

## Bills Committee on Companies Bill

### Comparison Table for Part 9 – Accounts and Audit

#### PURPOSE

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To facilitate clause-by-clause examination of Part 9 (Accounts and Audit) of the Companies Bill, this paper provides a comparison table, at Annex, on the provisions in Part 9 and relevant provisions in the Companies Ordinance (Cap. 32) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 9 are set out in sections 73 to 81 of Schedule 10. A simple guide on how a financial year is determined under Part 9 can be found at Appendix 2 of the Annex of the LegCo Paper No. CB(1)1879/10-11(04).

#### PART 9 OF THE CB

2. The major proposals and policy issues concerning Part 9 are set out in LegCo Paper No. CB(1)1879/10-11(04), which was considered by Members at the meetings of 6, 13 and 19 May 2011. Our responses to issues raised by Members at the meetings are as follows –

<b><u>Issues raised by Members</u></b>	<b><u>Administration's response (LegCo Paper No.)</u></b>
Concerns about the proposal to relax the qualifying criteria for small companies to prepare simplified financial and directors' reports.	CB(1)2132/10-11(03) CB(1)2439/10-11(03) CB(1)2636/10-11(02)
Concerns about the formulation in clause 403(4) and (6) which might not provide sufficient protection for a company and its officers in	CB(1)2132/10-11(03) CB(1)2636/10-11(02)

<b><u>Issues raised by Members</u></b>	<b>Administration's response <u>(LegCo Paper No.)</u></b>
case the company fails to obtain the information or explanation requested by the auditor concerning a non-Hong Kong subsidiary due to restrictions imposed by overseas legislation.	
Reasons for not introducing the requirement of separate directors' remuneration reports in the Companies Bill.	CB(1)2439/10-11(04)

3. Specifically, we are currently reviewing the qualifying criteria for simplified reporting in consultation with the Hong Kong Institute of Certified Public Accountants and will revert to the Bills Committee as soon as possible. As for the concerns on clause 403(4) and (6), while we are of the view that the current formulation would already provide sufficient protection, we are considering whether we can add an express defence to address Members' concern.

#### **ADVICE SOUGHT**

4. Members are invited to note the contents of the paper and provide their views.

**Financial Services and the Treasury Bureau  
Companies Registry  
11 November 2011**

Comparison Table for Part 9

This table includes provisions in the third (i.e. “Derivation”) column that indicate the corresponding or original section in the Companies Ordinance (“CO”) of the clause concerned in the CB, where applicable. Where reference has been made to the relevant statutory provision(s) in other jurisdictions, such provision(s) is/ are also cited in that column. We use the term “Existing law” to mean that the clause is restating an existing section in the CO as set out in the “Derivation” column without change in substance, although the actual wording may be different from the existing section as improvements are made to the drafting language and style.

A list of abbreviations used is as follows –

ACA:	Australia Corporations Act 2001
CO:	Companies Ordinance (Cap. 32)
SCA:	Singapore Companies Act
Singapore SFS Reg:	The Companies (Summary Financial Statement) Regulations 1995 made under SCA
UKCA 2006:	United Kingdom Companies Act 2006
UK CR Reg:	The Companies (Company Records) Regulations 2008 made under UKCA 2006
UK Large and Medium-sized Companies and Groups Reg:	The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 made under UKCA 2006
UK SFS Reg:	The Companies (Summary Financial Statement) Regulations 2008 made under UKCA 2006
UK Small Companies and Groups Reg:	The Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 made under UKCA 2006

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Division 1: Preliminary</b>				
356(1)	Interpretation - annual consolidated financial statements - annual financial statements - auditor's report - director's report - financial statements  - Regulation  - summary financial report	CO s.2(1)	It means a summary financial report of a listed company which complies with s.141CF(1) of the CO.	<ul style="list-style-type: none"> <li>- New definition. See clause 375(2).</li> <li>- New definition. See clause 375(1).</li> <li>- New definition. See clause 396.</li> <li>- New definition. See clause 380.</li> <li>- New definition to refer to annual consolidated financial statements and annual financial statements.</li> <li>- New definition. See clause 442 and clause 443.</li> <li>- Existing law modified in that the provisions for summary financial reports apply to all companies. See Division 7.</li> </ul>
356(2)	reporting documents			<ul style="list-style-type: none"> <li>- New definition to refer to the documents required to be prepared for a financial year.</li> </ul>

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
356(3)	wholly owned subsidiary	CO s.124(4)	It provides that a body corporate is a wholly owned subsidiary of another body corporate if it has only that other and that other's wholly owned subsidiaries or their nominees as its members.	- Existing law.
357	Application in relation to financial year beginning on or after commencement date of relevant provision etc.			New provision to provide for the application of the specified provisions upon the commencement of the CB. Transitional provisions are set out in Schedule 10.
<b>Division 2: Reporting Exemption</b>				
358	Company falling within reporting exemption	CO s.141D(1) to (3)	It provides that a private company with unanimous shareholders' consent in writing obtained in respect of a financial year is exempt from certain requirements and may instead prepare simplified accounts and directors' reports. It does not apply to a company within a group, a guarantee company and certain companies (e.g. banks and	Existing law modified by (a) changing the qualifying criteria from unanimous members' consent in respect of each financial year to automatic qualification if the size criteria are met; (b) expanding the scope of companies eligible for the exemption by –

Clause	Contents	Derivation	Position in CO	Position in CB
			companies licensed under Cap 571 to carry on regulated activity).	<ul style="list-style-type: none"> <li>(i) including guarantee companies; and</li> <li>(ii) removing the prohibitions in s.141D(3)(a) and (f) of the CO against companies of a corporate group and a private company that owns and operates ships or aircraft engaged in the carriage of cargo between Hong Kong and a place outside Hong Kong.</li> </ul>
359	Small private company			New provision to provide for the qualifying conditions for a private company to fall within the reporting exemption. This should be read together with section 1(1) and (2) of Schedule 3.
360	Small guarantee company			New provision to provide for the qualifying conditions for a guarantee company to fall within the reporting exemption. This should be read together with section 1(3) and (4) of Schedule 3.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
361	Group of small private companies			New provision to provide for the qualifying conditions for a group of private companies to fall within the reporting exemption. This should be read together with section 1(5), (6) and (7) of Schedule 3.
362	Group of small guarantee companies			New provision to provide for the qualifying conditions for a group of guarantee companies to fall within the reporting exemption. This should be read together with section 1(8) and (9) of Schedule 3.
<b>Division 3 : A Company's Financial Year</b>				
363	Financial year	CO s.127(1) c.f. UKCA 2006 s.390(2) to (5)	It provides that a holding company's directors shall secure that the financial year of each of its subsidiaries shall coincide with the company's financial year unless there are good reasons against it.	Subclauses (1), (2) and (3) are new provisions for the determination of the financial year by reference to the accounting reference period and accounting reference date. Subclause (4) is existing law.
364	Accounting reference period	c.f. UKCA 2006 s.391(5) to (7)		New provision to provide for the first accounting reference periods of an existing company and a new

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				company, and for subsequent accounting reference periods.
365	Primary accounting reference date	c.f. UKCA 2006 s.391(4)		New provision to provide for the primary accounting reference dates of an existing company and a new company by reference to which the first accounting reference periods will be determined.
366	Accounting reference date			New provision to specify that a company's accounting reference date is the anniversary of its primary accounting reference date, unless altered pursuant to clause 367.
367	Alteration of accounting reference date	c.f. UKCA 2006 s.392(1) to (5)		New provision to provide for the directors' power to alter the accounting reference date, subject to certain restrictions.
<b>Division 4 : Preparation of Financial Statements and Directors' Reports</b>				
<b>Subdivision 1 : Preliminary</b>				
368	Interpretation	CO s.168BAA (3)(a) and (c)		New definitions modelled on CO section 168BAA(3)(a) and (c).

