

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Ord. No. 28 of 2012)

Companies (Words and Expressions in Company Names) Order
Companies (Disclosure of Company Name and Liability Status) Regulation
Companies (Accounting Standards (Prescribed Body)) Regulation
Companies (Directors' Report) Regulation
Companies (Summary Financial Reports) Regulation

INTRODUCTION

The Financial Secretary has made the following pieces of subsidiary legislation for the implementation of the new Companies Ordinance ("CO") on 29 January 2013 –

- _____ (a) the Companies (Words and Expressions in Company Names) Order (Annex A) in exercise of the power under section 101 of the new CO;
- _____ (b) the Companies (Disclosure of Company Name and Liability Status) Regulation (Annex B) in exercise of the power under sections 659 and 660 of the new CO;
- _____ (c) the Companies (Accounting Standards (Prescribed Body)) Regulation (Annex C) in exercise of the power under section 452(1) of the new CO;
- _____ (d) the Companies (Directors' Report) Regulation (Annex D) in exercise of the power under section 452(3) of the new CO; and
- _____ (e) the Companies (Summary Financial Reports) Regulation (Annex E) in exercise of the power under section 452(4) and (5) of the new CO.

JUSTIFICATIONS

2. The new CO contains provisions which empower respectively the Financial Secretary and the Chief Justice to make subsidiary legislation on various administrative, procedural and technical matters. For the implementation of the new CO, a total of 13 pieces of subsidiary legislation will be made. As these 13 pieces of subsidiary legislation will form part of the new regime, they need to be enacted before the new CO can be brought into operation, tentatively in the first quarter of 2014. The Administration will therefore make them progressively by batches in the first half of 2013. The first batch comprises the five pieces of subsidiary legislation made by the Financial Secretary covered under this Legislative Council Brief¹. It does not include any provisions related to the new arrangement concerning the inspection of the Companies Register under the new CO. The subsidiary legislation related to the new arrangement is expected to be tabled before the Legislative Council in May 2013.

THE SUBSIDIARY LEGISLATION

Companies (Words and Expressions in Company Names) Order

3. Section 100(2)(b) of the new CO retains an existing arrangement under which approval has to be sought from the Companies Registry should a company wish to register a name containing certain words or expressions as specified in the relevant subsidiary legislation. This Order sets out the updated list of words and expressions. It basically follows the existing list in the Companies (Specification of Names) Order (Cap.32E) but with the addition of “levy” and “tourism board” (and their

¹ Other pieces of subsidiary legislation planned to be made in subsequent batches include –

- (a) Company Records (Inspection and Provision of Copies) Regulation;
- (b) Companies (Residential Addresses and Identification Numbers) Regulation;
- (c) Companies (Disclosure of Information about Benefits of Directors) Regulation;
- (d) Companies (Revision of Financial Statements and Reports) Regulation;
- (e) Companies (Model Articles) Notice;
- (f) Companies (Non-Hong Kong Companies) Regulation;
- (g) Companies (Fees) Regulation; and
- (h) Companies (Unfair Prejudice Petitions) Proceedings Rules.

All of the above subsidiary legislation will be made by the Financial Secretary and subject to the negative vetting procedures, except item (h) which will be made by the Chief Justice and subject to positive vetting procedures.

Chinese equivalents) to guard against the registration of a company name purporting to be responsible for collection of levies or to be connected in some way with the Hong Kong Tourism Board. In updating the list, several words and expressions in Cap.32E have not been retained as they are either duplicative² or no longer required³. The list of words and expressions is at the *Schedule* to this Order.

