Today’s Agenda

I. Introduction
II. Brief Notes on Each Part
III. Major Initiatives (as Summary)
Today’s Agenda

I. Introduction

Introduction

• The New Companies Ordinance ("the new CO")
  – consists of
    • Original text:
      – 21 parts,
      – 921 sections,
      – 11 schedules, and
      – totally, 1428 pages
    • Subsidiary legislation: 12 regulations
    • Brief note posted by CR in website: 152 pages
  – provides a modernised legal framework for the incorporation and operation of companies in Hong Kong

### Introduction: 21 Parts

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### Introduction: Key Changes (by CR)

1. Abolition of Par Value of Shares
2. Restricting Corporate Directorship in Private Companies
3. Headcount Test
4. Offences relating to contents of auditor's reports
5. Enhancement of Auditor's rights
6. Restricted Disclosure of Residential Addresses and Identification Numbers
7. Abolition of Memorandum of Association and Matters relating to Company Articles
8. Annual Returns of Local Companies
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10. Types of companies under the new Companies Ordinance and changes affecting companies limited by guarantee
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12. Meetings, Resolutions and Company Records
13. Registration of Charges and their Discharge
14. Disclosure of Company Name and Liability Status
15. Major Changes in Filing Requirements under the New Companies Ordinance
16. Non-Hong Kong Companies
17. Accounts and Audit
Introduction: Major Initiatives

• The comprehensive rewrite of the Companies Ordinance (Cap. 32) allows Hong Kong to
  – leverage the developments of company law in other comparable jurisdictions and
  – further enhance its competiveness and attractiveness as a major international business and financial centre.
• The new CO aims to achieve 4 main objectives, namely, to
  1. Enhance corporate governance,
  2. Ensure better regulations,
  3. Facilitate business, and
  4. Modernise the law.

Introduction: Major Initiatives

1. Enhancing Corporate Governance
   a. Strengthening the accountability of directors
   b. Enhancing shareholder engagement in the decision-making process
   c. Improving the disclosure of company information
   d. Fostering shareholder protection
   e. Strengthening auditors’ rights

2. Ensuring Better Regulation
   a. Ensuring the accuracy of information on the public register
   b. Improving the registration of charges
   c. Refining the scheme for deregistration of companies
   d. Improving the enforcement regime, incl. The original S. 399

3. Facilitating Business
   a. Streamlining procedures
   b. Facilitating simplified reporting
   c. Facilitating business operations

4. Modernising the Law
   a. Abolishing par value for shares
   b. Removing the power to issue share warrants
   c. Clarifying the rules on indemnification of directors against liabilities to third parties

Introduction: Sub. Legislations

- To facilitate implementation of the new CO, 12 regulations has been made.
  - The plan is to bring the subsidiary legislation into operation together with the new CO in the first quarter of 2014.

1. Companies (Accounting Standards (Prescribed Body)) Regulation
2. Companies (Directors' Report) Regulation
3. Companies (Disclosure of Company Name and Liability Status) Regulation
4. Companies (Disclosure of Information about Benefits of Directors) Regulation
   Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013
5. Companies (Fees) Regulation
6. Companies (Model Articles) Notice
7. Companies (Non-Hong Kong Companies) Regulation
8. Companies (Revision of Financial Statements and Reports) Regulation
   Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013
9. Companies (Summary Financial Reports) Regulation
10. Companies (Words and Expressions in Company Names) Order
11. Company Records (Inspection and Provision of Copies) Regulation
12. Companies (Unfair Prejudice Petitions) Proceedings Rules

Introduction: Timeline

- The new CO would commence operation after enactment of the subsidiary legislation, tentatively scheduled in 2014 (to be announced later)
- The original CO (Cap. 32) would remain in force until the new CO comes into operation
- When the new CO comes into operation,
  - the original CO (Cap. 32) will be retitled as "Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)"
    - the core provisions affecting the operation of companies repealed
    - however, those provisions relating to winding-up and insolvency of companies and prospectuses remain in force
Today’s Agenda

II. Brief Notes on Each Part

Part 1 – Preliminary
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Brief Notes on Each Part

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Part 1 – Preliminary

Introduction
– Part 1 is an introductory part that sets out
  • the title of the new CO,
  • its commencement,
  • the interpretation and definitions of various terms and expressions that are used throughout the new CO, including
    – “responsible person”,
    – “subsidiary”,
    – “parent undertaking” and
    – “subsidiary undertaking”, and
  • the types of companies that can be formed under the new CO.

Part 1 – Preliminary

Policy Objectives and Major Changes
– Part 1 contains initiatives that aim at improving regulation and modernising the law, namely –
  (a) Replacing the formulation of “officer who is in default” with “responsible person” to strengthen the enforcement regime; and
  (b) Streamlining the types of companies that can be formed.
– Part 1 also provides for the application of the new CO to
  • existing companies and
  • other types of companies.
Streamlining the Types of Companies that Can Be Formed (ss 7 – 12)

- In Cap. 32, 8 different types of companies can, in theory, be formed:
  - according to their capacity to raise funds from outside sources, the ability of members to freely transfer their shares and the methods by which the liability of members is determined.
  - They are –
    a. private co. limited by shares;
    b. non-private co. limited by shares;
    c. private co. limited by guarantee without a share capital;
    d. non-private co. limited by guarantee without a share capital;
    e. private unlimited co. with a share capital;
    f. non-private unlimited co. with a share capital;
    g. private unlimited co. without a share capital; and
    h. non-private unlimited co. without a share capital.

Under the new CO

- Sections 7 to 12 provide for the definitions whereas section 66 in Part 3 sets out the types of companies that may be formed under the new CO, namely –
  a. private companies limited by shares
  b. public companies limited by shares
  c. companies limited by guarantee without a share capital
  d. private unlimited companies with a share capital
  e. public unlimited companies with a share capital
Part 1 – Preliminary

Streamlining the Types of Companies that Can Be Formed (ss 7 – 12)

- Section 11(1) defines a **private company** (same as section 29 of Cap. 32) being a company if
  - (a) its **articles** —
    - (i) restrict a member’s right to transfer shares;
    - (ii) limit the number of members to 50; and
    - (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and
  - (b) it is not a company limited by guarantee (s. 29).

- Section 12 defines a **public company** being a company if
  - (a) it is not a **private company**; and
  - (b) it is not a **company limited by guarantee** (s. 12).

Brief Notes on Each Part

- Part 2
- Registrar of Companies and Companies Register
Part 2 – Registrar of Co. and CR

Introduction

- Part 2 (Registrar of Companies and Companies Register)
  - deals with the general functions and powers of the Registrar of Companies (“the Registrar”).
  - groups the existing provisions relating to
    - the office of the Registrar and
    - the register maintained by the Registrar.
  - clarifies the powers of the Registrar to maintain and safeguard the integrity of the register,
    - having regard to the development of the Companies Registry (CR)’s information system which will enable the electronic delivery of documents to or by the Registrar.
  - introduces new provisions for non-disclosure of residential addresses and full identity card/passport numbers in the register to enhance protection of personal data.

