

**For discussion  
on 6 March 2013**

**Sub-committee on Subsidiary Legislation Made  
under the New Companies Ordinance**

**Proposed Amendments to  
Companies (Directors' Report) Regulation  
and Companies (Summary Financial Reports) Regulation**

**Purpose**

The Administration proposes to amend the Companies (Directors' Report) Regulation ("C(DR)R") and the Companies (Summary Financial Reports) Regulation ("C(SFR)R"). This paper briefs Members on the proposed amendments.

**Amendments to Companies (Directors' Report) Regulation**

*Resignation of directors (section 8)*

2. Section 8 of C(DR)R provides that if a director has resigned (or declined to stand for re-election) because of disagreement with the board of directors of the company, and that if the director has given a notice of the reasons for disagreement, the directors' report of the company must contain a summary of such reasons. The requirement, which does not apply to companies falling within the reporting exemption under Division 2 of Part 9 of the new Companies Ordinance ("CO"), seeks to enhance corporate transparency without unnecessarily increasing the burden or compliance costs for companies. According to Companies Registry's records, there are companies having more than 100 directors. In 2012, there were over 78 000 cases of director resignation, in which over 8 000 cases belonged to public companies.

3. Taking into account Members' comments that the scope of application of this section as currently drafted would be too restrictive, consideration may be given to amending section 8(1) of the Regulation to provide that if a director has resigned because of reasons relating to the affairs of the company, the company must provide a summary of such reasons in the directors' report. And in response to Members' comments

on the notice of reasons given by directors, we propose to clarify that it is necessary for the notice to be in writing and be received by the company.

4. As explained in the second meeting of the sub-committee, the company will be required to provide a summary of reasons, vis-à-vis the full text of the reasons, as provided by the resigning director out of practical concerns. The requirement places an onus on the company to summarise the reasons so as to facilitate users of the directors' report in comprehending the matter without unnecessarily increasing compliance costs.

*Disclosure requirements in relation to debentures (sections 3 and 5)*

5. Section 3 of C(DR)R provides that a company shall disclose in the directors' report any arrangements whose objects are to enable directors of the company to acquire benefits by means of acquisition of shares in the company or any other body corporate. This follows section 129D(3)(k) of the existing CO but arrangements in relation to debentures are not retained within the scope. The background has been explained earlier vide LC Paper No. CB(1)610/12-13(02).

6. We note Members' concerns on the change as well as support from the Hong Kong Institute of Directors for retaining the existing disclosure requirement in this respect. Taking into account such views and comments, we agree to fully reinstate in C(DR)R the approach under the existing CO. Amendments to section 3 of the Regulation are therefore proposed to the effect that the requirement in this respect will correspond fully to the existing position, viz. –

- (a) the disclosure requirement will apply to arrangements whose objects are to enable directors of the company to acquire benefits by means of acquisition of debentures of, in addition to shares in, the company or any other body corporate;
- (b) it covers arrangements entered into by (i) the reporting company, (ii) the parent company of the reporting company, (iii) a subsidiary undertaking of the reporting company; and (iv) a subsidiary undertaking of the reporting company's

parent company<sup>1</sup> ((ii), (iii) and (iv) to be collectively referred to as “specified undertakings”); and

- (c) following the approach under section 141D of the existing CO, it will not be applicable to companies which fall within the reporting exemption within the meaning of Division 2 of Part 9 of the new CO.

7. As noted in paragraph 12 of LC Paper No. CB(1)610/12-13(02), the current C(DR)R has not retained the requirement to disclose information on the issuance of debentures as currently required under section 129D(3)(h) of the existing CO. In tandem with the proposed amendments set out in paragraph 6 above, we propose to reinstate the requirement for a company to disclose in a directors’ report the classes of debentures issued and, as respects each class of debentures, the amount issued and the consideration received by the company for the issue. Section 5 of C(DR)R is proposed to be amended accordingly.

*Permitted indemnity provisions (section 9)*

8. In response to queries raised at the second meeting of the sub-committee, we have examined the differences between the Chinese text of section 9 of C(DR)R and section 470 in the new CO. Our conclusion is that despite the slightly different wordings, the legal effects of both versions are identical. Nevertheless, we have no objection to Members’ suggestion to adjust the wordings and would propose amendment to the Chinese text of section 9 of the Regulation accordingly.

