

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 9 – Accounts and Audit
(Excluding the issues of simplified financial reporting and auditor’s liability (clause 399))

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 9 (“Accounts and Audit”) (clauses 356 to 443 and Schedules 3 to 5) of the Companies Bill (CB)(except for the issues of simplified financial reporting and auditor’s liability (clause 399), which will be dealt with separately). In preparing the CSAs, the Administration has taken account of, *inter alia*, the views of Members, deputations and the Legislative Council Legal Adviser. Marked-up copy of the proposed CSAs in numerical order is at **Annex A** for reference. The marked-up Chinese provisions in the Annex A only contain CSAs solely applicable to the Chinese text.

A list of abbreviations used in this table is as follows:

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

LegCo: Legislative Council

PAO: Professional Accountants Ordinance (Cap 50)

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
1	Change “14 days” to “15 days” for delivery of documents to the	Where a document has to be delivered to the Registrar within “14 days”, the time limit should be changed to “15 days”.	<ul style="list-style-type: none"> Some Bills Committee Members were concerned that the 14-day period may be insufficient for companies to deliver certain documents to the Registrar for registration or notification, as the delivery period for some of the documents was 15 days in the CO.

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	Registrar		<ul style="list-style-type: none"> Having reviewed the relevant provisions in the CB, the Administration agreed to extend the 14-day period to 15 days across the board. Please see paragraphs 31 to 32 of LegCo Paper No. CB(1)357/11-12(01) “<i>Administration’s response to issues raised by members at the meetings on 4 and 11 November 2011 in relation to Part 4 and Part 5</i>”. Insofar as Part 9 is concerned, we propose to amend clauses 367(2), 408(3), 410(4) and 418(3) pursuant to this item.
Other amendments specific to Part 9			
2	Clause 357 Application in relation to financial year beginning on or after commencement date of relevant provision etc.	Delete “已” in subclause (8) and add “的財務報表” at the end of subclause (13) of the Chinese version.	<ul style="list-style-type: none"> These are drafting changes proposed in response to LegCo Legal Adviser’s comments.
3	Clause 358 Company falling within reporting exemption	Add “務” after “銀行業” in subclause (4)(c)(ii) of the Chinese version.	<ul style="list-style-type: none"> This is a drafting change proposed in response to LegCo Legal Adviser’s comments.
4	Clause 363 Financial year	(I) Remove the flexibility for directors to set the end date of a financial year.	<ul style="list-style-type: none"> This CSA is proposed in response to Members’ suggestion. Please see paragraph 6 of LegCo Paper No. CB(1)1184/11-12(01) “<i>Follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies Bill</i>”.

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		(II) Add a definition for “undertaking (企業)”.	<ul style="list-style-type: none"> The definition is moved to this clause from the original clause 2 of Part 1. Given that “undertaking” has different meanings in different clauses, it will be defined in individual clauses rather than in Part 1.
5	Clause 365 Primary accounting reference date	(I) Replace “account” in subclause (1) with “accounting” and delete “up to” after “made” in subclause (1)(a).	<ul style="list-style-type: none"> To correct clerical errors.
		(II) Amend subclause (1)(b) as “if, on or after the commencement date of this section, the company’s accounts have not been laid or provided as mentioned in paragraph (a)(i) or (ii), the date by which the company is required by section 111(1) of the predecessor Ordinance having a continuing effect under Schedule 10 to hold a general meeting.”	<ul style="list-style-type: none"> This is a technical amendment. The date by which a company’s accounts are required by section 122 of the predecessor Ordinance to be laid before the company may be altered by the Court under section 122(1B)(a). The current formulation would provide more certainty in the determination of the primary accounting reference date.
6	Clause 369 Company must keep accounting records	<p>Amend subclauses (5) and (6) and add clause (5A) as follows –</p> <p>“(5) A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (4) commits an offence and is liable to a fine of \$300,000.</p> <p>(5A) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1)</p>	<ul style="list-style-type: none"> The limb of “fails to take all reasonable steps” has been removed from the formulation of “responsible person” (Please see item 2 of LegCo Paper No. CB(1)1591/11-12(01) “<i>Committee Stage Amendments to the Companies Bill – Part 1 – Preliminary</i>”). However, taking into account the importance of keeping accounting records, we are of the view that the revised formulation of “responsible person” should not be applicable to the offences in clauses 369, 370, 371 and 373. The CSAs extend the scope of liable persons to cover “failing to take all reasonable steps”. The applicable defence is also amended to follow the existing law (section 121(4) of the CO). We have explained our proposal to Members at the Bills Committee meeting on 18

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		<p>or (4) commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.</p> <p>(6) If a person is charged with an offence under subsection (5), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—</p> <p style="padding-left: 40px;">(a) was charged with the duty of ensuring that subsection (1) or (4) (as the case may be) was complied with; and</p> <p style="padding-left: 40px;">(b) was in a position to discharge that duty.”</p>	November 2011 and it is agreeable to Members.
7	<p>Clause 370</p> <p>Where accounting records to be kept</p>	Amend subclauses (4) and (5) and add subclause (4A) in line with clause 369.	<ul style="list-style-type: none"> • See item 6 above.
8	<p>Clause 371</p> <p>Director may obtain copies of accounting records during inspection</p>	<p>(I) Add subclause (5)(b).</p> <p>(II) Amend subclauses (6) and (7) in line with clause 369.</p>	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ suggestion in relation to a similar provision in clause 646 to ensure that inspection by electronic means would be allowed. • See item 6 above.

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9	Clause 373 How long account records to be preserved	Amend subclause (3) and add subclauses (4) and (5) in line with clause 369.	<ul style="list-style-type: none"> See item 6 above.
10	Clause 375 Directors must prepare financial statements	Replace “最少 3 個月前” with “3 個月” in subclause (3)(b)(iii) of the Chinese version.	<ul style="list-style-type: none"> This is a drafting change proposed in response to LegCo Legal Adviser’s comments.
11	Clause 376 General requirements for financial statements	(I) Add “or specified” in subclause (8)(a)	<ul style="list-style-type: none"> This is a drafting change to align with the wordings in the PAO. Under Section 2 of the PAO, “professional standards” means any (a) statement of professional ethics; or (b) standards of accounting, auditing and assurance practices, <u>issued or specified</u> or deemed to be <u>issued or specified</u> under section 18A of the PAO.
		(II) Add subclause (9).	<ul style="list-style-type: none"> See item 13 below.
12	Clause 377 Subsidiary undertakings to be included in annual consolidated financial statements	Add subclause (4).	<ul style="list-style-type: none"> See item 13 below.
13	Clause 377A	Add a new clause.	<ul style="list-style-type: none"> The CSAs are proposed to restate section 30(3) of the CO. If there is a contravention of the restriction imposed by a company’s articles in relation to its

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	Provisions supplementary to sections 376 and 377		status as a private company, the company has to comply with additional requirements in relation to its financial statements and directors' report that are applicable to a public company.
14	Clause 378 Notes to financial statements to contain information on directors' emoluments etc.	Amend subclauses (1) and (2) as – “(1) ... (c) payments made in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while directors; (d) loans, quasi-loans and other dealings in favour of— (i) directors of the company and of a holding company of the company; (ii) bodies corporate controlled by such directors; and (iii) entities connected with such directors; (e) material interests of directors in transactions, arrangements or contracts entered into by the company or another company in the same group of companies; (f) consideration paid to or	<ul style="list-style-type: none"> • The CSAs are proposed to clarify our intention in relation to the subsidiary legislation to be made. Some of the amendments are consequential to the proposed amendments to Part 11 of the CB.

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		<p>receivable by third parties for making available the services of a person as director or in any other capacity while director.</p> <p>(1A) In subsection (1)—</p> <p>(a) a reference to a director includes—</p> <p>(i) in the case of subsection (1)(a) and (b), includes a former director; and</p> <p>(ii) in the case of subsection (1)(c), (d) and (e), includes a former director and shadow director;</p> <p>(b) a reference to a body corporate controlled by a director has the meaning given by section 482A; and</p> <p>(c) a reference to an entity connected with a director has the meaning given by section 477.</p> <p>(2) ... Regulation for the purposes of that subsection if the company complies ...”</p>	
15	Clauses 378A Register of particulars not	Add a new clause.	<ul style="list-style-type: none"> This is a technical amendment. The original intention was to provide for the register in subsidiary legislation by empowering the Financial Secretary to make regulations under clause 442(1)(b). Taking into account other provisions in

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	required to be contained in notes to financial		relation to registers, it is proposed for consistency to provide for the register in the new clauses 378A, 378B and 378C. Clauses 378B and 378C are in line with proposed amended clause 618 and 621 of Part 12.
16	Clause 378B Place where register mentioned in section 378A must be kept	Add a new clause.	<ul style="list-style-type: none"> • See item 15 above.
17	Clause 378C Right to inspect and request copy	Add a new clause.	<ul style="list-style-type: none"> • See item 15 above.
18	Clause 379 Statement of financial position to be approved and signed	Add subclauses (1A) and (3).	<ul style="list-style-type: none"> • This is a technical amendment to align the provision with the amended clause 382. See item 21 below. • Consequential to the new subclause (1A), clauses 301(5) and 302(4) will be amended. The amended clauses are at <u>Annex B</u>.
19	Clause 380 Directors must prepare directors' report	(I) Add the reference to clause 533(2) in subclauses (1)(a) and (2)(a).	<ul style="list-style-type: none"> • This is a technical amendment. Clause 533(2) contains requirements in relation to directors' report and adding reference to the clause would facilitate readers. See also item 35 of LegCo Paper No. CB(1)1821/11-12(02) "<i>Committee Stage Amendments to the Companies Bill – Part 11 – Fair Dealing by Directors</i>".
		(II) Add subclause (4A).	<ul style="list-style-type: none"> • See item 20 below.

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20	Clause 380A Provisions supplementary to section 380	Add a new clause.	<ul style="list-style-type: none"> • See item 13 above.
21	Clause 382 Directors' report to be approved and signed	Add “, as respects any directors’ report a copy of which is circulated, published or issued by the company,” in subclause (3) and add a new subclause (4).	<ul style="list-style-type: none"> • These are technical amendments to clarify the scope of the offence.
22	Clause 384 Eligibility for appointment	Replace “不具” with “喪失” in subclause (2) of the Chinese version.	<ul style="list-style-type: none"> • This is a drafting change proposed in response to LegCo Legal Adviser’s comments.
23	Clause 386 Appointment of first auditor by directors	Delete “按規定” in subclause (2) of the Chinese version.	<ul style="list-style-type: none"> • This is a drafting change proposed in response to LegCo Legal Adviser’s comments.
24	Clause 387 Appointment of auditor by company members	Replace “須” with “可” in subclause (6) of the Chinese version.	<ul style="list-style-type: none"> • This is a drafting change proposed in response to LegCo Legal Adviser’s comments.
25	Clause 389	Delete “按規定” in subclause (1)(a) of	<ul style="list-style-type: none"> • This is a drafting change proposed in response to LegCo Legal Adviser’s

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	Appointment of auditor by Court	the Chinese version.	comments.
26	Clause 391 Special notice required for resolution for appointing auditor in some cases	Add a note under subclause (1)(b).	<ul style="list-style-type: none"> We have proposed to delete the signpost definition of “special notice” in clause 2 (Please see item 1(III) of LegCo Paper No. CB(1)1591/11-12(01) “<i>Committee Stage Amendments to the Companies Bill – Part 1 – Preliminary</i>”). Following the deletion, it would be useful to add a note in this clause to draw readers’ attention to clause 568.
27	Clause 394 Person deemed to be reappointed as auditor	Add a note under subclause (3).	<ul style="list-style-type: none"> See item 26 above.
28	Clause 396 Auditor’s duty to report	Replace “提交” in the Chinese heading with “擬備”.	<ul style="list-style-type: none"> This is a drafting change proposed in response to Members’ suggestion. Please see paragraph 9 of LegCo Paper No. CB(1)1184/11-12(01) “<i>Follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies Bill</i>”.
29	Clause 404 Offences relating to section 403	(I) Add subclause (3)(c).	<ul style="list-style-type: none"> The CSA is proposed to clarify our intention. Our intention is to restate section 134(1) of the CO.
		(II) Add subclause (5A).	<ul style="list-style-type: none"> This CSA is proposed in response to Members’ suggestion. Please see paragraphs 15 and 16 of LegCo Paper No. CB(1)1184/11-12(01) “<i>Follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies Bill</i>”.

