

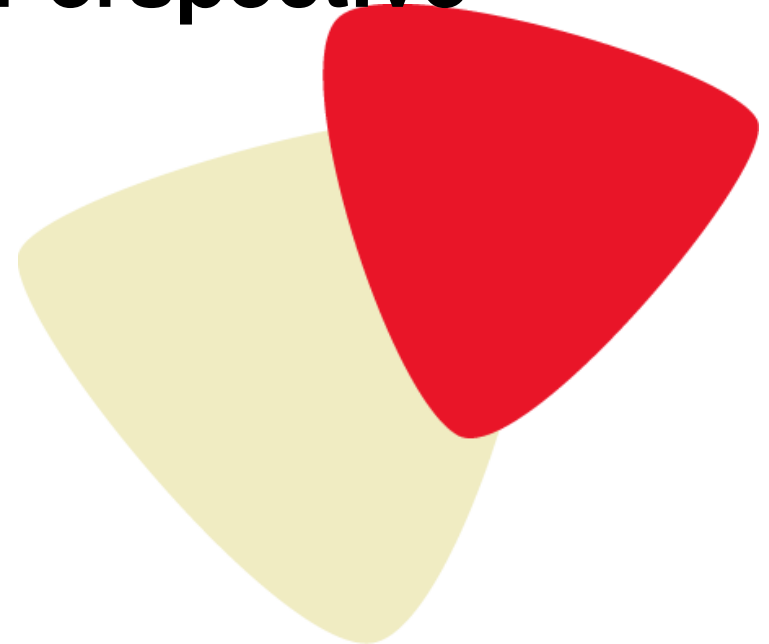
# **Companies Ordinance (Cap. 622)**

## **- Sharing of Experience from Company Secretarial Perspective**

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*Executive Director  
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*17 Mar 2017*



- **Types of companies**
- **Basic compliance obligations of a company under the Companies Ordinance**
- **Key provisions that directors need to know**
- **Holding of Annual General Meeting**
- **Some general requirements for financial statements**
- **Company registers and records**

Topics	Relevant Parts / Subsidiary Legislation under the Companies Ordinance
<b>Types of companies</b>	Part 3: Company Formation and Related Matters, and Re-registration of Company
<b>Basic compliance obligations of a company under the Companies Ordinance</b>	Part 1: Preliminary Part 3: Company Formation and Related Matters, and Re-registration of Company Part 9: Accounts and Audit Part 10: Directors and Company Secretaries Part 12: Company Administration and Procedure Part 18: Communications to and by Companies Cap.622A: Companies (Words and Expressions in Company Names) Order Cap.622B: Companies (Disclosure of Company Name and Liability Status) Regulation Cap.622H: Companies (Model Articles) Notice
<b>Key provisions that directors need to know</b>	Part 10: Directors and Company Secretaries Part 11: Fair Dealing by Directors
<b>Holding of Annual General Meeting</b>	Part 12: Company Administration and Procedure Part 18: Communications to and by Companies Cap.622K: Companies (Fee) Regulation
<b>Some general requirements for financial statements</b>	Part 9: Accounts and Audit Cap.622C: Companies (Accounting Standards (Prescribed Body)) Regulation Cap.622D: Companies (Directors' Report) Regulation
<b>Company registers and records</b>	Various Parts

- **Types of companies**
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## Types of companies that can be formed under the Companies Ordinance (s.66)

Predecessor Ordinance	Companies Ordinance (Cap. 622)
1. Private company limited by shares	1. <b>Private company limited by shares</b>
2. Non-private company limited by shares	2. <b>Public company limited by shares</b>
3. Private company limited by guarantee without a share capital	3. <b>Company limited by guarantee without a share capital</b>
4. Non-private company limited by guarantee without a share capital	
5. Private unlimited company with a share capital	4. Private unlimited company with a share capital
6. Non-private unlimited company with a share capital	5. Public unlimited company with a share capital
7. Private unlimited company without a share capital	<i>Obsolete and abolished</i>
8. Non-private unlimited company without a share capital	

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# Basic Compliance Obligations of a Company under the Companies Ordinance



		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
1.	Director	<ul style="list-style-type: none"> <li>• <b>At least 2</b> directors</li> <li>• <b>All</b> directors must be <b>individual</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Sole director</b> permitted</li> <li>• <b>At least one</b> must be <b>individual</b> (Note: Private company which is a member of a listed group must NOT appoint corporate director)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>At least 2</b> directors</li> <li>• <b>All</b> directors must be <b>individual</b></li> </ul>
2.	Member	• <i>Either</i> individual or corporation	• Same	• Same
3.	Members' Liability	• Limited to the <b>amount that the member undertakes to contribute</b> to the assets of the company <b>in the event of winding up</b>	• Limited to the <b>amount unpaid on the shares held</b> by the member	• Limited to the <b>amount unpaid on the shares held</b> by the member
4.	Company secretary	• <i>Either</i> individual or corporation	• Same	• Same
5.	Registered Office	• A <b>place in Hong Kong</b> to which all communications or notices may be addressed	• Same	• Same