*Addition of disclosure requirement on information concerning material interests in the directors’ report*

9. At present, section 129D(3)(j) of the existing CO provides for the disclosure in the directors’ report of information on material interests of the directors in contracts of significance in relation to the reporting company’s business (hereafter “information concerning material interests”). The requirement applies to those contracts entered into by the reporting company or specified undertakings. The particulars to be disclosed include a statement of the fact, indication of the nature of the

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<sup>1</sup> The text of section 129D has made references to “holding company” and “subsidiary”, which by virtue of section 2B of the existing CO, are considered to include “parent company” and “subsidiary undertaking” respectively, both of which are defined in Schedule 23 to the existing CO. These definitions have basically been restated in Schedule 1 to the new CO. This is also relevant to the proposed amendment relating to the disclosure of information concerning material interests (paragraphs 9 to 12 below).

contract and the interest, together with the relevant particulars. The above does not apply to companies which prepare simplified financial reports in accordance with section 141D of the existing CO. Section 129D(3)(j) of the existing CO is at Annex A.

10. It has always been the Administration's intention to restate the existing requirement under section 129D(3)(j) of the existing CO, with modifications, under the new CO regime. Our original plan was to prescribe all the disclosure requirements for information concerning material interests in the notes to financial statements in the proposed Companies (Disclosure of Information about Benefits of Directors) Regulation ("C(DIBD)R"), with modifications for consistency with the requirements for declaration of materials interests under Division 5 of Part 11 of the new CO, namely to expand the scope of disclosure to transactions and arrangements in addition to contracts and, in the case of a public company, to impose additional requirements in respect of connected entities.

11. Recently, the accounting sector has reflected to us that practical difficulties would arise if disclosure of information concerning material interests is to be made in the notes to financial statements instead of in the directors' report, especially for transactions, arrangements or contracts involving parties other than the reporting company itself. In view of the practical difficulties, the Administration, in consultation with the accounting sector, proposes to require the disclosure of part of the information concerning material interests in the notes to financial statements and the rest in the directors' report. In gist –

- (a) for transactions, arrangements and contracts involving material interests entered into by the reporting company, the disclosure of information will be made in the notes to financial statements. The requirement will be prescribed in C(DIBD)R to be made; whereas
- (b) for transactions, arrangements and contracts involving material interests entered into by specified undertakings, the disclosure of information will be made in the director's report. We therefore propose to introduce additional provisions in C(DR)R.

12. It should be noted that the above proposal concerns where the relevant information should be disclosed only, i.e. either in the directors' report or in the notes to financial statements, and will not affect the scope of information to be disclosed. The particulars required to be disclosed

will also be identical. Following the approach in the existing CO, the above would not apply to companies falling within the reporting exemption as per Division 2 of Part 9 of the new CO.

## **Amendments to Companies (Summary Financial Reports) Regulation**

### *Information about benefits of directors in a summary financial report (sections 3 and 5)*

13. Under the new CO regime, the disclosure requirements concerning benefits of directors will be consolidated in a piece of subsidiary legislation, i.e. the proposed C(DIBD)R, which will cover the following aspects –

- (a) the information concerning material interests in respect of the reporting company; and
- (b) the information and particulars disclosed in the company's accounts in accordance with sections 161, 161A and 161B of the existing CO concerning benefits of directors, viz. –
  - (i) payments in respect of directors' services; and
  - (ii) loans, quasi-loans and credit transactions, etc. (“specified dealings”) in favour of directors.

14. The current position is that for any listed company preparing a summary financial report, such a report shall also contain the above items pursuant to section 5(3)(a) and (h) of the Companies (Summary Financial Report of Listed Companies) Regulation (Cap.32M). Our policy intention is to follow the approach under the existing CO such that any information or particulars about benefits of directors which are required to be disclosed in the notes to financial statements pursuant to C(DIBD)R shall also be contained in a summary financial report of the company concerned. The current C(SFR)R, however, has not fully reflected the intention and does not tally with the scope of C(DIBD)R. In particular, there is at present no provision in C(SFR)R requiring the information concerning payments in respect of directors' services (i.e. paragraph 12(b)(i)) to be contained in a summary financial report.

