

LN249-E

Companies (summary financial reports of listed companies) regulation

(Made by the Chief Executive in Council under section 359A(2) of the Companies Ordinance (Cap. 32))

1. Commencement

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

2. Interpretation

In this Regulation, unless the context otherwise requires---

"general meeting" (大會), in relation to a listed company, means a general meeting in which a copy of the relevant financial documents is required to be laid before the company;

"notice of intent" (意願通知書) means a notice in writing which---

(a) is sent by an entitled person of a listed company to the company; and

(b) indicates whether the person---

(i) agrees to be sent a copy of the relevant financial documents for the purposes of a general meeting of the company; or

(ii) agrees to be sent a copy of the summary financial report in place of a copy of the relevant financial documents for the purposes of a general meeting of the company;

"notification" (通告) means a notification referred to in section 6.

Periods specified for purposes of Ordinance

3. Period specified for purposes of section 141CB of Ordinance

The period specified for the purposes of section 141CB of the Ordinance shall be a period of 30 days beginning immediately after the date on which the relevant listed company sends a notification to the relevant entitled person.

4. Period specified for purposes of section 141CC of Ordinance

The period specified for the purposes of section 141CC(1) and (2) of the Ordinance shall be a period beginning on the first day on which the relevant listed company sends the relevant notification to an entitled person of the company and ending 30 days after the last day on which the company sends the notification to an entitled person of the company.

Summary financial reports---form and contents

5. Form and contents of summary financial reports

(1) A summary financial report of a listed company shall contain all the information and particulars included in the company's balance sheet and profit and

loss account as they appear in the relevant financial documents.

(2) The balance sheet and profit and loss account referred to in subsection (1) of a listed company shall be the company's consolidated balance sheet and consolidated profit and loss account if the company is presenting group accounts.

(3) In addition, a summary financial report of a listed company shall---

(a) contain such information and particulars as included in the directors' report of the company and specified in section 129D(3) of the Ordinance;

(b) if the auditors' report of the company contains any of the following statements---

(i) a statement that proper books of account have not been kept by the company;

(ii) a statement that proper returns adequate for the auditors' audit have not been received from branches of the company not visited by the auditors;

(iii) a statement that the company's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account referred to in subsection (1) are not in agreement with the books of account and returns;

(iv) a statement that the auditors failed to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purposes of their audit,

set out that statement;

(c) contain a statement from the company's auditors as to 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 necessary for the understanding of the qualification or other modification;

(d) contain an opinion from the company's auditors as to whether the summary financial report is consistent with the relevant financial documents from which it is derived and whether it complies with the requirements of this section;

(e) include 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 that year;

(f) include 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;

(g) indicate the likely future developments of the business of the company;

(h) include particulars specified under sections 161, 161A and 161B of the Ordinance;

(i) contain in a prominent position---

(i) on the front cover of the report;

(ii) (if there is more than one cover purporting to be the front cover) on every such cover;

(iii) (if the report has no cover or no front cover) on the first page of the

report; or

(iv) (if the report has no cover and there is more than one page purporting to be the front page) on every such page,

a statement to the effect that the summary financial report only gives a summary of the information and particulars contained in the company's relevant financial documents from which it is derived and an entitled person of the company may obtain free of charge a copy of those relevant financial documents;

(j) contain in a prominent position in the report a statement as to how an entitled person of the company may obtain free of charge a copy of the company's relevant financial documents from which the report is derived;

(k) contain in a prominent position in the report a statement as to the manner in which an entitled person of the company may in future notify the company of his wishes in relation to the sending to the person a copy of a summary financial report in place of a copy of the relevant financial documents from which it is derived; and

(l) state the names of the directors who have signed the report on behalf of the board of directors of the company.

(4) Subject to the provisions of this Regulation, a listed company may specify such other requirements in relation to the form of its summary financial report as the company thinks fit.

Form and contents of notification used for purposes of ascertaining wishes of entitled persons

6. Notification from companies to entitled persons regarding provision of copies of summary financial reports

(1) For the purposes of ascertaining the wishes of an entitled person of a listed company in relation to the sending to the person, for the purposes of a general meeting of the company, a copy of a summary financial report in place of a copy of the relevant financial documents from which it is derived, the company may send to the person a notification which shall---

(a) include a general statement as to the contents and function of a summary financial report;

(b) contain a statement to the effect that a summary financial report only gives a summary of the information and particulars contained in the relevant financial documents from which it is derived;

(c) contain a statement to the effect that the person to whom the notification is addressed may send a notice of intent to the company notifying the company as to whether the person agrees to be sent a copy of the relevant financial documents, or agrees to be sent a copy of the summary financial report in place of those relevant

financial documents, for the purposes of a general meeting of the company;
(d) contain a statement to the effect that a notice of intent may be in such form and sent in such manner as specified in the notification; and
(e) contain a statement as to the effect of sending and of not sending a notice of intent to the company.

(2) Nothing in subsection (1) shall be construed as prohibiting the company from including in its notification such other information as the company thinks fit.

(3) A notification under this section shall have attached to it a card or document which may be used by an entitled person of the company for the purposes of sending a notice of intent to the company.

(4) If---

(a) a notification is in paper form; and

(b) the address of the entitled person of the relevant company to which the notification is to be sent is an address in Hong Kong,

the card or document mentioned in subsection (3) shall be a postage prepaid card or document, in which case the person may use it for sending in Hong Kong a notice of intent to the company without having to pay the relevant postage fee.

