



專業培訓中心
Professional Training Center

New Hong Kong Companies Ordinance

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Venue Duke of Windsor Social Service Building



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Introduction

- Chapter 622 of HK Laws and effective from 3 March 2014
- 21 Parts, 921 Sections and 11 Schedules
- 12 Subsidiary Legislations
- Corporate insolvency, winding up, disqualification of directors, receivers, managers and prospectuses remain in old Ordinance and renamed Companies (Winding up and Miscellaneous Provisions) Ordinance
- New accounting and audit requirements applicable to FS for period beginning on or after 3 March 2014 (first set year ending 31 March 2015)

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Useful Information

- New Companies Ordinance section in Companies Registry's Web Site
http://www.cr.gov.hk/en/companies_ordinance/index.htm
- ZHONGHUI ANDA Update
http://www.zhcpa.hk/pdf/CO_Mar2014.pdf
- KPMG Briefing Notes
<http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Newsletters/Financial-Reporting-Update/Documents/Financial-Reporting-Update-1311-73.htm>
- New Companies Ordinance section in the SMP and SME Resource Centre of the HKICPA's Web Site
<http://www.hkicpa.org.hk/en/standards-and-regulations/technical-resources/smp-and-sme-resource-centre/>

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Today's Topics

- Abolition of Par Value
- Keeping of Accounting Records
- Preparation of Financial Statements ("FS")
- Reporting Exemption ("RE")
- Directors' Reports ("DR")
- Audit

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Abolition of Par Value

- No par value for all shares issued before and after New CO
- Concepts of share premium, capital redemption reserve and authorised share capital abolished
- Previous share premium and capital redemption reserve becomes share capital
- Preserve previously permitted uses of share premium
- Previous references to par value not affected
- New CO allows capital to write off preliminary expenses, commission etc

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Keeping of Accounting Records

- Company to keep accounting records sufficient to:
 - show and explain company's transactions;
 - disclose with reasonable accuracy, at any time, company's financial position and financial performance; and
 - enable directors to ensure FS comply with New CO
- Accounting records contain daily entries including details of all money received and expended and company's assets and liabilities

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- If above requirements not apply to subsidiary, ensure subsidiary keeps accounting records sufficient to enable company's FS comply with New CO
- Company to keep accounting records at registered office or any other place
- If kept outside HK, accounts and returns sent to HK disclosing financial position at intervals of not more than 6 months and sufficient to enable company's FS comply New CO
- Company to keep records for 7 years after year end

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Preparation of Financial Statements

Preparation of consolidated FS not required if:

- Wholly owned subsidiary; or
- Partially owned subsidiary,
 - at least 6 months before year end, directors notify members in writing not to prepare consolidated FS (notification relate to that year only); and
 - no member object 3 months before year end

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General requirements under Section 380

- True and fair view (unless company falls within RE)
- Disclosures under Part 1 of Schedule 4 (all companies):
 - outstanding loans made to eligible employees to buy company's shares
 - holding company's statement of financial position and reserve movement
 - particulars of ultimate parent undertaking
 - state whether prepared in accordance with applicable accounting standards
- Disclosure of auditor's remuneration under Part 2 of Schedule 4 (companies not falling within RE)
- True and fair override (additional information or departure from New CO or accounting standards)

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Requirements under Section 381

- Consolidated FS include all subsidiaries
- If within RE, subsidiaries may be excluded (immaterial or involve expense and delay out of proportion to value to members)
- If not fall within RE, may exclude immaterial subsidiaries

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Requirements under Section 383(1)

- FS contain, in notes:
 - directors' emoluments
 - directors' retirement benefits
 - payments or benefit for termination of directors' service
 - loans, quasi-loans etc. to directors of company or its parent; directors controlled or connected parties
 - material interests of directors in transactions, arrangements or contracts entered into by the company (not required if falls within RE)
 - consideration to third parties for directors' services
- Details prescribed by Companies (Disclosure of Information about Benefits of Directors) Regulation

