



新《公司條例》 The New Companies Ordinance

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帳目及審計 Accounts and Audit



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適用於首個財政年度的新條例條文（第358條）

Application of new CO provisions to first financial year (s 358)

- 新條例關於會計紀錄（第373、374、376及377條）、簡明報告（第359條）、財務報表（第379及436條）、董事報告（第388條）、將報告文件在周年成員大會上提交公司省覽（第429條）、財務摘要報告（第439條）及修改財務報表（第449條）的規定，適用於新條例生效當日，或之後開始的財政年度。

The requirements in the new CO in relation to accounting records (ss 373, 374, 376 & 377), simplified reporting (s 359), financial statements (ss 379 & 436), directors' report (s 388), laying reporting documents before AGM (s 429), summary financial report (s 439) and revision of financial statements (s 449) apply to a financial year that begins on or after commencement of the new CO.

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適用於首個財政年度的新條例條文（第358條）（續）

Application of new CO provisions to first financial year (s 358)(cont'd)

- 第32章關於在新條例生效前開始的財政年度的帳簿、帳目、董事報告、將帳目在周年成員大會上提交公司省覽、財務摘要報告、修訂帳目的相應規定繼續適用（附表11第76、77、78、83、84及107(2)條）。

Corresponding requirements in Cap 32 continue to apply in relation to books of account, accounts, directors' report, laying of accounts before AGM, summary financial report and revision of accounts for a financial year beginning before commencement of the new CO (Schedule 11 ss 76, 77, 78, 83, 84 and 107(2)).

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會計參照期

Accounting reference period

- 第367條訂明，公司的首個財政年度及其後的財政年度，是根據公司的會計參照期而定的。
S 367 provides for the determination of a company's first financial year and subsequent financial years by reference to its accounting reference period.
- 公司在新條例開始生效後的首個財政年度，於首個會計參照期的首日開始，而終結日期為該期間的最後一日（第367(1)條）。
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 (s 367(1)).

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會計參照期（續）

Accounting reference period (cont'd)

- 財政年度亦即公司財務報表所涵蓋的期間（第379(1)條）。
The financial year is the period by reference to which the company's financial statements are to be prepared (s 379(1)).
- 原有公司的首個會計參照期，於緊接新條例生效前的財政年度擬備的公司帳目日期最後一日的翌日開始，並於該日的首個周年日終結（第368(1)、369(1)至(4)條）。
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 (ss 368(1), 369(1) to (4)).

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- 例子
Examples

新條例生效日期：2014年3月3日
Commencement date of new CO : 3 March 2014

A公司
Company A

- ◆ 現財政年度：2013年4月1日至2014年3月31日
Current financial year : 1 April 2013 to 31 March 2014
- ◆ 公司根據第32章擬備的帳目日期最後一日：2014年3月31日
End date of company's accounts prepared under Cap 32 : 31 March 2014
- ◆ 在新條例下，公司的首個會計參照期：2014年4月1日至2015年3月31日
Company's first accounting reference period under the new CO :
1 April 2014 to 31 March 2015

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- 例子
Examples

B公司
Company B

- ◆ 現財政年度：2014年1月1日至2014年12月31日
Current financial year : 1 January 2014 to 31 December 2014
- ◆ 公司根據第32章擬備的帳目日期最後一日：2014年12月31日
End date of company's accounts prepared under Cap 32 : 31 December 2014
- ◆ 在新條例下，公司的首個會計參照期：
2015年1月1日至2015年12月31日
Company's first accounting reference period under the new CO:
1 January 2015 to 31 December 2015

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會計參照期（續）

Accounting reference period (cont'd)

- 根據新條例組成及註冊的公司，其首個會計參照期，以成立為法團的日期開始，而其終結日期為：
For a company formed and registered under the new CO, the first accounting reference period begins on the incorporation date and ends on –
 - ◆ 董事所指明的日期，而該日期須是公司成立為法團的日期後的18個月內的日期；或
a date specified by the directors falling within 18 months after the company's incorporation; or
 - ◆ 如沒有指明日期，則為公司成立為法團的首個周年日所屬月份的最後一日（第368(2)、369(5)至(7)條）。
if none specified, the last day of the month of the first anniversary of the company's incorporation (ss 368(2), 369(5) to (7)).

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會計參照期（續）

Accounting reference period (cont'd)

- 其後每個會計參照期均為12個月，於緊接對上的會計參照期的終結後開始，並於會計參照日終結（第368(3)條）。
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 (s 368(3)).

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會計紀錄（第373至378條） Accounting records (ss 373 to 378)

- 第32章第121(2)條訂明，如沒有備存所需帳簿，以真實而公平地反映公司的事務狀況，及解釋公司所作的交易，則不得當作已備存妥善的帳簿。

S 121(2) of Cap 32 provides that proper books of accounts shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions.



會計紀錄（第373至378條）（續） Accounting records (ss 373 to 378) (cont'd)

- 在新條例下，有關規定為：
Under the new CO, the requirement is modified –
 - 規定備存的會計紀錄須足以：
The requirement is to keep accounting records that must be sufficient to –
 - 顯示及解釋公司的交易；
show and explain the company's transactions;
 - 以合理的準確度，披露公司的財務狀況及財務表現；及
disclose with reasonable accuracy the company's financial position and financial performance; and
 - 使董事能夠確保財務報表符合新條例（第373(2)條）。
enable the directors to ensure that the financial statements comply with the new CO (s 373(2)).



