

The New Companies Ordinance Enters Third Year of Implementation

新《公司條例》踏入第三個年頭

Companies Registry
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香港特別行政區政府

The new Companies Ordinance, Chapter 622 of the Laws of Hong Kong, has entered its third year of implementation since March 2014. This article seeks to review the achievements over the past two years and highlight the e-services of the Companies Registry and other legislative proposal in the pipeline.

The new Companies Ordinance (“the Ordinance”) introduced a new corporate regulatory regime for the incorporation and operation of companies in Hong Kong to achieve four main objectives - enhance corporate governance, facilitate business, ensure better regulation and modernise Hong Kong’s company law.

Achievements Since Implementation

A number of measures have been introduced under the Ordinance to simplify statutory procedures, reduce the compliance costs of companies and cater for the needs of small and medium-sized enterprises. In particular, the Ordinance has simplified the procedures for starting a business in Hong Kong by abolishing the memorandum of association and making

the use of a common seal optional. Hong Kong improved its ranking from eighth to fourth globally in “starting a business” in World Bank’s Doing Business 2016 Report.

The Ordinance also provides an alternative court-free procedure for the reduction of a company’s capital and introduces a new administrative procedure for the restoration of companies to the Companies Register.

Transition to the new regime has been very smooth, with the business community widely adopting the new initiatives which aim to facilitate business and save costs. The following are some statistics for 2015 which exemplify the achievement of the objectives:

- around 57% of the new companies incorporated electronically adopted the sample articles of association provided at the e-Registry (www.eregistry.gov.hk);
- 173 out of 176 companies which reduced their capital made use of the alternative court-free procedure;
- 328 applications for restoration of companies to the Companies Register using the administrative restoration procedures were received in 2015, which represented about 54% of the total

number of applications for company restoration; and

- 26 groups of companies have undergone amalgamation through the new court-free procedure.

In recognition of the efforts of the Companies Registry (“CR”) in implementing and promoting the new Ordinance to foster Hong Kong’s competitiveness as an ideal place to do business, the CR was awarded the Gold Prize of the Departmental Service Enhancement Award in the Civil Service Outstanding Service Award Scheme 2015.

Hong Kong’s position as a major international financial and commercial centre has been fostered since the implementation of the Ordinance.

Enhancing Corporate Governance

A host of initiatives to enhance corporate governance have been introduced under the Ordinance. These include, among others, requiring every private company to have at least one individual acting as director to enhance corporate transparency and accountability, introducing more effective rules to deal with directors’ conflicts of interest to foster shareholder protection, and empowering auditors to require a wider range of persons to provide information or explanations required for the performance of the auditors’ duties.

With the unwavering efforts of all concerned, we are delighted to see that the standard of corporate governance in Hong Kong has reached a new height. The World Bank has ranked Hong Kong first among 189 economies for the second year in “protecting minority investors” in its Doing Business 2016 Report. The World Bank commended Hong Kong for introducing requirements for directors to provide more detailed disclosure of conflicts of interest under the Ordinance.

To enhance stakeholders’ awareness of new disclosure requirements under the Ordinance, we issued reminder letters in September and October 2015 to all guarantee companies to remind them of the new requirements on delivery of annual returns.

Reminders have also been sent to all private companies which have not reported the appointment of at least one natural person acting as a director.

In parallel, we have stepped up our enforcement efforts. An Inspection Unit has been set up to conduct site visits of the registered office addresses of companies. The inspectors will check compliance, for example, with the requirements on disclosure of company names and keeping of company registers, including the registers of members, directors and company secretaries. During the visits, we also provide assistance to companies in understanding the relevant requirements under the Ordinance.

Updates on Implementation Issues

We wish to highlight some of the more notable issues for company directors below.

• Delivery of annual returns

Under the Ordinance, an 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.

For a public company or a guarantee company registered under a former 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 Ordinance and all subsequent financial years. For example, if a public company prepares its financial statements up to 31 December every year, its first annual return would have to be delivered under the Ordinance on or before 11 August 2016, within 42 days from 30 June 2016.

The late delivery of annual returns by guarantee companies is also subject to an escalating scale of annual registration fees in the same way as public companies. A simple and user-friendly Annual Return e-Reminder service is

available free of charge at our e-Registry (www.eregistry.gov.hk) to facilitate compliance. Users of the service will receive electronic notifications for delivering annual returns.

