

# New Companies Ordinance

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## Subsidiary Legislation for Implementation of the new Companies Ordinance

### *Phase Two Consultation Document*

November 2012

Financial Services and the Treasury Bureau  
[www.fstb.gov.hk](http://www.fstb.gov.hk)

Companies Registry  
[www.cr.gov.hk](http://www.cr.gov.hk)



## About This Document

The Financial Services and the Treasury Bureau and the Companies Registry are seeking the views of the public on the subsidiary legislation to be made for implementation of the new Companies Ordinance. The consultation is being conducted in two phases. The *Phase One Consultation Document*, consisting of Chapters 1 to 7, was issued on 28 September 2012. This *Phase Two Consultation Document* begins with Chapter 8 and consists of five chapters.

Please send your comments to us on or before 14 December 2012 by any of the following means :

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For enquiries, please contact us at (852) 2867 5844 or by any of the means provided above.

The consultation documents are available on the websites of the Financial Services and the Treasury Bureau ([http://www.fstb.gov.hk/fsb/co\\_rewrite/](http://www.fstb.gov.hk/fsb/co_rewrite/)) and the Companies Registry (<http://www.cr.gov.hk/>). Full text of the new Companies Ordinance is also available for viewing and downloading on the website of the Companies Registry.

Submissions will be received on the basis that we may freely reproduce and publish them, in whole or in part, in any form and use, adapt or develop any proposal put forward without seeking permission or providing acknowledgment of the party making the proposal.

Please note that names of respondents, their affiliation(s) and comments may be posted on the above websites or referred to in other documents we publish. If you do not wish your name and/or affiliation to be disclosed, please state so when making your submission. Any personal data submitted will only be used for purposes which are directly related to consultation purposes under this consultation paper. Such data may be transferred to other Government departments/agencies for the

same purposes. Please contact us for access to or correction of personal data contained in your submission.

## **Preamble**

In mid-2006, the Government embarked on an extensive exercise to reform our company law with a view to enhancing Hong Kong's competitiveness as a major international business and financial centre. This involves a comprehensive rewrite of provisions relating to live companies in the existing Companies Ordinance (Cap.32) ("the existing CO"). On 12 July 2012, the Legislative Council passed the Companies Bill, which was subsequently published in the gazette on 10 August 2012 as the new Companies Ordinance (Ordinance No. 28 of 2012) ("the new CO").

Before the new CO commences operation, we need to put in place subsidiary legislation to provide for various matters required for implementation of the new CO. Prior to making the subsidiary legislation, the Government would like to benefit from the advice of the public, in particular investors, the business communities and relevant professions, on the key proposals and draft provisions of the proposed subsidiary legislation at the Annexes.

We intend to consult the public on the following pieces of subsidiary legislation :

- (a) Companies (Summary Financial Reports) Regulation
- (b) Companies (Directors' Report) Regulation
- (c) Companies (Specification of Names) Order
- (d) Companies (Non-Hong Kong Companies) Regulation
- (e) Company Records (Inspection and Provision of Copies) Regulation
- (f) Companies (Model Articles) Notice
- (g) Companies (Accounting Standards (Prescribed Body)) Regulation
- (h) Companies (Trading Disclosures) Regulation
- (i) Companies (Revision of Financial Statements and Reports) Regulation
- (j) Companies (Disclosure of Information about Benefits of Directors) Regulation

- (k) Companies (Residential Addresses and Identification Numbers) Regulation
- (l) Companies (Unfair Prejudice Proceedings) Rules

The consultation is conducted in two phases. Items (a) to (g) above were covered in the first phase consultation launched on 28 September 2012. The second phase (i.e. the current phase) covers items (h) to (l) above.

We welcome members of the public to offer views and suggestions on the subsidiary legislation. To facilitate understanding of the proposed subsidiary legislation, we have included in each chapter an overview of the requirements under both the existing CO and the new CO, and highlighted the key proposals.

The deadline for responding to phase two of this consultation exercise is 14 December 2012. We will study the views received and finalise the draft subsidiary legislation for enactment in the first half of 2013. Upon completion of the necessary procedures, the subsidiary legislation will be brought into operation together with the new CO, tentatively in 2014.

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## CHAPTER 8

### Companies (Trading Disclosures) Regulation

#### *Present requirements*

- 8.1 Pursuant to section 93 of the existing CO, a company is required 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. Section 94 of the existing CO provides a list of permitted abbreviations of terms such as “HK”, “Co.” and “Ltd.” that may be used in the display of the company name. In case of contravention, the company and every officer of the company who is in default would be liable.
- 8.2 Section 93 further provides that a company shall state its name in its business letters, notices and other official publications (“*communication documents*”). The requirement also applies to contracts, deeds, bills of exchanges, invoices, receipts, etc. (“*transaction instruments*”).
- 8.3 If a limited company has only registered one name either in English or Chinese, and it displays or mentions its name in the other language (i.e., English in the case of a Chinese name and Chinese in the case of an English name), the company must also append the word “Limited” or the expression “有限公司” (as the case may be) to that name in that other language to avoid misleading the public as to the limited liability status of the company. This does not apply to a company licensed under section 21 of the existing CO to omit the word “Limited” or the expression “有限公司” from its company name, or a company licensed under section 93(2B) of the existing CO to be exempted wholly or in part from the requirement.
- 8.4 In case of contravention of the requirements mentioned in paragraphs 8.2 and 8.3 above, the company would be liable.

#### *Requirements under the new CO*

- 8.5 Under the new CO, the requirements mentioned in paragraphs 8.1 to 8.3 above are not reproduced in the primary legislation. Instead, section 659 of the new CO provides for the making of

subsidiary legislation to prescribe such matters. Section 660 of the new CO further provides that the subsidiary legislation may also provide for the criminal consequences of contravention.

*The proposed subsidiary legislation*

8.6 We propose to make a regulation, entitled the Companies (Trading Disclosures) Regulation (“C(TD)R”) to provide for various requirements concerning the display of a company’s name and the disclosure of the company’s status.

8.7 Regarding the display of a company’s name at its office or place of business, the requirement is modernized to accommodate possible display of the name by electronic means. Specifically, we propose that if an office or place of business is shared by more than six companies, and an electronic device for display of company names is used, the requirements for display of a company name will be complied with provided that the company name can be displayed (*section 3(2)*) –

(a) for at least 20 continuous seconds once in every four minutes;  
or

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

8.8 Taking into account the usual practices of company services providers and liquidators and with reference to the relevant UK legislation<sup>1</sup>, we propose to exempt a company from the requirement to display its names if –

(a) the company has had no accounting transactions since incorporation (*section 3(3)*); or

(b) a liquidator, receiver or manager of their property has been appointed in respect of a company and the company premises concerned are also a place of business of the liquidator, receiver or manager (*section 3(4)*).

8.9 The requirements concerning the display of a company’s name on communication documents and transaction instruments as set out in section 93 of the existing CO are retained. As the Internet is

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<sup>1</sup> Companies (Trading Disclosures) Regulations 2008 and Companies (Trading Disclosures) (Amendment) Regulations 2009 for (a) and (b) respectively.

now one of the most common means of doing business, we propose to expand the scope of the requirements to cover a company's website as well as communication documents and transaction instruments in electronic form (*section 2(2), 2(3) and section 4*).

- 8.10 The specific requirement applicable to a company with its registered name only in one language as described in paragraph 8.3 above is generally preserved<sup>2</sup> (*section 5*). The permitted abbreviations of any terms to be used in the display of company names set out in section 94 of the existing CO are also preserved in the proposed C(TD)R (*section 6*).
- 8.11 Under the existing CO, if a company fails to display its name on the outside of its premises, both the company and the officers in default will be held liable. However, the latter will not be liable in the case of failure (i) to state the company's name on communication documents or transaction instruments or (ii) to state the limited liability status. Considering the similar nature and context of these requirements, we propose that for consistency, both the company concerned and every responsible person of the company should be held liable for offences under C(TD)R. The penalty is proposed to be a level 3 fine (*section 7*).

### *The Regulation in detail*

- 8.12 The proposed C(TD)R comprises 7 sections :
- (a) *Sections 1 and 2* provide for the commencement of the Regulation and interpretation of the terms used respectively;
  - (b) *Section 3* specifies that a company's registered name must be displayed continuously in legible characters prominently on the outside of its registered office, any other office and any place of business of the company subject to the prescribed exceptions;
  - (c) *Section 4* provides for the communication documents or transaction instruments of a company on which the

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<sup>2</sup> Under the new CO regime, the Registrar of Companies will no longer be able to grant a license exempting a company from the requirement. However, it will be provided in section 5(4) (and subject to section 5(5)) that any company which has already been granted a license under section 93(2) of the existing CO prior to the commencement of C(TD)R will continue to be exempted.

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 companies to display their limited liability status or otherwise in the prescribed manner;
- (e) *Section 6* allows the use of certain abbreviations in the display of the company name; and
- (f) *Section 7* creates offences in respect of the non-compliance of requirements under the Regulation.