Companies (Disclosure of Company Name and Liability Status) Regulation

4. Sections 93 and 94 of the existing CO stipulate the requirements concerning the display and disclosure of a company's registered name at the company's offices and places in which its business is carried on. This Regulation, while re-enacting the majority of existing requirements in this respect, introduces the following changes –

- (a) the requirement for a company to paint or affix its name in a conspicuous position outside of its office (or place in which its business is carried on) is replaced by the requirement for its name to be displayed at the registered office and business venue⁴ and so positioned that it can be easily seen by any visitor, with a view to providing more flexibility to companies;
- (b) a business venue is subject to the requirement in paragraph (a) only if it is open to the public;
- (c) taking into account the usual practices of company services providers and liquidators, the requirement to display the name of the company concerned is dispensed with where –
 - (i) the company has had no accounting transactions since incorporation; or
 - (ii) a liquidator, receiver or manager of the property of the company has been appointed and the location concerned is also a place of business of the liquidator, receiver or manager; and
- (d) considering that it is common for a location to serve as the registered offices of multiple companies (such as in the case

² The Chinese expressions “總商會” and “受託人” are considered duplicative as their usage will still be subject to approval under section 100(b)(ii) of the new CO by virtue of the fact that “商會” and “受託” are retained on the list.

³ These are “Cooperative”, “Building Society”, “Mass Transit”, “Underground Railway” and “Municipal” (and their Chinese equivalents).

⁴ A business venue refers to an office and place, other than the registered office, which is open to the public and in which the company's business is carried on.

of the office of a company services provider), provisions are also added to accommodate the use of electronic devices for the display of company names at a location shared by more than six companies⁵.

5. The obligation to state a company's registered name (and its liability status where applicable) in all communication documents⁶ and transaction instruments⁷ of the company is re-enacted and extended to cover company websites. This Regulation further clarifies that the obligation also applies to any such documents and instruments in electronic form.

6. In addition, under the existing CO, both the company and the officers in default can be held liable if a company fails to display its name at its premises, whereas only the former can be held liable in the case of failure to state the company's name on communication documents or transaction instruments or to state the liability status. Considering the similar nature and context of these requirements, this Regulation aligns these offences such that the company concerned and every responsible person of the company can be held liable.

7. This Regulation comprises seven sections –

- (a) *Sections 1 and 2* provide for the commencement of this Regulation and interpretation of the terms used;
- (b) *Section 3* specifies that a company's registered name must be displayed continuously in legible characters at its registered office and every business venue such that it can be easily seen by any visitor to the location, subject to the prescribed exceptions;
- (c) *Section 4* provides for the communication documents or transaction instruments of a company on which the company's registered name must appear. A company is also required under this section to state its registered name on its websites;
- (d) *Section 5* stipulates the requirements for a company to

⁵ Specifically, the requirement for display of a company name will be complied with provided that the company name can be displayed in such cases –

(a) for at least 15 continuous seconds once in every four minutes; or

(b) within four minutes after a request to make the display is made through the device.

⁶ Communication documents include business letters, notices and other official publications.

⁷ Transaction instruments include contracts, deeds, bills of exchanges, invoices, receipts, etc.

disclose its limited liability status or otherwise in the prescribed manner;

- (e) *Section 6* allows the use of certain abbreviations in the display of a company's registered name; and
- (f) *Section 7* creates offences in respect of the non-compliance of requirements under this Regulation.

Companies (Accounting Standards (Prescribed Body)) Regulation

8. Section 380(4)(b) and (8)(b) of the new CO stipulates that the financial statements of a company must comply with the applicable statements of standard accounting practices issued or specified by a body prescribed by subsidiary legislation made pursuant to section 452(1). *Section 2* of this Regulation specifies the Hong Kong Institute of Certified Public Accountants ("HKICPA") as such a body⁸.

Companies (Directors' Report) Regulation

9. As in the existing CO, the new CO will continue to require the preparation of a directors' report for laying before the company in its general meeting. This Regulation re-enacts certain requirements concerning the contents of a directors' report (which are currently prescribed in section 129D(3) of the existing CO) with suitable modifications. To enhance corporate governance and transparency, the scope of disclosure is expanded to require the inclusion of –

- (a) information on equity-linked agreements entered into by a company; and
- (b) a summary of reasons given by any director who has resigned or declined to stand for re-election because of disagreement with the board of directors. This requirement will not apply to companies that prepare simplified reports.

