

# New Hong Kong Companies Ordinance

Date	30 May 2014
Time	19:00 – 21:00
Venue	Duke of Windsor Social Service Building



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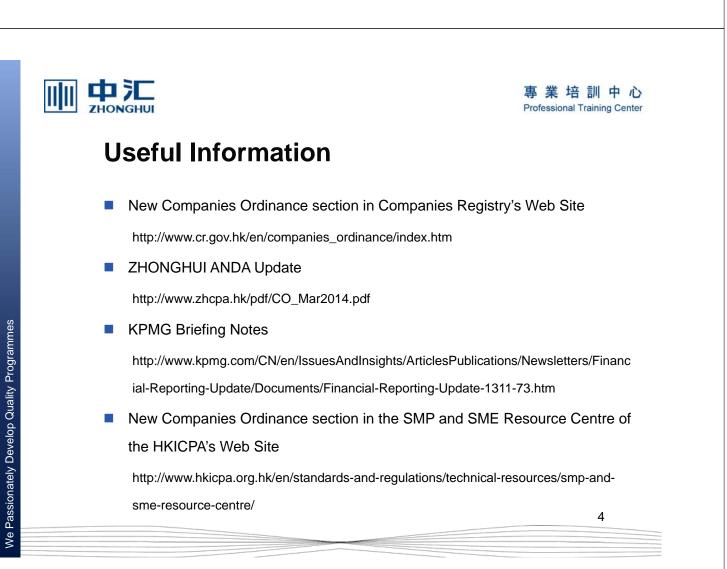
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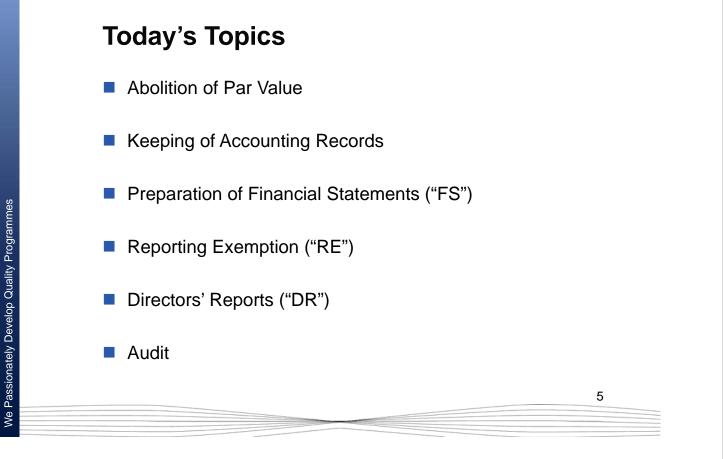
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# Introduction

- 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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# **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



# **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



# **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)



### **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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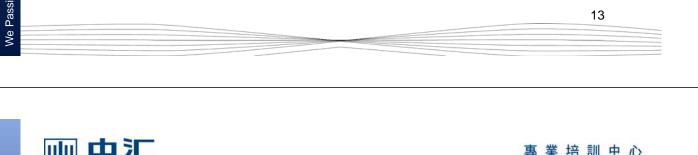
#### **Requirements under Section 383(1)**

- 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



# **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)



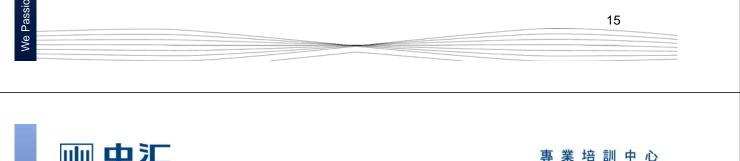
### Size tests for small private company (or group)

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



### 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:

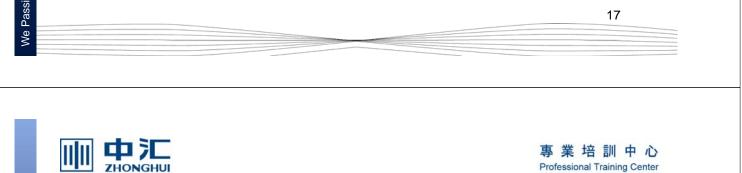
- Each group company qualify as small private company or eligible private company; and
- Group amounts not exceed 2 out of 3 of larger size tests

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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



#### 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



#### Size tests in first year

Meet size tests in first year or last year

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

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



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

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

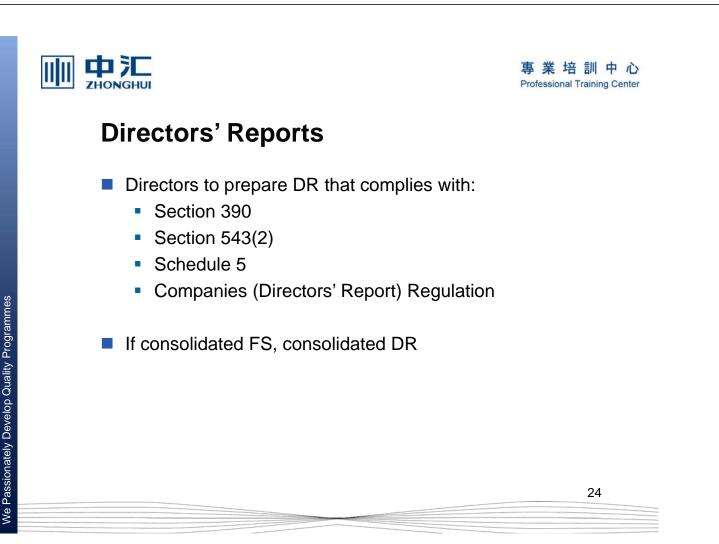
		Year ended 31 March						
		2014	2015	2016	5 20 <sup>°</sup>	17 2	2018	2019
Meet size tests		Υ	Ν	Ν	Y	1	Y	Ν
Meet RE		N/A	Υ	Y	N	1	Ν	<u>Y</u>
	Year ended 31 March							
		2014	2015	2016	5 20 <sup>-</sup>	17 2	2018	2019
Meet size tests		Υ	Ν	Ν	Y	1	Ν	Υ
Meet RE		N/A	Y	Y	N	1	Ν	N
	Year ended 31 March							
	2014	2015	2016	2017	2018	2019	2020	2021
Meet size tests	Y	Ν	Ν	Υ	Ν	Y	Y	Ν
Meet RE	N/A	Y	Y	Ν	Ν	<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 prorata 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 parttime):
  - determine number of employees at each month end
  - add all monthly numbers
  - divide total by number of months





#### 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





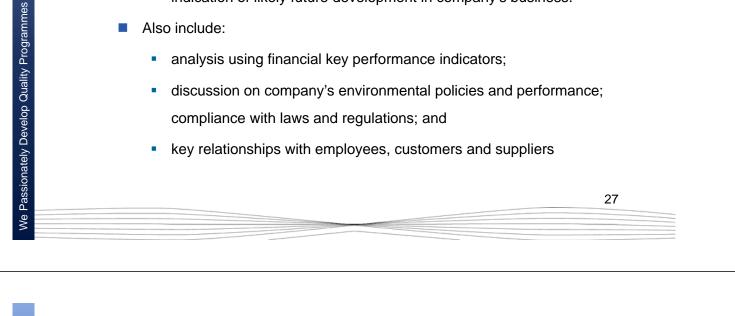
- Section 543
  - contract by which a person undertakes management and administration of the whole or any substantial part of company's business
  - not contract of directors' service or employment
  - statement of existence and duration of contract
  - name of every director and shadow director interested,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





#### **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



### 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 reelection 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



# 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"



- 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





- 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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