8.13 A draft of the proposed C(TD)R is attached at Annex 8 for views and comments.

## CHAPTER 9

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

#### *Present requirements*

- 9.1 Pursuant to section 141E of the existing CO, after the accounts of a company have been provided to its members, the directors of the company may still revise the accounts and make necessary consequential revisions to the summary financial report and the directors' report. Such revisions are confined to aspects of the accounts which do not comply with the CO and the necessary consequential revisions.
- 9.2 The detailed requirements that apply to the revision of accounts and reports ("*reporting documents*")<sup>3</sup> are prescribed by the Companies (Revision of Accounts and Reports) Regulation (Cap.32, sub. leg. N) ("*Cap.32N*"). An overview of the regime under Cap.32N is as follows :
- (a) the company's original reporting documents may be revised by either replacement or supplementary notes. The former involves replacing the original reporting documents with a substitute set, whereas the latter involves using notes to indicate the revisions made to the original reporting documents (*sections 3 to 5*);
  - (b) the revised reporting documents have to be approved or signed by the board of directors (*sections 6 to 8*);
  - (c) relevant provisions in the CO or its subsidiary legislation governing the matters to be included in the reporting documents of a company apply to the revised documents as they apply to the original version (*sections 3 to 5*);
  - (d) once the revised reporting documents have been approved and the relevant provisions complied with, the CO would have effect with respect to the revised reporting documents as if they were, as from the date of revision, the reporting

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<sup>3</sup> In the new CO context, reporting documents refer to the *financial statements* (instead of the *accounts*), the directors' report and the summary financial report. See also paragraph 9.7(a).

documents of the company (*section 9*);

- (e) an audit report must be prepared on the revised accounts. It may be prepared by the current auditor, or the original auditor who prepared the report for the original accounts (*sections 10 and 11*); and
- (f) the company is required to –
  - (i) send a copy of the revised reporting documents and the audit report within 28 days after the date of revision to its members and other relevant parties (*section 12*);
  - (ii) table the revised reporting documents and audit report before the first general meeting held after the revision (*section 15*); and
  - (iii) forward a copy of the revised reporting documents and the audit report to the Registrar of Companies (“Registrar”) if the original reporting documents have been forwarded to the Registrar (*section 16*).

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

#### *Requirements under the new CO*

9.4 Section 449 of the new CO restates section 141E of the existing CO to allow a company to voluntarily revise its financial statements. Following the approach under the existing CO regime, section 450 of the new CO provides that various matters relating to the revision of financial statements and reports will be prescribed by subsidiary legislation.

#### *The proposed subsidiary legislation*

9.5 We propose to prescribe the matters provided for in section 450 of the new CO by a piece of subsidiary legislation entitled the Companies (Revision of Financial Statements and Reports) Regulation (“C(RFS&R)R”).

9.6 The general principle underpinning the proposed C(RFS&R)R is

that the obligations and arrangements concerning the original reporting documents as provided in the new CO should equally apply to the revised reporting documents, subject to necessary modification. The proposed C(RFS&R)R achieve this by (i) providing for the manner in which the requirements in the new CO apply to the revised reporting documents, or (ii) reproducing the provisions in the new CO with necessary modifications.

9.7 The proposed C(RFS&R)R is largely based on the existing Cap.32N, with necessary modifications to align with the applicable provisions on accounts and audit in Part 9 of the new CO. The alignments include –

- (a) alignment of terms : replacing “accounts” by “financial statements”, and “balance sheet” and “profit and loss account” by “statement of financial position” and “statement of comprehensive income” respectively;
- (b) alignment of requirements prescribed in respect of signing and distribution of the revised reporting documents with the new requirements or arrangements under the new CO, such as the requirement to state the name of the person who signs the directors’ report on behalf of the directors. As a company may publish its reporting documents through a website or dispense with the holding of annual general meetings under the new CO regime, additional provisions have to be included in C(RFS&R)R to deal with circulation of the revised reporting documents in such scenarios;
- (c) alignment of the provisions concerning the contents and signing of the audit report on the revised financial statements, as well as those on the auditor’s rights and privileges, with the corresponding provisions in Part 9 of the new CO where applicable; and
- (d) alignment of the offences and penalties with those in the new CO in respect of the original reporting documents.

9.8 As noted above, revised financial statements have to be audited. For consistency with the arrangement under the new CO, section 15 of the Regulation applies section 407 of the main Ordinance which requires auditors to state first, his opinion if the revised financial statements are not in agreement with the accounting records; and second, the fact that he cannot obtain the necessary

information or explanations for the purpose of the audit. Likewise, section 16 of the Regulation mirrors section 408 of the new CO by imposing criminal sanction for knowingly or recklessly causing the omission of the required statement of opinion or fact.

- 9.9 During the passage of the new CO by the Legislative Council (“*LegCo*”), we noted that there is room for future improvement to the drafting of section 408 to address industry concerns and bridge potential implementation gaps. We are approaching the Hong Kong Institute of Certified Public Accountants to initiate a review of section 408 to see how best we may improve its wordings in light of comments by LegCo and relevant stakeholders. Should this review lead to amendments to section 408, corresponding amendments will be made to section 16 of the Regulation in parallel.

#### *The Regulation in detail*

- 9.10 The proposed C(RFS&R)R comprises six parts :
- (a) *Part 1* contains preliminary provisions. Section 2 defines or otherwise explains certain expressions used in the Regulation;
  - (b) *Part 2* provides for the contents of revised reporting documents;
  - (c) *Part 3* sets out the requirements relating to the approval and signature of revised statements of financial position, directors’ reports and summary financial reports;
  - (d) *Part 4* states that, from the date of revision onwards, the new CO has effect with respect to the revised reporting documents;
  - (e) *Part 5* provides for the preparation of an audit report on any revised financial statements and related matters; and
  - (f) *Part 6* imposes obligations on a company to inform relevant parties of the revisions made to the reporting documents.
- 9.11 A draft of the proposed C(RFS&R)R is attached at [Annex 9](#) for views and comments.

## CHAPTER 10

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

#### *Present requirements*

- 10.1 At present, a company is required by different sections in the existing CO to disclose information about benefits provided to its directors. These benefits include the directors' emoluments, loans to directors, directors' interest in contracts entered into by the company, etc.
- 10.2 Section 161 of the existing CO concerns the disclosure of various types of benefits. The information required to be disclosed in the notes to the company's accounts include –
- (a) the aggregate amount of the directors' emoluments;
  - (b) the aggregate amount of directors or past directors' pensions; and
  - (c) the aggregate amount of any compensation to directors or past directors in respect of loss of office.
- 10.3 Section 161B sets out the particulars to be disclosed in a company's accounts for any dealings entered into by the company in favour of its directors and other relevant persons which involve loans, quasi-loans or credit transactions<sup>4</sup>, as well as guarantees entered into and any security provided by the company in relation to such dealings.
- 10.4 Section 129D(3)(j) provides for the disclosure in the directors' report of any contract that is significant to the company's business and in which a director has any material interest, whether direct or indirect. The particulars to be disclosed include a statement of the fact, indication of the nature of the contract and the interest, together with the relevant particulars.

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<sup>4</sup> Quasi-loans and credit transactions are defined in section 157H(10) of the existing CO. In the new CO, their definitions are provided for in sections 493 and 494 respectively.

### *Requirements under the new CO*

- 10.5 Under the new CO, the requirements concerning disclosure of information about benefits to directors are provided for in section 383(1), which stipulates the requirement for the notes to financial statements to contain the following information :
- (a) the directors' emoluments;
  - (b) the directors' retirement benefits;
  - (c) payments made or benefit provided in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while being directors;
  - (d) loans, quasi-loans and other dealings in favour of –
    - (i) directors of the company and of a holding company of the company;
    - (ii) bodies corporate controlled by such directors; and
    - (iii) entities connected with such directors;
  - (e) material interests of directors in transactions, arrangements or contracts entered into by the company or another company in the same group of companies; and
  - (f) consideration provided to or receivable by third parties for making available the services of a person as director or in any other capacity while being a director.
- 10.6 Under sections 451 and 452 of the new CO, the particulars to be disclosed will be prescribed in subsidiary legislation.

### *The proposed subsidiary legislation*

- 10.7 We propose to make a regulation, entitled the Companies (Disclosure of Information about Benefits of Directors) Regulation (“C(DIBD)R”), to prescribe the particulars to be disclosed in the notes to financial statements in respect of the various types of benefits and dealings identified in section 383(1).
- 10.8 On many aspects, the disclosure requirements set out in

C(DIBD)R restate those in the existing CO. Where appropriate, some of the requirements have been modified to clarify the law, align with the changes introduced under the new CO, and facilitate compliance or enhance transparency. The major changes introduced in C(DIBD)R are set out in the ensuing paragraphs.

