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## New Companies Ordinance

### Frequently Asked Questions

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## (I) General

### Q1. What major changes are introduced under the new Companies Ordinance (“the new CO”) regarding financial reporting?

Answer: The following major changes are introduced under the new CO regarding financial reporting -

- Streamlining disclosure requirements that overlap with the accounting standards (see [Q10](#) below).
- Relaxing the criteria for companies to prepare simplified financial reports and directors’ reports i.e. the new “reporting exemption” (see [Q3](#) to [Q9](#) below);
- Making the summary financial report provisions more user-friendly and extending their application to all companies (see [Q15](#) below);
- Requiring public companies and other companies that do not qualify for simplified reporting to prepare a “business review” in the directors’ report (see [Q17](#) below);
- Clarifying the financial year of a company (see [Q18](#) below) and requiring companies to hold annual general meetings, and public companies or companies limited by guarantee to deliver annual returns, in respect of every financial year of the company for registration (see [Q23](#) below and Highlights on [Annual Returns of Local Companies](#)); and
- Requiring an auditor who retires or is removed from office to give a statement of the circumstances connected with the cessation of office (see [Q24](#) below and Highlights on [Enhancement of Auditor’s rights](#))

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### Q2. Will the new requirements regarding financial reporting apply to an existing company immediately on the commencement of the new CO?

Answer: No. The new requirements regarding financial reporting apply to the company’s [first financial year](#) after the commencement of the new CO and subsequent financial years (section 358).

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## (II) Reporting Exemption

### Q3. What is “reporting exemption”?

Answer: “Reporting exemption” means the exemptions available to private or guarantee companies (other than certain companies specifically excluded) that are qualified to prepare simplified accounts and directors’ reports. The exemptions are in respect of specific requirements relating to the preparation of financial statements, directors’ and auditor’s reports and they include –

- no requirement to disclose auditor's remuneration in financial statements (section 380(3) and Schedule 4 Part 2);
- no requirement for financial statements to give a "true and fair view" (section 380(7));
- subsidiary undertakings may be excluded from consolidated financial statements in accordance with applicable accounting standards (section 381(2));
- no requirement to disclose in the notes to financial statements the material interests of directors in transactions, arrangements or contracts of significance (section 23 of Cap. 622G);
- no requirement to disclose or include in the directors' report-
  - a business review (section 388(3)(a))
  - arrangements to enable directors to acquire benefits by the acquisition of shares or debentures
  - donations
  - directors' reasons for resignation or refusal to stand for re-election
  - material interests of directors in transactions, arrangements or contracts of significance entered into by a specified undertaking of the company (sections 3(3A), 4(3), 8(3) and 10(7) of Companies (Directors' Report) Regulation, Cap. 622D ("Cap. 622D"));
- no requirement for the auditor to express a "true and fair view" opinion on financial statements (section 406(1)(b)); and
- financial statements may be prepared in compliance with the Small and Medium-Sized Entity Financial Reporting Standard and Financial Reporting Framework issued or specified by HKICPA.

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**Q4. What are the qualifying criteria for "reporting exemption" under the new CO? When will the exemption be available to a company?**

Answer: The qualifying criteria are as follows-

- a small private company / holding company of a group of small private companies which meets two of the following conditions in a financial year –
  - total revenue / aggregate total revenue not exceeding \$100 million
  - total assets / aggregate total assets not exceeding \$100 million
  - employees / aggregate number of employees not exceeding 100
 (sections 359(1)(a), 359(2), 361, 364 and Schedule 3 section 1(1), (7) and (8))
- other private company (not being a member of a corporate group) with unanimous members' written agreement (section 359(1)(b));
- a small guarantee company / holding company of a group of small guarantee companies with total revenue / aggregate total revenue not exceeding \$25 million in a financial year (sections 359(1)(a), 359(3), 363, 366 and Schedule 3 sections 1(5) and (13));
- an eligible private company / holding company of a group of eligible private companies which meets higher size criteria (i.e. two of the following conditions

in a financial year: total revenue / aggregate total revenue not exceeding \$200 million, total assets / aggregate total assets not exceeding HK\$200 million, and employees / aggregate number of employees not more than 100) and with 75% approval from members and no member votes against the resolution (sections 359(1)(c), 359(2), 360, 362, 365 and Schedule 3 section 1(3), (10) and (11)).

If a company meets the qualifying criteria for the reporting exemption, the exemption will be available to the company in its first financial year that begins on or after the commencement of the new CO and in every subsequent financial year, until the company is disqualified for the exemption.

