

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Chapter 32)

COMPANIES (SUMMARY FINANCIAL REPORTS OF LISTED COMPANIES) REGULATION

INTRODUCTION

At the meeting of the Executive Council on 20 November 2001, the Council **ADVISED** and the Chief Executive **ORDERED** that the Companies (Summary Financial Reports of Listed Companies) Regulation, at the Annex, should be made.

BACKGROUND AND ARGUMENT

Companies (Amendment) Bill 2001

2. The Companies (Amendment) Bill 2001 enables a listed company incorporated in Hong Kong to send to an entitled person of the company a summary financial report in place of the full set of financial documents for the purpose of a general meeting of the company if the entitled person so agrees. The financial documents comprise a copy of the balance sheet, including every document required by law to be annexed to it (for example, the profit and loss accounts); a copy of the directors' report; and a copy of the auditors' report.

3. The Bill was passed by the Legislative Council on 31 October 2001 with amendments. It was signed by the Chief Executive on 8 November 2001 and promulgated on 9 November 2001. The amendments are technical in nature, and their main purpose is to make clear, in the primary legislation rather than in the Regulation, our policy intent that an entitled person is treated as having agreed to receive the summary financial report if he does not send a notice of intent as regards his wishes to the company within a specified period, in response to a notification from the company.

4. It is now necessary to make the Regulation, mainly to provide for the form and contents of summary financial reports, the ascertainment of entitled persons' wishes, and the determination of the effects of notices of intent.

Form and Contents of Summary Financial Reports

5. A summary financial report will be derived from the company's financial documents referred to in paragraph 2 above. It must also contain a brief report by the company's directors on the company's performance in the year under review and the outlook for the coming year. The brief report must include –

- (a) a fair review of the development of the business of the company and its subsidiaries, if any, during the financial year concerned and of the position at the end of the year;
- (b) particulars of all important events which have occurred since the end of the financial year concerned and affected the company and (if applicable) the group of companies to which the company belongs; and
- (c) an indication of likely future developments of the business of the company.

6. To ensure corporate transparency, the summary financial report must disclose the following information –

- (a) details of directors' emoluments, pensions, etc, as required under section 161 of the Companies Ordinance (Ordinance);
- (b) particulars as to loans to officers, etc, as required under sections 161A and 161B of the Ordinance; and
- (c) the list of names of directors, as required under section 129D(3)(i) of the Ordinance.

7. Other information which must be included in a summary financial report includes –

- (a) a statement as to the names of the directors who have signed the report on behalf of the board of directors of the company;
- (b) a clear statement (exhibited in a prominent position in the report) of how entitled persons can obtain, free of charge, a copy of the company's full set of documents from which the report is derived, and how an entitled person may in future notify the company of his wishes regarding the sending to him of a summary financial report in place of the full set of documents;
- (c) a statement which clarifies the nature of the report by indicating that the report only gives a summary of the information and particulars contained in the company's financial documents;
- (d) an opinion from the company's auditors as to whether the summary financial report is consistent with the full set of financial documents and whether it complies with the relevant statutory requirements;

- (e) a statement on whether the auditors' report concerned is qualified or otherwise modified and, if the auditors' report is qualified or otherwise modified, set out the full auditors' report and any further material for the understanding of the qualification or other modification; and
- (f) a statement, if it is contained in the auditors' report, under –
 - (i) section 141(4) of the Ordinance (accounting records or returns being inadequate, or accounts not agreeing with the records and returns); or
 - (ii) section 141(6) of the Ordinance (failure on the part of auditors to obtain necessary information and explanations).

Ascertainment of Entitled Persons' Wishes

8. A listed company may ascertain the wishes of an entitled person of the company by sending to him a notification, giving him 30 days to notify the company in the form of a notice of intent. The new section 141CB of the Ordinance provides that if an entitled person does not send a notice of intent to the company within the period specified in the regulations, i.e. 30 days, he will be treated as having sent a notice of intent to the company within the 30-day period notifying the company that he agrees to be sent a copy of the summary financial report in place of a copy of the financial documents.

9. To enable an entitled person to assess whether he wishes to receive a summary financial report, the notification is required to include a general statement as to the contents and function of a summary financial report and make clear that the summary financial report only gives a summary of the information and particulars contained in the full set of financial documents. The notification must also inform the entitled person that he may send a notice of intent to the company to indicate his wishes and must also explain the effect of sending and not sending such notice.

Determination of Effects of Notices of Intent

10. An entitled person of a listed company may at any time send a notice of intent to the company. It should be treated as a notice of intent if it is given in writing and clearly indicates the intent. The company is required to comply with the notice of intent for the purpose of a general meeting of the company if the notice of intent is received not less than 15 days before the date the company sends the full set of financial documents to the entitled persons of the company in accordance with the requirements of the Ordinance. Such a period gives the company sufficient time to process the notices of intent received.

11. We also consider it appropriate to stipulate that a notice of intent will apply to the subsequent general meetings of the company until it is replaced by a subsequent one. This will make it unnecessary for an entitled person of a listed company to send a notice of intent to the company every year. Moreover, the company need not ascertain the wishes of an “existing” entitled person every year.

THE REGULATION

12. **Section 3** specifies the period for the purpose of the new section 141CB of the Ordinance (see paragraph 8 above). **Section 4** specifies the period after which a copy of a summary financial report and a copy of the relevant financial documents of a listed company may be sent to an entitled person of the company under the new section 141CC of the Ordinance. **Section 5** provides for the form and contents of a summary financial report (see paragraphs 5 – 7 above). **Section 6** provides for the form and contents of a notification (see paragraph 9 above). **Sections 7 to 12** provide for determination of the effect of an entitled person’s notice of intent (see paragraphs 10 – 11 above).

PUBLIC CONSULTATION

13. We consulted the Standing Committee on Company Law Reform (SCCLR) on the proposal on 9 December 2000. The SCCLR endorsed the implementation of the proposal subject to the preservation and availability of full annual reports, the right of shareholders and the public to obtain access to these reports, and the option for a full annual report being printed explicitly at the front of the summary financial reports.

14. We consulted the Legislative Council Panel on Financial Affairs on the proposal on 7 March 2001. The Panel Members were generally supportive of the proposal. We also consulted the Hong Kong Society of Accountants (HKSA) in March 2001. The HKSA supported the proposal in principle, and raised a number of technical points, which had been addressed in the drafting of the legislation.

BASIC LAW IMPLICATIONS

15. The Department of Justice advises that the Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

16. The Department of Justice advises that the Regulation is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

17. The Regulation does not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

18. There are no financial and staffing implications for the Government arising from the implementation of the proposal.

ECONOMIC IMPLICATIONS

19. Apart from saving printing cost, the rendering of a less bulky and more concise summary financial report as an expedient over the full annual report may enable smaller shareholders to more readily appreciate the business and financial situation of the listed company concerned, thereby helping their respective investment considerations.

LEGISLATIVE TIMETABLE

20. The Regulation will be published in the Gazette on 23 November 2001 and tabled at the Legislative Council on 28 November 2001 for negative vetting.

PUBLICITY

21. A press release will issued on 22 November 2001. A spokesman will be available to handle media enquiries.

ENQUIRIES

22. For enquiries, please call Mr L W Ting, Assistant Secretary for Financial Services (Companies) at 2527 5543.

Financial Services Bureau

22 November 2001

(C14/19(01) Pt 6)

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