10. Other changes to the requirements on the contents of a directors' report include –

- (a) raising the upper limit of donations made by the company and its subsidiary undertakings which are exempted from

⁸ The accounting standards prescribed by the HKIPCA include the Hong Kong Financial Reporting Standards ("HKFRSs"), the Hong Kong Financial Reporting Standard for Private Entities ("HKFRS for PE") and the Small and Medium-sized Entities Financial Reporting Standard ("SME-FRS").

disclosure to \$10,000 (currently \$1,000);

- (b) restating the new disclosure requirement regarding permitted indemnity provisions of directors provided under section 470 of the new CO such that non-compliance will constitute an offence;
- (c) removing the requirement for disclosure of issue of debentures or arrangement for enabling directors to acquire benefits by means of the acquisition of debentures; and
- (d) moving the requirement for disclosure concerning contracts that involve directors' material interests to the notes to financial statements under section 383(1)(e) of the new CO.

11. This Regulation comprises nine sections –

- (a) *Sections 1 and 2* provide for the commencement of this Regulation and the interpretation of the terms used; and
- (b) *Sections 3 to 9* provide for the information that is required to be contained in a directors' report, including the new requirements to provide information on equity-linked agreements entered into by the company, the reasons for the resignation of any director and directors' permitted indemnity provisions.

Companies (Summary Financial Reports) Regulation

12. The new CO expands and modifies an existing arrangement for eligible companies to prepare a financial report in summary form ("summary financial report") for sending to its members in place of the reporting documents⁹ from which the report is derived. This Regulation sets out the requirements on the form and contents of a summary financial report as well as the relevant notifications and notices. It basically follows the existing Companies (Summary Financial Reports of Listed Companies) Regulation (Cap.32M), with necessary modifications made to tie in with the changes to the arrangements concerning summary financial reports brought by the new CO (please also refer to paragraph 28 for details) as well as to align with other requirements concerning the reporting documents under Part 9 of the new CO. A member can choose to receive from the company a copy of the summary financial report in hard copy form, in electronic form, through the company's website or not

⁹ *Reporting documents* in respect of a financial year is defined in section 357(2) of the new CO to mean the financial statements, directors' report and auditor's report for the financial year. The coverage is roughly equivalent to *relevant financial documents* as in the existing CO except that "financial statements" are included in place of "accounts".

to receive any copies of the company's reporting documents at all.

13. This Regulation comprises three parts, namely –
- (a) *Part 1* provides for the commencement of this Regulation and the interpretation of the terms used;
 - (b) *Part 2* provides for the information and statements that a summary financial report must contain. The information must be derived from the reporting documents of the company to which the summary financial report relates; and
 - (c) *Part 3* provides for the form and contents of a notification to any member for ascertaining the member's intention to receive summary financial reports. It specifies the particulars to be included in, and the effect of, a notice of intent, a notice of revocation¹⁰ and a notice of cessation of statutory election¹¹. This Part also imposes requirements to provide prepaid postage on the card or document for sending a notice of intent by the member.

LEGISLATIVE TIMETABLE

14. The five pieces of subsidiary legislation will be gazetted on 1 February 2013 and tabled at the Legislative Council for negative vetting on 6 February 2013. They are expected to come into operation together with the new CO, tentatively in the first quarter of 2014.

IMPLICATIONS OF THE PROPOSALS

15. 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.

¹⁰ A member or potential member may revoke the notice of intent given previously and indicate a new preference by giving a notice of revocation to the company.

¹¹ Statutory election refers to the case when a member or potential member is deemed to have elected to receive summary financial reports in hard copy form by default. A member or potential member may give the company a notice of cessation of statutory election to indicate a new preference.

