

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Ord. No. 28 of 2012)

**Companies (Revision of Financial Statements
and Reports) Regulation**

**Companies (Disclosure of Information about
Benefits of Directors) Regulation**

INTRODUCTION

The Financial Secretary (“FS”) has made the following pieces of subsidiary legislation for the implementation of the new Companies Ordinance (“CO”) on 19 March 2013 –

- _____ (a) the Companies (Revision of Financial Statements and Reports) Regulation (Annex A) in exercise of the power under section 450 of the new CO; and
- _____ (b) the Companies (Disclosure of Information about Benefits of Directors) Regulation (Annex B) in exercise of the power under sections 451 and 452(2) of the new CO.

JUSTIFICATIONS

2. The new CO contains provisions which empower respectively FS and the Chief Justice to make subsidiary legislation on various administrative, procedural and technical matters. As discussed with the Legislative Council (“LegCo”) Panel on Financial Affairs (“FA Panel”) on 7 January 2013, for the implementation of the new CO (tentatively scheduled for the first quarter of 2014), the subsidiary legislation would be made progressively by batches. The first batch, comprising five pieces of subsidiary legislation, was made by FS on 29 January 2013 and

tabled at the LegCo for negative vetting on 6 February 2013¹. This LegCo Brief covers the second batch, comprising two pieces of subsidiary legislation, made by FS on 19 March 2013. This batch does not contain any provision on the new arrangement concerning the inspection of the Companies Register under the new CO.

THE SUBSIDIARY LEGISLATION

Companies (Revision of Financial Statements and Reports) Regulation

3. As in the existing CO, the new CO has provided in section 449 that a company may voluntarily revise its financial statements and make necessary consequential revisions to the summary financial report and the directors' report (hereinafter referred as "relevant documents"²). Section 450 of the new CO further provides for the making of subsidiary legislation to prescribe the detailed requirements concerning the revised relevant documents, the manner in which relevant provisions in the principal legislation apply to the revised relevant documents as well as the relevant offences. This follows the existing approach, under which such matters are also prescribed by subsidiary legislation, namely the Companies (Revision of Accounts and Reports) Regulation (Cap.32N), based on the general principle that the obligations and arrangements concerning the original relevant documents also apply to the revised relevant documents.

4. The Companies (Revision of Financial Statements and Reports) Regulation basically re-enacts the existing Cap.32N and follows the

¹ The five pieces of subsidiary legislation under the first batch are –

- (a) the Companies (Words and Expressions in Company Names) Order (L.N. 7 of 2013);
- (b) the Companies (Disclosure of Company Name and Liability Status) Regulation (L.N. 8 of 2013);
- (c) the Companies (Accounting Standards (Prescribed Body)) Regulation (L.N. 9 of 2013);
- (d) the Companies (Directors' Report) Regulation (L.N. 10 of 2013); and
- (e) the Companies (Summary Financial Reports) Regulation (L.N. 11 of 2013).

For details, please refer to the LegCo Brief for the first batch of subsidiary legislation under the new CO issued on 30 January 2013 (File Ref.: CBT/7/6C).

² When used in the context of the existing CO, the term "relevant documents" means the company's accounts (instead of the financial statements), the summary financial report and the directors' report.

aforesaid general principle, with necessary modifications to align with the provisions on accounts and audit in Part 9 of the new CO. In summary, the changes include –

- (a) alignment of terms, namely replacing “accounts” by “financial statements” and “balance sheet” by “statement of financial position” respectively;
- (b) alignment of requirements prescribed in respect of the signing and distribution of the revised relevant documents with those under the new CO;
- (c) alignment of provisions on the auditor’s report on revised financial statements and auditors’ rights and privileges with the relevant provisions under the new CO, including sections 407 and 408 of the new CO³; and
- (d) alignment of offences and penalties with those in the new CO in respect of the original relevant documents.

5. This Regulation consists of six parts, namely –

- (a) *Part 1* contains preliminary provisions;
- (b) *Part 2* provides for the contents of the revised relevant documents;
- (c) *Part 3* sets out the requirements relating to the approval and signature of revised statement of financial position, revised directors’ report and revised summary financial report;
- (d) *Part 4* states that, from the date of revision onwards, a provision of the new CO applicable to the relevant document has effect with respect to the revised relevant documents;
- (e) *Part 5* provides for the preparation of an auditor’s report on

³ Section 407 of the new CO requires auditors to state first, *inter alia*, his opinion if the financial statements are not in agreement with the accounting records; and second, the fact that he cannot obtain the necessary information or explanations for the purpose of the audit. Section 408 imposes criminal sanction on relevant persons for knowingly or recklessly causing the omission of the required statement of opinion or fact. As revised financial statements are also required to be audited, to maintain consistency and following the general principle mentioned in paragraph 3 above, this Regulation contains, *inter alia*, a mirror provision of section 408 of the new CO, viz. section 16 of the Regulation with regard to liability of the person who prepared an auditor’s report on revised financial statements.

revised financial statements; and

- (f) *Part 6* imposes obligations on a company to inform relevant parties of the revisions made to the revised relevant documents.

Companies (Disclosure of Information about Benefits of Directors) Regulation

6. Under the new CO, section 383 stipulates that the notes to financial statements must contain the information concerning benefits of directors as prescribed by subsidiary legislation. Sections 451 and 452(2) further provide for the making of subsidiary legislation for such purpose. The Companies (Disclosure of Information about Benefits of Directors) Regulation accordingly sets out the detailed disclosure requirements on the following aspects –

- (a) directors' emoluments;
- (b) directors' retirement benefits;
- (c) payments made or benefits provided in respect of the termination of the service of directors;
- (d) loans, quasi-loans and credit transactions⁴ as well as guarantees entered into and security provided in connection with such dealings (hereafter "specified dealings") in favour of directors;
- (e) material interests of directors in transactions, arrangements or contracts which are significant to the company's business; and
- (f) consideration provided to or receivable by third parties for making available the services of a person as director.

7. The existing CO also imposes similar requirements for a company to disclose such types of information about benefits of directors. Specifically, sections 161 and 161B of the existing CO respectively prescribe the particulars about payments in respect of directors' services and specified dealings to be disclosed in the company's accounts. Section 129D(3)(j) provides for the disclosure of information about material interests of directors in contracts in the directors' report. This

⁴ Quasi-loans and credit transactions are defined in sections 493 and 494 of the new CO respectively.

Regulation mainly restates and consolidates the disclosure requirements on these aspects, with necessary modifications for alignment with the relevant provisions on fair dealings by directors under Part 11 of the new CO and to improve the disclosure regime.

8. In respect of payments to directors for their services, the Regulation mainly restates the requirements under section 161 of the existing CO with certain changes. The more notable ones are highlighted below –

- (a) the disclosure requirements applicable to non-cash benefits are strengthened to require an indication of the nature of such benefits;
- (b) the references to “pensions” are replaced by references to “retirement benefits” to more adequately reflect the intention of the disclosure regime; and
- (c) this Regulation prescribes the details in respect of the new requirement for the disclosure of information on the consideration provided to any third party for making available a director’s services under section 383(1)(f) of the new CO.

9. For specified dealings, this Regulation mainly restates the requirements and arrangements prescribed under section 161B of the existing CO. The scope of application of the disclosure requirements in respect of controlled bodies corporate and connected entities of a director⁵ is widened in line with provisions under Division 2 of Part 11 of the new CO. The types of particulars to be disclosed in respect of a specified dealing have also been refined. For instance, in the case of a specified dealing in favour of a connected entity of a director, the Regulation contains a new requirement which requires the nature of the connection between the entity and the director concerned to be stated in the notes to financial statements.

10. This Regulation also specifies the particulars to be disclosed in the notes to financial statements in respect of material interests of directors in transactions, arrangements and contracts which are significant to the reporting company’s business. The detailed disclosure requirements prescribed by this Regulation are identical to those in

⁵ Controlled bodies corporate and connected entities of a director are defined in sections 492 and 486 of the new CO respectively.

respect of transactions, arrangements and contracts entered into by specified undertakings of the reporting company⁶ to be prescribed under the Companies (Directors' Report) Regulation for disclosure in the directors' report⁷.

11. This Regulation consists of four parts, namely –
- (a) *Part 1* contains preliminary provisions;
 - (b) *Part 2* prescribes the particulars to be disclosed in respect of directors' emoluments, directors' retirement benefits, payments made or benefit provided in respect of the termination of the service of directors and consideration provided to or receivable by third parties for making available the services of persons as directors;
 - (c) *Part 3* prescribes the particulars to be disclosed in respect of specified dealings in favour of directors, their controlled bodies corporate and their connected entities. It also prescribes requirements concerning the provision of information by way of a statement in the notes to the financial statements, and provides for the disclosure requirements applicable to authorized financial institutions ("AFIs")⁸; and
 - (d) *Part 4* prescribes the particulars to be disclosed in respect of directors' material interests in transactions, arrangements or contracts entered into by a company.

