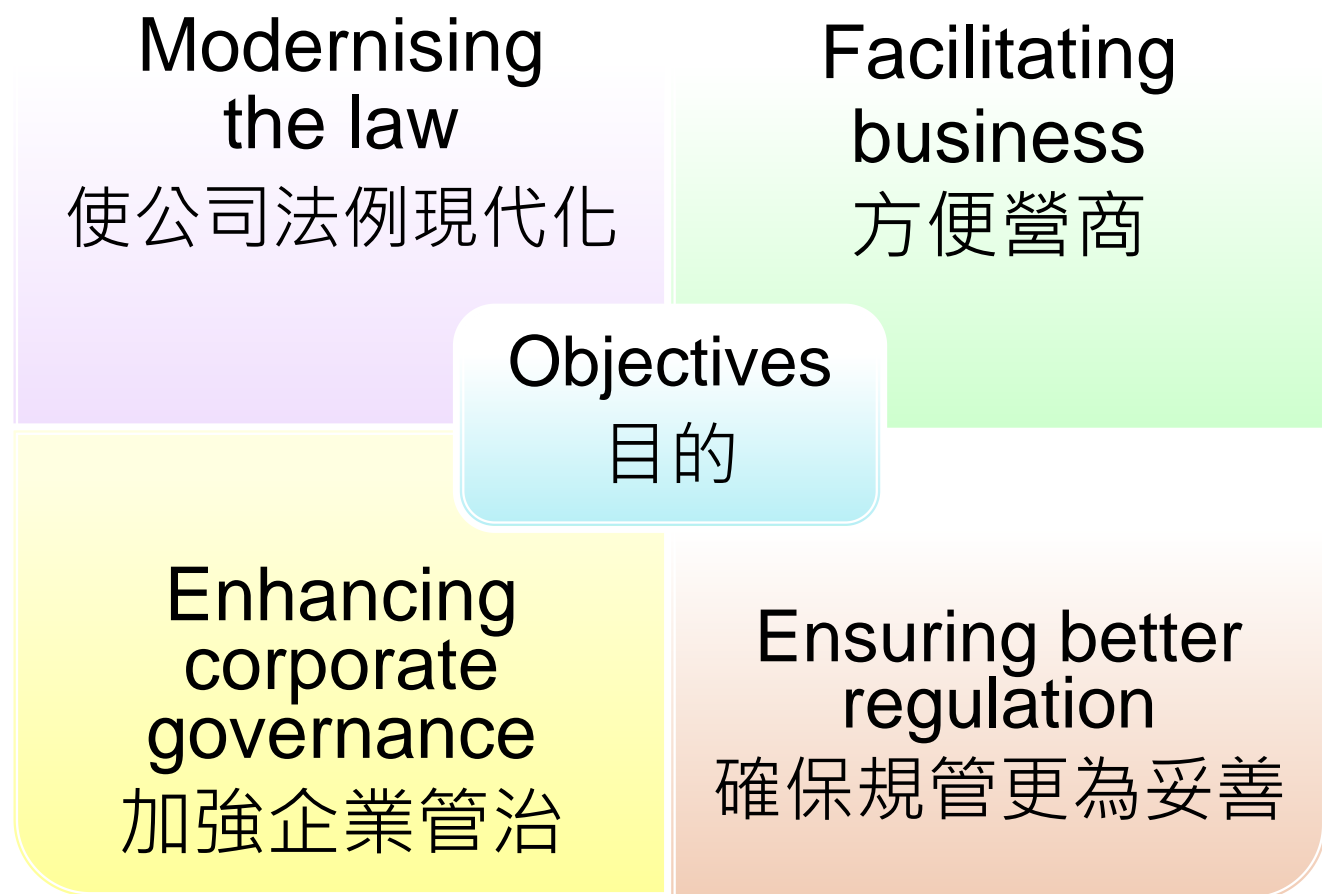


公 司 註 冊 處
COMPANIES REGISTRY

The New Companies Ordinance (Cap. 622) (“new CO”) 新《公司條例》(第622章) (“新條例”)

- ▶ Commenced operation in March 2014
於2014年3月實施
- ▶ Provides modern statutory framework for incorporation and operation of companies in Hong Kong
為在香港成立和營運的公司提供現代化的法律框架