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**Q5. Are companies which are subsidiaries of a listed company qualified for reporting exemption?**

Answer: Unless the subsidiary is a company specified in section 359(4) (which includes, for example, a bank, an insurance company, etc.), it is qualified for reporting exemption if it meets the size criteria or obtains the necessary members' approval for it to fall within the reporting exemption.

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**Q6. A private company (not being a member of a corporate group) with unanimous members' agreement may prepare simplified accounts and directors' reports. Does the unanimous agreement mean the agreement of 100% of ALL members of the company OR 100% of those members attending at a general meeting to pass a resolution for such purpose?**

Answer: Section 359(1)(b)(iii) requires all members of a company to agree in writing that the company is to fall within the reporting exemption. It is not a requirement for a resolution to be passed at a meeting by all members of the company or by all members attending the meeting.

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**Q7. An eligible private company / holding company of a group of eligible private companies may prepare simplified reports if it meets the higher size criteria and has 75% approval from members. Does the 75% mean 75% of the voting rights of ALL members of the company OR 75% of the voting rights of those members attending a general meeting to pass a resolution for such purpose?**

Answer: Sections 360(1) and (2) require a resolution passed by the members holding at least 75% of the voting rights in the company i.e. 75% of the voting rights of all members of the company.

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**Q8. Is there any requirement to deliver a copy of the agreement or the resolution mentioned in Q6 and Q7 above to the Registrar of Companies for registration?**

Answer: Yes. A company must deliver a copy of an agreement made for the purposes of section 359(1)(b)(iii) or a resolution passed for the purposes of section 360(1) or (2) to the Registrar for registration respectively within 15 days after it is made or passed pursuant to sections 622(1)(e) and (f) of the new CO.

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**Q9. Are companies falling within the reporting exemption required to have their financial statements audited?**

Answer: Yes. Audit of financial statements is required for all companies, including companies falling within the reporting exemption, except dormant companies (section 447).

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### (III) Financial Statements and Reports

**Q10. What are the general requirements for financial statements under the new CO?**

Answer: The general requirements are –

- a company's directors must prepare for each financial year financial statements that comply with sections 380 and 383 (section 379(1));
- if the company is a holding company at the end of the financial year, consolidated financial statements must be prepared instead unless the company is a wholly owned subsidiary or a partially owned subsidiary where no member requests for the preparation of consolidated financial statements (section 379(2));
- subject to permitted exclusions, the consolidated financial statements must include all the subsidiary undertakings of the company (section 381);
- unless the company falls within the [reporting exemption](#), the financial statements must give a true and fair view of the financial position and financial performance of the company (sections 380(1), (2) and (7));
- the financial statements must comply with –
  - the accounting disclosure requirement in Schedule 4 (section 380(3));
  - applicable accounting standards issued or specified by the Hong Kong Institute of Certified Public Accountants ("HKICPA") (sections 380(4), 380(8) and the Companies (Accounting Standards (Prescribed Body)) Regulation, Cap. 622C);
- the notes to financial statements must contain the information prescribed by the Companies (Disclosure of Information about Benefits of Directors) Regulation, Cap. 622G ("Cap. 622G") (section 383); and
- the financial statements must be audited (section 405).

Other requirements are in relation to the laying, sending, publication (sections 429 to 432 and 436) and voluntary revision of financial statements (section 449 and the Companies (Revision of Financial Statements and Reports) Regulation, Cap. 622F).

The above requirements do not apply to a company that is dormant (section 447).

**Q11. Are there any changes to the requirements on the contents of a directors' report under the new CO?**

Answer: Yes. There are new provisions requiring the directors' report to contain the following information –

- a business review (please see the answer to [Q17](#) below);
- equity-linked agreements entered into by the company (section 6 of Cap. 622D);
- a summary of the reasons relating to the affairs of the company given by a director who has resigned or refused to stand for re-election (section 8 of Cap. 622D) (except for companies falling within the reporting exemption); and
- permitted indemnity provision for the benefit of directors (section 470 and section 9 of Cap. 622D).

