

# New Hong Kong Companies Ordinance

## Introduction

The new Hong Kong Companies Ordinance, Chapter 622 of the Laws of Hong Kong, (the “New CO”) came into operation on 3 March 2014. The New CO consists of 21 Parts, 921 Sections and 11 Schedules. There are also 12 Subsidiary Legislations to facilitate the implementation of the New CO on administrative, technical and procedural matters.

The New CO replaces the core provisions of the old Hong Kong Companies Ordinance, Chapter 32 of the Laws of Hong Kong, governing the formation and operation of companies, which was repealed upon the commencement of the New CO. The remaining provisions of the old Ordinance, which primarily cover corporate insolvency, winding up, disqualification of directors, receivers, managers and prospectuses remain in the old Ordinance, which is renamed the Companies (Winding up and Miscellaneous Provisions) Ordinance when the New CO comes into operation.

The Companies Registry has created a New Companies Ordinance section in its Web Site which includes the provisions of the New CO, the Schedules, the Subsidiary Legislations and other useful reference materials.

[http://www.cr.gov.hk/en/companies\\_ordinance/index.htm](http://www.cr.gov.hk/en/companies_ordinance/index.htm)

The new accounting and audit requirements including the disclosure requirements of the financial statements and the directors’ reports are only applicable to financial statements for the period beginning on or after 3 March 2014. Therefore, the first set of annual financial statements affected will be year ending 31 March 2015.

The following sections of this update summarise some of the requirements of the New CO from the perspective of accountants:

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## Abolition of Par Value

Section 135 of the New CO requires that shares in a company have no nominal value. This applies to all shares issued before and after the commencement date of the New CO. The concepts of share premium, capital redemption reserve and authorised share capital are therefore abolished.

To facilitate the transition to this new no par system, section 37 of Schedule 11 “Transitional and Saving Provisions” requires that any previous amounts standing to the credit of the company’s share premium account and capital redemption reserve becomes part of the company’s share capital. Section 38 of Schedule 11 preserves the previously permitted uses of the share premium for these previous amounts standing to the credit of the company’s share premium account.

Sections 40 and 41 of Schedule 11 provide legal safeguards to ensure that any previous contracts which include references to par value and related terms are not affected by the abolition of par value. However, the Companies Registry suggests that individual companies may wish to review their particular situation to determine whether or not they need to introduce more specific changes to their documents as a result of the migration to the no par system.

Similar to the old Ordinance, Section 149 of the New CO allows capital to be applied in writing off the preliminary expenses of the company; certain permitted commissions on issues of shares; or any other expenses of any issue of shares in the company.

## Keeping of Accounting Records

Section 373 of the New CO requires a company to keep accounting records which are sufficient:

- ▶ to show and explain the company's transactions;
- ▶ to disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and
- ▶ to enable the directors to ensure that the financial statements comply with the New CO.

In particular, the accounting records must contain daily entries including details of all sums of money received and expended by the company and a record of the company's assets and liabilities.

If the above requirements to keep accounting records do not apply to a subsidiary undertaking of a company, the company must take all reasonable steps to secure that the subsidiary undertaking keeps accounting records that are sufficient to enable the company's directors to ensure the company's financial statements comply with the New CO.

Section 374 of the New CO requires a company to keep its accounting records at its registered office or any other place that the directors think fit. If the accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records must be sent to, and kept at, a place in Hong Kong. Those accounts and returns must disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months and sufficient to enable the directors to ensure that the company's financial statements comply with the New CO.

Section 377 of the New CO requires a company to preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates.

## Preparation of Financial Statements



Section 379 of the New CO requires preparation of financial statements for each financial year including the preparation of consolidated financial statements if the company is a holding company at the end of the financial year. Preparation of consolidated financial statements is not required if:

- ▶ the company is a wholly owned subsidiary of another body corporate in the financial year; or
- ▶ the company is a partially owned subsidiary of another body corporate in the financial year,
  - ◆ at least 6 months before the end of the financial year, the directors notify the members in writing of the directors' intention not to prepare consolidated financial statements for the financial year and the notification does not relate to any other financial year; and
  - ◆ as at a date falling 3 months before the end of the financial year, no member has responded by giving the directors a written request for the preparation of consolidated statements for the financial year.