The New Companies Ordinance (Cap. 622) (“new CO”) 新《公司條例》(第622章) (“新條例”)



Companies (Amendment) Ordinance 2018 《2018年公司(修訂)條例》(1)

- ▶ Commenced operation on 1 March 2018
於2018年3月1日實施
- ▶ A company incorporated in HK is required to keep a Significant Controllers Register (“SCR”) for inspection by law enforcement officers upon demand
在香港成立為法團的公司須備存「重要控制人登記冊」，供執法人員查閱

Companies (Amendment) Ordinance 2018 《2018年公司(修訂)條例》(2)

Taking reasonable steps to
identify significant controllers
採取合理步驟識別重要控制人

Entering required particulars in SCR
and keeping them up-to-date
所需詳情須記入登記冊及保持更新

Having at least 1 designated representative
最少有一名指定代表

Companies (Amendment) Ordinance 2018 《2018年公司(修訂)條例》(3)

- ▶ **Schedule 5A: Significant control**
附表5A: 重大控制權
- ▶ **Schedule 5B: Required particulars of significant controllers**
附表5B: 重要控制人的所需詳情
- ▶ **Schedule 5C: Additional matters**
附表5C: 額外事項
- ▶ **SCR must not be empty**
登記冊不得留空

The Amendment Ordinance 《修訂條例》

Background 背景

operational experience &
feedbacks from various stakeholders
運作經驗和各持份者的意見



Identified provisions that could be amended to
improve clarity and operation of the new CO, and
further facilitate business

可修訂若干條文，使新條例更清晰和易於實施，並使
在香港營商更為方便

The Legislative Process 立法過程 (1)

Consulted relevant stakeholders in 2016
在2016年向相關持份者進行諮詢

First Reading on 25 April 2018
2018年4月25日首讀

Bills Committee was then formed
及後成立法案委員會

The Legislative Process 立法過程 (2)

Enacted by the LegCo on 28 November 2018
於2018年11月28日獲立法會通過

Companies (Amendment) (No.2) Ordinance
2018年公司(修訂)(第2號)條例

Commenced operation on 1 February 2019
於2019年2月1日生效

Main Purposes 主要目的

- ▶ Improve/Update the accounting-related provisions
改善/更新與會計相關的條文
- ▶ Expand the types of companies within the reporting exemption
擴闊在提交報告方面獲豁免的公司的類別
- ▶ Enhance the administrative, procedural & technical requirements regulating HK and non-HK companies
優化有關規管香港公司及非香港公司的管理、程序及技術規定的事宜

Key Amendments 主要修訂 (1)

Interpretation (s. 2(4)(b)(ii)) **釋義 (第2(4)(b)(ii)條)**

Before 以前

“in electronic form”
“電子形式”

After 之後

“in the form of an
electronic record”
“電子紀錄形式”

Key Amendments 主要修訂 (2)

Dormant company (s. 5) 不活動公司 (第5條)

Before 以前

“was a dormant company”
“屬該條所指的不活動公司”

After 之後

“was deemed to be a
dormant company”
“就該條而言當作為
不活動公司”

Key Amendments 主要修訂 (3)

Company's articles (s. 76) 公司的章程細則 (第76條)

Before 以前

Must be printed in
English or Chinese
須以中文或英文印刷

After 之後

May be in
electronic form
可採用電子形式

Key Amendments 主要修訂 (4)

- ▶ A company with both an English name and a Chinese name
兼有中文名稱及英文名稱的公司
 - both names must be stated in its articles (s.81)
章程細則須兼述明該兩個名稱 (第81條)
 - the common seal may be engraved with only its English or Chinese name (s.124)
法團印章可只刻有該英文或中文名稱 (第124條)

Key Amendments 主要修訂 (5)

Alteration of company's articles (s. 88) **章程細則的修改(第88條)**

Before 以前

Must register
within 15 days
須於15天內登記

After 之後

Exempted from registration if
the alteration is in respect of a
change of company name only
如僅就其更改公司名稱而對章程
細則作出修改，可獲豁免登記

Key Amendments 主要修訂 (6)