Policy Objectives and Major Changes

- Part 2 contains initiatives that aim at improving regulation, facilitating business and modernising the law, namely,
  - (a) Clarifying the Registrar’s powers in relation to the registration of documents;
  - (b) Clarifying and enhancing the Registrar’s powers in relation to the keeping of the Companies Register;
  - (c) Providing expressly for removing information on the Companies Register; and
  - (d) Withholding residential addresses of directors and company secretaries and full identification numbers of individuals from public inspection.

Pending
Part 3 – Co. Formation and etc.

**Introduction**
- Part 3 (Company Formation and Related Matters, and Re-registration of Company)
  - deals with company formation, registration and related matters
  - provides for new requirements for the articles of association of a company following the abolition of the memorandum of association
  - makes the keeping and use of a common seal by a company optional to facilitate business operation
Part 3 – Co. Formation and etc.

Policy Objectives and Major Changes

Part 3 contains initiatives that aim at facilitating business operation and modernising the law, namely

(a) Abolishing the Memorandum of Association;
(b) Reforming company re-registration provisions;
(c) Providing statutory protection for persons dealing with a company;
(d) Making the keeping and use of a common seal optional and relaxing the requirements for a company to have an official seal for use abroad; and
(e) Widening the scope of documents an attorney can execute on behalf of a company locally or outside Hong Kong.

Part 3 – Co. Formation and etc.

Policy Objectives and Major Changes

Part 3 also

• provides for a company to appeal to the Administrative Appeals Board instead of to the court against a direction issued by the Registrar concerning the company’s name
• sets out the types of companies that may be formed
• incorporates changes introduced through the Companies (Amendment) Ordinance 2010,– which provided for an improved company name registration system following the implementation of the new electronic company registration and filing of document services.
Introduction
- Part 4 (Share Capital) deals with
  - the core concepts about share capital, its creation, transfer and alteration.
- In particular, this Part introduces
  - a mandatory no-par regime for all companies with a share capital to modernise the share capital regime.
Part 4 – Share Capital

Policy Objectives and Major Changes
– Part 4 contains initiatives that aim at modernising the law, enhancing corporate governance, ensuring better regulation, and facilitating business operation, namely
  
  (a) Adopting a mandatory system of no-par for all companies with a share capital;
  
  (b) Removing the power of companies to issue share warrants to bearer;

  (c) Extending the requirement of shareholders’ consent for allotments of shares
      – to the grants of rights to subscribe for shares, or
      – to convert securities into shares;

  (d) Requiring a company to give reasons explaining its refusal to register a transfer of shares upon request;

(e) Requiring a company to deliver to the Companies Registry (“CR”) a return or notification, including a statement of capital whenever there is a change to its capital structure;

(f) Clarifying and simplifying the requirements relating to class rights; and

(g) Simplifying the publication procedures for replacement of lost share certificate of a listed company.
**Brief Notes on Each Part**

**Part 5 – Transactions re Share Capital**

**Introduction**
- Part 5 (Transactions in relation to Share Capital) contains the provisions concerning
  - *capital maintenance* (reduction of capital and purchase of a company’s own shares) and
  - the giving of *financial assistance* by a company to another party for the purpose of acquiring shares of that company or its holding company.
- To facilitate business operation, Part 5 streamlines and rationalises the existing rules by
  - introducing new exceptions based on the *solvency test* for
    - reduction of capital,
    - buy-backs and
    - financial assistance
Part 5 – Transactions re Share Capital

Policy Objectives and Major Changes
- Part 5 contains initiatives that aim at facilitating business operation, namely -
  (a) Adopting a uniform solvency test based on cash-flow for different types of transactions under this Part;
  (b) Introducing an alternative court-free procedure for reduction of capital based on a solvency test;
  (c) Allowing all companies to purchase their own shares out of capital, subject to a solvency test;
  (d) Allowing all types of companies (listed or unlisted) to provide financial assistance for acquisitions of the companies' shares, subject to satisfaction of the solvency test and certain specified procedures; and
  (e) Relaxing the rules on giving of financial assistance for the purposes of employee share schemes.

Brief Notes on Each Part

Part 6

Distribution of Profits and Assets
**Part 6 – Distribution of Profits and Assets**

**Introduction**

- Part 6 (Distribution of Assets and Profits)
  - contains provisions that deals with the distribution of profits and assets to members.
- The usual form of distribution is through payment of dividends.
- While there is no fundamental change to the current rules, the modernised language should facilitate easier understanding.

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**Policy Objectives and Major Changes**

- Part 6 does not introduce fundamental changes to the distribution provisions in the Cap. 32 as the rules under Cap. 32 have generally worked well and provided certainty.
- It mainly reorganises the provisions in Cap. 32 and proposes some minor technical amendments.
Introduction

- Part 7 (Debentures)
  - deals with a miscellany of matters concerning debentures,
  - covers, for example,
    - keeping of the register of debenture holders,
    - rights to inspect and make copies of the register, debenture, trust deed and other documents, and
    - convening meetings of debenture holders
  - introduces new requirements for
    - registration of the allotment of debentures and
    - filing of a return of allotment,
    to align with similar requirements for shares
Part 7 – Debentures

Policy Objectives and Major Changes

– Part 7 contains initiatives that aim at modernising the law and ensuring better regulation, namely -

(a) Improving clarity by separating
   – provisions applicable to debentures from
   – those applicable to shares.

(b) Aligning provisions for keeping of the register of debenture holders with similar provisions for register of members in Part 12;

(c) Introducing new requirements for registration of allotment of debentures to align with similar requirements for shares introduced in Part 4; and

(d) Allowing debenture holders to apply to the Court to order a meeting to be held to give directions to the trustee for the protection of debenture holders.

Brief Notes on Each Part

Part 8

Registration of Charges
Part 8 – Registration of Charges

Introduction

- Part 8 (Registration of Charges)
  - deals with the registration of charges by both Hong Kong and registered non-Hong Kong companies.
  - sets out the types of charges which require registration, the registration procedures and the consequences of non-compliance
  - contains provisions to regulate related matters, such as requiring companies to
    » keep, and
    » allow inspection of,
    copies of instruments of charges and registers of charges
  - introduces improvements to the current registration system, including
    » revising the list of registrable charges and
    » requiring a certified copy of the charge instrument to be registered and available for public inspection to enhance transparency.