### Emoluments, retirement benefits, etc.

10.9 The changes in relation to emoluments, retirement benefits, payment for termination of services, and payment to third parties for making available a director's services include –

- (a) *new interpretive provisions* : apart from those contained in section 161 of the existing CO, the proposed C(DIBD)R will contain additional interpretive provisions to provide for a more comprehensive regime. These provisions will cover *payment to a director*<sup>5</sup> and *payment by a person*<sup>6</sup> (*sections 9(1) and 9(2)*);
- (b) *enhancing disclosure of nature of benefits otherwise than in cash* : while the estimated money value of benefits otherwise than in cash is already counted towards emoluments in the existing CO (which will also be the position in C(DIBD)R), we propose that the nature of such non-cash benefits must also be disclosed. In addition to directors' emoluments, we propose to apply such a requirement to the disclosure of information on retirement benefits, payment for termination of services, and payment to third parties for making available a director's services where applicable (*sections 3(1)(b), 4(1)(b), 5(1)(b) and 6(1)(b)*);
- (c) *clarifying the scope of emoluments* : as in the existing CO, C(DIBD)R will continue to require the disclosure of an aggregate figure of the directors' emoluments. For clarity, it will be explicitly provided for in *section 3(2) and 3(3)* respectively that the term "emoluments" covers also bonuses and emoluments paid to a person for accepting office as a

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<sup>5</sup> *Payment to a director* includes (i) a payment to an entity connected with the director; and (ii) a payment to a person made at the direction of, or for the benefit of, the director or an entity connected with the director.

<sup>6</sup> *Payment by a person* includes a payment by another person made at the direction of, or on behalf of, the person.

director;

- (d) *modernising the references to pensions and pension schemes* : section 161 of the existing CO relies on the term “*pensions*” which includes any superannuation allowance, superannuation gratuity or similar payment. In C(DIBD)R, the term will be replaced by “*retirement benefits*”, which will also be further clarified to include any benefits, in cash or otherwise than in cash, relating in several different ways to the retirement of a director<sup>7</sup> (*section 2*);
- (e) *clarifying the scope of payment for loss of office* : the existing requirement for the disclosure of an aggregate figure on the compensation for loss of office made to directors will be preserved (*section 5(1)*). The term “payment for loss of office” in C(DIBD)R will be interpreted in accordance with section 517 of the new CO. For clarity, two specific types of payment are explicitly included<sup>8</sup> (*section 5(2)*); and
- (f) *prescribing information to be disclosed regarding payment to third parties for making available directors’ services* : section 383(1)(f) of the new CO introduces a new requirement for the disclosure of information on the consideration provided to any third party for making available a director’s services to a company or any subsidiary undertaking. We propose to prescribe in section 6 that the information to be disclosed in this respect shall be an aggregate figure of any such payment in respect of all directors. The meaning of a third party is also set out in the

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<sup>7</sup> These include benefits –

- (a) given or to be given –
  - (i) on or after the retirement or death of the person;
  - (ii) in anticipation of the retirement of the person;
  - (iii) in connection with the person’s past service; or
- (b) given or to be given on, or in anticipation of, or in connection with any change in the nature of the person’s service.

<sup>8</sup> The two types of payment are –

- (a) any payment for damages or settlement of a claim, if a person’s retirement is occasioned by a breach of an existing legal obligation or a claim in connection with the termination (*section 5(2)(a)*); and
- (b) any payment in connection with termination of a director’s qualifying services (*section 5(2)(b)*).

same section.

Loans, quasi-loans etc. in favour of directors (“specified dealings”)

10.10 The changes in relation to specified dealings, i.e. loans, quasi-loans, credit transactions, as well as guarantees entered into and any security provided by the company in relation to such dealings include –

- (a) *removing the requirement for disclosure of information about specified dealings in favour of officers* : in the existing CO, the disclosure requirements apply to “officer” which includes any manager and the company secretary. Considering that directors would have much stronger influence on the businesses of the company as compared to the officers, the new CO regime will no longer require the disclosure of specified dealings in favour of officers of the company. In other words, only dealings in favour of directors or, where applicable, their connected entities or controlled bodies corporate have to be disclosed under C(DIBD). Notwithstanding the above, any specified dealings in favour of an officer who is also a director of the company will still be subject to the disclosure regime; and
- (b) *refining the detailed disclosure requirements* : the existing requirement for the disclosure of information on the maximum liability in relation to quasi-loans and credit transactions (as well as the provision of guarantee or security for such dealings) at the beginning and at the end of the financial year is to be replaced by the disclosure of information on (i) the liability at the beginning and the end of the financial year and (ii) the maximum liability throughout that year (*section 11(2)(c) and 11(2)(d)*). For specified dealings in favour of a connected entity, we propose to add a new requirement to disclose the nature of the connection between an entity and the director concerned (*section 11(2)(b)(ii)*).

10.11 Under the existing CO, a company has the option to simplify its disclosure of information on transactions involving quasi-loans or credit transactions in the notes to the accounts by providing aggregate figures for each person in lieu of the details of individual transaction. The particulars will then have to be

entered into a register for inspection by its members throughout the year. The above does not apply to transactions involving loans. The option is restated in section 12 of C(DIBD)R whereas the requirements concerning the register are stipulated in sections 384 to 386 of the new CO.

- 10.12 For an authorized financial institution (“AFI”)<sup>9</sup>, section 161B(8), (9) and (10) of the existing CO provides that it may give aggregate information on all eligible specified dealings (i.e. including loans) in the notes to the accounts. The AFI will need to enter the particulars of individual transactions into a statement, which will be made available for inspection by the general public for two weeks before the Annual General Meeting and one week thereafter in accordance with section 161BA.
- 10.13 While the new CO should provide a set of requirements that apply equally to all companies, we recognise that lending activities form one of the main businesses of the banking industry and it is not uncommon for AFIs to provide loans to its directors. Requiring AFIs to comply the requirements applicable to other companies could entail the inclusion of a substantial amount of detail in the financial statements of the AFIs, which would be cumbersome and of little practical use. We therefore propose to, as in the existing CO, provide for special disclosure arrangements for AFIs in C(DIBD)R (*sections 11(6) and 13*), i.e. AFIs may give aggregate information on all eligible specified dealings (including loans) in the notes to financial statements, while putting the particulars in a register. However, the requirements applicable to the register of AFI’s transactions will be aligned with those applicable to all companies in sections 384 to 386 of the new CO, i.e. the AFI’s register should be made available for inspection by its members throughout the year.

#### Transactions, arrangements and contracts involving material interest

- 10.14 The changes in relation to transactions, arrangements and contracts involving material interest include –
- (a) *expanding the scope of disclosure to cover transactions and arrangements as well as those involving entities connected with director* : section 162 of the existing CO provides that if

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<sup>9</sup> Authorized financial institutions refer to licensed banks, restricted licence banks and deposit-taking companies under the Banking Ordinance (Cap.155).

a director has a material interest in a contract, and that the contract is significant to the business of the company, he shall declare his interest in it to the board of directors. Under section 536(1) of the new CO, the scope of declaration is extended to cover *transactions and arrangements* that are significant in relation to the company's business involving material interests. Section 536(2) further provides that in the case of a public company, a director must also declare the material interests of any entity connected with the director. In line with the enhanced regime for declaration of interest in the new CO, we propose that the scope of disclosure in this respect under the proposed C(DIBD)R should be expanded accordingly for consistency (*section 17*);

- (b) *clarifying the information required to be disclosed* : we propose to replace the requirement to give “an indication of the nature” under the existing CO by a requirement to specify “the principal terms” of the transaction, arrangement or contract (*section 17(2)(a)*); and
- (c) *exempting private companies which prepare simplified reports from the disclosure regime* : the relevant disclosure requirement applies only to a company that does not fall within the reporting exemption for the financial year concerned (*section 16(2)*).

### *The Regulation in detail*

10.15 The proposed C(DIBD)R comprises four parts :

- (a) *Part 1* provides for the commencement of the Regulation;
- (b) *Part 2* provides for the disclosure of information about emoluments (*section 3*), retirement benefits (*section 4*), payment for termination of services (*section 5*) and payment to third parties in making available a director's services (*section 6*) in respect of the company's directors. The interpretive provisions applicable to this part are contained in *sections 2, 7 and 8*;
- (c) *Part 3* provides for the disclosure of information about specified dealings in favour of directors (*section 11*). *Sections 12 and 13* restate the alternative disclosure of aggregate figures, as well as the disclosure requirements

applicable to AFIs as provided for in section 161B of the existing CO. The interpretive provisions applicable to this part are contained in *sections 10, 14 and 15*; and

- (d) *Part 4* provides for the disclosure of information about transactions, arrangements and contracts of material interest (*section 17*). The interpretive provisions applicable to this part are contained in *section 16*.

10.16 A draft of the proposed C(DIBD)R is attached at Annex 10 for views and comments.

## CHAPTER 11

### Companies (Residential Addresses and Identification Numbers) Regulation

#### *Present requirements*

- 11.1 At present, directors and company secretaries who are natural persons are required to state their usual residential addresses and full identification numbers (“*personal information*”) in documents delivered to the Registrar for registration, such as the annual returns filed by a company. There are also instances where other persons such as liquidators may have to provide their full identification numbers on documents delivered for registration.
- 11.2 These documents containing personal information are available for public inspection subject to payment of a fee where applicable.

#### *Requirements under the new CO*

- 11.3 A feature of the new CO is to enhance protection of the privacy of personal information in documents for registration. Taking into account views gathered from public consultation, a regime that strikes a balance between protecting privacy and the need for public access to certain personal information has been put in place in the new CO.
- 11.4 An overview of the regime for protecting or withholding personal information from public inspection is as follows :
  - (a) for documents under the new CO, section 54 of the new CO provides that the personal information of directors and other individuals therein will *not* be made available for public inspection (i.e. “*protected information*”);
  - (b) as regards documents that have already been delivered for registration (in particular those delivered before commencement of the new CO), section 49 of the new CO provides that applications can be made to the Registrar for withholding from public inspection the personal information in such documents (i.e. “*withheld information*”); and
  - (c) for both (a) and (b) above, if the residential address of an

individual is to be withheld or protected from public inspection, the *correspondence address* provided by the individual will be made available for public inspection. As for identification number, part of it will remain available for public inspection.

