

LEGISLATIVE COUNCIL BRIEF

Companies Ordinance
(Ord. No. 28 of 2012)

**Companies (Revision of Financial Statements and Reports)
(Amendment) Regulation 2013**

**Companies (Disclosure of Information about Benefits of Directors)
(Amendment) Regulation 2013**

INTRODUCTION

The Financial Secretary (“FS”) has made the following pieces of subsidiary legislation under the new Companies Ordinance (“CO”) (Ord. No. 28 of 2012) on 16 May 2013 –

- (a) the Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 (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) (Amendment) Regulation 2013 (Annex B) in exercise of the power under sections 451 and 452(2) of the new CO.

JUSTIFICATIONS

2. For the implementation of the new CO, the FS has made the Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34 of 2013) and the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. 35 of 2013) (hereafter “the Regulation(s)”) on 19 March 2013. The Regulations were first published in the Gazette on 22 March 2013 and introduced into the Legislative Council (“LegCo”) for negative vetting on 27 March 2013.

3. The Subcommittee on Subsidiary Legislation Made under the

New Companies Ordinance (“the Subcommittee”) of LegCo has held two meetings to scrutinise the Regulations. In response to the views of Members and the Legal Adviser of the Subcommittee, the Administration has proposed to make a few amendments to the Regulations by resolutions pursuant to section 34(2) of the Interpretation and General Clauses Ordinance (Cap.1) at the LegCo sitting of 15 May 2013, on the expectation that it would be the last sitting before the expiry of the scrutiny period if extended as per the usual practice. However, since LegCo was unable to deal with the motion for extension of the scrutiny period of the Regulations at a sitting on or before 24 April 2013, it was no longer possible to amend the Regulations through the aforesaid approach¹. We subsequently wrote to the Clerk to the Subcommittee on 14 May 2013 indicating that we would introduce the proposed amendments to the Regulations by way of amendment regulations together with the third batch of subsidiary legislation to be made under the new CO. The Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013 and the Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013 (hereafter “the Amendment Regulation(s)”) were thus made.

THE SUBSIDIARY LEGISLATION

Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013

4. In the Regulation, section 20(3) provides that it is an offence for a person to make a misleading, false or deceptive statement to the person preparing an auditor’s report on revised financial statements², while section 20(4) further provides that the maximum penalty that may be imposed for such offence is (i) a fine of \$150,000 and imprisonment for two years on conviction on indictment or (ii) a fine of level 5 and imprisonment for six months on summary conviction. The above

¹ Please refer to paragraph 32 of the second report of the Subcommittee to the House Committee of LegCo (LC Paper No. CB(1)949/12-13) for details.

² Section 20(3) of the Regulation provides that in the course of preparation of the auditor’s report on revised financial statements, 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 new CO by virtue of section 19(2) of the Regulation;
- (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.

mirrors the penalty level in section 413(4) of the new CO concerning an offence of the same nature but in respect of an auditor's report on original financial statements. Nevertheless, the empowering section vide section 450 of the new CO provides that a regulation made under that section may prescribe imprisonment only if the offence is committed wilfully, and in such case the maximum sentence is imprisonment for 12 months.

5. As indicated in our correspondence with the Legal Adviser of the Subcommittee of 15 April 2013 (LC Paper No. CB(1)844/12-13(03)), the underpinning principle remains that the penalty for offences committed in respect of the auditor's report on revised financial statements should be aligned with that imposed on the auditor's report on original financial statements in the new CO. Nevertheless, having regard to the special circumstances explained above, we have proposed to pursue the following as an interim measure –

- (a) amend section 20(4)(a) such that the maximum period of imprisonment will be 12 months (instead of two years in the Regulation); and
- (b) introduce a new provision, section 20(4A), to stipulate that a person may be sentenced to imprisonment only if the offence under section 20(3) was committed wilfully.

We will review the relevant provisions after the commencement of the new CO, with a view to taking forward necessary legislative amendment in the next exercise to update the new CO to align the penalties imposed under the principal and subsidiary legislation. Members noted our position and considered the proposed amendments at the Subcommittee meeting of 16 April 2013, and they have not raised any objection.