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30	Clause 405 Auditor may provide information to incoming auditor without contravening duties	Replace “並不” in subclause (1) of the Chinese version with “不會”.	<ul style="list-style-type: none"> This is a drafting change proposed in response to LegCo Legal Adviser’s comments.
31	Clause 408 Registration of auditor	Amend subclause (3) of the Chinese version as “...將述明該事實並符合指明格式的通知交付處長登記。”.	<ul style="list-style-type: none"> This is a drafting change.
32	Clause 409 Cessation of office	Replace “immediately” in subclause (1)(b) with “in writing within 14 days from the date of the cessation”.	<ul style="list-style-type: none"> This CSA is proposed in response to Members’ suggestion. Please see paragraph 19 of LegCo Paper No. CB(1)1184/11-12(01) “<i>Follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies Bill</i>”. Members suggested that the period should be 14 days.
33	Clause 410 Company may remove auditor	Add a note under subclause (2).	<ul style="list-style-type: none"> See item 26 above.
34	Clause 413 Cessation statement in relation to, and attendance at,	(I) Amend subclauses (1)(b), (2)(b) and (3)(b) as “may request the company to comply with the requirement specified in subsection (5) in relation to the statement;”.	<ul style="list-style-type: none"> These are drafting changes. As clauses 413 and 454 are similar, amendments will be made to clause 454 to align the two clauses. The amended clause 454 is at <u>Annex B</u>.

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	general meeting	(II) Combine subclauses (5) and (6) and fine-tune the drafting.	<ul style="list-style-type: none"> • These are drafting changes in response to Members’ request for a review of the drafting.
		(III) Delete “(a)” and replace “requirement” with “request” in subclause (7).	<ul style="list-style-type: none"> • These are drafting changes.
		(IV) Amend subclause (8) as – “...the the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has given a statement and made a requirement under subsection (1)(a) and (b), (2)(a) and (b) or (3)— (a) has abused the right to do so; or (b) has used such a right to secure needless publicity for defamatory matter.”	<ul style="list-style-type: none"> • The original subclause (8)(b) is deleted in line with the proposed deletion of clause 454(6) (Please see item 4(III) of LegCo Paper No. CB(1)1747/11-12(03) “Committee Stage Amendments to the Companies Bill – Part 10 – Directors and Company Secretaries”). The new subclause (8)(b) is added in response to Members’ suggestion in relation to clause 544. Others are drafting changes.
35	Clause 414 Cessation statement in relation to written resolution	(I) Amend subclause (5) in line with clause 413(8).	<ul style="list-style-type: none"> • See item 34(IV) above.
		(II) Amend subclause (5) of the Chinese version as – “如原訟法庭應公司或任何聲稱受屈的人提出的申請，信納根據第(2)	<ul style="list-style-type: none"> • These are drafting changes proposed in response to LegCo Legal Adviser’s comments.

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		款給予陳述並提出要求的人... (a) ... (b) 該給予陳述的人支付申請人就該申請而招致的訟費的全部或部分，即使該給予陳述的人不是該申請的一方亦然。”	
36	Clause 416 Duty of auditor who retires or is removed to give statement	Add “遭” in subclause (1) of the Chinese version.	<ul style="list-style-type: none"> This is drafting change proposed in response to LegCo Legal Adviser’s comments.
37	Clause 418 Court may order statement of circumstances not to be sent	(I) Add “or is using the statement to secure needless publicity for defamatory matter” in subclause (2).	<ul style="list-style-type: none"> This CSA is proposed in response to Members’ suggestion in relation to clause 544.
		(II) Replace “不繼續進行” in subclause (4) of the Chinese version with “中止”.	<ul style="list-style-type: none"> This is drafting change proposed in response to LegCo Legal Adviser’s comments.
38	Clause 420 Directors must lay financial statements etc. before company in general	(I) Add subclause (1A) and delete the note under subclause (1).	<ul style="list-style-type: none"> Subclause (1A) provides for matters originally provided in clause 602(3). With the new subclause, the note can be deleted. Please see Annex D of LegCo Paper No. CB(1)1295/11-12(02) “Notes” and “Examples” in the Companies Bill”.
		(II) Amend subclauses (2), (3) and (4) with reference to section 122(3) of	<ul style="list-style-type: none"> The CSAs are proposed in response to Members’ suggestion. Please see paragraph 21 of LegCo Paper No. CB(1)1184/11-12(01) “Follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies

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	meeting	the CO.	<i>Bill</i> ". Members suggested that the period should be 14 days.
39	Clause 422 Period for laying and publishing financial statements etc.	Replace “publishing” in the heading with “sending”.	<ul style="list-style-type: none"> • This is a drafting change.
40	Clause 423 Exception to section 421	Replace “is” in subclause (2)(b) with “are”.	<ul style="list-style-type: none"> • To correct a clerical error.
41	Clause 424 Company must send to non-voting members other documents	Move the clause to the new clause 425A.	<ul style="list-style-type: none"> • This is a drafting change.
42	Clause 425A Company must send to non-voting members other documents	This is a new clause moved from the original clause 424.	<ul style="list-style-type: none"> • This is a drafting change. A new offence is added for the enforcement of subclause (1).
43	Clause 426	Add subclause (4).	<ul style="list-style-type: none"> • The CSA is proposed to clarify our intention. Our intention is to restate the

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	Company must send copies of financial statements etc. to members and others on demand		defence in section 129G(3) of the CO.
44	Clause 431 Summary financial report to be approved and signed	Add subclause (2A).	<ul style="list-style-type: none"> This is a technical amendment to clarify the scope of the offence. See item 21 above.
45	Clause 433 Company may seek member's intent on receiving summary financial report	<p>(I) Add subclause (3A).</p> <p>(II) Replace the first “通知” in subclause (1), “通知” in subclause (2), “上述通知” in subclause (3) and “公司根據第(1)款發出的通知” in subclause (7) with “知會”, and delete “知會該成員” in subclause (1).</p>	<ul style="list-style-type: none"> The CSA is proposed to clarify our intention. Our intention is that the members' options to receive a copy of the reporting documents or summary financial reports in electronic form or via a website under subclause (3)(b) should only be given if the company agrees to allow those options. “Notification/notify” is generally rendered as “通知” in the CB. However, since both “notice” and “notification/notify” (which refer to different things) appear in this clause and both terms are rendered as “通知”, it may cause confusion. It is proposed that “知會” will be adopted as the equivalent of “notification/notify”.
46	Clause 434 Notice of revocation and	Add subclause (3A).	<ul style="list-style-type: none"> This is similar to item 45(I) above.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	notice of cessation of statutory election		
47	Clause 436 Additional copy of reports etc. to be sent by company	Add subclause (7).	<ul style="list-style-type: none"> Following the revision to the formulation of “responsible person”, it is considered appropriate to restate the defence in section 141CD(4) of the CO.
48	Clause 437 Company must not send summary financial report under some circumstances	Add “for the purposes of section 432(1)” in subclauses (1) and (1)(b).	<ul style="list-style-type: none"> The CSAs are introduced in response to Members’ suggestion. Please see paragraph 23 of LegCo Paper No. CB(1)1184/11-12(01) “<i>Follow-up actions for the meetings held on 18 and 25 November 2011 in relation to Part 9 of the Companies Bill</i>”.
49	Clause 438 Exemption applicable to dormant company	Add a comma after the first “accounting transaction” in subclause (2)(b).	<ul style="list-style-type: none"> This is a drafting change.
50	Clause 439 Liability for untrue or misleading statement in reports	Replace “或” in subclause (1)(a) of the Chinese version with “及”.	<ul style="list-style-type: none"> This is drafting change proposed in response to LegCo Legal Adviser’s comments.

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51	Clause 441 Financial Secretary may make regulation regarding revision of financial statements etc.	(I) Add subclause (1)(b) and replace “auditors of a company” in subclause (2)(b) with “persons who prepare the auditor’s report”.	<ul style="list-style-type: none"> • These are technical amendments to clarify our intention in relation to the subsidiary legislation.
		(II) Delete “a continuing” in subclause (3)(a)(ii) and (3)(b)(ii).	<ul style="list-style-type: none"> • These are technical amendments.
52	Clause 442 Financial Secretary may make regulation regarding disclosures of certain information	Amend clause 442 as “The Financial Secretary may make regulations prescribing for the purposes of section 378(2) a requirement that the financial statements for the financial year are to contain a statement showing the information about the matter mentioned in section 378(1)(d) that are is specified in the regulations.”	<ul style="list-style-type: none"> • Other matters originally provided for in the clause will be provided for in the new clauses 378A, 378B and 378C. See items 15 to 17 above.

**Financial Services and the Treasury Bureau
Companies Registry
24 May 2012**

357. 就於有關條文的生效日期當日或之後開始的財政年度的適用範圍等

- (1) 以下每一條文，均就於該條的生效日期當日或之後開始的財政年度而適用 —
 - (a) 第 358 條；
 - (b) 第 375 條；
 - (c) 第 380 條；
 - (d) 第 420 條；
 - (e) 第 421 條；
 - (f) 第 430 條。
- (2) 以下每一條文，均就關乎於該條的生效日期當日或之後開始的財政年度的會計紀錄而適用 —
 - (a) 第 369 條；
 - (b) 第 370 條；
 - (c) 第 372 條；
 - (d) 第 373 條。
- (3) 以下每一條文，均就關乎於該條的生效日期當日或之後開始的財政年度的財務報表而適用 —
 - (a) 第 376 條；
 - (b) 第 377 條；
 - (c) 第 378 條；
 - (d) 第 427 條；
 - (e) 第 440 條。
- (4) 第 379 條就以下財務狀況表而適用：關乎於該條的生效日期當日或之後開始的財政年度的財務狀況表。
- (5) 以下每一條文，均就關乎於該條的生效日期當日或之後開始的財政年度的董事報告而適用 —
 - (a) 第 381 條；
 - (b) 第 382 條。
- (6) 以下每一條文，均就為於該條的生效日期當日或之後開始的財政年度作出的核數師委任而適用 —
 - (a) 第 385 條；
 - (b) 第 386 條；
 - (c) 第 387 條；
 - (d) 第 389 條；
 - (e) 第 390 條。
- (7) 以下每一條文，均就為於該條的生效日期當日或之後開始的財政年度獲委任為核數師的人而適用 —
 - (a) 第 393 條；
 - (b) 第 394 條；
 - (c) 第 395 條。
- (8) 第 402 條就以下成員大會而適用：於該條的生效日期當日或之後¹就之發出通知的成員大會。

¹ Item 2 / 第 2 項

Companies Bill
《 公司條例草案 》

- (9) 以下每一條文就為於該條的生效日期當日或之後開始的財政年度獲委任或當作再度獲如此委任為核數師的人而適用 —
- (a) 第 403 條；
 - (b) 第 407 條；
 - (c) 第 408 條；
 - (d) 第 409 條；
 - (e) 第 410 條。
- (10) 第 406 條就以下條文而適用：於該條的生效日期當日或之後訂立的條文。
- (11) 第 426 條就以下項目而適用 —
- (a) 關於於該條的生效日期當日或之後開始的財政年度的財務報表及董事報告；及
 - (b) 就該財務報表作出的核數師報告。
- (12) 第 431 條就以下財務摘要報告而適用：關於於該條的生效日期當日或之後開始的財政年度的財務摘要報告。
- (13) 附表 4 就以下財務報表而適用：關於於該附表的生效日期當日或之後開始的財政年度的財務報表²。