會計紀錄（續）

Accounting records (cont'd)

- ◆ 有附屬企業的公司，須採取一切合理步驟，以確保附屬企業備存會計紀錄，該等會計紀錄須足以使該公司的董事能夠確保財務報表符合新條例的規定（第373(4)條）。

A company that has a subsidiary undertaking must take all reasonable steps to secure that the subsidiary undertaking keeps accounting records that are sufficient to enable the company's directors to ensure that the financial statements comply with the new CO requirements (s 373(4)).

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會計紀錄（續）

Accounting records (cont'd)

- 其他新規定

Other new requirements

- ◆ 第375條明確賦予董事有權在查閱會計紀錄時，可製作會計紀錄的文本，或要求提供會計紀錄的文本。現時，第32章只訂明董事有權查閱帳簿。

S 375 gives a director an express right to make a copy of the accounting records during inspection or request for a copy of the accounting records. Currently, Cap 32 only provides a right of inspection of books of accounts by the directors.

- ◆ 第378條訂明，董事可向法庭申請授權某人代表該董事查閱公司的會計紀錄。獲授權的人可製作會計紀錄的文本。

S 378 provides that a director may apply to Court to authorize a person to inspect the company's accounting records on the director's behalf. A person so authorized may make copies of the accounting records.

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財務報表 Financial statements

- 董事須就每個財政年度，擬備符合法定規定的財務報表（第379至387條、附表4）。
Directors must prepare financial statements for each financial year complying with the statutory requirements (ss 379 to 387, Schedule 4)
- 「報告文件」是指須在周年成員大會上提交公司省覽，或送交成員的財務報表、董事報告，及就財務報表作出的核數師報告（第357(2)、429(1)、430(1)及(3)條）。
“Reporting documents” 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 (ss 357(2), 429(1), 430(1), (3)).

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財務報表（續） Financial statements (cont'd)

- 與財務報告準則及《英國2006年公司法》的用語保持一致
Alignment of terminologies with financial reporting standards and UKCA 2006
 - ◆ 「帳目」 → 「財務報表」（第357、379條）
“accounts” → “financial statements” (ss 357, 379)
 - ◆ 「集團帳目」 → 「綜合財務報表」／「綜合報表」（第379(2)、380(2)條）
“group accounts” → “consolidated financial statements” / “consolidated statements” (ss 379(2), 380(2))
 - ◆ 「資產負債表」 → 「財務狀況表」（第387條）
“balance sheet” → “statement of financial position” (s 387)
 - ◆ 「損益表」 → 「全面收益表」（第436(6)條）
“profit and loss account” → “statement of comprehensive income” (s 436(6))
 - ◆ 「帳簿」 → 「會計紀錄」（第373條）
“books of account” → “accounting records” (s 373)

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財務報表（續）

Financial statements (cont'd)

- 為使會計及審計的條文與《香港財務報告準則》保持一致，已廢除帳目須符合第32章附表10及11的規定。
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.
- 財務報表須符合由香港會計師公會發出或指明的報告準則《公司（會計準則（訂明團體）規例》（第622C章）及第380(4)、(8)條。
Financial statements are to comply with reporting standards issued or specified by the HKICPA (Companies (Accounting Standards (Prescribed Body) Regulation Cap 622C and s 380(4), (8)).

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財務報表（續）

Financial statements (cont'd)

- 附表4的會計披露，取代第32章附表10及11的詳細規定（第380(3)條）。
Accounting disclosures in Schedule 4 replace the detailed requirements in the 10th and 11th Schedules to Cap 32 (s 380(3)).
- 財務報表的附註，須載有董事薪酬等（參閱第32章第161、161B、161BB條）的資料（第383條）。訂明的披露詳情載於《公司（披露董事利益資料）規例》（第622G章）。
Information on directors' emoluments etc (cf ss 161, 161B, 161BB Cap 32) required to be contained in notes to financial statements (s 383). The detailed prescribed disclosures are set out in Companies (Disclosure of Information about Benefits of Directors) Regulation Cap 622G.

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財務報表（續） Financial statements (cont'd)

- 綜合財務報表
Consolidated financial statements
 - ◆ 控權公司（如屬另一法人團體的附屬公司則除外）須擬備綜合財務報表以作代替（第379條）。
A holding company (except one that is a subsidiary of another body corporate) must, instead of preparing financial statements, prepare consolidated financial statements (s 379).
 - ◆ 至於非全資附屬公司，例外情況只適用於董事已告知成員他們無意擬備綜合報表，而沒有成員另行提出要求。
For a partially owned subsidiary, the exception only applies if the directors have notified the members of their intention not to prepare consolidated statements and no member has requested otherwise.
 - ◆ 綜合報表的附註，須載有控權公司的財務狀況表（附表4第2條）。
The holding company's statement of financial position must be contained in the notes to the consolidated statements (Schedule 4 s 2).