15. For better alignment with our policy intention explained above, we propose to streamline the relevant provisions (i.e. sections 3(3)(e)(ii), 5(1) and 5(2)) by a simple provision to the effect that a summary financial report shall contain all the information and particulars disclosed in the

notes to financial statements as required under C(DIBD)R.

### **Advice Sought**

16. The draft amendments to C(DR)R and C(SFR)R (English version only) are shown at Annex B and Annex C respectively for Members' consideration.

**Financial Services and the Treasury Bureau  
Companies Registry  
5 March 2013**

**Section 129D(3)(j) of the existing CO**

(3) The report shall –

- (j) if, at the end of the financial year, there subsists a contract with the company or the company's subsidiary or holding company or a subsidiary of the company's holding company in which a director of the company has, or at any time in that year had, in any way, whether directly or indirectly, an interest, or there has, at any time in that year, subsisted a contract with the company or the company's subsidiary or holding company or a subsidiary of the company's holding company in which a director of the company had, at any time in that year, in any way, whether directly or indirectly, an interest (being, in either case, in the opinion of the directors, a contract of significance in relation to the company's business and in which the director's interest is or was material), contain –
  - (i) a statement of the fact of the contract's subsisting or, as the case may be, having subsisted;
  - (ii) the names of the parties to the contract (other than the company);
  - (iii) the name of the director (if not a party to the contract);
  - (iv) an indication of the nature of the contract; and
  - (v) an indication of the nature of the director's interest in the contract;

## Companies (Directors' Report) Regulation

(Made by the Financial Secretary under section 452(3) of the Companies Ordinance (28 of 2012))

### 1. Commencement

This Regulation comes into operation on the day on which section 452(3) of the Companies Ordinance (28 of 2012) comes into operation.

### 2. Interpretation

In this Regulation—

*directors' report* (董事報告) means—

- (a) the report required to be prepared under section 388(1) of the Ordinance; or
- (b) the consolidated report required to be prepared under section 388(2) of the Ordinance;

*reporting exemption* (提交報告豁免) means a reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance;

*parent company* ( ) means a parent undertaking that is a company;

*specified undertaking* ( ) in relation to a company, means—

- (i) a parent company of the company;
- (ii) a subsidiary undertaking of the company; or
- (iii) a subsidiary undertaking of the company's parent company.



### 3. Directors' interests

- (1) A directors' report for a financial year must contain a statement that complies with subsection (3) if, at the end of the financial year, there subsists arrangements—
  - (a) to which the company or ~~the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company~~ a specified undertaking of the company is a party; and
  - (b) whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.
- (2) A directors' report for a financial year must contain a statement that complies with subsection (3) if at any time in the financial year there have subsisted arrangements—
  - (a) to which the company or a specified undertaking of the company ~~the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company~~ was a party; and
  - (b) whose objects were, or one of whose objects was, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.
- (3) The statement must—
  - (a) explain the effect of the arrangements referred to in subsection (1) or (2); and
  - (b) give the names of the persons who at any time in that financial year were directors of the company and held, or whose nominees held, shares or debentures acquired under the arrangements.

(3A) Subsections (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.

(4) In this section—

*shares* (股份) has the meaning given by section 1 of Schedule 1 to the Ordinance.

#### 4. Donations

(1) If a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong)—

(a) has no subsidiary undertakings; and

(b) has in a financial year made donations for charitable or other purposes to a total amount of not less than \$10,000,

a directors' report for the financial year must state the total amount of those donations.

(2) If—

(a) a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong) has subsidiary undertakings; and

(b) the company has in a financial year made donations (whether on its own or by its subsidiary undertakings) for charitable or other purposes to a total amount of not less than \$10,000,

a directors' report for the financial year must state the total amount of those donations.

(3) Subsections (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.

(4) For the purposes of subsections (1) and (2)—

*wholly owned subsidiary* (全資附屬公司) is to be construed in accordance with section 357(3) of the Ordinance.

**5. Shares issued**

If, in any financial year of a company, the company has issued any shares, a directors' report for the financial year must state—

- (a) the reason for making the issue;
- (b) the classes of shares issued; and
- (c) for each class of shares, the number of shares issued and the consideration received by the company for the issue.

**5A. Debentures issued**

If, in any financial year of a company, the company has issued any debentures, a directors' report for the financial year must state—

- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) for each class of debentures, the amount issued and the consideration received by the company for the issue.