6. Apart from the amendments set out in paragraph 5 above, this Amendment Regulation also gives effect to a number of minor textual amendments to sections 2(1), 7(2), 8(2), 9(2) and 18 of the Chinese text of the Regulation. These amendments, which were proposed in response to the views of Members and the Legal Adviser of the Subcommittee, have been considered by the Subcommittee vide LC Paper No. CB(1)915/12-13(01) and Members have not raised any objection.

Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013

7. This Amendment Regulation gives effect to a number of minor textual amendments to both the English text and the Chinese text of the

Regulation. Specifically, amendments to sections 3, 16 and 18 of the Regulation are made in response to the views of Members and the Legal Adviser of the Subcommittee for further elucidating the requirements concerned. Textual amendments are also made to some other sections (namely sections 7³, 13, 15, 17 and 22) for better flow and consistency. The amendments have been considered by the Subcommittee vide LC Paper No. CB(1)915/12-13(01) and Members have not raised any objection.

LEGISLATIVE TIMETABLE

8. The Amendment Regulations will be published in the Gazette on 24 May 2013 and tabled at the LegCo for negative vetting on 29 May 2013. They will come into operation on the commencement of the Regulations, i.e. the amended regulations will come into operation together with the new CO.

IMPLICATIONS OF THE PROPOSALS

9. The Amendment Regulations do not have civil service, economic, environmental, family, 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

10. The proposed amendments to the Regulations have been considered by the Subcommittee at its meeting of 16 April 2013 and vide LC Paper No. CB(1)915/12-13(01). Members have not raised any objection to such amendments.

PUBLICITY

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

³ For technical reasons, a minor textual amendment originally proposed for section 6(2)(a) of the Chinese text is now made to section 7(2)(a) instead.

BACKGROUND

Companies (Revision of Financial Statements and Reports) Regulation

12. The new CO provides in section 449 that a company may voluntarily revise its financial statements and make necessary consequential revisions to the summary financial reports and the directors' reports (hereafter "relevant documents"). 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 the relevant provisions of the new CO apply to the revised relevant documents as well as the relevant offences. The Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34 of 2013), made by the FS on 19 March 2013 in exercise of the power under section 450 of the new CO, sets out such detailed requirements and arrangements. It basically re-enacts the Companies (Revision of Accounts and Reports) Regulation (Cap.32N) with necessary modifications to align with the provisions on accounts and audit in Part 9 of the new CO.

Companies (Disclosure of Information about Benefits of Directors) Regulation

13. 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 (L.N. 35 of 2013), made by the FS on 19 March 2013 in exercise of the power under sections 451 and 452(2) of the new CO, 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, whether in the capacity of directors or any other capacity while as directors of the company;
- (d) loans, quasi-loans and other 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 or in other capacity while as a director of the company.

ENQUIRIES

14. 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
22 May 2013

Companies (Revision of Financial Statements and Reports) (Amendment)
Regulation 2013

Section 1

1

Companies (Revision of Financial Statements and Reports) (Amendment) Regulation 2013

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

1. **Commencement**
This Regulation comes into operation on the day on which the Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34 of 2013) comes into operation.
2. **Companies (Revision of Financial Statements and Reports) Regulation amended**
The Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34 of 2013) is amended as set out in sections 3 to 8.
3. **Section 2 amended (interpretation)**
 - (1) Section 2(1), definition of *relevant Regulation*, paragraph (a)—
Repeal
“Regulation”
Substitute
“Regulation (L.N. 35 of 2013)”.
 - (2) Section 2(1), Chinese text, definition of **《有關規例》**, paragraph (a)—
Repeal
“關於董事的利益的”
Substitute

Companies (Revision of Financial Statements and Reports) (Amendment)
Regulation 2013

Section 4

2

“董事利益”.

4. **Section 7 amended (approval and signature of revised statement of financial position)**
Section 7(2), Chinese text—
Repeal
“發出的”
Substitute
“發出”.
5. **Section 8 amended (approval and signature of revised directors’ report)**
Section 8(2), Chinese text—
Repeal
“發出的”
Substitute
“發出”.
6. **Section 9 amended (approval and signature of revised summary financial report)**
Section 9(2), Chinese text—
Repeal
“發出的”
Substitute
“發出”.