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擬備更具分析性的業務審視的職責 Duty to prepare a more analytical business review

- 新條例規定在董事報告內加入業務審視，而該審視須涵蓋以下資料
The new CO requires a directors' report to include a business review which should cover the following information of a company
 - ◆ 公司業務的中肯審視
a fair review of its business
 - ◆ 公司面對的主要風險及不明朗因素的描述
a description of its principal risks and uncertainties
 - ◆ 在財政年度終結後發生，並對公司有影響的重大事件的詳情
particulars of any important events affecting it which have occurred since the end of the financial year

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擬備更具分析性的業務審視的職責 (續)

Duty to prepare a more analytical business review (cont'd)

- ◆ 公司業務相當可能有的未來發展的揭示
an indication of likely future development in its business
- ◆ 探討公司的環境政策及表現，包括公司遵守對其有重大影響的有關法例及規例的情況
a discussion on its environmental policies and performance, including compliance with the relevant laws and regulations that have a significant impact on the company

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擬備更具分析性的業務審視的職責 (續)

Duty to prepare a more analytical business review (cont'd)

- ◆ 公司與其僱員、顧客及供應商，以及與其他人士(對公司有重大影響而公司的興盛繫於該等人士)的重要關係的說明
(第388條及附表5)
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
(s 388 & Sch 5)
- 業務審視的規定，是與提倡企業社會責任的國際趨勢一致。
The requirement for business review is in line with international trends to promote corporate social responsibility.

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擬備更具分析性的業務審視的職責 (續)

Duty to prepare a more analytical business review (cont'd)

- 下列公司無須擬備業務審視-
The following companies are not required to prepare a business review -
 - ◆ 「在提交報告方面獲豁免」的公司
companies falling with the reporting exemption
 - ◆ 不屬「在提交報告方面獲豁免」的私人公司，但獲得75%的成員批准
a private company that does not fall within the reporting exemption with 75% approval from members
 - ◆ 法人團體的全資附屬公司（第388(3)條）
a wholly owned subsidiary of a body corporate (s 388(3))

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擬備更具分析性的業務審視的職責 (續)

Duty to prepare a more analytical business review (cont'd)

- 除非董事知道，或罔顧陳述是否屬不真實或具誤導性，或不誠實地隱瞞重要事實，否則董事無須就報告內不真實或具誤導性的陳述或遺漏，承擔法律責任（第448條）。
A director is not liable for untrue or misleading statement or omission unless he knew or was reckless as to whether it was untrue or misleading, or there was dishonest concealment of a material fact (s 448).

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核數師的權利 Auditor's rights

- 核數師索取資料的權利
Auditor's rights to information
 - ◆ 第412條賦權核數師可要求更廣泛類別的人士，向他們提供為履行核數師的職責所需要的資料及解釋 —
S 412 empowers auditors to require information and explanation for the performance of their duties from a wider range of persons –
 - (a) 公司的高級人員
an officer of the company
 - (b) 公司在香港成立為法團的附屬公司
a HK incorporated subsidiary of the company

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核數師的權利 (續) Auditor's rights (cont'd)

- (c) 該附屬公司的高級人員或核數師
an officer or auditor of such a subsidiary
- (d) 持有公司或該附屬公司會計紀錄的人，或須就會計紀錄負責的人
a person holding or accountable for the accounting records of the company or such a subsidiary
- (e) 在有關資料或解釋關乎的時間，屬以上任何類別的人士或附屬公司
any of the above persons or subsidiary at the time to which the information or explanation relates
- ◆ 控權公司的核數師可要求公司向其附屬企業（並非在香港成立為法團的公司）、該附屬企業的高級人員或核數師，以及持有該附屬企業的會計紀錄或須就該等紀錄負責的人，取得資料或解釋。
The auditor of a holding company may require the company to obtain information or explanation from its subsidiary undertaking that is not a HK incorporated company, an officer or auditor of such a subsidiary undertaking and a person holding or accountable for the accounting records of such a subsidiary undertaking.

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核數師的權利 (續) Auditor's rights (cont'd)

- 核數師有關成員大會及書面決議的權利 (第411、555、559、575條)
Auditor's rights in relation to general meetings and written resolutions (ss 411, 555, 559, 575)
 - ◆ 第575條規定，公司須在向成員發出成員大會的通知，或任何關乎成員大會的文件的同時，向核數師發出該通知或該等文件。
S 575 requires a company to give notice of or any other document relating to a general meeting to the auditor at the same time as the notice or document is given to its members.
 - ◆ 第559條規定，公司須通知核數師書面決議已通過。
S 559 requires the company to send to the auditor notice of the fact that a written resolution is passed.

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核數師的權利 (續) Auditor's rights (cont'd)

- 受約制特權
Qualified privilege
 - ◆ 第410條訂明，核數師無須就在履行核數師職責時作出的陳述，負上誹謗的法律責任，只要作出該陳述並非出於惡意。
S 410 provides that in the absence of malice, an auditor is not liable for defamation in respect of any statement made by the auditor in the course of performing duties as auditor of the company.
 - ◆ 「履行核數師職責」包括當核數師辭任或遭免任，或不再獲委任時所作出的情況陳述或停任陳述。
"Performing duties as auditor of a company" includes making a statement of circumstances or a cessation statement upon the resignation or removal of the auditor or when the auditor is not reappointed.