# Basic Compliance Obligations of a Company under the Companies Ordinance



		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
6.	Company Name	<ul style="list-style-type: none"> <li>May be a <b>English</b> name or a <b>Chinese</b> name or <b>bilingual names</b></li> <li><b>Certain words / names are prohibited</b> (e.g. same as that of an existing company, that may give an expression of connecting with the Government, prohibited words specified by the Financial Secretary in the Gazette etc.)</li> <li><b>Company name must have “Limited” or “有限公司” as the last word / characters of the name</b></li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>
7.	Dispensation with the word “Limited” or “有限公司” in the company name	<ul style="list-style-type: none"> <li>May <b>apply to the Registrar for the licence to dispense with the word “Limited” or “有限公司”</b> if Registrar is satisfied:                             <ul style="list-style-type: none"> <li>Objects restricted to promoting commerce, art, science, religion, charity etc.</li> <li>Profits applied in promoting objects only</li> <li>No dividend payment to members</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>N/A</li> </ul>



# Basic Compliance Obligations of a Company under the Companies Ordinance



		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
8.	Display of Company Name and Liability	<ul style="list-style-type: none"> <li>Must <b>display the company name</b> and <b>status of limited liability</b>:                             <ul style="list-style-type: none"> <li>At the registered office</li> <li>At every business venue</li> <li>In communication documents (<i>e.g. business letter, notice or other official publication</i>)</li> <li>In transaction instrument (<i>e.g. contract or deed, bill of exchange, promissory note, cheque or order for money or goods, consignment note, invoice, receipt or letter of credit etc.</i>)</li> <li>On the company's website</li> </ul> </li> </ul>	• Same	• Same
		• If the company is <b>registered with bilingual names</b> , it is sufficient to state <i>either</i> English or Chinese name	• Same	• Same
		• If the company is <b>registered with a name in either English or Chinese only and has also stated the name in other language</b> ( <i>e.g. for translation purpose</i> ), the word “Limited” or “有限公司” must be appended to that name in such other language	• Same	• Same
		<ul style="list-style-type: none"> <li>If the company is <b>licensed to dispense with the word “Limited” or “有限公司”</b>:                             <ul style="list-style-type: none"> <li>Must state the fact that it is incorporated with limited liability</li> </ul> </li> </ul>	• N/A	• N/A

# Basic Compliance Obligations of a Company under the Companies Ordinance



		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
9.	Articles of Association (“Articles”)	<ul style="list-style-type: none"> <li>Every company shall have <b>one single constitutional document</b>, i.e. Articles</li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>
		<ul style="list-style-type: none"> <li>Articles must be:                             <ul style="list-style-type: none"> <li>Printed in English or Chinese</li> <li><b>Divided into paragraphs</b> which must be <b>numbered consecutively</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>
		<ul style="list-style-type: none"> <li>Articles basically contain 2 main parts:                             <ul style="list-style-type: none"> <li><b>Mandatory provisions</b></li> <li><b>Other provisions</b> (company may adopt the <b>Model Articles</b> prescribed in the Companies Ordinance)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Same (Note: Private company’s articles shall:                             <ul style="list-style-type: none"> <li><i>Restrict member’s right to transfer shares</i></li> <li><i>Limit members’ number to 50</i></li> <li><i>Prohibit invitation to public to subscribe shares or debentures of the company)</i></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>

# Basic Compliance Obligations of a Company under the Companies Ordinance



		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
10.	Content of Mandatory Provisions	• <b>Company name</b>	• Same	• Same
		• <b>Objects</b> <i>(Notes:</i> – <i>If the company is licensed to dispense with the word “Limited” or “有限公司”, it will be required to state the objects</i> – <i>Articles of guarantee companies normally contain the objects which set out the mission and purposes of the company)</i>	• N/A <i>(Note: Companies limited by shares are NOT required to state the objects)</i>	• N/A <i>(Note: Companies limited by shares are NOT required to state the objects)</i>
		• <b>Members’ liability is limited</b>	• Same	• Same
		• <b>Statement of liability or contributions</b> of members	• Same	• Same
		• N/A	• <b>Capital and initial shareholdings</b>	• <b>Capital and initial shareholdings</b>

# Basic Compliance Obligations of a Company under the Companies Ordinance



		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
11.	Holding of Annual General Meeting ("AGM")	<ul style="list-style-type: none"> <li>Unless it is NOT required to hold the AGM in accordance with the Companies Ordinance, AGM must be held within <b>9 months after end of financial year</b></li> </ul>	<ul style="list-style-type: none"> <li>Unless it is NOT required to hold the AGM in accordance with the Companies Ordinance, AGM must be held within <b>9 months after end of financial year</b></li> </ul> <p><i>(Note: Private company which is a <b>member of a public company</b>, AGM must be held within <b>6 months after end of financial year</b>)</i></p>	<ul style="list-style-type: none"> <li>Unless it is NOT required to hold the AGM in accordance with the Companies Ordinance, AGM must be held within <b>6 months after end of financial year</b></li> </ul>
12.	Financial Statements	<ul style="list-style-type: none"> <li><b>Directors must prepare financial statements for each financial year</b></li> <li><b>Directors must lay the financial statements before AGM / send the same to each member</b></li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>