### General requirements under Section 380 of the New CO

The annual financial statements must give a true and fair view of the financial position of the company (or the group) as at the end of the financial year; and the financial performance of the company (or the group) for the financial year. The true and fair view requirement does not apply if the company falls within the reporting exemption. See below for more details about reporting exemption under section 359 of the New CO.



The detailed disclosure requirements under Schedules 10 and 11 of the old Ordinance are much simplified and are now included in Schedule 4 "Accounting Disclosures" of the New CO. The financial statements must comply with:

- ▶ Part 1 of Schedule 4 if the company falls within the reporting exemption for the financial year; or
- ▶ Parts 1 and 2 of Schedule 4 if the company does not fall within the reporting exemption for the financial year.

The following disclosures under Part 1 of Schedule 4 of the New CO are required for companies whether or not falling within the reporting exemption:

- ▶ the aggregate amount of any outstanding loans made to eligible employees to enable them to buy shares in the company under the authority of Sections 280 and 281 of the New CO during the financial year.
- ▶ the annual consolidated financial statements to contain, in the notes to the statements, the holding company's statement of financial position and movement in the holding company's reserves.

The holding company's statement of financial position is not required to contain any notes. This statement of financial position must be in the format in which this statement would have been prepared if the holding company had not been required to prepare any consolidated financial statements.

- ▶ subsidiary's financial statements to contain particulars of ultimate parent undertaking in the notes to the statements, i.e. the name of the ultimate parent undertaking; its country of incorporation (if body corporate); and the address of its principal place of business (if not body corporate).
- ▶ the financial statements to state whether they have been prepared in accordance with the applicable accounting standards; and if they have not been so prepared, the particulars of, and the reasons for, any material departure from those standards.

The disclosure of auditor's remuneration under Part 2 of Schedule 4 of the New CO is required for companies not falling within the reporting exemption.

The financial statements must comply with the applicable accounting standards i.e. standards issued by the HKICPA.

If compliance with the above would be insufficient to give a true and fair view, the financial statements must contain all additional information necessary for that purpose.

If compliance with the above would be inconsistent with a requirement to give a true and fair view, the financial statements must depart to the extent necessary for it to give a true and fair view; and must contain the reasons for, and the particulars and effect of, the departure. This gives the company the statutory backing in order to follow the requirements of the relevant accounting standards when departure from the New CO may be required. For example, the requirement not to consolidate a subsidiary in the financial statements of an investment entity parent under the requirement of HKFRS 10.



### **Requirements under Section 381 of the New CO**

The annual consolidated financial statements for a financial year must in general include all the subsidiary undertakings of the company.

Where the company falls within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the annual consolidated financial statements in compliance with the accounting standards applicable to the statements i.e. SME-FRS. Section 19.2 of the SME-FRS allows one or more subsidiaries to be excluded from consolidation when their exclusion measured on an aggregate basis is not material to the group as a whole; or their inclusion would involve expense and delay out of proportion to the value to members of the company.

Where the company does not fall within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the consolidated financial statements if the inclusion of the subsidiary undertaking is not material for the purpose of giving a true and fair view.

### **Requirements under Section 383(1) of the New CO**

The financial statements must contain, in the notes to the statements, the following information:

- ▶ the directors' emoluments;
- ▶ the directors' retirement benefits;
- ▶ payments made or benefit provided in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while directors;
- ▶ loans, quasi-loans and other dealings in favour of directors of the company and of a holding company of the company; bodies corporate controlled by such directors; and entities connected with such directors;
- ▶ material interests of directors in transactions, arrangements or contracts entered into by the company (this disclosure is not required if the company falls within the reporting exemption)
- ▶ consideration provided to or receivable by third parties for making available the services of a person as director or in any other capacity while director.