• Business Review

To improve the disclosure of company information, 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. The review must contain, inter alia, 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 needs 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.

• Reduction of capital

The Ordinance introduces an alternative court-free procedure for reducing capital based on a solvency test. Under the procedure, the company is required to satisfy the solvency test, pass a special resolution for reduction of capital and publish notices in the gazette and newspapers. The special resolution and reduction take effect when the return on reduction of share capital is registered. The new procedure is faster and cheaper than the procedure under the old Companies Ordinance which involved filing an application with the Court.

Full Scale Electronic Services


The CR has striven to expand its electronic services over the years. Since 2011, we have provided a One-stop Electronic Service for Company Incorporation and Business Registration at the e-Registry. The e-incorporation service has significantly streamlined the company incorporation and business registration process, with

electronic Certificates of Incorporation and Business Registration Certificates usually issued in one go within an hour. Since 3 March 2015, all specified forms including annual return can be filed online. The electronic filing service not only facilitates the reporting and disclosure of company information but also enhances the efficiency of filing for companies.

Presently, over 99% of company searches are conducted online using the electronic search services at www.icris.cr.gov.hk. On average, more than 9,000 searches are now conducted daily on a mobile platform (www.mobile-cr.gov.hk) using the Company Search Mobile Service. The CR targets to introduce a full range of electronic search services on the mobile platform this year.

Open-Ended Fund Companies

Now that the Ordinance has been successfully implemented, a major initiative in the legislative process relates to open-ended fund companies.

Following a public consultation in March 2014, the Government has formulated the legal framework to introduce open-ended fund companies (OFC) in Hong Kong to facilitate the setting up of investment funds. 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. While the Securities and Futures Commission will regulate the operation of OFC, the CR will be responsible for processing the incorporation of OFC and the registration of their corporate filings. 



港法例第622章新《公司條例》自二零一四年三月開始實施，現已踏入第三個年頭。本篇文章旨在檢視過去兩年的工作成果，並重點介紹公司註冊處的電子服務及其他立法建議。

新《公司條例》（下稱「條例」）為規管在香港成立及營運的公司引入一套新的企業監管制度，以達致四大目的：加強企業管治、方便營商、確保規管更為妥善，以及使香港的公司法例現代化。

實施條例的工作成果

條例引進多項措施，以簡化法定程序，減低公司的遵規成本，並照顧中小企的需要。具體而言，條例簡化了在香港開設公司的程序，例如廢除公司須設有組織章程大綱的規定、讓公司自行選擇是否使用法團印章等。在世界銀行發表的《2016年營商環境報告》中，香港在「開辦企業」方面的國際排名由第八位跳升至第四位。

條例亦增設不經法院進行的減少股本程序，以便企業重訂股本，並引入以行政方式恢復公司註冊的新程序。

新制度的過渡情況非常順利，商界廣泛採用了旨在方便營商及節省成本的新措施。達標情況從下列二零一五年的一些統計數字可見一斑：

- 以電子方式成立的新公司約有57%採納了本處在「註冊易」網站(www.eregistry.gov.hk)提供的組織章程細則範本；
- 在176間減少股本的公司中，有173間採用不經法院替代程序；
- 在二零一五年，本處接獲328份使用以行政方式恢復公司註冊的申請，佔了恢復公司註冊申請總數的54%左右；以及
- 有26個公司集團透過不經法院的新程序進行了合併。

因我們致力實施及推廣新條例，從而促進香港作為理想營商地的競爭力，公司註冊處（下稱「本處」）於「2015年公務員優質服務獎勵計劃」的「部門精進服務獎」中榮獲「金獎」。

自從實施條例後，香港作為主要國際金融和商業中心的地位得以提升。

加強企業管治

條例推出多項新猷，以加強企業管治。新措施包括規定每間私人公司最少要有一名個人出任董事，以提升企業的透明度及問責性；引入更有效的規則來處理董事的利益衝突，以加強對股東的保障；以及賦權核數師要求更多不同人士提供資料或解釋，以助其履行核數師的職責。

我們很高興見到，在各有關人士鏗而不捨的努力下，香港的企業管治水平得以更上一層樓。在世界銀行發表的《2016年營商環境報告》中，在189個經濟體中，香港連續第二年在「保障小股東投資者」方面獨佔鰲頭。世界銀行讚揚香港在新條例下，新增要求董