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核數師的權利 (續) Auditor's rights (cont'd)



- 離任核數師的情況陳述
Outgoing auditor's statement of circumstances
 - ◆ 第425(1)條把核數師須作出的與停任職位有關連的情況陳述這項職責，擴至核數師因遭免任，或在卸任後不再獲委任的情況。
Under s 425(1), the auditor's duty to make a statement of circumstances connected with the cessation of office is extended to situations where the auditor is removed from office and where a retiring auditor is not reappointed.
 - ◆ 目前，這項規定只適用於辭任的核數師 [第32章第140A條]
Currently, such a requirement only applies to a resigning auditor [s 140A Cap 32].

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核數師的權利 (續) Auditor's rights (cont'd)



- ◆ 如法庭信納核數師濫用情況陳述，或運用該陳述，在帶誹謗成分的事宜上取得不必要的宣傳，則公司無須傳閱該陳述（第427條）。
A company is not bound to circulate the statement if the Court is satisfied that the auditor has abused the use of the statement or is using the statement to secure needless publicity for defamatory matter (s 427).
- ◆ 核數師須在訂明時限內把情況陳述的文本交付處長登記（第426(5)及427(5)條）。
The auditor must deliver a copy of the statement to the Registrar for registration within the prescribed time (ss 426(5) and 427(5)).

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核數師的權利 (續) Auditor's rights (cont'd)

- 離任核數師可向繼任核數師提供資料 (第414條)
Outgoing auditor may provide information to incoming auditor (s 414)
 - ◆ 任何屬或曾屬公司的核數師的人，不會僅因他向另一人提供以核數師身分得悉的資料而違反在法律上須承擔的職責，但前提是 —
A person who is or has been an auditor of a company does not contravene any duty in law by reason only that the person gives information of which he became aware in the capacity of auditor to another person —
 - (a) 該另一人是公司的核數師；
who is an auditor of the company;
 - (b) 該另一人已獲委任為公司的核數師，但其任期尚未開始；或
who has been appointed as auditor of the company but whose term of office has not yet begun; or
 - (c) 公司已向該另一人作出擔任核數師的要約，但該人尚未獲委任。
to whom the company has offered the position as auditor but who has not yet been appointed.

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免除核數師的法律責任的條文 Provisions protecting auditor from liability

- 目前，第32章第165條訂明 —
Currently s 165 of Cap 32 provides that —
 - ◆ 如有任何條文，豁免高級人員或核數師承擔其因犯了對公司或有關連公司的疏忽、失責、失職或違反信託行為而須承擔的法律責任，或彌償該法律責任，則該條文屬無效。
Any provision exempting or indemnifying any officer or auditor from liability in respect of negligence, default, breach of duty or breach of trust in relation to the company or a related company is void.
 - ◆ 公司可就該法律責任為公司的高級人員或核數師購買並保持保險，即該人對公司、有關連公司，或任何其他須承擔的法律責任(欺詐行為除外)。
A company may purchase and maintain insurance for an officer or auditor against such liability (except for fraud) to the company, a related company or any other party.
 - ◆ 公司可就下述法律責任彌償高級人員或核數師：在他獲判勝訴或獲判無罪的法律程序中進行辯護所招致的法律責任；或在與申請並獲給予寬免的有關法律程序中所招致的法律責任。
A company may indemnify an officer or auditor against liability incurred in defending proceedings in which judgment is given in his favour or in which he is acquitted; or in connection with an application in which relief is granted to him.

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免除核數師的法律責任的條文（續）

Provisions protecting auditor from liability (cont'd)

- 第415條就現行法例有以下修訂 —
Section 415 modifies the existing law by –
 - ◆ 刪除禁止豁免核數師對有關連公司須承擔法律責任的條文。該豁免條文本身存在問題，由於公司不能夠「豁免」核數師對另一公司須承擔的法律責任。
removing the prohibition against exempting an auditor from liability to a related company. The exemption is problematic since a company is not capable of "exempting" an auditor's liability to another company
 - ◆ 把禁止範圍擴至彌償核數師對有聯繫公司須承擔的法律責任（第415(3)條）。
extending the prohibition against indemnifying the liability of an auditor of an associated company (s 415(3))

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免除核數師的法律責任的條文（續）

Provisions protecting auditor from liability (cont'd)

- ◆ 把准許投購保險並保持該保險有效的範圍，擴至包括核數師對有聯繫公司須承擔的法律責任（第415(4)條）
extending the permission to take out and keep in force insurance to cover the liability of an auditor of an associated company (s 415(4))
- ◆ 訂明離任核數師作出的停任陳述或情況陳述，屬「履行核數師職責」（第415(6)條），以致受禁條文及獲准投購保險的範圍，包括核數師因作出陳述而招致的法律責任
providing that the making of a cessation statement or statement of circumstances by an outgoing auditor falls within "performance of the auditor's duties" (s 415(6)) so that the prohibitions and the permitted insurance include the auditor's liability arising from the making of such statements

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- 把財務摘要報告的條文，擴至包括所有公司（擬備簡明帳目的公司除外）（第438條）
Summary financial report provisions are extended to all companies except those that prepare simplified accounts (s 438)
 - ◆ 目前，財務摘要報告的條文只適用於上市公司 [第32章第141CA至141CG條]
Currently summary financial report provisions apply to listed companies only [ss 141CA to 141CG Cap 32]
 - ◆ 除非受禁止[第446條]，否則公司可選擇向其成員送交財務摘要報告的文本，以代替報告文件的文本（第439、441、442條）
Unless prohibited [s 446], companies have a choice of sending to its members a copy of the summary financial report instead of reporting documents (ss 439, 441, 442)
 - ◆ 《公司(財務摘要報告)規例》（第622E章）取代《公司(上市公司的財務摘要報告)規例》（第32M章）。
Companies (Summary Financial Reports) Regulation Cap 622E replaces Companies (Summary Financial Reports of Listed Companies) Regulation Cap 32M.