- 11.5 To allow legitimate access to withheld or protected information, sections 51(3) and 58(3) permit the Registrar to disclose such information to certain specified types of persons.

*The proposed subsidiary legislation*

- 11.6 The general arrangements for the withholding or protection of personal information as well as the disclosure of such information are set out in sections 47 to 59 of the new CO. As for the detailed and procedural matters relating to the application for withholding personal information and the application for disclosure of any withheld or protected information, they will be prescribed by a piece of subsidiary legislation entitled the Companies (Residential Addresses and Identification Numbers) Regulation (“C(RAIN)R”).
- 11.7 Regarding the application for withholding personal information under section 49 of the new CO, the applicant must submit an application form to the Registrar. The application must specify the address and/or identification number to be withheld and the document concerned (*section 3(1) and (3)*).
- 11.8 For an application to withhold a residential address from public inspection, the applicant must also provide a correspondence address to be made available for public inspection in lieu of the residential address. Such correspondence address cannot be a post office box number (*section 3(1)(a) and (2)*).
- 11.9 As regards an application for disclosure of withheld or protected information under section 51 or 58 of the new CO, the following types of persons may make such an application (*sections 8 and 12*):
- (a) the person whose personal information has been withheld or protected (i.e. the data subject) may access the withheld or protected information relating to himself/herself;
  - (b) a person authorised in writing by a data subject may apply

for access to the withheld or protected information relating to the data subject. The application must be supported by documentary proof of the authorisation;

- (c) a member of a company, on production of a written statement confirming his membership, may apply for access to withheld or protected information on documents in respect of the company;.
- (d) public officers, public bodies and certain persons identified in the Schedule<sup>10</sup> may apply for access to withheld or protected information if required for legitimate purposes. They will need to confirm in writing that the information will not be used for any other purposes; and
- (e) a liquidator under Cap.32 and a trustee of the property of a bankrupt under the Bankruptcy Ordinance (Cap.6) may also apply for access to withheld or protected information if required in their work. Similarly, the applicant will need to confirm in writing that the information will not be used for any other purposes.

11.10 For an application for withholding information or for gaining access to protected or withheld information, the Registrar will be entitled to request for additional information and document for determining the application (*sections 4, 7 and 11*).

11.11 An application for withholding information or for access to withheld or protected information will be subject to payment of a fee to be prescribed.

### *The Regulation in detail*

11.12 The proposed C(RAIN)R comprises four parts and one schedule :

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<sup>10</sup>

The persons identified in the Schedule consist of –

- (i) an inspector under the new CO for investigation into the affairs of a company;
- (ii) an inspector under the Trustee Ordinance (Cap.29);
- (iii) the self-regulatory organisations of the insurance sector under the Insurance Companies Ordinance (Cap.41); and
- (iv) a recognized clearing house, a recognized exchange company, a recognized exchange controller and a recognized investor compensation company under the Securities and Futures Ordinance (Cap.571).

- (a) *Part 1* provides for the commencement of the Regulation and interpretation of the terms used in the Regulation;
- (b) *Part 2* provides for matters relating to an application for withholding personal information pursuant to section 49(1) of the new CO; and
- (c) *Parts 3 and 4* provide for matters relating to the application for disclosure of withheld information and protected information respectively, as well as any condition for disclosure of such information to each type of persons (some of which are specified in the *Schedule*).

11.13 A draft of the proposed C(RAIN)R is attached at Annex 11 for views and comments.

## CHAPTER 12

### Companies (Unfair Prejudice Proceedings) Rules

#### *Present requirements*

- 12.1 Section 168A of the existing CO provides that a petition may be made to the court if the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members (including past members) of the company. The court may make orders under that section for giving relief, with a view to bringing to an end the matters complained of.
- 12.2 The conduct of proceedings under section 168A is regulated by the Companies (Winding-up) Rules (Cap.32, sub. leg. H) ("Cap.32H") made by the Chief Justice ("CJ") pursuant to section 296 of the existing CO, insofar as they are applicable. Specifically, the relevant rules provide for matters including the form of a petition (rule 22 and form 3A), the presentation of a petition (rule 23), the drawing up of an order (rule 35(1)) and those relating to the service of an order on the company and the Registrar (rule 36(3)).

#### *Requirements under the new CO*

- 12.3 Sections 724 to 726 of the new CO mainly restate the arrangements in section 168A of the existing CO with modifications. The provisions clarify the scope of application by providing that a petition may also be made in respect of a proposed act or omission of the company that would be unfairly prejudicial. The scope of remedies which the court may order is also expressly expanded in section 725 of the new CO to allow the court to make an order requiring the doing of an act that the company proposed to omit to do.

#### *The proposed subsidiary legislation*

- 12.4 Section 727(1)(a) of the new CO provides that, subject to the approval of the LegCo the CJ may make rules for regulating the conduct of unfair prejudice proceedings. We propose that a set of rules, entitled the Companies (Unfair Prejudice Proceedings) Rules ("C(UPP)R"), be made by the CJ for this purpose.

- 12.5 Cap.32H (which will be consequentially amended by Part 7 of Schedule 9 to the new CO) will co-exist with the proposed C(UPP)R. The former will apply to a petition solely for the winding up of a company. The latter will apply to an unfair prejudice petition. If an unfair prejudice petition includes a prayer to wind up a company, the applicable provisions in Cap.32H will also apply to the petition<sup>11</sup> (*rule 3*).
- 12.6 The proposed rules 4, 5, 6 and 9 are formulated with reference to the Companies (Unfair Prejudice Applications) Proceedings Rules 2009 of the United Kingdom. A brief outline is as follows :
- (a) a petition must be in the prescribed form and the petitioner must specify both the grounds for presenting the petition and the order sought (*rule 4*). The prescribed form in the Schedule is based on Form 3A of Cap.32H with suitable modifications to reflect the changes described in paragraph 12.3 above;
  - (b) the court will return sealed copies of the petition endorsed with the return day and time of hearing of the petition to the petitioner, who will be responsible for service of the sealed copies on the company and, where applicable, every respondent named in the petition at least 14 days before the return day (*rules 4 and 5*); and
  - (c) on or after the return day, the court may give directions on the procedural and other matters as set out in *rule 6*, which include advertising of the petition and any order for a stay with a view to mediation or other alternative dispute resolution. *Rule 9* provides that the court may give directions on the manner and time of advertising of the court order granting relief.
- 12.7 The procedural requirements concerning the drawing up and service of an order in rules 35(1) and 36(3) of Cap.32H are restated as *rules 7 and 8* of the proposed C(UPP)R.

### *The Rules in detail*

- 12.8 The proposed C(UPP)R comprises nine rules and one schedule :

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<sup>11</sup> If the prayer to wind up a company included in such an unfair prejudice petition is subsequently removed, Cap.32H will cease to apply.

- (a) *Rules 1 and 2* provide for the commencement of the Regulation and interpretation of the terms used in the rules respectively;
- (b) *Rule 3* sets out the circumstances in which the relevant provisions in Cap.32H and the new rules specified in the proposed C(UPP)R apply to unfair prejudice proceedings;
- (c) *Rule 4* specifies the form of the petition and sets out the arrangements for presentation of the petition and fixing of the return day on which the Court gives directions in relation to the procedure on the petition;
- (d) *Rule 5* sets out the requirements on the service of the petition by the petitioner;
- (e) *Rule 6* provides for the matters on which the Court may give directions on the return day;
- (f) *Rule 7* provides for the drawing up of an order and *rule 8* provides for the service of the order. They essentially restate rules 35(1) and 36(3) of Cap.32H;
- (g) *Rule 9* provides for the Court's power to give directions on the advertising of the order; and
- (h) *The Schedule* reproduces, with modification, Form 3A in the Appendix to Cap.32H.

12.9 A draft of the proposed C(UPP)R is attached at Annex 12 for views and comments.

## **Annex 8**

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### **Companies (Trading Disclosures) Regulation**

## Companies (Trading Disclosures) Regulation

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

### 1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

### 2. Interpretation

(1) In this Regulation—

**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) A reference to a communication document or transaction instrument is a reference to it in hard copy, electronic or any other form.

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### Companies (Trading Disclosures) Regulation

- (3) In relation to a company, a reference to its websites includes any part of a website relating to that company which that 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 prominently on the outside of—
- (a) its registered office;
  - (b) any other office of the company; and
  - (c) any place of business of the company.
- (2) If a location is an office (whether or not the registered office) or a place of business of more than 6 companies, and any of the companies, in purported compliance with subsection (1), displays its registered name through an electronic device, the registered name is taken to be displayed continuously for the purposes of that subsection if—
- (a) the registered name is displayed for at least 20 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.
- (3) Subsections (1) and (2) do not apply to a company that has had no accounting transaction at any time since its incorporation.
- (4) If—
- (a) a liquidator, receiver or manager of the property of a company has been appointed; and
  - (b) the registered office, any other office or any place of business of the company is also a place of business of the liquidator, receiver or manager,

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### Companies (Trading Disclosures) Regulation

subsections (1) and (2) do not apply to that registered office, other office or place of business.