事更詳盡地披露利益衝突的規定。

為了加強持份者對條例下新披露規定的認識，在二零一五年九月和十月，我們向所有擔保公司發信，提醒他們有關交付周年申報表的新規定。我們亦向所有未有申報委任最少一名自然人為董事的私人公司發出催辦通知書。

與此同時，我們繼續加強執法工作。本處成立了一個巡查小組，負責實地視察公司的註冊辦事處地址。巡查人員會檢查公司有否遵從有關披露公司名稱及備存公司紀錄(包括成員登記冊、董事登記冊及公司秘書登記冊)等等的規定。在進行視察期間，我們亦向公司提供協助，使他們更清楚理解條例的相關規定。

實施事宜的最新情況

我們現把一些較為顯著的實施事宜扼述如下，供公司董事參考：

• 交付周年申報表

在條例下，公眾公司或擔保公司的周年申報表須於該公司的申報表日期後的42日內交付本處登記，並須隨附有關財務報表、董事報告及核數師報告的經核證真實副本，而申報表日期即該公司的會計參照期結束後的6個月（就公眾公司而言）或9個月（就擔保公司而言）屆滿之日。

對於根據舊有《公司條例》註冊的公眾公司或擔保公司，新規定適用於公司在條例生效日期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。例如，如公眾公司擬備的周年財務報表的終結日期為每年12月31日，該公司須由2016年6月30日起計42日內，於2016年8月11日當日或之前交付其在新條例下的首份周年申報表。

擔保公司如逾期交付周年申報表，亦須如公眾公司般按遞增收費模式繳付每年登記費用。本處在「註冊易」網站(www.eregistry.gov.hk)免費提供一項簡單易用的「周年申報表 e提示服務」，方便公司遵從規定。該項服務的用戶會收到提示公司交付周年申報表的電子通知書。

• 業務審視

為改善公司資料的披露，公眾公司及不屬在提交報告方面獲豁免的公司須擬備更具分析性及前瞻性的業務審視，作為董事報告的一部分。該項業務審視當中須載有該公司面對的主要風險及不明朗

因素的描述，以及對該公司有重大影響的環境與僱員事宜的資料。

不屬在提交報告方面獲豁免的私人公司，如獲75%成員通過的特別決議批准，便無須擬備業務審視。惟該特別決議須在有關董事報告所關乎的財政年度終結前最少6個月通過。

• 減少股本

條例就減少股本引入了以償付能力測試作為依據的不經法院替代程序。在該程序下，公司須通過償付能力測試及減少股本的特別決議，並在憲報及報章上刊登公告。減少股本的申報表一經登記，特別決議及減少股本一事即告生效。舊《公司條例》下的程序牽涉到要向法院提交申請。與之相比，新程序則較為快捷和便宜。

全面電子提交文件服務

本處在拓展電子服務方面一直不遺餘力。自二零一一年起，我們在「註冊易」網站提供「一站式電子成立公司及商業登記服務」，令整個成立公司及商業登記程序所需的時間大幅減少，申請人一般可於一小時內取得以電子方式發出的公司註冊證明書及商業登記證。自二零一五年三月三日起，所有指明表格（包括周年申報表）可經網上提交。這項電子提交文件服務不但便利公司申報及披露資料，亦可提升公司提交文件的效率。

現時，在網上www.icris.cr.gov.hk使用電子查冊服務進行公司查冊的比率為99%。經公司查冊流動版服務的流動平台(www.mobile-cr.gov.hk)進行查冊每日平均超過9,000宗。本處計劃於年內在流動平台推出全面的電子查冊服務。

開放式基金型公司

《公司條例》現已成功實施，現時在立法程序中的一項主要新猷是有關開放式基金型公司。

繼二零一四年三月進行公眾諮詢，政府已擬訂法律框架，把開放式基金型公司引入香港，以便利業界成立投資基金。《2016年證券及期貨（修訂）條例草案》已於二零一六年一月提交立法會審議，藉此為新制度訂定框架。證券及期貨事務監察委員會將負責監管開放式基金型公司的運作，而本處則會負責處理開放式基金型公司的成立和登記該等公司交付的文件。