16. The five 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

17. We conducted a public consultation on the draft provisions of subsidiary legislation to be made under the new CO (including the five pieces of subsidiary legislation covered by this Legislative Council Brief) 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 of the proposed subsidiary legislation. Insofar as the five pieces of subsidiary legislation are concerned, the respondents offered both general and technical comments on the draft provisions. The Standing Committee on Company Law Reform was consulted in the process. We have also briefed the Panel on Financial Affairs of the Legislative Council on the subsidiary legislation to be made under the new CO on 7 January 2013. We have taken into account the comments received during public consultation when making the five pieces of subsidiary legislation.

PUBLICITY

18. A spokesman will be arranged to handle media enquiries.

BACKGROUND

Rewrite of the Companies Ordinance

19. 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 Companies Bill (“CB”) into the Legislative Council 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 (Words and Expressions in Company Names) Order

20. Section 20 of the existing CO provides that prior approval is required should a company wish to register a name containing certain words or expressions. The words and expressions are set out in the Companies (Specification of Names) Order (Cap.32E). The above arrangement is re-enacted in section 100(2)(b) of the new CO. Section 101 of the new CO further provides that the Financial Secretary may make an order to specify such words and expressions.

Companies (Disclosure of Company Name and Liability Status) Regulation

21. Section 93 of the existing CO requires a company to paint or affix its name in legible characters in a conspicuous place outside every office and place in which its business is carried on. This section further provides that a company shall state its name in its communication documents and transaction instruments. Permitted abbreviations of terms such as “HK”, “Co.” and “Ltd.” that may be used in the display of the company’s registered name are prescribed under section 94.

22. Under the new CO, section 659 provides for the making of subsidiary legislation to prescribe the aforesaid matters that used to be set out in sections 93 and 94 of the existing CO. Section 660 further provides that the subsidiary legislation may also provide for the criminal consequences of contravention of such requirements.

Companies (Accounting Standards (Prescribed Body)) Regulation

23. Under the existing CO, the balance sheet and profit and loss account of a company must meet the requirements as set out in Schedule 10 of that Ordinance that comprises a detailed list of items to be disclosed. For companies which prepare their accounts in simplified form pursuant to section 141D of the existing CO, the disclosure requirements as set out in Schedule 11 of that Ordinance apply to the balance sheet instead. The accounts of a company must also comply with the reporting standards issued by the HKICPA.

24. As accounting practices and requirements are constantly evolving in line with international development, the disclosure requirements applicable to financial statements will be streamlined under the new CO regime. Specifically, to avoid potential conflict, both Schedules 10 and 11 of the existing CO will be repealed while the reporting standards issued by the HKICPA will be given indirect statutory

recognition. This displaces the need to stipulate the detailed disclosure requirements for financial statements in our legislation.

Companies (Directors' Report) Regulation

25. Section 129D of the existing CO stipulates that a directors' report shall be attached to the company's balance sheet. The report shall be approved by the board of directors and signed either by the chairman of the board meeting, or the company secretary, on behalf of the board. A list of matters to be stated in a directors' report is prescribed in section 129D(3). These matters include the principal activities of the company, matters relating to shares issued, management contracts, arrangements and other contracts involving director's interest or benefits, donations and any other matters which are material for appreciation of the state of the company's affairs.

26. In the new CO, the requirements concerning the preparation and approval of a directors' report are generally restated in sections 388 and 391 respectively. Section 390 provides for the inclusion of, among others, the names of directors and information about the principal activities of the company (and its subsidiary undertakings in the case of a holding company); section 543 requires the disclosure of information on management contracts; and section 452(3) provides that information to be contained in a directors' report and other requirements may be prescribed by subsidiary legislation.

Companies (Summary Financial Reports) Regulation

27. Under the existing CO, sections 141CA to 141CG provide that a listed company may prepare a summary financial report for sending to its members in place of the relevant financial documents from which the report is derived. The company has to send a notification to ascertain the intent of individual members, who may then indicate agreement to receive summary financial reports by giving a notice of intent to the company.