Other changes include –

- The amount of donations made by the company and its subsidiary undertakings which are exempted from disclosure is raised to \$10,000 from \$1,000 in section 129D(3)(e) of the old Companies Ordinance (Cap. 32) (“the old Ordinance”) (section 4 of Cap. 622D); and
- The requirement under section 129D(3)(j) of the old Ordinance is modified. The disclosure of information on material interests of directors in contracts of significance entered into by a company or a specified undertaking of the company is expanded to cover transactions and arrangements in addition to contracts and, where the company is a public company, material interests of a connected entity of a director of the company. (“Specified undertaking” means a parent company or subsidiary undertaking of the company, or a subsidiary undertaking of the company’s parent company.) In line with the approach under the old Ordinance, the requirement does not apply to companies falling within the reporting exemption (section 10 of Cap. 622D). For material interests of directors in transactions, arrangements and contracts entered into by a specified undertaking of a company, the information must be contained in the directors' report of the company. For transactions, arrangements and contracts entered into by the company, disclosure of the information is required to be made in the notes to financial statements instead (section 383 and section 22 of Cap. 622G).

**Q12. For a company which is a holding company in a financial year, is it required to disclose the name of every director of its subsidiary undertakings rather than just the name of every director of the company itself in its directors' report according to section 390(3)?**

Answer: For a company which is a holding company and an annual consolidated financial statements and a consolidated directors' report are prepared under section 388(2), the consolidated directors' report must contain the name of every person who was a director of the company or of the subsidiary undertakings included in the financial statements -

- (i) during the financial year; or
- (ii) during the period beginning with the end of the financial year and ending on the date of the report.

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**Q13. For large corporate groups with a large number of subsidiary undertakings, are there any practical measures that a holding company can adopt to comply with the requirement to disclose directors' names on a consolidated basis in the directors' report of the holding company under section 390(3)?**

Answer: The names of directors of all subsidiary undertakings included in the annual consolidated financial statements may be disclosed on a consolidated basis, without further setting out specifically the directorship of each individual subsidiary undertaking. If the number of names of directors of all subsidiary undertakings is, in the opinion of the directors of the holding company, of excessive length, disclosure of the names of directors of subsidiary undertakings may be made by way of inclusion by reference, provided that the information on the relevant directors' names is clearly contained in the directors' report by making a list of such names readily available to the reader. This may include, for example, by providing a link to the relevant website(s) which contains a full list of the names.

The above does not affect the requirement to disclose the names of the directors of the holding company and other particulars required under section 390, such information must be contained fully in the directors' report.

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**Q14. Will the new requirements regarding contents of a directors' report apply to the directors' report of an existing company for a financial year that begins before the commencement of the new CO?**

Answer: No. Similar to the financial reporting requirements mentioned in [Q2](#) above, the new requirements regarding contents of a directors' report will apply to the directors' report of an existing company for the first financial year after the commencement of the new CO and subsequent financial years (sections 358(1) and (5)).

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**Q15. Can a company send a summary financial report to the members under the new CO without first seeking the consent of the members?**

Answer: Yes. Section 441 provides companies (other than those falling within the reporting exemption) with a choice of sending a copy of the summary financial report instead of a copy of the full reporting documents (defined in section 357(2) to mean the financial statements, directors' report and auditor's report) to their members. There is no need for a company to ask its members in advance before it can send them a copy of the summary financial report. Members receiving the summary financial report may request a copy of the full reporting documents from the company (section 445).

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**Q16. Section 436 of the new CO stipulates the requirement in connection with publication of financial statements including any non-statutory accounts. What is the meaning of "non-statutory accounts" in this section?**



Answer: Section 436 applies to the circulation, publication or issuance of “specified financial statements” or “non-statutory accounts”. Under section 436(6) “non-statutory accounts” basically means any statement of financial position or statement of comprehensive income, otherwise than as part of the financial statements; or accounts in any form, otherwise than as part of the financial statements, purporting to be a statement of financial position or statement of comprehensive income for a group of companies. Section 436 is not intended to cover summary financial reports.

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**Q17. What is a “business review”? Are all companies required to prepare a business review?**

Answer: A business review is required to be contained in a directors’ report. It should include the following information of a company –

- a fair review of its business;
- a description of the principal risks and uncertainties facing the company;
- particulars of important events affecting it that have occurred since the end of the financial year;
- an indication of likely future development in its business;
- a discussion of its environmental policies and performance, and its compliance with relevant laws and regulations that have a significant impact on the company; and
- an account of its key relationships with employees, customers, suppliers and others that have a significant impact on the company and on which its success depends.

(section 388 and Schedule 5)

Not all companies are required to prepare a business review. Under section 388(3), the following companies are not required to prepare a business review -

- a company that falls within the reporting exemption;
- a wholly owned subsidiary of a body corporate; and
- a private company that does not fall within the reporting exemption, the members of which has passed a special resolution to the effect that the company is not to prepare a business review for the financial year. The special resolution must be passed at least 6 months before the end of the financial year to which the directors’ report relates (section 388(4)). The special resolution is required to be delivered to the Registrar for registration within 15 days after it is passed (section 622).