Detailed disclosure requirements of the above are prescribed by the Companies (Disclosure of Information about Benefits of Directors) Regulation.



## Reporting Exemption under Section 359 of the New CO



The New CO permits private companies and companies limited by guarantee to take advantage of the reporting exemption if they meet certain qualifying criteria set out in Section 359 of the New CO. The reporting exemption takes the form of exemption from certain of the disclosure requirements of the directors' report and financial statements.

The exemption is applicable if the company (or group) falls within the reporting exemption. Therefore, the minimum requirement is that the company (or group) is eligible for the reporting exemption and not whether in fact it takes advantage of this eligibility by preparing simplified financial statements.

However, the following types of companies are not permitted to take the reporting exemption:

- ▶ the company is authorised under the Banking Ordinance to carry out banking business;
- ▶ the company is licensed under Part V of the Securities and Futures Ordinance to carry on a regulated business;
- ▶ the company accepts, by way of trade or business (other than banking business) loans of money at interest or repayable at a premium, other than on terms involving the issue of debentures or other securities; or
- ▶ the company carries on any insurance business, other than solely as an agent.

The New CO brings forward the qualifying criteria that were previously found in Section 141D of the old Ordinance, relating to private companies which do not have subsidiaries and are not a subsidiary of another company. These companies are eligible for the reporting exemption provided that each year they obtain approval in writing from all of their shareholders.

The New CO introduces 3 additional categories of companies (or groups) that fall within the reporting exemption if they meet certain criteria relating to the type of company, the size of the company and in certain cases the need for shareholders' approval. The 3 categories are:

- ▶ small private company (or group of small private companies);
- ▶ eligible private company (or group of eligible private companies); and
- ▶ small guarantee company (or group of small guarantee companies).

If a parent company is not exempt from preparing consolidated financial statements under the New CO, then the parent company, each company in the group and the group as a whole must meet the relevant size tests in order for the group to meet the qualifying criteria.

### **Size tests for small private company (or group of small private companies)**

A private company qualifies as a small private company if it does not exceed any 2 of the following:

- ▶ total annual revenue of HK\$100 million
- ▶ total assets of HK\$100 million at the end of the reporting period
- ▶ 100 employees

In order to qualify for the reporting exemption as a group of small private companies:

- ▶ each company in the group must qualify as a small private company; and
- ▶ the aggregate amounts for the group in total must not exceed 2 out of 3 of the small size tests.

### **Size tests for eligible private company (or group of eligible private companies)**

A private company qualifies as an eligible private company if it does not exceed any 2 of the following:

- ▶ total annual revenue of HK\$200 million
- ▶ total assets of HK\$200 million at the end of the reporting period
- ▶ 100 employees

In order to qualify for the reporting exemption as a group of eligible private companies:

- ▶ each company in the group must qualify as either a small private company or an eligible private company; and
- ▶ the aggregate amounts for the group in total must not exceed 2 out of 3 of the larger size tests.

In addition to meeting the above larger size tests, in order to qualify as an eligible private company or a group of eligible private companies, the following shareholders' approvals are required.

To qualify as an eligible private company, at least 75% of all the members must pass a resolution at a general meeting that the company is to fall within the reporting exemption for the financial year, with none objecting.

To qualify as a group of eligible private companies, all the companies in the group individually, as well as the parent of the group, must have obtained the 75% shareholders' approval (except for those subsidiaries within the group that fall within the small private company category), with none objecting.

The 75% vote is calculated as a percentage of the entire shareholding of a company, not simply as a percentage of the shareholders who attend the general meeting. The resolution is defeated if any member objects either at the meeting or at any time by giving notice in writing to the company, provided that the written notice is given at least 6 months before the end of the financial year to which the objection relates.