Policy Objectives and Major Changes

- Part 8 basically retains the registration regime under Part III of Cap. 32”, with the following initiatives that aim at ensuring better regulation by enhancing disclosure and improving the registration system -
  (a) Updating the list of registrable charges;
  (b) Replacing the automatic acceleration of the repayment obligation with a choice given to the lender as to whether the secured amount should be immediately payable where a charge is rendered void for non-compliance with the registration requirements;
  (c) Requiring a certified copy of the charge instrument to be registered and made available for public inspection;
  (d) Shortening the period for delivery to the Registrar of a certified copy of the charge instrument and the prescribed particulars from five weeks to one month;
Part 8 – Registration of Charges

Policy Objectives and Major Changes

- Part 8 basically retains the registration regime under Part III of Cap. 32”, with the following initiatives that aim at ensuring better regulation by enhancing disclosure and improving the registration system -
  
  (e) Requiring a certified copy of the written evidence of debt satisfaction or release of a charge to be registered and made available for public inspection;
  
  (f) Clarifying the effect of a Court order to extend the time for registration as regards criminal liability already incurred; and
  
  (g) Empowering the Court to rectify the particulars in the registered charge instrument and evidence of discharge.

Updating the List of Registrable Charges (Section 334)

- In the new CO,
  
  • to remove the ambiguities and dispense with redundant items, the following changes have been made:

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<th>Items</th>
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<td>a. Charge on an aircraft or any share in an aircraft</td>
<td>Registrable under s.334(1)(h)</td>
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<tr>
<td>b. Instalments due, but not paid, on the issue price of shares</td>
<td>Registrable under s.334(1)(f)</td>
</tr>
<tr>
<td>c. Charges for the purpose of securing any issue of debentures</td>
<td>Not registrable as this head of registrable charge is removed</td>
</tr>
<tr>
<td>d. Lien on subfreights</td>
<td>Not registrable as clarified by s.334(4)</td>
</tr>
<tr>
<td>e. Cash deposits</td>
<td>Not registrable as clarified by s.334(3)(b)</td>
</tr>
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</table>
Introduction
- Part 9 (Accounts and Audit) contains
  - the accounting and auditing provisions in relation to the keeping of accounting records,
  - the preparation and circulation of annual financial statements, directors’ reports and auditor’s reports and
  - the appointment and rights of auditors.
- New provisions are introduced
  - to facilitate SMEs to take advantage of simplified accounting and reporting requirements,
  - to require public and large companies to include an analytical business review in directors’ reports, and
  - to enhance auditors’ right to information.
- This Part also introduces new sanctions relating to the contents of auditor’s reports (so-called “S. 399” but now S. 408).
Part 9 – Accounts and Audit

Policy Objectives and Major Changes

– Initiatives to enhance corporate governance:
  (1) Requiring public companies and other companies that do not qualify for simplified reporting to prepare a "business review" within the directors' report, whilst allowing private companies to opt out by special resolution;
  (2) Empowering auditors to obtain information from a wider range of persons for the performance of their duties; and
  (3) Improving transparency with regard to circumstances of cessation of office of an auditor.

– Initiatives to ensure better regulation:
  (4) Introducing a new offence in relation to inaccurate auditor’s reports (so-called “S. 399”, now S. 408)

– Initiatives that aim at business facilitation:
  (5) Relaxing the criteria for companies to prepare simplified financial and directors’ reports i.e. the “reporting exemption”, and
  (6) Making the summary financial report provisions more user-friendly and extending their application to all companies.

– Initiative to modernise and improve the law:
  (7) Clarifying the financial year of a company, requiring companies to hold annual general meetings (“AGMs”) and requiring public companies or companies limited by guarantee to file annual returns in respect of every financial year of the company; and
  (8) Streamlining disclosure requirements that overlap with the accounting standards.
Relaxing the Criteria for Companies to Prepare Simplified Financial and Directors’ Reports i.e. the “Reporting Exemption” (Sections 359 to 366 and Schedule 3 to the new CO)

In Cap. 32
- Section 141D provides that a private company (other than those specifically excluded) may, with the written agreement of all its shareholders, prepare simplified accounts and simplified directors’ reports in respect of one financial year at a time.
- According to the Small and Medium-sized Entity-Financial Reporting Framework (“SME-FRF”) issued by the HKICPA
  - a HK company qualifies for reporting based on the SME-Financial Reporting Standard (“SME-FRS”) if it satisfies the requirement under section 141D
- The SME-FRF is not applicable to groups of companies or guarantee companies at all under Cap. 32.

In the new CO
- The criteria for simplified reporting are relaxed by
  - relaxing the criteria for eligibility limits for automatic qualification,
  - introducing a higher size criteria for private companies/groups that opt for simplified reporting, and
  - retaining the exception in section 141D of Cap. 32.
- A summary of the qualifying conditions for companies to prepare simplified financial and directors’ report is set out
Part 9 – Accounts and Audit

Relaxing the Criteria for Companies to Prepare Simplified Financial and Directors’ Reports i.e. the “Reporting Exemption” (Sections 359 to 366 and Schedule 3 to the new CO)

<table>
<thead>
<tr>
<th>Company</th>
<th>Qualifying Conditions</th>
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<tbody>
<tr>
<td>A. a private company is a “small private company”, or a private company is the holding company of a group of “small private companies”</td>
<td>Size test for small private company</td>
</tr>
<tr>
<td>B. an eligible private company, or an eligible private company is the holding company of a “group of eligible private companies”</td>
<td>Size test for eligible private company, 75% members’ approval without any member objection</td>
</tr>
<tr>
<td>C. a “small guarantee company”, or a guarantee company is the holding company of a “group of small guarantee companies”</td>
<td>Size test for small guarantee company</td>
</tr>
<tr>
<td>D. option similar to s. 141D of Cap. 32</td>
<td>S. 359(1)(b)</td>
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A. Small private company (or a group of small private companies)

- qualified for simplified reporting if it satisfies any 2 of the following conditions:
  (i) total (or aggregate total) annual revenue of not more than HK$100 million;
  (ii) total (or aggregate total) assets of not more than HK$100 million;
  (iii) no more than 100 employees.

- for small private company: sections 359(1)(a)(i), 361, Schedule 3 section 1(1), (2)
- for group of small private companies: sections 359(2)(a), (b) and (c)(i), 364, Schedule 3 section 1(7), (8) and (9)
Part 9 – Accounts and Audit

Relaxing the Criteria for Companies to Prepare Simplified Financial and Directors’ Reports i.e. the “Reporting Exemption” (Sections 359 to 366 and Schedule 3 to the new CO)

B. Eligible private company (or a group of eligible private companies)

- qualified for simplified reporting if it satisfies any 2 of the following conditions:
  1. total (or aggregate total) annual revenue of not more than HK$200 million;
  2. total (or aggregate total) assets of not more than HK$200 million;
  3. no more than 100 employees.