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- 自發修改財務報表及報告
（第449及450條）[參閱第32章第141E條]
Voluntary revision of financial statements and reports
(ss 449 & 450)[cf section 141E Cap 32]
 - ◆ 《公司(修改財務報表及報告)規例》（第622F章）載有訂明的規定，並取代《公司(修訂帳目及報告)條例》（第32N章）。
Prescribed requirements set out in Companies (Revision of Financial Statements and Reports) Regulation Cap 622F which replaces Companies (Revision of Accounts and Reports) Regulation Cap 32N.
 - ◆ 基本原則 – 關乎原有文件的條文適用於修改的文件。
Basic principle – provisions relating to original documents apply to revised documents.

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影響董事的主要修改 Major Changes affecting Directors



37



法人團體擔任董事 Corporate directorship

- 法人團體不得獲委任為公眾及擔保公司的董事。
Corporate directors are not permitted for public and guarantee companies.
- 私人公司須有最少一名董事為自然人。原有公司有六個月的時間遵從有關規定。
Private companies must have at least one director who is a natural person. Existing companies have 6 months to comply with the requirement.

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董事有責任以謹慎、技巧及努力行事（第465條） Directors' duty of care, skill and diligence (s 465)

- 第32章沒有關於董事有責任以謹慎、技巧及努力行事的條文，而香港普通法在這方面的情況亦非清晰。
There is no provision in Cap 32 on the directors' duty of care, skill and diligence. The common law position in HK is not entirely clear.
- 在新條例下，董事須以合理水平的謹慎、技巧及努力行事，即指任何合理努力並具備以下條件的人在行事時會有的謹慎、技巧及努力—
Under the new CO, 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 –

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董事有責任以謹慎、技巧及努力行事（第465條）（續） Directors' duty of care, skill and diligence (s 465) (cont'd)

- ◆ 可合理預期任何人在執行有關董事就有關公司所執行的職能會具備的一般知識、技巧及經驗（「客觀準則」）；及
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
- ◆ 該董事本身具備的一般知識、技巧及經驗（「主觀準則」）。
the general knowledge, skill and experience that the director has (“subjective test”)
- 該項職責亦適用於幕後董事。
The duty also applies to a shadow director.

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追認董事的行為必須獲無利益關係的成員批准 Ratification of conduct by directors by disinterested members' approval

- 第32章沒有關於追認董事行為須獲成員批准的具體條文。
No specific provision in Cap 32 on ratification by members' approval.
- 追認涉及疏忽、失責、失職或違反信託的行為，須由成員藉決議提出，但如該成員屬董事，而其行為是尋求追認的對象，或是與該董事有關連的實體，或以信託方式，為該董事或該實體持有公司的股份，則無須理會該成員所投的一票（第473條）。
Ratification of conduct involving negligence, default, breach of duty or breach of trust is by resolution, disregarding the votes of 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 (s 473).
- 並不影響成員一致同意作出的決定的有效性，或董事同意不提起訴的權力，亦不影響董事就他們代表公司提出和解或放棄申索的權力（第473(6)條）。
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 (s 473(6)).

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與董事或其有關連實體的交易 Transactions with directors or their connected entities

- 擴大公眾公司受禁貸款及類似交易的範圍，以包括更多與董事有關連的人。例如成年子女、同居者、父母。
For public companies the prohibitions on loans and similar transactions are extended to cover a wider category of persons connected with a director. For example, adult children, cohabittees, parents.
- ◆ 關連實體包括家庭成員、有同居關係的人士、有聯繫的法人團體、指明類別的信託人及合夥人（第486條）。
Connected entity includes family members, person in cohabitation relationship, associated body corporate, specified categories of trustees and partner (s 486).

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與董事或其有關連實體的交易 (續)

Transactions with directors or their connected entities (cont'd)

- 公眾公司須獲無利益關係成員的批准，才可進行有關交易（第496(2)(b)(ii)條）。
Disinterested members' approval of the transaction is required in the case of public companies (s 496(2)(b)(ii)).
- ◆ 有關人士：有關董事、有關連實體，以及以信託方式，為該等人士／該等實體持有公司股份的人士。
Interested parties: the relevant directors, connected entities and any person who holds any shares in the company in trust for these persons/entities.
- 董事受僱用的保證年期超過3年須獲成員批准。如屬公眾公司，則無須理會董事，或以信託形式為董事持有股份的人士所投的一票。
Members' approval is required for directors' employment for a guaranteed term exceeding three years. For public companies, the votes of the director or the person holding shares in trust for him must be disregarded.