² Item 2 / 第 2 項

358. 在提交報告方面獲豁免的公司

- (1) 就本部而言，如有以下情況，公司即就某財政年度在提交報告方面獲豁免 —
 - (a) 該公司就該財政年度而言，符合歸類為小型私人公司或小型擔保公司的資格；及
 - (b) 該公司在該財政年度的任何時間，均不是第(4)款指明的公司。
- (2) 就本部而言，如有以下情況，公司亦就某財政年度在提交報告方面獲豁免 —
 - (a) 該公司在該財政年度的整段期間，均是私人公司，並且在該財政年度的任何時間，均不是第(4)款指明的公司；
 - (b) 該公司是某公司集團的控權公司，而在該財政年度的任何時間，該集團沒有成員是第(4)款指明的公司；及
 - (c) 該集團就該財政年度而言，符合歸類為小型私人公司集團的資格。
- (3) 就本部而言，如有以下情況，公司亦就某財政年度在提交報告方面獲豁免 —
 - (a) 該公司在該財政年度的整段期間，均是擔保有限公司，並且在該財政年度的任何時間，均不是第(4)款指明的公司；
 - (b) 該公司是某公司集團的控權公司，而在該財政年度的任何時間，該集團沒有成員是第(4)款指明的公司；及
 - (c) 該集團就該財政年度而言，符合歸類為小型擔保公司集團的資格。
- (4) 為施行第(1)、(2)及(3)款而指明的公司為 —
 - (a) 經營銀行業務，並持有有效的根據《 銀行業條例 》(第 155 章)批給的銀行牌照的公司；
 - (b) 屬符合以下說明的法團的公司：根據《 證券及期貨條例 》(第 571 章)第 V 部獲發牌，以經營該條例所指的任何受規管活動的業務；或
 - (c) 符合以下說明的公司 —
 - (i) 經營任何並非純粹以代理人身分經營的保險業務；或
 - (ii) 以經營銀行業³以外的行業或業務的方式，接受有息貸款或須連同溢價償還的貸款，但按涉及發行債權證或其他證券的條款而接受的貸款除外。

³ Item 3 / 第 3 項

363. Financial year

- (1) A company's first financial year after the coming into operation of this section begins on the first day of its first accounting reference period and ends on the last day of that period ~~or on any other date, not more than 7 days before or after that last day, that the directors think fit.~~⁴
- (2) Every subsequent financial year of a company begins on the date immediately following the end of the previous financial year and ends on the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined, ~~or on any other date, not more than 7 days before or after that last day, that the directors think fit.~~⁴
- (3) If an undertaking is not a company, a reference in this Ordinance to its financial year is a reference to a period in respect of which a profit and loss account of the undertaking is required, by its constitution or by the law under which it is established, to be made up, whether or not the period is a year.
- (4) A company's directors must secure that the financial year of each of its subsidiary undertakings coincides with the company's financial year unless, in the directors' opinion, there are good reasons against those financial years coinciding with each other.

(5) In this section—

undertaking (企業) means—

(a) a body corporate;

(b) a partnership; or;

(c) an unincorporated association carrying on a trade or business, whether for profit or not.⁵

⁴ Item 4(I) / 第4(I)項

⁵ Item 4(II) / 第4(II)項

365. Primary accounting reference date

- (1) For an existing company formed and registered before the commencement date of Division 1 of Part 3, the primary accounting⁶ reference date is—
- (a) the date up to which the company's accounts are made ~~up to~~⁶ if, on or after the commencement date of this section, the company's accounts—
- (i) have been laid before the company in general meeting under section 122 of the predecessor Ordinance having a continuing effect under Schedule 10; or
- (ii) have been provided to the members under section 111(6) of the predecessor Ordinance having a continuing effect under Schedule 10; or
- (b) ~~the date by which the company's accounts is required by section 122 to be laid before the company in general meeting~~ if, on or after the commencement date of this section, the company's accounts have not been laid or provided as mentioned in paragraph (a)(i) or (ii), the date by which the company is required by section 111(1) of the predecessor Ordinance having a continuing effect under Schedule 10 to hold a general meeting.⁷
- (2) Subsection (1) does not apply if those accounts are made up to a date falling more than one day before the commencement date of this section.
- (3) Subsection (1)(a)(i) does not apply unless the general meeting is held—
- (a) in the case of the company's first general meeting, within 18 months of the company's incorporation; or
- (b) in any other case, within 15 months, and in the year, after the company's last annual general meeting.
- (4) For a company formed and registered under this Ordinance or under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the primary accounting reference date is—
- (a) a date specified by the directors before the relevant date for the purposes of this paragraph; or
- (b) in the absence of such a specified date, the relevant date.
- (5) A date specified for the purposes of subsection (4)(a) must fall within 18 months after the date of the company's incorporation.
- (6) In this section—
- relevant anniversary** (有關周年日), in relation to a company's incorporation, means the anniversary of the company's incorporation that first occurs after this section comes into operation;
- relevant date** (有關日期) means the last day of the month in which the relevant anniversary of the company's incorporation falls.

⁶ Item 5(I) / 第 5(I)項

⁷ Item 5(II) / 第 5(II)項

367. Alteration of accounting reference date

- (1) The directors of a company may specify a new accounting reference date in relation to—
 - (a) the company's current accounting reference period and every subsequent accounting reference period; or
 - (b) the company's previous accounting reference period and every subsequent accounting reference period.
- (2) If the directors of a public company or a company limited by guarantee specify a new accounting reference date under subsection (1), the company must, within 154⁸ days after the date of the directors' resolution specifying the new accounting reference date, deliver a notice, in the specified form, of that new date to the Registrar for registration.
- (3) A directors' resolution by which a new accounting reference date is specified, and a notice of that new date delivered to the Registrar, must state—
 - (a) whether the current or previous accounting reference period concerned is to be shortened, so as to end on the first occasion on which the new accounting reference date falls or fell after the beginning of that period; or
 - (b) whether the current or previous accounting reference period concerned is to be extended, so as to end on the second occasion on which the new accounting reference date falls or fell after the beginning of that period.
- (4) The directors of a company must not specify a new accounting reference date in relation to the previous accounting reference period if—
 - (a) the period for laying before the company in general meeting under section 420 a copy of the reporting documents for the financial year determined by reference to that accounting reference period has expired; or
 - (b) the period for sending a copy of the reporting documents for the financial year to the members under section 421(3) has expired.
- (5) The directors of a company must not specify a new accounting reference date in relation to an accounting reference period so as to extend the period to longer than 18 months.
- (6) The directors of a company must not specify a new accounting reference date in relation to the current or previous accounting reference period so as to extend that period if—
 - (a) those directors have specified a new accounting reference date in relation to an earlier accounting reference period so as to extend that earlier period; and
 - (b) the earlier accounting reference period ended within 5 years before the new accounting reference date is specified.
- (7) Subsection (6) does not apply if—
 - (a) the new accounting reference date to be specified by the directors coincides with the accounting reference date of a holding company of the company; or
 - (b) the specification is approved by a members' resolution.
- (8) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (9) In this section—

previous accounting reference period (對上的會計參照期), in relation to a company, means the accounting reference period of the company immediately preceding the company's current accounting reference period.

⁸ Item 1 / 第 1 項

369. Company must keep accounting records

- (1) A company must keep accounting records that comply with subsections (2) and (3).
- (2) The accounting records must be sufficient—
 - (a) to show and explain the company's transactions;
 - (b) to disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and
 - (c) to enable the directors to ensure that the financial statements comply with this Ordinance.
- (3) In particular, the accounting records must contain—
 - (a) daily entries of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and
 - (b) a record of the company's assets and liabilities.
- (4) If subsection (1) does not apply in relation to a subsidiary undertaking of a company, the company must take all reasonable steps to secure that the subsidiary undertaking keeps accounting records that are sufficient to enable the company's directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.
- (5) ~~If a company contravenes subsection (1) or (4), every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months. A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (4) commits an offence and is liable to a fine of \$300,000.~~
- (5A) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (4) commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (6) If a person is charged with an offence under subsection (5), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1) or (4) (as the case may be) was complied with; and
 - (b) was in a position to discharge that duty.~~the person acted honestly; and~~
 - (b) ~~in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).~~⁹

⁹ Item 6 / 第 6 項

370. Where accounting records to be kept

- (1) A company's accounting records—
 - (a) must be kept at its registered office or any other place that the directors think fit; and
 - (b) must be open to inspection by the directors at all times without charge.
- (2) If a company's accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records—
 - (a) must be sent to, and kept at, a place in Hong Kong; and
 - (b) must be open to inspection by the directors at all times without charge.
- (3) Those accounts and returns—
 - (a) must disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and
 - (b) must be sufficient to enable the directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.
- (4) ~~If subsection (1), (2) or (3) is contravened, every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months. A director of a company who fails to take all reasonable steps to secure compliance with subsection (1), (2) or (3) commits an offence and is liable to a fine of \$300,000.~~
- (4A) ~~A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1), (2) or (3) commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.~~
- (5) If a person is charged with an offence under subsection (4), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1), (2) or (3) (as the case may be) was complied with; and
 - (b) was in a position to discharge that duty.~~the person acted honestly; and~~
 - (b) ~~in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).~~¹⁰

¹⁰ Item 7 / 第 7 項

371. Director may obtain copies of accounting records during inspection

- (1) A company must allow a director of the company to make a copy of its accounting records in the course of inspection.
- (2) A company must provide a director of the company with a copy of its accounting records without charge if so requested by the director.
- (3) For the purposes of subsection (2)—
 - (a) if the director requests a copy of the company's accounting records in hard copy form, the company must provide the copy in hard copy form; and
 - (b) if the director requests a copy of the company's accounting records in electronic form, the company must provide the copy in any electronic form that the company thinks fit.
- (4) Subsections (2) and (3) do not require a company to provide a director of the company with a copy of its accounting records in electronic form if it keeps its accounting records by recording the information in hard copy form only.
- (5) If any accounting records are kept by a company by recording the information in electronic form, a requirement under this Subdivision for the accounting records to be open to inspection is to be regarded as a requirement ~~for—~~
 - ~~(a) -for a reproduction of the recording in hard copy form to be open to inspection; a reproduction of the recording in hard copy form to be open to inspection.; and~~
 - ~~(b) for the recording to be open to inspection by electronic means at the request of a person entitled to inspect the accounting records.¹¹~~
- (6) ~~If a company contravenes subsection (1) or (2), every responsible person of the company~~ A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence, and ~~each~~ is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) If a person is charged with an offence under subsection (6), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and
 - ~~(b) was in a position to discharge that duty; the person acted honestly; and~~
 - ~~(b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).¹²~~

¹¹ Item 8(I)/ 第 8(I)項

¹² Item 8(II)/ 第 8(II)項

373. How long accounting records to be preserved

- (1) This section applies to any accounting records, or any accounts and returns, that are required by section 369(1) or 370(2) to be kept.
- (2) The company must preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates.
- (3) ~~If a company contravenes subsection (2), every responsible person of the company~~ A director of a company who fails to take all reasonable steps to secure compliance with subsection (2) commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.
- ~~(4) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (2) commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.~~
- ~~(5) If a person is charged with an offence under subsection (3), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—~~
 - ~~(a) was charged with the duty of ensuring that subsection (2) was complied with; and~~
 - ~~(b) was in a position to discharge that duty.~~¹³