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#### **(IV) Financial Year**

**Q18. How is the first financial year of a company determined under the new CO?**

Answer: A company's first financial year after the commencement of the new CO begins on the first day of its first accounting reference period and ends on the last day of that period (section 367(1)). For an existing company, the first accounting reference period begins on the day immediately following its primary accounting reference date and ends on the first anniversary of that date (section 368(1)). Please see the answer to [Q23](#) for examples.

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**Q19. What is an "accounting reference period"?**

Answer: An accounting reference period is the period by reference to which the company's annual financial statements are to be prepared. The first and last days of the first accounting reference period determine the company's first financial year under the new CO (section 367). Every subsequent accounting reference period of a company is a period of 12 months beginning immediately after the end of the previous accounting reference period and ending on its accounting reference date, unless the accounting reference period is shortened or extended by alteration of the accounting reference date (section 368(3)). For examples of "first accounting reference period", please see the answer to [Q23](#).

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**Q20. How is the first accounting reference period of a company determined under the new CO?**

Answer: The first accounting reference period is determined as follows -

- For an existing company, it begins on the day immediately following its primary accounting reference date and ends on the first anniversary of that date (section 368(1)). Please see the answer to [Q23](#) for examples.
- For a company formed and registered under the new CO, it begins on its incorporation date and ends on its primary accounting reference date (section 368(2))
- For the meaning of "primary accounting reference date", please see the answer to [Q21](#) below.

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**Q21. What is "primary accounting reference date"?**

Answer: The "primary accounting reference date" is the end date of the accounts or financial statements by reference to which the first accounting reference period, i.e. the first financial year, of a company under the new CO is determined (section 368).


• Existing company

For an existing company, the primary accounting reference date is the date up to which the company's accounts for the financial year beginning before the commencement of the new CO ("the relevant financial year") are made, if the accounts have been laid before the company in general meeting under section 122 of the old Ordinance or provided to the members under section 111(6) of the old Ordinance on or after the commencement date of the new CO (sections 369(1)(a), (2) and (3)). Please see the answer to [Q23](#) for examples.

If the accounts for the relevant financial year have not been so laid or provided to members, the primary accounting reference date is determined as follows,

pursuant to sections 369(1)(b), (2) and (4) –

- (a) it is the end date of the accounts for the relevant financial year that have been prepared on or before the date by which the company is required by section 111(1) of the old Ordinance to hold a general meeting (sections 369(1)(b)(i) and (2));
- (b) if (a) does not apply, it is the first anniversary of the end date of the accounts for the financial year immediately preceding the relevant financial year that have been prepared on or before the date by which the company is required by section 111(1) of the old Ordinance to hold a general meeting for the financial year immediately preceding the relevant financial year (sections 369(1)(b)(ii) and (4)); and
- (c) in any other case, it is the date by which the company is required by section 111(1) of the old Ordinance to hold a general meeting (section 369(1)(b)(iii)).




 Company registered under the new CO

For a company registered under the new CO, the primary accounting reference date is a date specified by the directors that falls within 18 months after its incorporation date, or if no date is specified by the directors, the last date of the month in which the first anniversary of the company's incorporation falls (sections 369(5) to (7)).

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**Q22. What is “accounting reference date”? Can it be altered?**

Answer: The accounting reference date is the anniversary of the company's primary accounting reference date and is the end date of subsequent accounting reference periods (sections 368(3) and 370) –

-  For an existing company, the accounting reference date is the anniversary of the company's primary accounting reference date determined under bullet 1 of the answer to [Q21](#) above.
-  For a company formed and registered under the new CO, it is the anniversary of the company's primary accounting reference date determined under bullet 2 of the answer to [Q21](#) above.
-  Subject to the provisions in section 371, the accounting reference date can be altered by a resolution of directors.

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**Q23. Please provide examples on how the “primary accounting reference date” and the “first accounting reference period” of an existing company are determined under the new CO.**

Answer: The following examples are given on the basis that the new CO came into operation on 3 March 2014 and the accounts of the companies have been prepared under the old Ordinance in the circumstances described in sections 369(1) to (4).