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Reporting Exemption

- Permits private companies and companies limited by guarantee to take advantage of RE
- Exemption applicable if company (or group) falls within RE, not whether in fact takes advantage of eligibility
- Following types of companies not permitted:
 - banking business under Banking Ordinance
 - regulated business under Securities and Futures Ordinance
 - accepts, by way of trade or business, loans of money, other than issue of debentures or other securities; or
 - insurance business, other than solely agent

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Four types of eligible companies

- Previous Section 141D companies
 - no subsidiaries and not subsidiary of another company
 - written approval from all shareholders each year
- Small private company (or group of small private companies)
- Eligible private company (or group of eligible private companies)
- Small guarantee company (or group of small guarantee companies)

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Size tests for small private company (or group)

Small private company if not exceed any 2 of following:

- Annual revenue of HK\$100 million
- Total assets of HK\$100 million at year end
- 100 employees

Group of small private companies:

- Each group company qualify as small private company; and
- Group amounts not exceed 2 out of 3 of small size tests

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Size tests for eligible private company (or group)

Eligible private company if not exceed any 2 of following:

- Annual revenue of HK\$200 million
- Total assets of HK\$200 million at year end
- 100 employees

Group of eligible private companies:

- Each group company qualify as small private company or eligible private company; and
- Group amounts not exceed 2 out of 3 of larger size tests

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Shareholders' approvals

- For eligible private company, at least 75% members' resolution with none objecting
- For group of eligible private companies, all group companies obtain at least 75% members' resolution (except group company that meet small private company category), with none objecting
- 75% calculated as a percentage of entire shareholding
- Resolution defeated if any member objects at the meeting or written notice given at least 6 months before year end

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Size tests for small guarantee company (or group)

- Small guarantee company if annual revenue not exceed HK\$ 25 million

Group of small guarantee companies:

- Each group company qualify as small guarantee company; and
- Group annual revenue not exceed HK\$25 million

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Size tests in first year

- Meet size tests in first year or last year

	Year ended 31 March	
	2014	2015
Meet size tests	Y	N
Meet RE	N/A	<u>Y</u>

	Year ended 31 March	
	2014	2015
Meet size tests	N	Y
Meet RE	N/A	<u>Y</u>

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Size tests in subsequent years

- If previously qualified, continue to qualify
- If fail for two consecutive years, fail to qualify in third year

	Year ended 31 March			
	2014	2015	2016	2017
Meet size tests	Y	N	N	N
Meet RE	N/A	Y	Y	<u>N</u>

	Year ended 31 March			
	2014	2015	2016	2017
Meet size tests	Y	N	N	Y
Meet RE	N/A	Y	Y	<u>N</u>

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Exception to two year grace period for losing entitlement

- Fail due to new group company, disqualify in that year immediately

	Year ended 31 March		
	2014	2015	2016
Meet size tests	Y	Y	N (new group company)
Meet RE	N/A	Y	<u>N</u>

	Year ended 31 March		
	2014	2015	2016
Meet size tests	Y	N (own size)	N (new group company)
Meet RE	N/A	Y	<u>N</u>

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- If previously disqualified, continue not qualify
- If meet size tests for two consecutive years, qualify in third year

	Year ended 31 March					
	2014	2015	2016	2017	2018	2019
Meet size tests	Y	N	N	Y	Y	N
Meet RE	N/A	Y	Y	N	N	<u>Y</u>

	Year ended 31 March					
	2014	2015	2016	2017	2018	2019
Meet size tests	Y	N	N	Y	N	Y
Meet RE	N/A	Y	Y	N	N	<u>N</u>

	Year ended 31 March							
	2014	2015	2016	2017	2018	2019	2020	2021
Meet size tests	Y	N	N	Y	N	Y	Y	N
Meet RE	N/A	Y	Y	N	N	<u>N</u>	<u>N</u>	<u>Y</u>

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Interpretative guidance for size tests

- Figures based on relevant FS i.e. using SME-FRS
- Reporting period shorter or longer than a year, revenue pro-rata to 12 months
- Group revenue and total assets after eliminating intergroup amounts
- Single company includes amounts with other group members
- Number of employees is average number (full-time or part-time):
 - determine number of employees at each month end
 - add all monthly numbers
 - divide total by number of months