¹³ Item 9 / 第 9 項

375. 董事須擬備財務報表

- (1) 公司的董事須就每個財政年度擬備符合第 376 及 378 條的報表。
- (2) 儘管有第(1)款的規定，如在有關的財政年度終結時，公司是控權公司，則董事須以就該財政年度擬備符合第 376、377 及 378 條的綜合報表代替。
- (3) 如有以下情況，第(2)款不適用 —
 - (a) 在有關財政年度，公司是另一法人團體的全資附屬公司；或
 - (b) 以下情況 —
 - (i) 在有關財政年度，公司是另一法人團體的非全資附屬公司；
 - (ii) 在該財政年度終結前最少 6 個月，董事以書面方式告知成員他們擬不就該財政年度擬備綜合報表，而該通知不關乎任何其他財政年度；及
 - (iii) 直至該財政年度終結前最少~~3~~ 個月¹⁴前~~14~~的日期，沒有成員藉以下方式回應該通知：向董事提出書面要求，要求就該財政年度擬備綜合報表。
- (4) 如就根據第 420 條在成員大會上提交公司省覽、根據第 421 條送交成員或由該公司以其他方式傳閱、發布或發出的財務報表的文本而言，該公司的董事沒有採取一切合理步驟，以確使第(1)或(2)款獲遵守，有關董事即屬犯罪，可處罰款\$300,000。
- (5) 如就根據第 420 條在成員大會上提交公司省覽、根據第 421 條送交成員或由該公司以其他方式傳閱、發布或發出的財務報表的文本而言，該公司的董事故意沒有採取一切合理步驟，以確使第(1)或(2)款獲遵守，有關董事即屬犯罪，可處罰款\$300,000 及監禁 12 個月。
- (6) 凡某人被控犯第(4)款所訂罪行，如確立該人有合理理由相信，而又確實相信，有勝任而可靠的人 —
 - (a) 已獲委以確保第(1)或(2)款(視屬何情況而定)獲遵守的責任；及
 - (b) 居於能夠執行該責任的位置，即屬免責辯護。

¹⁴ Item 10 / 第 10 項

376. General requirements for financial statements

- (1) The annual financial statements for a financial year—
 - (a) must give a true and fair view of the financial position of the company as at the end of the financial year; and
 - (b) must give a true and fair view of the financial performance of the company for the financial year.
- (2) The annual consolidated financial statements for a financial year—
 - (a) must give a true and fair view of the financial position of the company, and all the subsidiary undertakings, as a whole as at the end of the financial year; and
 - (b) must give a true and fair view of the financial performance of the company, and all the subsidiary undertakings, as a whole for the financial year.
- (3) The financial statements for a financial year must comply with—
 - (a) if the company falls within the reporting exemption for the financial year, Part 1 of Schedule 4; or
 - (b) if the company does not fall within the reporting exemption for the financial year, Parts 1 and 2 of Schedule 4.
- (4) The financial statements for a financial year must also comply with—
 - (a) any other requirements of this Ordinance in relation to the financial statements; and
 - (b) the accounting standards applicable to the financial statements.
- (5) If, in relation to any financial statements, compliance with subsections (3) and (4) would be insufficient to give a true and fair view under subsection (1) or (2), the financial statements must contain all additional information necessary for that purpose.
- (6) If, in relation to any financial statements, compliance with subsection (3) or (4) would be inconsistent with a requirement to give a true and fair view under subsection (1) or (2), the financial statements—
 - (a) must depart from subsection (3) or (4) (as the case may be) to the extent necessary for it to give a true and fair view; and
 - (b) must contain the reasons for, and the particulars and effect of, the departure.
- (7) Subsections (1), (2), (5) and (6) do not apply if the company falls within the reporting exemption for the financial year.
- (8) In this section—
 - (a) **accounting standards** (會計準則) means statements of standard accounting practice issued **or specified**¹⁵ by a body prescribed by the Regulation; and
 - (b) a reference to accounting standards applicable to any financial statements is a reference to accounting standards as are, in accordance with their terms, relevant to the company's circumstances and to the financial statements.
- (9) This section has effect subject to section 377A.¹⁶

¹⁵ Item 11(I) / 第 11(I)項

¹⁶ Item 11(II) / 第 11(II)項

377. Subsidiary undertakings to be included in annual consolidated financial statements

- (1) Subject to subsections (2) and (3), the annual consolidated financial statements for a financial year must include all the subsidiary undertakings of the company.
- (2) Where the company falls within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the annual consolidated financial statements in compliance with the accounting standards applicable to the statements.
- (3) Where the company does not fall within the reporting exemption for the financial year—
 - (a) one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of the subsidiary undertaking is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 376(2)(a) and (b); and
 - (b) more than one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of those subsidiary undertakings taken together is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 376(2)(a) and (b).

(4) This section has effect subject to section 377A.¹⁷

¹⁷ Item 12 / 第 12 項

377A. Provisions supplementary to sections 376 and 377

(1) This section applies if at any time during a financial year of a private company—

(a) the company registers any transfer of shares in the company in contravention of the restrictions imposed by the company's articles;

(b) the membership of the company exceeds the number specified in section 10(1)(a)(ii); or

(c) the company makes an invitation to the public to subscribe for any shares or debentures of the company.

(2) Despite sections 376 and 377, the financial statements of the company for the financial year must comply with those sections as if the company were a public company.

(3) The Court may, on the application of the company or a person interested in the matter, order that subsection (2) does not apply.

(4) The Court may make the order on any terms and conditions that the Court thinks just and expedient.

(5) The Court must not make the order unless the Court is satisfied that—

(a) the occurrence of the event mentioned in subsection (1)(a), (b) or (c) was accidental;

(b) it was due to inadvertence or to some other sufficient cause that the event occurred; or

(c) it is just and equitable to grant the relief on other grounds.¹⁸

¹⁸ Item 13 / 第 13 項

378. Notes to financial statements to contain information on directors' emoluments etc.

- (1) The financial statements for a financial year must contain, in the notes to the statements, the information prescribed by the Regulation for the purposes of this subsection about the following—
- (a) the directors' emoluments;
 - (b) the directors' retirement benefits;
 - (c) ~~compensation to payments made in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while directors; directors for loss of office;~~
 - (d) loans, quasi-loans and other dealings in favour of—
 - ~~(i) directors of the company and of a holding company of the company;~~
 - ~~(ii) bodies corporate controlled by such directors; and~~
 - ~~(iii) entities connected with such directors;~~
 - ~~(e) material interests of directors in transactions, arrangements or contracts entered into by the company or another company in the same group of companies;~~
 - ~~(f) consideration paid to or receivable by third parties for making available the services of a person as director or in any other capacity while director.~~
- ~~(1A) In subsection (1)—~~
- ~~(a) a reference to a director includes—
 - ~~(i) in the case of subsection (1)(a) and (b), includes a former director; and~~
 - ~~(ii) in the case of subsection (1)(c), (d) and (e), includes a former director and shadow director;~~~~
 - ~~(b) a reference to a body corporate controlled by a director has the meaning given by section 482A; and~~
 - ~~(c) a reference to an entity connected with a director has the meaning given by section 477.~~
- (2) Despite subsection (1)(d), the financial statements for a financial year are not required to contain the information prescribed by the Regulation ~~for the purposes of that subsection about loans, quasi-loans and other dealings in favour of directors~~ if the company complies with the requirements prescribed by the Regulation for the purposes of this subsection.¹⁹
- (3) The notes to any financial statements must also comply with other requirements prescribed by the Regulation.
- (4) A person who is, or has been during the preceding 5 years, a director or shadow director of a company must give notice to the company of any matter that—
- (a) is prescribed by the Regulation;
 - (b) relates to the person; and
 - (c) is necessary for the purposes of subsection (1).
- (5) A person who contravenes subsection (4) commits an offence and is liable to a fine at level 5.

¹⁹ Item 14 / 第 14 項

378A. Register of particulars not required to be contained in notes to financial statements

- (1) A company must enter into a register the particulars that would, but for section 378(2), be required by section 378(1)(d) to be contained in the notes to the financial statements for a financial year.
- (2) A company must keep the particulars in the register for at least 10 years after the date on which the particulars are entered.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.²⁰

²⁰ Item 15 / 第 15 項

378B. Place where register mentioned in section 378A must be kept

(1) A company must keep the register mentioned in section 378A at—

(a) the company's registered office; or

(b) a place prescribed by regulations made under section 648.

(2) A company must notify the Registrar of the place at which the register mentioned in section 378A is kept. The notice must be in the specified form and be delivered to the Registrar for registration within 15 days from the day on which the register is first kept at that place.

(3) A company must notify the Registrar of any change (other than a change of the address of the company's registered office) in the place at which the register mentioned in section 378A is kept. The notice must be in the specified form and be delivered to the Registrar for registration within 15 days from the change.

(4) Subsection (2) does not require a company to notify the Registrar of the place where the register mentioned in section 378A is kept—

(a) if, in the case of a register that came into existence on or after the commencement date of this section, it has at all times been kept at the company's registered office; or

(b) if—

(i) immediately before that commencement date, the company kept a register for the purposes of section 161BB of the predecessor Ordinance; and

(ii) on and after that commencement date, that register is kept as a register for the purposes of section 378A at the place at which that registrar was kept immediately before that commencement date.

(5) If a company contravenes subsection (1), (2) or (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.²¹

²¹ Item 16 / 第 16 項

378C. Right to inspect and request copy

- (1) A member of a company is entitled, on request made in the prescribed manner and without charge, to inspect the register kept by the company under section 378A in accordance with regulations made under section 648.
- (2) A member of a company is entitled, on request and on payment of a prescribed fee, to be provided with a copy of the register kept by the company under section 378A, or any part of it, in accordance with regulations made under section 648.
- (3) In this section—
prescribed (訂明) means prescribed by regulations made under section 648.²²

²² Item 17 / 第 17 項

379. Statement of financial position to be approved and signed

- (1) A statement of financial position that forms part of any financial statements—
- (a) must be approved by the directors; and
 - (b) must be signed—
 - (i) by 2 directors on the directors' behalf; or
 - (ii) in the case of a company having only one director, by the director.

(1A) Every copy of a statement of financial position that forms part of any financial statements laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, must state the name of the person who signed the statement on the directors' behalf.²³

- (2) If, as respects any financial statements a copy of which is circulated, published or issued by the company, subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

(3) If subsection (1A) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.²³

²³ Item 18 / 第 18 項

380. Directors must prepare directors' report

- (1) A company's directors must prepare for each financial year a report that—
 - (a) complies with sections 381 and 533(2)²⁴ and Schedule 5;
 - (b) contains the information prescribed by the Regulation; and
 - (c) complies with other requirements prescribed by the Regulation.
 - (2) Despite subsection (1), if the company is a holding company in a financial year, and the directors prepare annual consolidated financial statements for the financial year, the directors must instead prepare for the financial year a consolidated report that—
 - (a) complies with sections 381 and 533(2)²⁴ and Schedule 5;
 - (b) contains the information prescribed by the Regulation; and
 - (c) complies with other requirements prescribed by the Regulation.
 - (3) Subsection (1) or (2) does not require the directors' report for a financial year to comply with Schedule 5 if—
 - (a) the company falls within the reporting exemption for the financial year;
 - (b) the company is a wholly owned subsidiary of another body corporate in the financial year; or
 - (c) the company is a private company that does not fall within the reporting exemption for the financial year, and a special resolution is passed by the members to the effect that the company is not to prepare a business review required by that Schedule for the financial year.
 - (4) A resolution for the purposes of subsection (3)(c)—
 - (a) may be passed in relation to—
 - (i) a financial year; or
 - (ii) a financial year and every subsequent financial year;
 - (b) must be passed at least 6 months before the end of the financial year to which the directors' report relates; and
 - (c) may only be revoked by a special resolution.
- (4A) Subsections (1), (2) and (3) have effect subject to section 380A.²⁵**
- (5) A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of \$150,000.
 - (6) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of \$150,000 and to imprisonment for 6 months.
 - (7) If a person is charged with an offence under subsection (5), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1) or (2) (as the case may be) was complied with; and
 - (b) was in a position to discharge that duty.