- for eligible private company: sections 359(1)(c), 360(1), 362, Schedule 3 section 1(3) and (4)
- for group of eligible private companies: sections 359(2)(a),(b) and (c)(ii), 360(2), 365, Schedule 3 section 1(10), (11) and (12)

C. Small guarantee company (or a group of small guarantee companies)

- a company limited by guarantee and

- qualified for simplified reporting if its total (or aggregate total) annual revenue does not exceed HK$25 million

- for small guarantee company: sections 359(1)(a)(i), 363, Schedule 3 section 1(5), (6)
- for group of small guarantee companies: sections 359(3), 366, Schedule 3 section 1(13) and (14)
Relaxing the Criteria for Companies to Prepare Simplified Financial and Directors’ Reports i.e. the “Reporting Exemption” (Sections 359 to 366 and Schedule 3 to the new CO)

D. Option Similar to Section 141D of Cap. 32

Section 359(1)(b) states that:

- (1) For the purposes of this Part, a company falls within the reporting exemption for a financial year—
- (b) if—
  - (i) it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;
  - (ii) it does not have any subsidiary and is not a subsidiary of another company; and
  - (iii) all members of the company agree in writing that the company is to fall within the reporting exemption for the financial year only (s. 359(1)(b))

Companies specified not entitled to reporting exemption

Section 359(4)(b) states that:

- (a) one that carries on any banking business and holds a valid banking licence granted under the Banking
- (b) one that is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or
- (c) one that—
  - (i) carries on any insurance business otherwise than solely as an agent; or
  - (ii) accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities. (s. 359(4))
Part 9 – Accounts and Audit

Relaxing the Criteria for Companies to Prepare Simplified Financial and Directors’ Reports i.e. the “Reporting Exemption” (Sections 359 to 366 and Schedule 3 to the new CO)

– Companies which are qualified for simplified reporting are referred to in the new CO as
  • companies “falling within the reporting exemption”.
– The reporting exemptions are in respect of the specific requirements relating to the preparation of
  • financial statements, and
  • directors’ reports.

EXEMPT
Part 9 – Accounts and Audit

Relaxing the Criteria for Companies to Prepare Simplified Financial and Directors’ Reports i.e. the “Reporting Exemption” (Sections 359 to 366 and Schedule 3 to the new CO)

– Under section 380(4)(b), the financial statements of a company must be prepared in compliance with the applicable accounting standards.
  
  • The intention is that the accounting standards that will be applicable to a company falling within the reporting exemption is the SME-FRS and FRF issued or specified by the HKICPA which is the body prescribed in the Companies (Accounting Standards (Prescribed Body)) Regulation for issuing or specifying the applicable accounting standards under section 380(8)(a).
  
  • The accounting standards applicable to companies that prepare simplified financial reports are less onerous than the HKFRS applicable to listed, public or other companies not qualified for simplified reporting.

– Audit of the financial statements is still required for all companies, except dormant companies (section 447), under the new CO.
Part 10 – Directors and Co. Secretaries

Introduction

- Part 10 (Directors and Company Secretaries)
  - deals with directors and company secretaries of a company.
- It mainly reorganises, with some modifications, the existing provisions of the Companies Ordinance (Cap. 32) relating to the appointment, removal and resignation of directors and company secretaries.
- Part 10 also clarifies the standard of directors’ duty of care, skill and diligence.

Policy Objectives and Major Changes

- Initiatives to enhance corporate governance:
  (a) restricting corporate directorship in private companies;
  (b) clarifying the standard of directors’ duty of care, skill and diligence; and
  (c) requiring ratification of conduct of directors by disinterested members’ approval.
- Initiatives to improve regulation and modernising the law:
  (a) enabling the Registrar to give directions to a company relating to the appointment of directors and company secretaries; and
  (b) clarifying the rules on indemnification of directors against liabilities to third parties.
Part 10 – Directors and Co. Secretaries

Policy Objectives and Major Changes

Apart from the above major changes, Part 10 also restates a miscellany of provisions in Cap. 32 concerning directors and company secretaries, including:

- directors’ vicarious liability for the acts of their alternates (section 478),
- the avoidance of acts done by a person in a dual capacity as director and company secretary (section 479),
- prohibition of undischarged bankrupt from acting as director (section 480) and
- the keeping of minutes of proceedings at directors’ meetings (sections 481 and 482).

Restricting Corporate Directorship in Private Companies (Section 457)

- In Cap. 32
  - prohibits all public companies and private companies which are members of a group of companies of which a listed company is a member from appointing a body corporate as their director
  - no restriction for other private companies
- In the new CO
  - Section 456 maintains the restriction in corporate directorship in
    - public companies,
    - companies limited by guarantee and
    - private companies which are members of a group of companies of which a listed company is a member.
  - Section 457 applies to other private companies, which are required to have at least one director who is a natural person to enhance transparency and accountability.
Part 10 – Directors and Co. Secretaries

Restricting Corporate Directorship in Private Companies (Section 457)

- Section 457 “Requirement to have at least one director who is natural person” requires that
  1. This section applies to a private company other than a private company that is a member of a group of companies of which a listed company is a member.
  2. The company must have at least one director who is a natural person (s. 457).

Brief Notes on Each Part

Fair Dealing by Directors

Part 11
Part 11 – Fair Dealing by Directors

Introduction

- Part 11 (Fair Dealing by Directors)
  - covers fair dealing by directors
  - deals with specified situations in which a director is perceived to have a conflict of interest
  - governs transactions involving directors or their connected entities which require members’ approval (namely loans and similar transactions, long-term service contracts and payments for loss of office), and
  - covers disclosure by directors of material interests in transactions, arrangements or contracts.
  - introduces new statutory provisions requiring members’ approval for director’s long-term employment by a company
  - requires disinterested members’ approval in the case of public companies and subsidiaries of public companies.

Policy Objectives and Major Changes

- Initiatives to enhance corporate governance include:
  (a) expanding the prohibitions on loans and similar transactions to cover a wider category of persons connected with a director;
  (b) requiring disinterested members’ approval for various prohibited transactions;
  (c) expanding the prohibitions on payments for loss of office;
  (d) requiring members’ approval for directors’ employment exceeding 3 years; and
  (e) widening the ambit of disclosure currently required under section 162 of Cap. 32 (i.e. director’s interests in contract)

Major Initiative 1d(i)

Major Initiative 1d(ii)
Part 11 – Fair Dealing by Directors

Policy Objectives and Major Changes
– Initiatives to facilitate business and modernising the law include:
  (a) introducing new exemptions from prohibitions on loans and similar transactions in favour of directors and connected entities;
  (b) modifying the scope of private companies that are subject to more stringent restrictions similar to a public company; and
  (c) removing the criminal sanction for breach of the provisions on prohibition of loans and similar transactions in favour of directors and connected entities.