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

A company must state its registered name in legible characters—

- (a) in any communication document of the company;
- (b) in any transaction instrument of the company; and
- (c) 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)—
  - (a) outside or inside the registered office, any other office or any place of business of the company;

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### Companies (Trading Disclosures) Regulation

(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 Chinese characters “有限公司”.

(4) Subject to subsection (5), a limited company that was, immediately before the commencement date 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—

(a) 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

(b) 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) outside or inside the registered office, any other office or any place of business 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 definite article as the first word in the description.

**7. Offences**

- (1) If a company contravenes sections 3(1), 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—

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- (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.

Secretary for Financial Services and  
the Treasury

2012

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## **Annex 9**

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Companies (Revision of Financial Statements and  
Reports) Regulation

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# Companies (Revision of Financial Statements and Reports) Regulation

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# Companies (Revision of Financial Statements and Reports) Regulation

(Made by the Secretary for Financial Services and the Treasury under section 450 of the Companies Ordinance (28 of 2012))

## Part 1

### Preliminary

#### 1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

#### 2. Interpretation

(1) In this Regulation—

***audit report*** (核數報告) means a report on revised financial statements mentioned in section 13(1) or (2);

***auditor's report*** (核數師報告) has the meaning given by section 357(1) of the Ordinance;

***date of revision*** (修訂日期)—

(a) in relation to any revised financial statements, means—

(i) in the case of a revision by replacement, the date required by section 3(6)(a)(i) or (b)(i) to be stated in the revised financial statement; or

(ii) in the case of a revision by supplementary note, the date required by section 3(6)(a)(ii) or (b)(ii) to be stated in the note;

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- (b) in relation to any revised directors' report, means the date on which the report is approved under section 391 of the Ordinance; and
- (c) in relation to any revised summary financial report, means the date on which the report is approved under section 440 of the Ordinance;

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

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

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

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

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

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

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

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

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

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***relevant Regulation*** (《有關規例》) means—

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

***reporting exemption*** (提交報告方面的豁免) means a reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance;

***revised directors' report*** (經修訂董事報告) means—

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

***revised financial statements*** (經修訂財務報表) means—

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

***revised statement of financial position*** (經修訂財務狀況表) means—

- (a) in the case of a revision by replacement, the statement of financial position replacing the original statement of financial position for the purpose of the revision; or

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

***revised summary financial report*** (經修訂財務摘要報告) means—

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

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

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

(2) In this Regulation—

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

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

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## **Part 2**

### **Contents of Revised Documents**

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

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make in a prominent position in the revised financial statements—

- (a) a statement that the revised financial statements replace the original financial statements for the financial year specified in the statement;
- (b) a statement that the original financial statements—
  - (i) are taken as having been revised by the directors on the date of the original financial statements instead of on the date of revision; and
  - (ii) accordingly do not deal with events between those 2 dates; and
- (c) a statement as to—
  - (i) the respects in which the original financial statements did not, as appears to the directors, comply with the Ordinance or relevant Regulation; and
  - (ii) the material revisions to the original financial statements.

(5) If the directors of a company cause the financial statements of the company to be revised by supplementary note, the directors must make in a prominent position in the note—

- (a) a statement that the note—
  - (i) revises in certain respects the original financial statements; and
  - (ii) is to be treated as forming part of those statements; and
- (b) a statement that the original financial statements—
  - (i) are taken as having been revised by the directors on the date of the original financial statements instead of on the date of revision; and

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- (ii) accordingly do not deal with events between those 2 dates.
- (6) In addition to the requirements under subsection (4) or (5) (as the case may be), the directors must also—
  - (a) in the case of a revision to a statement of financial position, cause the date on which the revised statement of financial position is approved under section 387 of the Ordinance to be stated—
    - (i) in the case of a revision by replacement, in the revised financial statements; or
    - (ii) in the case of a revision by supplementary note, in the supplementary note; or
  - (b) in any other case, cause the date specified by the directors as the date on which the financial statements are regarded as having been revised to be stated—
    - (i) in the case of a revision by replacement, in the revised financial statements; or
    - (ii) in the case of a revision by supplementary note, in the supplementary note.
- (7) In this section, a reference to a provision of the Ordinance or relevant Regulation is to be construed, if the provision has been amended after the date of the original financial statements but before the date of revision, as a reference to the provision as in force at the date of the original financial statements.

#### **4. Offences relating to section 3**

- (1) This section applies in respect of any revised financial statements of a company a copy of which—
  - (a) is laid before the company in general meeting under section 429 of the Ordinance;

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- (b) is sent to a member under section 430 of the Ordinance;  
or
  - (c) is otherwise circulated, published or issued by the company.
- (2) If a director of the company fails to take all reasonable steps to secure compliance with any of the following provisions as respects any revised financial statements of the company, the director commits an offence and is liable to a fine of \$300,000—
- (a) in the case of a company not falling within the reporting exemption for the financial year—
    - (i) a provision mentioned in section 3(1) or (2);
    - (ii) section 3(4) or (5) (as the case may be) or section 3(6); or
  - (b) in the case of a company falling within the reporting exemption for the financial year—
    - (i) a provision mentioned in section 3(3);
    - (ii) section 3(4) or (5) (as the case may be) or section 3(6).
- (3) If a director of the company wilfully fails to take all reasonable steps to secure compliance with any of the following provisions as respects any revised financial statements of the company, the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months—
- (a) in the case of a company not falling within the reporting exemption for the financial year—
    - (i) a provision mentioned in section 3(1) or (2);
    - (ii) section 3(4) or (5)(as the case may be) or section 3(6); or

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

#### **5. Matters to be included in revised directors' report**

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

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

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

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

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

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### **6. Matters to be included in revised summary financial report**

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

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

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- (9) In this section, a reference to a provision of the Ordinance or relevant Regulation is to be construed, if the provision has been amended after the date of the original summary financial report but before the date of revision, as a reference to the provision as in force at the date of the original summary financial report.
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## **Part 3**

### **Approval and Signature of Revised Documents**

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

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

**8. Approval and signature of revised directors' report**

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

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### **9. Approval and signature of revised summary financial report**

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

### **Effect of Revised Documents**

#### **10. Effect of revised financial statements**

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

#### **11. Effect of revised directors' report**

- (1) On the directors of a company approving a revised directors' report of the company, and complying with section 5(2) or (3) (as the case may be) and section 5(4), the Ordinance has effect with respect to the revised directors' report as if the revised directors' report were, as from the date of revision, the directors' report of the company in place of the original directors' report.

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- (2) Without limiting subsection (1), if, as at the date of revision, any of the following provisions has yet to be complied with by the company, the revised directors' report is, as from that date, the directors' report of the company for the relevant financial year for the purposes of that provision—
- (a) where a copy of the original financial statements was sent to a member under section 430(1) of the Ordinance, section 429(1), 435(1) or 662 of the Ordinance;
  - (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance, section 435(1) or 662 of the Ordinance.

#### **12. Effect of revised summary financial report**

- (1) On the directors of a company approving a revised summary financial report of the company, and complying with section 6(2) or (3) (as the case may be) and section 6(4), the Ordinance has effect with respect to the revised summary financial report as if the revised summary financial report were, as from the date of revision, the summary financial report of the company in place of the original summary financial report.
- (2) Without limiting subsection (1), the revised summary financial report is, as from the date of revision, the summary financial report of the company for the relevant financial year for the purposes of section 446(1) and (2) of the Ordinance.
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## **Part 5**

### **Audit Report on Revised Financial Statements**

#### **13. Audit report**

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

#### **14. Opinion on revised financial statements**

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

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- (2) If the person preparing an audit report is of the opinion that the information in a directors' report or revised directors' report for a financial year is not consistent with the revised financial statements for the financial year, the person—
  - (a) must state that opinion in the audit report; and
  - (b) may bring that opinion to the members' attention at a general meeting.
- (3) A reference in subsection (1) to a provision of the Ordinance is to be construed, if the provision has been amended after the date of the original financial statements but before the date of revision, as a reference to the provision as in force at the date of the original financial statements.

#### **15. Opinion on other matters**

Section 407 of the Ordinance—

- (a) applies to an audit report, as it applies to an auditor's report; and
- (b) applies to a person preparing an audit report, as it applies to a company's auditor preparing an auditor's report.

#### **16. Offences relating to contents of audit report**

- (1) Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes to be omitted from an audit report a statement required to be contained in the report by virtue of section 15.
- (2) The persons are—
  - (a) if the person who prepares an audit report is a natural person—
    - (i) the person; and
    - (ii) every employee and agent of the person who is eligible for appointment as auditor of the company;

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- (b) if the person is a firm, every partner, employee and agent of the person who is eligible for appointment as auditor of the company; or
  - (c) if the person is a body corporate, every officer, member, employee and agent of the person who is eligible for appointment as auditor of the company.
- (3) A person who commits an offence under subsection (1) is liable to a fine of \$150,000.