# Basic Compliance Obligations of a Company under the Companies Ordinance



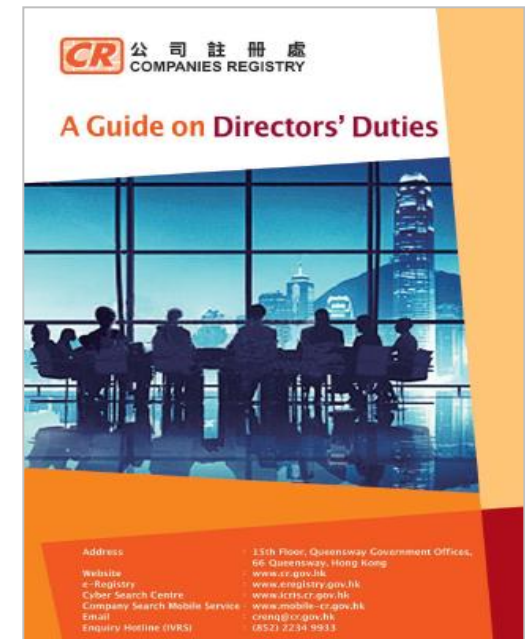
		Company Limited by Guarantee	Company Limited by Shares	
			Private Company	Public Company
13.	Filing of Annual Return ("AR")	<ul style="list-style-type: none"> <li>AR date = <b>9 months after end of financial year</b></li> <li>AR must be filed <b>within 42 days after AR date</b></li> <li>AR must be filed <b>together with the certified copies of the financial statements, directors' report and auditor's report</b></li> </ul>	<ul style="list-style-type: none"> <li>AR date = <b>Anniversary of date of incorporation</b></li> <li>AR must be filed <b>within 42 days after AR date</b></li> <li>It is NOT necessary to file the Company's financial statements</li> </ul>	<ul style="list-style-type: none"> <li>AR date = <b>6 months after end of financial year</b></li> <li>AR must be filed <b>within 42 days after AR date</b></li> <li>AR must be filed <b>together with the certified copies of the financial statements, directors' report and auditor's report</b></li> </ul>
14.	Responsible Person	<ul style="list-style-type: none"> <li>Such person who:                             <ul style="list-style-type: none"> <li>Is an officer or shadow director of the company</li> <li>Authorizes or permits, participates in, the contravention or failure of compliance with the provisions of the Companies Ordinance</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>	<ul style="list-style-type: none"> <li>Same</li> </ul>

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# The General Principles of Directors' Duties

1. To **act in good faith** **for the benefit of the company as a whole**
2. To use powers for a proper purpose **for the benefit of members as a whole**
3. Not to delegate powers except with proper authorization and duty to exercise independent judgement
4. To **exercise care, skill and diligence**
5. To **avoid conflicts** between personal interests and interests of the company
6. Not to enter into transactions the directors have an interest except in compliance with the laws
7. Not to gain advantage from use of position as a director
8. Not to make unauthorized use of company's property or information
9. Not to accept personal benefit from third parties conferred because of position as a director
10. To **observe the company's constitution and resolutions**
11. To **keep accounting records**

*"A Guide on Directors' Duties" is available Companies Registry's website:  
[http://www.cr.gov.hk/en/companies\\_ordinance/docs/Guide\\_DirDuties-e.pdf](http://www.cr.gov.hk/en/companies_ordinance/docs/Guide_DirDuties-e.pdf)*



# Directors' Duty of Care, Skill and Diligence



## Predecessor Ordinance

- No provision

## Companies Ordinance (Cap. 622)

- A director must exercise reasonable care, skill and diligence that would be exercised by a reasonably diligent person with (s.465):
  - the general knowledge, skill and experience that may **reasonably be expected of a person carrying out the functions** carried out by the director in relation to the company (*objective test*)
  - the general knowledge, skill and experience that **the director has** (*subjective test*)

**\*\*\* Advisory Note in the specified forms re Consent to Act as Director**

All directors of the Company are advised to read **"A Guide on Directors' Duties"** published by the Companies Registry and acquaint themselves with the general duties of directors outlined in the Guide.



## **Circumstances that a Director shall cease office:**

- **Below the age of 18** (minimum age requirement, s.459)
- **Bankrupt / Undischarged bankrupt** (s.480)
- **Prohibited by laws or court order** (e.g. winding up order made against him)
- **Provisions set out in the company's articles regarding termination / disqualification of directors**
  - **Makes any arrangement or composition with creditors**
  - **Mentally incapacitated**
  - **Removed by an ordinary resolution of members**
  - **Resigns from office**
  - **Other specific provisions e.g.**
    - **Absence from office for a specific period of time**
    - **Failure of performing duties etc. ....**

# Fair Dealing by Directors

## (Part 11 of Companies Ordinance)

- **Prohibition** from entering into transactions without members' approval  
(unless exempted)

Loans and other similar transactions in favour of directors or their connected entities

(Note 1)

Payments (including transfer of property) for loss of office to:

- Directors or connected entities
- Person(s) at the direction of the above person(s)