Brief Notes on Each Part

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Part 12 – Co. Admin. and Procedure

Introduction

Part 12 (Company Administration and Procedure)

- governs resolutions and meetings, registers (including registers of members, directors and company secretaries), company records, registered offices, publication of company names and annual returns.

- introduces a number of changes to enhance shareholders’ engagement in and the transparency of the decision-making process of a company.

- revises the provisions relating to registers, registered offices and annual returns to suit the needs of the modern community.

Policy Objectives and Major Changes

- Initiatives to enhance corporate governance include:
  1. Introducing a comprehensive set of rules for proposing and passing a written resolution;
  2. Requiring a company to bear the expenses of circulating members’ statements relating to business of, and proposed resolutions for, Annual General Meetings (“AGMs”); and
  3. Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.
Part 12 – Co. Admin. and Procedure

Policy Objectives and Major Changes

Initiatives to facilitate business include:
1. Permitting a general meeting to be held at more than one location by using technology that enables members apart to listen, speak and vote at the meeting;
2. Allowing companies to dispense with AGMs by unanimous shareholders' consent; and
3. Updating the provisions relating to keeping and inspection of company records.

Policy Objectives and Major Changes

Initiatives to modernise the law include:
1. Clarifying the rights and obligations of proxies and enhancing the right to appoint proxies;
2. Requiring public companies or companies limited by guarantee to file annual returns in respect of every financial year and requiring the annual return of a listed company to include particulars relating to members who held 5% or more of the issued shares; and
3. Empowering the Financial Secretary ("FS") to make regulations to require a company to display its name and related information in certain locations and to state prescribed information in documents or communications.
Part 13 – Arrangements, Amalgamation, & etc.

Introduction

Part 13 (Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back) restates, with some amendments, the provisions of Cap. 32 concerning

- schemes of arrangement, reconstructions or amalgamations of a company with other companies, and compulsory acquisitions.

- The "headcount test" for approving a scheme of arrangement that involves a takeover offer or a general offer to buy back shares

  - is replaced by a new requirement that the dissenting votes do not exceed 10% of the votes attaching to all disinterested shares.

  - For other schemes, the headcount test is retained, with a new discretion given to the court to dispense with the test for members' schemes in appropriate circumstances.

- It also introduces a court-free statutory amalgamation procedure for wholly-owned intra-group co.
Policy Objectives and Major Changes

Part 13 largely restates the relevant provisions under Cap. 32.

However, the following changes that aim at facilitating business have been introduced:

1. Revising the definitions of “property” and “liabilities” in the provisions for facilitating reconstructions and amalgamations;
2. Introducing a new court-free statutory amalgamation procedure for wholly-owned intra-group companies;
3. Clarifying the meaning of “takeover offer”, “shares already held by the offeror” and “shares to which the offer relates” in a takeover;
4. Introducing new provisions to allow a revised offer to be treated as the original offer so long as certain specified conditions are met; and

5. Introducing new provisions to allow an offeror in a takeover offer or share buy-back offer to apply to the court for an authorization to give squeeze out notices.

The “headcount test” for approving a scheme of arrangement that involves a general offer or a takeover offer:

- Is replaced with the requirement that the votes cast against the scheme do not exceed 10% of the voting rights attached to all disinterested shares.

- The headcount test is retained for other schemes:
  - But the court is given a new discretion to dispense with the test for members’ schemes that retain the test.
Part 14 – Remedies for Protection

**Introduction**

- Part 14 (Remedies for Protection of Companies’ or Members’ Interests) consolidates the existing provisions concerning shareholder remedies under the Companies Ordinance (Cap. 32).
  - The scope and operation of the unfair prejudice remedy are refined.
- It contains provisions relating to the remedies available for protection of companies’ or members’ interests
  - These include
    - the unfair prejudice remedy,
    - the statutory injunction order restraining conduct that constitutes contravention of the new CO,
    - the statutory derivative action, and
    - the right to seek a court order for inspection of company records.
Part 14 – Remedies for Protection

Policy Objectives and Major Changes

– The provisions on shareholder remedies were substantially revised by the Companies (Amendment) Ordinance 2004 with a view to enhancing legal remedies available to members of a company.

– The amendments included –

1. providing for a statutory derivative action that may be taken on behalf of a company by a member of the company (subsequently extended to cover multiple derivative action through Companies (Amendment) Ordinance 2010);

2. facilitating members to exercise their rights to obtain access to company records;

3. empowering the court, on application by an affected person or the Financial Secretary, to grant an injunction restraining any person from engaging in conduct which constitutes contravention of the Companies Ordinance (Cap. 32) (“Cap. 32”) or a breach of his fiduciary or other duties owed to a company; and

4. improving the unfair prejudice remedy in section 168A of Cap. 32 to provide the court with a power to award damages to the members of a company where it was found that their interests had been unfairly prejudiced and to award such interest on the damages as the court thinks fit.

– The scope of the remedy has also been extended to allow past members (and their personal representatives) of local companies and members and past members (and their personal representatives) of non-HK companies to commence legal action under that section.
Part 14 – Remedies for Protection

Policy Objectives and Major Changes

- Part 14 of the new CO mainly restates the existing provisions with improved drafting, while at the same time introduces the following initiatives that aim at fostering shareholder protection, namely
  1. extending the scope of the unfair prejudice remedy to cover proposed acts and omissions; and
  2. enhancing the court’s discretion in granting relief in cases of unfair prejudice.

- There is also a new provision for an express power for the Chief Justice to make rules relating to unfair prejudice proceedings.

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Part 15 – Striking Off or Deregistration

Introduction
– Part 15 (Dissolution by Striking Off or Deregistration)
  • sets out the provisions on
    – striking off and deregistration of defunct companies,
    – restoration of companies that have been struck off or deregistered, and
    – related matters (including treatment of properties of dissolved companies)
  • introduces changes which streamline the existing procedures for striking-off and restoration of companies
  • imposes new requirements to prevent any possible abuse of the deregistration procedure

Policy Objectives and Major Changes
– Part 15 contains initiatives that aim at facilitating business and improving regulation, namely –
  1. extending the voluntary deregistration procedure to guarantee companies;
  2. imposing additional conditions for deregistration of defunct companies;
  3. introducing a new procedure of “administrative restoration” of a dissolved company by the Registrar; and
  4. streamlining the procedures for restoration of dissolved companies by court order.
Introduction
- Part 16 (Non-Hong Kong Companies) deals with
  - companies incorporated outside Hong Kong which have established a place of business in Hong Kong.
- There is no fundamental change to the current rules.
Part 16 – Non-H.K. Companies

Policy Objectives and Major Changes

- Part 16 essentially restates Part XI of the Cap. 32
- There are no substantive changes to the registration regime of non-Hong Kong companies under Cap. 32.
- However, some clarification and modification of the regime are made, which aim at improving regulation and modernising the law, namely –
  (a) Clarifying provisions on changes of corporate names of non-Hong Kong companies;
  (b) Clarifying provisions for striking the name of a non-Hong Kong company off the Companies Register and restoration of the company to the Companies Register;
  (c) Moving certain procedural details to subsidiary legislation; and
  (d) Modifying the penalty provisions to align with those of Hong Kong incorporated companies.
- Apart from the above changes, Part 16 also provides for a company to appeal to the Administrative Appeals Board, instead of to the court.