- ▶ The statement of capital should report the share capital position immediately after the relevant change instead of as at the date of change
股本說明須申報緊接有關更改後的股本狀況，而非更改當天的股本狀況
- Return of allotment (s. 142)
配發申報書 (第142條)
- Notice of alteration of share capital (s. 171)
更改股本的通知 (第171條)

Key Amendments 主要修訂 (7)

- ▶ Varying class rights (s. 180)
更改類別的權利 (第180條)
- ▶ Full consent 全體同意

holders representing total voting
rights of shares in the class
持有有關類別股份的總表決權的人

Written
consent
書面同意

Unanimous
resolution
一致的決議

Key Amendments 主要修訂 (8)

- ▶ When does a variation of class rights take effect?
更改類別的權利於何時生效？
 - full consent – the date of, or a later date as specified in, the full consent
全體同意 – 有關全體同意的日期，或其所指明的較後日期

Key Amendments 主要修訂 (9)

- not full consent 不是全體同意
 - if no application made under s. 182 for the variation to be disallowed – at the end of the 28 days' period
如沒有人根據第182條提出否決該項更改的申請 – 在該28日的限期終結時
 - if an application is made for the variation to be disallowed – when the application is withdrawn or finally determined
如有人提出否決該項更改的申請 – 在該申請被撤回或獲終局裁定時

Key Amendments 主要修訂 (10)

- ▶ Disallowance/confirmation of variation by Court (s. 182)
原訟法庭否決或確認更改事宜 (第182條)

full consent
全體同意

No holder of shares in the class may
apply to the Court to have the
variation disallowed
有關類別股份的持有人不得向法庭提
出申請，要求否決該項更改

Key Amendments 主要修訂 (11)

- ▶ Varying class rights (s. 188) & disallowance or confirmation of variation by Court (s. 190)
更改類別的權利 (第188條)及原訟法庭否決或確認更改事宜 (第190條)
 - similar amendments as ss. 180 & 182
與第180及182條相似的修訂
 - applicable to companies that do not have share capital
適用於無股本的公司

Key Amendments 主要修訂 (12)

- ▶ Statement of capital (s. 201) 股本說明 (第201條)
 - the obligation to give particulars of class rights in the statement of capital only arises if there are different classes of shares
只有在股本分為不同類別股份的情況下，才產生在股本說明內述明類別權利詳情的責任

Key Amendments 主要修訂 (13)

- ▶ Prohibition on financial assistance for acquisition of own shares (s. 275)
禁止為購入本身股份而提供資助 (第275條)
- Subsection (3) repealed: This section does not apply to the giving of financial assistance by a company for the acquisition of shares in its holding company or reducing or discharging liability for the acquisition if the holding company is a non-HK company
廢除第(3)款：本條不適用於以下情況：該公司的控權公司是非香港公司，而該公司提供資助的目的，是為購入該控權公司的股份，或為減少或解除為該項購入而招致的債務

Key Amendments 主要修訂 (14)

- ▶ Return of allotment 配發申報書 (s. 316)
 - A return of allotment of debentures or debenture stock that are transferable by delivery does not need to state the name and address of the allottee
- 可藉交付而轉讓的債權證/債權股證，其配發申報書無需述明獲配發者的姓名或名稱及地址

Key Amendments 主要修訂 (15)

Obligations to keep copies of instruments creating charges (s. 351) 備存設立押記的文書的副本的責任(第351條)

Before 以前

Must notify the Registrar if there is a change in the place where a copy is kept

須在備存該文書的副本所在的地方有所更改後通知處長

After 之後

Exempted if the change only relates to a change of the address of the registered office / principal place of business

如更改只關乎公司註冊辦事處 / 主要營業地點地址的更改，則可獲豁免

Key Amendments 主要修訂 (16)

Conditions for granting application (administrative restoration) (s. 761)

批准申請的條件(以行政方式恢復註冊)(第761條)

Before 以前

Applicant has obtained
Government's
confirmation of "no
objection"
申請人須取得政府的
「不反對」確認

After 之後

The Government has no
objection to the restoration
政府並不反對該公司恢復註冊

Key Amendments 主要修訂 (17)

- ▶ Effect of restoration on bona vacantia property or right (s. 773)
恢復註冊對無主財物或權利的效果 (第773條)
 - expressly provide for Government's power to dispose of any property or right vested as bona vacantia under the predecessor CO
明文訂明政府處置根據前身《公司條例》屬無主財物並歸屬政府的財產的權力