#### **17. Audit reports to be signed**

- (1) Section 409(1), (2) and (3) of the Ordinance applies to an audit report as it applies to an auditor's report, except that—
- (a) section 409(1)(a) of the Ordinance applies as if it required the signature of the person preparing the audit report;
  - (b) section 409(1)(b) of the Ordinance applies as if it required the signature of the natural person authorized to sign the name of the person preparing the audit report on behalf of the person preparing the audit report; and
  - (c) section 409(2) and (3) of the Ordinance applies as if it required the name of the person preparing the audit report to be stated.
- (2) If, as respects any audit report, section 409(3) of the Ordinance that is applicable to the report by virtue of subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

#### **18. Qualified privileges of person preparing audit report etc.**

- (1) For a person preparing an audit report who is not the current auditor of the company (*relevant person*), in the absence of malice, the relevant person is not liable to any action for

defamation at the suit of any person in respect of any statement made by the relevant person in the course of performing duties as a person preparing an audit report.

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

**19. Rights of person preparing audit report**

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

- (3) Section 412(7) and (8) of the Ordinance applies to and in relation to a relevant person as it applies to and in relation to a person mentioned in that section.

**20. Offences relating to section 19**

- (1) If, as respects a requirement made under section 412(2) of the Ordinance by virtue of section 19(2), section 412(3) of the Ordinance is contravened by the person to whom the requirement is made, the person commits an offence and is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (2) If a person is charged with an offence under subsection (1), it is a defence to establish that it was not reasonably practicable for the person to provide the information or explanation.
- (3) A person commits an offence if—
  - (a) the person makes a statement to a person preparing an audit report that conveys or purports to convey any information or explanation that the person preparing the audit report requires, or is entitled to require, under section 412(2) or (4) of the Ordinance by virtue of section 19(2);
  - (b) the statement is misleading, false or deceptive in a material particular; and
  - (c) the person knows that, or is reckless as to whether or not, the statement is misleading, false or deceptive in a material particular.
- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or

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- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) If, as respects a requirement made under section 412(4) of the Ordinance by virtue of section 19(2), section 412(6) of the Ordinance is contravened by the company to which the requirement is made, the company, and every responsible person of the company, commit an offence and each is liable to a fine at level 4 and, in the case of a continuing offence, to a further fine of \$700 for each day during which the offence continues.
- (6) If a person is charged with an offence under subsection (5) for failing to obtain any information or explanation from a subsidiary undertaking or another person, it is a defence to establish that—
  - (a) it would be an offence under the law of a place outside Hong Kong for the subsidiary undertaking or that other person to provide the information or explanation to the defendant; and
  - (b) the subsidiary undertaking or that other person did not provide the information or explanation to the defendant on that ground.
- (7) This section does not affect the right of a person preparing an audit report to apply for an injunction to enforce any of the person's right granted under section 412 of the Ordinance by virtue of section 19(2).

#### **21. Audit report to be attached to revised financial statements in certain cases**

- (1) The revised financial statements of a company must not be circulated, published, issued or otherwise made available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read those

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

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statements unless the audit report on the revised financial statements are attached to those statements.

- (2) If subsection (1) is contravened, the company, and every responsible person of the company who is in default, commit an offence, and each is liable to a fine of \$150,000.
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## **Part 6**

### **Company's obligations regarding revised documents**

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

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

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

#### **23. Exception to section 22**

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

- (5) If a company does not have a share capital, section 22 does not require the company to send a copy of any document to a member who is not entitled to receive notice of general meeting of the company.

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

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

the financial statements, the company must, within 28 days after the date of revision in relation to the revised financial statements, send a copy of the revised summary financial report, together with a statement of the revisions made and their effect, to—

- (a) every member of the company who was sent a copy of the summary financial report; and
- (b) every member of the company to whom the company must, as at the date of revision in relation to the revised financial statements, send a copy of the summary financial report in compliance with a request under 444(1) or 445(2) of the Ordinance.

- (5) If a company contravenes subsection (2) or (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

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

- (1) This section applies if a company sends or supplies any document or information for the purposes of section 22 or 24 by making it available on a website.
- (2) For the purposes of section 833(3)(c) of the Ordinance, a notification must be sent within 28 days after the date of revision concerned.
- (3) The period specified for the purposes of section 833(3)(d)(i) of the Ordinance is—
  - (a) for a company that is required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision

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concerned and ending on the date of the following general meeting at which a copy of the reporting documents for the financial year is required to be laid before the company under section 429 of the Ordinance;

- (b) for a company that, by virtue of section 612(1) of the Ordinance, is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the circulation date of the written resolution mentioned in section 612(1)(a) of the Ordinance; or
- (c) for a company that, by virtue of section 612(2) of the Ordinance, is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date on which a copy of the reporting documents for the financial year is required to be sent to every member of the company under section 430(3) of the Ordinance.

(4) In this section—

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

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

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

- (1) If the directors of a company cause any financial statements of the company to be revised or make revisions to a directors' report of the company after the original financial statements or original directors' report (as the case may be) has been laid before the company in general meeting under section 429 of the Ordinance, the directors must lay before the first general meeting of the company held after the date of revision—
  - (a) the revised financial statements or revised directors' report (as the case may be); and
  - (b) the audit report on the revised financial statements.
- (2) If a director of a company fails to take all reasonable steps to secure compliance with subsection (1) as respects any revised financial statements or revised directors' report of the company, the director commits an offence and is liable to a fine of \$300,000.
- (3) If a director of a company wilfully fails to take all reasonable steps to secure compliance with subsection (1) as respects any revised financial statements or revised directors' report of the company, the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (4) If a person is charged with an offence under subsection (2), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
  - (a) was charged with the duty of ensuring that subsection (1) was complied with; and
  - (b) was in a position to discharge that duty.

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

- (1) If the directors of a company cause any financial statements of the company to be revised or make revisions to a directors' report of the company after a copy of the original financial statements or original directors' report has been delivered to the Registrar for registration as required by section 662 of the Ordinance, the company must, within 28 days after the date of revision in relation to the revised financial statements or revised directors' report (as the case may be), deliver to the Registrar for registration—
  - (a) in the case of any revised financial statements, a certified copy of the audit report on the revised financial statements and—
    - (i) for a revision by replacement, a certified copy of the revised financial statements; or
    - (ii) for a revision by supplementary note, a certified copy of the note; or
  - (b) in the case of a revised directors' report—
    - (i) for a revision by replacement, a certified copy of the revised directors' report; or
    - (ii) for a revision by supplementary note, a certified copy of the note.
- (2) If any copy mentioned in subsection (1) is not in English or Chinese, the copy must be accompanied by a certified translation of the copy in English or Chinese.
- (3) If a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

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- (4) If a person is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order, do the act that the person has failed to do.
- (5) A person who contravenes an order under subsection (4) commits an offence and is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (6) For the purposes of this section, a copy of any document of a company is a certified copy if it is certified as a true copy of the document by a director or company secretary of the company.

Secretary for Financial Services and  
the Treasury

2012

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## **Annex 10**

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Companies (Disclosure of Information about Benefits of  
Directors) Regulation

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Companies (Disclosure of Information about Benefits of Directors) Regulation

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

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

## **Part 1**

### **Preliminary**

#### **1. Commencement**

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

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## Part 2

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

## Division 1—Interpretation

### 2. Interpretation of Part 2

(1) In this Part—

***company contributions*** (公司供款), in relation to a director of a company, means any payment (including insurance premium) paid, or treated as paid, under a retirement benefits scheme in respect of the qualifying services of the director by the company or any other person;

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

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

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

- (a) includes any lump sum, gratuity, periodical payment or other like benefit, any other property, or any other benefit whether in cash or otherwise—

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- (i) given or to be given on or after the retirement or death of the person (including any annuity or other benefit paid or payable under any medical, accident or life insurance policy on or after the retirement or death of the person), or in anticipation of the retirement of the person;
- (ii) given or to be given in connection with the person's past service; or
- (iii) given or to be given on, or in anticipation of, or in connection with any change in the nature of the person's service,

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

- (b) excludes—
  - (i) any benefit which has or is to be afforded solely by reason of the person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment; and
  - (ii) any retirement gift of a value not exceeding \$50,000;

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

- (a) a recognized occupational retirement scheme as defined by section 2 of the Inland Revenue Ordinance (Cap. 112);
- (b) a mandatory provident fund scheme as defined by that section; and
- (c) a retirement insurance scheme;

***retirement insurance scheme*** (退休保險計劃)—

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- (a) means a scheme for the provision of medical, accident or life insurance coverage—
    - (i) on or after the retirement or death of a person;
    - (ii) in connection with a person’s past service; or
    - (iii) on or in connection with any change in the nature of a person’s service; but
  - (b) excludes a scheme for the provision of insurance coverage for a person’s personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment.
- (2) In this Part, a reference to a director—
- (a) in the case of section 4, includes a former director; and
  - (b) in the case of section 5, includes a former director and shadow director.
- (3) In this Part, a reference to a subsidiary undertaking of a company—
- (a) subject to paragraphs (b) and (c), if a person, while a director of the company, is or was also a director of any other undertaking by virtue of the company’s nomination, whether direct or indirect, includes that other undertaking, whether or not that other undertaking is or was in fact a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance);
  - (b) for the purposes of section 6, is a reference to a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance) at the time the qualifying services of the person concerned are or were rendered; and
  - (c) in paragraph (b) of the definition of *qualifying services* in subsection (1)—

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- (i) for the purposes of sections 3, 4 and 6, is a reference to a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance); and
  - (ii) for the purposes of section 5, is a reference to a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance) immediately before the loss of office as director of the company.
- (4) In this Part, a reference to an entity connected with a director has the meaning given by section 486 of the Ordinance.