Brief Notes on Each Part

Companies not Formed, but Registrable, under this Ordinance

Part 17
Part 17 – Co. not Formed, but Registrable

Introduction
- Part 17 (Companies Not Formed, but Registrable, under this Ordinance) deals with
  - companies not formed under the new CO or a former Companies Ordinance but are eligible to be registered under the new CO.
  - There is no fundamental change to the current rules.

Policy Objectives and Major Changes
- There is no significant change to the Companies Ordinance (Cap. 32) (“Cap. 32”) introduced under Part 17.
  - Part 17 mainly restates, with some modifications, Part IX of Cap. 321, which provides for the registration of companies which are/have been formed in pursuance of any Ordinance other than Cap. 32 or a former Companies Ordinance.
  - The sequence of the provisions in Part IX of Cap. 32 is re-arranged in a more logical and user-friendly order.
  - The archaic provisions on “joint stock company” under sections 310 to 312 of Cap. 32 have been removed.
Part 18 – Communications to and by Co.

**Introduction**

- Part 18 (Communications to and by Companies) builds on
  - the rules governing communications by a company to another person introduced in the Companies (Amendment) Ordinance 2010.
  - The new rules will also facilitate electronic communications by a company’s members and debenture holders to the company.
Part 18 – Communications to and by Co.

Policy Objectives and Major Changes
- Part 18 aims at facilitating business by setting out the rules governing communications to and from companies in electronic form and hard copy form.
  1. New rules have been introduced governing communications to companies in electronic form and in hard copy form.
  2. Regarding the communications by a company to another person other than the Registrar, Part 18 restates Part IVAAA of Cap. 32 which was introduced through the Companies (Amendment) Ordinance 2010, covering communications in hard copy form, electronic form and by means of website.
  3. Section 826 provides that for documents or information to be sent or supplied to the Registrar, Part 18 has effect subject to Part 2.
  4. Section 827 preserves the Cap. 32 provisions that, for a document that is issued for the purpose of any legal proceedings, it may be served on a company by sending it by post to or leaving it at the company’s registered office.

Brief Notes on Each Part

Investigations and Enquiries

Part 19
Part 19 – Investigations and Enquiries

Introduction

- Part 19 (Investigations and Enquiries)
  - deals with investigations and enquiries into a company’s affairs by inspectors and the Financial Secretary.
  - modernises the existing provisions by reference to similar powers under
    - the Securities and Futures Ordinance (Cap. 571) and
    - the Financial Reporting Council Ordinance (Cap. 588).
  - provides a new power for the Registrar to obtain documents, records and information for the purposes of ascertaining whether any conduct that would constitute specified offences relating to giving false or misleading statement has taken place.
    - This new power will facilitate enforcement and safeguard the integrity of the public register.

Policy Objectives and Major Changes

- Part 19 mainly reorganises the provisions in Cap. 32 relating to
  - the appointment of an inspector by the Financial Secretary (“FS”) to investigate the affairs of a company; and
  - the power of the FS (or someone authorized by him) to inspect books and papers of a company, which will be rephrased in the new CO as a power to “enquire into a company’s affairs” to better describe the nature of the power (“the enquiry power”).

- It is noteworthy that many of the previous investigations undertaken by inspectors involved listed companies or their related companies.
  - The last appointment of an inspector was made in 1999, while the power to inspect books and papers (i.e. the “enquiry power” in the new CO) has never been invoked.
Part 19 – Investigations and Enquiries

Policy Objectives and Major Changes

– The absence of investigation by inspectors since 1999 is mainly due to developments in the regulatory framework for listed companies, namely,
  a. the coming into operation of the Securities and Futures Ordinance (Cap. 571) (“SFO”) in April 2003 which empowered the Securities and Futures Commission with greater authority to investigate into market misconduct involving listed companies; and
  b. the establishment of the Financial Reporting Council (FRC) in 2006 which conducts independent investigations of possible auditing and reporting irregularities in relation to listed companies.

– Notwithstanding the above, the possibility of the FS using the investigatory and enquiry powers in future cases where there are sufficient grounds to do so cannot not be ruled out.

– Therefore, the provisions are retained in the new CO as “reserve” or “last resort” powers as a supplement to the powers contained in other Ordinances, including the SFO and the FRC Ordinance (Cap. 588).

Policy Objectives and Major Changes

– Part 19 also introduces modifications to the provisions in Cap. 32 concerning these “reserve” or “last resort” powers by making reference to similar provisions on investigations under the SFO and FRCO, which are more up-to-date.

– These modifications aim at ensuring better regulation by:-
  a. Enhancing the investigatory powers of an inspector;
  b. Providing better safeguards for confidentiality of information and protection of informers; and
  c. Providing a new power for the Registrar to obtain documents or information for ascertaining whether any conduct that would constitute certain offences under the new CO has taken place.

Major Initiative 2d(i)

Major Initiative 2d(ii)

Major Initiative 2d(iii)
### Part 20 – Miscellaneous

**Introduction**

- Part 20 (Miscellaneous) contains miscellaneous provisions that mainly re-enact provisions in Cap. 32 that may be classified into the following categories:
  1. miscellaneous offences, namely the offences for false statements and for improper use of “Limited” or “有限公司” etc., based on sections 349 and 350 of Cap. 32 respectively;
  2. miscellaneous provisions relating to investigation or enforcement measures, including provisions mirroring sections 306, 351A, 351B and 352 of Cap. 32, and a new power for the Registrar to compound specified offences under the new CO;
  3. miscellaneous provisions relating to misconduct by an officer or auditor of a company derived from section 358 of Cap. 32; and
  4. other miscellaneous provisions, such as those modelled on sections 49Q(3)(b) and (c), 354, 355, 357, 359A and 360 of Cap. 32, and provisions that deal with paperless holding and transfer of shares and debentures.
Part 20 – Miscellaneous

Policy Objectives and Major Changes
- Initiatives to improve the regulatory regime and remove the anomaly relating to security for costs under Cap. 32, namely:
  1. Redefining the scope of the offence for making false statements;
  2. Empowering the Registrar to compound specified offences; and
  3. Widening the categories of companies in respect of which the court may require security for costs in civil actions.