²⁴ Item 19(I) / 第 19(I)項

²⁵ Item 19(II) / 第 19(II)項

380A. Provisions supplementary to section 380

(1) This section applies if at any time during a financial year of a private company—

(a) the company registers any transfer of shares in the company in contravention of the restrictions imposed by the company's articles;

(b) the membership of the company exceeds the number specified in section 10(1)(a)(ii); or

(c) the company makes an invitation to the public to subscribe for any shares or debentures of the company.

(2) Despite section 380, the directors' report for the financial year is required to comply with that section as if the company were a public company.

(3) The Court may, on the application of the company or a person interested in the matter, order that subsection (2) does not apply.

(4) The Court may make the order on any terms and conditions that the Court thinks just and expedient.

(5) The Court must not make the order unless the Court is satisfied that—

(a) the occurrence of the event mentioned in subsection (1)(a), (b) or (c) was accidental;

(b) it was due to inadvertence or to some other sufficient cause that the event occurred; or

(c) it is just and equitable to grant the relief on other grounds.²⁶

²⁶ Item 20 / 第 20 項

382. Directors' report to be approved and signed

- (1) A directors' report—
 - (a) must be approved by the directors; and
 - (b) must be signed on the directors' behalf by a director or by the company secretary.
- (2) Every copy of a directors' report laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, must state the name of the person who signed the report on the directors' behalf.
- (3) If, as respects any directors' report a copy of which is circulated, published or issued by the company, subsection (1) ~~or (2)~~²⁷ is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (4) If subsection (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.²⁷

²⁷ Item 21 / 第 21 項

384. 獲委任的資格

- (1) 只有執業單位方有資格根據本次分部獲委任為公司的核數師。
- (2) 以下人士~~不具喪失~~²⁸有根據本次分部獲委任為公司的核數師的資格 —
 - (a) 該公司的高級人員或僱員；
 - (b) (a)段所述的人的合夥人或僱員；
 - (c) 符合以下說明的人士 —
 - (i) 憑藉(a)或(b)段而不具有獲委任為下述的企業的核數師的資格：該公司的附屬企業或母企業，或該母企業的附屬企業；或
 - (ii) 假若該企業是一間公司，便不具有獲如此委任的資格。
- (3) 在本條中，提述公司的高級人員或僱員，不包括該公司的核數師。

²⁸ Item 22 / 第 22 項

386. 由董事委任首任核數師

- (1) 本條適用於以下公司 —
 - (a) 根據本條例組成及註冊的公司；及
 - (b) 按根據附表 10 或憑藉《釋義及通則條例》(第 1 章)第 23 條具有持續效力的《前身條例》的條文組成及註冊的公司。
- (2) 如公司按規定²⁹須按照第 600 條，就其首個財政年度舉行周年成員大會，則董事可在該大會之前的任何時間，就該首個財政年度委任該公司的核數師。
- (3) 如公司憑藉第 602(1)或(2)條，而無需按照第 600 條就其首個財政年度舉行周年成員大會，則董事可在下一個財政年度的委任期之前的任何時間，就該首個財政年度委任該公司的核數師。

²⁹ Item 23 / 第 23 項

387. 由公司成員委任核數師

- (1) 公司須藉在就對上的財政年度舉行的周年成員大會上通過的決議，就某個財政年度委任該公司的核數師。
- (2) 如公司憑藉第 602(2)條，而無需按照第 600 條就對上的財政年度舉行周年成員大會，第(1)款不適用於該公司。
- (3) 如公司就某財政年度委任該公司的核數師，而 —
 - (a) 該公司憑藉第 602(2)條，而無需按照第 600 條就對上的財政年度舉行周年成員大會；及
 - (b) 沒有人根據第 394 條被當作就該財政年度再度獲委任為該公司的核數師，則該公司須藉在成員大會上通過的決議，作出該項委任。
- (4) 第(3)款所指的委任，須在有關財政年度的委任期終結之前作出。
- (5) 如公司沒有在就對上的財政年度舉行的周年成員大會上，就某財政年度委任該公司的核數師，則該公司須藉在另一成員大會上通過的決議，作出該項委任。
- (6) 就第 386 條適用的公司而言，如董事沒有根據該條，就該公司的首個財政年度委任該公司的核數師，則該公司須³⁰藉在成員大會上通過的決議，作出該項委任。

³⁰ Item 24 / 第 24 項

389. 由原訟法庭委任核數師

- (1) 如有以下情況，原訟法庭可應公司的成員的申請，就某個財政年度委任該公司的核數師 —
 - (a) 該公司按規定³¹須按照第 600 條，就對上的財政年度舉行周年成員大會，而 —
 - (i) 在該大會上，沒有人就該財政年度獲委任為該公司的核數師；或
 - (ii) 沒有按照該條舉行周年成員大會；或
 - (b) 該公司憑藉第 602(2)條，而無需按照第 600 條就對上的財政年度舉行周年成員大會，而 —
 - (i) 在該財政年度的委任期終結時，沒有人就該財政年度獲委任為該公司的核數師；及
 - (ii) 沒有人根據第 394 條被當作就該財政年度再度獲委任為該公司的核數師。
- (2) 如沒有根據第 386(2)或(3)條作出的委任，亦沒有根據第 387(6)條作出的委任，原訟法庭可應第 386 條適用的公司的成員的申請，就該公司的首個財政年度委任該公司的核數師。
- (3) 如沒有根據第 388 條作出的委任，原訟法庭可應公司的成員的申請，委任一人填補該公司的核數師職位的期中空缺。

³¹ Item 25 / 第 25 項

391. Special notice required for resolution for appointing auditor in some cases

- (1) Special notice is required for—
- (a) a resolution proposed for the purposes of section 387(1), (3) or (5) for appointing a person as auditor in place of a specified incumbent; and
 - (b) a resolution proposed for the purposes of section 388(2).

Note—

[See also section 568.](#)³²

- (2) Special notice is also required for a resolution proposed for the purposes of section 387(1), (3) or (5) for appointing a specified incumbent as auditor if that incumbent holds office by virtue of an appointment by the directors to fill a casual vacancy under section 388(1).
- (3) On receipt of a special notice, the company must send a copy of it—
- (a) to the person proposed to be appointed as auditor; and
 - (b) in the case of—
 - (i) a proposed appointment under section 387(1), (3) or (5) of a person in place of a specified incumbent, to that incumbent; or
 - (ii) a proposed appointment under section 387(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 388(1) or (2) to fill a casual vacancy caused by a resignation, to the person who resigned.

- (4) In this section—

specified incumbent (指明在任人) means—

- (a) the person who is the last auditor of the company and whose term of office as auditor has expired; or
- (b) the person whose term of office as auditor will expire—
 - (i) at the end of the general meeting; or
 - (ii) at the end of the appointment period in relation to the financial year concerned.

³² Item 26 / 第 26 項

394. Person deemed to be reappointed as auditor

- (1) If—
- (a) by virtue of section 602(2), a company is not required to hold an annual general meeting in accordance with section 600 in respect of a financial year; and
 - (b) at the end of the appointment period in relation to the next financial year, no person has been appointed as auditor of the company for that next financial year,
- the person who is the auditor of the company as at the end of that appointment period is deemed to be reappointed, at that time, as auditor of the company for that next financial year on the same terms of appointment.
- (2) Despite subsection (1), the person is not deemed to be reappointed as auditor of the company for the next financial year if—
- (a) the person was appointed as auditor under section 386 or 388(1);
 - (b) the company's articles require an actual appointment;
 - (c) before the person is deemed to be reappointed under that subsection, the members have by a resolution passed at a general meeting resolved that the person should not be reappointed as auditor for that next financial year;
 - (d) the person declines the reappointment in a written notice sent to the company at least 14 days before the end of the appointment period in relation to that next financial year; or
 - (e) members representing at least the requisite percentage of the voting rights of all the members who would be entitled to vote on a resolution that the person should not be reappointed give the company a notice complying with subsection (5).
- (3) Special notice is required for a resolution proposed for the purposes of subsection (2)(c).
- Note—**
[See also section 568.](#)³³
- (4) On receipt of a special notice, the company must send a copy of it to the person proposed not to be reappointed.
- (5) A notice for the purposes of subsection (2)(e)—
- (a) must state that the person should not be reappointed;
 - (b) must be authenticated by the member or members giving it;
 - (c) must be delivered to the company in hard copy form or electronic form; and
 - (d) must be received by the company before the end of the accounting reference period immediately preceding the time when the reappointment would have effect.
- (6) This section does not affect the operation of Subdivision 6.
- (7) In ascertaining the amount of any compensation or damages payable to a person on ceasing to hold office of auditor for any reason, no account is to be taken of any loss of the opportunity of being deemed to be reappointed as auditor under this section.
- (8) In this section—
- requisite percentage** (所需百分比) means 5%, or a lower percentage specified for the purposes of this section in the company's articles.

³³ Item 27 / 第 27 項

396. 核數師提交擬備³⁴報告的職責

公司的核數師須就符合以下說明的、由董事擬備的財務報表，擬備一份向成員提交的報告：在該核數師任內，該報表的文本根據第 420 條在成員大會上提交公司省覽、根據第 421 條送交成員，或由該公司以其他方式傳閱、發布或發出。

³⁴ Item 28 / 第 28 項

404. Offences relating to section 403

- (1) A person who contravenes section 403(3) commits an offence and is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (2) If a person is charged with an offence under subsection (1), it is a defence to establish that it was not reasonably practicable for the person to provide the information or explanation.
- (3) A person commits an offence if—
 - (a) the person makes a statement to an auditor of a company that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, under section 403(2) or (4); ~~and~~
 - (b) the statement is misleading, false or deceptive in a material particular; ~~and~~
 - (c) the person knows that, or is reckless as to whether or not, the statement is misleading, false or deceptive in a material particular.³⁵
- (4) A person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) If a company contravenes section 403(6), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (5A) If a person is charged with an offence under subsection (5) for failing to obtain any information or explanation from a subsidiary undertaking or another person, it is a defence to establish that—
 - (a) it would be an offence under the law of a place outside Hong Kong for the subsidiary undertaking or that other person to provide the information or explanation to the defendant; and
 - (b) the subsidiary undertaking or that other person did not provide the information or explanation to the defendant on that ground.³⁶
- (6) This section does not affect an auditor's right to apply for an injunction to enforce any of the auditor's rights under section 403.