**6. Equity-linked agreements**

(1) If, in any financial year of a company, the company has entered into an equity-linked agreement, a directors' report for the financial year must state—

- (a) the reason for entering into the agreement;
- (b) the nature and terms of the agreement including, if applicable—
  - (i) the conditions that must be met before the company issues any shares;
  - (ii) the conditions that must be met before a third party may require the company to issue any shares; and
  - (iii) any monetary or other consideration that the company has received or will receive under the agreement;

- (c) the classes of shares issued under the agreement; and
  - (d) for each class of shares, the number of shares that have been issued under the agreement.
- (2) If, at the end of a financial year of a company, there subsists an equity-linked agreement entered into by the company, a directors' report for the financial year must state—
- (a) the classes of shares that may be issued under the agreement;
  - (b) for each class of shares, the number of shares that may be issued under the agreement;
  - (c) any monetary or other consideration that the company has received or will receive under the agreement; and
  - (d) any other conditions or terms that remain to be met before the shares are issued.
- (3) In this section—
- equity-linked agreement*** (股票掛鈎協議)—
- (a) means—
    - (i) an agreement that will or may result in the company issuing shares; or
    - (ii) an agreement requiring the company to enter into the agreement specified in subparagraph (i); and
  - (b) includes—
    - (i) an option to subscribe for shares;
    - (ii) an agreement for the issue of securities that are convertible into, or entitle the holder to subscribe for, shares in the company;
    - (iii) an employee share scheme; and
    - (iv) a share option scheme; but
  - (c) does not include—

- (i) an agreement to subscribe for shares in a company that is entered into pursuant to the company's offer of its shares to the public; and
- (ii) an agreement to subscribe for shares in a company that is entered into pursuant to an offer made to the members of the company in proportion to their shareholdings;

*offer* (要約) includes an invitation to the public to subscribe for shares in a company.

## 7. Recommended dividend

A directors' report for a financial year must state the amount (if any) that the directors of the company recommend should be paid by way of dividend for the financial year.

## 8. Reasons for resignation etc.

~~(1) If a director of a company—~~

~~(a) has resigned or given notice declining to stand for re-election during a financial year because of disagreement with the board of directors of the company; and~~

~~(b) has given a notice of the reasons for disagreement to the company;~~

(1) This section applies if—

(a) a director of a company has in a financial year resigned from the office or refused to stand for re-election to the office; and

(b) the company has received a notice in writing from the director specifying that the resignation or refusal is due to reasons relating to the affairs of the company (whether or not other reasons are specified).

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- (2) A directors' report for the financial year must contain a summary of the reasons relating to the affairs of the company.
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- (3) This section does not apply in respect of a company that falls within the reporting exemption for the financial year.

## 9. Permitted indemnity provision

- (1) If, when a directors' report prepared by the directors of a company is approved in a financial year of the company in accordance with section 391(1)(a) of the Ordinance, a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision is in force as required by section 470 of the Ordinance.
- (2) If, at any time in the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision was in force as required by section 470 of the Ordinance.
- (3) In this section—
- permitted indemnity provision*** (獲准許的彌償條文), in relation to a company, means a provision that—
- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
  - (b) meets the requirements specified in section 469(2) of the Ordinance;

*third party* (第三者), in relation to a company, means a person other than the company or its associated company.

**10. Material interests in transaction, arrangement or contract**

(1) A directors' report for a financial year must state the particulars of any transaction, arrangement or contract—

(a) entered into by a specified undertaking of the company; and

(b) in which a person who at any time in the financial year of the company was a director of the company had, directly or indirectly, a material interest.

(2) The particulars referred to in subsection (1) are—

(a) the principal terms of the transaction, arrangement or contract;

(b) a statement of the fact that the transaction, arrangement or contract was entered into or subsisted in the financial year;

(c) the names of the parties to the transaction, arrangement or contract;

(d) the name of the director having the material interest and the nature of that interest; and

(e) (if the director is treated as having the material interest by virtue of subsection (3)) the name of the director's connected entity and the nature of the connection.

(3) For the purposes of this section, a director of a public company is treated as having a material interest in a transaction, arrangement or contract entered into by a specified undertaking of the company if a connected entity of that director has a material interest in that transaction, arrangement or contract.

(4) In this section, a reference to a transaction, arrangement or contract, is a reference to a transaction, arrangement or contract that is significant in relation to the company's business.