### **Size tests for small guarantee company (or group of small guarantee companies)**

A company limited by guarantee qualifies as a small guarantee company if its total annual revenue does not exceed HK\$ 25 million.

In order to qualify for the reporting exemption as a group of small guarantee companies:

- ▶ each company in the group must qualify as a small guarantee company; and
- ▶ the aggregate annual revenue of the group must not exceed HK\$25 million.

### Meeting the size tests in the first year that the New CO applies

The company will qualify for the reporting exemption "RE" for the first financial year beginning on or after 3 March 2014 if it meets the relevant size tests in that first financial year; or in the immediately preceding financial year. If the company qualifies in the first financial year, it will continue to qualify until it is disqualified (as set out below).

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

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

### Meeting the size tests in all subsequent financial years

Where a company has previously qualified for the reporting exemption in terms of its size, the company will continue to qualify for the reporting exemption even when it no longer meets the relevant size tests, unless the company has failed the size tests for two consecutive reporting periods. It will then fail to qualify for the reporting exemption in the third reporting period, regardless of its size in that third reporting period.

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

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

An exception to this two year grace period for losing entitlement is where a new company enters the group. In this case, the group will no longer be eligible for the reporting exemption in the year in which the new company enters the group, if the new subsidiary is such that the group fails the size test in that year.

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

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

A company which was previously disqualified on the grounds of its size will need to meet the size tests for two consecutive reporting periods, before it will qualify for the reporting exemption in the third reporting period, regardless of its size in that third reporting period.

	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	<b>Y</b>

	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	<b>N</b>

	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	<b>N</b>	<b>N</b>	<b>Y</b>	

### Interpretative guidance for the size tests under Schedule 3

The total revenue and total assets are determined based on the relevant financial statements i.e. using the SME-FRS.

In the case where the reporting period is shorter or longer than a year, the amount of total revenue for a financial year is to be calculated on a pro-rata basis as if the length of the financial year were 12 months.

In the case of a group, the aggregate total annual revenue and aggregate total assets are calculated after eliminating intergroup transactions and balances. However, the amount for a single company includes amounts with other group members. Therefore, if a group member records a revenue or amount due from other group members and the amount is over the size limit, the group will not be able to meet the size test even these amounts are eliminated on consolidation level.

The number of employees is the average number of persons employed by the company or the group during the reporting period (irrespective of whether in full-time or part-time employment) determined on a monthly basis as follows:

- ▶ determine the number of employees as at the end of each calendar month
- ▶ add together all the monthly numbers
- ▶ divide the total number by the number of months in the reporting period

## Directors' Reports



Section 388 of the New CO requires directors to prepare a directors' report of the company that complies with Sections 390 and 543(2) of the New CO, Schedule 5 "Contents of Directors' Report: Business Review" and the Companies (Directors' Report) Regulation. If the company is a holding company and prepares consolidated financial statements, the directors' report is prepared on a consolidated basis.

### General content of directors' report

Section 390 of the New CO requires a directors' report to include:

- ▶ the name of every person who was a director of the company during the financial year; or during the period beginning with the end of the financial year and ending on the date of the report;
- ▶ the principal activities of the company in the course of the financial year; and
- ▶ particulars of any other matter that is material for the members' appreciation of the state of the company's affairs and the disclosure of which will not, in the directors' opinion, be harmful to the business of the company.

The information required by Section 390 also extends to any of the company's subsidiary undertakings if the directors' report is prepared on a consolidated basis.

Section 391 of the New CO requires that a directors' report must be approved by the directors and signed on the directors' behalf by a director or by the company secretary. Every copy of a directors' report laid before a company in general meeting, or sent to a member or otherwise circulated, published or issued by the company, must state the name of the person who signed the report on the directors' behalf.



### Disclosure of management contracts

If a company enters into a contract by which a person undertakes the management and administration of the whole or any substantial part of any business of the company; and the contract is not a contract of service with any director of the company or any person engaged in the full-time employment of the company, Section 543 of the New CO requires the directors' report for any year in which the contract is in force to include:

- ▶ a statement of the existence and duration of the contract; and
- ▶ the name of every director and shadow director interested in the contract, and the nature and extent of the interest.