³⁵ Item 29(I) / 第 29(I)項

³⁶ Item 29(II) / 第 29(II)項

405. 核數師可向繼任核數師提供資料而不違反職責

- (1) 任何屬或曾屬公司的核數師的人，**並不會**³⁷僅因向另一人提供工作資料而違反該人在法律上須承擔的核數師職責，但前提是 —
- (a) 該另一人是該公司的核數師；
 - (b) 該另一人已獲委任為該公司的核數師，但其任期尚未開始；或
 - (c) 該公司已向該另一人作出擔任核數師的要約，但該另一人尚未獲委任。
- (2) 除非有關的人在向另一人提供工作資料時 —
- (a) 是以真誠行事；及
 - (b) 合理地相信該資料攸關該另一人履行該公司核數師的職責的，
- 否則第(1)款不適用。
- (3) 在本條中 —
- 工作資料** (work-related information)就屬或曾屬公司的核數師的人而言，指該人以核數師的身分得悉的資料。

³⁷ Item 30 / 第 30 項

408. Resignation of auditor

- (1) A person may resign from the office of auditor by giving the company a notice in writing that is accompanied by a statement required to be given under section 415.
- (2) Such a person's term of office expires—
 - (a) at the end of the day on which notice is given to the company under subsection (1); or
 - (b) if the notice specifies a time on a later day for the purpose, at that time.
- (3) Within ~~15~~¹⁴³⁸ days beginning on the date on which a company receives a notice of resignation, the company must deliver a notification in the specified form of that fact to the Registrar for registration.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

³⁸ Item 1 / 第 1 項

408. **核數師辭職**(Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 任何人可藉向公司發出書面通知，辭去核數師職位，該通知須隨附第 415 條規定須給予的陳述。
- (2) 上述的人的任期 —
 - (a) 在根據第(1)款向公司發出通知的日期終結時屆滿；或
 - (b) 在該通知為此目的指明一個在較後日期的時間的情況下，在該時間屆滿。
- (3) 公司須在自收到辭職通知的日期起計的 14 日內，將述明該事實 並符合指明格式 的通知交付處長登記，~~該通知須符合指明格式~~³⁹。
- (4) 如公司違反第(3)款，該公司及其每名責任人均屬犯罪，可各處第 5 級罰款及監禁 6 個月，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另各處罰款\$1,000。

³⁹ Item 31 / 第 31 項

409. Cessation of office

- (1) If, while holding office as auditor of a company, a person ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2, the person—
 - (a) immediately ceases to be auditor of the company; and
 - (b) must notify the company of the cessation in writing within 14 days from the date of the cessation~~immediately~~⁴⁰.
- (2) A person who contravenes subsection (1)(b) commits an offence and is liable to a fine at level 4.
- (3) If a person is charged with an offence under subsection (2), it is a defence to establish that the person did not know, and had no reason to believe, that the person had ceased to be eligible, or had become disqualified, for appointment as auditor of the company under Subdivision 2.

⁴⁰ Item 32 / 第 32 項

410. Company may remove auditor

- (1) A company may by an ordinary resolution passed at a general meeting remove a person from the office of auditor despite—
 - (a) any agreement between the person and the company; or
 - (b) anything in the company's articles.
- (2) Special notice is required for an ordinary resolution proposed for the purposes of subsection (1).

Note—

See also section 568.⁴¹

- (3) On receipt of a special notice, the company must send a copy of it to the person proposed to be removed.
- (4) If an ordinary resolution for the removal is passed, the company must deliver a notice in the specified form of that fact to the Registrar for registration within 15⁴² days beginning on the date on which it is passed.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

⁴¹ Item 33 / 第 33 項

⁴² Item 1 / 第 1 項

413. Cessation statement in relation to, and attendance at, general meeting

- (1) If a general meeting is convened under section 412(2), the person who resigns from the office of auditor—
 - (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the resignation;
 - (b) may ~~request~~require the company to comply with the requirement specified in ~~comply with~~ subsections (5) ~~and (6)~~⁴³ in relation to the statement; and
 - (c) is entitled—
 - (i) to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;
 - (ii) to attend the general meeting; and
 - (iii) to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.
- (2) If special notice is given under section 391(1)(a) for a resolution for appointing a person as auditor in place of another person, that other person—
 - (a) may give the company a statement by that other person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor;
 - (b) may ~~request~~require the company to comply with the requirement specified in ~~comply with~~ subsections (5) ~~and (6)~~⁴³ in relation to the statement; and
 - (c) is entitled—
 - (i) to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;
 - (ii) to attend the general meeting; and
 - (iii) to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.
- (3) If special notice is given under section 410(2) for an ordinary resolution for removing a person from the office of auditor, the person—
 - (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the proposed removal; and
 - (b) may ~~request~~require the company to ~~comply with~~ comply with the requirement specified in subsections (5) ~~and (6)~~⁴³ in relation to the statement.
- (4) A person's entitlement under subsection (1)(c)(ii) or (iii) or (2)(c)(ii) or (iii) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.
- (5) ~~Unless the company receives the statement within 2 days before the last day on which notice may be given under section 561(1) to call the general meeting, the company—~~ The requirement specified for the purposes of subsection (1)(b), (2)(b) or (3)(b) is—
 - (a) if the company receives the statement on a date that is more than 2 days before the last day on which notice may be given under section 561(1) to call the general meeting, the requirement—
 - ~~(i) must, to state,~~ in every notice of the meeting given to the members, ~~state~~ that the statement has been made; and
 - ~~(bii) must to~~ send a copy of the statement to every member to whom a notice of the meeting is or has been given; ~~or-~~
 - ~~(b) if the company has not sent a copy of the statement to every member to whom a notice of the meeting is or has been given, the requirement to ensure that the statement is read out at the meeting.~~⁴⁴

⁴³ Item 34(I) / 第 34(I)項

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- ~~(6) The company must ensure that the statement is read out at the meeting if it has not sent a copy of the statement to every member to whom a notice of the meeting is or has been given.⁴⁴~~
- (7) Unless exempted by an order under subsection (8)(a), the company must comply with a request requirement⁴⁵ made under subsection (1)(b), (2)(b) or (3)(b).
- (8) On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has given a statement and made a requirement under subsection (1)(a) and (b), (2)(a) and (b) or (3)—
- ~~(a) -has abused the right to do so; or~~
- ~~(b) has used such a right to secure needless publicity for defamatory matter., order—~~
- ~~(a) that the company is exempted from complying with the requirement; and~~
- ~~(b) that the applicant's costs on the application are to be paid in whole or in part by the person even though the person is not a party to the application.⁴⁶~~
- (9) If a company contravenes subsection (7), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

⁴⁴ Item 34(II) / 第 34(II)項

⁴⁵ Item 34(III) / 第 34(III)項

⁴⁶ Item 34(IV) / 第 34(IV)項

414. Cessation statement in relation to written resolution

- (1) This section applies if a company sends a copy of a written resolution to a person under section 392(3)(b)(i).
- (2) The person may, within 14 days after receiving a copy of the written resolution from the company—
 - (a) give the company a statement by the person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor; and
 - (b) require the company to send a copy of the statement to every member at the same time when the written resolution is circulated under section 540 or 542.
- (3) Section 543 applies to the circulation of the written resolution as if the reference to 21 days in section 543(3) were replaced by a reference to 28 days.
- (4) Unless exempted by an order under subsection (5)(a), the company must comply with a requirement made under subsection (2)(b).
- (5) On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the requirement, if it is satisfied that the person who has given a statement and made a requirement under subsection (2)—
 - (a) -has abused the right to do so; or
 - (b) has used such a right to secure needless publicity for defamatory matter.;~~order~~
 - ~~(a) that the company is exempted from complying with the requirement; and~~
 - ~~(b) that the applicant's costs on the application are to be paid in whole or in part by the person even though the person is not a party to the application.~~⁴⁷
- (6) If a company contravenes subsection (4), the written resolution is ineffective.

⁴⁷ Item 35(I) / 第 35(I)項

414. **關於書面決議的停任陳述**(Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 如公司根據第 392(3)(b)(i)條向某人送交書面決議的文本，則本條適用。
- (2) 上述的人可在收到公司送交的書面決議的文本後的 14 日內 —
 - (a) 向該公司給予該人作出的陳述，以合理篇幅列明終止核數師委任的背景情況；及
 - (b) 要求該公司在根據第 540 或 542 條傳閱該書面決議的同時，向每名成員送交該陳述的文本。
- (3) 第 543 條適用於傳閱書面決議，猶如在第 543(3)條中對“21 日”的提述被“28 日”所取代一樣。
- (4) 公司除非獲第(5)(a)款所指的命令豁免，否則須遵從根據第(2)(b)款作出的要求。
- (5) 如原訟法庭應公司或任何聲稱受屈的人提出的申請，信納根據第(2)款給予陳述並提出第(2)款所指的要求的人濫用其如此行事的權利，則原訟法庭可命令 —
 - (a) 該公司獲豁免而無需遵從該要求；及
 - (b) 該給予陳述的人支付申請人就該申請而招致的訟費的全部或部分，即使該給予陳述的人不是該申請的一方亦然。⁴⁸
- (6) 如公司違反第(4)款，有關書面決議即屬無效。

⁴⁸ Item 35(II) / 第 35(II)項

416. 卸任或遭免任的核數師給予陳述的職責

- (1) 除第(3)款另有規定外，根據第 407(1)(a)或(d)款⁴⁹終止核數師委任的人 —
 - (a) 如認為有與委任終止有關連的情況應獲公司的成員或債權人加以注意，須在其委任終止時，向該公司給予述明該情況的陳述；或
 - (b) 如認為沒有上述情況，須在其委任終止時，向該公司給予述明沒有該情況的陳述。
- (2) 如 —
 - (a) 上述的人的任期因該人根據第 394(2)(d)條不被當作再度獲委任而屆滿，該人送交第(1)款所述的陳述，須令該陳述在下一個財政年度的委任期終結之前最少 14 日送抵公司；或
 - (b) 屬任何其他情況，該人送交第(1)款所述的陳述，須令該陳述在自委任終止的日期起計的 14 日內送抵公司。
- (3) 如有以下情況，第(1)款不適用 —
 - (a) 有關的人的委任根據第 407(1)(a)條終止；及
 - (b) 該人 —
 - (i) 獲委任為公司的核數師，任期在緊接屆滿的任期之後開始；或
 - (ii) 根據第 394 條，被當作就下一個財政年度再度獲委任為公司的核數師。
- (4) 任何人違反第(1)或(2)款，即屬犯罪，可處第 3 級罰款，如有關罪行是持續的罪行，則可就該罪行持續期間的每一日，另處罰款\$300。
- (5) 凡某人被控犯第(4)款所訂罪行，如確立該人已採取一切合理步驟確使第(1)或(2)款(視屬何情況而定)獲遵守，即屬免責辯護。

⁴⁹ Item 36 / 第 36 項

418. Court may order statement of circumstances not to be sent

- (1) This section applies if an application has been made under section 417(1)(b) or (3) in relation to a statement of circumstances given by a person to a company.
- (2) If the Court is satisfied that the person has abused the use of the statement of circumstances or is using the statement to secure needless publicity for defamatory matter⁵⁰, the Court—
 - (a) must direct that copies of the statement are not to be sent under section 417(1)(a); and
 - (b) may order the person, though not a party to the application, to pay the applicant's costs on the application in whole or in part.
- (3) If the Court gives directions under subsection (2)(a), the company must, within ~~15~~⁵¹ days beginning on the date on which the directions are given—
 - (a) send a notice setting out the effect of the directions to—
 - (i) every member of the company; and
 - (ii) unless already named as a party to the proceedings, the person who has given the statement of circumstances to the company; and
 - (b) deliver a copy of the notice to the Registrar for registration.
- (4) If the Court decides not to grant the application, the company must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reason—
 - (a) give notice of the decision to the person who has given the statement of circumstances to the company; and
 - (b) send a copy of the statement of circumstances to every member of the company and to that person.
- (5) Within 7 days beginning on the date on which a person receives a notice under subsection (4)(a), the person must deliver a copy of the statement of circumstances to the Registrar for registration.

⁵⁰ Item 37(I) / 第 37(I)項

⁵¹ Item 1 / 第 1 項

418. 原訟法庭可命令不得送交情況陳述 (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)
- (1) 如有根據第 417(1)(b)或(3)條就任何人向公司給予的情況陳述提出的申請，則本條適用。
 - (2) 如原訟法庭信納上述的人濫用情況陳述，則 —
 - (a) 原訟法庭須指示無需根據第 417(1)(a)條送交該陳述的文本；及
 - (b) 原訟法庭可命令該人支付申請人就該申請而招致的訟費的全部或部分，即使該人不是該申請的一方亦然。
 - (3) 如原訟法庭根據第(2)(a)款作出指示，公司須在自該指示作出的日期起計的 14 日內 —
 - (a) 將列明該指示的效力的通知，送交 —
 - (i) 該公司的每名成員；及
 - (ii) 向該公司給予有關情況陳述的人，但如該人已被指名為法律程序的一方則除外；及
 - (b) 將該通知的文本交付處長登記。
 - (4) 如原訟法庭決定不批准有關申請，公司須在自該決定作出的日期或有關法律程序因任何原因而不繼續進行中止⁵²的日期起計的 14 日內 —
 - (a) 將關於該決定的通知，發出予向該公司給予情況陳述的人；及
 - (b) 向該公司的每名成員及該人送交該情況陳述的文本。
 - (5) 有關的人須在自收到第(4)(a)款所指的通知的日期起計的 7 日內，將情況陳述的文本交付處長登記。

⁵² Item 37(II) / 第 37(II)項

420. Directors must lay financial statements etc. before company in general meeting

- (1) A company's directors must, in respect of each financial year, lay before the company in annual general meeting, or in any other general meeting directed by the Court, a copy of the reporting documents for the financial year within the period specified in section 422.