7. **Section 18 heading amended (qualified privileges of person preparing auditor's report on revised financial statements etc.)**

Section 18, Chinese text, heading—

Repeal

“等的人”

Substitute

“的人等”。

8. **Section 20 amended (offences relating to section 19)**

(1) Section 20(4)—

Repeal

“A person”

Substitute

“Subject to subsection (4A), a person”。

(2) Section 20(4)(a)—

Repeal

“2 years”

Substitute

“12 months”。

(3) After section 20(4)—

Add

“(4A) A court may sentence a person to imprisonment for an offence under subsection (3) only if the court is satisfied that the offence was committed wilfully.”。

Financial Secretary

2013

Explanatory Note

This Regulation amends the Companies (Revision of Financial Statements and Reports) Regulation (L.N. 34 of 2013) (*principal Regulation*) to—

- (a) reduce the maximum imprisonment for a conviction on indictment of an offence under section 20(3) of the principal Regulation from 2 years to 12 months;
- (b) provide that a person may be sentenced to imprisonment for an offence under section 20(3) of the principal Regulation only if the offence was committed wilfully; and
- (c) make minor textual amendments to the principal Regulation.

**Companies (Disclosure of Information about Benefits of
Directors) (Amendment) Regulation 2013**

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Companies (Disclosure of Information about Benefits of Directors) (Amendment) Regulation 2013

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

1. Commencement

This Regulation comes into operation on the day on which the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. 35 of 2013) comes into operation.

2. Companies (Disclosure of Information about Benefits of Directors) Regulation amended

The Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. 35 of 2013) is amended as set out in sections 3 to 10.

3. Section 3 amended (interpretation of Part 2)

- (1) Section 3(1), definition of *retirement benefits*, paragraph (a)(i)(C), after “service”—

Add

“rendered”.

- (2) Section 3(1), definition of *retirement insurance scheme*, paragraph (a)(ii), after “service”—

Add

“rendered”.

- (3) Section 3(4)(a), Chinese text—

Repeal

“時)擔任另一企業的董事，則不論該另一企業事實上是否同時(或曾否同時)屬”

Substitute

“時擔任)另一企業的董事，則不論該另一企業事實上是否屬(或曾否屬)”。

4. Section 7 amended (information about consideration provided to or receivable by third parties for making available directors' services)

Section 7(2)(a), Chinese text—

Repeal

everything after “第三者的代價”

Substitute

“(不論是否屬現金形式)或該第三者可就提供該人的合資格服務而收取的代價(不論是否屬現金形式)的總數；及”。

5. Section 13 amended (interpretation of Part 3)

Section 13(5), Chinese text—

Repeal

everything after “本部中，”

Substitute

“就董事而言，提述受控制的法人團體，即提述受該董事控制的法人團體(本條例第 492 條所指者)。”

6. Section 15 amended (information about loans, quasi-loans and other dealings in favour of directors, controlled bodies corporate and connected entities)

- (1) Section 15(3)(b)(ii)—

Repeal

everything after “outstanding”

Substitute

“on the loan, quasi-loan or credit transaction, in respect of the principal and interest or otherwise, at the beginning of the financial year;”.

- (2) After section 15(3)(b)(ii)—

Add

“(ia) the amount so outstanding at the end of the financial year;”.

- (3) Section 15(3)(c)(i)—

Repeal

everything after “the amount”

Substitute

“representing the maximum liability that may be incurred under the guarantee or security at the beginning of the financial year;”.

- (4) After section 15(3)(c)(i)—

Add

“(ia) the amount representing the maximum liability that may be so incurred at the end of the financial year;”.

- (5) Section 15(3)(c)(ii), English text—

Repeal

“of maximum”

Substitute

“representing the maximum”.

7. **Section 16 amended (provisions for statement in lieu of information prescribed by section 15)**

- (1) Section 16(2), Chinese text—

Repeal

“該附註”

Substitute

“該等附註”.