## Business review required by Schedule 5

The business review consists of:

- ▶ a fair review of the company's business;
- ▶ a description of the principal risks and uncertainties facing the company;
- ▶ particulars of important events affecting the company that have occurred since the end of the financial year; and
- ▶ an indication of likely future development in the company's business.

To the extent necessary for an understanding of the development, performance or position of the company's business, a business review must include:

- ▶ an analysis using financial key performance indicators;
- ▶ a discussion on the company's environmental policies and performance; and the company's compliance with the relevant laws and regulations that have a significant impact on the company; and
- ▶ an account of the company's key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company's success depends.

The disclosure of any information about impending developments or matters in the course of negotiation is not required if the disclosure would, in the directors' opinion, be seriously prejudicial to the company's interests.



The information required by Schedule 5 also extends to any of the company's subsidiary undertakings if the directors' report is prepared on a consolidated basis.

The business review information in Schedule 5 is not required if:

- ▶ the company falls within the reporting exemption for the financial year;
- ▶ the company is a wholly owned subsidiary of another body corporate in the financial year; or
- ▶ the company is a private company that does not fall within the reporting exemption for the financial year, and a special resolution is passed by the members to the effect that the company is not to prepare a business review.

The resolution for this purpose may be passed in relation to a financial year; or a financial year and every subsequent financial year. The resolution must be passed at least 6 months before the end of the financial year to which the directors' report relates and may only be revoked by a special resolution.

A special resolution is defined in the New CO as a resolution that is passed by at least 75% of those members who voted in person at the meeting or by proxy.

The HKICPA has issued an exposure draft of Accounting Bulletin 5 to provide guidance for the preparation of a business review under the New CO. Please refer to AB 5 for more detailed guidance on the preparation of a business review.



## Information required by Companies (Directors' Report) Regulation

Most of the disclosure requirements of a directors' report under Section 129D of the old Ordinance are carried forward with some additional requirements under the New CO and included in the Companies (Directors' Report) Regulation. The disclosure requirements in a directors' report are:

### Disclosures not required if the company falls within the reporting exemption

- ▶ Effect of the arrangements and names of directors who held or whose nominees held shares or debentures acquired under such arrangements if there were any such arrangements at the end of the financial year or at any time in the financial year:
  - ◆ to which the company, its subsidiaries, its parent company or any subsidiary of its parent company is a party, and
  - ◆ any object of the arrangements is to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.
- ▶ Total amount of donations if the company, or the company and its subsidiaries made donations of HK\$10,000 or above in a financial year. This disclosure does not apply if the company is a wholly-owned subsidiary of another company incorporated in Hong Kong.
- ▶ a summary of the reasons relating to the affairs of the company if during the financial year, a director has resigned from the office or refused to stand for re-election; and the company has received a notice in writing from the director specifying that the resignation or refusal is due to reasons relating to the affairs of the company (whether or not other reasons are specified).
- ▶ certain particulars of a transaction, arrangement or contract that is significant in relation to the company's business entered into by the company's subsidiaries, its parent company or any subsidiary of its parent company, and in which a director of the company had, directly or indirectly, a material interest.

### Disclosures required for all companies

- ▶ the reason, the class of shares issued, the number of shares issued and the consideration received if the company has issued any shares in the financial year.
- ▶ the reason, the class of debentures issued, the amount issued and consideration received if the company has issued any debentures in the financial year.
- ▶ certain particulars of any equity-linked agreement entered into by the company during the financial year or in existence at the end of the year. See below for more details about equity-linked agreements.
- ▶ the amount of dividend recommended to be paid for the financial year.
- ▶ a statement that the permitted indemnity provision was in force if at the date that the directors approved the directors' report, or at any time during the financial year to which the directors' report relates, a permitted indemnity provision is in force for the benefit of one or more of the directors of the company (whether made by the company or otherwise); or one or more directors of an associated company (if made by the company).