(5) For the purposes of subsection (4), a transaction, arrangement or contract is not significant in relation to the company's business if, after consideration, the directors of the company are of the opinion that it is not significant in relation to the company's business.

(6) For the purposes of this section, an interest that a director of a company has in a transaction, arrangement or contract is not material if, after consideration, the directors of the company are of the opinion that it is not material.

(7) This section does not apply in respect of—

(a) a company that falls within the reporting exemption for the financial year;

(b) a transaction, arrangement, or contract unless it was entered into in the financial year or subsisted at any time in that year;

(c) a transaction, arrangement or contract between the company and its specified undertaking in which a director of the company has a material interest; or

(d) a director's contract of service.

(8) In this section—

(a) a reference to a director includes a shadow director; and

(b) a reference to a connected entity, in relation to a director, is a reference to an entity connected with the director within the meaning of section 486 of the Ordinance.



Financial Secretary

2013

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### Explanatory Note

This Regulation is made under Part 9 of the Companies Ordinance (28 of 2012) (*the Ordinance*). It provides for the information that is required to be contained in a directors' report under section 388(1) and (2) of the Ordinance and other requirements prescribed for the report.

2. The information that is required to be contained in a directors' report includes—
  - (a) directors' interests under certain arrangements involving acquisition of shares or debentures entered into by the company or another company in the same corporate group;
  - (b) donations no less than \$10,000 made by the company and its subsidiary undertakings;
  - (c) shares or debentures issued by the company;
  - (d) equity-linked agreements entered into by the company that will or may result in the issuing of shares;
  - (e) dividends recommended to be paid by the directors;
  - (f) if a director has resigned because of ~~disagreement with the board of directors~~ reasons relating to the affairs of the company, a summary of those~~the~~ reasons~~for the disagreement~~; and
  - (g) directors' permitted indemnity provision; and
  - (h) directors' material interests in transactions, arrangements or contracts.
3. A director of a company who fails, or wilfully fails, to take all reasonable steps to secure compliance with the Regulation commits an offence and is liable to a fine, or a fine and imprisonment, under section 388(6) or (7) of the Ordinance.

# Companies (Summary Financial Reports) Regulation

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# Companies (Summary Financial Reports) Regulation

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# Companies (Summary Financial Reports) Regulation

(Made by the Financial Secretary under section 452(4) and (5) of the Companies Ordinance (28 of 2012))

## Part 1

### Preliminary

#### 1. Commencement

This Regulation comes into operation on the day on which section 452(4) and (5) of the Companies Ordinance (28 of 2012) comes into operation.

#### 2. Interpretation

(1) In this Regulation—

***annual consolidated financial statements*** (周年綜合財務報表) means the consolidated statements required to be prepared under section 379(2) of the Ordinance;

***annual financial statements*** (周年財務報表) means the statements required to be prepared under section 379(1) of the Ordinance;

***auditor's report*** (核數師報告) means the report required to be prepared under section 405 of the Ordinance;

***directors' report*** (董事報告) means—

(a) the report required to be prepared under section 388(1) of the Ordinance; or

(b) the consolidated report required to be prepared under section 388(2) of the Ordinance;

***Disclosure Regulation*** (《披露規例》) means regulations made under sections 451 and 452(2) of the Ordinance;

***financial statements*** (財務報表) means annual financial statements or annual consolidated financial statements;

***potential member*** (潛在成員), in relation to a company, means a person who is entitled, whether conditionally or unconditionally, to become a member of the company;

***summary financial report*** (財務摘要報告) means a financial report prepared under section 439 of the Ordinance.

- (2) In this Regulation, a reference to the reporting documents for a financial year is a reference to all of the following—
- (a) the financial statements for the financial year;
  - (b) the directors' report for the financial year;
  - (c) the auditor's report on those financial statements.
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## Part 2