(Note 2)

Employment / service contract with guaranteed term exceeding 3 years

(Note 2)

- a) Spouse and person in cohabitation relationship
- b) Child (minor, adult, step-child, adopted child)
- c) Minor child (step-child, adopted child) of b) above who lives with director
- d) Parent
- e) Associated body corporate
- f) Trustee of specified trust (beneficiaries: director, and spouse / minor child of director)
- g) Partner (with director, spouse, minor child and trustee)

- Note: 1. **Disinterested members' approval** required for a public company, and a private or guarantee company that is a subsidiary of a public company
2. **Disinterested members' approval** required for a public company

- Declaration of material interests in a transaction, arrangement or contract
  - Need to disclose “**Nature**” and “**Extent**” of the interests
  - Manner on how disclosure should be made
    - At a directors’ meeting
    - By notice in writing to the other directors
    - By general notice made by the director
  - For a public company, the ambit of disclosure is widened to include connected entities of the directors

*Example of declaration of interests to be recorded in board minutes:*

“It was noted that Mr. A, a director of the Company, had declared that he is interested in the proposed transaction to be entered into by the Company with XYZ Limited **by virtue of his directorship in and interests representing 50% of the issued share capital of XYZ Limited**”

- A provision for indemnity against liability incurred by a director to a third party, provided such indemnity does **NOT** cover the following (s.469):



- Criminal fines
- Penalty for non-compliance with regulatory requirements



- Defence costs of criminal proceedings where the director is found guilty



- Defence costs of civil proceedings brought against the director by the company or an associated company in which judgement is given against the director



- Costs of unsuccessful applications to the court by the director for relief

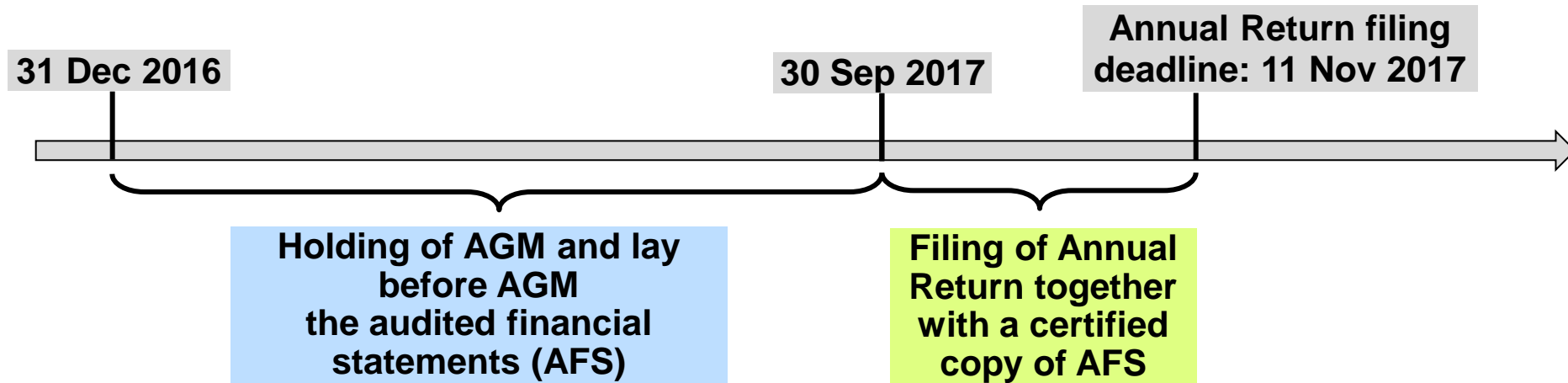
- Where a PIP is in force / was in force during a financial year  
➔ Directors' Report for that financial year must state that the PIP is / was in force
- Copy of PIP (or a written memorandum if PIP is not in writing) must be
  - Kept at the registered office (RO) / a prescribed place in Hong Kong (If not kept at RO ➔ Filing of specified form within 15 days )
  - Kept for at least one year after expiry of the provision
  - Made available for inspection

- **A company may take out insurance for directors against any liability (s.468(4))**
  - **Any liability to any person attaching to the director in connection with negligence, default, breach of duty or breach of trust (except fraud)**
  - **Any liability incurred by director in defending any proceedings (civil or criminal) taken against the director for negligence, default, breach of duty or breach of trust (including fraud)**

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# Case: Holding of AGM and Filing of AR of a Company Limited by Guarantee

*Example: A guarantee company with financial year end on 31 December*



1.	<ul style="list-style-type: none"><li>• <b>Holding of annual general meeting (“AGM”)</b> (s.610) <i>(unless it is not required to hold the AGM in accordance with the Companies Ordinance)</i></li></ul>	<ul style="list-style-type: none"><li>• <b>Within 9 months after end of financial year</b></li></ul>	<b>Note:</b> <i>21 days’ notice required for AGM</i>
2.	<ul style="list-style-type: none"><li>• <b>Filing of an Annual Return (“AR”)</b> (s.662)</li><li>• <b>AR Date = 9 months after end of financial year</b> <i>(to be filed together with certified true copies of the financial statements, directors’ report and auditor’s report)</i></li></ul>	<ul style="list-style-type: none"><li>• <b>Within 42 days after AR Date</b></li></ul>	<b>Note:</b> <i>Escalating fee scale applies</i>

