

## **Draft Companies Bill – Public Consultation**

### ***Part 9***

### ***Accounts and Audit***

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Registrar of Companies  
Companies Registry  
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## **Application of Part 9**

The financial reporting provisions of Part 9 will apply in relation to a financial year, whether of an existing company or a company incorporated under the new Ordinance, that begins on or after the commencement of Part 9.

The reporting of a financial year that begins before the commencement of Part 9 will continue to be governed by the existing Companies Ordinance.

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## Reporting Exemption

The existing exemption for certain private companies with unanimous members' consent to prepare simplified accounts (including simplified directors' report) which show a true and correct view under section 141D will be changed substantially.



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## Companies eligible for the reporting exemption

Under the new provisions that replace section 141D, the companies that will be allowed to prepare simplified financial statements and directors' reports are

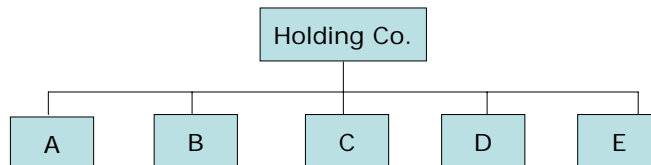
- ◆ a small private company;
- ◆ a non-small private company with 75% members' approval and with no objection from the remaining members.

Clauses 9.2 to 9.9

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## Companies eligible for the reporting exemption

### Private Companies



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## Companies eligible for the reporting exemption

### Small private company

A private company will qualify as a “**small**” company if it satisfies at least two of the following conditions

- ◆ total annual revenue of not more than HK\$50 million;
- ◆ total assets of not more than HK\$50 million at the date of the statement of financial position; or
- ◆ no more than 50 employees.

Clauses 9.2(1)(a), 9.4, 9.8(1)

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## Companies eligible for the reporting exemption

### Group of small private companies

A group of companies will qualify as a “**small group**” if each company in the group is a small private company and the group satisfies any two of the following conditions.

- ◆ Aggregate total annual revenue of not more than HK\$50 million net;
- ◆ Aggregate total assets of not more than HK\$50 million net;
- ◆ No more than 50 employees.

Clauses 9.2(2), 9.6, 9.8(6)

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## Companies eligible for the reporting exemption

### Group of non-small private companies

If either :-

- ◆ there is one or more “non-small” companies in the group; or
- ◆ two out of three of the size criteria cannot be met.

Each non-small company in the group (in the former case) or the holding company of the group (in the latter case) can still elect for the reporting exemption with the requisite members’ approval.

Clauses 9.2(3), 9.3(2) & (3)

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## Companies eligible for the reporting exemption

### Small guarantee companies

A guarantee company will qualify as a “**small**” company if the total annual revenue of the company does not exceed HK\$25 million.

### Small group of guarantee companies

A group of guarantee companies will qualify as a “**small group**” if each company in the group is a small guarantee company and the aggregate total annual revenue of the group does not exceed HK\$25 million.

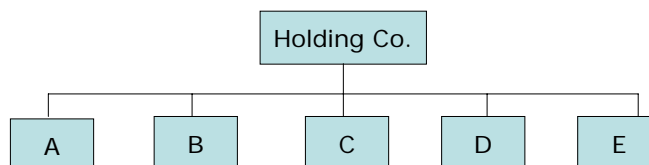
Clauses 9.2(2), 9.5, 9.8(3)

Clauses 9.2(4), 9.7, 9.8(8)

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## Companies eligible for the reporting exemption

### Guarantee Companies



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## Directors' report

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Compared to section 129D of the Companies Ordinance, a new matter required to be covered in a directors' report is the company's **business review** which should include the following information in relation to the company

- ◆ a fair review of its business;
- ◆ a description of its principal risks and uncertainties;
- ◆ particulars of any important events affecting it which have occurred since the end of the financial year;
- ◆ an indication of likely future development in its business; and

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## Directors' report

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- ◆ if having a significant impact on its business,
  - a discussion on its environmental policies and performance, including compliance with the relevant laws and regulations; and
  - an account of its key relationships with employees, customers, suppliers and others, on which its success depends.

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## **Dispensation with Annual General Meetings**

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- ◆ A company, whether private or public, may dispense with AGMs by a resolution passed by all members;
- ◆ Exception :- any member may require an AGM to be held for a particular financial year;
- ◆ The resolution to dispense with AGMs may be revoked by the company by an ordinary resolution.

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## **Accounting reference period**

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The requirements to

- ◆ send the financial statements and reports (if the AGM is dispensed with, see Clause 9.74(3)); or
- ◆ hold an AGM (Clause 12.73); and
- ◆ lay financial statements and reports at the AGM (Clauses 9.73(1) and 9.75)

are to take place within 6 months (for public companies) or 9 months (for private or guarantee companies) after the end of the accounting reference period.

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## Auditor's right to information

Compared to sections 133(1)(a) and 141(5) of the Companies Ordinance, there will be a wider range of persons from whom auditors can require information, explanations or other assistance under Clause 9.56.



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## Auditor's right to information

Clause 9.58 provides that an outgoing auditor does not contravene any duty just because he/she gives “work-related information” to another person

- ◆ who is an auditor of the company;
- ◆ who has been appointed as auditor of the company but whose term of office has not yet begun; or
- ◆ to whom the company has offered the position as auditor but who has not yet been appointed.

“Work-related information” means information of which the person became aware in the capacity as such auditor.

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## **Outgoing auditor's statement of circumstances**

Under section 140A(1) and (2) of the Companies Ordinance, a resigning auditor is required to make a statement in the notice of resignation as to whether there are any circumstances in relation to his resignation that he considers should be brought to the notice of the members or creditors of the company, and if so, a statement of any such circumstance (statement of circumstances).

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## **Outgoing auditor's statement of circumstances**

Under Clauses 9.68 and 9.69, the requirement to make and circulate the statement of circumstances will be extended to

- ◆ an auditor who has been removed; and
- ◆ a retiring auditor who has not been re-appointed

so that such auditors will also be required to provide a statement of circumstances, or if there are no such circumstances, a statement to that effect.

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## Outgoing auditor's statement of circumstances

It will be the outgoing auditor's duty to send a copy of the statement of circumstances to the Registrar for registration unless the court directs that the statement should not be publicized on the ground that the auditor has abused the use of the statement.

Clauses 9.70(5), 9.71(5)

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## Auditors' liability and qualified privilege

Clause 9.54 provides an auditor with qualified privilege for statements made without malice in the course of his duties as auditor.



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## Offences relating to contents of audit report

Clause 9.52(1) provides for an offence where an auditor knowingly or recklessly causes an auditor's report to omit

- ◆ a statement that the company's financial statement does not agree with accounting records (cf. Clause 9.51(2)(b)); or
- ◆ a statement that necessary information and explanation has not been obtained (cf. Clause 9.51(3)).

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## Summary financial reports

Under Clause 9.86 a company may send a copy of the summary financial report to its members in lieu of the reporting documents without first ascertaining the members' intentions.

The safeguard is that a member may request for a copy of the reporting documents under Clause 9.90 after receipt of the summary financial report.



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## Ascertain members' intentions

The company can also ascertain the wishes of its members through notifications given under Clause 9.87 which allow members to elect

- ◆ to receive a copy of the reporting documents; or
- ◆ a copy of the summary financial report –  
in either case in hard copies, electronic form or  
vide the company's website; or
- ◆ not to receive any copies of the documents.

***Thank You***