28. The aforesaid arrangement is retained as sections 437 to 446 of the new CO with several modifications, notably (i) in addition to listed companies, any other companies not preparing simplified reports will also be eligible to prepare summary financial reports; (ii) an opt-out regime will be adopted, i.e. a member will receive a copy of the summary financial report in hard copy form by default if the member has not given a notice of intent to the company before a specified date, whereas the

member is still entitled to request for a copy of the reporting documents for the financial year concerned; and (iii) a potential member, in addition to members of the company, may also give notices of intent. For a summary financial report as well as the relevant notifications and notices, their form and contents must comply with any requirements prescribed by subsidiary legislation made pursuant to section 452(4) and (5) of the new CO.

ENQUIRIES

29. Any enquiry on this Legislative Council 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
30 January 2013

Companies (Words and Expressions in Company Names) Order

(Made by the Financial Secretary under section 101 of the Companies Ordinance (28 of 2012))

1. Commencement

This Order comes into operation on the day on which section 101 of the Companies Ordinance (28 of 2012) comes into operation.

2. Specification of words and expressions for purposes of section 100(2)(b) of Ordinance

The words and expressions set out in the Schedule are specified for the purposes of section 100(2)(b) of the Ordinance.

Schedule

[s. 2]

Words and Expressions

chamber of commerce

kaifong

levy

savings

tourism board

tourist association

trust

trustee

受託

信託

旅遊協會

旅遊發展局

商會

街坊

徵費

儲蓄

Financial Secretary

2013

Explanatory Note

Section 100(2)(b) of the Companies Ordinance (28 of 2012) provides that except with the prior approval of the Registrar of Companies appointed under section 21(1) of the Ordinance, a company must not be registered by a name that contains any word or expression for the time being specified in an order under section 101 of the Ordinance.

2. This Order, which is made under section 101 of the Ordinance, is to specify the words and expressions for the purposes of section 100(2)(b) of the Ordinance.

Companies (Disclosure of Company Name and Liability Status) Regulation

(Made by the Financial Secretary under sections 659 and 660 of the Companies Ordinance (28 of 2012))

1. Commencement

This Regulation comes into operation on the day on which sections 659 and 660 of the Companies Ordinance (28 of 2012) come into operation.

2. Interpretation

(1) In this Regulation—

business venue (業務場所), in relation to a company, means an office or a place, other than its registered office—

- (a) where it carries on its business; and
- (b) that is open to the public;

communication document (通訊文件), in relation to a company, means any business letter, notice or other official publication of the company;

registered name (註冊名稱), in relation to a company, means the name by which the company is registered under the Ordinance;

transaction instrument (交易文書), in relation to a company, means—

- (a) any contract or deed purporting to be signed by or on behalf of the company;
- (b) any bill of exchange, promissory note or endorsement purporting to be signed by or on behalf of the company;

- (c) any cheque or order for money or goods purporting to be signed by or on behalf of the company; or
- (d) any consignment note, invoice, receipt or letter of credit of the company.

- (2) In this Regulation, a reference to a communication document or transaction instrument is a reference to it in hard copy form, electronic form or any other form.
- (3) In this Regulation, a reference to the website of a company includes any part of a website relating to the company which the company has caused or authorized to appear.

3. Display of registered name at registered office, etc.

- (1) A company must display continuously its registered name in legible characters at—
 - (a) its registered office; and
 - (b) every business venue of the company.
- (2) The registered name must be so positioned that it may be easily seen by any visitor to the office or business venue.
- (3) If a location is the registered office or a business venue of more than 6 companies, and any of the companies, in purported compliance with subsections (1) and (2), displays its registered name through an electronic device, the registered name is taken to be displayed continuously for the purposes of those subsections if—
 - (a) the registered name is displayed for at least 15 continuous seconds at least once in every 4 minutes; or
 - (b) the registered name is capable of being displayed within 4 minutes after a request to make the display is made through the electronic device.