Major Initiative 2d(vi)

Brief Notes on Each Part

Consequential Amendments, and Transitional and Saving Provisions

Part 21
Part 21 – Con. Amendments, & Transition

Introduction
- Part 21 (Consequential Amendments, and Transitional and Saving Provisions) contains
  • technical provisions that deal with consequential and related amendments to Cap. 32 and its subsidiary legislation and to other ordinances and subsidiary legislation in the Laws of Hong Kong, as well as
  • transitional and saving arrangements, that are necessary on the commencement of the new CO.

Policy Objectives and Major Changes
- Part 21 contains technical provisions of the following categories:
  1. provisions for consequential and related amendments to Cap. 32, other ordinances, and their subsidiary legislation that are necessary on the commencement of the new CO;
  2. transitional and saving provisions for smooth transition from the Cap. 32 regime to the new CO regime; and
  3. provisions supplemental to the consequential and related amendments, and transitional and saving provisions mentioned above.
Today’s Agenda

III. Major Initiatives (as Summary)

Major Initiatives
(Measures for 4 Main Objectives)

1. Enhancing Corporate Governance
   a. Strengthening the accountability of directors
   b. Enhancing shareholder engagement in the decision-making process
   c. Improving the disclosure of company information
   d. Fostering shareholder protection
   e. Strengthening auditors’ rights

2. Ensuring Better Regulation
   a. Ensuring the accuracy of information on the public register
   b. Improving the registration of charges
   c. Refining the scheme for deregistration of companies
   d. Improving the enforcement regime, incl. The original S. 399

3. Facilitating Business
   a. Streamlining procedures
   b. Facilitating simplified reporting
   c. Facilitating business operations

4. Modernising the Law
   a. Abolishing par value for shares
   b. Removing the power to issue share warrants
   c. Clarifying the rules on indemnification of directors against liabilities to third parties
Major Initiatives
(Measures for 4 Main Objectives)

1. Enhancing Corporate Governance

a. Strengthening the Accountability of Directors
   i. Restricting the appointment of corporate directors
      • by requiring every private company to have at least one natural person to act as director, to enhance transparency and accountability.
      [New CO Part 10 S. 457]
   ii. Clarifying in the statute the directors’ duty of care, skill and diligence with a view to providing clear guidance to directors.
      [New CO Part 10 S. 465 & 466]

b. Enhancing Shareholder Engagement in the Decision-Making Process
   i. Introducing a comprehensive set of rules for proposing and passing a written resolution.
      [New CO Part 12 S. 548 to 561]
   ii. Requiring a company to bear the expenses of circulating members’ statements relating to the business of, and proposed resolutions for, Annual General Meetings, if they are received in time to be sent with the notice of the meeting.
      [New CO Part 12 S. 580 & etc.]
   iii. Reducing the threshold requirement for members to demand a poll from 10% to 5% of the total voting rights.
      [New CO Part 12 S. 591]
Major Initiatives
(Measures for 4 Main Objectives)

1. Enhancing Corporate Governance

c. Improving the Disclosure of Company Information
   i. Requiring public companies and the larger (i.e., companies that do not qualify for simplified reporting) private companies and guarantee companies to prepare a more comprehensive directors’ report
      • which includes an analytical and forward-looking “business review”,
        – whilst allowing private companies to opt out by special resolution.
      • The business review will provide useful information for shareholders.
      • In particular, the requirement to include information relating to environmental and employee matters that have a significant effect on the company is in line with international trends to promote corporate social responsibility.

Major Initiatives
(Measures for 4 Main Objectives)

1. Enhancing Corporate Governance

d. Fostering Shareholder Protection
   i. Introducing more effective rules to deal with directors’ conflicts of interests.
      • including expanding the requirement for seeking shareholders’ approval to cover directors’ employment contracts which exceed three years.
   ii. Requiring disinterested shareholders’ approval in cases where shareholders’ approval is required for transactions of public companies and their subsidiaries.
   iii. Requiring the conduct of directors to be ratified by disinterested shareholders’ approval to prevent conflicts of interest and possible abuse of power by interested majority shareholders in ratifying the unauthorised conduct of directors.
Major Initiatives
(Measures for 4 Main Objectives)

1. Enhancing Corporate Governance

d. Fostering Shareholder Protection

iv. Replacing the “headcount test” with a not more than 10% disinterested voting requirement for privatisations and specified schemes of arrangement, while giving the court a new discretion to dispense with the test (in cases where it is retained) for members’ schemes.

v. Extending the scope of the unfair prejudice remedy to cover “proposed acts and omissions”,
• so that a member may bring an action for unfair prejudice even if the act or omission that would be prejudicial to the interests of members is not yet effected.

Major Initiatives
(Measures for 4 Main Objectives)

1. Enhancing Corporate Governance

e. Strengthening Auditors’ Rights

i. Empowering an auditor to require a wider range of persons, including
• the officers of a company’s Hong Kong subsidiary undertakings and
• any person holding or accountable for the company or its subsidiary undertakings’ accounting records, to provide information or explanation reasonably required for the performance of the auditor’s duties.
• The offence for failure to provide the information or explanation is extended to cover officers of the company and the wider range of persons.
Major Initiatives
(Measures for 4 Main Objectives)

2. Ensuring Better Regulation

a. Ensuring the Accuracy of Information on the Public Register

i. Clarifying the Registrar’s powers in relation to the registration of documents, such as

- specifying the requirements for the authentication of documents to be delivered to the Companies Registry and the manner of delivery, and
- withholding the registration of unsatisfactory documents pending further particulars.

ii. Clarifying the Registrar’s powers in relation to the keeping of the register, such as

- rectifying typographical or clerical errors,
- making annotations and
- requiring a company to resolve any inconsistency or provide updated information.

New CO Part 2 S. 31, 35 to 38

iii. Providing a statutory basis for applications to court for removing information from the register that is inaccurate, forged or derived from anything invalid, ineffective or done without the authority of the company.

New CO Part 2 S. 42

iv. Requiring a company to deliver to the Registry a return, including a statement of capital, whenever there is a change to its capital structure, to ensure that the public register contains up-to-date information on a company’s share capital structure.

New CO Part 4 S. 201
Major Initiatives
(Measures for 4 Main Objectives)

b. Improving the Registration of Charges

i. Revising the list of registrable charges, such as
   • expressly providing that a charge on an aircraft or any share in an aircraft is registrable, and
   • removing the requirement to register a charge for the purpose of securing an issue of debentures.

