

二零一三年三月六日

討論文件

根據新《公司條例》訂立的附屬法例小組委員會

《公司(董事報告)規例》及《公司(財務摘要報告)規例》的修訂建議

目的

當局建議對《公司(董事報告)規例》及《公司(財務摘要報告)規例》作出修訂，本文件向委員簡介各項修訂建議。

修訂《公司(董事報告)規例》

董事辭職 (第 8 條)

2. 《公司(董事報告)規例》第 8 條訂明，如董事因與公司的董事局意見不一致而辭職（或拒絕參選連任），並已給予意見不一致的理由的通知，則公司的董事報告須載有該等理由的摘要。此項規定並不適用於新《公司條例》第 9 部第 2 分部所指在提交報告方面獲豁免的公司，其目的旨在增加公司的透明度，而又不會非必要地加重公司的負擔或增加合規成本。公司註冊處的記錄顯示，目前一些公司有超逾一百名董事，而在二零一二年，共有超過 78 000 宗董事辭職的個案，當中超過 8 000 宗來自公眾公司。

3. 考慮到委員認為本條的適用範圍過於局限，委員可考慮修訂第 8(1)條，訂明若董事因關乎公司事務的理由辭職，公司即須在董事報告內提供該等理由的摘要。此外，因應委員就董事以通知形式給予理由此方面所提出的意見，條文亦會清楚闡明有關辭職理由的通知須以書面載述，而該公司亦已收到有關通知，上述要求始為有效。

4. 正如我們在小組委員會第二次會議上所述，基於實際考慮，公司須就請辭董事所給予理由提供摘要，而非該等理由的全文。按照這項

規定，公司將負上撮述有關理由的責任，以期協助董事報告的使用者了解有關事宜，而又不會非必要地增加公司的合規成本。

與債權證有關的披露規定 (第 3 及 5 條)

5. 《公司(董事報告)規例》第 3 條規定，公司如有任何安排，而該等安排的目的是使該公司的董事能藉購入該公司或任何其他法人團體的股份而獲取利益，則必須在董事報告內披露相關資料。這項規定源自現行《公司條例》第 129D(3)(k)條，但關乎債權證的安排則沒有保留在披露範圍內。我們早前在立法會第 CB(1)610/12-13(02)號文件中已交代有關背景。

6. 我們察悉委員關注上述改動，以及香港董事學會支持保留這方面的現有披露規定。經考慮有關意見及建議後，我們同意在《公司(董事報告)規例》中全面重訂現行《公司條例》在這方面的要求。我們因此建議修訂此項規例第 3 條，有關修訂旨在使這方面的規定與現行規定完全相符，即 ——

- (a) 如有任何安排的目的是使公司的董事除購入股份外，能藉購入該公司或任何其他法人團體的債權證而獲取利益，則披露規定亦適用於該等安排；
- (b) 披露規定適用於由以下各方訂立的安排：(i)提交報告的公司、(ii)提交報告公司的母公司、(iii)提交報告公司的附屬企業，以及(iv)提交報告公司的母公司的附屬企業¹（(ii)、(iii)及(iv)項統稱為「指明企業」）；以及
- (c) 依循現行《公司條例》第 141D 條的做法，上述披露規定不適用於新《公司條例》第 9 部第 2 分部所指在提交報告方面獲豁免的公司。

¹ 第 129D 條所提述的「控股公司」及「附屬公司」，按照現行《公司條例》第 2B 條，分別視作包括「母公司」及「附屬企業」，兩者的定義載於現行《公司條例》附表 23。新《公司條例》附表 1 基本上已重訂有關定義。上述解釋也適用於有關披露具相當分量利害關係的資料的擬議修訂（見下文第 9 至 12 段）。

7. 正如我們在立法會第 CB(1)610/12-13(02)號文件第 12 段所述，現時《公司(董事報告)規例》並無保留現行《公司條例》第 129D(3)(h)條就公司必須披露發行債權證的相關資料的規定。隨着上文第 3 段所載的修訂建議，我們亦建議重訂這方面的規定，訂明公司必須在董事報告內披露所發行債權證的類別，以及公司就每一類別債權證所發行的數額及所收到的代價。《公司(董事報告)規例》第 5 條將予以修訂。

獲准許的彌償條文 (第 9 條)

8. 因應委員在小組委員會第二次會議上的提問，我們已研究《公司(董事報告)規例》第 9 條及新《公司條例》第 470 條的中文本的不同之處。我們認為，雖然這兩個版本所用的字眼略有分別，但兩者的法律效力完全相同。不過，我們並不反對委員要求調整有關字眼的建議，並會對此項規例第 9 條的中文本作出修訂。

加入在董事報告內披露具相當分量利害關係的資料的規定

9. 目前，按照現行《公司條例》第 129D(3)(j)條規定，如有合約與提交報告的公司的業務有重大關係，且董事在合約中有具相當分量的利害關係，則董事報告須披露相關資料（下稱「具相當分量利害關係的資料」）。這項規定適用於由提交報告的公司或指明企業訂立的合約。須予披露的詳情包括關於此事的陳述、合約及利害關係的性質，以及相關詳情。上述規定不適用於按照現行《公司條例》第 141D 條擬備簡明財務報告的公司。現行《公司條例》第 129D(3)(j)條載於附件 A。