### Summary Financial Report

#### 3. Form and contents of summary financial report: general

- (1) A summary financial report for a financial year of a company must contain the information derived from the reporting documents for the financial year of the company.
- (2) A summary financial report for a financial year of a company must contain the information and particulars set out in subsection (3).
- (3) The information and particulars referred to in subsection (2) are—
  - (a) all the information and particulars included in the following statements of the company relating to the financial year—
    - (i) statement of financial position; and
    - (ii) statement of comprehensive income;
  - (b) if the company is a holding company, all the information and particulars included in the following statements of the company relating to the financial year—
    - (i) consolidated statement of financial position; and
    - (ii) consolidated statement of comprehensive income;
  - (c) if the company's reporting documents for the financial year include a separate income statement in addition to the company's statement of comprehensive income, all the information and particulars included in the income statement;
  - (d) if the company is a holding company and its reporting documents for the financial year include a separate

consolidated income statement in addition to the company's consolidated statement of comprehensive income, all the information and particulars included in the consolidated income statement; and

- (e) all the information and particulars—
  - (i) included in the directors' report of the company for the financial year as required under—
    - (A) sections 388 and 390 of the Ordinance; and
    - (B) the Companies (Directors' Report) Regulation; and
  - (ii) contained in the notes to the financial statements for the financial year as prescribed by the Disclosure Regulation ~~in relation to a director's material interests in a transaction, arrangement or contract.~~

#### **4. Form and contents of summary financial report: auditor's report and opinion**

- (1) A summary financial report for a financial year of a company must—
  - (a) contain a statement from the company's auditor as to whether the auditor's report for that financial year is qualified or otherwise modified, or includes a reference to any matter to which the auditor drew attention by way of emphasis without qualifying the report; and
  - (b) if the auditor's report is qualified or otherwise modified, set out the full auditor's report and any further material necessary for the understanding of the qualification or other modification.
- (2) If the auditor's report of a company contains a statement that, in the auditor's opinion, the financial statements for a



financial year of the company have not been properly prepared in compliance with the Ordinance, and in particular—

- (a) a true and fair view of the financial position and financial performance of the company has not been given; or
- (b) for a company that is required to prepare annual consolidated financial statements, a true and fair view of the financial position and financial performance of the company, and all the subsidiary undertakings, as a whole has not been given,

a summary financial report for that financial year must contain that statement.

- (3) If the auditor's report of a company contains a statement that, in the auditor's opinion, the information in a directors' report for a financial year is not consistent with the financial statements for the financial year, a summary financial report for that financial year must contain that statement.
- (4) If the auditor's report for a financial year of a company contains—
  - (a) a statement that, in the auditor's opinion—
    - (i) adequate accounting records have not been kept by the company; or
    - (ii) the company's financial statements are not in agreement with its accounting records in any material respect;
  - (b) a statement that the auditor has failed 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; and

(c) a statement giving the particulars that are required to be, but have not been, contained in the financial statements, as required by section 407(4) of the Ordinance,

a summary financial report for that financial year must contain those statements.

(5) A summary financial report of a company must contain an opinion from the company's auditor as to whether—

(a) the report is consistent with the reporting documents from which the report is derived; and

(b) the report complies with the requirements of this Part.

## 5. Form and contents of summary financial report: other matters

~~(1) If the information about loans, quasi loans and other dealings in favour of the directors of a company or of its holding company, bodies corporate controlled by the directors or the entities connected with the directors prescribed by the Disclosure Regulation for the purposes of section 383(1)(d) of the Ordinance is contained in the notes to the financial statements for a financial year of the company, the summary financial report for that financial year must include the information.~~

~~(2) Despite subsection (1), if the information referred to in that subsection is shown in a statement contained in the notes to the financial statements for a financial year of a company in compliance with the requirements prescribed by the Disclosure Regulation for the purposes of section 383(3) of the Ordinance, the summary financial report for that financial year must include that statement.~~

(3) If a company is not required to prepare annual consolidated financial statements, a summary financial report of the company must contain, in a prominent position (but not

necessarily on the front cover) of the report, a statement to the effect that—

- (a) the report only gives a summary of the information and particulars contained in the reporting documents of the company from which the report is derived; and
  - (b) a member of the company may obtain from the company free of charge a copy of the reporting documents if a request is made on or before the specified date.
- (4) If a company is required to prepare annual consolidated financial statements, a summary financial report of the company must contain, in a prominent position (but not necessarily on the front cover) of the report, a statement to the effect that—
- (a) the report only gives a summary of the information and particulars contained in the reporting documents of the company, and its subsidiary undertakings, from which the report is derived; and
  - (b) a member of the company may obtain from the company free of charge a copy of the reporting documents if a request is made on or before the specified date.
- (5) A summary financial report for a financial year of a company must contain, in a prominent position (but not necessarily on the front cover) of the report, a statement about how a member of the company may obtain from the company free of charge a copy of the reporting documents from which the report is derived.
- (6) This section does not prohibit a company from including in its summary financial report for a financial year any other information or particulars which—
- (a) the company considers appropriate; and

- (b) is not inconsistent with the reporting documents of the company for the financial year from which the report is derived.