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Directors' Reports

- Directors to prepare DR that complies with:
 - Section 390
 - Section 543(2)
 - Schedule 5
 - Companies (Directors' Report) Regulation
- If consolidated FS, consolidated DR

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General content of DR

- Section 390
 - name of directors during year and up to date of DR
 - principal activities
 - particulars of other matter material for members' appreciation of state of affairs (directors consider not harmful to business)
- Section 391
 - approved by directors and signed by director or company secretary
 - state name of signing person

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- Section 543
 - contract by which a person undertakes management and administration of the whole or any substantial part of company's business
 - not contract of directors' service or employment
 - statement of existence and duration of contract
 - name of every director and shadow director interested, and nature and extent of interest

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Business review required by Schedule 5

- Business review consists of:
 - fair review of company's business;
 - description of principal risks and uncertainties facing company;
 - particulars of important events affecting company since year end; and
 - indication of likely future development in company's business.
- Also include:
 - analysis using financial key performance indicators;
 - discussion on company's environmental policies and performance; compliance with laws and regulations; and
 - key relationships with employees, customers and suppliers

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- Disclosure of information about impending developments or matters under negotiation not required if seriously prejudicial to company's interests
- Information required extends to any subsidiary if consolidated DR
- Business review not required if:
 - company falls within RE;
 - company is wholly owned subsidiary of another body corporate; or
 - special resolution (75% members voted in person by proxy) not to prepare
- Resolution may include every subsequent year
- Resolution passed at least 6 months before end of year and revoked by special resolution
- Exposure draft of Accounting Bulletin 5

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Information required by Companies (Directors' Report) Regulation

Disclosures not required if falls within RE

- Arrangements to enable directors to acquire benefits by means of acquisition of shares or debentures (company, subsidiaries, parent or fellow subsidiary is party)
- Donations of HK\$10,000 or above (not apply if wholly-owned subsidiary of another HK company)
- Reasons of director resigned or refused to stand for re-election relating to affairs of company
- Material interests of directors in transactions, arrangements or contracts entered into by subsidiaries, parent or fellow subsidiary

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Disclosures required for all companies

- Particulars of shares issued
- Particulars of debentures issued
- Particulars of equity-linked agreement
- Dividend recommended
- Permitted indemnity provision in force

Proposed transfer to reserves and particulars of change in fixed assets not required

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Audit

- Auditor's opinion to state:
 - whether FS properly prepared in compliance with New CO; and
 - whether FS give true and fair view of financial position and financial performance of company or group (if not fall within RE)
- If information in DR not consistent with FS, state that in auditor's report; and may bring that opinion to members' attention at general meeting

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Section 407 requirements on auditors:

- carry out investigation whether adequate accounting records kept and whether FS in agreement with accounting records
- state in auditor's report if adequate accounting records not kept or FS not in agreement with accounting records in any material respect
- state in auditor's report if fails to obtain all information or explanations necessary and material for audit
- include in auditor's report disclosures under Section 383(1) if not done
- If auditor omits to report certain above matters, liable to be prosecuted under Section 408
- AATB 4 "Guidance on Section 408 of the Companies Ordinance"

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- New CO grants rights to auditors to obtain information from related entity of the company. A related entity means:
 - officer of the company;
 - HK subsidiary of the company
 - officer or auditor of such subsidiary; or
 - person holding or accountable for any accounting records of the company or such subsidiary
- If subsidiary not HK company, auditor may require company to obtain information from:
 - subsidiary
 - officer or auditor of subsidiary; and
 - person accountable for any of the subsidiary's accounting records

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- If resigning auditor considers any circumstances connected with resignation that should be brought to attention of company's members or creditors, give company such a statement; or negative statement
- If auditor retires or removed considers any circumstances connected with termination that should be brought to attention of company's members or creditors, give company such a statement; or negative statement

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Q&A Section