- (4) Subsections (1), (2) and (3) do not apply to a company that has had no accounting transaction at any time since its incorporation.
- (5) If—
- a liquidator, receiver or manager of the property of a company has been appointed; and
 - the registered office or any business venue of the company is also a place where the business of the liquidator, receiver or manager is carried on,
- subsections (1), (2) and (3) do not apply to that registered office or business venue.

4. Registered name to appear in communication documents, etc.

A company must state its registered name in legible characters—

- in any communication document of the company;
- in any transaction instrument of the company; and
- on any website of the company.

5. Duty to disclose company's status of limited liability or otherwise

- (1) A limited company licensed under section 103 of the Ordinance to be exempt from section 102 of the Ordinance must state in legible characters in any communication document and transaction instrument of the company and on any website of the company the fact that it is incorporated with limited liability.
- (2) An unlimited company must state in legible characters in any communication document and transaction instrument of the company and on any website of the company the fact that it is incorporated without limited liability.

- (3) If a limited company registered by a name in English only (other than a company licensed under section 103 of the Ordinance to be registered without "Limited" as the last word of its name) displays or states any name of or for the company in Chinese characters (whether or not the name is a transliteration or translation of its registered name)—
 - at the registered office or any business venue of the company;
 - in any communication document or transaction instrument of the company or any other document on which the company's common seal is affixed; or
 - on any website of the company,

the company must append to the name so displayed or stated the Chinese characters "有限公司".
- (4) Subject to subsection (5), a limited company that was, immediately before the coming into operation of this Regulation, exempt from section 93(2) of the predecessor Ordinance by a licence issued under the proviso to that section, is exempt from subsection (3).
- (5) Subsection (4) does not apply if—
 - for the purposes of the licence the Registrar had approved in writing a manner in which the name in Chinese characters was to be used; and
 - that name is displayed or stated in a manner different from the approved manner.
- (6) If a limited company registered by a name in Chinese only (other than a company licensed under section 103 of the Ordinance to be registered without "有限公司" as the last 4 characters of its name) displays or states any name of or for the company in English (whether or not the name is a transliteration or translation of its registered name)—

- (a) at the registered office or any business venue of the company;
 - (b) in any communication document or transaction instrument of the company or any other document on which the company's common seal is affixed; or
 - (c) on any website of the company,
- the company must append to the name so displayed or stated the English word "Limited".

6. Adequacy of certain descriptions of companies

The description of a company is not inadequate or incorrect only by reason of—

- (a) the use of—
 - (i) the abbreviation "Co." or "Coy." in lieu of the word "Company" contained in the name of the company;
 - (ii) the abbreviation "Ltd." in lieu of the word "Limited" contained in the name of the company;
 - (iii) the abbreviation "HK" or "H.K." in lieu of the words "Hong Kong" contained in the name of the company;
 - (iv) the symbol "&" in lieu of the word "and" contained in the name of the company;
 - (v) any of those words in lieu of the corresponding abbreviation or symbol contained in the name of the company; or
 - (vi) any type or case of letters, spaces between letters, accents or punctuation marks which are not the same as those appearing in the name of the company; or

- (b) the use or omission of "The" or "the" as the first word in the description.

7. Offences

- (1) If a company contravenes section 3(1) or (2), 4 or 5(1), (2), (3) or (6), the company and every responsible person of the company commit an offence, and each is liable to a fine at level 3.
- (2) If, on behalf of a company, a person other than a responsible person of the company—
 - (a) issues or authorizes the issue of any communication document of the company in respect of which section 4(a) or 5(1), (2), (3)(b) or (6)(b) is contravened;
 - (b) signs or authorizes to be signed on behalf of the company any contract, deed, bill of exchange, promissory note, endorsement, cheque or order for money or goods in respect of which section 4(b) or 5(1), (2), (3)(b) or (6)(b) is contravened;
 - (c) issues or authorizes the issue of any consignment note, invoice, receipt or letter of credit of the company in respect of which section 4(b) or 5(1), (2), (3)(b) or (6)(b) is contravened; or
 - (d) causes or authorizes the appearance of a website of the company in respect of which section 4(c) or 5(1), (2), (3)(c) or (6)(c) is contravened,

the person commits an offence and is liable to a fine at level 3.

