



The New Companies Ordinance

Companies Registry



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Part 9

Accounts and Audit
and
related provisions in Part 12
(Company Administration and
Procedure)

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Application of new CO provisions in relation to financial statements etc to financial year beginning on or after the commencement of the new CO

- The requirements in the new CO in relation to simplified reporting (section 359), preparation of financial statements (section 379), directors report (section 388), laying financial statements and reports before an AGM (section 429), preparation of summary financial report (section 439) apply to a financial year that begins on or after the commencement of the new CO (section 358).
- Equivalent requirements in Cap 32 continue to apply in relation to accounts, directors' report and summary financial reports for a financial year beginning before the commencement of the new CO (Schedule 11 Part 9 sections 77, 78, 83 and Part 12 section 107(2)).

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Prepare financial statements for each financial year

1. Provide for a "financial year" of a company
 - Section 2(1) of Cap 32 defines "financial year" as the period in respect of which the accounts required to be made up and laid every year are made up.
 - Section 367 of the new CO provides for the determination of a company's first financial year and subsequent financial years by reference to a company's first accounting reference period.
 - The financial year / accounting reference period is the period by reference to which the company's financial statements are to be prepared (section 379(1)).

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Prepare financial statements for each financial year (2)

2. First financial year
 - The company's first financial year after the commencement of the new CO ("first financial year") begins on the first day of its first accounting reference period and ends on the last day of that period (section 367(1)).
3. First accounting reference period
 - For an existing company, the first accounting reference period begins on the day immediately following the end date of the company's accounts for the financial year immediately before the commencement of the new CO and ends on the first anniversary of that date (section 368(1), 369(1) to (4)).

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Prepare financial statements for each financial year (3)

- Example
 - Commencement date of new CO : 3 March 2014
 - A
 - ◆ Company's current financial year : 1 April 2013 to 31 March 2014
 - ◆ End date of company's accounts : 31 March 2014
 - ◆ Company's first accounting reference period under the new CO :
1 April 2014 to 31 March 2015
 - B
 - ◆ Company's current financial year : 1 January 2014 to 31 December 2014
 - ◆ End date of company's accounts : 31 December 2014
 - ◆ Company's first accounting reference period under the new CO:
1 January 2015 to 31 December 2015

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Prepare financial statements for each financial year (4)

- For a company formed and registered under the new CO, the first accounting reference period begins on the incorporation date and ends on –
 - a date specified by the directors falling within 18 months after the company's incorporation; or
 - if none specified, the last day of the month of the first anniversary of the company's incorporation (sections 368(2), 369(5) to (7)).



Prepare financial statements for each financial year (5)

4. Subsequent accounting reference periods
 - Unless shortened or extended, every subsequent accounting reference period is a period of 12 months beginning immediately after the end of the previous accounting reference period and ending on the company's accounting reference date (section 368(3)).
5. Accounting reference date (section 370)
 - For an existing company, the accounting reference date is the anniversary of the end date of the company's accounts for the financial year immediately before the commencement of the new CO.
 - For a company formed and registered under the new CO, it is the anniversary of the date determined under section 369(5) to (7).



Changes in the requirements for financial statements and reports

1. Financial statements (cf sections 123 to 126, 129C, 141D, 10th and 11th Schedules Cap 32) (sections 379 to 387, Schedule 4)
 - Alignment of terminologies with financial reporting standards and UKCA 2006
 - “accounts” → “financial statements” (sections 357, 379)
 - “group accounts” → “consolidated financial statements” / “consolidated statements” (sections 379(2), 380(2))
 - “balance sheet” → “statement of financial position” (section 387)
 - “profit and loss account” → “statement of comprehensive income” (section 436(6))
 - “books of account” → “accounting records” (section 373)

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Changes in the requirements for financial statements and reports (2)

- To align accounting and auditing provisions with the Hong Kong Financial Reporting Standards, the requirement for accounts to comply with the 10th and 11th Schedules to Cap 32 is repealed (sections 123(2), 141D(1)(b) Cap 32).
- Financial statements are to comply with reporting standards issued or specified by the Hong Kong Institute of Certified Public Accountants (“HKICPA”) under the Companies (Accounting Standards (Prescribed Body)) Regulation LN 9/2013 (section 380(4), (8), Schedule 4 Part 1 section 4).
- Accounting disclosures in Schedule 4 replace the detailed requirements in the 10th and 11th Schedules (section 380(3)).
- Information on directors’ emoluments etc (cf sections 161, 161B, 161BB Cap 32) required to be contained in notes to financial statements (section 383). The detailed prescribed disclosures are set out in Companies (Disclosure of Information about Benefits of Directors) Regulation LN 35/2013 as amended by the Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013 LN 76 of 2013.