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Subdivision 2 : Accounting Records</b>				
369	Company must keep accounting records	CO s.121(1), (2) & (4) c.f. UKCA 2006 s.386(1) to (3) & (5) and 387; and ACA s.286(1)(a)	It provides for a company's duties to keep proper books of account which must give a true and fair view of the state of the company's affairs and explain its transactions. A director is liable if he fails to take all reasonable steps to secure compliance by the company with such requirements or by his own wilful act been the cause of any default by the company. It is a defence if the director had reasonable ground to believe and did believe that a competent and reliable person was charged with and was in a position to discharge the duty of seeing that the requirements were complied with.	Existing law modified – (a) “books of account” is replaced by “accounting records”; (b) new requirements in subclause (2) and (4) in relation to accounting records; (c) the requirement to keep books and accounts of all sales and purchases of goods is removed; and (d) a modified offence committed by a responsible person (clause 369(5)) and defence (clause 369(6)).
370	Where accounting records to be kept	CO s.121(3) & (4) c.f. UKCA 2006 s.388(1) to (3) and 389(1), (2) &	It provides for a company's obligation to keep its books of account at its registered office or any other place the directors think fit and to make them available for inspection by the directors. An offence and defence are also	Existing law with a modified offence (clause 370(4)) and a modified defence (clause 370(5)). The change in defence is the same as the change in clause 369.

Clause	Contents	Derivation	Position in CO	Position in CB
		(4)	provided.	
371	Director may obtain copies of accounting records during inspection			
(1) & (2)				New provisions on a director's right to make and to be supplied with copies of accounting records.
(3) & (4)		c.f. UK CR Reg reg.7, 8(1) & (2)		New provisions to provide for the supply of copies in hard copy or electronic form.
(5)		CO s.348C(3)	It provides that if company records are kept in a non-legible form, the company must allow inspection and reproduction of the records in a legible form.	Existing law.
(6) & (7)				New offence and defence for subclauses (1) and (2).
372	Form of accounting	CO s.348C(1), (2) & (4)	It provides that company records may be kept by making entries in a	Existing law plus – (a) a requirement to adequately

Clause	Contents	Derivation	Position in CO	Position in CB
	records	c.f. UKCA 2006 s.1135(1) & (2) and 1138(1) to (3)	bound book or by recording the information in any other manner including recording it in a non-legible form, provided that the recording is capable of being reproduced in a legible form and adequate precautions for guarding against falsification and facilitating its discovery are taken. It is an offence if such precautions are not taken.	record information in accounting records for future reference (clause 372(1)); and (b) new provisions providing for the keeping of accounting records in hard copy or electronic form arranged in the manner that the directors think fit (clause 372(2)).
373	How long accounting records to be preserved	CO s.121(3A) & (4)  c.f. UKCA 2006 s.388(4) and 389(1)	It provides for a company's obligation to preserve its books of account for 7 years. A director is liable if he fails to take all reasonable steps to secure compliance by the company with such requirement or by his own wilful act been the cause of any default by the company. It is a defence if the director had reasonable ground to believe and did believe that a competent and reliable person was charged with and was in a position to discharge the duty of seeing that the	Existing law except that the offence is modified (clause 373(3)) and the statutory defence is removed as officers are only liable if they are "responsible persons".

Clause	Contents	Derivation	Position in CO	Position in CB
			requirements were complied with.	
374	Court may order accounting records to be inspected on director's behalf	c.f. SCA s.199(5); and ACA s.290(2) to (4)		New provision to provide that a director may apply to court for an order of inspection and copying of accounting records by a person on his behalf.
<b>Subdivision 3 :Financial Statements</b>				
375	Directors must prepare financial statements			
(1)		CO s.123(1) to (4), 129C and 141D  c.f. UKCA 2006 s.393(1) and 394	It provides that the balance sheet and profit and loss account must comply with the specified requirements.	Existing law plus a provision that expressly provides for the directors' duty to prepare financial statements.
(2)		CO s.124(1) 125(1) and 126(1)  c.f. UKCA 2006 s.399	It provides for a holding company's obligation to prepare group accounts of the company and its subsidiaries and its own balance sheet and profit and loss account in accordance with specified	Existing law modified by requiring a holding company to prepare consolidated financial statements and removing the obligation to prepare its own accounts. However, the statement of financial

Clause	Contents	Derivation	Position in CO	Position in CB
			requirements.	position of the company is required to be prepared and contained in the notes to the consolidated financial statements (Schedule 4 Part 1 clause 2).
(3)		CO s.124(2)(a)	It provides that group accounts are not required if the company is a wholly owned subsidiary of another body corporate.	Existing law plus a new provision in subclause (3)(b) that provides that unless any member requests otherwise, a partially owned subsidiary of another body corporate is also exempted from the requirement to prepare consolidated financial statements.
(4) to (6)		CO s.123(6), 124(3)	It provides for the offence by a director for failing to take all reasonable steps to secure compliance by the company with the requirements relating to the accounts. It is a defence if the director had reasonable ground to believe and did believe that a competent and reliable person was charged with and was in a position to discharge the duty of seeing that the requirements were complied	Existing law modified - (a) there are 2 separate offences, one for failure to take all reasonable steps to secure compliance (clause 375 (4)), and the other for wilfully failing to take those steps (clause 375(5)); and (b) the statutory defence is removed for an offence committed wilfully (clause 375(6)).

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			with.	
376	General requirements for financial statements			
(1)		CO s.123(1) c.f. ACA s.297(a)	It provides that the balance sheet must give a true and fair view of the state of affairs of the company as at the end of its financial year, and the profit and loss account must give a true and fair view of the profit or loss for the financial year.	Existing law modified by providing that annual financial statements are required to give a true and fair view of the financial position of the company as at the end of the financial year (clause 376(1)(a)) and a true and fair view of the financial performance of the company for the financial year (clause 376(1)(b)).
(2)		CO s.2B(3) and s.126(1) c.f. ACA s.297(b)	It provides that group accounts must give a true and fair view of the state of affairs and profit or loss of the company and its subsidiary undertakings as a whole.	Existing law modified by providing that annual consolidated financial statements are required to 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 (clause 376(2)(a)) and a true and fair view of the financial performance of the company and all

Clause	Contents	Derivation	Position in CO	Position in CB
				the subsidiary undertakings as a whole for the financial year (clause 376(2)(b)).
(3)		CO s.123(2), 126(3) and 141D(1)(b)	It provides that the accounts must comply with the requirements of the 10 <sup>th</sup> Schedule. For companies which prepare simplified accounts, the requirements are specified in the 11 <sup>th</sup> Schedule.	Existing law modified – (a) for companies whether or not falling within the reporting exemption, the financial statements must comply with the accounting disclosures in Schedule 4 Part 1; and (b) for companies not falling within the reporting exemption, the financial statements must comply with the accounting disclosures in Schedule 4 Parts 1 and 2.
(4)		CO s.123(3) and 126(4)  c.f. ACA s.296	It provides that compliance with the 10 <sup>th</sup> Schedule is without prejudice to other requirements in the CO or the requirement to give a true and fair view.	Existing law plus a new subclause (4)(b) that provides that the financial statements must also comply with applicable accounting standards.
(5) & (6)		CO s.123(4) and 126(4)	It permits additional information to be given in the accounts, or departure from, the general	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			requirements in the CO, for the purpose of giving a true and fair view.	
(7)		CO s.141D(1)(a) & (e)(ii)	It provides for the exemption for companies that prepare simplified accounts from complying with the requirements in specified sections and the requirement for the balance sheet to give a true and correct view of the state of affairs.	Existing law modified – (a) the requirement to give a “true and correct view” is removed; (b) the reporting exemption applies to the expanded categories of companies (see clauses 358 to 362).
(8)		c.f. UKCA 2006 s.464(1) & (2)		New provision to define “accounting standards”.
377 <sup>Note 1</sup>	Subsidiary undertakings to be included in annual consolidated financial statements			