LEGISLATIVE TIMETABLE

12. These two pieces of subsidiary legislation will be gazetted on 22 March 2013 and tabled at the LegCo for negative vetting on 27 March 2013. They are expected to come into operation together with the new

⁶ Specified undertakings refer to (i) the parent company of the reporting company, (ii) a subsidiary undertaking of the reporting company; and (iii) a subsidiary undertaking of the reporting company's parent company.

⁷ The requirements are to be specified under section 10 of the Companies (Directors' Report) Regulation (which was included in the first batch of subsidiary legislation) and subject to LegCo's approval at the Council sitting of 27 March 2013. Please refer to LC Paper No. CB(1)667/12-13(03) for details.

⁸ Authorized financial institutions refer to licensed banks, restricted licence banks and deposit-taking companies under the Banking Ordinance (Cap.155).

CO, tentatively scheduled for the first quarter of 2014.

IMPLICATIONS OF THE PROPOSALS

13. The subsidiary legislation to be made under the new CO is part of the new company law regime. It will contribute to the achievement of the economic benefits as envisaged to be brought by the CO rewrite, namely to improve Hong Kong's business environment and strengthen our position as an international financial and business centre.

14. Both pieces of subsidiary legislation do not have civil service, environmental, financial, productivity or sustainability implications. They are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the new CO.

PUBLIC CONSULTATION

15. We conducted a public consultation on the draft provisions of subsidiary legislation to be made under the new CO in two phases, with phase one launched on 28 September 2012 and phase two on 2 November 2012. The consultation period was six weeks in both phases. A total of 34 submissions were received by end 2012 and the respondents were generally supportive. The Standing Committee on Company Law Reform was consulted in the process. We also briefed the LegCo FA Panel on the subsidiary legislation on 7 January 2013.

16. Insofar as these two pieces of subsidiary legislation are concerned, the respondents offered mostly general and technical comments on the draft provisions. We have taken into account these comments when finalising the subsidiary legislation. Some respondents from the accounting sector who previously expressed concerns on certain aspects of section 408 of the new CO during scrutiny of the Companies Bill ("CB") by the Bills Committee in the last LegCo term have repeated their previous views while commenting on the mirror provision of that section in the Companies (Revision of Financial Statements and Reports) Regulation. They generally welcomed the fact that we continue to engage with the Hong Kong Institute of Certified Public Accountants ("HKICPA") on section 408 of the new CO. In this regard, we have initiated discussion with the HKICPA on the preparatory work for implementation of section 408 when the new CO is brought into

operation, tentatively scheduled for the first quarter of 2014. In parallel, we are also exploring with the HKICPA as to whether and how the wording of the provision could be improved in the future in light of market feedback and practical operating experience.

PUBLICITY

17. A press release on the gazettal of the two pieces of subsidiary legislation will be issued on 22 March 2013. A spokesman will also be arranged to handle media enquiries.

BACKGROUND

Rewrite of the Companies Ordinance

18. The rewrite of the existing CO (Cap.32) aims to provide a modernised legal regime for the formation and operation of companies in Hong Kong. In January 2011, we introduced the CB into the LegCo and a Bills Committee was formed to scrutinise the Bill. The CB was passed on 12 July 2012 and it was subsequently gazetted as the new CO (Ord. No. 28 of 2012) on 10 August 2012. Our target is to bring the new CO into operation in the first quarter of 2014.

Companies (Revision of Financial Statements and Reports) Regulation

19. Pursuant to section 141E of the existing CO, after the accounts of a company have been provided to its members, the directors of the company may still revise the accounts and make necessary consequential revisions to the summary financial report and the directors' report. Such revisions are confined to aspects of the accounts which do not comply with the CO and the necessary consequential revisions.

20. The detailed requirements that apply to the revision of accounts and reports are prescribed by the Companies (Revision of Accounts and Reports) Regulation (Cap.32N). An overview of the regime under Cap.32N is as follows –

- (a) the company's original relevant documents may be revised by either replacement or supplementary notes. The former involves replacing the original relevant documents with a substitute set, whereas the latter involves using notes to

indicate the revisions made to the original relevant documents;

- (b) the revised relevant documents have to be approved or signed by the board of directors;
- (c) relevant provisions in the principal legislation or subsidiary legislation governing the matters to be included in the relevant documents apply to the revised relevant documents as they apply to the original version;
- (d) once the revised relevant documents have been approved and the relevant provisions complied with, the CO would have effect with respect to the revised relevant documents as if they were, as from the date of revision, the relevant documents of the company;
- (e) an audit report must be prepared on the revised accounts. It may be prepared by the current auditor or the original auditor who prepared the report for the original accounts; and
- (f) the company is required to circulate to its members a copy of the revised relevant documents and the audit report on the revised accounts within 28 days after the date of revision, table them at the first general meeting held after the revision and forward a copy thereof to the Registrar of Companies.

21. Cap.32N also prescribes the offences for failing to prepare, sign or distribute the revised relevant documents in the prescribed manner. The penalty may involve a fine, imprisonment or a combination of both.

Companies (Disclosure of Information about Benefits of Directors) Regulation

22. At present, section 161 of the existing CO provides for the disclosure of various types of payments to directors in respect of their services. The information required to be disclosed in the company's accounts include –

- (a) the aggregate amount of the directors' emoluments;
- (b) the aggregate amount of directors or former directors' pensions; and

- (c) the aggregate amount of any compensation to directors or former directors in respect of loss of office.

23. Section 161B of the existing CO sets out the particulars to be disclosed in a company's accounts for any dealings entered into by the company in favour of its directors and other relevant persons which involve loans, quasi-loans or credit transactions, as well as guarantees entered into and any security provided by the company in relation to such dealings. It also allows a company to simplify its disclosure of information on quasi-loans or credit transactions (and guarantees entered into and any security provided in connection with such transactions) in statement form containing the aggregate figures for each person in lieu of the particulars of individual transactions, which will be entered into a separate register available for inspection instead. The section also contains specific provisions which apply exclusively to AFIs⁹.

24. Section 129D(3)(j) of the existing CO provides for the disclosure in the directors' report of any contract entered into by a company or its specified undertakings that is significant to the company's business, and in which a director of the company has any material interest, whether direct or indirect. The particulars to be disclosed include a statement of the fact, indication of the nature of the contract and the interest, together with the relevant particulars.

ENQUIRIES

25. Any enquiry on this LegCo Brief should be addressed to Mr Arsene Yiu, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 6384.

Financial Services and the Treasury Bureau
20 March 2013

⁹ Section 161B(8), (9) and (10) applies exclusively to AFIs.

Companies (Revision of Financial Statements and Reports) Regulation

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Companies (Revision of Financial Statements and Reports) Regulation

(Made by the Financial Secretary under section 450 of the Companies Ordinance (28 of 2012))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day on which section 450 of the Companies Ordinance (28 of 2012) comes into operation.

2. Interpretation

(1) In this Regulation—

auditor's report (核數師報告)—

- (a) in relation to original financial statements, has the meaning given by section 357(1) of the Ordinance; and
- (b) in relation to revised financial statements, means the report required to be prepared under section 13;

date of revision (修改日期)—

- (a) in relation to any revised directors' report, means the date on which the report is approved under section 391 of the Ordinance;
- (b) in relation to any revised financial statements, means—
 - (i) for a revision by replacement, the date required by section 3(6)(a)(i) or (b)(i) to be stated in the statements; or

- (ii) for a revision by supplementary note, the date required by section 3(6)(a)(ii) or (b)(ii) to be stated in the supplementary note;
- (c) in relation to any revised statement of financial position, means the date on which the statement is approved under section 387 of the Ordinance; and
- (d) in relation to any revised summary financial report, means the date on which the report is approved under section 440 of the Ordinance;

date of the original directors' report (原董事報告日期) means the date on which the original directors' report is approved under section 391 of the Ordinance;

date of the original financial statements (原財務報表日期) means the date on which a statement of financial position that forms part of the original financial statements is approved under section 387 of the Ordinance;

date of the original statement of financial position (原財務狀況表日期) means the date on which the original statement of financial position is approved under section 387 of the Ordinance;

date of the original summary financial report (原財務摘要報告日期) means the date on which the original summary financial report is approved under section 440 of the Ordinance;

directors' report (董事報告) has the meaning given by section 357(1) of the Ordinance;

financial statements (財務報表) has the meaning given by section 357(1) of the Ordinance;

original directors' report (原董事報告) means the directors' report that is the subject of revision by a revised directors' report;

original financial statements (原財務報表) means the financial statements that are the subject of revision by revised financial statements;

original statement of financial position (原財務狀況表) means the statement of financial position that is the subject of revision by a revised statement of financial position;

original summary financial report (原財務摘要報告) means the summary financial report that is the subject of revision by a revised summary financial report;

relevant Regulation (《有關規例》) means—

- (a) in sections 3 and 4, the Companies (Disclosure of Information about Benefits of Directors) Regulation;
- (b) in section 5, the Companies (Directors' Report) Regulation (L.N. 10 of 2013);
- (c) in section 6, the Companies (Summary Financial Reports) Regulation (L.N. 11 of 2013);