Financial Secretary

2013

Explanatory Note

This Regulation deals with disclosure of company name and liability status to be made by a company in certain circumstances.

2. Section 3 specifies that a company's registered name must be displayed in legible characters continuously at its registered office, and every other office or place where the company carries on its business and that is open to the public, subject to the prescribed exceptions.
3. Section 4 provides for the documents or instruments of a company in which the company's registered name must appear. A company is also required under this section to state its registered name on its website.
4. Section 5 provides for requirements for companies to disclose their status of limited liability or otherwise in the prescribed manner.
5. Section 6 allows the use of certain abbreviations for the description of a company.
6. Section 7 creates offences in respect of the non-compliance of requirements under the Regulation.

**Companies (Accounting Standards (Prescribed Body))
Regulation**

(Made by the Financial Secretary under section 452(1) of the Companies Ordinance (28 of 2012))

1. Commencement

This Regulation comes into operation on the day on which section 452(1) of the Companies Ordinance (28 of 2012) comes into operation.

2. Prescribed body

The Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50) is prescribed for the purposes of section 380(8)(a) of the Ordinance.

Financial Secretary

2013

Explanatory Note

This Regulation prescribes the Hong Kong Institute of Certified Public Accountants for the purposes of section 380(8)(a) of the Companies Ordinance (28 of 2012). Statements of standard accounting practice issued or specified by a body so prescribed are the accounting standards for the purposes of section 380 of that Ordinance.

Companies (Directors' Report) Regulation

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

1. Commencement

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

2. Interpretation

In this Regulation—

directors' report (董事報告) means—

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

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

3. Directors' interests

- (1) A directors' report for a financial year must contain a statement that complies with subsection (3) if, at the end of the financial year, there subsists arrangements—
 - (a) to which the company or the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company is a party; and
 - (b) whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of

the acquisition of shares in the company or any other body corporate.

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

shares (股份) has the meaning given by section 1 of Schedule 1 to the Ordinance.
- ### 4. Donations
- (1) If a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong)—
 - (a) has no subsidiary undertakings; and
 - (b) has in a financial year made donations for charitable or other purposes to a total amount of not less than \$10,000,

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

(2) If—

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

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

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

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

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

5. Shares issued

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

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

6. Equity-linked agreements

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

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

(2) If, at the end of a financial year of a company, there subsists an equity-linked agreement entered into by the company, a directors' report for the financial year must state—

- (a) the classes of shares that may be issued under the agreement;
- (b) for each class of shares, the number of shares that may be issued under the agreement;
- (c) any monetary or other consideration that the company has received or will receive under the agreement; and
- (d) any other conditions or terms that remain to be met before the shares are issued.

(3) In this section—

equity-linked agreement (股票掛鈎協議)—

- (a) means—
 - (i) an agreement that will or may result in the company issuing shares; or

- (ii) an agreement requiring the company to enter into the agreement specified in subparagraph (i); and
- (b) includes—
 - (i) an option to subscribe for shares;
 - (ii) an agreement for the issue of securities that are convertible into, or entitle the holder to subscribe for, shares in the company;
 - (iii) an employee share scheme; and
 - (iv) a share option scheme; but
- (c) does not include—
 - (i) an agreement to subscribe for shares in a company that is entered into pursuant to the company's offer of its shares to the public; and
 - (ii) an agreement to subscribe for shares in a company that is entered into pursuant to an offer made to the members of the company in proportion to their shareholdings;

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

7. Recommended dividend

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

8. Reasons for resignation etc.

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

- (b) has given a notice of the reasons for disagreement to the company,

a directors' report for the financial year must contain a summary of the reasons.

- (2) Subsection (1) does not apply in respect of a company that falls within the reporting exemption for the financial year.