(7) In this section—

*specified date* (指明日期)—

- (a) if a company is required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, means the day immediately before the expiry of a period of 6 months after the date of the annual general meeting on which a copy of the reporting documents is to be laid;
- (b) if a copy of the reporting documents is laid at a general meeting subsequent to an annual general meeting, means the day immediately before the expiry of a period of 6 months after the date of the subsequent meeting; or
- (c) if, by virtue of section 612(2) of the Ordinance, a company is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, means the day immediately before the expiry of a period of 6 months after the date on which a copy of the reporting documents for the financial year is sent under section 430(3) of the Ordinance.

## 6. **Other requirements in relation to form of summary financial report**

Subject to this Regulation, a company may specify any other requirements in relation to the form of its summary financial report that the company considers appropriate.

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## Part 3

### Notification and Notice of Intent, etc.

- 7. Form and contents of notification for seeking member's intent on receiving summary financial report**
- (1) For the purposes of section 442(2) of the Ordinance, the notification to be sent by a company to a member or potential member must—
    - (a) state the financial year to which the notification relates; and
    - (b) include a general statement about the contents and function of a summary financial report.
  - (2) The notification must contain the statements set out in subsection (3).
  - (3) The statements referred to in subsection (2) are—
    - (a) a statement to the effect that a summary financial report only gives a summary of the information and particulars contained in the reporting documents from which the report is derived;
    - (b) a statement to the effect that the person to whom the notification is addressed may send a notice of intent to the company informing the company as to whether—
      - (i) the person wishes to receive from the company a copy of the reporting documents—
        - (A) in hard copy form; or
        - (B) (if the company has given an option to request the copy to be sent in electronic form or by making it available on a website) in

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- electronic form or by making it available on the company's website;
- (ii) the person wishes to receive from the company, instead of a copy of the reporting documents, a copy of the summary financial report—
    - (A) in hard copy form; or
    - (B) (if the company has given an option to request the copy to be sent in electronic form or by making it available on a website) in electronic form or by making it available on the company's website; or
  - (iii) the person does not wish to receive a copy of the reporting documents or a copy of the summary financial report at all;
- (c) a statement to the effect that a notice of intent may be in the form and sent in the manner that is specified in the notification; and
  - (d) a statement to the effect that if a notice of intent is to have effect in relation to the financial year to which the notification relates, the card or document mentioned in section 10 must be received by the company at least 28 days before the specified date.
- (4) The notification must contain a statement about the effect of a notice of intent for a financial year, that is—
- (a) if the notice of intent is received by the company at least 28 days before the specified date, the notice of intent has effect in relation to that financial year, and every subsequent financial year, until it ceases to have effect under section 442(7) of the Ordinance;
  - (b) if the notice of intent is received by the company less than 28 days before the specified date—

- (i) the notice of intent has effect in relation to every financial year subsequent to that financial year until it ceases to have effect under section 442(7) of the Ordinance; and
- (ii) the member or potential member who gives the notice of intent is to be regarded as—
  - (A) having requested a copy of the summary financial report for the financial year; and
  - (B) having requested the copy of the report to be sent by the company in hard copy form; and
- (c) if a member or potential member does not give the company a notice of intent in response to the notification before the specified date, 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 every subsequent financial year; and
  - (ii) having requested the copy of the report to be sent by the company in hard copy form,  
until the statutory election ceases to have effect under section 442(9) of the Ordinance.

(5) In this section—

*specified date* (指明日期) means the first date on which a copy of the reporting documents for a financial year is sent to a member under section 430 of the Ordinance.