~~Note—~~

~~See the exception in section 602(3).~~

~~(1A) Subsection (1) does not apply in relation to a financial year in respect of which an annual general meeting is not required to be held under section 602.⁵³~~

~~(2) If a company's directors contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000.~~

~~(2) A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) commits an offence and is liable to a fine of \$300,000.~~

~~(3) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.~~

~~(3) If a company's directors wilfully contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.~~

(4) If a person is charged with an offence under subsection (2)—

(a) it is a defence to establish that the person ~~took all reasonable steps to secure compliance with subsection (1); and~~ had reasonable grounds to believe, and did believe, that a competent and reliable person—

~~(i) was charged with the duty of ensuring that subsection (1) was complied with; and~~

~~(ii) was in a position to discharge that duty; and⁵⁴~~

(b) it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

⁵³ Item 38(I) / 第 38(I)項

⁵⁴ Item 38(II) / 第 38(II)項

422. Period for laying and publishingsending⁵⁵ financial statements etc.

- (1) Subject to subsection (2), the period specified for the purposes of sections 420(1) and 421(3) is—
 - (a) where the company is a private company described in subsection (3), or a company limited by guarantee, at the end of the accounting reference period by reference to which the financial year is determined—
 - (i) subject to subparagraph (ii), the period of 9 months, or any longer period directed by the Court, after the end of that accounting reference period; or
 - (ii) if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (4)(a) and (b) expires last; or
 - (b) where the company is neither a private company described in subsection (3), nor a company limited by guarantee, at the end of that accounting reference period—
 - (i) subject to subparagraph (ii), the period of 6 months, or any longer period directed by the Court, after the end of that accounting reference period; or
 - (ii) if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (5)(a) and (b) expires last.
- (2) If, after a new accounting reference date is specified under section 367(1), the accounting reference period by reference to which the financial year is determined is shortened, the period specified for the purposes of section 420(1) and 421(3) is whichever of the following expires last—
 - (a) the period specified in subsection (1);
 - (b) the period of 3 months after the date of the directors' resolution.
- (3) For the purposes of subsection (1)(a) or (b), the private company is one that is not a subsidiary of a public company at any time during the financial year.
- (4) The periods set out for the purposes of subsection (1)(a)(ii) are—
 - (a) the period of 9 months, or any longer period directed by the Court, after the first anniversary of the company's incorporation; and
 - (b) the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.
- (5) The periods set out for the purposes of subsection (1)(b)(ii) are—
 - (a) the period of 6 months, or any longer period directed by the Court, after the first anniversary of the company's incorporation; and
 - (b) the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.

⁵⁵ Item 39 / 第 39 項

423. Exception to section 421

- (1) Section 421 does not require a company to send a copy of any document to a member whose address is unknown to the company.
- (2) Section 421 does not require a company to send a copy of any document—
 - (a) in the case of joint holders of shares none of whom is entitled to receive notices of the company's general meeting, to more than one of the holders; or
 - (b) in the case of joint holders of shares some of whom areis⁵⁶ so entitled and some not, to those who are not entitled.
- (3) Section 421 does not require a company to send a copy of any document to a member if the company has sent the member a copy of the summary financial report for the financial year under section 432, or in compliance with a request under section 435.
- (4) If a company does not have a share capital, section 421 does not require the company to send a copy of any document to a member who is not entitled to receive notice of general meeting of the company.

⁵⁶ Item 40 / 第 40 項

~~424. — Company must send to non-voting members other documents~~

~~A company must send to every member who is not entitled to vote at a general meeting of the company—~~

- ~~—— (a) a copy of any document issued by the company and circulated by the company with a copy of the reporting documents under section 421; and~~
- ~~—— (b) a copy of any other document intended for the purpose of providing information about the company's affairs that is so circulated.⁵⁷~~

⁵⁷ Item 41 / 第 41 項

425A. Company must send to non-voting members other documents

- (1) A company must, at the same time when it sends a copy of the reporting documents under section 421, send to every member who is not entitled to vote at a general meeting of the company—
- (a) a copy of any document issued by the company and circulated by the company with a copy of the reporting documents under section 421; and
 - (b) a copy of any other document intended for the purpose of providing information about the company's affairs that is so circulated.
- (2) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.⁵⁸

⁵⁸ Item 42 / 第 42 項

426. Company must send copies of financial statements etc. to members and others on demand

- (1) Within 7 days after a demand is made by a member or a member's personal representative, a company must send to the member or personal representative—
 - (a) one copy of the latest financial statements;
 - (b) one copy of the latest directors' report; or
 - (c) one copy of the auditor's report on those latest financial statements.
- (2) A copy of a document that a person is entitled to be sent under subsection (1) is in addition to any copy of the document that the person is entitled to be sent under section 421.
- (3) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If a person is charged with an offence under subsection (3), it is a defence to establish that the member or member's personal representative (as the case may be) had already made a demand for the document concerned and had been provided with a copy of the document.⁵⁹

⁵⁹ Item 43 / 第 43 項

431. Summary financial report to be approved and signed

- (1) A summary financial report—
 - (a) must be approved by the directors; and
 - (b) must be signed on the directors' behalf by a director.
- (2) Every copy of a summary financial report sent to a member under this Division or otherwise circulated, published or issued by the company must state the name of the director who signed the report on the directors' behalf.

(2A) If, as respect any summary financial report a copy of which is circulated, published or issued by the company, subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.⁶⁰

- (3) If subsection ~~(1)~~ or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

⁶⁰ Item 44 / 第 44 項

433. Company may seek member's intent on receiving summary financial report

- (1) A company may notify every member or potential member to give the company a notice of intent under subsection (3).
- (2) A notification to a member or potential member—
 - (a) must be given in writing; and
 - (b) must be given in relation to a financial year.
- (3) In response to a notification, a member or potential member may give the company a notice of intent to—
 - (a) request—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (b) in the case of paragraph (a)(i), request the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.

(3A) A member or potential member may only make a request under subsection (3)(b) in response to a notification for a copy of the reporting documents or a copy of the summary financial report to be sent in electronic form or by making it available on a website if the company has given, in the notification, the member or potential member an option to request the copy to be so sent.⁶¹

- (4) If a notice of intent is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421, the notice of intent has effect in relation to that financial year, and every subsequent financial year, until it ceases to have effect by virtue of subsection (6).
- (5) If a notice of intent is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421—
 - (a) the notice of intent has effect in relation to every financial year subsequent to that financial year until it ceases to have effect by virtue of subsection (6); and
 - (b) the member or potential member is to be regarded as—
 - (i) having requested a copy of the summary financial report for the financial year; and
 - (ii) having requested the summary financial report to be sent by the company in hard copy form.
- (6) A notice of intent ceases to have effect if the person who gave the notice—
 - (a) is no longer a member of the company; or
 - (b) revokes the notice by giving the company a written notice of revocation.
- (7) If a member or potential member does not give the company a notice of intent in response to a notification before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421, the member or potential member is to be regarded as—
 - (a) having requested a copy of the summary financial report for the financial year and every subsequent financial year; and
 - (b) having requested the summary financial report to be sent by the company in hard copy form.
- (8) Subsection (7) ceases to have effect in relation to a person if—
 - (a) the person is no longer a member of the company; or
 - (b) the person gives the company a written notice of cessation of statutory election.

⁶¹ Item 45(I) / 第 45(I)項

433. 公司可尋求成員對收取財務摘要報告的意向 (Note: CSAs to this provision in the Chinese text do not include the CSA(s) in the English text. / 這條條文中文本的修正案並不包括英文本中的修正案。)

- (1) 公司可 ~~知會通知~~ 每名成員或潛在成員 ~~→ 知會該成員~~⁶² 向該公司發出第(3)款所指的意向通知。
- (2) 向成員或潛在成員發出的 ~~通知知會~~⁶² —
 - (a) 須以書面作出；及
 - (b) 須就某財政年度作出。
- (3) 成員或潛在成員在回應 ~~上述通知知會~~⁶² 時，可向公司發出意向通知 —
 - (a) 表示 —
 - (i) 要求獲得報告文件的文本或財務摘要報告的文本；或
 - (ii) 不要求獲得上述文本；及
 - (b) (如屬(a)(i)段的情況)要求該公司送交採用印本形式或電子形式的文本，或在網站上提供該文本。
- (4) 如在根據第 421 條向成員送交關乎有關財政年度的報告文件的文本的首日前最少 28 日前，公司收到意向通知，則該通知就該財政年度及其後每個財政年度具有效力，直至它憑藉第(6)款不再具有效力為止。
- (5) 如在根據第 421 條向成員送交關乎有關財政年度的報告文件的文本的首日前不足 28 日，公司收到意向通知，則 —
 - (a) 該通知就該財政年度後的每個財政年度具有效力，直至它憑藉第(6)款不再具有效力為止；及
 - (b) 有關成員或潛在成員須視為 —
 - (i) 已要求獲得關乎該財政年度的財務摘要報告的文本；及
 - (ii) 已要求該公司送交採用印本形式的該財務摘要報告。
- (6) 如發出意向通知的人 —
 - (a) 不再是公司的成員；或
 - (b) 藉向公司發出書面撤銷通知，撤銷該意向通知，則該意向通知不再具有效力。
- (7) 如成員或潛在成員沒有在根據第 421 條向成員送交關乎有關財政年度的報告文件的文本的首日前，向公司發出意向通知以回應 ~~公司根據第(1)款發出的通知知會~~⁶²，則該成員或潛在成員須視為 —
 - (a) 已要求獲得關乎該財政年度及其後每個財政年度的財務摘要報告的文本；及
 - (b) 已要求該公司送交採用印本形式的該財務摘要報告。
- (8) 任何人如 —
 - (a) 不再是公司的成員；或
 - (b) 向公司發出取消法定選擇的書面通知，則第(7)款不再就該人具有效力。

⁶² Item 45(II) / 第 45(II)項

434. Notice of revocation and notice of cessation of statutory election

- (1) A notice of revocation given by a person for the purposes of section 433(6)(b)—
 - (a) must state the financial year to which it relates;
 - (b) must state that the notice of intent previously given by the person is revoked;
 - (c) must state that the person requests—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (d) in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.
 - (2) The request stated in a notice of revocation under subsection (1)(c) must be different from the request stated in the notice of intent revoked by the notice of revocation.
 - (3) A notice of cessation of statutory election given by a person for the purposes of section 433(8)(b)—
 - (a) must state the financial year to which it relates;
 - (b) must state that the person is no longer regarded as having made the requests mentioned in section 433(7);
 - (c) must state that the person requests—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (d) in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.
- (3A) A person may only state in a notice of revocation under subsection (1)(d), or a notice of cessation of statutory election under subsection (3)(d), that the person requests for a copy of the reporting documents or a copy of the summary financial report to be sent in electronic form or by making it available on a website if the company has given, in the notification under section 433(1) to which the notice relates, the person an option to request the copy to be so sent.⁶³
- (4) If a notice of revocation, or a notice of cessation of statutory election, is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 421, the notice has effect in relation to that financial year, and every subsequent financial year.
 - (5) If a notice of revocation, or a notice of cessation of statutory election, is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 421, the notice has effect in relation to every financial year subsequent to that financial year.