10. 當局的原意一向是在新《公司條例》的制度下重訂現行《公司條例》第 129D(3)(j)條的規定，並作出所需修訂。我們原先計劃在擬議的《公司(披露董事利益資料)規例》中，訂明公司須在財務報表附註內披露具相當分量利害關係的資料的各項規定，並參照新《公司條例》第 11 部第 5 分部有關申報具相當分量利害關係的規定作出改動，使兩者要求一致，即除合約外，把披露範圍擴至包括各項交易和安排，以及對公眾公司就有關連的實體方面加入額外披露規定。

11. 會計界最近向我們反映，假如須在財務報表的附註而非董事報告內披露具相當分量利害關係的資料，將會出現實際困難，特別是在交

易、安排或合約涉及提交報告公司以外的各方的情況。鑑於上述實際困難，就具相當分量利害關係的資料而言，當局經諮詢會計界後，建議規定公司在財務報表的附註內披露此方面資料的一部分，並在董事報告內披露餘下部分。扼要而言 ——

- (a) 若涉及具相當分量利害關係的交易、安排及合約是由提交報告的公司訂立，公司必須在財務報表的附註內披露相關資料。這項規定會在擬訂立的《公司(披露董事利益資料)規例》中訂明；以及
- (b) 若涉及具相當分量利害關係的交易、安排及合約是由指明企業訂立，公司則必須在董事報告內披露相關資料。因此，我們建議在《公司(董事報告)規例》中增訂條文，以述明這項規定。

12. 須注意的是，上述建議只關乎應在何處披露相關資料，即應在董事報告還是財務報表的附註內披露，而不會影響須予披露資料的範圍，須予披露的詳情亦是相同。依循現行《公司條例》的做法，上述擬議規定不適用於新《公司條例》第9部第2分部所指在提交報告方面獲豁免的公司。

修訂《公司(財務摘要報告)規例》

財務摘要報告所載的董事利益資料 (第3及5條)

13. 在新《公司條例》的制度下，有關董事利益的披露規定將歸納在一項附屬法例內予以訂明，即擬議的《公司(披露董事利益資料)規例》。須予披露的資料包括下列各方面 ——

- (a) 有關提交報告公司的具相當分量利害關係的資料；以及
- (b) 根據現行《公司條例》第161、161A及161B條而須在公司帳目內披露的董事利益資料及詳情，即 ——
 - (i) 就董事服務所支付的款項；以及

- (ii) 惠及董事的貸款、類似貸款及信貸交易等（下稱「指明交易」）。

14. 目前，若上市公司擬備財務摘要報告，均須按照《公司(上市公司的財務摘要報告)規例》(第 32M 章)第 5(3)(a)及(h)條，在報告內載列上述各項資料。我們的政策原意是依循現行《公司條例》的做法，即任何須按照《公司(披露董事利益資料)規例》而在財務報表的附註內予以披露的董事利益資料或詳情，也須載於有關公司的財務摘要報告。然而，現時《公司(財務摘要報告)規例》未能完全反映有關原意，與《公司(披露董事利益資料)規例》所訂的披露範圍也不相符。當中，《公司(財務摘要報告)規例》目前並無條文，規定財務摘要報告須載有就董事服務所支付款項的資料（即第 12(b)(i)段所述項目）。

15. 為使此項規例更符合我們在上文所闡釋的政策原意，我們建議簡化有關條文（即第 3(3)(e)(ii)、5(1)及 5(2)條），改以一條簡單的條文訂明，財務摘要報告須載有按照《公司(披露董事利益資料)規例》的規定而在財務報表的附註內所披露的一切資料及詳情。

徵詢意見

16. 《公司(董事報告)規例》及《公司(財務摘要報告)規例》修訂條文擬稿（只備英文版）分別載於附件 B及附件 C，以供委員考慮。

財經事務及庫務局

公司註冊處

二零一三年三月五日

現行《公司條例》第 129D(3)(j)條

(3) 有關報告書 —

- (j) 如在該財政年度終結時有任何合約存在，而立約的一方為公司、或公司的附屬公司或控股公司，或公司的控股公司的附屬公司，且公司的一名董事，以任何方式直接或間接在該合約中有利害關係，或曾在該年度內的任何時間以任何方式直接或間接在該合約中有利害關係，或在該年度內的任何時間，曾有任何合約存在，而立約的一方為公司、或公司的附屬公司或控股公司，或公司的控股公司的附屬公司，而公司的一名董事曾在該年度內的任何時間以任何方式直接或間接在該合約中有利害關係(而在上述任何一種情況下，董事認為該合約與公司的業務有重大關係，且有關董事在該合約中的利害關係具關鍵性或曾具關鍵性的)，則須載列 —
- (i) 一項陳述，說明該合約現時存在或(視屬何情況而定)曾經存在一事；
 - (ii) 該合約各方(公司除外)的姓名或名稱；
 - (iii) 有關董事的姓名或名稱(如該董事並非該合約的一方)；
 - (iv) 該合約的性質；及
 - (v) 有關董事在該合約中利害關係的性質；

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

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

(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.
-

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.

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

- 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

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).