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New Companies Ordinance – an accountant's perspective

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Areas of focus for accountants

Financial reporting

- True & fair accounts (company or group)
- True & correct accounts for s141D entities
- Directors' disclosures – directors' report, transactions, emoluments, loans etc
- Summary financial reports
- Revision of financial reports

Auditors' rights and obligations

- Appointment & resignation
- Rights to information
- Obligations to report opinions
- Attendance at meetings

Capital maintenance rules

- Share premium & share premium "merger relief"
- Redemption/repurchase of capital
- Distribution of profits by reference to net realised profits

Impact of the new Companies Ordinance on our areas of focus

What's stayed the same?

- True & fair accounts for public and non-exempt private companies
- Directors' disclosures (mostly)
- Rules re revision of financial reports
- Most of the auditors' rights and obligations
- Merger relief (mostly)
- Distribution of profits by reference to "net realised profits"

What's new?

- Business review for public and non-exempt private companies
- Statutory backing for HKFRS
- Extended scope for private company reporting exemption
- Opt out regime for summary financial report
- Enhanced auditors' rights to information
- Auditors' liability for omitted statements
- Redemption/repurchase of capital rules relaxed

Overview of financial reporting regimes

	Current Ordinance	New Ordinance
Full reporting regime	Directors report	Directors report including business review
	“True and fair” financial statements – group and/or company	“True and fair” financial statements – group or company in accordance with standards issued or specified by the HKICPA
	“True and fair” audit opinion	“True and fair” audit opinion

New content in director's report: business review (s. 388 and schedule 5)

A fair review of the company's/group's business using financial key performance indicators and discussion

Description of company's/group's principal risks and uncertainties

Business review

Particulars of important events affecting the company/group since the end of the year

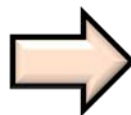
Indication of likely future development of company/group

However, most private companies are exempt from preparing a business review...

Exemption from preparing non-consolidated financial statements

Current CO

- **Wholly-owned subsidiary; or**
- **Where all subsidiaries can be excluded as for each it is:**
 - **impracticable;**
 - **misleading;**
 - **no real value to members; or**
 - **involves expense or delay out of proportion to the value to members**



