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A BILL

To Amend the Companies Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Companies Ordinance (Cap. 32) is amended by adding---
"entitled person" (有權利的人), in relation to a listed company, means a person who under section 129G(1) as read with the proviso thereto is entitled to be sent copies of the documents mentioned in that section;

"notice of intent" (意願通知書) means a notice of intent referred to in regulations made under section 359A(2);

"relevant financial documents" (有關財務文件), in relation to a listed company, means the documents required to be sent under section 129G(1) in respect of the company;

"summary financial report" (財務摘要報告), in relation to a listed company, means a summary financial report of the company which complies with section 141CE(1);".

3. Accounts to be annexed, and auditors' report to be attached, to balance sheet

Section 129C is amended by adding---

"(4) This section does not apply to a copy of a balance sheet incorporated into a summary financial report of a listed company and issued, circulated or published as part of the report."

4. Right to receive copies of balance sheets and directors' and auditors' reports

(1) Section 129G(1) is amended, in proviso (b)---

(a) in paragraph (ii), by repealing "or" at the end;

(b) in paragraph (iii), by repealing "; and" and substituting "; or";

(c) by adding---

"(iv) subject to sections 141CA(1) and 141CD(1), to a member of a listed company, a holder of debentures of the company or any other person who is entitled to receive notices of general meetings of the company, if the company has, pursuant to a relevant notice of intent, duly sent to the member, holder or person a copy of a summary financial report in place of a copy of those documents from which the report is derived; and"

(2) Section 129G is amended by adding---

"(1A) Subject to sections 141CB(1) and 141CD(1), for the purposes of proviso (b)(iv) to subsection (1), a copy of a summary financial report of a listed company shall be treated as having been duly sent if---

(a) subject to paragraph (b), it is sent not less than 21 days before the date of the general meeting concerned;

(b) where proviso (c) to subsection (1) applies, it is sent not less than such number of days as agreed under that proviso by the members entitled to attend and vote at the meeting."

(3) Section 129G is amended by adding---

"(5) For the purposes of proviso (b)(iv) to subsection (1), "relevant notice of intent" (有關意願通知書), in relation to a member of a listed company, a holder of debentures of the company or any other person who is entitled to receive notices of general meetings of the company, means a notice of intent sent by the member, holder or person to the company in accordance with regulations made under section 359A(2)."

5. Resignation of auditor

Section 140A(3)(b) is amended by adding "as read with the proviso thereto" before "is entitled".

6. Sections added

The following are added before the subheading "Accounts of certain private companies"---

"Summary Financial Reports of Listed Companies

141CA. Restrictions on sending of summary financial reports of listed companies

(1) A listed company shall not send to an entitled person of the company, for the purposes of its general meeting, a copy of a summary financial report in place of a copy of the relevant financial documents from which the report is derived, unless there is in force a notice of intent sent by the person to the company, notifying the company that the person agrees to be sent a copy of the summary financial report in place of a copy of the relevant financial documents.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

141CB. Restrictions on sending of summary financial reports, etc. of listed companies where there are "relevant dates"

(1) Where there is a relevant date in respect of a general meeting of a listed company, the company shall not send to an entitled person of the company a copy of the summary financial report in relation to the meeting until the expiry of such period

as may be specified by regulations made under section 359A(2).

(2) In addition, in the case mentioned in subsection (1), the company shall not send to such a person a copy of the relevant financial documents from which the summary financial report mentioned in that subsection is derived until the expiry of such period as may be specified by regulations made under section 359A(2).

(3) If default is made in complying with subsection (1) or (2), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

(4) For the purposes of this section---

"relevant date" (有關日期), in relation to a general meeting of a listed company, means the first day on which the company sends a relevant notification in respect of the meeting to an entitled person of the company;

"relevant notification" (有關通告), in relation to a general meeting of a listed company, means a notification referred to in regulations made under section 359A(2), being a notification which according to its contents, is intended to apply exclusively or first to the meeting.

141CC. Duties of listed companies to comply with certain requests made by entitled persons

(1) Subject to subsection (2), if an entitled person of a listed company who has been sent a copy of a summary financial report in relation to a general meeting of the company makes a request under this section for a copy of the relevant financial documents from which the report is derived, then the company shall, subject to the provisions of this Ordinance, comply with the request within 14 days from the date of---

(a) its receipt; or

(b) the first day on which copies of those documents are sent to its entitled persons, whichever is later.

(2) A listed company is not required to comply with a request made under subsection (1) unless the request is made---

(a) in writing; and

(b) before the relevant date.

(3) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine and, for continued default, to a daily default fine.

(4) It shall be a defence for a person charged under subsection (3) to prove that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence.