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

revised directors' report (經修改董事報告) means—

- (a) for a revision by replacement, the directors' report replacing the original directors' report for the purpose of the revision; or
- (b) for a revision by supplementary note, the original directors' report, together with the supplementary note for the purpose of the revision;

revised financial statements (經修改財務報表) means—

- (a) for a revision by replacement, the financial statements replacing the original financial statements for the purpose of the revision; or

- (b) for a revision by supplementary note, the original financial statements, together with the supplementary note for the purpose of the revision;

revised statement of financial position (經修改財務狀況表) means—

- (a) for a revision by replacement, the statement of financial position replacing the original statement of financial position for the purpose of the revision; or
- (b) for a revision by supplementary note, the original statement of financial position, together with the supplementary note for the purpose of the revision;

revised summary financial report (經修改財務摘要報告) means—

- (a) for a revision by replacement, the summary financial report replacing the original summary financial report for the purpose of the revision; or
- (b) for a revision by supplementary note, the original summary financial report, together with the supplementary note for the purpose of the revision;

revision (修改) means a revision made under section 449 of the Ordinance;

summary financial report (財務摘要報告) has the meaning given by section 357(1) of the Ordinance.

(2) In this Regulation—

- (a) a reference to revision of any statements or report by replacement is a reference to revision by the preparation of a replacement set of statements or report in substitution for the statements or report; and
- (b) a reference to revision of any statements or report by supplementary note is a reference to revision by the

preparation of a note indicating revisions made to the statements or report.

- (3) Nothing in this Regulation is to be construed as affecting any right accrued, or any obligation or liability incurred, in relation to any original directors' report, original financial statements or original summary financial report.

Part 2

Contents of Revised Documents

3. Requirements regarding contents of revised financial statements

- (1) A provision of the Ordinance or relevant Regulation as to the requirements regarding the contents of the financial statements of a company (other than a company falling within the reporting exemption for the financial year concerned) applies to revised financial statements, as it applies to the original financial statements, as if the revised financial statements were prepared by the directors of the company on the date of the original financial statements.
- (2) Without limiting subsection (1), section 380(1) and (2) of the Ordinance applies to the revised financial statements of a company (other than a company falling within the reporting exemption for the financial year concerned), as it applies to the original financial statements, so as to require the revised financial statements to give a true and fair view of the matters mentioned in that section.
- (3) A provision of the Ordinance or relevant Regulation as to the requirements regarding the contents of the financial statements of a company falling within the reporting exemption for a financial year applies to revised financial statements, as it applies to the original financial statements, as if the revised financial statements were prepared by the directors of the company on the date of the original financial statements.
- (4) If the directors of a company cause any financial statements to be revised by replacement, the directors must make in a prominent position in the revised financial statements—

- (a) a statement that the revised financial statements replace the original financial statements for the financial year specified in the statement;
- (b) a statement that the original financial statements—
 - (i) are taken as having been revised by the directors on the date of the original financial statements instead of on the date of revision; and
 - (ii) accordingly do not deal with events between those 2 dates; and
- (c) a statement as to—
 - (i) the respects in which the original financial statements did not, as appears to the directors, comply with the Ordinance or relevant Regulation; and
 - (ii) the material revisions to the original financial statements.
- (5) If the directors of a company cause any financial statements to be revised by supplementary note, the directors must make in a prominent position in the supplementary note—
 - (a) a statement that the supplementary note—
 - (i) revises in certain respects the original financial statements; and
 - (ii) is to be treated as forming part of those statements; and
 - (b) a statement that the original financial statements—
 - (i) are taken as having been revised by the directors on the date of the original financial statements instead of on the date of revision; and
 - (ii) accordingly do not deal with events between those 2 dates.

- (6) In addition to the requirements under subsection (4) or (5) (as the case may be), the directors must also—
- (a) for a revision to a statement of financial position, cause the date of revision to be stated—
 - (i) for a revision by replacement, in the revised financial statements; or
 - (ii) for a revision by supplementary note, in the supplementary note; or
 - (b) in any other case, cause the date specified by the directors as the date on which the financial statements are taken as having been revised to be stated—
 - (i) for a revision by replacement, in the revised financial statements; or
 - (ii) for a revision by supplementary note, in the supplementary note.
- (7) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original financial statements but before the date of revision, a reference to the provision as in force at the date of the original financial statements.

4. Offences relating to section 3

- (1) This section applies in respect of any revised financial statements of a company a copy of which—
- (a) is laid before the company in general meeting under section 429 of the Ordinance;
 - (b) is sent to a member under section 430 of the Ordinance; or
 - (c) is otherwise circulated, published or issued by the company.

- (2) If a director of a company fails to take all reasonable steps to secure compliance with any of the following provisions as respects any revised financial statements of the company, the director commits an offence and is liable to a fine of \$300,000—
- (a) for a company not falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(1) or (2);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6); or
 - (b) for a company falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(3);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6).
- (3) If a director of a company wilfully fails to take all reasonable steps to secure compliance with any of the following provisions as respects any revised financial statements of the company, the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months—
- (a) for a company not falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(1) or (2);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6); or
 - (b) for a company falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(3);

- (ii) section 3(4) or (5) (as the case may be) or section 3(6).
- (4) If a person is charged with an offence under subsection (2) for failing to take all reasonable steps to secure compliance with a provision mentioned in subsection (2)(a)(i) or (ii) or (b)(i) or (ii), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that the provision was complied with; and
 - (b) was in a position to discharge that duty.
- (5) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original financial statements but before the date of revision, a reference to the provision as in force at the date of the original financial statements.

5. Matters to be included in revised directors' report

- (1) A provision of the Ordinance or relevant Regulation as to the matters to be included in a directors' report of a company applies to a revised directors' report, as it applies to the original directors' report, as if the revised directors' report were approved by the directors of the company on the date of the original directors' report.
- (2) If the directors of a company make revisions to a directors' report by replacement, the directors must make in a prominent position in the revised directors' report—
 - (a) a statement that the revised directors' report replaces the original directors' report for the financial year specified in the statement;
 - (b) a statement that the revised directors' report—

- (i) is taken as having been approved by the directors on the date of the original directors' report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates; and
- (c) a statement as to the material revisions to the original directors' report.
- (3) If the directors of a company make revisions to a directors' report by supplementary note, the directors must make in a prominent position in the supplementary note—
 - (a) a statement that the supplementary note—
 - (i) revises in certain respects the original directors' report; and
 - (ii) is to be treated as forming part of that report; and
 - (b) a statement that the revised directors' report—
 - (i) is taken as having been approved by the directors on the date of the original directors' report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates.
- (4) In addition to the requirements under subsection (2) or (3) (as the case may be), the directors must also cause the date of revision to be stated—
 - (a) for a revision by replacement, in the revised directors' report; or
 - (b) for a revision by supplementary note, in the supplementary note.
- (5) If a director of a company fails to take all reasonable steps to secure compliance with any of the following provisions as respects a revised directors' report of the company, the

director commits an offence and is liable to a fine of \$150,000—

- (a) a provision mentioned in subsection (1);
 - (b) subsection (2) or (3) (as the case may be) or subsection (4).
- (6) If a director of a company wilfully fails to take all reasonable steps to secure compliance with any of the following provisions as respects a revised directors' report of the company, the director commits an offence and is liable to a fine of \$150,000 and to imprisonment for 6 months—
- (a) a provision mentioned in subsection (1);
 - (b) subsection (2) or (3) (as the case may be) or subsection (4).
- (7) If a person is charged with an offence under subsection (5) for failing to take all reasonable steps to secure compliance with a provision mentioned in subsection (5)(a) or (b), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
- (a) was charged with the duty of ensuring that the provision was complied with; and
 - (b) was in a position to discharge that duty.
- (8) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original directors' report but before the date of revision, a reference to the provision as in force at the date of the original directors' report.

6. Matters to be included in revised summary financial report

- (1) A provision of the Ordinance or relevant Regulation as to the matters to be included in a summary financial report of a company applies to a revised summary financial report, as it

applies to the original summary financial report, as if the revised summary financial report were approved by the directors of the company on the date of the original summary financial report.