⁶³ Item 46 / 第 46 項

436. Additional copy of reports etc. to be sent by company

- (1) If a company has sent a copy of the summary financial report for a financial year to a person under section 432, or in compliance with a request under section 435, the company must, at the person's request, send a copy of the reporting documents for the financial year to the person at the time specified in subsection (3).
- (2) If a company has sent a copy of the reporting documents for a financial year to a person under section 421, the company must, at the person's request, send a copy of the summary financial report for the financial year to the person at the time specified in subsection (3) unless it is prohibited from doing so by section 437.
- (3) The time specified for subsection (1) or (2) is—
 - (a) where a copy of the reporting documents for the financial year is to be laid before the company in general meeting under section 420(1), and the company receives the person's request more than 14 days before the date of that meeting, any time falling at least 7 days before the date of that meeting; or
 - (b) in any other case, any time within 14 days after the date on which the company receives the person's request.
- (4) Subsection (1) or (2) does not require a company to send a copy of the summary financial report or reporting documents for a financial year to a person if—
 - (a) where a copy of the reporting documents for the financial year is laid before the company in general meeting under section 420(1), the person's request is made at least 6 months after the date of that meeting; or
 - (b) where a copy of the reporting documents for the financial year is sent to every member under section 421(3), the person's request is made at least 6 months after the date on which the copy is sent.
- (5) Subsection (2) does not require a company to send a copy of the summary financial report for a financial year to a person unless—
 - (a) the company has prepared the summary financial report for the financial year; and
 - (b) when the company sent a copy of the reporting documents for the financial year to the person, the company gave the person a right to request a copy of the summary financial report for the financial year.
- (6) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (7) If a company is charged with an offence under subsection (6), it is a defence to establish that it took all reasonable steps to secure compliance with subsection (1) or (2) (as the case may be).⁶⁴

⁶⁴ Item 47 / 第 47 項

437. Company must not send summary financial report under some circumstances

- (1) A company must not send a copy of the summary financial report for the purposes of section 432(1)⁶⁵ for a financial year to a member if—
 - (a) the company's articles require that a copy of the reporting documents for the financial year must be sent to each member; or
 - (b) the company's articles prohibit the company from sending a copy of the summary financial report for the purposes of section 432(1)⁶⁵ for the financial year to a member.
- (2) A company must not send a copy of the summary financial report for a financial year to a member if—
 - (a) an auditor's report has not been prepared on the financial statements for the financial year;
 - (b) the summary financial report has not been approved by the directors;
 - (c) the summary financial report has not been signed on the directors' behalf; or
 - (d) the summary financial report does not comply with section 430(2).
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.

⁶⁵ Item 48 / 第 48 項

438. Exemption applicable to dormant company

- (1) The following provisions do not apply to a company that is a dormant company under section 5(1)—
- (a) section 363(4);
 - (b) Subdivisions 3 and 4 of Division 4;
 - (c) Subdivisions 2 and 3 of Division 5;
 - (d) sections 402 and 403;
 - (e) Subdivisions 6, 7 and 8 of Division 5;
 - (f) Divisions 6 and 7.
- (2) If such a company enters into an accounting transaction—
- (a) subsection (1) ceases to have effect on and after the date of the accounting transaction; and
 - (b) a member of the company who knew or ought to have known about the accounting transaction,⁶⁶ and every director of the company, are personally liable for any debt or liability of the company arising out of the accounting transaction.
- (3) In this section—
- director** (董事) includes a shadow director.

⁶⁶ Item 49 / 第 49 項

439. 就報告內不真實或具誤導性的陳述而負有的法律責任

- (1) 本條適用於 —
 - (a) 董事報告；**或及**⁶⁷
 - (b) 財務摘要報告(只限於該報告的內容是來自董事報告的範圍內)。
- (2) 公司的董事有法律責任就該公司因以下事宜而蒙受的損失作出補償 —
 - (a) 有關報告內的不真實或具誤導性的陳述；或
 - (b) 有關報告遺漏了它按規定須載有的任何事宜。
- (3) 就 —
 - (a) 第(2)(a)款而言，除非董事知道有關陳述屬不真實或具誤導性，或該董事罔顧該陳述是否不真實或具誤導性，否則該董事無需負上法律責任；或
 - (b) 第(2)(b)款而言，除非董事知道有關遺漏屬不誠實地隱瞞屬事關重要的事實，否則該董事無需負上法律責任。
- (4) 有關的人不須對另一人(有關公司除外)因該另一人或任何其他倚賴有關報告所載的資料而負上法律責任。
- (5) 就第(4)款而言，有關的人(**前者**)在以下情況下亦須對另一人負上法律責任：該另一人有權針對前者 —
 - (a) 獲給予民事補救；或
 - (b) 撤銷或廢除合約。
- (6) 本條不影響刑事罪行的法律責任。

⁶⁷ Item 50 / 第 50 項

441. Financial Secretary may make regulation regarding revision of financial statements etc.

- (1) The Financial Secretary may make regulations—
- ~~(a) providing for the application of this Ordinance in relation to the financial statements, summary financial report or directors' report that has been revised under section 440; and~~
- ~~(b) providing for requirements in relation to revised financial statements, summary financial report or directors' report.~~⁶⁸
- (2) The regulations may—
- (a) make different provisions according to whether the financial statements, summary financial report or directors' report has been revised by—
- (i) supplementing the financial statements or report with another document that shows the revisions; or
- (ii) replacing the financial statements or report;
- (b) provide for the functions of the ~~auditors of a company~~ persons who prepare the auditor's report⁶⁸ in relation to the financial statements, summary financial report or directors' report that has been revised;
- (c) where—
- (i) the financial statements or directors' report, or a copy of the statements or report, has, before the revision, been laid before the company in general meeting under section 420, been sent to members under section 421, or been delivered to the Registrar in compliance with section 655(3)(b); or
- (ii) a copy of a summary financial report has, before the revision, been sent to a member under section 432, or in compliance with a request under section 435 or 436(2),
- require the company or the directors of the company to take the steps specified in the regulations in relation to the financial statements or report that has been revised; and
- (d) provide for the application of this Ordinance to the financial statements, summary financial report or directors' report that has been revised, subject to such additions, exceptions and modifications as may be specified in the regulations.
- (3) The regulations may provide that any of the following is an offence—
- (a) a failure to take all reasonable steps to secure compliance with, as respects the financial statements, summary financial report or directors' report that has been revised—
- (i) a specified provision of the regulations; or
- (ii) a specified provision of this Ordinance as having ~~a continuing~~⁶⁹ effect under the regulations;
- (b) a contravention of—
- (i) a specified provision of the regulations; or
- (ii) a specified provision of this Ordinance as having ~~a continuing~~⁶⁹ effect under the regulations.
- (4) The maximum fine that may be prescribed for an offence committed wilfully is \$300,000 and the maximum imprisonment is 12 months. The maximum fine that may be prescribed for an offence not committed wilfully is \$300,000. In addition, in the case of a continuing offence, a further fine not exceeding \$2,000 for each day during which the offence continues may be prescribed.
- (5) The regulations may provide for defences to any such offence.

⁶⁸ Item 51(I) / 第 51(I)項

⁶⁹ Item 51(II) / 第 51(II)項

442. Financial Secretary may make regulation regarding disclosures of certain information

- (1) The Financial Secretary may make regulations prescribing ~~the following requirements~~ for the purposes of section 378(2)—
- ~~(a) a requirement that the financial statements for the financial year are to contain a statement showing the information about the matter mentioned in section 378(1)(d) particulars of the loans, quasi-loans and other dealings in favour of directors that are is specified in the regulations;~~
 - ~~(b) a requirement that the company is to enter into a register any particulars that would, but for section 378(2), be required by section 378(1)(d) to be contained in the notes to the financial statements for the financial year.~~
- ~~(2) The regulations may—~~
- ~~(a) provide for—~~
 - ~~(i) the maintenance and inspection of such a register;~~
 - ~~(ii) the keeping of particulars in the register; and~~
 - ~~(iii) the supply of a copy of the register by the company to a member of the company; and~~
 - ~~(b) provide that any of the following is an offence—~~
 - ~~(i) a failure to take all reasonable steps to secure compliance with a specified provision of the regulations; or~~
 - ~~(ii) a contravention of a specified provision of the regulations.~~
 - ~~(3) The maximum fine that may be prescribed for an offence is level 4 and the maximum imprisonment is 6 months. In addition, in the case of a continuing offence, a further fine not exceeding \$700 for each day during which the offence continues may be prescribed.~~
 - ~~(4) The regulations may provide for defences to any such offence.~~
 - ~~(5) The regulations may provide that the Court may order—~~
 - ~~(a) if an offence is committed for a failure to allow inspection of a register, that the register be opened to inspection; or~~
 - ~~(b) if an offence is committed for a failure to provide a copy of a register to a member, that such a copy be sent to the member.⁷⁰~~

⁷⁰ Item 52 / 第 52 項

301. Interim financial statements specified for purposes of section 298

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) A statement of financial position that forms part of the financial statements—
 - (a) must be approved by the directors; ~~and~~
 - (b) must be signed by 2 directors on the directors' behalf; and
 - (c) must state the name of the directors who signed the statement on the directors' behalf.
- (6) ...

302. Initial financial statements specified for purposes of section 298

- (1) ...
- (2) ...
- (3) ...
- (4) A statement of financial position that forms part of the financial statements—
 - (a) must be approved by the directors; ~~and~~
 - (b) must be signed by 2 directors on the directors' behalf; and
 - (c) must state the name of the directors who signed the statement on the directors' behalf.
- (5) ...
- (6) ...
- (7) ...
- (8) ...

454. Director's right to protest against removal

(1) ...

(2) ...

(3) If notice is given of a resolution under section 453(4) to remove a director, the director—

(a) may make with respect to the resolution representations in writing to the company (not exceeding a reasonable length); and

(b) may request the company to comply with the requirement specified in subsection (4) in relation to the representations.

(4) The requirement specified for the purposes of subsection (3)(b) is—

(a) if the company receives the representations on a date that is more than 2 days before the last day on which notice may be given under section 561(1) to call the meeting, the requirement—

(i) to state, in every notice of the meeting given to the members, that the representations have been made; and

(ii) to send a copy of the representations to every member to whom a notice of the meeting is or has been given; or

(b) if the company has not sent a copy of the representations to every member to whom a notice of the meeting is or has been given, the requirement to ensure that the representations are read out at the meeting.

(5) Unless exempted by an order under subsection (6), the company must comply with a request made under subsection (3)(b).

(6) On application by the company or by anyone who claims to be aggrieved, the Court may order that the company is exempted from complying with the request, if it is satisfied that the person who has made representations and made a requirement under subsection (3)—

(a) has abused the right to do so; or

(b) has used such a right to secure needless publicity for defamatory matter.

(7) If the company contravenes subsection (5), the resolution passed under section 453(1) is void even though section 552(1) is complied with.

~~(3) If notice is given of a resolution under section 453(4) to remove a director, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company must, unless the representations are received by it too late for it to do so—~~

~~(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and~~

~~(b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).~~

~~(4) If a copy of the representations is not sent as required by subsection (3) because they were received too late or because of the company's default, the director may (without prejudice to the right to be heard orally) require that the representations be read out at the meeting.~~

~~(5) Copies of the representations need not be sent and the representations need not be read out at the meeting if, on an application either by the company or by any other person who claims to be aggrieved, the Court is satisfied that the rights given by this section are being abused.~~

~~(6) The Court may order the company's costs on an application under subsection (5) to be paid in whole or in part by the director, despite the fact that the director is not a party to the application.~~