(5) For the avoidance of doubt, it is declared that---

(a) the requirement to send a copy of a listed company's relevant financial documents to an entitled person of the company in compliance with section 129G(1) does not apply where the company sends a copy of those documents to the person in response to a request under this section; and

(b) a request under this section does not include a notice of intent except where the notice of intent is treated as such a request under the provisions of regulations made under section 359A(2).

(6) For the purposes of subsection (2), "relevant date" (有關日期), in relation to a listed company, means---

(a) subject to paragraph (b), the first day on which copies of the relevant financial documents required to be laid before the company in the following general meeting are sent to the entitled persons of the company;

(b) if no copies of those documents mentioned in paragraph (a) are required to be sent to the entitled persons of the company, the first day on which copies of the summary financial report in relation to that following meeting are sent to the entitled persons of the company.

141CD. Certain circumstances in which no summary financial reports shall be sent in place of relevant financial documents

(1) A listed company shall not send any copy of a summary financial report to an entitled person of the company in place of a copy of the relevant financial documents---

(a) if the memorandum or articles of association of the company does not permit the company to do that;

(b) if the person is a holder of debentures of the company and the instrument that constitutes or governs the debentures does not permit the company to do that; or

(c) if an order under section 141CF would thereby be contravened.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and liable to a fine.

(3) For the avoidance of doubt, it is declared that---

(a) if there is an event mentioned in subsection (1)(a), (b) or (c), then any notice of intent sent to the company by the person concerned, which is in force immediately before the existence of that event, shall cease to have effect; and

(b) the cessation of any event mentioned in subsection (1)(a), (b) or (c) does not revive a notice of intent ceasing to have effect pursuant to paragraph (a), and the company in such case shall be treated as not having previously sent any notification referred to in regulations made under section 359A(2) to the person concerned.

141CE. Form and contents, etc. of summary financial reports

(1) A summary financial report in relation to a general meeting of a listed company shall be---

- (a) derived from the relevant financial documents required to be laid before the company in that meeting;
- (b) in such form and contain such information and particulars as specified in regulations made under section 359A(2); and
- (c) approved by the board of directors of the company.

(2) Nothing in subsection (1) shall be construed as prohibiting a listed company from including in a summary financial report any other information or particulars which---

- (a) the company considers appropriate; and
- (b) is not inconsistent with the relevant financial documents from which the summary financial report is derived.

(3) If a document, purporting to be a summary financial report of a listed company, does not comply with subsection (1) and is circulated, issued or published by the company to any other person, unless there is reasonable excuse---

- (a) the company shall be guilty of an offence and liable to a fine; and
- (b) every officer of the company shall be guilty of an offence and liable to a fine and imprisonment.

141CF. Prohibition orders against circulation, etc. of summary financial reports

Where there is a conviction of an offence under section 141CE(3), the court may---

- (a) by order prohibit the company concerned and any other person from circulating, issuing or publishing any of the company's summary financial report to any person for such period as the court may specify; and
- (b) in making the order impose such conditions as the court thinks appropriate.

Relevant Financial Documents and Summary Financial Reports on Computer Networks

141CG. Circumstances in which listed companies may comply with section 129G by use of computer network

(1) Subject to subsection (2), for the purposes of section 129G, a listed company shall be treated as having sent a copy of the relevant financial documents or a copy of a summary financial report to an entitled person of the company in satisfaction of that section if---

- (a) the person has, pursuant to a notice of intent or other notice which is in force,

agreed with the company to his having access to the documents or report, as the case may be---

(i) on a computer network to which the entitled person or any other entitled person may have access; and

(ii) instead of being sent the documents or report, as the case may be; and

(b) the person is notified, in a manner for the time being agreed between the person and the company, of---

(i) the publication of the documents or report, as the case may be, on the computer network;

(ii) the address of the computer network; and

(iii) the location on that computer network where the documents or report, as the case may be, may be accessed, and how they or it may be accessed.

(2) Where a listed company's relevant financial documents or summary financial report are or is treated as being sent to an entitled person of the company by virtue of the operation of subsection (1), the documents or report, as the case may be, shall be treated as being sent to the person not less than 21 days before the date of the general meeting to which the documents or report, as the case may be, relate or relates if and only if---

(a) the documents or report, as the case may be, are or is published on the computer network referred to in that subsection throughout the period beginning not less than 21 days before the date of the meeting and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the company; and

(b) the notification given for the purposes of subsection (1)(b) is given not less than 21 days before the date of the first-mentioned meeting.

(3) Nothing in subsection (2) shall invalidate the proceedings of a general meeting where---

(a) any documents or report that are or is required to be published as mentioned in subsection (2)(a) are or is published for a part, but not all, of the period mentioned in that subsection; and

(b) the failure to publish the documents or report throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid."