- (2) If the directors of a company make revisions to a summary financial report by replacement, the directors must make in a prominent position in the revised summary financial report—
- (a) a statement that the revised summary financial report replaces the original summary financial report for the financial year specified in the statement;
 - (b) a statement that the revised summary financial report—
 - (i) is taken as having been approved by the directors on the date of the original summary financial report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates; and
 - (c) a statement as to the material revisions to the original summary financial report.
- (3) If the directors of a company make revisions to a summary financial report by supplementary note, the directors must make in a prominent position in the supplementary note—
- (a) a statement that the supplementary note—
 - (i) revises in certain respects the original summary financial report; and
 - (ii) is to be treated as forming part of that report; and
 - (b) a statement that the revised summary financial report—
 - (i) is taken as having been approved by the directors on the date of the original summary financial report instead of on the date of revision; and

- (ii) accordingly does not deal with events between those 2 dates.
- (4) In addition to the requirements under subsection (2) or (3) (as the case may be), the directors must also cause the date of revision to be stated—
- (a) for a revision by replacement, in the revised summary financial report; or
- (b) for a revision by supplementary note, in the supplementary note.
- (5) A revised summary financial report of a company must not be circulated, published or issued by the company unless the report complies with subsection (2) or (3) (as the case may be), subsection (4) and the provision mentioned in subsection (1).
- (6) If a director of a company fails to take all reasonable steps to secure compliance with subsection (5), the director commits an offence and is liable to a fine of \$300,000.
- (7) If a director of a company wilfully fails to take all reasonable steps to secure compliance with subsection (5), the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (8) If a person is charged with an offence under subsection (6), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
- (a) was charged with the duty of ensuring that subsection (5) was complied with; and
- (b) was in a position to discharge that duty.
- (9) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original summary financial report but before

the date of revision, a reference to the provision as in force at the date of the original summary financial report.

Part 3

Approval and Signature of Revised Documents

7. Approval and signature of revised statement of financial position

- (1) Section 387(1) and (2) of the Ordinance applies to a revised statement of financial position, as it applies to the original statement of financial position, except that, for a revision by supplementary note—
 - (a) section 387(1)(b) of the Ordinance applies as if it required a signature on the supplementary note instead of on the statement of financial position; and
 - (b) section 387(2) of the Ordinance applies as if it required the name of the person who signed the supplementary note to be stated on a copy of the supplementary note instead of on a copy of the statement of financial position.
- (2) If, as respects any revised statement of financial position a copy of which is circulated, published or issued by the company, section 387(1) of the Ordinance that is applicable to the statement by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (3) If, as respects any revised statement of financial position, section 387(2) of the Ordinance that is applicable to the statement by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (4) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original

statement of financial position but before the date of revision, a reference to the provision as in force at the date of the original statement of financial position.

8. Approval and signature of revised directors' report

- (1) Section 391(1) and (2) of the Ordinance applies to a revised directors' report, as it applies to the original directors' report, except that, for a revision by supplementary note—
 - (a) section 391(1)(b) of the Ordinance applies as if it required a signature on the supplementary note instead of on the directors' report; and
 - (b) section 391(2) of the Ordinance applies as if it required the name of the person who signed the supplementary note to be stated on a copy of the supplementary note instead of on a copy of the directors' report.
- (2) If, as respects any revised directors' report a copy of which is circulated, published or issued by the company, section 391(1) of the Ordinance that is applicable to the report by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (3) If, as respects any revised directors' report, section 391(2) of the Ordinance that is applicable to the report by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (4) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original directors' report but before the date of revision, a reference to the provision as in force at the date of the original directors' report.

9. Approval and signature of revised summary financial report

- (1) Section 440(1) and (2) of the Ordinance applies to a revised summary financial report, as it applies to the original summary financial report, except that, for a revision by supplementary note—
 - (a) section 440(1)(b) of the Ordinance applies as if it required a signature on the supplementary note instead of on the summary financial report; and
 - (b) section 440(2) of the Ordinance applies as if it required the name of the person who signed the supplementary note to be stated on a copy of the supplementary note instead of on a copy of the summary financial report.
- (2) If, as respects any revised summary financial report a copy of which is circulated, published or issued by the company, section 440(1) of the Ordinance that is applicable to the report by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (3) If, as respects any revised summary financial report, section 440(2) of the Ordinance that is applicable to the report by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.
- (4) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original summary financial report but before the date of revision, a reference to the provision as in force at the date of the original summary financial report.

Part 4**Effect of Revised Documents****10. Effect of revised financial statements**

- (1) On the directors of a company causing any financial statements of the company to be revised, and complying with section 3(4) or (5) (as the case may be) and section 3(6), the Ordinance has effect with respect to the revised financial statements as if the revised financial statements were, as from the date of revision, the financial statements of the company in place of the original financial statements.
- (2) Without limiting subsection (1), if, as at the date of revision, any of the following provisions has yet to be complied with by the company, the revised financial statements are, as from that date, the financial statements of the company for the financial year concerned for the purposes of that provision—
 - (a) where a copy of the original financial statements was sent to a member under section 430(1) of the Ordinance—
 - (i) section 429(1) of the Ordinance;
 - (ii) section 435(1) of the Ordinance;
 - (iii) section 662 of the Ordinance; or
 - (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance—
 - (i) section 435(1) of the Ordinance;
 - (ii) section 662 of the Ordinance.

11. Effect of revised directors' report

- (1) On the directors of a company approving a revised directors' report of the company, and complying with section 5(2) or (3) (as the case may be) and section 5(4), the Ordinance has effect with respect to the revised directors' report as if the revised directors' report were, as from the date of revision, the directors' report of the company in place of the original directors' report.
- (2) Without limiting subsection (1), if, as at the date of revision, any of the following provisions has yet to be complied with by the company, the revised directors' report is, as from that date, the directors' report of the company for the financial year concerned for the purposes of that provision—
 - (a) where a copy of the original financial statements was sent to a member under section 430(1) of the Ordinance—
 - (i) section 429(1) of the Ordinance;
 - (ii) section 435(1) of the Ordinance;
 - (iii) section 662 of the Ordinance; or
 - (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance—
 - (i) section 435(1) of the Ordinance;
 - (ii) section 662 of the Ordinance.

12. Effect of revised summary financial report

- (1) On the directors of a company approving a revised summary financial report of the company, and complying with section 6(2) or (3) (as the case may be) and section 6(4), the Ordinance has effect with respect to the revised summary financial report as if the revised summary financial report

were, as from the date of revision, the summary financial report of the company in place of the original summary financial report.

- (2) Without limiting subsection (1), the revised summary financial report is, as from the date of revision, the summary financial report of the company for the financial year concerned for the purposes of section 446(1) and (2) of the Ordinance.

Part 5

Auditor's Report on Revised Financial Statements

13. Auditor's report on revised financial statements

- (1) Subject to subsection (2), the current auditor of a company must prepare a report for the members of the company on any revised financial statements of the company.
- (2) If the auditor's report on the original financial statements was made by a person other than the current auditor of the company, the directors of the company may resolve that the report on the revised financial statements is to be prepared by the person if—
 - (a) the person agrees to do so; and
 - (b) the person is eligible, and not disqualified, for appointment as auditor of the company under Subdivision 2 of Division 5 of Part 9 of the Ordinance.

14. Opinion on revised financial statements

- (1) An auditor's report on revised financial statements must state, in the opinion of the person preparing the report—
 - (a) whether the revised financial statements have been properly prepared in compliance with the provisions of the Ordinance; and
 - (b) for a company not falling within the reporting exemption for the financial year concerned, whether the revised financial statements give a true and fair view, seen as at the date of the original financial statements, with respect to the matters set out in section 406(1)(b) of the Ordinance.

- (2) If the person preparing an auditor's report on revised financial statements is of the opinion that the information in a directors' report or revised directors' report for a financial year is not consistent with the revised financial statements for the financial year, the person—
 - (a) must state that opinion in the auditor's report; and
 - (b) may bring that opinion to the members' attention in a general meeting.
- (3) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original financial statements but before the date of revision, a reference to the provision as in force at the date of the original financial statements.

15. Opinion on other matters

Section 407 of the Ordinance—

- (a) applies to an auditor's report on revised financial statements, as it applies to an auditor's report on original financial statements; and
- (b) applies to a person preparing an auditor's report on revised financial statements, as it applies to a company's auditor preparing an auditor's report on original financial statements.

16. Offences relating to contents of auditor's report on revised financial statements

- (1) Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes to be omitted from an auditor's report on revised financial statements a statement required to be contained in the report by virtue of section 15.
- (2) The persons are—

- (a) if the person who prepares an auditor's report on revised financial statements is a natural person—
 - (i) the person; and
 - (ii) every employee and agent of the person who is eligible for appointment as auditor of the company;
 - (b) if the person is a firm, every partner, employee and agent of the person who is eligible for appointment as auditor of the company; or
 - (c) if the person is a body corporate, every officer, member, employee and agent of the person who is eligible for appointment as auditor of the company.
- (3) A person who commits an offence under subsection (1) is liable to a fine of \$150,000.