# Case: Holding of AGM and Filing of AR of a Company Limited by Guarantee

*Example: A guarantee company with financial year end on 31 December*

Annual registration fee for an Annual Return of a company limited by guarantee and a private limited company#	Fee (HK\$)
If the annual return is delivered <b>within 42 days after the company's return date</b>	\$105
If the annual return is delivered more than 42 days after but <b>within 3 months</b> after the company's return date	\$870
If the annual return is delivered more than 3 months after but <b>within 6 months</b> after the company's return date	\$1,740
If the annual return is delivered more than 6 months after but <b>within 9 months</b> after the company's return date	\$2,610
If the annual return is delivered <b>more than 9 months</b> after the company's return date	\$3,480

# AR Date of a private limited company = anniversary of incorporation date

on filing  
Nov 2017



days' notice  
required for  
AGM

- Filing of an Annual Return ("AR") (s.662)
  - AR Date = 9 months after end of financial year  
*(to be filed together with certified true copies of the financial statements, directors' report and auditor's report)*

- Within 42 days after AR Date

**Note:**  
*Escalating fee scale applies*



# When AGM is NOT Required to be Held

A company is not required to hold an AGM in the following circumstances:

If everything that is required to be done at AGM is **done by a members' written resolution** and copies of the documents required to be laid or produced at AGM are provided to each member on or before the circulation date of the written resolution (s.612(1))

If the company is a **single member company** (s.612(2)(a))

If the company **dispenses with the holding of AGMs** by a written resolution or a resolution at a general meeting passed by all members (s.612(2)(b) and s.613)

If the company is a **dormant company** (s.611)

- The **auditor is deemed reappointed** for the next financial year (s.403)
- The company **must send a copy of the financial statements and reports** to every member (s.429 and s.430)
- Where required, the company may deal with the distribution of **final dividend** and/or **re-election of directors** by a general meeting or members' written resolution in accordance with the company's Articles

# Certain New Provisions relating to General Meeting, Proxy and Voting

- **Removal of terms**
  - Extraordinary general meeting (EGM)
  - Special business

- **Notice period (s.571)**
  - AGM: 21 days
  - Others: 14 days (limited co)  
7 days (unlimited co)

- Notice period requirement no longer applies to types of resolution (ordinary or special)
- To follow longer notice period provisions in Articles

# Certain New Provisions relating to General Meeting, Proxy and Voting

- **Removal of terms**

- Extraordinary general meeting (EGM)
- Special business

- **Notice period (s.571)**

- AGM: 21 days
- Others: 14 days (limited co)  
7 days (unlimited co)

- **Manner in which notice to be given (s.572)**

- In hard copy or electronic form; or
- By making available on website

- **Meeting venue (s.584)**

- 2 or more places using technology that enables members to listen, speak and vote at the meeting
- Such provision has effect subject to any provisions in company's articles

- **Communication in electronic form (other than website)**

- Only with recipient's agreement (revocable by 7 days' notice)
- Electronic address specified by recipient

- **Communication by means of website**

- Permitted by articles or Members' resolution or Agreement with individual member (deemed agreement if no response within 28 days after company's request, and revocable by 7 days' notice)
- Company must notify the recipient of: the posting of document, date available, website address, place on website and how to access
- If a meeting is concerned, such notification must state: Place, date and time of meeting, and that it is an AGM (if this is the case)

# Certain New Provisions relating to General Meeting, Proxy and Voting



- **Removal of terms**
  - Extraordinary general meeting (EGM)
  - Special business
- **Right to appoint proxy (s.588 and s.596)**
  - Guarantee co: Articles may restrict only to appoint another member as proxy
  - Co with share capital: multiple proxies
- **Notice period (s.571)**
  - AGM: 21 days
  - Others: 14 days (limited co)  
7 days (unlimited co)
- **Manner in which proxy may be returned (s.599)**
  - In hard copy or electronic form (at company's specified address)
- **Manner in which notice to be given (s.572)**
  - In hard copy or electronic form; or
  - By making available on website
- **Record of poll results in minutes (if voting has been conducted by poll vote) (s.594)**
  - The results of the poll
  - The total number of votes that could be cast on the resolution
  - The number of votes in favour of the resolution
  - The number of votes against the resolution
- **Meeting venue (s.584)**
  - 2 or more places using technology that enables members to listen, speak and vote at the meeting
  - Such provision has effect subject to any provisions in company's articles

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# Some General Requirements for Financial Statements *(Part 9 of Companies Ordinance)*

- Directors must prepare financial statements for each financial year
- Directors must lay the financial statements before AGM or where no AGM, send the same to each member
- The financial statements must disclose the information required by Companies Ordinance (e.g. Business Review) and applicable accounting standards
- The financial statements must be audited
- Simplified accounts may be prepared if the company meets the qualifying criteria for **reporting exemption**
- Where conditions are met, **Business Review can be opted out**
- If the company is a holding company, consolidated accounts must be prepared (**preparation of consolidated accounts may be exempted**)
- The company must file a specified form regarding any change of financial year end date (except for private company)
- Requirements in respect of **“Non-statutory Accounts”**