7. Power to make regulations

Section 359A is amended---

(a) by renumbering it as section 359A(1);

(b) by adding---

"(2) Without prejudice to the power conferred under subsection (1), the Chief

Executive in Council may make regulations---

(a) specifying the periods after which a copy of a summary financial report and a copy of the relevant financial documents of a listed company may be sent under section 141CB;

(b) providing for any matter in relation to the determination of the effect of a notice of intent sent by an entitled person of a listed company, including providing for the circumstances under which such a notice of intent shall be treated as a request under section 141CC;

(c) providing for the form and contents of a summary financial report of a listed company (including empowering a listed company to determine certain aspects of the form of its summary financial report);

(d) providing for the means to ascertain the wishes of an entitled person of a listed company in relation to the sending of a copy of a summary financial report to the person in place of a copy of the relevant financial documents from which the report is derived (including providing for the sending of a notification by the company to the person for the purposes);

(e) providing for the form and contents of a notification referred to in paragraph (d), including---

(i) providing for the form and contents of any card or document attached to such a notification; and

(ii) providing that any of such card or document shall be postage prepaid; and

(f) providing for any incidental, consequential and transitional provision that is necessary or expedient for the purposes of the matters provided for by this subsection."

8. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding---

"141CA(2) Company sending Summary level 3 ---
copy of summary
financial report in
place of copy of
relevant financial
documents in
contravention of
section 141CA(1)

141CB(3) Company sending Summary level 3 ---
copy of summary
financial report

in contravention
of section 141CB(1)

141CB(3) Company sending Summary level 3 ---
copy of relevant

financial documents
in contravention
of section 141CB(2)

141CC(3) Company failing to Summary level 5 \$300
comply with request

for copy of relevant
financial documents

141CD(2) Company sending Summary level 5 ---
copy of summary

financial report
where there is in
existence any of the
events mentioned
in section 141CD(1)

141CE(3)(a) Company circulates, Summary \$300,000 ---
issues or publishes

copy of summary
financial report
which does not
comply with
requirements referred
to in section 141CE(1)

141CE(3)(b) Officer circulates, Summary \$300,000 ---".
issues or publishes and

copy of summary 12 months
financial report
which does not
comply with
requirements referred
to in section 141CE(1)

Explanatory Memorandum

The purpose of this Bill is to amend the Companies Ordinance (Cap. 32) ("the Ordinance") to enable a listed company incorporated in Hong Kong ("listed Hong Kong company") to send a copy of a summary financial report in place of a copy of the

financial documents required to be laid before the company in its general meeting to a shareholder, debentures holder or any other entitled person of the company ("entitled person").

2. Clause 2 amends section 2(1) of the Ordinance to define new terms used in the Bill.

3. Clause 3 adds a new provision to section 129C of the Ordinance to make it clear that the requirement for certain documents to be attached to a balance sheet of a company does not apply to a copy of a balance sheet which is incorporated into a summary financial report of a listed Hong Kong company.

4. Clause 4 amends section 129G of the Ordinance so that a listed Hong Kong company is not required to send a copy of its financial documents to an entitled person if it has duly sent to the person a copy of its summary financial report.

5. Clause 5 amends section 140A(3)(b) of the Ordinance to improve the provision from the drafting aspect.

6. Clause 6 adds new sections to the Ordinance in relation to the sending of copies of summary financial reports to entitled persons. New sections 141CA and 141CB regulate the sending of a summary financial report of a listed Hong Kong company in certain circumstances. New section 141CC provides for the compliance of certain requests made by entitled persons of a listed Hong Kong company for copies of the financial documents of the company. New section 141CD specifies the circumstances in which a listed Hong Kong company is not allowed to send to an entitled person a copy of a summary financial report in place of a copy of the financial documents. New section 141CE specifies the requirements in relation to the form and contents of a summary financial report of such a company. New section 141CF empowers the court to make order prohibiting a listed Hong Kong company from circulating, issuing or publishing a summary financial report where there is a conviction of an offence under new section 141CE(3). A new section (section 141CG) is also added to the Ordinance to provide that a listed Hong Kong company shall be treated in certain circumstances as having sent a copy of the company's financial documents or summary financial report to entitled persons for the purposes of section 129G if the documents or report are or is published on a computer network.

7. Clause 7 amends section 359A of the Ordinance to empower the Chief Executive in Council to make regulations providing for various matters in relation to a summary financial report of a listed Hong Kong company, including providing for the form and contents of the report, the means to ascertain the wishes of an entitled person in respect of receiving a copy of a summary financial report in place of a copy of the financial documents for the purposes of a general meeting and such incidental, consequential and transitional provisions as are necessary or expedient for the

purposes of the matters provided for under the new section 359A(2).

8. Clause 8 amends the Twelfth Schedule to the Ordinance to specify the penalties for committing offences under new sections 141CA, 141CB, 141CC, 141CD and 141CE.