Effects of notices of intent

7. Sending of notices of intent

An entitled person of a listed company may, on his own accord or in response to a notification sent to the person by the company, send a notice of intent to the company.

8. Notices of intent received not less than 15 days before relevant date of general meeting

(1) Subject to subsection (2), if a notice of intent is received by a listed company not less than 15 days before the relevant date of a general meeting of the company, the notice---

(a) shall have effect in respect of the meeting; and

(b) shall have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the relevant entitled person to the company which has effect in respect of such a subsequent general meeting.

(2) If 2 or more notices of intent are received by a listed company from the same entitled person not less than 15 days before the relevant date of a general meeting of the company, the latest of such notices received shall prevail.

9. Notices of intent received within 14 days before relevant date of general meeting

(1) Subject to subsection (2), if a notice of intent is received by a listed company within 14 days before the relevant date of a general meeting of the company,

the notice shall---

(a) in respect of the meeting---

(i) have no effect as such a notice; and

(ii) subject to subsection (3), be treated as a request under section 141CD(1) of the Ordinance; and

(b) have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the relevant entitled person to the company which has effect in respect of such a subsequent general meeting.

(2) If an entitled person of a listed company sends a notice of intent to the company within the period referred to in section 3, then, and notwithstanding that the notice is received by the company within 14 days before the relevant date of a general meeting of the company, the notice---

(a) shall have effect in respect of the meeting; and

(b) shall have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the person to the company which has effect in respect of such a subsequent general meeting.

(3) A notice of intent received by a listed company within 14 days before the relevant date of a general meeting of the company shall be treated as a request under section 141CD(1) of the Ordinance by virtue of subsection (1)(a)(ii) only if---

(a) the notice indicates that the relevant entitled person agrees to be sent a copy of the relevant financial documents; and

(b) (i) an earlier notice of intent which indicates that the person agrees to be sent a copy of the summary financial report has effect in respect of the meeting; or

(ii) a notice of intent treated by virtue of section 141CB of the Ordinance as having been sent by the person has effect in respect of the meeting.

10. Notices of intent received on or after relevant date of general meeting

If a notice of intent is received by a listed company on or after the relevant date of a general meeting of the company, the notice---

(a) shall have no effect in respect of the meeting; and

(b) shall have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the relevant entitled person to the company which has effect in respect of such a subsequent general meeting.

11. No notice of intent sent within period referred to in section 3

(1) Subject to subsections (2) and (3), if an entitled person of a listed company does not send any notice of intent to the company within the period referred to in section 3, the notice of intent treated by virtue of section 141CB of the Ordinance as having been sent by the person---

(a) shall have effect in respect of the first general meeting of the company to be held after the sending of the relevant notification by the company; and

(b) shall have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the person to the company which has effect in respect of such a subsequent general meeting.

(2) If an entitled person of a listed company only sends a notice of intent to the company after the period referred to in section 3 and the notice is received by the company not less than 15 days before the relevant date of a general meeting of the company, the notice---

(a) shall have effect in respect of the meeting; and

(b) shall have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the person to the company which has effect in respect of such a subsequent general meeting.

(3) If an entitled person of a listed company only sends a notice of intent to the company after the period referred to in section 3 and the notice is received by the company within 14 days before the relevant date, or received by the company on or after the relevant date of a general meeting of the company, the notice---

(a) shall have no effect in respect of the meeting; and

(b) shall have effect in respect of any subsequent general meeting of the company unless and until there is a further notice of intent sent by the person to the company which has effect in respect of such a subsequent general meeting.

12. Meaning of "relevant date" for purposes of sections 8, 9, 10 and 11

For the purposes of sections 8, 9, 10 and 11, "relevant date" (有關日期), in relation to a general meeting of a listed company, means---

(a) the first day on which copies of the relevant financial documents required to be laid before the company in the meeting are sent to the entitled persons of the company; or

(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 the meeting are sent to the entitled persons of the company.

CHENG Mei-sze, Maisie

Clerk to the Executive Council

Council Chamber

20 November 2001

Explanatory Note

This Regulation is made consequential to the enactment of the Companies (Amendment) Ordinance 2001 (27 of 2001) ("the Amendment Ordinance"). The Amendment

Ordinance provides for a listed company incorporated in Hong Kong ("listed Hong Kong company") to send copies of a summary financial report to its shareholder or debenture holder or any other entitled person ("entitled person") of the company for the purposes of a general meeting of the company.

2. Section 3 specifies the period required to be specified for the purposes of the new section 141CB of the Companies Ordinance (Cap. 32).

3. 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 Hong Kong company may be sent to an entitled person of the company under the new section 141CC of the Companies Ordinance (Cap. 32).

4. Section 5 provides for the form and contents of a summary financial report of a listed Hong Kong company.

5. Section 6 provides for the form and contents of a notification of a listed Hong Kong company sent for the purposes of ascertaining the wishes of an entitled person of the company in relation to the sending to the person a copy of a summary financial report in place of a copy of the relevant financial documents for the purposes of a general meeting of the company.

6. Sections 7 to 12 provide for determination of the effect of a notice of intent sent by an entitled person of a listed Hong Kong company in relation to a general meeting of the company.