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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.
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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.

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- (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.

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- (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;

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- (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;

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- (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.

John TSANG
Financial Secretary

29 January 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).