<sup>Note 1</sup> CSAs will be introduced to define “subsidiary undertaking” as the undertaking required by the applicable accounting standards to be included in the consolidated financial statements, so that the requirements as to the scope of consolidated financial statements are simplified and are dealt with entirely in Part 9. Schedule 1 of CB (which restates the provisions in CO 23<sup>rd</sup> Schedule) will be deleted by CSA.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
(1)		CO s.2B(3) and s.124(1)  c.f. UKCA 2006 s.405(1)	It provides that group accounts dealing with the state of affairs and profit or loss of a holding company and its subsidiary undertakings shall be laid before the holding company in its general meeting.	Existing law modified by expressly requiring annual consolidated financial statements to include all subsidiary undertakings of the company.
(2)				New provision to allow the exclusion of subsidiary undertakings from consolidated financial statements in compliance with the applicable accounting standards for companies falling within the reporting exemption.
(3)		CO s.2B(3) and s.124(2)(b)  c.f. UKCA 2006 s.405(2)	It provides that group accounts may exclude a subsidiary undertaking if the specified criteria are met.	New criteria for excluding subsidiary undertaking(s) from consolidated financial statements for companies not falling within the reporting exemption.
378	Notes to financial statements to contain information on directors'	CO s.161(1), 161B(1) to (7), (11) & (17), 161BB(1), and 161C(1), (2A) & (3)	It provides for the disclosure in the accounts of the specified information including : - the aggregate amount of directors' emoluments and pensions and compensation to	Existing law modified – (a) a new provision requires the notes to financial statements to contain information prescribed by regulations to be made by the FS under clause 443(2) (clause

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	emoluments etc.	c.f. UKCA 2006 s.412(1), (2), (5) & (6)	<p>directors or past directors; and</p> <p>- particulars relating to loan or quasi loan or other dealings, in favour of a director.</p> <p>It also provides for a company's duty to enter the particulars relating to loans, quasi loans or other dealings in a register and a director's duty to provide the information on such dealings that relate to himself.</p>	<p>378(1)); and</p> <p>(b) the alternative disclosure of information in relation to loans, quasi-loans and other dealings in favour of directors in a register under s.161BB of CO will be moved to regulations to be made by the FS under clause 442 (clause 378(2)).</p>
379	Statement of financial position to be approved and signed	CO s.129B(1) & (3)	It provides that the balance sheet shall be approved by the board and signed by 2 directors, or if the company has only one director, by the sole director. There is an offence for default.	Existing law except that "balance sheet" is replaced by "statement of financial position".
<b>Subdivision 4 : Directors' Report</b>				
380	Directors must prepare directors' report	CO s.129D(1) & (3), 129F and 141D(1)(a), (c) & (4)  c.f. UKCA	Section 129D(1) & (3) provide for the duty to prepare a directors' report and set out the requirements relating to the contents of the directors' report. Section 129F provides for the offence and defence relating to the directors' report.	Existing law modified plus new provisions that require –  (a) the directors' report to contain information prescribed by regulations made by the Financial Secretary under clause 443(3) (clause 380(1)(b));

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		2006 s.415(1), (2) & (4) and 416(4)	Section 141D(1)(a) and (c) provide for the requirements as to a directors' report of a company that prepares simplified accounts and section 141D(4) provides for the related offence and defence.	(b) the directors' report to contain a business review specified in Schedule 5 (clause 380(1)(a)), unless exempted under subclause (3); (c) a holding company that prepares consolidated financial statements to prepare a consolidated directors' report (clause 380(2)); and (d) in relation to a private company that prepares accounts under s.141D of the CO, the information required to be contained in a directors' report is modified and the penalty for an offence under s.141D(4) of the CO is increased from a maximum fine at level 5 (\$50,000) to \$150,000 (clause 380(5) and (6)).
381	Contents of directors' report: general	CO s.2B(3) and s.129D(3)(a), (i) & (l)	It provides that the directors' report shall state the principal activities of the company and its subsidiary undertakings, the names of the directors and particulars of material	Existing law plus a new provision requiring a company that prepares a consolidated directors' report to include information in relation to the subsidiary undertakings

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		c.f. UKCA 2006 s.416(1) & (2)	matters the disclosure of which will not harm the business of the company or its subsidiary undertakings.	included in the annual consolidated financial statements (clause 381(3)).
382	Directors' report to be approved and signed	CO s.129D(2), 129F and 141D(1)(a), (d) & (4)  c.f. UKCA 2006 s.419(1), 433(1), (2), (4) & (5)	It provides that the directors' report shall be approved by the board and signed by the chairman or the company secretary. An offence is committed if a director fails to take all reasonable steps to secure compliance with the requirements relating to the directors' report and a defence is available. Section 141D contains provisions on directors' report of a company that prepares simplified accounts.	Existing law modified – (a) a directors' report can be signed on the directors' behalf by a director or company secretary (clause 382(1)); (b) a new provision requires the name of the signatory to be stated in published copies of the report (clause 382(2)); and (c) the statutory defence and the penalty of 6 months' imprisonment are removed. The maximum fine is lowered from \$150,000 (as in CO s.129F) and level 5 (\$50,000, as in CO s.141D) to level 4 (\$25,000) (clause 382(3)).
<b>Division 5 : Auditor and Auditor's Report</b>				
<b>Subdivision 1 : Preliminary</b>				
383	Interpretation	c.f. UKCA 2006		New provision on the meaning of the terms used in Division 5.

Clause	Contents	Derivation	Position in CO	Position in CB
		s.485(2)		
<b>Subdivision 2 : Appointment of Auditor</b>				
384	Eligibility for appointment	CO s.140(1) & (2)	It provides for the eligibility of persons for appointment as auditor.	Existing law except that a person qualified for appointment as an auditor under the Professional Accountants Ordinance (Cap 50) is referred to as a “practice unit”.
385	Auditor must be appointed for each financial year	CO s.131(1) c.f. UKCA 2006 s.485(1) and 489(1) & (5)	It provides that a company shall at each annual general meeting (“AGM”) appoint an auditor to hold office until the next AGM.	Existing law modified by requiring the appointment of an auditor for each financial year and only in accordance with sub-division 2 of Division 5 of Part 9. The term of office of an auditor is determined by clause 393.
386	Appointment of first auditor by directors	CO s.131(3) c.f. UKCA 2006 s.485(3)(a) and 489(3)(a)	It provides for the appointment and term of office of the first auditors of a company appointed by the directors before its first AGM.	Existing law modified – (a) the term of office of an auditor is determined by clause 393; and (b) a new provision for the appointment of auditors where the company is not required to hold an AGM for its first financial year by virtue of clause 602 (clause 386(3)).