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Changes in the requirements for financial statements and reports (3)

2. Directors' report (cf sections 129D, 141D Cap 32)

(sections 388 to 391).
 - Business Review (section 388(1)(a), (2)(a), Schedule 5, for exemptions see section 388(3))
 - Other prescribed disclosures set out in Companies (Directors' Report) Regulation LN 10/2013 as amended by Resolution of the Legislative Council LN 47/2013.
3. Auditor's report (cf section 141 Cap 32)

(sections 405 to 409)
4. "Reporting documents" in Part 9 means the financial statements, directors' report and the auditor's report on the financial statements that are required to be laid at AGM or sent to members (sections 357(2), 429(1), 430(1), (3)).

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Changes in the requirements for financial statements and reports (4)

5. Revamping summary financial report provisions
 - Currently summary financial report provisions apply to listed companies only (cf sections 141CA to 141CG Cap 32)
 - Under the new CO summary financial report provisions are extended to all companies except those that prepare simplified accounts (section 438, Division 7 of Part 9)
 - Unless prohibited (section 446), companies have a choice of sending to its members a copy of the summary financial report instead of a copy of the financial statements and reports (sections 439, 441, 442).
 - Companies (Summary Financial Reports) Regulation LN 11/2013 as amended by Resolution of the Legislative Council LN 48/2013 replace Companies (Summary Financial Reports of Listed Companies) Regulation Cap 32M.
6. Voluntary revision of financial statements and reports (cf section 141E Cap 32)

(sections 449 to 450)
 - Prescribed requirements set out in Companies (Revision of Financial Statements and Reports) Regulation LN 34/2013 as amended by the Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 LN 75/2013 which replace Companies (Revision of Accounts and Reports) Regulation Cap 32N.

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Simplified reporting

- Under section 141D of Cap 32 a private company (other than a company which is a member of a corporate group and certain companies specifically excluded) may with the written agreement of all the shareholders prepare simplified accounts and directors' report in respect of one financial year at a time.
- Under the new CO, private or guarantee companies (other than certain companies specifically excluded) that qualify for simplified reporting are referred to as companies falling within the "reporting exemption" (Division 2 of Part 9 and Schedule 3 of the new CO).

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Simplified reporting (2)

1. Companies qualified for reporting exemption
 - a small private company / holding company of a group of small private companies meeting 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
 - average employees / aggregate average employees not exceeding 100
- (sections 359(1)(a), 361, 364, Schedule 3 section 1(1), (7), (8))

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Simplified reporting (3)

- an eligible private company / holding company of a group of eligible private companies meeting a 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 average employees / aggregate average employees not more than 100 and with 75% approval from members and no member objects.

(sections 359(1)(c), (2), 360, 362, 365, Schedule 3 section 1(3), (10), (11))

- other private companies (not being a member of a corporate group) with unanimous members' written agreement (cf section 141D of Cap 32).

(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), (3), 363, 366, Schedule 3 section 1(5), (13))

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Simplified reporting (4)

2. Relevant financial year for determining the size of a company

For qualification in the first financial year after commencement of the new CO –

- Existing company - it is the size of the company in the first financial year after commencement of the new CO or the financial year immediately preceding that first financial year that counts (sections 361(2), 362(2), 363(2), 364(2), 365(2) and 366(2)).
- Company formed and registered under the new CO - it is the size of the company in its first financial year that counts (sections 361(1), 362(1), 363(1), 364(1), 365(1) and 366(1)).
- Qualification continues for subsequent financial years until disqualification.