“Reporting Exemption” means the exemptions of certain specific requirements in relation to the preparation of financial statements [available to private or guarantee companies](#) e.g.:

- **Financial statements may be prepared under the “Small and Medium-Sized Entity Financial Reporting Standard and Financial Reporting Framework” of HKICPA**
- **Exempted from disclosure e.g.**
  - **Business Review**
  - **Arrangements to enable directors to acquire benefits by the acquisition of shares or debentures**
  - **Donations**
  - **Reasons of directors’ resignation or refusal to stand for re-election**
  - **Material interests of directors in transactions, arrangements or contracts**
  - **Auditors’ remuneration**
  - **Subsidiary undertakings from consolidated financial statements**

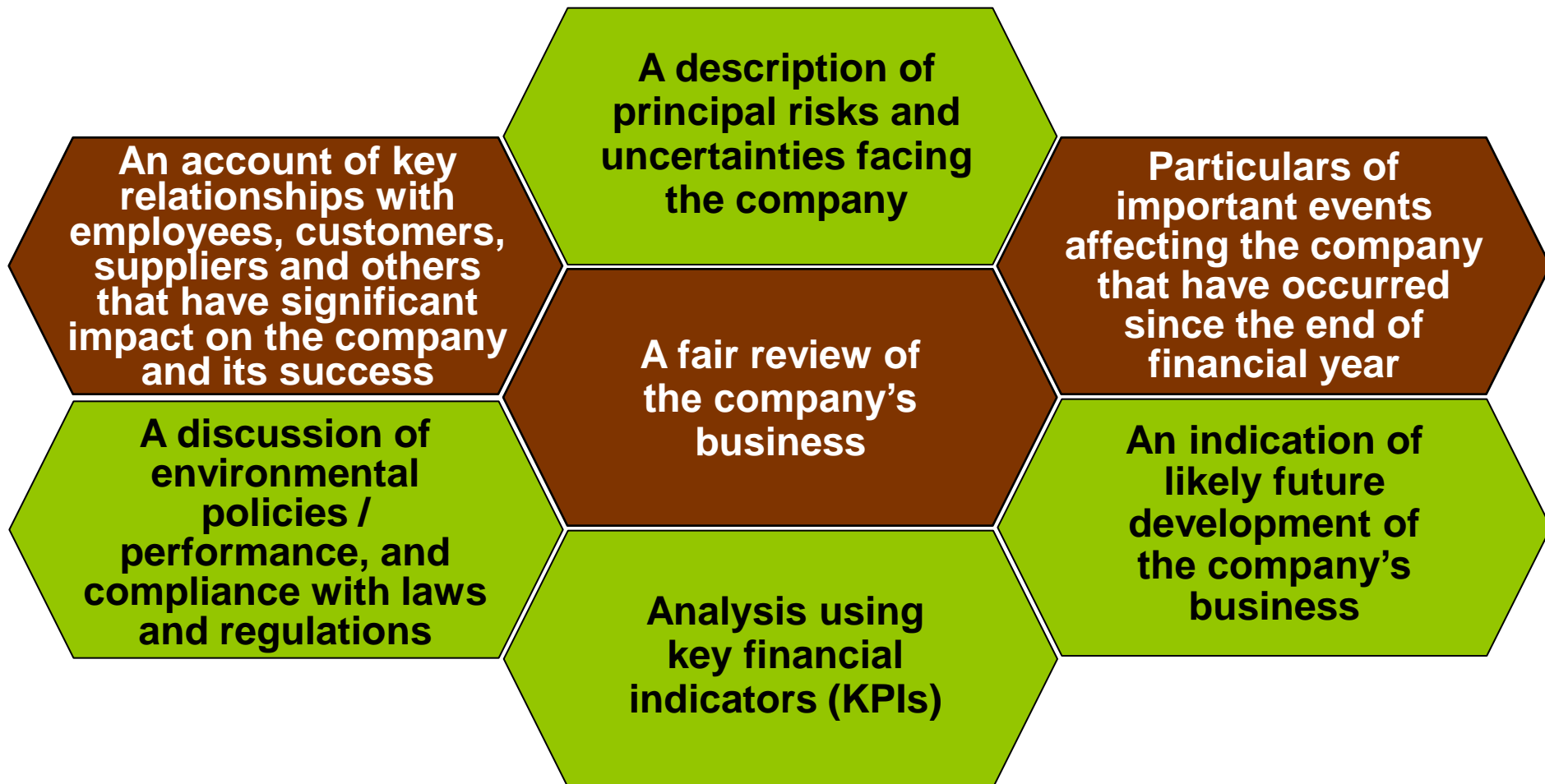
# Qualifying Criteria for Reporting Exemption (s.359 – s.366)