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
387	Appointment of auditor by company members	CO s.131(1) & (4)  c.f. UKCA 2006 s. 485(2) & (4), 489(2) & (4)	It provides that a company shall at each AGM appoint an auditor to hold office until the next AGM. If the director does not appoint the first auditors, the company may appoint the first auditors in a general meeting.	Existing law plus new provisions that govern the appointment of auditors where –  (a) the company is not required to hold an AGM under clause 602(2) (clause 387(2) & (3)(a)); and  (b) no person is deemed to be reappointed as auditor under clause 394 (clause 387(3)(b)).
388	Appointment to fill casual vacancy	CO s.131(5)  c.f. UKCA 2006 s.485(3)(c) & (4)(c) and 489(3)(c) & (4)(c); and ACA s.327C(1)	It provides for the appointment of auditors by the directors or the company in general meeting, to fill a casual vacancy. While such vacancy continues, the surviving or continuing auditors may act.	Existing law plus a new provision that provides that the members may fill a vacancy if the directors have not done so within one month of the vacancy (clause 388(2)). The right of the surviving or continuing auditor(s) to act is restated in clause 407(4).
389	Appointment of auditor by Court	CO s.131(2)  c.f. UKCA 2006 s.486(1)	It provides that where no auditors are appointed or reappointed at an AGM, the court may, on the application by a member, appoint a person to fill the vacancy.	Existing law plus new provisions to provide for appointment of auditors by the court where no appointment is made in the following circumstances –  (a) where an AGM was held or was

Clause	Contents	Derivation	Position in CO	Position in CB
				<p>required to be held but was not held (clause 389(1)(a));</p> <p>(b) where an AGM was not required to be held under clause 602(2) (clause 389(1)(b)); and</p> <p>(c) where the appointment of first auditors has not been made or a casual vacancy has not been filled by appointment made by the directors or members (clause 389(2) &amp; (3)).</p>
390	Effect of appointing a firm as auditor	CO s.131(9)	It provides that appointment of a firm as auditors operates as an appointment of the partners of the firm who are qualified for appointment, provided that the appointment shall lapse if all these partners cease to be partners or so qualified.	Existing law. The proviso to CO s.131(9) is restated in clause 407(2).
391	Special notice required for resolution for appointing auditor in some cases	CO s.132(1) & (2)	It provides that special notice is required for a resolution appointing, reappointing or removing an auditor, or filling a casual vacancy. On receipt of such notice, the company shall send a copy thereof	Existing law. The provision in respect of a resolution to remove an auditor is in clause 410(2) & (3).

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			to the auditors concerned.	
392	Copies of written resolution for appointment must be sent to new and old auditors	c. f. UKCA 2006 s.514(1) to (3) and (8)		New provision requiring the sending of copy of proposed written resolution for appointment of auditor to the auditors concerned.
393	Terms of office of auditor	CO s.131(1) c. f. UKCA 2006 s.487(1) and 491(1)	It provides that at each AGM an auditor shall be appointed to hold office from the conclusion of the meeting until the conclusion of the next AGM.	Existing law plus new provisions that provide for the commencement and termination of office of an auditor where the company does not hold an AGM under clause 602 (clause 393(2)(b)(ii) & (iii)).
394	Person deemed to be reappointed as auditor	c.f. UKCA 2006 s.487(2) to (4), 488		New provision to provide for the situations where a person is deemed (clause 394(1)) or not deemed (clause 394(2)) to be reappointed as auditor where the company does not hold an AGM.
395	Auditor's remuneration	CO s.131(8)	It provides that the remuneration of the auditor may be fixed by the directors or by the court if the	Existing law plus a new provision that gives the members an option, instead of an obligation, to fix the

Clause	Contents	Derivation	Position in CO	Position in CB
			auditor is appointed by the directors or by the court, and in other cases, by the company in general meeting.	remuneration of an auditor appointed by the members (clause 395(1)).
<b>Subdivision 3 : Auditor's Report</b>				
396	Auditor's duty to report	CO s.141(1) c.f. UKCA 2006 s.495(1)	It provides for the auditor's duty to make a report on the accounts or group accounts.	Existing law modified – (a) the term “financial statements” defined in clause 356 replaces “accounts”, “balance sheet”, “profit and loss account” and “group accounts”; and (b) the provision applies to financial statements sent to members or otherwise circulated, published or issued.
397	Auditor's opinion on financial statements, directors' report, etc.	CO s.141(3)(a), 141D(1)(a) & (e) c.f. UKCA 2006 s.495(3)(a) & (b) and 496	Section 141(3)(a) provides that the auditors' report shall state whether the accounts or group accounts have been properly prepared in accordance with the CO and whether in their opinion a true and fair view is given of the state of affairs and profit or loss of the company or of the company and its subsidiaries. Section 141D(1)(a) & (e) deal with the auditors' report	Existing law modified – (a) in the case of a company falling within the reporting exemption, the requirement to state the opinion as to whether the balance sheet exhibits a “true and correct view of the state of the company's affairs” is removed. (b) in the case of a company not falling within the reporting

Clause	Contents	Derivation	Position in CO	Position in CB
			of a company that prepares simplified accounts.	<p>exemption, the auditor must also state if the company's annual financial statements or annual consolidated financial statements give a true and fair view of the financial position and financial performance of the company, or of the company and all the subsidiary undertakings as a whole, as the case may be (clause 397(1)(b)); and</p> <p>(c) there is a requirement to state and bring to members' attention the auditor's opinion in the auditor's report if the auditor is of the opinion that the information in a directors' report is not consistent with the financial statements (clause 397(2)).</p>
398	Auditor's opinion on other matters	CO s.141(4) & (6), 141D(1)(e)(i), 161(8) and 161B(12)	Section 141(4) &(6) sets out the duty of the auditors to carry out investigations to enable them to form an opinion as to whether proper books of account have been kept and whether the accounts are in	Existing law modified in that materiality is added as a prerequisite to the requirement to state the auditor's opinion i.e. the financial statements are not in agreement with the accounting records in a

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>agreement with the accounting records. If not, or if the auditors fail to obtain all necessary information and explanations, they shall state the fact in the auditors' report. The provisions on auditors' report for a company that prepares simplified accounts are in section 141D(1)(e)(i). Section 161(8) and 161B(12) set out the duty of auditors to include particulars of directors' emoluments, pensions etc and loans and other dealings with directors in the auditors' report.</p>	<p>material respect (clause 398(2)(b)), or if the auditor fails to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit (clause 398(3)).</p>
399	Offences relating to contents of auditor's report	c.f. UKCA 2006 s.507(2) to (3)	S.141(4)(b) and (6) provide for a duty on the auditor to make the specified statements in the auditor's report but with no offence provision.	New provision setting out the offence of knowingly or recklessly causing a specified statement to be omitted from an auditor's report and the persons potentially caught by the offence.
400	Auditor's reports to be signed	c.f. UKCA 2006 s.503 and 505(1)(a) & (2) to (4)		New provision requiring the auditor's report to be signed and the auditor's name to be stated in the report, coupled with an offence for

Clause	Contents	Derivation	Position in CO	Position in CB
				default.
<b>Subdivision 4 : Auditor's Rights and Privileges, etc.</b>				
401	Qualified privileges	c.f. SCA s.208		New provision on the protection from being sued in defamation that is given to an auditor in respect of any statement made in the course of performing duties as auditor and that is also given to any person in respect of the publication of any document prepared by an auditor in the course of performing duties as auditor.
402	Rights in relation to general meeting	CO s.141(7) and (8)  UKCA 2006 s.502(2) & (3)	It provides for the right of the auditors to attend any general meeting, to receive notices relating thereto and to be heard at the meeting on any business which concerns them as auditors. If the auditor is a corporate practice, such right is exercisable by an individual authorized by such auditor.	Existing law plus a new provision that provides that if the auditor is a firm, the rights will be exercisable by a natural person authorized to act as the firm's representative at the meeting (clause 402(2)). The auditor's entitlement to receive notices of and other communications relating to general meetings is retained in clause 565.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
403	Rights in relation to information			
(1)		CO s.141(5)	It provides that an auditor has a right of access to the books and accounts and vouchers and is entitled to require information and explanations from the officers of the company.	Existing law. The term “books and accounts and vouchers” is replaced by “accounting records”.
(2) to (6) & (9)		CO s.2B(3) and s.133(1)  c.f. UKCA 2006 s.499(1) & (2), 500(1) to (3) and 501(3); and ACA s.323A	It provides that where a company has a subsidiary which is incorporated in HK, it is the duty of the subsidiary and its auditors to give the auditors of the holding company such information and explanations as they may reasonably require. In any other case, it is the duty of the holding company to take all reasonable steps to obtain such information and explanation from its subsidiary undertaking.	Existing law plus new provisions that – (a) widen the scope of persons from whom an auditor may require the provision of information or explanation that the auditor reasonably requires for the performance of his duties (clause 403(2), (4), (5), (9)); and (b) provide that the information or explanation must be provided as soon as practicable (clause 403(3) & (6)).
(7) & (8)		c.f. UKCA 2006 s.499(3)		New provisions on the use of information provided to the auditor