A permitted indemnity provision is a provision that protects directors against liability incurred by them to a third party (i.e. a person other than the company or an associated company). An "associated company" is defined in Section 2 of the New CO as being the company's subsidiary; or (ii) the company's holding company; or any subsidiary of the company's holding company (i.e. a fellow subsidiary).

The disclosure requirements of the amount of any proposed transfer to reserves and particulars of any significant change in fixed assets in the old Ordinance are no longer required to be disclosed in a directors' report.

## Equity-linked Agreements

An equity-linked agreement is an agreement that will or may result in the company issuing shares and includes:

- ▶ an option to subscribe for shares;
- ▶ an agreement for the issue of securities that are convertible into, or entitle the holder to subscribe for, shares in the company;
- ▶ an employee share scheme; and
- ▶ a share option scheme;

but excludes agreements to subscribe for shares in a company that are entered into pursuant to:

- ▶ the company's offer of shares to the public; and
- ▶ an offer made to members of the company in proportion to their shareholdings (i.e. a rights issue).

The information to be disclosed in the directors' report depends on whether the agreement was entered into during the financial year and/or the agreement still subsisted at the end of the financial year.

If the agreement was entered into during the financial year, disclose:

- ▶ the reason for entering into the agreement;
- ▶ the nature and terms of the agreement;
- ▶ the classes of shares issued under the agreement; and
- ▶ for each class of shares, the number of shares that have been issued under the agreement.

If the agreement still subsisted at the end of the financial year, disclose:

- ▶ the classes of shares that may be issued under the agreement;
- ▶ for each class of shares, the number of shares that may be issued under the agreement;
- ▶ any monetary or other consideration that the company has received or will receive under the agreement; and
- ▶ any other conditions or terms that remain to be met before the shares are issued.



## Audit



Section 405 of the New CO requires a company's auditor to prepare an auditor's report. Section 406 of the New CO requires the auditor's opinion to state:

- ▶ whether the financial statements have been properly prepared in compliance with this Ordinance; and
- ▶ whether the financial statements give a true and fair view of the financial position and financial performance of the company or the group if the company does not fall within the reporting exemption.

If the information in a directors' report is not consistent with the financial statements, Section 406 also requires the auditor to state that opinion in the auditor's report; and may bring that opinion to the members' attention at a general meeting.

Section 407 of the New CO has the following requirements on auditors:

- ▶ in preparing an auditor's report, the auditor must carry out an investigation that will enable the auditor to form an opinion as to whether adequate accounting records have been kept by the company; and whether the financial statements are in agreement with the accounting records.
- ▶ a company's auditor must state the auditor's opinion in the auditor's report if the auditor is of the opinion that adequate accounting records have not been kept by the company; or the financial statements are not in agreement with the accounting records in any material respect.
- ▶ if a company's auditor fails to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report.
- ▶ if the financial statements do not comply with Section 383(1) of the New CO, the auditor must include in the auditor's report, so far as the auditor is reasonably able to do so, a statement giving the particulars that are required to be, but have not been, contained in the financial statements.

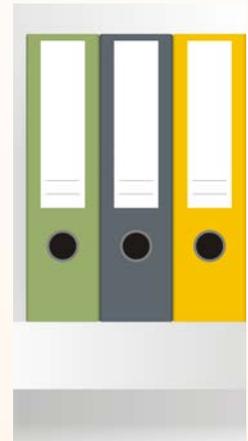
If an auditor omits to report certain matters required under Section 407, then the auditor is liable to be prosecuted under Section 408. The HKICPA has issued Technical Bulletin AATB 4 "Guidance on Section 408 of the Companies Ordinance" to provide guidance on compliance on the relevant sections of the New CO.