Key Amendments 主要修訂 (18)

- ▶ An authorized representative of a non-HK company must have an address in HK
非香港公司的獲授權代表須有香港地址

s. 774

第774條

required
details

所需細節

s. 803

第803條

service of
process/notice

送達法律程序
文件 / 通知

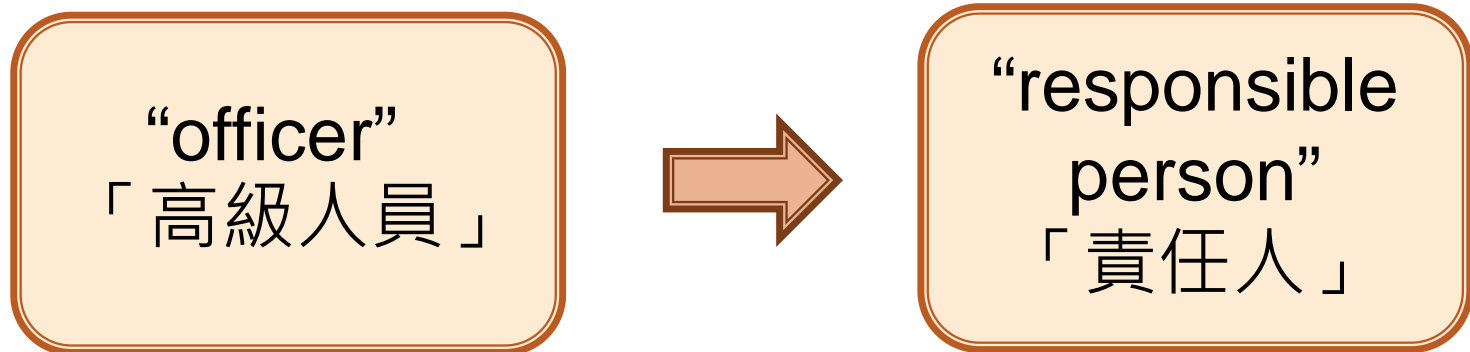
Key Amendments 主要修訂 (19)

- ▶ Require the name of a non-HK company to be in “characters of the Latin alphabet” instead of being in “Roman script” for various purposes (ss. 776, 777 & 778)

規定非香港公司為各種目的使用以拉丁字母的字組成的名稱而非羅馬字的名稱
(第776、777及778條)

Key Amendments 主要修訂 (20)

- ▶ Company must deliver accounts for registration
公司須將帳目交付登記 (s. 789)



Key Amendments 主要修訂 (21)

- ▶ Display of name for non-HK companies
非香港公司展示名稱
 - repeal s. 792 廢除第792條
 - ss. 805A & 805B: empower the FS to make regulations in respect of non-HK companies
第805A及805B條: 賦權財政司司長就非香港公司展示名稱訂立規例
 - align the obligations of non-HK companies with those of HK companies in the display of company names 劃一非香港公司和香港公司在展示公司名稱的責任

Key Amendments 主要修訂 (22)

Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation 《非香港公司(披露公司名稱、成立為法團所在地方及成員的有限法律責任)規例》

Companies Ordinance (Amendment of Schedule 7) Notice 2019 《2019年公司條例(修訂附表7)公告》

Companies (Amendment)(No. 2) Ordinance 2018 (Commencement) Notice 《〈2018年公司(修訂)(第2號)條例〉(生效日期)公告》

Key Amendments 主要修訂 (23)

Companies Ordinance (Amendment of Schedule 7) Notice 2019 《2019年公司條例(修訂附表7)公告》

- ▶ Schedule 7 of Companies Ordinance
《公司條例》附表7
- ▶ Offences in respect of which no proceedings will
be instituted
在某些條件下可不就之提出訴訟的罪行
- ▶ To include certain offences under s. 8 of the new
Regulation in Schedule 7
把新規例第8條的若干罪行納入附表7

Key Amendments 主要修訂 (24)

Companies (Amendment)(No. 2) Ordinance 2018
(Commencement) Notice 《〈2018年公司(修訂)(第2號)條例〉(生效日期)公告》