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與董事或其有關連實體的交易 (續)

Transactions with directors or their connected entities (cont'd)

- 為方便營商，引入了新的豁免條文及例外情況
To facilitate business, new exemptions and exceptions are introduced
- ◆ 已獲得成員訂明批准的禁制貸款
exemptions from prohibition on loans etc with prescribed approval of members
- ◆ 價值不超過淨資產額或已催繳股本5%的小型貸款等（第505條）
exception for small loans etc not exceeding 5% of net assets or called up capital (s 505)
- ◆ 有關下述事項：為支付在法律程序中辯護，或在與調查或規管行動有關連的情況下的支出，但須受有關財政限額及還款的規定所規限（第507及508條）
exception for expenditure on defending proceedings etc or in connection with investigation or regulatory action, subject to financial limit and requirements as to repayment (s 507 & s 508)

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與董事或其有關連實體的交易 (續)

Transactions with directors or their connected entities (cont'd)

- 第32章的刑事制裁已刪除。民事後果有以下兩項 -
The criminal sanction in Cap 32 is removed. Civil consequences only -
 - ◆ 交易可由公司提出要求而致使無效，但有例外情況
voidable at company's instance, with exceptions
 - ◆ 董事及其他人有責任向公司作出交代
directors and others liable to account to company
- 就失去職位而作出付款的禁制，其範圍擴大至包括向董事或與前董事有關連的實體作出的付款，以及向控股公司的董事作出的付款（第516(3)及521(2)條）。
The prohibitions on payments for loss of office are extended to cover payment to entity connected with director or former director and to payment to director of holding company (s 516(3) & s 521(2)).

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與董事或其有關連實體的交易(續)

Transactions with directors or their connected entities (cont'd)

- 擴大披露在公司重要合約中具相當份量的利害關係的範圍
The ambit of disclosure of material interest in contract of significance with the company is widened
 - ◆ 涵蓋「交易」及「安排」，而不僅是「合約」
covers "transaction" and "arrangement", instead of just "contract"
 - ◆ 如屬公眾公司，披露範圍擴大至包括須披露與董事有關連的實體具相當份量的利害關係。董事並不知悉的利害關係則除外（第536(2)、(5)條）
for a public company, the ambit of disclosure is widened to include disclosure of material interest of entities connected with director, except interest that the director is not aware of (s 536(2), (5))

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與董事或其有關連實體的交易(續)

Transactions with directors or their connected entities (cont'd)

- ◆ 披露利害關係的「性質及範圍」，而不僅是「性質」
disclose the “nature and extent” of interest, instead of just “nature”
- ◆ 亦涵蓋幕後董事（第540(1)條）
also covers shadow directors (s 540(1))
- ◆ 訂明申報利益的程序（第537至539條）
procedures for declaration of interest are set out (s 537 to s 539)

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有關公司管理的主要修改 Major Changes relating to Company Administration



48

訂立一套有關書面決議的詳盡規則

Introduction of a comprehensive set of rules for written resolution



- 第32章沒有訂明有關提出和通過書面決議的程序。
Cap 32 does not provide for the procedures for proposing and passing a written resolution.
- 任何可藉在公司成員大會，或某類別成員的會議上通過的決議而作出的事情，均可在無須事先通知的情況下，藉公司成員的書面決議作出(第548條)。例外情況-免任核數師或董事的決議。
Anything that may be done by a resolution passed at a general meeting or class meeting, without any previous notice being required, may be done by a written resolution (s 548). Exception - a resolution removing auditor or director.
- 當所有有權表決的成員表示同意某書面決議，該決議即獲通過 (第556條)。
A written resolution is passed when all members who are entitled to vote have signified their agreement (s 556).

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訂立一套有關書面決議的詳盡規則(續)

Introduction of a comprehensive set of rules for written resolution (cont'd)



- 提出及通過書面決議的程序
Procedure for proposing and passing a written resolution
 - ◆ 董事或佔總表決權5%的成員可提出書面決議 (第549及552條)。
The directors or members holding 5% of total voting rights may propose a written resolution (s 549 & s 552).
 - ◆ 提出書面決議的成員可要求公司在傳閱決議的同時，傳閱一份關於該決議而字數不多於1 000 字的陳述書 (第551(2)條)。
A member who proposes a written resolution may request the company to circulate with the resolution a statement of not more than 1000 words on the resolution (s 551(2)).
 - ◆ 如法院信納要求傳閱陳述書的權利正被濫用，或正被用以在帶誹謗成分的事宜上，取得不必要的宣傳，則公司無須傳閱陳述書 (第554(1)條)。
A company is not bound to circulate the statement if the Court is satisfied that the right is being abused or being used to secure needless publicity for defamatory matter (s 554(1)).