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		& (4) and 500 (4) & (5)		in criminal proceedings and on legal professional privilege.
404	Offences relating to section 403			
(1), (2) & (5)		CO s.2B(3) and s.133(2) & (3)  c.f. UKCA 2006 s.501(3) & (4)	It provides that if a HK subsidiary or its auditor fails to give the required information to the auditors of the holding company, the subsidiary and every officer in default commits an offence. If the subsidiary is not a body corporate incorporated in HK and the holding company fails to take reasonable steps to obtain the required information from it, the company and every officer in default commits an offence.	Existing law modified – (a) the maximum penalty is increased from level 3 to level 4 and there is a new maximum daily fine of \$700 (clause 404(1) & (5)); and (b) for contravention of s.133(1)(a) of the CO (equivalent to clause 403(3)) the statutory defence of “reasonable excuse” (in relation to the auditors of a HK subsidiary) in s.133(2) of CO is changed to “not reasonably practicable” (in relation to any person who contravenes 403(3) in clause 404(2)).
(3) & (4)		CO s.134	It provides that an officer who knowingly or recklessly makes a statement to the auditors that is	Existing law <sup>Note 2</sup> .

<sup>Note 2</sup> CSAs will be introduced to add “knowingly or recklessly” to clause 404(3).

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
			misleading, false or deceptive in a material particular commits an offence.	
(6)		c.f. UKCA 2006 s.501(6)		New provision to clarify that the auditor's right to apply for an injunction to enforce his right to information is not affected by the penal provisions in this clause.
405	Auditor may provide information to incoming auditor without contravening duties	c.f. Cap 485 s.42A		New provision to provide that an outgoing auditor may provide work-related information to another auditor or an incoming auditor of the same company.
<b>Subdivision 5 : Auditor's Liability</b>				
406	Avoidance of provisions protecting auditor from liability	CO s.165(1) to (3) & (5)  c.f. UKCA 2006 s.532(1), (2)(a), (3), (4) and 533	It provides for the avoidance of any provision exempting or indemnifying any officer or auditor from liability in respect of negligence, default, breach of duty or breach of trust in relation to the company or a related company. A company may purchase and maintain insurance for an officer or	Existing law modified by – (a) adding a prohibition against indemnifying the liabilities of an auditor of an associated company (clause 406(3)); and (b) extending the permission to take out and keep in force insurance to cover the auditors of an associated company (clause

Clause	Contents	Derivation	Position in CO	Position in CB
			auditor against such liability to the company, related company or third party and any liability incurred in defending proceedings against him for negligence, default, breach of duty or breach of trust (including fraud). Indemnification against liability incurred in defending proceedings or in seeking relief may be allowed.	406(4)). The term “associated company” replaces “related company” and is defined in clause 2(1).
<b>Subdivision 6 : Termination of Auditor’s Appointment</b>				
407	When appointment is terminated			
(1) & (3)				New provisions setting out when an auditor’s appointment is terminated.
(2) & (4)		CO s.131(5) and proviso to (9)	It provides that a surviving or continuing auditor may act as the auditor. If a firm is appointed as auditors, the appointment shall lapse if all partners qualified for appointment cease to be partners or cease to be so qualified.	Existing law.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
408	Resignation of auditor	CO s.140A(1), (2), (3)(a) & (7)  c.f. UKCA 2006 s.516 and 517	It provides for the resignation of an auditor by depositing a written notice at the company's registered office, the requirements as to the content, signing and registration of the notice and an offence for default.	Existing law except that prosecution on indictment for failure to notify the Registrar of notice of resignation is dropped. For summary prosecution, a new maximum daily default fine of \$1,000 is imposed on top of the level 5 maximum fine (clause 408(4)). The details of the statement to be given by the auditor are now stated in clause 415.
409	Cessation of office	CO s.140(4)  c.f. UKCA 2006 s.1213(2)(b), (3)(b), (4) & (8)	It provides that an auditor shall forthwith vacate his office if he ceases to be qualified, or becomes disqualified for appointment.	Existing law modified – (a) to provide clearly that a person ceases to be auditor of the company by operation of law if he ceases to be eligible or becomes disqualified for appointment (clause 409(1)(a)); and (b) to provide for a new offence for failure to immediately notify the company of the cessation (clause 409(2)).
410	Company may remove auditor	CO s.131(6) & (7), 132(1)(d),	It provides that a company may by ordinary resolution remove an	Existing law modified – (a) “despite anything in the

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
		(2)(a)  c.f. UKCA 2006 s.510(1) & (2), 511(1) & (2) and 512	auditor from office despite any agreement between them. Notice of the resolution removing an auditor of a non private company shall be given to the Registrar, and the failure to do so is an offence. Special notice is required for a resolution removing an auditor and notice of the intended resolution must be sent to the auditor.	company's articles" are added (clause 410(1)(b)); and  (b) the requirement to notify the Registrar of the removal of an auditor and the offence for default are extended to cover all companies (clause 410(4) & (5)).
411	Removed auditor not deprived of compensation, damages, etc	CO s.131(10)	It provides that the company's right to remove an auditor does not deprive the auditor of compensation or damages payable to him for termination.	Existing law.
<b>Subdivision 7 : Outgoing Auditor's Right to Requisition Meeting of Company and Make Representation</b>				
412	Resigning auditor may requisition meeting	CO s.140B(1) & (3)	It provides for an auditor's right to requisition an extraordinary general meeting if his notice of resignation contains a statement of the circumstances connected with his resignation. It also provides for the time limit for convening such meeting and an offence for default.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
413	Cessation statement in relation to, and attendance at, general meeting	CO s.132(3) to (6), 140B(2) to (5), 141(7) & (8)	<p>Section 132(3) to (5) provides that where a resolution proposes to appoint a person other than the retiring auditor or proposes to remove an auditor, the auditor may make representations concerning that resolution and request for its notification to the members. The company must send a copy of, or read out, the representations to the members, subject to any court order to the contrary. The test for a court order is whether the auditor’s rights “are being abused to secure needless publicity for defamatory matter”.</p> <p>Section 140B (2) to (4) provides that where a notice of resignation contained a statement of circumstances, the auditor may make a requisition to call a general meeting and request for its notification to the members. The company must send a copy of, or read out, the statement to the members, subject to any court order to the contrary. The test for a court</p>	<p>Existing law modified –</p> <p>(a) the auditor’s “representations” or “statement” in ss.132(3) and 140B(2)(b) of the CO is replaced by “cessation statement” defined in clause 383. The meeting at which the statement will be considered is the meeting convened by the directors pursuant to the resigning auditor’s requisition under clause 412(2), or the meeting convened for a resolution for removing or replacing an auditor;</p> <p>(b) the phrase “unless the representations are / statement is received too late” in sections 132(3) and 140B(2)(b) of the CO is replaced by “unless the company receives the statement within 2 days before the last day on which notice may be given” (clause 413(5));</p> <p>(c) the court may order that the statement need not be sent or read out if it is satisfied that the</p>

