

**Proposed amendment to section 20 of
Companies (Revision of Financial Statements and Reports) Regulation**

20. Offences relating to section 19

- (1) If, as respects a requirement made under section 412(2) of the Ordinance by virtue of section 19(2), section 412(3) of the Ordinance is contravened by the person to whom the requirement is made, the person commits an offence and is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (2) If a person is charged with an offence under subsection (1), it is a defence to establish that it was not reasonably practicable for the person to provide the information or explanation.
- (3) A person commits an offence if—
 - (a) the person makes a statement, to a person preparing an auditor's report on revised financial statements, that conveys or purports to convey any information or explanation that the person preparing the report requires, or is entitled to require, under section 412(2) or (4) of the Ordinance by virtue of section 19(2);
 - (b) the statement is misleading, false or deceptive in a material particular; and
 - (c) the person knows that, or is reckless as to whether or not, the statement is misleading, false or deceptive in a material particular.
- (4) Subject to subsection (4A), a person who commits an offence under subsection (3) is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 12 months~~2 years~~; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (4A) A court may sentence a person to imprisonment for an offence under subsection (3) only if the court is satisfied that the offence was committed wilfully.
- (5) If, as respects a requirement made under section 412(4) of the Ordinance by virtue of section 19(2), section 412(6) of the Ordinance is contravened by the company to which the requirement is made, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (6) If a person is charged with an offence under subsection (5) for failing to obtain any information or explanation from a subsidiary undertaking or another person, it is a defence to establish that—
 - (a) it would be an offence under the law of a place outside Hong Kong for the subsidiary undertaking or that other person to provide the information or explanation to the defendant; and
 - (b) the subsidiary undertaking or that other person did not provide the information or explanation to the defendant on that ground.
- (7) This section does not affect the right of a person preparing an auditor's report on revised financial statements to apply for an injunction to enforce any of the person's rights granted under section 412 of the Ordinance by virtue of section 19.