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訂立一套有關書面決議的詳盡規則(續)

Introduction of a comprehensive set of rules for written resolution (cont'd)



- 書面決議可以印本或電子形式傳閱，或在網站上提供有關文本 (第553條)。
Written resolutions may be circulated by sending in hard copy or electronic form or by making them available on the website (s 553).
- 表示同意的期限為28日，或公司的章程細則指明的期限 (第558條)。
The period for agreeing to the proposed written resolution is 28 days or such period as specified in the articles (s 558).
- 法定條文不會取代法律規則，例如普通法中成員一致同意的原則 (第547(3)(a)條)。
The statutory provisions do not override any rule of law e.g. the common law principle of unanimous shareholders' consent (s 547(3)(a)).
- 只要規定須獲得成員一致同意，公司的章程細則可自訂通過書面決議的程序 (第561條)。
Articles may provide its own procedures for passing a written resolution provided unanimous members' approval is required (s 561).

51

免除舉行周年成員大會

Dispensation with the holding of AGM



- 在下列情況下，公司無須舉行周年成員大會
Circumstances in which company not required to hold AGM
 - ◆ 所有事情已藉書面決議作出 (第612(1)條)
If everything done by written resolution (s 612(1))
 - ◆ 公司只有一名成員 (第612(2)(a)條)
Single member company (s 612(2)(a))
 - ◆ 不活動公司 (第611條)
A dormant company (s 611)
 - ◆ 成員一致決議，就某財政年度或其後的財政年度，免除舉行周年成員大會 (第612(2)(b)條)
Members' unanimous resolution to dispense with the holding of AGM in respect of a particular financial year or for subsequent financial years (s 612(2)(b))

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免除舉行周年成員大會 (續) Dispensation with the holding of AGM (cont'd)

- 如沒有舉行周年成員大會 –
Where no AGM is held –
 - ◆ 董事（否則成員）可就公司首個財政年度，委任首位核數師 (第395及396(6)條)。
Directors (failing which members) may appoint the company's first auditor for the company's first financial year (s 395 & s 396(6)).
 - ◆ 將財務報表及報告等的文本送交成員 (第430(3)條)
Copy of financial statements and reports to be sent to the members (s 430(3)).
 - ◆ 現任核數師當作再度獲委任，除非被他拒絕 (第403條)
Current auditor deemed to be re-appointed unless he declines (s 403).
 - ◆ 如再度委任被拒，由成員在成員大會委任新核數師 (第396(3)條)
If reappointment declined, members replace retiring auditor at a general meeting (s 396(3)).

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免除舉行周年成員大會 (續) Dispensation with the holding of AGM (cont'd)

- 即使免除舉行周年成員大會，但如出現以下情況，公司亦須舉行大會 –
AGM is required to be held after dispensation if -
 - ◆ 任何成員要求公司召開周年成員大會，而該要求是在舉行周年成員大會的法定限期結束前的3個月之前發出 (第613(5)條)。
a member requests the company to convene an AGM by giving notice to the company not later than 3 months before the end of the statutory period for holding an AGM (s 613(5)).
 - ◆ 成員藉普通決議，把免除舉行周年成員大會的一致決議撤銷 (第614條)。
the unanimous resolution for dispensing with holding an AGM is revoked by an ordinary resolution (s 614).

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讓股東參與決定

Engagement of shareholders in decision making

- 根據第32章，成員可自費要求公司傳閱就周年成員大會提出的決議，或就任何成員大會提出的決議，或將在該會議上處理的事務的陳述書。
Under Cap 32 members may request the company to circulate at their expense a proposed resolution for an AGM or a statement relating to any proposed resolution or business to be dealt with at general meeting.
- 新條例訂明，公司如及時收到成員就周年成員大會提出的決議及有關陳述書的要求，使公司能夠在發出會議的通知時，可同時送交該陳述書或決議的文本，則公司須支付傳閱該等文件的費用 (第582及616條)。
The new CO provides 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 (s 582 & s 616).
- 如要求傳閱陳述書的權利正被濫用，或正被用以在帶誹謗成分的事宜上，取得不必要的宣傳，則公司無須傳閱該陳述書 (第583條)。
Company not required to circulate the statement if the right is abused or is used to secure needless publicity for defamatory matter (s 583).

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降低要求投票表決的門檻

Lowering the threshold for demanding a poll

- 成員要求以投票方式表決的最低人數規定，由佔總表決權的10% (第32章的規定) 減至5% (第591(2)(b)條)。
The threshold for members to demand a poll is reduced from 10% (in Cap 32) to 5% of the total voting rights (s 591(2)(b)).
- 另一最低人數規定 (最少5名成員) 則予以保留 (第591(2)(a)條)。
The other threshold of at least 5 members in Cap 32 is retained (s 591(2)(a)).

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釐清代表的權利

Clarification of the rights of proxy

- 除公司的章程細則另有規定外，2名親身出席，或委派代表出席的成員，即構成公司成員大會的法定人數(第595(3)條)。目前，第32章規定須有2名成員親身出席，才構成法定人數。
Subject to the articles, 2 members present in person or by proxy form a quorum of a general meeting (s 595(3)). Currently Cap 32 requires 2 members personally present to be a quorum.
- 成員的代表可行使成員所有，或任何以下的權利：出席成員大會，成員大會上發言及表決(第596條)。目前，除公司的章程細則另有規定外，第32章只容許代表以投票方式表決。
A proxy may exercise all or any of the member's rights to attend, speak and vote at a general meeting (s 596). Currently Cap 32 allows a proxy to vote on a poll only.
- 除公司的章程細則另有規定外，代表可獲推選為成員大會的主席(第602條)。第32章則沒有明文規定。
Subject to the articles, a proxy may be elected as the chairperson of a general meeting (s 602). There is no express provision to that effect in Cap. 32.