Clause	Contents	Derivation	Position in CO	Position in CB
			<p>order is whether the auditor's rights "are being abused to secure needless publicity for defamatory matter".</p> <p>Section 132(6), 140B(5) and 141(7) &amp; (8) deal with the auditor's right to attend any general meeting on matters which concern him as auditor or former auditor.</p>	<p>outgoing auditor has abused his rights (clause 413(8)); and</p> <p>(d) a new offence and penalty is imposed on the company's failure to comply with the requirements relating to the cessation statement (clause 413(9)).</p>
414	Cessation statement in relation to written resolution	c.f. UKCA 2006 s.514(1), (4) to (6)(a), (7) & (8)		New provision on the right of an auditor who is not re-appointed because of the appointment of another person by written resolution to give a cessation statement on the circumstances surrounding the termination of his appointment and to require the company to send a copy of it to the members (clause 414(2)).
<b>Subdivision 8 : Outgoing Auditor's Statement of Circumstances</b>				
415	Duty of resigning auditor to give statement	CO s.140A(1) & (2)	It provides for a resigning auditor's duty to give the company a statement on the circumstances, or on the absence of relevant circumstances, connected with his	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			resignation.	
416	Duty of auditor who retires or is removed to give statement	c.f. UKCA 2006 s.519(1), (2), (4)(b) & (c) to (6)		New provision on the duties of an auditor who retires or is removed to give the company a statement on the circumstances, or of no circumstances, connected with the termination of his appointment.
417	Company's and aggrieved person's responses to statement of circumstances	CO s.140A(3)(b), (4), (5) & (7)  c.f. UKCA 2006 s.520(1) to (3), (6) to (8) and 521(1), (3) to (5)	It provides for a company's duties to send a copy of the notice of resignation and the statement of circumstances to the members and the Registrar and an offence for default. It also provides that the company or a person who claims to be aggrieved may apply to court for an order directing the statement not to be sent.	Existing law plus new provisions – (a) for the giving of notice of application to court for non-publicity of the statement to the outgoing auditor and the company (clause 417(2) & (4)); (b) requiring the auditor to deliver a copy of the statement to the Registrar coupled with an offence for the failure to do so (clause 417(5), (7) & (8)); and (c) relating to statements given by an auditor who is removed or is not re-appointed (See the definition of “statement of circumstances” in clause 383.)

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
418	Court may order statement of circumstances not to be sent	CO s.140A(5) & (6)  c.f. UKCA 2006 s.169(5), 295(1), 520(4) & (5) and 521(2)	It provides for the court's power to direct that copies of the notice of resignation and statement of circumstances need not be sent if the auditor is using the notice to secure needless publicity for defamatory matter. If the court makes such an order, the company must send a statement setting out the effect of the order to the members and the Registrar. If the court does not make such an order, the company must send a copy of the notice and statement to such persons. There is an offence for default in either case.	Existing law modified – (a) the test for non-publicity of the statement is whether the outgoing auditor has abused the use of the statement (clause 418(2)); (b) the company must notify the auditor of the court's decision (clause 418(3) & (4)); (c) the auditor must deliver a copy of the statement to the Registrar for registration if he receives notice that the application is not granted by the court (clause 418(5)); and (d) the provisions also cover statements given by an auditor who is removed or is not re-appointed.
419	Offences relating to section 418	CO s.140A(7)  c.f. UKCA 2006 s.520(6) and (8), 521(3) and (4)	It provides that the company and every officer in default commit an offence if the company fails to send the notice of resignation together with the statement of circumstances or the statement setting out the effect of the court order.	Existing law modified – (a) the provisions also cover statements given by an auditor who is removed or is not re-appointed; and (b) an auditor commits an offence if he fails to deliver a copy of the

Clause	Contents	Derivation	Position in CO	Position in CB
				statement of circumstances to the Registrar and a defence is available (clause 419(2) & (3)).
<b>Division 6 : Laying and Publication of Financial Statements and Reports</b>				
420	Directors must lay financial statements etc. before company in general meeting	CO s.122(1), (2) and (3)  c.f. UKCA 2006 s.437(1) and 438(1) to (4)	It provides for the director's duties to lay before the company at its AGM a profit and loss account and a balance sheet. A director commits an offence if he fails to take all reasonable steps to comply with the requirement. It is a defence if the director had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements were complied with and was in a position to discharge that duty.	Existing law modified - (a) a copy of the reporting documents (defined in clause 356(2)) instead of the profit and loss account and balance sheet are to be laid before the company (clause 420(1)); (b) there is an exception to the requirement to lay financial statements (see clause 602(3)); (c) the offence and statutory defence (which is removed for an offence committed willfully) are modified (clause 420(2), (3) & (4)); and (d) a new provision specifying that it is not a defence to establish that the financial statements or report was not in fact prepared as required by the Ordinance (clause 420(4)(b)).
421	Company must	CO s.129G(1)	It provides for a company's duties	Existing law modified –

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	send copies of financial statements etc. to members before general meeting	and proviso (c), (1AA) and (1AB)  c.f. UKCA 2006 s.423(1)(a) and (5), 424(3), (4) and (6)	to send a copy of the accounts, directors' report and auditors' report to the members, debenture holders and other persons entitled to receive notices of general meetings not less than 21 days before the general meeting is held.	(a) debenture holders and other persons entitled to receive notices of general meetings are removed from the class of persons to whom the company is required to send copies of the reporting documents (clause 421(1) , (4)(a) & (5)(a)); (b) if, by virtue of clause 602(2), a company is not required to hold an AGM, it must send a copy of the reporting documents to every member (clause 421(3), (4)(b) & (5)(b)); and (c) a new clause 421(6) provides that if a copy or copies of the reporting documents are sent over a period of days, they are regarded as having been sent on the last day of the period.
422	Period for laying and publishing financial statements etc.	CO s.122(1), (1B), (2) and 111(1)  c.f. UKCA 2006 s.442(2)	Section 122 provides for the directors' duties to lay accounts before the company at its AGM and the court's power to order that the accounts may be laid at another general meeting. Section 111(1)	Existing law modified – (a) the period for laying and publishing financial statements is a period of 9 months (for a guarantee company or a private company that is not a subsidiary

Clause	Contents	Derivation	Position in CO	Position in CB
		to (7)	provides that a company shall hold an AGM in each year and no more than 15 months shall elapse between one AGM and the next. The proviso to s.111(1) provides that if a company holds its first AGM within 18 months of its incorporation, it need not hold it in the year of incorporation or in the following year.	<p>of a public company) or 6 months (for a public company or a private company that is a subsidiary of a public company) after the end of the company's accounting reference period or any longer period directed by the court (clause 422(1)(a)(i), (b)(i) &amp; (3));</p> <p>(b) clause 422(1)(a)(ii), (b)(ii), (4) and (5) provides for the period of laying and publishing financial statements in relation to the company's first accounting reference period;</p> <p>(c) clause 422(2) is a new provision that applies to an accounting reference period shortened by alteration of the accounting reference date.</p>
423	Exception to section 421	CO s.129G(1) proviso (a) & (b)	It provides that a company need not send copy of the accounts and reports to the persons specified in s.129G(1).	Existing law except that the references to the entitlement (or otherwise) of debenture holders to receive notice of general meetings are removed.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
424	Company must send to non-voting members other documents	CO s.129G(2A)	It provides for a non-voting member's entitlement to receive copy of the chairman's statement and any other document intended for providing information about the affairs of the company which is circulated with the accounts.	Existing law.
425	Offences relating to section 421	CO s.129G(3) c.f. UKCA 2006 s.425(1) and 438(3)	It provides the offence and defence for failure to furnish a copy of the accounts and reports to any person entitled thereto under s.129G(1).	Existing law modified (a) the maximum penalty is increased from level 3 to level 5 (clause 425(1)); (b) clauses 425(2) and (3) are new offences for new provisions; and (c) clause 425(4) is a new provision specifying that it is not a defence to establish that the financial statements or report was not in fact prepared as required by the Ordinance.
426	Company must send copies of financial statements etc. to members and others on	CO s.129G(2) & (3) and Twelfth Schedule c.f. UKCA	It provides for a company's duty to send to the members, their personal representatives and debenture holders, on demand without charge, a copy of the latest accounts and reports and the offence and defence	Existing law modified – (a) debenture holders are removed from the class of persons entitled to make the demand for copy of reporting documents (clause 426(1));