17. Auditor's reports on revised financial statements to be signed

- (1) Section 409(1), (2) and (3) of the Ordinance applies to an auditor's report on revised financial statements, as it applies to an auditor's report on original financial statements, except that—
- (a) section 409(1)(a) of the Ordinance applies as if it required a signature of the person preparing the auditor's report on revised financial statements;
 - (b) section 409(1)(b) of the Ordinance applies as if it required a signature of the natural person authorized to sign the name of the person preparing the auditor's report on revised financial statements on that person's behalf; and
 - (c) section 409(2) and (3) of the Ordinance applies as if it required the name of the person preparing the auditor's report on revised financial statements to be stated.

- (2) If, as respects any auditor's report on revised financial statements, section 409(3) of the Ordinance that is applicable to the report by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

18. Qualified privileges of person preparing auditor's report on revised financial statements etc.

- (1) In the absence of malice, a relevant person of a company is not liable to any action for defamation at the suit of any person in respect of any statement made by the relevant person in the course of performing duties as a person preparing an auditor's report on revised financial statements.
- (2) In the absence of malice, a person is not liable to any action for defamation at the suit of any person in respect of the publication of any document—
 - (a) prepared by a relevant person in the course of performing duties as a person preparing an auditor's report on revised financial statements; and
 - (b) required by the Ordinance—
 - (i) to be delivered to the Registrar; or
 - (ii) to be sent to any member of the company or any other person.
- (3) This section does not limit or affect any other right, privilege or immunity that a relevant person, or any other person, has as defendant in an action for defamation.
- (4) In this section—

relevant person (有關人士), in relation to a company, means a person—

 - (a) who is not the current auditor of the company; and

- (b) who prepares an auditor's report on revised financial statements for the company.

19. Rights of person preparing auditor's report on revised financial statements

- (1) Section 411 of the Ordinance applies to a person preparing an auditor's report on revised financial statements, as it applies to a person appointed as auditor of a company.
- (2) Section 412(1), (2), (3), (4), (5), (6) and (9) of the Ordinance applies to and in relation to a person preparing an auditor's report on revised financial statements, as it applies to and in relation to an auditor of a company, so that if the person makes a requirement under section 412(2) or (4) of the Ordinance, the person or company to whom the requirement is made (*relevant person*) must comply with section 412(3) or (6) (as the case may be) of the Ordinance accordingly.
- (3) Section 412(7) and (8) of the Ordinance applies to and in relation to a relevant person, as it applies to and in relation to a person mentioned in that section.

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) A person who commits an offence under subsection (3) is liable—
- (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) If, 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.

21. Auditor's report on revised financial statements to be attached to revised financial statements in certain cases

- (1) The revised financial statements of a company must not be circulated, published, issued or otherwise made available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the statements unless the auditor's report on the revised financial statements is attached to the statements.
- (2) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$150,000.

Part 6

Company's Obligations Regarding Revised Documents

22. Company to send revised financial statements or revised directors' report

- (1) Subject to section 23, if revisions are made to a company's financial statements or directors' report for a financial year, the company must, within 28 days after the date of revision, send to every member who is entitled under section 430(1) or (3) or 434 of the Ordinance to be sent a copy of documents for the financial year—
 - (a) for revised financial statements, a copy of the auditor's report on the revised financial statements and—
 - (i) for a revision by replacement, a copy of the revised financial statements; or
 - (ii) for a revision by supplementary note, a copy of the supplementary note; or
 - (b) for a revised directors' report—
 - (i) for a revision by replacement, a copy of the revised directors' report; or
 - (ii) for a revision by supplementary note, a copy of the supplementary note.
- (2) If a company contravenes subsection (1) in respect of a member who is entitled under section 430(1) or 434 of the Ordinance to be sent a copy of documents, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.
- (3) If a company contravenes subsection (1) in respect of a member who is entitled under section 430(3) of the Ordinance

to be sent a copy of documents, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$300,000.

- (4) If a company wilfully contravenes subsection (1) in respect of a member who is entitled under section 430(3) of the Ordinance to be sent a copy of documents, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.

23. Exception to section 22

- (1) This section applies to a member of a company who is entitled under section 430(1) or (3) of the Ordinance to be sent a copy of documents for a financial year.
- (2) Section 22 does not require a company to send a copy of any document to a member whose address is unknown to the company.
- (3) Section 22 does not require a company to send a copy of any document—
- (a) for joint holders of shares none of whom is entitled to receive notices of general meeting of the company, to more than one of the joint holders; or
 - (b) for joint holders of shares some of whom are so entitled and some not, to those who are not entitled.
- (4) Section 22 does not require a company to send a copy of any document to a member if the company has sent the member a copy of the summary financial report for the financial year concerned under section 441 of the Ordinance or in compliance with a request under section 444 of the Ordinance.
- (5) If a company does not have a share capital, section 22 does not require the company to send a copy of any document to a

member who is not entitled to receive notices of general meeting of the company.

24. Company to notify recipient of summary financial report after revising financial statements

- (1) This section applies if the directors of a company cause any financial statements of the company to be revised and a copy of the summary financial report concerned is sent to a person under section 441 of the Ordinance or in compliance with a request under section 444(1) or 445(2) of the Ordinance.
- (2) If the directors have not made to the summary financial report necessary revisions that are consequential to the revisions to the financial statements, the company must, within 28 days after the date of revision in relation to the revised financial statements, send in the manner specified in subsection (5) or (6) a note that complies with subsection (3), together with a copy of the auditor's report on the revised financial statements, to—
- (a) every member who was sent a copy of the summary financial report; and
 - (b) every member to whom the company must, as at the date of revision in relation to the revised financial statements, send a copy of the summary financial report in compliance with a request under section 444(1) or 445(2) of the Ordinance.
- (3) The note must state that the financial statements of the company for the financial year specified in the note have been revised in a way that has no bearing on the summary financial report for the financial year.
- (4) If the directors have made to the summary financial report necessary revisions that are consequential to the revisions to the financial statements, the company must, within 28 days

after the date of revision in relation to the revised financial statements, send in the manner specified in subsection (5) or (6) a copy of the revised summary financial report, together with a statement of the revisions made and their effect, to—

- (a) every member who was sent a copy of the summary financial report; and
 - (b) every member to whom the company must, as at the date of revision in relation to the revised financial statements, send a copy of the summary financial report in compliance with a request under section 444(1) or 445(2) of the Ordinance.
- (5) Where a member of a company has given the company a notice of intent under section 442(3) of the Ordinance, or a notice of revocation or notice of cessation of statutory election for the purposes of section 442(7)(b) or (9)(b) of the Ordinance, requesting a copy of the summary financial report to be sent to the member in a particular manner and that notice has effect in relation to the financial year concerned under section 442(5) or 443(5) of the Ordinance, any document required to be sent to the member under subsection (2) or (4) must be sent in that particular manner or in any other manner expressly agreed to by the company and the member.
- (6) Where a member of a company is regarded as having requested a copy of the summary financial report to be sent to the member in hard copy form under section 442(6)(b) or (8)(b) of the Ordinance, any document required to be sent to the member under subsection (2) or (4) must be sent in hard copy form or in any other manner expressly agreed to by the company and the member.
- (7) If subsection (2) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a

continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

25. Communication for purposes of sections 22 and 24 by website

- (1) This section applies if a company sends or supplies any document or information for the purposes of section 22 or 24 by making it available on a website.
- (2) For the purposes of section 833(3)(c) of the Ordinance, a notification must be sent within 28 days after the date of revision concerned.
- (3) The period specified for the purposes of section 833(3)(d)(i) of the Ordinance is—
 - (a) for a company that is required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date of the following general meeting in which a copy of the reporting documents for the financial year is required to be laid before the company under section 429 of the Ordinance;
 - (b) for a company that, by virtue of section 612(1) of the Ordinance, is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the circulation date of the written resolution mentioned in section 612(1)(a) of the Ordinance; or
 - (c) for a company that, by virtue of section 612(2) of the Ordinance, is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a

date falling within 28 days after the date of revision concerned and ending on the date on which a copy of the reporting documents for the financial year is required to be sent to every member under section 430(3) of the Ordinance.

(4) In this section—

circulation date (傳閱日期) has the meaning given by section 547(1) of the Ordinance.

(5) In this section, a reference to the reporting documents for a financial year is a reference to the reporting documents for a financial year within the meaning of section 357(2) of the Ordinance.

26. Company to lay revised financial statements or revised directors' report etc. before general meeting

(1) If the directors of a company cause any financial statements of the company to be revised or make revisions to a directors' report of the company after the original financial statements or original directors' report (as the case may be) has been laid before the company in general meeting under section 429 of the Ordinance, the directors must lay before the first general meeting of the company held after the date of revision—

(a) the revised financial statements or revised directors' report (as the case may be); and

(b) the auditor's report on the revised financial statements.

(2) If a director of a company fails to take all reasonable steps to secure compliance with subsection (1) as respects any revised financial statements or revised directors' report of the company, the director commits an offence and is liable to a fine of \$300,000.

(3) If a director of a company wilfully fails to take all reasonable steps to secure compliance with subsection (1) as respects any

revised financial statements or revised directors' report of the company, the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.