<b>Private companies</b> (which has no subsidiary and is not a subsidiary of another body corporate)	<ul style="list-style-type: none"> <li>• Unanimous (i.e. 100%) written agreement of members</li> </ul>
<b>Small private companies</b> (or a group of small private companies)	<ul style="list-style-type: none"> <li>• At least 2 out of 3 of the size tests are met:             <ul style="list-style-type: none"> <li>– Total revenue / aggregate total revenue not exceeding HK\$100 million</li> <li>– Total assets / aggregate total assets not exceeding HK\$100 million</li> <li>– Employees / aggregate number of employees not exceeding 100</li> </ul> </li> </ul>
<b>Small guarantee companies</b> (or a group of small guarantee companies)	<ul style="list-style-type: none"> <li>• Total revenue / aggregate total revenue not exceeding HK\$25 million</li> </ul>
<b>Larger “eligible” private companies</b> (or a group of larger “eligible” private companies)	<ul style="list-style-type: none"> <li>• All of the following conditions are met:             <ul style="list-style-type: none"> <li>– All companies in the group are either small private companies or larger “eligible” private companies</li> <li>– At least 2 out of 3 of the following size tests are met:                 <ul style="list-style-type: none"> <li>▪ Total revenue / aggregate total revenue not exceeding HK\$200 million</li> <li>▪ Total assets / aggregate total assets not exceeding HK\$100 million</li> <li>▪ Employees / aggregate number of employees not exceeding 100</li> </ul> </li> <li>– At least 75% approval from members and no member votes against the resolution</li> </ul> </li> </ul>



- Directors' report for a financial year must contain a Business Review that contain the information set out in Schedule 5 **UNLESS EXEMPTIONS APPLY**



- Directors' report for a financial year must contain a Business Review that contain the information set out in Schedule 5 **UNLESS EXEMPTIONS APPLY**

The company falls within the reporting exemption for the financial year

or

The company is a wholly owned subsidiary of another body corporate in the financial year

or

The members of a private company pass a special resolution to the effect that the company is not to prepare the business review for the financial year

- Directors' report for a financial year must contain a Business Review that contain the information set out in Schedule 5 **UNLESS EXEMPTIONS APPLY**

The company falls within the reporting exemption for the financial year

or

The company is a wholly owned subsidiary of another body corporate in the financial year

or

The members of a private company pass a special resolution to the effect that the company is not to prepare the business review for the financial year

## Such **Special Resolution**

- Must be passed **at least 6 months before the end of the financial year** to which the directors' report relates
- May relate to a specific financial year / to every subsequent financial year
- Must be filed with CR within 15 days after the resolution is passed
- May only be revoked by another special resolution

- Directors' report for a financial year must contain a Business Review that contain the information set out in Schedule 5 **UNLESS EXEMPTIONS APPLY**

The company  
falls within the

The company is  
a wholly owned

The members of a  
private company  
pass a special

- If the company is a holding company in a financial year and the directors prepare annual consolidated financial statements for the financial year, the directors' report should be a **consolidated report** (s.379)
- Such Business Review in the consolidated directors' report should consider **the company and all the subsidiaries as a whole**, in order to satisfy the requirement of Schedule 5

# Exemptions from Preparing Consolidated Financial Statements (s.379)

**Section 379(3):  
2 ways in which  
a holding company  
can be exempted  
from preparing  
consolidated  
financial  
statements**

1. If the holding company is a **wholly owned** subsidiary of another body corporate

*or*

2a. If the holding company is a **partially owned** subsidiary of another body corporate

+

2b. At least **6 months before the end of the financial year**, the directors notify the members in writing of their intention **not** to prepare consolidated statements for that financial year

+

2c. As at a date falling **3 months before the end of the financial year**, **no member** has responded and given a written request for the preparation of consolidated statements for the financial year

Financial statements/accounts that may be prepared, circulated, published, issued or otherwise made available for public inspection by a company

## Specified Financial statements

- Any financial statements prepared by the directors as required by the Companies Ordinance
  - To be laid at AGM
  - To be sent to members

- Must be accompanied by the auditors' report

## Non-statutory Accounts

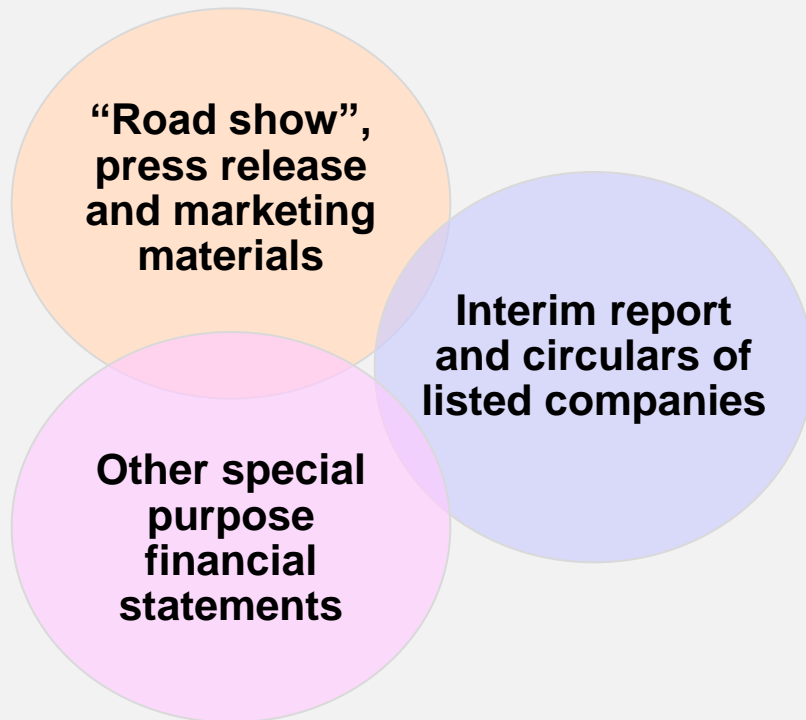
- Any statements of financial position or comprehensive income, or accounts in any form, **otherwise than** as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company