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	demand	2006 s.431	for the failure to do so within 7 days.	(b) a new provision clarifies that the copy document is additional to the entitlement under clause 421 (clause 426(2)); and (c) the maximum daily default fine is increased from \$300 to \$1,000 and the statutory defence is removed (clause 426(3)).
427	Requirement in connection with publication of financial statements etc.	CO s.129C(1) & (3) c.f. UKCA 2006 s.434(1), (3) to (5), 435(1) to (3), (5) & (6) and 436	It provides that the profit and loss account and, if applicable, group accounts shall be annexed to the balance sheet, and the auditors' report shall be attached thereto. The company and every officer in default is liable to a fine for failure to do so.	Existing law (clause 427(2)) plus new provisions that non-statutory accounts must be accompanied by a specified statement, coupled with offences (clause 427(3), (4), (5) & (6)).
<b>Division 7 : Summary Financial Reports</b>				
428	Interpretation	c.f UK SFS Reg reg 8(2); and Singapore SFS Reg reg 2		New provision on the meaning of "potential member".
429	Application of Division	c.f. CO s.141CA to	The provisions apply to listed companies only.	New provision on the application of Division 7 to companies not falling

Clause	Contents	Derivation	Position in CO	Position in CB
		s.141CH		within the reporting exemption.
430	Directors may prepare financial report in summary form	CO s.141CF(1)(a), (b) & (3)  c.f. UKCA 2006 s.429	It provides that a summary financial report of a listed company shall be derived from the accounts and reports and shall comply with the relevant regulations. If such requirements are not complied with, the company and every officer shall be guilty of an offence, unless there is reasonable excuse.	Existing law except that (a) the provisions on summary financial report apply to all companies not falling within the reporting exemption instead of listed companies only (clause 430(1)); (b) the offence against a director and the statutory defence of “reasonable excuse” in section 141CF(3) of the CO are modified (clauses 430(3) and (4)); (c) the offence against the company in section 141CF(3) of the CO is removed; and (d) there are separate offences (clause 430(3)) for “failed to take all reasonable steps to secure compliance” (punishment by fine only) and “willfully failed to take all reasonable steps to secure compliance”.

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
431	Summary financial report to be approved and signed	CO s.141CF(1)(c) & (3)  Cap 32M Reg 5(3)(l)  c.f. Singapore SFS Reg reg 3(1)(b) & (c)	It provides that the summary financial report must be approved by the board and must state the names of the directors who signed the report on the directors' behalf. The company and every officer in default shall be guilty of an offence for failure to comply with such requirement, unless there is reasonable excuse.	Existing law except that the offence is modified and – (a) the maximum penalty for the offence is lowered from \$300,000 to level 4 i.e. \$25,000 (clause 431(3)); (b) the penalty of imprisonment is removed; and (c) the statutory defence is removed as officers are only liable if they are “responsible persons”.
432	Company may send copy of summary financial report to member	CO s.129G(1) proviso (b)(iv) & (1A) and 141CA  c.f. ACA s.314(1)(b); SCA s.203A(1); and UK SFS Reg reg 3(a)	It provides that the accounts and reports need not be sent by a listed company to a person entitled thereto (“entitled person”) if the company has, pursuant to a notice of intent, sent a copy of a summary financial report to him. The notice of intent is a notice by a person to the company notifying it that the person agrees to be sent a copy of the summary financial report in place of a copy of the accounts and reports.	Existing law modified – (a) the requirement is to send a copy of the summary financial report to a member instead of an entitled person; (b) the requirement that a company has to first ascertain the wishes of a member before sending a copy of the summary financial report instead of a copy of the reporting documents is modified (clause 433 and regulations to be made by FS under clause 443).

Clause	Contents	Derivation	Position in CO	Position in CB
433	Company may seek member's intent on receiving summary financial report	CO s.141CB  Cap 32M regs 3, 6, 8 to 12  c.f. UK SFS Reg reg 8(2); ACA s.316(1)(a); SCA s.203A(3); and Singapore SFS Reg reg 5(1) and (2)	It provides that for the purpose of ascertaining the wishes of an entitled person to receive a copy of a summary financial report in place of a copy of the accounts and reports, the company may send to the person a notification. It also provides for the effect of the notice of intent sent by the person and received by the company not less than 15 days before, or within 14 days before, the first day on which copies of the accounts or reports that are required to be laid before the general meeting are sent to the persons. If the person does not send a notice of intent within the time limit, he shall be treated as having sent the notice.	Existing law modified –  (a) the company may seek a potential member's intent on receiving a summary financial report (clause 433(1));  (b) members or potential members may elect not to receive copies of the reporting documents or summary financial report or to receive hard or electronic copies (including via a website) of any of them (clause 433(3));  (c) the provisions on the effect of the notice of intent received or not received by the company at least 28 days before the first date on which copies of the reporting documents are sent to a member are simplified (clause 433(4), (5) and (7));  (d) plus new provisions on the cessation of effect of –  (i) a notice of intent (clause 433(6)); and  (ii) a deemed election for a hard copy of a summary financial report where no

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				notice of intent is given (clause 433(7) & (8)).
434	Notice of revocation and notice of cessation of statutory election	Cap 32M regs 2, 7, 8(2), 9(1)(b), (2)(b), 10(b), 11(1)(b), (2)(b)	It provides that an entitled person may, on his own accord or in response to a notification, send a notice of intent to the company indicating that the person agrees to be sent a copy of the accounts or reports or a copy of the summary financial report. It also provides for the effect of receiving 2 or more notices of intent from the person.	New provision on the requirements and effects of – (a) a notice to revoke the notice of intent (clause 434(1), (2), (4) & (5)); and (b) a notice of cessation of statutory election (clause 434(3), (4) & (5)).
435	Company must comply with members' request in notice of intent etc.	c.f. UK SFS Reg reg 5(2)		New provision on the duties of a company to comply with a request relating to the supply of a copy of reporting documents or summary financial report.
436	Additional copy of reports etc. to be sent by company			
(1)		CO s.141CD(1)	It provides that if a person has been sent a copy of the summary financial report and makes a written	Existing law except that the timing for compliance with the request for a copy of the reporting documents is

Clause	Contents	Derivation	Position in CO	Position in CB
			request for the accounts and reports, the listed company must comply with the request within the time limit.	modified and the request is not subject to conditions.
(2)				New provision on the company's duty to send upon request a copy of the summary financial report to a person who has been sent a copy of the reporting documents.
(3)		CO s.141CD(1) & (6)	It specifies the time limit within which a listed company must send copy of the accounts and reports to an entitled person at his request.	Existing law modified in that the time for compliance with the request bears reference to the date of the general meeting before which the reporting documents are to be laid rather than the first date on which copies of the reporting documents are sent to the members.
(4)		CO s.141CD(2)(b) & (6)	It provides that a listed company is not required to comply with s.141CD(1) unless the request is made before the first day on which copies of the accounts or reports are sent to entitled persons.	New exception to a company's duty to send a copy of the summary financial report or reporting documents where the request is made after 6 months from the date of the general meeting or the date on which a copy of the reporting

Clause	Contents	Derivation	Position in CO	Position in CB
				document was sent.
(5)				New provision that provides an exception to the company's duty to send a summary financial report at a person's request.
(6)		CO s.141CD(3) & (4)	If the company fails to comply with the request, the company and every officer in default is guilty of an offence, but it is a defence if it can be proved that the person could not, by the exercise of reasonable diligence, have prevented the commission of the offence.	The maximum daily default fine for non-compliance is increased from \$300 to \$1,000 and the statutory defence is removed but officers are only liable if they are 'responsible persons.
437	Company must not send summary financial report under some circumstances	CO s.141CE(1)(a) &(b) & (2), 141CF(1)(b), (c) & (3) and 141CG  Cap 32M reg 5(3)(l)	S.141CE(1)(a) and (2) provides that a summary financial report shall not be sent if the company's constitution does not permit it, contravention of which is an offence.  S.141CF (1)(b), (c) and (3) provides that a summary financial report must comply with the prescribed	Existing law modified – (a) instead of an application to court for an order to prohibit the circulation etc of a defective summary financial report after conviction of an offence based on a default, clause 437(2) prohibits the circulation of such a report directly; (b) plus a new prohibition against