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釐清代表的權利 (續)

Clarification of the rights of proxy (cont'd)

- 新條例規定，在一名由公司指名作為代表的人士獲成員委任為代表的情況下，該代表須按委任書中指明的方式表決。(第603(2)(b)條)。
Where a proxy put forward by a company is appointed by a member to be his proxy, the new CO requires the proxy to vote in the way specified in the appointment of the proxy (s 603(2)(b)).
- 如委任人出席會議並作出表決，即被視為撤銷其代表的委任(第605條)。
The appointment of a proxy is regarded as revoked if the appointor attends and votes at the meeting (s 605).
- 有股本公司的股東可委任多名代表(第596(3)條)。
Multiple proxies are allowed in the case of a company having a share capital (s 596(3)).

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加強保障股東利益 Enhanced Protection of Shareholders' Interest



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安排計劃－人數驗證 Scheme of Arrangement - headcount test

- 現行《公司條例》的人數驗證
Headcount test in current CO
 - ◆ 「代表成員的四分之三(以價值計算).....」(「股份價值驗證」)「的大多數」(「人數驗證」)。法院認許計劃，對所有成員有約束力，計劃即使已通過股份價值驗證及人數驗證，法院仍可酌情不予認許。
“majority in number” (“headcount test”) “representing three-fourths in value of the members...” (“share value test”). Court may sanction scheme which will be binding on all members, i.e. court still has discretion whether or not to sanction scheme even if both tests are satisfied.
 - ◆ 上市公司亦須符合《收購守則》第2.10(b)條的規定，即反對計劃的票數，不得超過無利害關係的股份投票權的10%。
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.
 - ◆ 鑑於電訊盈科有限公司一案，人數驗證予以檢討。案中有證據顯示有股東拆細股份。
The headcount test is reviewed in the light of *Re PCCW Ltd* case where there is evidence of share splitting.

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安排計劃－人數驗證(續)

Scheme of Arrangement - headcount test (cont'd)

- ◆ 人數驗證抵觸「一股一票」的原則。
Headcount test inconsistent with "one share one vote" principle.
- ◆ 中央結算及交收系統內上市公司大部分股份，均以香港中央結算(代理人)有限公司的名義登記，人數驗證未能達致最初的目的。
Most shares in listed companies within the Central Clearing and Settlement Scheme (CCASS) are registered in the name of HKSCC Nominees Ltd. The headcount test does not serve the purpose it was originally designed to achieve.
- ◆ 澳洲於二零零七年修訂《公司法》，賦予法院酌情權批准成員計劃，即使未能取得大多數同意。
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.

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安排計劃－人數驗證(續)

Scheme of Arrangement - headcount test (cont'd)

- 回購股份的公開要約，或收購要約的成員安排計劃，「人數驗證」的規定，由反對票佔無利害關係股份表決權不超過10%的這項規定所取代。
For members' scheme of arrangement involving a general offer to buy back shares or a takeover offer, the headcount test is replaced by the requirement that the votes cast against the scheme do not exceed 10% of the total voting rights attached to all disinterested shares.
- 其他成員計劃仍會保留人數驗證的規定，但法院獲賦予酌情權，可不施行驗證。
The headcount test is retained for other members' schemes but the Court is given a discretion to dispense with the test in special circumstances.
- 如反對計劃的成員提出的反對，屬瑣屑無聊或無理纏擾，法院可飭令其支付訟費。
Court may order costs against a member only if his opposition to the scheme is frivolous or vexatious.

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不公平損害的補救 Remedies for unfair prejudice

- 擴大不公平損害補救的範圍，以涵蓋擬作出，或不作出的作為。
Extended to cover proposed acts and omissions.
- 第32章中「為了結遭投訴的事項」，由法院可作出「它認為合適」的命令，就遭投訴的「事項提供濟助」所取代。
“with a view to bringing to an end the matter complained of” in Cap 32 replaced by any order “that it thinks fit for giving relief in respect of the matter” complained of.
- 目前，《公司(清盤)規則》適用於不公平損害的法律程序。在新條例下，終審法院首席法官獲賦予明確權力訂立規則，規管不公平損害的法律程序(見《公司(不公平損害呈請)法律程序規則》(第622L章))。
Currently the Winding Up Rules are applicable to unfair prejudice proceedings. Under the new CO, CJ is given express power to make rules to regulate such proceedings (see Companies (Unfair Prejudice Petitions) Proceedings Rules, Cap 622L).

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「多重衍生訴訟」 “multiple derivative action”

- 法定衍生訴訟於二零零四年引入，其後終審法院認為普通法容許多重衍生訴訟。
Statutory derivative action introduced in 2004. Subsequently CFA held that a multiple derivative action was possible at common law.
- 二零一零年作出的修訂，就多重衍生訴訟作出規定，有聯繫公司的成員，可就對公司作出的不當行為提起法律程序。新條例重述該等條文。
Amendments were made in 2010 to provide for multiple derivative action to enable a member of an associated company to bring proceedings in respect of misconduct committed against a company. Such provisions are restated in the new CO.

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