(4) If a person is charged with an offence under subsection (2), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—

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

(b) was in a position to discharge that duty.

27. Company to deliver revised financial statements or revised directors' report to Registrar

(1) If the directors of a company cause any financial statements of the company to be revised or make revisions to a directors' report of the company after a copy of the original financial statements or original directors' report (as the case may be) has been delivered to the Registrar for registration as required by section 662 of the Ordinance, the company must, within 28 days after the date of revision, deliver to the Registrar for registration—

(a) for any revised financial statements, a certified copy of the auditor's report on the revised financial statements and—

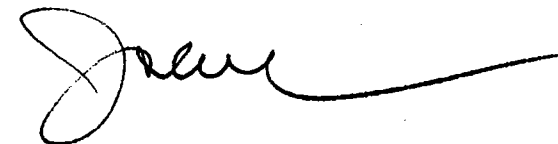
(i) for a revision by replacement, a certified copy of the revised financial statements; or

(ii) for a revision by supplementary note, a certified copy of the supplementary note; or

(b) for a revised directors' report—

(i) for a revision by replacement, a certified copy of the revised directors' report; or

- (ii) for a revision by supplementary note, a certified copy of the supplementary note.
- (2) If any copy mentioned in subsection (1) is not in English or Chinese, the copy must be accompanied by a certified translation of the copy in English or Chinese.
- (3) If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If a person is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order, do the act that the person has failed to do.
- (5) A person who contravenes an order under subsection (4) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (6) For the purposes of this section, a copy of any document of a company is a certified copy if it is certified as a true copy of the document by a director or company secretary of the company.



Financial Secretary

19 March 2013

Explanatory Note

The principal object of this Regulation is to provide for the application of the Companies Ordinance (28 of 2012) (***the Ordinance***) in relation to the financial statements, directors' reports or summary financial reports that have been revised under section 449 of the Ordinance.

2. Part 1 contains preliminary provisions. Section 2 defines or otherwise explains certain expressions used in the Regulation.
3. Part 2 provides for the contents of revised financial statements, revised directors' reports and revised summary financial reports.
4. Part 3 sets out the requirements relating to the approval and signature of revised statements of financial position, revised directors' reports and revised summary financial reports.
5. Part 4 states that, from the date of revision onwards, the Ordinance has effect with respect to the revised financial statements, revised directors' reports and revised summary financial reports.
6. Part 5 provides for the preparation of an auditor's report on revised financial statements.
7. Part 6 imposes obligations on a company to inform relevant parties of the revisions made to the company's financial statements or directors' reports.

Companies (Disclosure of Information about Benefits of Directors) Regulation

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Companies (Disclosure of Information about Benefits of Directors) Regulation

(Made by the Financial Secretary under sections 451 and 452(2) of the Companies Ordinance (28 of 2012))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day on which sections 451 and 452(2) of the Companies Ordinance (28 of 2012) come into operation.

2. Interpretation

In this Regulation—

- (a) a reference to a director, in relation to an undertaking that is not a company, is a reference to the person holding an office in that undertaking corresponding to that of a director of a company;
- (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; and
- (c) a reference to an undertaking has the meaning given by section 1 of Schedule 1 to the Ordinance.

Part 2

Disclosure of Directors' Emoluments and Retirement Benefits, Payments in Respect of Termination of Directors' Services and Consideration for Directors' Services

Division 1—Interpretation

3. Interpretation of Part 2

(1) In this Part—

contributions (供款), in relation to a retirement benefits scheme—

- (a) means the payments (including insurance premiums) made under the scheme by or in respect of persons rendering services in respect of which retirement benefits are payable under the scheme; but
- (b) excludes any payments made in respect of 2 or more such persons if the amount of the payments made in respect of each of those persons cannot be ascertained;

qualifying services (合資格服務), in relation to a person, means—

- (a) the person's services as a director of the company concerned; or
- (b) while a director of the company—
 - (i) the person's services as a director of a subsidiary undertaking of the company; or
 - (ii) the person's other services in connection with the management of the affairs of the company or a subsidiary undertaking of the company;

retirement benefits (退休利益), in relation to a person—

(a) includes—

(i) any lump sum, allowance, gratuity, periodical payment or other like benefit, any other property, or any other benefit whether in cash or otherwise—

(A) given or to be given on or after the retirement or death of the person (including any annuity or other benefit paid or payable under any insurance policy on or after the retirement or death of the person);

(B) given or to be given in anticipation of the retirement of the person; or

(C) given or to be given in connection with the person's service before the retirement or death of the person; and

(ii) any benefit paid or to be paid under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); but

(b) excludes—

(i) any benefit which has been or is to be afforded solely because of the person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment; and

(ii) any retirement gift of a value (or, in the case of a retirement gift made otherwise than in cash, an estimated money value) not exceeding \$50,000;

retirement benefits scheme (退休利益計劃) means a scheme for the provision of retirement benefits, and includes—

(a) a recognized occupational retirement scheme as defined by section 2 of the Inland Revenue Ordinance (Cap. 112);

- (b) a mandatory provident fund scheme as defined by that section; and
- (c) a retirement insurance scheme;

retirement insurance scheme (退休保險計劃)—

- (a) means a scheme for the provision of insurance coverage—
 - (i) on or after the retirement or death of a person; or
 - (ii) in connection with a person's service before the retirement or death of the person; but
 - (b) excludes a scheme for the provision of insurance coverage for a person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment.
- (2) In this Part, a reference to a director—
- (a) for the purposes of section 5, includes a former director; and
 - (b) for the purposes of section 6, includes a former director and shadow director.
- (3) For the purposes of subsection (2)(b), a reference to a shadow director is to be construed subject to section 516(5) of the Ordinance.
- (4) In this Part, a reference to a subsidiary undertaking of a company—
- (a) in relation to a person who, while a director of the company, is or was also a director of any other undertaking by virtue of the company's nomination (whether direct or indirect), includes that other undertaking, whether or not that other undertaking is or was in fact a subsidiary undertaking of the company;

- (b) for the purposes of section 7, is a reference to a subsidiary undertaking of the company at the time the qualifying services of the person concerned are or were rendered; and
- (c) in paragraph (b) of the definition of *qualifying services* in subsection (1)—
 - (i) for the purposes of sections 4, 5 and 7, is a reference to a subsidiary undertaking of the company at the time the qualifying services of the person concerned are or were rendered; and
 - (ii) for the purposes of section 6, is a reference to a subsidiary undertaking of the company immediately before the loss of office as a director of the company.

Division 2—Information to be Contained in Notes to Financial Statements

4. Information about directors' emoluments

- (1) The information about directors' emoluments prescribed by subsection (2) must be contained in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in subsection (1) is—
 - (a) the aggregate amount of the emoluments paid to or receivable by the directors of the company in respect of their qualifying services; and
 - (b) if any such emoluments consist of a benefit otherwise than in cash, the nature of that benefit.
- (3) The information must distinguish between—

- (a) the emoluments paid or receivable in respect of a person's services as a director, whether of the company or its subsidiary undertaking; and
 - (b) the emoluments paid or receivable in respect of that person's other services in connection with the management of the affairs of the company or its subsidiary undertaking.
- (4) Any emoluments paid or receivable in respect of a person accepting office as a director are to be treated as emoluments paid or receivable in respect of that person's services as a director.
- (5) For the purposes of this section, if any emoluments consist of a benefit otherwise than in cash, to that extent, a reference to the amount of the emoluments is a reference to the estimated money value of that benefit.
- (6) In this section—
- emoluments** (薪酬), in relation to a director—
- (a) includes—
 - (i) the director's fees, percentages, salaries and bonuses;
 - (ii) any sums paid to the director by way of expenses allowance less the amounts actually spent on the expenses for which the allowance was made;
 - (iii) any contributions paid under a retirement benefits scheme, by any person other than the director, in respect of the director; and
 - (iv) any other benefits received by the director, whether in cash or otherwise; but
 - (b) excludes any retirement benefits to which the director is entitled under any retirement benefits scheme.

5. Information about directors' retirement benefits

- (1) The information about directors' retirement benefits prescribed by subsection (2) must be contained in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in subsection (1) is—
 - (a) the aggregate amount of the retirement benefits paid to or receivable by the directors of the company in respect of their qualifying services; and
 - (b) if any such retirement benefits consist of a benefit otherwise than in cash, the nature of that benefit.
- (3) The information must distinguish between—
 - (a) the retirement benefits paid or receivable in respect of a person's services as a director, whether of the company or its subsidiary undertaking; and
 - (b) the retirement benefits paid or receivable in respect of that person's other services in connection with the management of the affairs of the company or its subsidiary undertaking.
- (4) For the purposes of subsections (2) and (3), any amount of the retirement benefits paid or receivable under a retirement benefits scheme is to be disregarded if the contributions made under the scheme are substantially adequate for the maintenance of the scheme.
- (5) For the purposes of this section, if any retirement benefits consist of a benefit otherwise than in cash, to that extent, a reference to the amount of the retirement benefits is a reference to the estimated money value of that benefit.