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

#### 3. Information about directors' emoluments

- (1) The information about the directors' emoluments prescribed for the purposes of section 383(1)(a) of the Ordinance is—
  - (a) the aggregate amount of the emoluments paid to or receivable by the directors in respect of their respective qualifying services; and
  - (b) if any such emoluments consist of a benefit otherwise than in cash, the nature of that benefit.
- (2) Any emoluments paid or receivable in respect of a person accepting office as a director are to be treated as emoluments paid or receivable in respect of that person's services as a director.
- (3) In this section—

*emoluments* (薪酬), in relation to a director of a company—

  - (a) includes—
    - (i) the director's salaries, fees and bonuses;

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- (ii) any sums paid to the director by way of expenses allowance less the amounts actually spent on the expenses for which the allowance was made;
  - (iii) any company contributions paid, or treated as paid, in respect of the qualifying services of the director under any retirement benefits scheme; and
  - (iv) the estimated money value of any other benefits received by the director otherwise than in cash; but
- (b) excludes any retirement benefits to which the director is entitled under any retirement benefits scheme.

#### **4. Information about directors' retirement benefits**

- (1) The information about the directors' retirement benefits prescribed for the purposes of section 383(1)(b) of the Ordinance is—
- (a) the excess of the retirement benefits paid over the retirement benefits entitled; and
  - (b) (where there is such an excess) if any such retirement benefits consist of a benefit otherwise than in cash, the nature of that benefit.
- (2) In subsection (1)—
- (a) a reference to the retirement benefits paid is a reference to the aggregate amount of the retirement benefits paid to or receivable by the directors under any retirement benefits scheme in respect of their qualifying services; and
  - (b) a reference to the retirement benefits entitled is a reference to the aggregate amount of the retirement benefits to which the directors are or were entitled on the date on which those benefits first become or became

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payable or on the commencement date of this Regulation, whichever is the later.

- (3) For the purposes of subsection (2)(a), any amount of retirement benefits is to be disregarded if—
  - (a) the funding of the retirement benefits scheme was such that the amount was or could have been paid without recourse to additional company contributions; and
  - (b) the amount was paid to or receivable by all scheme members of the retirement benefits scheme on the same basis.
- (4) For the purposes of this section, if any retirement benefits consist of a benefit otherwise than in cash, to that extent, a reference to the amount of the retirement benefits is a reference to the estimated money value of that benefit.
- (5) In this section—

*scheme member* (計劃成員), in relation to a retirement benefits scheme, means any person who is entitled to the present payment of retirement benefits under the scheme.

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

- (1) The information about the payments made or benefit provided in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while directors, prescribed for the purposes of section 383(1)(c) of the Ordinance is—
  - (a) the aggregate amount of payments for loss of office made to the directors; and
  - (b) if any such payments for loss of office consist of a benefit otherwise than in cash, the nature of that benefit.

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- (2) In this section, a reference to payment for loss of office is a reference to payment for loss of office within the meaning of section 517 of the Ordinance and includes—
    - (a) in the case of section 517(1)(c) and (d) of the Ordinance, if a person’s retirement is occasioned by a breach of an existing legal obligation or a claim arising in connection with the termination of the person’s office or employment—
      - (i) any payment made by way of damages for the breach; and
      - (ii) any payment made by way of settlement or compromise of the claim; and
    - (b) any other payment paid to or receivable by a person in connection with the termination of the person’s qualifying services.
  - (3) For the purposes of this section, if any payment for loss of office consists of a benefit otherwise than in cash, to that extent, a reference to the amount of the payment is a reference to the estimated money value of that benefit.
- 6. Information about consideration provided to or receivable by third parties for making available directors’ services**
- (1) The information about the consideration provided to or receivable by third parties for making available the services of a person as director of a company, or in any other capacity while director, prescribed for the purposes of section 383(1)(f) of the Ordinance is—
    - (a) the aggregate amount of the consideration paid to or receivable by any third party for making available the qualifying services of any person; and
    - (b) if any such considerations consist of a benefit otherwise than in cash, the nature of that benefit.

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- (2) In this section—
  - (a) a reference to consideration includes benefits otherwise than in cash; and
  - (b) a reference to any third party is a reference to any person other than—
    - (i) the director;
    - (ii) an entity connected with the director;
    - (iii) the company; or
    - (iv) any subsidiary undertaking of the company.
- (3) For the purposes of this section, if any consideration consists of a benefit otherwise than in cash, to that extent, a reference to the amount of the consideration is a reference to the estimated money value of that benefit.

### **Division 3—Supplementary Provisions Relating to Information Prescribed by this Part**

#### **7. Only information contained in company's records required to be given**

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

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

#### **8. What amounts to be shown**

- (1) For the purposes of this Part, an amount to be shown for any financial year in the notes to the financial statements prepared for that year is—

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- (a) the sums receivable in respect of that year (whenever paid); or
  - (b) in the case of sums not receivable in respect of a period, the sums paid during that year.
- (2) If—
- (a) any sums are not shown for any financial year in the notes to the financial statements prepared for that year on the ground that the person receiving them is liable to account for them as mentioned in section 9(3); and
  - (b) the liability is, wholly or partly, released subsequently or not enforced within a period of 2 years after the date on which the sums are received by the person,
- those sums must, to the extent that the liability is so released or not enforced, be shown in the notes to the first financial statements in which it is practicable to show them, and must be distinguished from the amounts to be shown apart from this provision.
- (3) If an amount is to be shown for any financial year in the notes to the financial statements prepared for that year in relation to the information required to be given under this Part, the corresponding amount for the immediately preceding financial year must also be shown in those notes.
  - (4) If a provision of this Part requires any distinction to be made in any amount to be shown, the directors may, for the purpose of complying with that provision, apportion any payment among the matters in respect of which the payment is paid or receivable in the manner that the directors think fit.

### 9. **Certain payments and amounts covered for the purposes of this Part**

- (1) In this Part, a reference to a payment to a director includes—

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- (a) a payment to an entity connected with the director; and
    - (b) a payment to a person made at the direction of, or for the benefit of, the director or an entity connected with the director.
  - (2) In this Part, a reference to a payment by a person includes a payment by another person made at the direction of, or on behalf of, the person.
  - (3) In this Part, a reference to an amount paid by or receivable from a company includes all relevant sums paid by or receivable from—
    - (a) the company;
    - (b) any subsidiary undertaking of the company; or
    - (c) any other person,except sums to be accounted for by the person receiving them to the company or any subsidiary undertaking of the company or, by virtue of section 529 of the Ordinance, to those who have sold their shares in the company or a subsidiary of the company as a result of a takeover offer (within the meaning of section 689 of the Ordinance).
  - (4) In this Part, a reference to an amount paid to or receivable by a person includes all relevant sums paid to or receivable by an entity connected with the person.
-

## Part 3

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

## Division 1—Interpretation

### 10. Interpretation of Part 3

(1) In this Part—

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

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

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

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

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

*transaction* (交易) means—

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

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

(3) In this Part, a reference to a subsidiary undertaking of a company is a reference to a subsidiary undertaking at the end of the company's financial year, whether or not it was in fact a

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subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance) on the date of the transaction in question.

- (4) In this Part, a reference to a connected entity, in relation to a director, is a reference to an entity connected with a director within the meaning of section 486 of the Ordinance.
- (5) In this Part, a reference to a controlled body corporate, in relation to a director, is a reference to a body corporate controlled by a director within the meaning of section 492 of the Ordinance.
- (6) In this Part, a reference to a loan, quasi-loan or credit transaction, or a guarantee or security in connection with a loan, quasi-loan or credit transaction, includes—
  - (a) any arrangement under which the loan, quasi-loan or credit transaction is made or entered into, or under which the guarantee or security is made or provided; and
  - (b) any arrangement for an assignment or assumption of any rights, obligations or liabilities under the loan, quasi-loan or credit transaction or under the guarantee or security.
- (7) In this Part, a reference to a person for whom a transaction is entered into has the meaning given by section 495 of the Ordinance and, for the purposes of this subsection, a reference to an arrangement in subsection (2) of that section is to be construed as a reference to an arrangement referred to in subsection (6)(a) or (b).