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Simplified reporting (5)

For qualification in subsequent financial years –

- The company has to fall within the size criteria for 2 consecutive financial years before it would qualify for the reporting exemption for the financial year immediately following those 2 years (sections 361(3), 362(3), 363(3), 364(3), 365(3), 366(3)).
- Qualification continues for subsequent financial years until disqualification.
- 3. The specific exemptions (no exemption from audit unless company is dormant)

The exemptions are in respect of specific requirements relating to the preparation of financial statements, the directors' and auditor's reports –

- 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))



Simplified reporting (6)

- no requirement to disclose in the notes to financial statements the material interests of directors in transactions, arrangements or contracts of significance entered into by the company (section 23 of Companies (Disclosure of Information about Benefits of Directors) Regulation LN 35/2013)
- subsidiary undertakings may be excluded from consolidated financial statements in accordance with applicable accounting standards (section 381(2))
- no requirement to include in the directors' report-
 - business review (section 388(3)(a))
 - arrangements to enable directors to acquire benefits by the acquisition of shares or debentures;
 - donations made by the company;



Simplified reporting (7)

- directors' reasons for resignation or refusal to stand for re-election; or
 - 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)
- no requirement for auditor to express a "true and fair view" opinion on financial statements (section 406(1)(b))
 - 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 under the Companies (Accounting Standards (Prescribed Body) Regulation).
4. Audit of financial statements are still required for all companies, except dormant companies (section 447).



Changes in the requirement to hold AGM

1. AGM to be held in respect of each financial year instead of in each calendar year
- Section 111 of Cap 32 requires every company to hold an AGM. The first AGM is required to be held within 18 months of the company's incorporation. Subsequent AGMs are required to be held in each year and not more than 15 months is to elapse between the date of one AGM and the next.
 - Under the new CO, every company is required to hold an AGM in respect of each financial year (section 610) instead of each calendar year.



Changes in the requirement to hold AGM (2)

2. Period for holding an AGM under the new CO –

- a private company (that is not a subsidiary of a public company at any time during the financial year) or a company limited by guarantee, within 9 months after the end of the accounting reference period by reference to which the company's financial year is determined (section 610(1)(a), (4))
- in the case of any other company the period is 6 months (section 610(1)(b))
- if the accounting reference period is the company's first accounting reference period and is longer than 12 months, the period is 9 or 6 months (depending on the type of the company) after the anniversary of the company's incorporation or 3 months after the end of that accounting reference period, whichever is later (section 610(2)).

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Changes in the requirement to hold AGM (3)

3. Circumstances in which company not required to hold AGM

- (a) If done by written resolution (cf section 111(6) of Cap 32 (section 612(1)).
- (b) Single member company (section 612(2)(a)).
- (c) Members unanimous resolution or written resolution to dispense with the holding of AGM in respect of a particular financial year or for subsequent financial years (sections 612(2)(b) and 613). Copy of the resolution is required to be delivered to the Registrar for registration within 15 days after it is passed (section 622(1)(g)).
- (d) A dormant company defined in section 5 (section 611), i.e. a private company that has passed a special resolution declaring it to be dormant.

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Changes in the requirement to hold AGM (4)

4. Where no AGM is held –

- Directors (failing which members) may appoint the company's first auditor for the company's first financial year (sections 395(3), 396(6)).
- For 3(b) and (c) above –
 - Copy of the financial statements and reports are required to be sent to the members instead (section 430(3)).
 - Current auditor deemed to be re-appointed unless he declines (section 403, for other exceptions to deemed reappointment see section 403(2)).
 - If reappointment declined members replace retiring auditor at a general meeting (section 396(3), (4)).
 - Members holding at least 5% of total voting rights may request directors to call a meeting (section 566).

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Changes in the requirement to hold AGM (5)

5. When AGM required to be held after dispensation under sections 612(2)(b) and 613

- Any member may request the company to convene an AGM for a particular financial year by giving notice to the company not later than 3 months before the end of the statutory period for holding an AGM (section 613(5)).
- The unanimous resolution for dispensing with holding an AGM is revocable by an ordinary resolution (section 614).

6. For transitional and saving arrangement – Schedule 11 Part 12 section 107

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Changes in the requirement to lay accounts at AGM

1. Financial statements to be laid in respect of each financial year instead of in each calendar year
 - Section 122 of Cap 32 requires accounts made out in every calendar year to be laid before the company at its AGM. The accounts shall be made up to a date falling not more than 6 months, or, in the case of a private company (other than one that was a member of a corporate group consisting of a non-private company) and a company limited by guarantee, not more than 9 months before the date of the AGM.
 - As financial statements are required to be prepared in respect of each financial year and that a company does not have to hold an AGM under section 612, the requirement to lay accounts made up to 6 / 9 months before the AGM date under Cap 32 is changed to a requirement to lay financial statements in respect of each financial year within 6 / 9 months after the end of the accounting reference period (sections 429(1) and 431).