- ▶ Sections 79 and 89 of Amendment Ordinance
《修訂條例》第79及89條
- ▶ Commencement date: 1 August 2019
生效日期: 2019年8月1日
- ▶ New Regulation and Schedule 7 Notice will be
commenced on the same date
新規例及附表7公告將同日生效

The New Regulation 新規例 (1)

Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation 《非香港公司(披露公司名稱、成立為法團所在地方及成員的有限法律責任)規例》

- ▶ modelled on Cap. 622B
以第622B章為藍本
- ▶ re-enacts certain provisions in s. 792 regarding companies in liquidation
重訂第792條內有關非香港公司正進行清盤的事宜

The New Regulation 新規例 (2)

- ▶ A non-HK company must display its name and place of incorporation continuously at every business venue 非香港公司須持續地在其每個業務場所展示其名稱及成立為法團所在地方
- ▶ Business venue 業務場所
 - office / place in HK where the company carries on business and is open to the public 公司在香港經營業務並向公眾開放的辦事處/地點
 - its principal place of business in HK 公司在香港的主要營業地點

The New Regulation 新規例 (3)

- ▶ “Name” of a non-HK company 非香港公司的名稱
 - the company’s corporate name in Chinese or in characters of the Latin alphabet 公司的中文或以拉丁字母的字組成的法團名稱
 - if there is an approved name in relation to that corporate name – the approved name
如公司有相對該法團名稱而言的經批准名稱，
即該經批准名稱

The New Regulation 新規例 (4)

- ▶ Display of company's name and place of incorporation must be –
展示公司的名稱及成立為法團所在地方須 –
 - in legible characters
採用可閱字樣
 - positioned to be easily seen by any visitor
置於可讓訪客易於看見的位置

The New Regulation 新規例 (5)

- ▶ Business venue of more than 6 companies
多於6間公司的業務場所
- ▶ Display through electronic device
透過電子器材展示
 - at least 15 continuous seconds in every 4 minutes
在4分鐘內展示最少一次，每次持續最少15秒
 - within 4 minutes upon request
在有人要求後，能夠於4分鐘內展示

The New Regulation 新規例 (6)

▶ Exemption 豁免

- business venue is also a place of business of the liquidator / receiver / manager of the property of the company

業務場所亦是公司的清盤人 / 財產的接管人 / 經理人
經營業務的地點

The New Regulation 新規例 (7)

Must state company's name
and place of incorporation in
legible characters

須採用可閱字樣述明公司的名
稱及成立為法團所在地方於

communication
document
通訊文件

transaction
instrument
交易文書

The New Regulation 新規例 (8)

- ▶ Must disclose members' limited liability
成員的有限法律責任須予披露
- conspicuously exhibit a notice of that fact at business venue
在業務場所顯眼地展示關於該事實的告示
- state in legible characters that fact in communication document and transaction instrument
在通訊文件及交易文書上以可閱字樣述明該事實

The New Regulation 新規例 (9)

- ▶ While in liquidation, must state in legible characters in its every advertisement in HK –
正進行清盤時，須以可閱字樣於其在香港的每項廣告內述明 –
 - name
名稱
 - place of incorporation
成立為法團所在地方
 - members' limited liability
成員的有限法律責任

The New Regulation 新規例 (10)

- ▶ Must add “(in liquidation)” or “(正進行清盤)” after company’s name –
須在名稱後加上“(in liquidation)”或 “(正進行清盤)” –
 - displaying name at business venue
在業務場所展示名稱
 - stating name in communication document and transaction instrument
在通訊文件及交易文書顯示名稱
 - stating name in advertisements
在廣告內述明名稱

The New Regulation 新規例 (11)

- ▶ Adequacy of certain descriptions
某些描述屬足夠

- ▶ Examples –
例子 –

- “Company” – “Co.”/“Coy.”
- “Limited” – “Ltd”
- “Hong Kong” – “HK”/ “H.K.”
- “and” – “&”

The New Regulation 新規例 (12)

▶ Offences

罪行

- the company, every responsible person and every agent who authorizes / permits the contravention
公司、其每名責任人及其每名授權或准許該公司違反的代理人
- liable to a fine at level 3 (HK\$10,000)
可處第3級罰款(港幣\$10,000)

Thank you!
謝謝!

Companies Registry:
公司註冊處:

www.cr.gov.hk