Section 412 of the New CO grants certain rights to auditors in relation to information. An auditor of a company may require a person that is a related entity of the company, or was a related entity of the company at the time to which the information or explanation relates, to provide the auditor with any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company. A related entity, in relation to a company, means:

- ▶ an officer of the company;
- ▶ a subsidiary undertaking of the company that is a company incorporated in Hong Kong;
- ▶ an officer or auditor of such a subsidiary undertaking; or
- ▶ a person holding or accountable for any of the accounting records of the company or such a subsidiary undertaking



If a subsidiary undertaking of a company is not a company incorporated in Hong Kong, an auditor of the company may require the company to obtain from any of the persons specified below any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company. The persons are:

- ▶ the subsidiary undertaking;
- ▶ a person who is an officer or auditor of the subsidiary undertaking; or was an officer or auditor of the subsidiary undertaking at the time to which the information or explanation relates; and
- ▶ a person who holds or is accountable for any of the subsidiary undertaking's accounting records; or held or was accountable for the subsidiary undertaking's accounting records at the time to which the information or explanation relates.

Section 424 of the New CO requires, if the resigning auditor considers that there are circumstances connected with the resignation that should be brought to the attention of the company's members or creditors, to give the company a statement of those circumstances; or if the auditor considers that there are no such circumstances, a statement to that effect.

Section 425 of the New CO requires, if the auditor who retires or is removed considers that there are circumstances connected with the termination that should be brought to the attention of the company's members or creditors, to give the company a statement of those circumstances; or if the auditor considers that there are no such circumstances, a statement to that effect.



## **Content of the New Hong Kong Companies Ordinance (Appendix 1)**

The 21 Parts of the New CO are:

- Part 1 - Preliminary
- Part 2 - Registrar of Companies and Companies Register
- Part 3 - Company Formation and Related Matters, and Re-registration of Company
- Part 4 - Share Capital
- Part 5 - Transactions in relation to Share Capital
- Part 6 - Distribution of Profits and Assets
- Part 7 - Debentures
- Part 8 - Registration of Charges
- Part 9 - Accounts and Audit
- Part 10 - Directors and Company Secretaries
- Part 11 - Fair Dealing by Directors
- Part 12 - Company Administration and Procedure
- Part 13 - Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back
- Part 14 - Remedies for Protection of Companies' or Members' Interests
- Part 15 - Dissolution by Striking off or Deregistration
- Part 16 - Non-Hong Kong Companies
- Part 17 - Companies not Formed, but Registrable, under this Ordinance
- Part 18 - Communications to and by Companies
- Part 19 - Investigations and Enquiries
- Part 20 - Miscellaneous
- Part 21 - Consequential Amendments, and Transitional and Saving Provisions

The 11 Schedules of the New CO are:

- Schedule 1 - Parent Undertakings and Subsidiary Undertakings
- Schedule 2 - Content of Incorporation Form
- Schedule 3 - Specified Qualifying Conditions for Sections 361 to 366
- Schedule 4 - Accounting Disclosures
- Schedule 5 - Contents of Directors' Report: Business Review

## **Content of the New Hong Kong Companies Ordinance (Appendix 1)**

- Schedule 6 - Information to be Contained in Annual Return and Documents by which Annual Return must be Accompanied
- Schedule 7 - Offences in respect of which Proceedings not Instituted under Certain Conditions
- Schedule 8 - Amendments relating to Paperless Holding and Transfer of Shares and Debentures
- Schedule 9 - Consequential and Related Amendments to Companies Ordinance (Cap. 32) and its Subsidiary Legislation
- Schedule 10 - Consequential and Related Amendments to Other Ordinances and Subsidiary Legislation
- Schedule 11 - Transitional and Saving Provisions