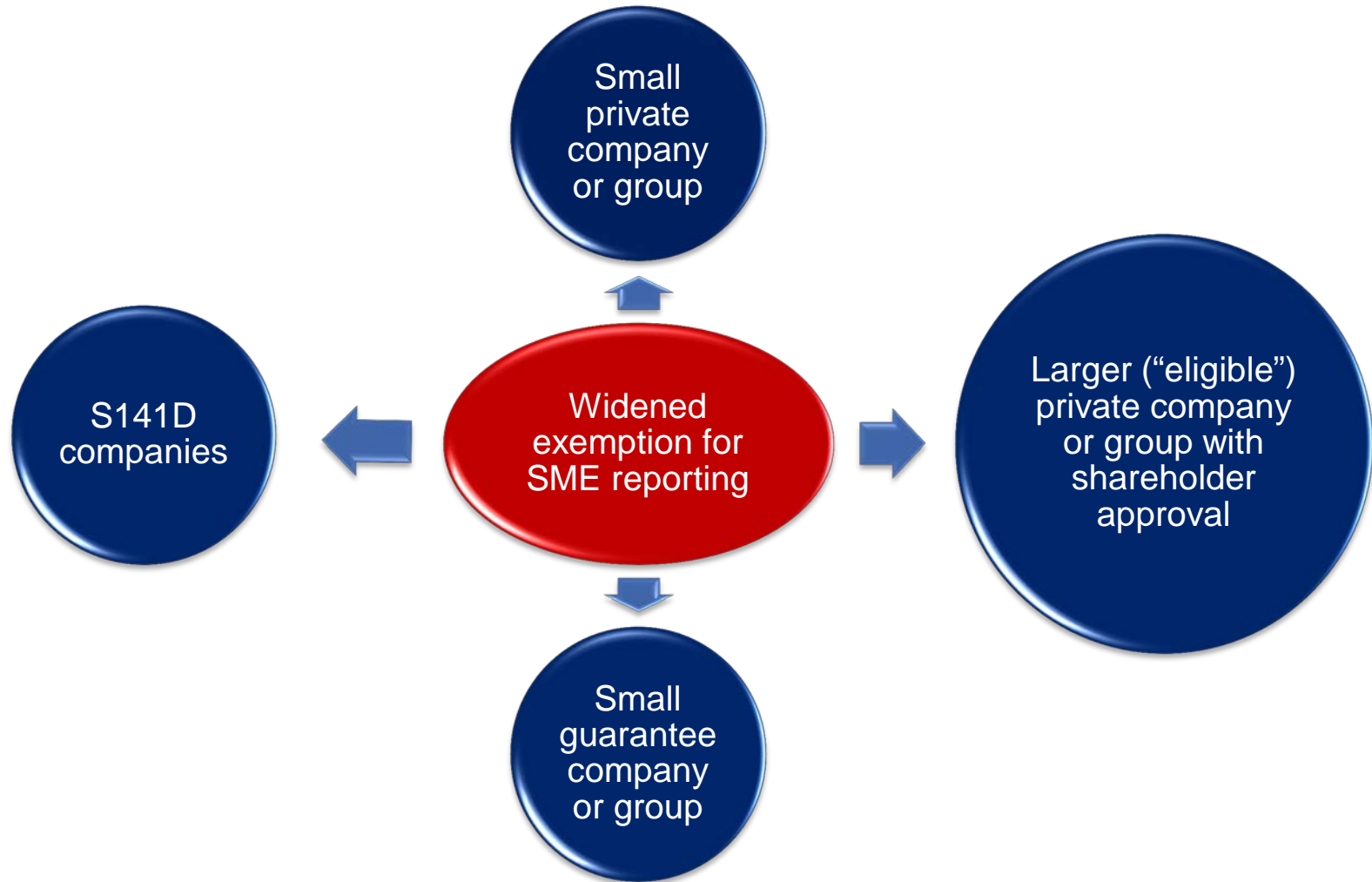
New CO

- **Wholly-owned subsidiary; or**
- **Partially owned subsidiary provided these procedures are followed:**
 - At least 6 months before year end the directors notify members in writing of intention not to prepare consolidated financial statements
 - As at 3 months before year-end no member has responded requesting consolidated financial statements

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Simplified reporting regime (optional)	Section 141D – very limited eligibility	Much broader eligibility
	Brief directors’ report	Directors’ report (excl. business review)
	Balance Sheet per 11 th Sch	Financial statements per HKICPA SME FRF & FRS
	“True and correct” audit opinion (full scope audit)	“Properly prepared” audit opinion (full scope audit)

Eligibility for simplified reporting



Summary of eligibility criteria

	S 141D co's	Small private co/grp ¹	Small guarantee co/grp ¹	Larger ("eligible") private co/grp ¹
Annual revenue	No limit	≤ \$100m ²	≤ \$25m	≤ \$200m ²
Total assets	No limit	≤ \$100m ²	No limit	≤ \$200m ²
Average employees	No limit	≤ 100 ²	No limit/ n/a?	≤ 100 ²
Shareholder approval	100% of members approve	Not required	Not required	At least 75% of members approve and none object

¹ In groups these tests have to be met for each entity in the group and for the group as a whole on a consolidated basis

² Need to meet at least 2 out of the 3 tests

Reminder of HKICPA SME FRF & FRS

- Home grown accounting framework and self-contained accounting standard
- Historical cost accounting resulting in a “properly prepared” opinion
- Simplifications in current version:
 - Applies to company level financial statements only
 - No cash flow statement
 - No deferred tax
 - Fair value re-measurement not permitted
 - Fewer disclosures
- Current version is under review

Summary financial reports: new opt out regime

Opt in regime

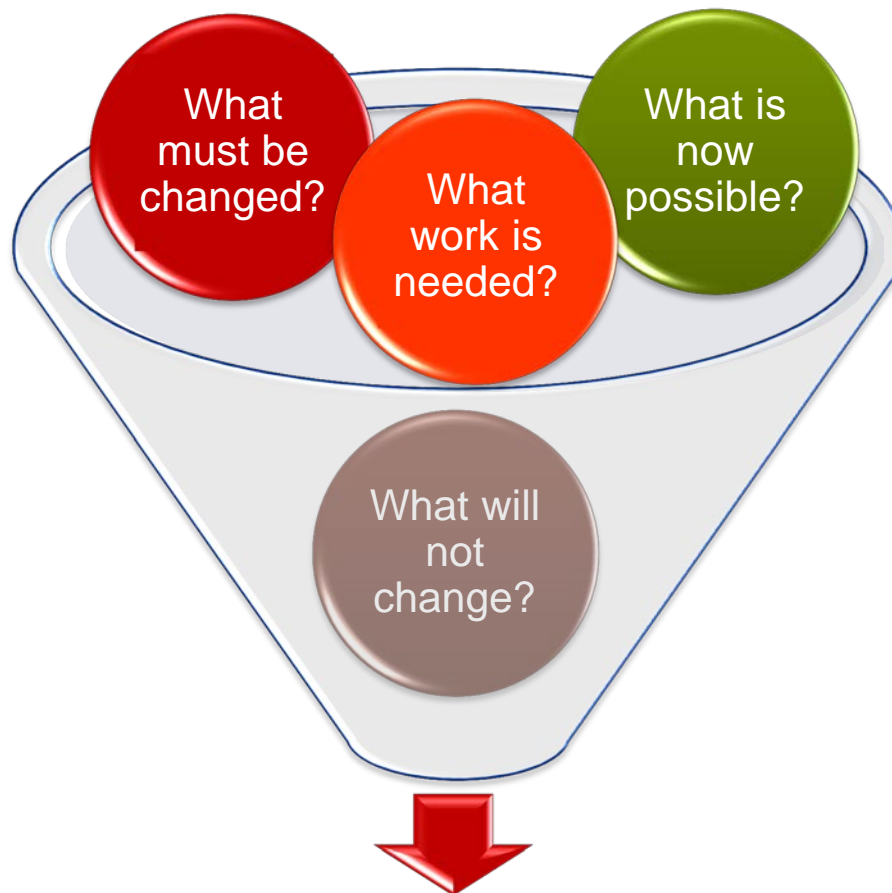
- Positive confirmation from shareholder needed
- Default: full set of annual report