6. Information about payments made or benefit provided in respect of termination of directors' services

- (1) The information about payments made or benefit provided in respect of the termination of the services of directors, whether in the capacity of directors or in any other capacity while directors, prescribed by subsection (2) must be contained in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in subsection (1) is—
 - (a) the aggregate amount of the payments for loss of office (within the meaning of section 517 of the Ordinance) made to or receivable by the directors of the company, whether in cash or otherwise, in respect of the termination of the qualifying services of the directors; and
 - (b) if any such payments for loss of office consist of a benefit otherwise than in cash, the nature of that benefit.
- (3) The information must distinguish between—
 - (a) the payments made to or receivable by a person for the loss of office as a director, whether of the company or its subsidiary undertaking; and
 - (b) the payments made to or receivable by that person for the loss of any other office in connection with the management of the affairs of the company or its subsidiary undertaking.
- (4) The information must also distinguish between—
 - (a) the amounts paid by or receivable from the company;
 - (b) the amounts paid by or receivable from the subsidiary undertakings of the company; and
 - (c) the amounts paid by or receivable from any other person.

- (5) For the purposes of this section, if any payments for loss of office consist of a benefit otherwise than in cash, to that extent, a reference to the amount of the payments is a reference to the estimated money value of that benefit.

7. Information about consideration provided to or receivable by third parties for making available directors' services

- (1) The information about consideration provided to or receivable by any third party for making available the services of a person as a director of a company, or in any other capacity while a director, prescribed by subsection (2) must be contained in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in subsection (1) is—
 - (a) the aggregate amount of the consideration provided to or receivable by the third party, whether in cash or otherwise, for making available the qualifying services of such a person; and
 - (b) if any such consideration consists of a benefit otherwise than in cash, the nature of that benefit.
- (3) In this section, a reference to any third party is a reference to any person other than—
 - (a) the director;
 - (b) a connected entity of the director;
 - (c) the company; or
 - (d) a subsidiary undertaking of the company.
- (4) For the purposes of this section, if any consideration consists of a benefit otherwise than in cash, to that extent, a reference to the amount of the consideration is a reference to the estimated money value of that benefit.

Division 3—Supplementary Provisions

8. Only information contained in company's records required to be given

This Part requires information to be given by a company only in so far as—

- (a) the information is contained in the company's records (as defined by section 838(1) of the Ordinance); or
- (b) the company has the right to obtain it from the persons concerned.

9. Amounts paid or receivable in which period to be shown

- (1) For the purposes of this Part, an amount shown in the notes to the financial statements for a financial year must be the amount of—
 - (a) all relevant sums receivable in respect of that year (whenever paid); or
 - (b) in the case of sums not receivable in respect of a period, the sums paid during that year.
- (2) If an amount is shown for a financial year in the notes to the financial statements for that year in relation to the information prescribed by this Part, the corresponding amount for the immediately preceding financial year must also be shown in the notes.

10. Payments made by or to which person to be shown

- (1) For the purposes of this Part, an amount shown in the notes to the financial statements of a company in relation to the information prescribed by this Part must include all relevant sums, whether paid by or receivable from the company or its subsidiary undertaking or any other person.

(2) In this Part, a reference to a payment to or receivable by a director includes—

- (a) a payment to or receivable by a connected entity of the director; and
- (b) a payment to a person made or to be made at the direction of, or for the benefit of, the director or a connected entity of the director.

(3) In this Part, a reference to a payment by a person includes a payment by another person made at the direction of, or on behalf of, the person.

11. Payments accounted for not to be included until liability released or not enforced

- (1) For the purposes of this Part, an amount shown in the notes to the financial statements of a company must not include the amount of any payment to be accounted for—
 - (a) to the company or any subsidiary undertaking of the company; or
 - (b) under section 529 of the Ordinance, to those who have sold their shares as a result of a takeover offer (within the meaning of section 689 of the Ordinance) made.
- (2) If—
 - (a) the amount of any payment received in a financial year is not shown in the notes to the financial statements for that year on the ground that the person receiving the payment is liable to account for it; and
 - (b) the liability is, wholly or partly, released subsequently or is not enforced within 2 years after the date on which the payment is received by the person,the amount of the payment must (to the extent that the liability is so released or not enforced) be shown in the notes to the

first financial statements in which it is practicable to show it, and must be distinguished from the amounts to be shown apart from this provision.

12. How to distinguish between different payments

Subject to any express provision to the contrary, if any distinction is required to be made in any information to be shown in accordance with this Part, the directors may, for the purpose of complying with the requirement, apportion any payment between the matters in respect of which the payment is made or receivable in the manner that the directors think fit.

Part 3

Disclosure of Loans, Quasi-loans and Other Dealings in Favour of Directors

Division 1—Interpretation

13. Interpretation of Part 3

(1) In this Part—

authorized financial institution (認可財務機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155);

credit transaction (信貸交易) has the meaning given by section 494 of the Ordinance;

guarantee (擔保) means a guarantee as defined by section 491(1) of the Ordinance;

holding company (控股公司) includes a parent undertaking that is a company;

quasi-loan (類似貸款) has the meaning given by section 493 of the Ordinance;

specified company (指明公司) means a specified company as defined by section 491(1) of the Ordinance;

transaction (交易) means—

- (a) any loan, quasi-loan or credit transaction; or
- (b) any guarantee or security in connection with any loan, quasi-loan or credit transaction.

(2) In this Part, a reference to a director includes a shadow director.

- (3) For the purposes of subsection (2), a reference to a shadow director is to be construed subject to section 491(2) of the Ordinance.
- (4) In this Part, a reference to a subsidiary undertaking of a company is a reference to such a subsidiary undertaking at the end of the company's financial year, whether or not it was in fact a subsidiary undertaking of the company on the date of the transaction in question.
- (5) In this Part, a reference to a controlled body corporate, in relation to a director, is a reference to a body corporate controlled by the director within the meaning of section 492 of the Ordinance.
- (6) In this Part, a reference to a loan, quasi-loan or credit transaction, or a guarantee or security in connection with a loan, quasi-loan or credit transaction, includes—
 - (a) any arrangement under which the loan or quasi-loan is made or the credit transaction is entered into, or under which the guarantee is given or security is provided; and
 - (b) any arrangement for an assignment or assumption of any rights, obligations or liabilities under the loan, quasi-loan or credit transaction or under the guarantee or security.
- (7) In this Part, a reference to a person for whom a transaction is entered into has the meaning given by section 495 of the Ordinance and, for the purposes of this subsection, a reference to an arrangement in subsection (2) of that section is a reference to an arrangement referred to in subsection (6)(a) or (b).

14. Application of Part 3

- (1) This Part applies to a transaction that—
 - (a) was entered into during the financial year concerned; or

- (b) subsisted at any time during that year.
- (2) This Part applies whether or not the transaction is prohibited under Division 2 of Part 11 of the Ordinance.

Division 2—Information to be Contained in Notes to Financial Statements

15. Information about loans, quasi-loans and other dealings in favour of directors, controlled bodies corporate and connected entities

- (1) The information about loans, quasi-loans and other dealings in favour of directors, their controlled bodies corporate and their connected entities prescribed by subsection (2) must be contained in the notes to the financial statements of a company for a financial year.
- (2) The information referred to in subsection (1) is—
 - (a) the particulars of any transaction entered into by the company for a person who at any time during the financial year was—
 - (i) a director of the company or of its holding company;
 - (ii) a controlled body corporate of such a director; or
 - (iii) in the case of a specified company, a connected entity of such a director; and
 - (b) the particulars of any transaction entered into by a subsidiary undertaking of the company for a person who at any time during the financial year was a director of the company.
- (3) The particulars referred to in subsection (2)(a) and (b) are—
 - (a) the name of the person for whom the transaction was entered into, and—

- (i) if the person was a controlled body corporate of a director of the company or of its holding company, the name of that director; or
 - (ii) if the person was a connected entity of a director of the company or of its holding company, the name of that director and the nature of the connection;
- (b) if the transaction consists of a loan, quasi-loan or credit transaction—
 - (i) the principal terms of the loan, quasi-loan or credit transaction, including the amount payable under it (whether in a lump sum or by instalments, or by way of periodical payments or otherwise), the rate of interest (if any) and the security for it (if any);
 - (ii) the amount outstanding, in respect of the principal and interest or otherwise, on the loan, quasi-loan or credit transaction, both at the beginning and at the end of the financial year;
 - (iii) (if, at different times during the financial year, the amounts so outstanding are different) the greatest of those amounts;
 - (iv) the amount (if any) that, having fallen due, has not been paid; and
 - (v) the amount of any provision made in respect of any failure or anticipated failure to repay the whole or part of the loan, quasi-loan or credit transaction, or to pay the whole or part of any interest or otherwise on the loan, quasi-loan or credit transaction; and
- (c) if the transaction consists of a guarantee or security in connection with a loan, quasi-loan or credit transaction—

- (i) the amount of maximum liability that may be incurred under the guarantee or security, both at the beginning and at the end of the financial year;
- (ii) (if, at different times during the financial year, the amounts of maximum liability that may be so incurred are different) the greatest of those amounts; and
- (iii) the amount paid and the amount of any liability incurred during the financial year for the purpose of fulfilling the guarantee or discharging the security, including any loss incurred by reason of the enforcement of the guarantee or security.