### The 12 Subsidiary Legislations of the New CO are:

- Cap. 622A - Companies (Words and Expressions in Company Names) Order
- Cap. 622B - Companies (Disclosure of Company Name and Liability Status) Regulation
- Cap. 622C - Companies (Accounting Standards (Prescribed Body)) Regulation
- Cap. 622D - Companies (Directors' Report) Regulation
- Cap. 622E - Companies (Summary Financial Reports) Regulation
- Cap. 622F - Companies (Revision of Financial Statements and Reports) Regulation
- Cap. 622G - Companies (Disclosure of Information about Benefits of Directors) Regulation
- Cap. 622H - Companies (Model Articles) Notice
- Cap. 622I - Company Records (Inspection and Provision of Copies) Regulation
- Cap. 622J - Companies (Non-Hong Kong Companies) Regulation
- Cap. 622K - Companies (Fees) Regulation
- Cap. 622L - Companies (Unfair Prejudice Petitions) Proceedings Rules

## Summary of Disclosure Requirements in Financial Statements (Appendix 2)

Source	Disclosure Requirements	Disclosure exempted if company falls within "Reporting Exemption"
Sch 4 Part 1.1	Aggregate amount of outstanding loans to eligible employees to buy shares in the company	No
Sch 4 Part 1.2	Holding company's statement of financial position and reserve movements	No
Sch 4 Part 1.3	Particulars of ultimate parent undertaking	No
Sch 4 Part 1.4	State whether financial statements prepared in accordance with applicable accounting standards	No
Sch 4 Part 2.1	Auditor's remuneration	Yes
S 383(1)(a) C(DIBD)R Part 2	Directors' emoluments	No
S 383(1)(b) C(DIBD)R Part 2	Directors' retirement benefits	No
S 383(1)(c) C(DIBD)R Part 2	Payments made or benefit provided for termination of service of directors, whether in the capacity of directors or in any other capacity while directors	No
S 383(1)(d) C(DIBD)R Part 3	Loans, quasi-loans and other dealings in favour of directors of the company and holding company of the company; bodies corporate controlled by such directors; and entities connected with such directors	No
S 383(1)(e) C(DIBD)R Part 4	Material interests of directors in transactions, arrangements or contracts entered into by the company	Yes
S 383(1)(f) C(DIBD)R Part 2	Consideration provided to or receivable by third parties for making available the services of a person as director or in any other capacity while director	No

Sch 4 = Schedule 4 of the New CO

S = Section of the New CO

C(DIBD)R = Companies (Disclosure of Information about Benefits of Directors) Regulation

## Summary of Disclosure Requirements in Directors' Reports (Appendix 3)

Source	Disclosure Requirements	Disclosure exempted if company falls within "Reporting Exemption"
S 390(1)(a)	Name of director during the financial year and up to date of directors' report	No
S 390(1)(b)	Principal activities during the financial year	No
S 390(2)	Particulars of other matter material for the members' appreciation of state of affairs	No
S 543(2)	Management contracts	No
Sch 5	Business review (a)	Yes
C(DR)R.3	Arrangements to enable directors to acquire benefits by means of acquisition of shares or debentures of the company or any other body corporate	Yes
C(DR)R.4	Donations of HK\$10,000 or above (b)	Yes
C(DR)R.5	Particulars of shares issued	No
C(DR)R.5A	Particulars of debentures issued	No
C(DR)R.6	Particulars of equity-linked agreements	No
C(DR)R.7	Dividend recommended to be paid	No
C(DR)R.8	Reasons relating to affairs of the company of a director resigned or refused for re-election	Yes
C(DR)R.9 S 470	Statement that permitted indemnity provision was in force	No
C(DR)R.10	Material interests of directors in transactions, arrangements or contracts entered into by the company's subsidiaries, its parent company or any subsidiary of its parent company	Yes
S 391(2)	Name of director or company secretary signing the report	No

- a. Business review is also not required if the company is a wholly owned subsidiary of another body corporate or a members' special resolution is passed not to prepare a business review.
- b. This disclosure does not apply if the company is a wholly-owned subsidiary of another company incorporated in Hong Kong.

S = Section of the New CO

Sch 5 = Schedule 5 of the New CO

C(DR)R = Companies (Directors' Report) Regulation

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