- (2) Section 16(2)(a), English text—

Repeal

“the quasi-loans made to and credit transactions entered into for”

Substitute

“quasi-loans made to, and all credit transactions entered into for.”.

- (3) After section 16(2)(a)(i)—

Add

“(ia) the aggregate of the amounts outstanding referred to in section 15(3)(b)(iia) on those quasi-loans and credit transactions;”.

- (4) Section 16(2)(b)—

Repeal

“the guarantees and security in connection with every quasi-loan made to or every credit transaction entered into for”

Substitute

“guarantees and security in connection with all quasi-loans made to, and all credit transactions entered into for.”.

- (5) Section 16(2)(b)(i), English text—

Repeal

“of maximum”

Substitute

“representing the maximum”.

- (6) Section 16(2)(b)(i)—

Repeal

“; and”

Substitute a semicolon.

- (7) After section 16(2)(b)(i)—

Add

“(ia) the aggregate of the amounts representing the maximum liability referred to in section 15(3)(c)(ia) that may be incurred under those guarantees and security; and”.

8. Section 17 amended (provisions applicable to company that is or where its subsidiary undertaking is authorized financial institution)

- (1) Section 17(1)(a)(i), Chinese text, after “, 指”—

Add

“所有”.

- (2) Section 17(1)(a)(ii), English text—

Repeal

“of maximum”

Substitute

“representing the maximum”.

- (3) Section 17(1)(a)(ii)—

Repeal

everything after “in connection with”

Substitute

“all loans and quasi-loans made to, and all credit transactions entered into for, the persons referred to in subparagraph (i); and”.

- (4) Section 17(2)(a)(i), Chinese text—

Repeal

everything after “就該機構借予”

Substitute

“有關人士的所有貸款及類似貸款(及就該機構以債權人身分為有關人士訂立的所有信貸交易)而未清償的本金及利息或其他尚未清償的款額，上述有關人士，指所有在該年度任何時間屬該公司的董事的人；及”.

- (5) Section 17(2)(a)(ii), English text—

Repeal

“of maximum”

Substitute

“representing the maximum”.

- (6) Section 17(2)(a)(ii)—

Repeal

everything after “in connection with”

Substitute

“all loans and quasi-loans made to, and all credit transactions entered into for, the persons referred to in subparagraph (i); and”.

- (7) Section 17(3)(b)(ii), English text—

Repeal

“of maximum” (wherever appearing)

Substitute

“representing the maximum”.

- (8) Section 17(3)(b)(ii)—

Repeal

“any loan or quasi-loan made to, or any credit transaction”

Substitute

“all loans and quasi-loans made to, and all credit transactions”.

9. **Section 18 amended (exemption for employee)**

Section 18—

Repeal everything before paragraph (a)

Substitute

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

10. **Section 22 amended (information about material interests of directors in transactions, arrangements or contracts)**

- (1) Section 22(3)(d), Chinese text—

Repeal

“有關的”.

- (2) Section 22(3)(e), Chinese text—

Repeal

“被視為有該”

Substitute

“視為有”.

- (3) Section 22(4), Chinese text—

Repeal

“為施行本條，如某公眾公司的董事的有關連實體在該公眾公司所訂立的交易、安排或合約中，有具相當分量的利害關係，”

Substitute

“就本條而言，如公眾公司的董事的有關連實體，在該公眾公司所訂立的交易、安排或合約中，有具相當分量的利害關係，則”.

- (4) Section 22, Chinese text—

Repeal subsections (6) and (7)

Substitute

- “(6) 就第(5)款而言，如公司董事經考慮後，認為某交易、安排或合約，就該公司的業務而言並非屬重大，則該交易、安排或合約，就該公司的業務而言不屬重大。
- (7) 就本條而言，如公司董事經考慮後，認為該公司的某董事在某交易、安排或合約中的利害關係並非具相當分量，則該利害關係不屬具相當分量。”.

Explanatory Note

This Regulation makes minor textual amendments to the Companies (Disclosure of Information about Benefits of Directors) Regulation (L.N. 35 of 2013).

Financial Secretary

2013