Opt out regime

- Shareholder given a chance to choose
- Default: Summary financial report

Implementation: the devil is in the detail



**HOW WILL THE NEW ORDINANCE
IMPACT ME AND THOSE I DEAL WITH?**



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Further details on eligibility criteria for private company reporting exemption

Ineligible private companies – companies which ...

- carry on banking business under a banking license granted under the Banking Ordinance; or
- are licensed under SFC to carry on regulated business; or
- carry on insurance business otherwise than as an agent; or
- accept by way of trade or business loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities

Source: section 359(4)

Section 141D companies still eligible ...

- Eligibility criteria:
 - Private company not carrying out ineligible business
 - No subsidiaries and not a subsidiary of another company
 - 100% shareholder approval obtained on year by year basis
- No size criteria
- Source: section 359(1)(b)

“Small private companies or groups”

New statutory backing for the HKICPA’s SME FRF & FRS ...

- Automatic eligibility for SME reporting if company satisfies at least 2 out of 3 size tests:
 - Total annual revenue not more than HKD 100 million
 - Total assets not more than HKD 100 million
 - Average number of employees during the year not more than 100
- If company has subsidiaries:
 - each company in the group must qualify as a small private company; and
 - above tests also have to be met based on consolidated numbers
- Specific rules to deal with change in SME status, long/short accounting periods, fluctuating work force
- Source: sections 359(1)(a), 359(2), 361, 364, Schedule 3

“Small guarantee companies or groups”

Similar to small private companies or groups – but have to be smaller ...

- Automatic eligibility for SME reporting if company satisfies a single monetary size test:
 - Total annual revenue not more than HKD 25 million
- If company has subsidiaries:
 - each company in the group must qualify as a small guarantee company
 - above test has to be met based on consolidated numbers
- Specific rules to deal with change in SME status, long/short accounting periods
- Source: sections 359(1)(a), 359(3), 363, 366, Schedule 3

Larger (“eligible”) private companies or groups – size tests

- Company must satisfy at least 2 out of 3 size tests:
 - Total annual revenue not more than HKD 200 million
 - Total assets not more than HKD 200 million
 - Average number of employees during the year not more than 100
- If company has subsidiaries:
 - each company in the group has to qualify as an eligible private entity under above size tests; and
 - above tests also have to be met based on consolidated numbers
- Specific rules to deal with change in SME status, long/short accounting periods, fluctuating work force
- Source: sections 359(1)(c), 359(2), Schedule 3

Larger (“eligible”) private companies or groups - shareholder approval

- Shareholder approval required each year by way of a general meeting resolution following special notice
- Resolution has to be passed by the members holding at least 75% of the voting rights of the company
- Not effective if any members holding the remaining rights vote against the resolution
 - Effective objections can also be lodged in writing up to 6 months before the end of the financial year
- If the company has subsidiaries then this resolution is required for each subsidiary which is not a “small private company”
- Source: sections 359(c), 359(2), 360

Which companies are exempt from preparing the business review?

- Any company that falls within the “reporting exemption” (i.e. small/larger private companies or groups, etc per section 359)
- Wholly owned subsidiary of another body corporate
- Any other private company which does not fall within the reporting exemption, provided a special resolution is passed by members
 - Resolution must be passed at least 6 months before the end of the financial year
 - Effectiveness of resolution can be made to roll from one year to the next until revoked
 - May only be revoked by special resolution
- Source: section 388(3)



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Thank you.

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