   New CO Part 8 S. 334

ii. Replacing the automatic acceleration of the repayment obligation with a choice given to the lender
   • as to whether the secured amount is to become immediately payable when a charge is void due to non-compliance with the registration requirements.

   New CO Part 8 S. 337(6)

iii. Requiring a certified copy of the charge instrument (in addition to the prescribed particulars of the charge) to be registered and available for public inspection, to provide more detailed info. to those searching the register.

   New CO Part 8 S. 335, & etc.

iv. Shortening the period for delivery to the Registrar of the charge instrument and the prescribed particulars from five weeks to one month, to reduce the period during which the charge is not visible on the register.

   New CO Part 8 S. 335 & etc.

v. Requiring written evidence of satisfaction/release of a charge to accompany a notification to the Registrar for registration of the satisfaction/release, thus making such documents available for public inspection.

   New CO Part 8 S. 345.
Major Initiatives
(Measures for 4 Main Objectives)

c. Refining the Scheme for Deregistration of Companies
   i. Imposing three additional conditions for the deregistration of defunct companies.
      • namely that the applicant must confirm that
        – that the company is not a party to any legal proceedings and
        – that neither the company nor its subsidiary has any immovable property in Hong Kong,
        to minimise any potential abuse of the deregistration procedure.
   *New CO Part 15 S. 750 to 751*

Major Initiatives
(Measures for 4 Main Objectives)
d. Improving the Enforcement Regime
   i. Enhancing the investigatory powers of an inspector.
      • for example, by requiring a person under investigation to preserve records or documents and to verify statements made by statutory declaration.
   ii. Providing better safeguards to ensure the confidentiality of information obtained in investigations and enquiries and for the better protection of informers.
   iii. Providing new powers for the Registrar to obtain documents or information to ascertain whether any conduct that would constitute an offence in relation to the provision of false or misleading statement to the Registrar has taken place.
   *New CO Part 19 S. 846 to 850, 880 to 885, 873 to 876*
Major Initiatives
(Measures for 4 Main Objectives)

d. Improving the Enforcement Regime

iv. Strengthening the enforcement regime in relation to the liabilities of officers of companies for the companies’ contravention of provisions in the new Ordinance, including

- lowering the threshold for prosecuting a breach or contravention and
- extending it to cover reckless acts through a new definition of “responsible person”.

v. Introducing a new offence in relation to inaccurate auditor’s reports

- so-called 399 regime, now S. 408
- the offence would be committed if the auditors in question knowingly or recklessly caused two important statements to be omitted from the auditor’s report.

vi. Empowering the Registrar to compound specified offences to optimise the use of judicial resources.

- Compoundable offences are generally confined to straightforward, minor regulatory offences committed by companies that are punishable by a fine.
Major Initiatives
(Measures for 4 Main Objectives)

3. Facilitating Business

a. Streamlining Procedures
   i. Allowing companies to dispense with Annual General Meetings by unanimous shareholders’ consent.
      - New CO Part 12 S. 612 to 614
   ii. Introducing an alternative court-free procedure for reducing capital based on a solvency test.
      - New CO Part 5 S. 215 to 225
   iii. Allowing all types of companies (rather than just private companies, as in the current Companies Ordinance (Cap.32)) to purchase their own shares out of capital, subject to a solvency test.
      - New CO Part 5 S. 257 to 266
   iv. Allowing all types of companies (whether listed or unlisted) to provide financial assistance to another party for the purpose of acquiring the company’s own shares or the shares of its holding company, subject to a solvency test.
      - Under the current CO, subject to certain specified exceptions, there is a broad prohibition on the giving of financial assistance to purchase the company’s own shares.
      - New CO Part 5 S. 283 to 289
   v. Introducing a new court-free statutory amalgamation procedure for wholly owned intra-group companies.
      - New CO Part 13 S. 678 to 686
Major Initiatives
(Measures for 4 Main Objectives)

3. Facilitating Business

a. Streamlining Procedures

vi. Streamlining the procedures for the restoration of dissolved companies by court order.

vii. Introducing a new administrative restoration procedure for a company dissolved by the Registrar in straightforward cases, without the need for recourse to the court.

New CO Part 15 S. 765 to 767

New CO Part 15 S. 760 to 762

b. Facilitating Simplified Reporting

i. Facilitating SMEs to prepare simplified financial and directors’ reports along the following lines:

  • A private company (with the exception of a bank/deposit-taking company, an insurance company or a stockbroker) will automatically qualify for simplified reporting if it qualifies as a “small private company”.

  • The holding company of a group of companies that qualifies as a “group of small private companies” will also qualify for simplified reporting.

  • A private company that is not a member of a corporate group may adopt simplified reporting with the agreement of all the members.

New CO Part 9 S.359-366, S.3
Major Initiatives
(Measures for 4 Main Objectives)

b. Facilitating Simplified Reporting
   i. Allowing small guarantee co. and groups of small guarantee co., which have a total annual revenue of not more than $25 million, to qualify for simplified reporting.
   
   ii. A private co. or a group of private co. which is not qualified as a “small private co.” or a “group of small private co.” respectively may prepare simplified reports
       • if it meets a higher size criteria and
       • if the members holding 75% of the voting rights so resolve and no member objects.
   
   iii. Making the summary financial reporting provisions more user-friendly and extending their application to companies in general (rather than confining them to listed companies)

   New CO Part 9 S. 437 to 446

Major Initiatives
(Measures for 4 Main Objectives)

c. Facilitating Business Operations
   i. Making the use of a common seal optional and relaxing the requirements for a company to have an official seal for use abroad.

   ii. Permitting a general meeting to be held at more than one location using electronic technology.

   iii. Setting out the rules governing communications to and by companies in electronic form.

   New CO Part 3 S. 124 & etc.
   New CO Part 12 S. 584
   New CO Part 18 S. 831 to 837
Major Initiatives
(Measures for 4 Main Objectives)

a. Abolishing Par Value for Shares
   i. Adopting a mandatory system of no-par for all companies with a share capital
      • as par value is an antiquated concept that may give rise to practical problems, such as inhibiting the raising of new capital and unnecessarily complicating the accounting regime

b. Removing the Power to Issue Share Warrants
   i. Removing the power of companies to issue share warrants to bearers.
      • Share warrants are rarely issued by companies nowadays and are undesirable from the perspective of anti-money laundering because of the lack of transparency in the recording of their ownership and the manner by which they are transferred.
Major Initiatives
(Measures for 4 Main Objectives)

c. Clarifying the Rules on Indemnification of Directors against Liabilities to Third Parties
   i. Clarifying the rules on the indemnification of directors against liabilities to third parties
      • in order to remove the uncertainties at common law.

The New Companies Ordinance
(From a CPA’s Perspective) – PDF Version 3 March 2014

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