9. Permitted indemnity provision

- (1) If, when a directors' report prepared by the directors of a company is approved in a financial year of the company in accordance with section 391(1)(a) of the Ordinance, a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision is in force as required by section 470 of the Ordinance.
- (2) If, at any time in the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision was in force as required by section 470 of the Ordinance.
- (3) In this section—

permitted indemnity provision (獲准許的彌償條文), in relation to a company, means a provision that—

 - (a) provides for indemnity against liability incurred by a director of the company to a third party; and
 - (b) meets the requirements specified in section 469(2) of the Ordinance;

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

Financial Secretary

2013

Explanatory Note

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

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

Companies (Summary Financial Reports) Regulation

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Companies (Summary Financial Reports) Regulation

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

Part 1**Preliminary****1. Commencement**

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

2. Interpretation

(1) In this Regulation—

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

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

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

directors' report (董事報告) means—

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

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

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

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

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

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

(2) In this Regulation, a reference to the reporting documents for a financial year is a reference to all of the following—

(a) the financial statements for the financial year;

(b) the directors' report for the financial year;

(c) the auditor's report on those financial statements.

Part 2

Summary Financial Report

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

- consolidated income statement in addition to the company's consolidated statement of comprehensive income, all the information and particulars included in the consolidated income statement; and
 - (e) all the information and particulars—
 - (i) included in the directors' report of the company for the financial year as required under—
 - (A) sections 388 and 390 of the Ordinance; and
 - (B) the Companies (Directors' Report) Regulation; and
 - (ii) contained in the notes to the financial statements for the financial year as prescribed by the Disclosure Regulation in relation to a director's material interests in a transaction, arrangement or contract.
4. **Form and contents of summary financial report: auditor's report and opinion**
- (1) A summary financial report for a financial year of a company must—
 - (a) contain a statement from the company's auditor as to whether the auditor's report for that financial year is qualified or otherwise modified, or includes a reference to any matter to which the auditor drew attention by way of emphasis without qualifying the report; and
 - (b) if the auditor's report is qualified or otherwise modified, set out the full auditor's report and any further material necessary for the understanding of the qualification or other modification.
 - (2) If the auditor's report of a company contains a statement that, in the auditor's opinion, the financial statements for a

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

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

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

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

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

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

- (5) A summary financial report of a company must contain an opinion from the company's auditor as to whether—
 - (a) the report is consistent with the reporting documents from which the report is derived; and
 - (b) the report complies with the requirements of this Part.

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

- (1) If the information about loans, quasi-loans and other dealings in favour of the directors of a company or of its holding company, bodies corporate controlled by the directors or the entities connected with the directors prescribed by the Disclosure Regulation for the purposes of section 383(1)(d) of the Ordinance is contained in the notes to the financial statements for a financial year of the company, the summary financial report for that financial year must include the information.
- (2) Despite subsection (1), if the information referred to in that subsection is shown in a statement contained in the notes to the financial statements for a financial year of a company in compliance with the requirements prescribed by the Disclosure Regulation for the purposes of section 383(3) of the Ordinance, the summary financial report for that financial year must include that statement.
- (3) If a company is not required to prepare annual consolidated financial statements, a summary financial report of the company must contain, in a prominent position (but not

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

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

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

(7) In this section—

specified date (指明日期)—

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

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

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

Part 3**Notification and Notice of Intent, etc.**

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

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

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

(5) In this section—

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

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

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

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

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

(3) In this section—

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

9. Company may include other information in notification

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

10. Notification attached with card or document

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

11. Postage

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

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

Financial Secretary

2013

Explanatory Note

Division 7 of Part 9 of the Companies Ordinance (28 of 2012) (*the Ordinance*) contains provisions on summary financial reports applicable to all companies except those falling within the reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance. The directors of a company may prepare for a financial year a financial report, in summary form, derived from the reporting documents for the financial year and a copy of which is required to be sent to every member of the company.

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

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