Division 3—Other Requirements Prescribed for Purposes of this Part

16. Provisions for statement in lieu of information prescribed by section 15

- (1) If the requirement prescribed by subsection (2) is complied with, the financial statements for a financial year are not required, by virtue of section 383(3) of the Ordinance, to contain—
 - (a) the particulars specified in section 15(3)(b) in respect of a quasi-loan or credit transaction; and
 - (b) the particulars specified in section 15(3)(c) in respect of a guarantee or security in connection with a quasi-loan or credit transaction.
- (2) The requirement referred to in subsection (1) is that the notes to the financial statements for the financial year must contain a statement showing, in respect of each person named in the notes under section 15(3)(a), the following information—

- (a) in relation to all the quasi-loans made to and credit transactions entered into for each such person—
 - (i) the aggregate of the amounts outstanding referred to in section 15(3)(b)(ii) on those quasi-loans and credit transactions;
 - (ii) the aggregate of the amounts referred to in section 15(3)(b)(iv) in respect of those quasi-loans and credit transactions; and
 - (iii) the aggregate of the amounts of provision referred to in section 15(3)(b)(v) in respect of those quasi-loans and credit transactions; and
- (b) in relation to all the guarantees and security in connection with every quasi-loan made to or every credit transaction entered into for each such person—
 - (i) the aggregate of the amounts of maximum liability referred to in section 15(3)(c)(i) that may be incurred under those guarantees and security; and
 - (ii) the aggregate of the amounts referred to in section 15(3)(c)(iii) in respect of those guarantees and security.

17. Provisions applicable to company that is or where its subsidiary undertaking is authorized financial institution

- (1) If a company is an authorized financial institution, the notes to the financial statements of the company for a financial year must contain a statement showing the following information—
 - (a) the aggregate of the following amounts at the end of the financial year—
 - (i) the amount outstanding, in respect of the principal and interest or otherwise, on all loans and quasi-

- loans made by the company to, and all credit transactions entered into by the company as a creditor for, persons each of whom was, at any time during the financial year—
 - (A) a director of the company or of its holding company;
 - (B) a controlled body corporate of such a director; or
 - (C) in the case of a specified company, a connected entity of such a director; and
 - (ii) the amount of maximum liability that may be incurred under all guarantees given, and all security provided, by the company in connection with any loan or quasi-loan made to, or any credit transaction entered into for, any of the persons referred to in subparagraph (i); and
 - (b) (if, at different times during the financial year, the aggregates of the amounts referred to in paragraph (a)(i) and (ii) are different) the greatest of those aggregates.
- (2) If any subsidiary undertaking of a company is an authorized financial institution, the notes to the financial statements of the company for a financial year must contain a statement showing the following information—
- (a) the aggregate of the following amounts at the end of the financial year—
 - (i) the amount outstanding, in respect of the principal and interest or otherwise, on all loans and quasi-loans made by the institution to, and all credit transactions entered into by the institution as a creditor for, persons each of whom was, at any

- time during the financial year, a director of the company; and
- (ii) the amount of maximum liability that may be incurred under all guarantees given, and all security provided, by the institution in connection with any loan or quasi-loan made to, or any credit transaction entered into for, any of the persons referred to in subparagraph (i); and
- (b) (if, at different times during the financial year, the aggregates of the amounts referred to in paragraph (a)(i) and (ii) are different) the greatest of those aggregates.
- (3) In the case of a transaction entered into for any person by a company that is, or a company's subsidiary undertaking that is, an authorized financial institution, the information prescribed by section 15 is not required, by virtue of section 383(3) of the Ordinance, to be contained in the financial statements of the company for a financial year if—
- (a) the value of the transaction is not greater, and the terms of it are not more favourable, than what is reasonable to expect the institution to have offered to a person of the same financial standing but unconnected with the institution; or
 - (b) in any other case, the aggregate of the following amounts does not exceed \$10,000,000 or an amount equivalent to 10% of the paid up capital and reserves of the institution, whichever is the lower—
 - (i) the amount outstanding, in respect of the principal and interest or otherwise, during the financial year on all loans and quasi-loans (except those falling within paragraph (a)) made by the institution to, and all credit transactions (except those falling within that paragraph) entered into by the

- institution as a creditor for, that person or (if, at different times during the financial year, the amounts so outstanding are different) the greatest of those amounts; and
- (ii) the amount of maximum liability that may be incurred during the financial year under all guarantees (except those falling within paragraph (a)) given, and all security (except those falling within that paragraph) provided, by the institution in connection with any loan or quasi-loan made to, or any credit transaction entered into for, that person or (if, at different times during the financial year, the amounts of maximum liability that may be so incurred are different) the greatest of those amounts.

Division 4—Supplementary Provisions

18. Exemption for employee

This Part does not apply to a loan or quasi-loan made by a company or its subsidiary undertaking to an employee of the company or the subsidiary undertaking, or a credit transaction entered into by a company or its subsidiary undertaking as a creditor for such an employee, if—

- (a) the value of the loan, quasi-loan or credit transaction does not exceed \$100,000;
- (b) the loan or quasi-loan is certified by the directors of the company or the subsidiary undertaking to have been made, or the credit transaction is so certified to have been entered into, in accordance with the relevant practice adopted or about to be adopted by the company or the subsidiary undertaking;

- (c) the loan or quasi-loan is not made, or the credit transaction is not entered into, by the company under a guarantee given, or security provided, by a subsidiary undertaking of the company; and
- (d) the loan or quasi-loan is not made, or the credit transaction is not entered into, by the subsidiary undertaking under a guarantee given, or security provided, by the company or any other subsidiary undertaking of the company.

19. How to determine value of transaction

For the purposes of this Part, section 497 of the Ordinance applies in determining the value of a transaction.

Part 4

Disclosure of Directors' Material Interests in Transactions, Arrangements or Contracts

Division 1—Interpretation

20. Interpretation of Part 4

In this Part, a reference to a director includes a shadow director.

21. Application of Part 4

This Part applies to a transaction, arrangement or contract that—

- (a) was entered into during the financial year concerned; or
- (b) subsisted at any time during that year.

Division 2—Information to be Contained in Notes to Financial Statements

22. Information about material interests of directors in transactions, arrangements or contracts

- (1) The information about material interests of directors in transactions, arrangements or contracts entered into by a company prescribed by subsection (2) must be contained in the notes to the financial statements of the company for a financial year.
- (2) The information referred to in subsection (1) is the particulars of any transaction, arrangement or contract—
 - (a) entered into by the company; and

- (b) in which a person who at any time during the financial year was a director of the company had, directly or indirectly, a material interest.
- (3) The particulars referred to in subsection (2) 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 during 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 that director is treated as having the material interest by virtue of subsection (4)) the name of the director's connected entity and the nature of the connection.
- (4) 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 the public company if a connected entity of that director has a material interest in that transaction, arrangement or contract.
- (5) 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.
- (6) For the purposes of subsection (5), 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.

- (7) 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.

Division 3—Supplementary Provisions

23. Exemption under Part 4

This Part does not apply to—

- (a) a company that falls within the reporting exemption (within the meaning of Division 2 of Part 9 of the Ordinance) for the financial year concerned;
- (b) a transaction, arrangement or contract between the company and another undertaking in which a director of the company has an interest only by virtue of being a director of that other undertaking; or
- (c) a director's contract of service.



Financial Secretary

19 March 2013

Explanatory Note

The main object of this Regulation is to prescribe the information required by section 383 of the Companies Ordinance (28 of 2012) to be contained in the notes to the financial statements of a company. In particular—

- (a) Part 2 prescribes information about—
 - (i) directors' emoluments;
 - (ii) directors' retirement benefits;
 - (iii) payments made or benefit provided in respect of the termination of the services of directors, whether in the capacity of directors or in any other capacity while directors; and
 - (iv) consideration provided to or receivable by third parties for making available the services of persons as directors, or in any other capacity while directors;
- (b) Part 3 prescribes information about loans, quasi-loans and other dealings in favour of directors, their controlled bodies corporate and their connected entities, and, furthermore—
 - (i) prescribes requirements in relation to alternative information that may be provided by way of a statement in the notes to the financial statements; and
 - (ii) provides for disclosure requirements in relation to authorized financial institutions; and
- (c) Part 4 prescribes information about directors' material interests in transactions, arrangements or contracts.