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Changes in the requirement to lay accounts at AGM (2)

2. Period for laying copy of reporting documents at AGM
 - a private company (that is not a subsidiary of a public company) or a company limited by guarantee, within 9 months after the end of the accounting reference period (section 431(1)(a))
 - in the case of any other company the period is 6 months (section 431(1)(b))
 - aligns with the timing for holding AGM under section 610
 - same period for sending copy of reporting documents to members if AGM not held under section 612(2) (sections 430(3) and 431(1))

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Changes in the requirement to lay accounts at AGM (3)

3. Other changes

- Section 115A of Cap 32 enables members to request the company to circulate at the expense of the requisitionists a proposed resolution for an AGM or a statement relating to any proposed resolution or business to be dealt with at any general meeting.
- Sections 582, 615 and 616 provide that the expenses of circulation of the statement and the resolution in relation to an AGM are to be paid by the company if the request is received in time to enable the company to send a copy of the statement or resolution with the notice of meeting.
- Section 584 permits a company to hold a general meeting at 2 or more places using any technology that enables the members of the company who are not together at the same place to listen, speak and vote at the meeting.

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Changes in the requirement to file annual return of a public company or a company limited by guarantee

1. Annual return to be filed in respect of each financial year instead of in each calendar year
- Under sections 107 and 109 of Cap 32, every company shall once in every year make a return which (except where the company is a private company having a share capital) is required to be filed within 42 days after the AGM.
 - Under the new CO, a public company or a company limited by guarantee is required to file the annual return within 42 days after the company's return date, i.e. 6 months (for a public company) or 9 months (for a company limited by guarantee) after the end of the company's accounting reference period (section 662(3) and (4)).

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Changes in the requirement to file annual return of a public company or a company limited by guarantee (2)

- The annual return of a public company or a company limited by guarantee is required to be filed in respect of each financial year of the company instead of in each calendar year.
 - No change to the requirement to file annual return of a private company having a share capital under section 109(1A) of Cap 32 (i.e. within 42 days after the anniversary of its incorporation) (section 662(1) and (2)).
2. Contents of annual return (sections 662(5), 664, Schedule 6)
- Particulars related to members of a listed company are limited to members with 5% or more of the issued shares in any class (Schedule 6 section 2). Currently details of all shareholders are required to be set out in the return.
 - Sections 3 and 4 of Schedule 6 will not commence operation owing to the status quo of disclosing residential addresses of directors and identification numbers of directors and company secretaries.

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Changes in the requirement to file annual return of a public company or a company limited by guarantee (3)

3. Annual return of a company limited by guarantee to be accompanied by certified true copies of reporting documents
- Section 109(3) of Cap 32 requires every company (except a private company) to include certified copies of the company's balance sheet and reports laid before the company in general meeting during the period to which the return relates to be filed with the annual return.
 - As a company limited by guarantee registered under Cap 32 and which comes within the meaning of "private company" under section 29 of Cap 32 is considered a company limited by guarantee upon commencement of the new CO (sections 9 and 17) such companies are required to file its annual return together with certified true copies of its financial statements and reports under the new CO (Schedule 6 Part 3).
 - Transitional and saving arrangement – Schedule 11 Part 12 section 121(2).

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Part 10

Directors and Company Secretaries



Corporate directors

- Currently corporate directors not permitted, except for private company (other than a private company that is a member of a group of companies of which a listed company is a member) (CO s 154A)
- Private company (other than one that is a member of a group of companies of which a listed company is a member) must have at least one director who is a natural person (s 457). Existing companies have 6 months from commencement of s 457 to comply (Schedule 11 Part 10 s 89)
- S 457 does not apply to a company which, on the commencement of the section, is deemed to be a dormant company under s 344A of the current CO



Clarifying directors' duty of care, skill and diligence (s 465)

- A director must exercise reasonable care, skill and diligence, i.e. the care, skill and diligence that would be exercised by a reasonably diligent person with –
 - ◆ 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"); and
 - ◆ the general knowledge, skill and experience that the director has ("subjective test")
- The duty has effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence
- The consequences of breach are the same as would apply if the common law rules or equitable principles that it replaces applied (s.466)

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Indemnification of officers against liability to company

- Currently covers officers and auditors (s165 CO). Auditors have specific provision in new CO (S 415)
- Avoidance of provisions protecting director from liability. Restates s 165, but extends the prohibition to include indemnity provided by a related company and extends scope of permitted liability insurance to directors of a related company (s 468)
- Indemnity in relation to negligence etc. in relation to third parties formerly covered by common law agency rules. S 469 provides for permitted indemnity against liability incurred by a director to a third party
- Permitted indemnities to be disclosed in directors' report (s 470) and copies to be kept (s 471) and to be available for inspection by members (s 472)