- Must **NOT** be accompanied by the auditors' report
- Must be accompanied by a **STATEMENT**

# Non-Statutory Accounts (s.436)

Financial statements/accounts that may be prepared, circulated, published, issued or otherwise made available for public inspection by a company

## Examples of “Non-statutory Accounts”:



## Non-statutory Accounts

- Any statements of financial position or comprehensive income, or accounts in any form, **otherwise than** as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company

- Must **NOT** be accompanied by the auditors’ report
- Must be accompanied by a **STATEMENT**

Financial statements/accounts that may be prepared, circulated, published, issued or otherwise made available for public inspection by a company

- If the “Non-statutory Accounts” are included in the Specified Financial Statements
  - It must clearly state that the auditors’ report only relates to the Specified Financial Statements

(FAQ of the Companies Registry)

## Non-statutory Accounts

- Any statements of financial position or comprehensive income, or accounts in any form, **otherwise than** as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company

- Must **NOT** be accompanied by the auditors’ report
- Must be accompanied by a **STATEMENT**



Financial statements/accounts that may be prepared, circulated, published, issued or otherwise made available for public inspection by a company

- Under s.436(3), such **STATEMENT** must indicate:
  - Those accounts are NOT Specified Financial Statements (SFS)
  - Whether the SFS with which those accounts purport to deal have been delivered to the Registrar
  - Whether auditors' report has been prepared on the SFS
  - Whether the auditors' report
    - was qualified or otherwise; or
    - referred to any matter the auditor drew the attention by way of emphasis without qualifying the report; or
    - contained auditors' opinion:
      - Inconsistency in information
      - Inadequate accounting records
      - Failure to obtain information

## Non-statutory Accounts

- Any statements of financial position or comprehensive income, or accounts in any form, **otherwise than** as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company

- Must **NOT** be accompanied by the auditors' report
- Must be accompanied by a **STATEMENT**

- Types of companies
- Basic compliance obligations of a company under the Companies Ordinance
- Key provisions that directors need to know
- Holding of Annual General Meeting
- Some general requirements for financial statements
- **Company registers and records**

# Keeping of Registers and Records



		Period for Keeping the Records
1.	Entries in the Register of Members relating to a person who has ceased to be a member	10 years (s.627(5))
2.	Records of resolutions and meetings of members	10 years (s.618(2))
3.	Written records of decision of sole member	10 years (s.618(1)(c) & (2))
4.	Minutes of directors' meetings	10 years (s.481(2))
5.	Written record of decision of sole director	10 years (s.483(3))
6.	Accounting records	7 years after F/Y end (s.377)
7.	Register for the particulars that have not been contained in the notes to the financial statements	10 years (s.384(2))
8.	Copy of provision or memorandum setting out the terms of the permitted indemnity provisions for a director	1 year after termination of provisions (s.471(3))
9.	Copy of management contract under which a person undertakes the management of the whole or a substantial part of any business of the company (excluding service contract with director / full-time employee)	1 year after termination (s.543(4)(a))
10.	Books and papers of dissolved company to be kept by former directors	6 years (s.758)
11.	Copy of contract or memorandum of its terms for share buy-back, its variation, release or variation to release.	10 years after completion of contract (s.237(3))

# Location of Registers and Records

1. Register of Members (s.627)
2. Register of Directors (s.641)
3. Register of Company Secretaries (s.648)
4. Register of Debenture Holders (s.308)
5. Register of Charges (s.352)
6. \* Register of Particulars not required to be contained in notes to financial statements (s.384)
7. Copies of Resolutions of Members, Minutes of Proceedings of General Meetings and Written Records of Decisions of Sole Member (s.618)
8. Copies of Instruments Creating Charges (s.351)
9. \* Copy of Permitted Indemnity Provision or a Written Memorandum Setting Out the Terms of the Provision (s.471)
10. \* Copy of Management Contract or a Written Memorandum Setting out the Terms of the Contract (s.543)

▪ “Register of People with Significant Control” (i.e. Register of Ultimate Beneficial Owners)

*(Note: Public consultation is underway)*

## *\*New requirements*

**\*\*\* Unless the above registers and company records have at all times been kept at the registered office of a company, the company must notify CR in Form NR2 of the locations within 15 days after they are first kept at those places and of any changes in those locations**

# Thank You

*Susan Lo*

*Executive Director  
Tricor Services Limited*

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