## 8. Additional provisions as to contents of notification under section 7

- (1) The notification under section 7 must contain a statement specifying the matters referred to in subsection (2).
- (2) The matters referred to in subsection (1) are—

- (a) a notice of intent may be revoked by giving the company a written notice of revocation under section 442(7)(b) of the Ordinance;
- (b) the particulars of the notice of revocation required under section 443(1), (2) and (4) of the Ordinance;
- (c) the effect of the notice of revocation in relation to the financial year to which it relates, that is—
  - (i) if the notice of revocation is received by the company at least 28 days before the specified date, the notice has effect in relation to that financial year, and every subsequent financial year;
  - (ii) if the notice of revocation is received by the company less than 28 days before the specified date, the notice has effect in relation to every financial year subsequent to that financial year;
- (d) if a notice of intent is not given to the company before the date specified in section 442(8) of the Ordinance, a written notice of cessation of statutory election may be given to the company under section 442(9)(b) of the Ordinance;
- (e) the particulars of the notice of cessation of statutory election required under section 443(3) of the Ordinance; and
- (f) the effect of the notice of cessation of statutory election in relation to the financial year to which it relates, that is—
  - (i) if the notice of cessation of statutory election is received by the company at least 28 days before the specified date, the notice has effect in relation to that financial year, and every subsequent financial year;



- (ii) if the notice of cessation of statutory election is received by the company less than 28 days before the specified date, the notice has effect in relation to every financial year subsequent to that financial year.

(3) In this section—

*specified date* (指明日期) means the first date on which a copy of the reporting documents for the financial year to which a notice of revocation or a notice of cessation of statutory election (as the case may be) relates is sent to a member under section 430 of the Ordinance.

## **9. Company may include other information in notification**

Sections 7 and 8 do not prohibit a company from including in its notification any other information that the company considers appropriate.

## **10. Notification attached with card or document**

A notification under section 7 must have attached to it a card or document that may be used by a member or potential member for the purposes of sending a notice of intent to the company.

## **11. Postage**

- (1) The card or document mentioned in section 10 must be provided with postage prepaid that is sufficient to enable a member or potential member to use it for sending in Hong Kong a notice of intent to the company without having to pay the relevant postage fee if—
  - (a) a notification under section 7 is in paper form; and
  - (b) the address of the member or potential member to which the notification is to be sent is an address in Hong Kong.

- (2) Despite subsection (1), the company is not required to pay the postage in respect of the return of the card or document if—
- (a) the address of a member to which a notification is sent, in accordance with the company's articles, is not in Hong Kong; or
  - (b) the address of a potential member to which a notification is sent, in accordance with the contractual provisions under which the potential member is entitled, whether conditionally or unconditionally, to become a member, is not in Hong Kong.

Financial Secretary

2013

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## Explanatory Note

- Division 7 of Part 9 of the Companies Ordinance (28 of 2012) (*the Ordinance*) contains provisions on summary financial reports applicable to all companies except those falling within the reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance. The directors of a company may prepare for a financial year a financial report, in summary form, derived from the reporting documents for the financial year and a copy of which is required to be sent to every member of the company.
2. This Regulation is made under section 452(4) and (5) of the Ordinance. It provides for the form and contents of a summary financial report (*the report*) of a company as well as a notification relating to the report.
  3. Section 2 defines certain expressions used in the Regulation.
  4. Sections 3, 4 and 5 specify the information and statements that the report must contain. The information must be derived from the reporting documents (that is, financial statements, directors' reports and auditor's reports) of the company to which it relates.
  5. Section 6 allows a company to specify other requirements in relation to the report.
  6. Section 7 specifies the form and contents of a notification by which a company seeks its members' intent as to whether they wish to receive a copy of the reporting documents or a copy of the report or to receive none of those copies. A member or potential member, in response to the notification, may give the company a notice of such intent and indicate how the member would like to receive a copy of the documents or report, whether in hard copy form or otherwise.
  7. Section 8 specifies the matters to be included in, and the effect of, a notice of revocation and a notice of cessation of statutory election by reference to section 443 of the Ordinance.

8. Section 9 clarifies that a company may include other information in the notification under section 7.
9. Section 10 requires a company to attach a card or document to the notification under section 7.
10. Section 11 requires a company to provide postage on the card or document except under specified circumstances.
11. By way of background information, under section 439(2) of the Ordinance, a summary financial report must contain the information prescribed by the Regulation (which is made by the Financial Secretary under section 452(4) and (5) of the Ordinance). If section 439(2) is contravened, a director who failed, or wilfully failed, to take all reasonable steps to secure compliance with that section commits an offence and is liable to a fine or, a fine and imprisonment (as the case may be).