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Ratification of conduct by directors by disinterested members' approval (s 473)

- Ratification of conduct involving negligence, default, breach of duty or breach of trust
- By resolution by the members of the company
 - ◆ every vote by a member who is a director in respect of whose conduct the ratification is sought, or who is an entity connected with that director or holder of any shares in the company in trust for that director or entity, is to be disregarded.
- Does not affect the validity of a decision taken by unanimous consent of the members or power of the directors to agree not to sue, or to settle or release a claim made on behalf of the company.

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Part 11

Fair Dealing by Directors

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1. Expanding the prohibitions on loans and similar transactions to cover a wider category of persons connected with a director. For example, adult children, cohabittees, parents (s 486)
 - Connected entity means family members (s 487), person in cohabitation relationship, associated body corporate (s 488), specified categories of trustees and partner
2. Requiring disinterested members' approval in the case of public companies (ss 496(2)(b)(ii), (5), 515(1)(b)(ii), (4), 518(2)(b)(ii), (4), 532(2)(b)(ii)(4)
 - Interested parties: the relevant directors, connected entities and any person who holds any shares in the company in trust for these persons/entities
3. Requiring members' approval for directors' employment exceeding three years (s 534)



Part 13

Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back



Scheme of Arrangement - headcount test

- Headcount test in current CO
 - ◆ S 166(2)... “majority in number” (“headcount test”) “representing three-fourths in value of the creditors... or members...” (“share value test”). Court may sanction scheme which will be binding on all creditors or members, i.e. court still has discretion whether or not to sanction scheme even if both tests are satisfied.
 - ◆ The problem of share splitting *Re PCCW Ltd* case
 - ◆ Australia amended the Corporations Act in 2007 to give the court a discretion to approve a members’ scheme even though majority in number is not obtained specifically to deal with share splitting. But subsequently the Australian Corporations and Markets Advisory Committee recommended that the headcount test be removed, but this has not happened yet
 - ◆ Listed companies must also satisfy rule 2.10(b) of the Takeovers Code, i.e. number of votes cast against the scheme must not be more than 10% of the votes attaching to disinterested shares

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- ◆ The provision originally only applied to insolvent company schemes until extended to non-insolvent schemes in 1900
- ◆ Headcount test inconsistent with “one share one vote” principle
- ◆ Most shares in listed companies within the Central Clearing and Settlement Scheme (CCASS) are registered in the name of HKSCC Nominees Ltd.
- Headcount test retained for creditors’ schemes (s 674(1)(a), (b))
- For members’ schemes the headcount test is retained but the court may order otherwise (s 674(1)(c)(ii)), but for an arrangement involving a general offer (s 707) or a takeover offer the test is at least 75% in value of members voting and the votes cast against the arrangement do not exceed 10% of the total voting rights attached to all disinterested shares (s 674(2)(a)(ii), (b)(ii) & 674(3))
- Specific provision as to costs (s 676)
- Schemes for facilitating reconstruction and amalgamation of companies (s 675)
 - ◆ Revising definition of “property” and “liabilities” in current CO s 167(4) to permit transfer of contract of personal service, thus reversing the effect of *Nokes v Doncaster Amalgamated Collieries Ltd* (1940)

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New court-free statutory amalgamation procedure (ss 678 to 686)

- Confined to wholly-owned intra-group companies
- Vertical amalgamation (i.e. between holding company and one or more of wholly owned subsidiaries) (s 680) or horizontal (i.e. between two or more subsidiaries of the same holding company (s 681))
- Amalgamation proposal
 - ◆ solvency statement
 - ◆ shareholders' approval
 - ◆ notice of amalgamation
 - ◆ if floating charge over assets, creditor must consent to the amalgamation
 - ◆ registration of amalgamation
 - ◆ creditors' and shareholders' right to apply to court
- Effect of amalgamation

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Further Information

CR thematic website on new CO at: < [http:// www.cr.gov.hk](http://www.cr.gov.hk) >

- Briefing Notes on new CO
- Briefing Notes on subsidiary legislation made under the new CO
- Table of Origins (source of new CO provisions)
- Table of Destination (destination of Cap 32 provisions in the new CO)
- Highlights and FAQs

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