	Company A	Company B	Company C
End date of annual financial statements	On 31 March each year	On 30 September each year	On 31 December each year
Primary	31 March 2014	30 September	31 December 2014

Accounting Reference Date		2014	
First Accounting Reference Period (First Financial Year)	1 April 2014 to 31 March 2015	1 October 2014 to 30 September 2015	1 January 2015 to 31 December 2015
Date for delivery of the <b>first</b> annual return accompanied by the first financial statements under the new CO for registration (where the company is a public or guarantee company)	For public company: Within 42 days after 30 September 2015  For guarantee company: Within 42 days after 31 December 2015	For public company: Within 42 days after 31 March 2016  For guarantee company: Within 42 days after 30 June 2016	For public company: Within 42 days after 30 June 2016  For guarantee company: Within 42 days after 30 September 2016
<b>Notes:</b>			
<b>For the accounts made up to the “primary accounting reference date”:</b>			
<ul style="list-style-type: none"> <li>The financial reporting requirements of the new CO <b>do not</b> apply. Provisions under the old Ordinance should be complied with instead.</li> <li>If the company is a public company or a guarantee company, the annual return accompanied by certified true copies of financial statements, directors' report and auditor's report should be delivered for registration within 42 days from the date of annual general meeting pursuant to sections 107 and 109 of the old Ordinance. (Schedule 11 section 121)</li> </ul>			
<b>For the financial statements covering the first “accounting reference period” i.e. first financial year:</b>			
<ul style="list-style-type: none"> <li>They are the first financial statements required to be prepared under the new CO.</li> <li>If the company is a public company or a guarantee company, the annual return accompanied by certified true copies of financial statements, directors' report and auditor's report should be delivered for registration within 42 days after the company's return date. The return date is 6 months (for a public company) or 9 months (for a guarantee company) after the end of the company's accounting reference period.</li> </ul>			
<b>For private companies:</b>			
<ul style="list-style-type: none"> <li>For local private companies, there is no change in the requirement to deliver annual returns. A private company should deliver the annual return for registration within 42 days after the anniversary of the date of the company's incorporation.</li> </ul>			

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## (V) Termination of Auditor's Appointment

**Q24. What is the outgoing auditor's duty in respect of the making of a statement of circumstances under the new CO? Are there any changes in the duty under the new CO?**

Answer: A "statement of circumstances" is defined in section 392 of the new CO to mean a statement given under section 424(a) or 425(1)(a), i.e., a statement of the circumstances connected with the resignation or termination of appointment of an

auditor who considers that such circumstances should be brought to the attention of the company's members or creditors.

The auditor who has given the company a statement of circumstances is required to deliver a copy of the statement to the Registrar for registration in the circumstances, and within the period, mentioned in sections 426(5) and 427(5).

Compared to section 140A of the old Ordinance, the auditor's duty to make a statement of circumstances is extended from cases of resignation of auditors to removal of auditors from office or retirement of auditors who are not reappointed.

For application of the new CO provisions and transitional arrangements, please refer to section 358(9) and section 81 of Schedule 11 to the new CO.

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**Q25. Are there any changes in the filing requirements in relation to the resignation / removal from office of auditor under the new CO?**

Answer: Yes. In relation to resignation of auditor, section 417(3) of the new CO requires a company to deliver a notification of the resignation in a specified form - Notification of Resignation of Auditor (Form NA2) to the Registrar for registration within 15 days beginning on the date on which the company receives the notice of resignation.

In relation to removal of auditor from office, if an ordinary resolution for the removal is passed, under section 419(4) of the new CO the company must deliver a notice in the specified form – Notice of Removal of Auditor (Form NA1) to the Registrar for registration within 15 days beginning on the date on which the resolution is passed. Compared to section 131(6) of the old Ordinance (which does not apply to private companies), the filing requirement under the new CO applies to all types of companies, and the period is changed from 14 days to 15 days.

For application of the new CO provisions and transitional arrangements please refer to section 358(9) and section 81 of Schedule 11 to the new CO.

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**Q26. If the outgoing auditor considers that there are no circumstances connected with his or her resignation or termination of appointment that should be brought to the attention of the company's members or creditors, is there a need to deliver the statement given by the auditor to the company under section 424(b) or 425(1)(b) (i.e. a "statement of no circumstances") together with the relevant specified form to the Registrar of Companies for registration?**

Answer: If the outgoing auditor gives a statement to the company under section 424(b) or section 425(1)(b) that there are no circumstances connected with his or her resignation or termination of appointment as an auditor that should be brought to the attention of the company's members or creditors, there is no requirement to deliver such statement to the Registrar of Companies for registration.

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**Note**

Please also see FAQs on [Offences relating to contents of auditor's reports](#) and [Enhancement of Auditor's rights](#).

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