Clause	Contents	Derivation	Position in CO	Position in CB
		c.f. UK SFS Reg reg 3 and 4(1)(a) & (2)	regulations and be approved by the board, contravention of which is an offence.  S.141CG provides that the court may prohibit the circulating, issuing or publishing of a summary financial report if there is a conviction for an offence for circulating, issuing or publishing a summary financial report that does not comply with the statutory requirements.	sending a copy of the summary financial report if an auditor's report has not been prepared on the financial statements (clause 437(2)(a)).
<b>Division 8 : Miscellaneous</b>				
438	Exemption applicable to dormant company	CO s.344A(4), (6) & (7)	It provides that a dormant company is exempt from certain requirements relating to accounts, audit and auditors and that the exemption ceases as from the date of a relevant accounting transaction.	Existing law. The terms “accounting transaction” (which replaces “relevant accounting transaction”) and “dormant company” are defined in clauses 2(1) and 5.
439	Liability for untrue or misleading statement in reports	c.f. UKCA 2006 s.463(1)(a) & (c), (2) to (5) and (6)(b)		New provision to provide for a director's civil liability for untrue or misleading statement in, or omission from, a directors' report or summary financial report (so far as

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				it is derived from a directors' report).
440	Voluntary revision of financial statements etc.	CO s.141E	It provides for the directors' power to have the accounts revised if the accounts did not comply with the CO. The scope of revision is limited to those aspects in which the accounts did not comply with the CO and consequential revisions.	Existing law modified – (a) “as soon as practicable” in s.141E(3) CO is replaced by “within 7 days” (clause 440(3)); and (b) the maximum daily default fine is increased from \$700 to \$1,000 (clause 440(4)).
441	Financial Secretary may make regulation regarding revision of financial statements etc.	CO s.359A(3)(a), (4)(a) to (d) & (6)	It empowers the CE in Council to make regulations relating to revision of accounts.	Existing law modified – (a) the power is to be exercised by FS instead of the CE in Council (clause 441(1)); (b) the maximum daily default fine is increased from \$700 to \$2,000 (clause 441(4)); and (c) two separate offences (clause 441(4)) for “committed wilfully” and “not committed wilfully” (punishment by fine only).
442	Financial Secretary may make regulation	CO s.161BB	It provides for particulars of quasi-loans and credit transactions that would, but for s.161B(2), (5)	New provision that gives the FS power to prescribe regulations for – (a) disclosure of particulars of

Clause	Contents	Derivation	Position in CO	Position in CB
	regarding disclosures of certain information		and (7), be required by s.161B to be shown in the company's accounts to be given in a register and for inspection and provision of copies of the register to members. It also provides for offences and a defence for default in compliance with the provisions.	director's loans, quasi-loans and other dealings in favour of directors in a register (clause 442(1)); (b) technical requirements in relation to inspection and provision of copies of the register (clause 442(2)(a)); and (c) ancillary offences and defences, the maximum fine for which is lowered from level 5 to level 4 and a new maximum daily default fine of \$700 (clauses 442(2)(b), (3) and (4)), instead of setting out the requirements in s.161B(2), (5) & (7) and 161BB of CO in the primary legislation.
443	Financial Secretary may make other regulations			
(1)				New provision that gives the Financial Secretary power to prescribe a body for issuing

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
				statements of standard accounting practice.
(2)		CO s.129D(3)(j), 161(1) to (7) & (9), 161A(1) and 161BB(1) to (7), (11) & (17)	It provides for disclosure in the accounts of directors' emoluments, pensions, compensation in respect of loss of office, interest in contracts of significance and loans, quasi-loans and credit transactions in relation to directors. It also provides for technical requirements in relation to amounts to be shown.	New provision that gives the FS power to prescribe regulations for disclosure of the information instead of setting them out in the primary legislation.
(3)		CO s.129D(3)(b), (d), (e), (g) & (k)	It provides for information to be given in a directors' report in relation to recommended dividend, charitable donations, shares issued and directors' interests in arrangements for acquisition of shares.	New provision that gives the FS power to prescribe regulations for disclosure of the information instead of setting them out in the primary legislation.
(4) & (5)		CO s.359A(2)(d) to (f)	It empowers the CE in Council to make regulations relating to summary financial reports.	Existing law except that the power is to be exercised by FS instead of the CE in Council.
<b>Schedule 3 : Specified Qualifying Conditions for Sections 359 to 362</b>				
1	Qualifying			New provision setting out the

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	conditions			qualifying conditions for – (a) a small private company and a group of small private companies; and (b) small guarantee company and a group of small guarantee companies.
2	Provisions supplementary to section 1 of this Schedule			New provision on the calculations of total revenue or assets and the average number of employees.
<b>Schedule 4 : Accounting Disclosures</b>				
<b>Part 1 : Disclosures for Companies whether or not Falling within Reporting Exemption</b>				
1	Aggregate amount of authorized loans	CO Tenth Schedule para.9(1)(c) and Eleventh Schedule para.5	It provides that the balance sheet shall show under a separate heading the aggregate amount of outstanding loans made under s.47C(4)(b) and (c) of the CO (i.e. loans exempted from the prohibition against giving financial assistance for the purchase of the shares in the company or its holding company).	Existing law.
2	Statement of financial			New provision on the disclosure requirements of annual consolidated

<b>Clause</b>	<b>Contents</b>	<b>Derivation</b>	<b>Position in CO</b>	<b>Position in CB</b>
	position to be contained in notes to annual consolidated financial statements			financial statements.
3	Subsidiary's financial statements must contain particulars of ultimate parent undertaking	CO s.2B(3) and s.129A(1)	It provides for a subsidiary company's duty to disclose in its accounts the name of its ultimate parent undertaking and the country in which the parent is incorporated or the address of its principal place of business.	Existing law.
4	Compliance with applicable accounting standards	c.f. UK Large and Medium-sized Companies and Groups Reg Schedule 1 para.45; and UK Small Companies and Groups Reg Schedule 1 para.10(2)		New provision on the requirement to state whether the financial statements have been prepared in accordance with the applicable accounting standards.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Part 2 : Disclosures for Companies not Falling within Reporting Exemption</b>				
1	Remuneration of auditor	CO Tenth Schedule para.15	It provides that the profit and loss account shall show the amount of the auditors' remuneration under a separate heading.	Existing law.
<b>Schedule 5: Contents of Directors' Report : Business Review</b>				
(1), (2)(a), (3) to (5)		c.f. UKCA 2006 s.417(3), (6)(a), (9) and (10); and UK Large and Medium-sized Companies and Groups Reg section 10 and Schedule 7 paragraph 7(1)(a) & (b)		New provision setting out the requirements of a business review.
(2)(b) & (c)		c.f. Main Board Listing Rules App. 16.52(vi) and (viii)		New provisions modelled on the Listing Rules.

Clause	Contents	Derivation	Position in CO	Position in CB
<b>Schedule 10: Transitional and Saving Provisions</b>				
73-81	Transitional and Saving Arrangements for Part 9			<p>New provisions to provide transitional and saving arrangements in the following areas :-</p> <ul style="list-style-type: none"> <li>(a) books of account;</li> <li>(b) financial year and related matters;</li> <li>(c) accounts and directors' report;</li> <li>(d) appointment of auditor;</li> <li>(e) auditor's report;</li> <li>(f) removal and resignation of auditor;</li> <li>(g) indemnity provision;</li> <li>(h) summary financial report; and</li> <li>(i) voluntary revision of accounts.</li> </ul>