

**For Information
on 7 March 2001**

**Legislative Council
Panel on Financial Affairs**

**Proposed Legislative Amendments to facilitate
Preparation of Summary Financial Statements by
Listed Companies for their Shareholders**

Purpose

This paper informs Members of our proposed amendments to the Companies Ordinance (CO) to facilitate preparation of summary financial statements by listed companies for their shareholders.

Background

2. Section 129G of the CO provides that Hong Kong incorporated companies, whether listed or not, shall send a full set of financial statements to their shareholders, which comprise –

- (a) a copy of the balance sheet, including every document required by law to be annexed to it (referred to in section 129C as the profit and loss accounts and, where applicable, the group accounts);
- (b) a copy of the directors' report; and
- (c) a copy of the auditors' report.

The financial statements are usually contained in the annual reports of the companies in question.

3. Whilst the information in the financial statements is of interest to sophisticated investors, the length and complexity of the information may discourage the retail investors from trying to read the financial statements. Moreover, printing a large number of annual reports has significant paper consumption and is not environmentally friendly.

4. To facilitate the investing public to better comprehend the operations of listed companies, we consider that there is merit in allowing listed companies to send summary financial statements (instead of the full set of documents required under section 129G) to their shareholders. These shareholders would continue to have the right to choose to receive the full set if they so desire. This proposal is in line with practices in several other jurisdictions including the United Kingdom, Australia and Singapore.

Proposal

Sending summary financial statements to entitled persons

5. We propose to amend section 129G to allow a listed company to send a summary financial statement (instead of the full set of documents required under section 129G) to entitled persons¹. An entitled person can, at all times, notify the company in writing or electronically (in an electronic communication to the email address of the company) of his wish to receive the full set of documents.

6. This proposal does not, however, apply to the following circumstances –

- (a) where the memorandum and articles of association of the company prohibits the company from doing so;

¹ “Entitled persons” are defined to include persons mentioned in subsections (1), (2) and (2A) of section 129G. Subsection (1) refers to persons who shall be sent the documents required under section 129G. Subsection (2) refers to persons who shall be entitled to be furnished on demand with charge with a copy of the last balance sheet of the company, together with a copy of the directors’ reports and a copy of the auditors’ report. Subsection (2A) refers to persons who shall be furnished with a chairman’s statement and other documents containing information on the affairs of the company.

- (b) where the person entitled to the documents under section 129G is a holder of a debenture and the instrument that constitutes or governs the debenture prohibits the company from doing so; and
- (c) where the court so orders pursuant to the penalty provision and for so long as the order remains in force (see paragraph 15 below).

7. The summary financial statements may be sent out by electronic means with the agreement of individual entitled persons. The electronic means should include posting a summary financial statement on the website of the listed company in question and advising the entitled persons of such posting. This notwithstanding, an entitled person should still be entitled to elect to receive a printed copy of the statement if he so desires and indicates his desire to the company. This is to ensure that he may be able to receive a printed copy in case he cannot download a copy from the website.

Publication of summary financial statements to the public in general

8. We also consider it appropriate to allow a listed company to issue, circulate or publish a summary financial statement generally to members of the public.

Ascertainment of entitled persons' wishes

9. A listed company may not send a summary financial statement to an entitled person unless the company has ascertained that he does not wish to receive the full set of documents under section 129G. The company should do so by sending him a notice in writing or electronically (if previously so agreed by him), giving him an opportunity to elect to receive the full set of documents.

10. The notice should be sent out two months before the annual report is due to be despatched. The company will be considered to have sufficiently ascertained the wishes of the entitled person if the company has given notice but not received a response by a date which is one month from the date on which the annual general meeting is fixed, and in which case, the entitled person is deemed to have agreed to receive a summary financial statement. The option chosen by an entitled person would continue to apply in the following years, unless the listed company is notified otherwise in writing or electronically.

Contents of summary financial statements

11. A summary financial statement will be derived from the company's annual accounts (which include the balance sheet and all documents required by law to be annexed thereto) and the directors' report. It contains a summary directors' report, and a summary profit and loss account and balance sheet.

12. The summary directors' report should include a statement in relation to the following matters –

- (a) a fair review of the development of the business of the company and its subsidiaries during the financial year and of their position at the end of the year;
- (b) particulars of important events affecting the company or any of its subsidiaries which have occurred since the end of the financial year; and
- (c) an indication of likely future developments in the business of the company and/or its subsidiaries.

It also has to contain the list of names of directors required by paragraph (i) of subsection 129C(3).

13. The summary profit and loss account and balance sheet has to contain the form and content of the profit and loss account; and the balance sheet, as represented in the full annual accounts of the company in compliance with the Tenth Schedule of the CO save that the notes to the profit and loss account or the balance sheet as permitted under the Tenth Schedule need not be included. It also has to show such disclosures as are required by sections 161 to 161C, which deal with –

- (a) disclosure of details of directors' emoluments, pensions, etc in the accounts;
- (b) particulars as to loans to officers, etc, in the accounts;
- (c) loans to officers, etc of authorised financial institutions; and

- (d) duty of a director to make the disclosures that relate to himself for the purposes of sections 161 and 161B.

14. Apart from the summary directors' report and the summary profit and loss account and balance sheet, the summary financial statement has to contain the following –

- (a) a statement as to the name of the person who signed it on behalf of the board of the company;
- (b) a clear statement (exhibited in a prominent position) of how entitled persons can obtain, free of charge, a copy of the company's last full accounts and reports, and of how entitled persons may elect in writing or electronically to receive full accounts and reports in place of summary financial statements for all future financial years;
- (c) a statement that the information is only a summary of the information in the company's annual accounts and the directors' report, and that the full report will be sent to the entitled person free of charge upon request;
- (d) an opinion from the company's auditors as to whether the summary financial statements are consistent with those annual accounts;
- (e) a statement on whether the auditor's report on the annual accounts is qualified or modified and if it was qualified or modified, set out the report in full together with any further material needed to understand the qualification;
- (f) a statement on whether the auditors' report in the annual accounts contains a statement under –
 - (i) subsection (4) of section 141 (accounting records or returns inadequate or accounts not agreeing with the records and returns); or

- (ii) subsection (6) of section 141 (failure to obtain necessary information and explanations).

Penalty

15. Failure on the part of a listed company and every officer of the listed company to comply with the relevant legislative proposals should be an offence. We also intend to provide the court with an additional power to prohibit a defaulter upon conviction from issuing, circulating or publishing summary financial statements for such period as the court may determine.

Other legislation

16. The above legislative proposals will not affect the provisions in the Banking Ordinance and the Insurance Companies Ordinance that relate to the presentation, publication, issuance, circulation, or submission of financial statements or documents required to be annexed or attached to such statements.

Way Forward

17. We are making preparations for introducing the legislative amendments into the Legislative Council in the current legislative session.

Financial Services Bureau
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