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

- 11. Information about loans, quasi-loans and other dealings in favour of directors, controlled bodies corporate and connected entities**
- (1) Subject to section 12, the information about loans, quasi-loans and other dealings in favour of the directors of a company and of its holding company, their controlled bodies corporate and their connected entities prescribed for the purposes of section 383(1)(d) of the Ordinance is—
- (a) the particulars of any transaction entered into by the company for a person who at any time during the financial year concerned was—
    - (i) a director of the company or of its holding company;
    - (ii) a controlled body corporate of such a director; or
    - (iii) in the case of a specified company, a connected entity of such a director; and
  - (b) the particulars of any transaction entered into by a subsidiary undertaking of the company for a person who at any time during the financial year concerned was a director of the company.
- (2) The particulars referred to in subsection (1) are—
- (a) the principal terms of the transaction;
  - (b) the name of the person for whom the transaction was entered into, and—
    - (i) if that person was a controlled body corporate of a director of the company or of its holding company, the name of that director; or

## Annex 10

- (ii) if that person was a connected entity of a director of the company or of its holding company, the name of that director and the nature of the connection;
- (c) if the transaction consists of or relates to a loan, quasi-loan or credit transaction—
  - (i) the amount of the liability of the person to whom the loan or quasi-loan was made or for whom the credit transaction was entered into, in respect of the principal and interest or otherwise, both at the beginning and at the end of the financial year concerned;
  - (ii) the maximum amount of that liability during the financial year;
  - (iii) the amount (if any) that, having fallen due, has not been paid; and
  - (iv) the amount of any provision made in respect of any failure or anticipated failure by the person referred to in subparagraph (i) to repay the whole or part of the loan, quasi-loan or credit transaction, or to pay the whole or part of any interest or otherwise on the loan, quasi-loan or credit transaction; and
- (d) if the transaction consists of or relates to a guarantee or security in connection with a loan, quasi-loan or credit transaction—
  - (i) the amount for which the company or its subsidiary undertaking was liable under the guarantee, or in respect of the security, both at the beginning and at the end of the financial year concerned;
  - (ii) the maximum amount for which the company or its subsidiary undertaking may become so liable; and

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- (iii) any amount paid and any liability incurred by the company or its subsidiary undertaking for the purpose of fulfilling the guarantee or discharging the security, including any loss incurred by reason of the enforcement of the guarantee or security.
- (3) This section applies—
  - (a) whether or not the transaction is prohibited under Division 2 of Part 11 of the Ordinance;
  - (b) whether or not the person for whom the transaction was entered into was, at the time the transaction was entered into—
    - (i) a director of the company or of its holding company;
    - (ii) a controlled body corporate of such a director; or
    - (iii) a connected entity of such a director; and
  - (c) in the case of a transaction entered into by an undertaking that at any time during a financial year was a subsidiary undertaking of a company, whether or not that undertaking was a subsidiary undertaking of the company at the time the transaction was entered into.
- (4) This section does not apply to a transaction that was not entered into during the financial year concerned and did not subsist at any time during that year.
- (5) This section does not apply to a loan or quasi-loan made by a company or its subsidiary undertaking to an employee of the company or the subsidiary undertaking, or a credit transaction entered into by a company or its subsidiary undertaking as a creditor for an employee of the company or the subsidiary undertaking, if—
  - (a) the value of the loan, quasi-loan or credit transaction does not exceed \$100,000;

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- (b) the loan, quasi-loan or credit transaction is certified by the directors of the company or the subsidiary undertaking, as the case may be, to have been made or entered into in accordance with the relevant practice (if any) adopted by the company or of the subsidiary undertaking;
  - (c) the loan, quasi-loan or credit transaction is not made or entered into by the company under a guarantee given, or on a security provided, by a subsidiary undertaking of the company; and
  - (d) the loan, quasi-loan or credit transaction is not made or entered into by the subsidiary undertaking under a guarantee given, or on a security provided, by the company or any other subsidiary undertaking of the company.
- (6) Subject to section 13, the particulars of any transaction entered into by a company that is, or a company's subsidiary undertaking that is, an authorized financial institution for any person are not required to be contained in the notes to the financial statements by virtue of section 383(3) of the Ordinance if—
- (a) the value of the loan, quasi-loan, credit transaction, guarantee or security concerned is not greater, and the terms of it are not more favourable, than what is reasonable to expect the authorized financial institution to have offered to a person of the same financial standing but unconnected with the institution; or
  - (b) in any other case, the aggregate of the following amounts does not exceed \$10,000,000 or an amount equivalent to 10% of the paid up capital and reserves of the authorized financial institution, whichever is the lower—

- (i) the maximum amount outstanding, in respect of the principal and interest or otherwise, during the financial year concerned on all loans and quasi-loans (except those falling within paragraph (a)) made by the institution to, and all credit transactions (except those falling within that paragraph) entered into by the institution as a creditor for, that person; and
- (ii) the maximum amount of the liability of the institution during the financial year under all guarantees (except those falling within paragraph (a)) given, and all security (except those falling within that paragraph) provided, by the institution to that person in connection with any loan or quasi-loan made to or any credit transaction entered into for that person.

### **Division 3—Alternative Method to Provide Information Required**

- 12. Other particulars may be provided by statement in lieu of particulars to be contained in notes to financial statements as specified in section 11**
- (1) Subject to the compliance with the requirement prescribed in subsection (2), the following particulars are not required to be contained in the notes to the financial statements by virtue of section 383(3) of the Ordinance—
    - (a) the particulars specified in section 11(2)(c) in respect of a quasi-loan or credit transaction; and
    - (b) the particulars specified in section 11(2)(d) in respect of a guarantee or security in connection with a quasi-loan or credit transaction.

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- (2) The requirement referred to in subsection (1) is that the financial statements must contain a statement in the notes to those statements showing, in respect of each person named in the financial statements under section 11(2)(b), the following information in lieu of the particulars referred to in that subsection—
- (a) in relation to all the quasi-loans made to or credit transactions entered into for each such person, each of the amounts referred to in section 11(2)(c)(i), (ii), (iii) and (iv) in respect of those quasi-loans in aggregate or credit transactions in aggregate; and
  - (b) in relation to all the guarantees or security in connection with quasi-loans made to or credit transactions entered into for each such person, each of the amounts referred to in section 11(2)(d)(i), (ii) and (iii) in respect of those guarantees in aggregate or security in aggregate.
- 13. Statement made by company that is or where its subsidiary undertaking is authorized financial institution**
- (1) Section 11(6) has effect subject to the compliance with the requirement prescribed in subsection (2) or (3).
  - (2) In the case of a company that is an authorized financial institution, the financial statements of the company must contain a statement in the notes to those statements showing—
    - (a) the aggregate of the following amounts as at the end of the financial year concerned—
      - (i) the amount outstanding, in respect of the principal and interest or otherwise, on every loan or quasi-loan made by the company to, or every credit transaction entered into as a creditor by the company for, a person who at any time during the financial year concerned was—

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- (A) a director of the company or of its holding company;
  - (B) a controlled body corporate of such a director; or
  - (C) in the case of a specified company, a connected entity of such a director; and
- (ii) the maximum amount of liability of the company under all guarantees given, and all security provided, by the company in connection with any transaction referred to in subparagraph (i); and
- (b) the maximum aggregate of the amounts referred to in paragraph (a) at any time during the financial year.
- (3) In the case of a company of which any of its subsidiary undertakings is an authorized financial institution, the financial statements of the company must contain a statement in the notes to those statements showing—
    - (a) the aggregate of the following amounts as at the end of the financial year concerned—
      - (i) the amount outstanding, in respect of the principal and interest or otherwise, on every loan or quasi-loan made by the authorized financial institution to, or every credit transaction entered into as a creditor by the institution for, a director of the company (whether or not that director was a director of the company at the time the loan, quasi-loan or credit transaction was made or entered into); and
      - (ii) the maximum amount of liability of the authorized financial institution under all guarantees given, and all security provided, by the institution in connection with any transaction referred to in subparagraph (i); and

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- (b) the maximum aggregate of the amounts referred to in paragraph (a) at any time during the financial year.

### **Division 4—Supplementary Provisions Relating to Information Prescribed by this Part**

**14. What amounts to be shown**

If an amount is to be shown for any financial year in the notes to the financial statements prepared for that year in relation to the information required to be given under this Part, the corresponding amount for the immediately preceding financial year must also be shown in the notes.

**15. Value of transaction**

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

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## Part 4

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

#### Division 1—Interpretation

##### 16. Interpretation of Part 4

(1) In this Part—

*public company* (公眾公司) has the meaning given by section 12 of the Ordinance.

(2) In this Part, a reference to a company is a reference to a company that does not fall within the reporting exemption (within the meaning of Division 2 of Part 9 of the Ordinance) for the financial year concerned.

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

(4) In this Part, a reference to a connected entity in relation to a director is a reference to an entity connected with a director within the meaning of section 486 of the Ordinance.

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

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

(1) The information about material interests of directors in transactions, arrangements or contracts entered into by a company or another company in the same group of companies prescribed for the purposes of section 383(1)(e) of the

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Ordinance is the particulars of any transaction, arrangement or contract entered into by—

- (a) the company;
- (b) a holding company of the company;
- (c) a subsidiary undertaking of the company; or
- (d) a subsidiary undertaking of the holding company,

in which a person who at any time during the financial year was a director of the company had, directly or indirectly, a material interest.

- (2) The particulars referred to in subsection (1) are—
  - (a) the principal terms of the transaction, arrangement or contract;
  - (b) a statement of the fact that the transaction, arrangement or contract was entered into or subsisted during the financial year concerned;
  - (c) the names of the parties to the transaction, arrangement or contract; and
  - (d) the name of the director having the material interest and the nature of that interest and, if that director is treated as having the interest by virtue of subsection (3), the name of the director's connected entity and the nature of the connection.
- (3) For the purposes of this section, in the case of a public company, a director of the public company is treated as having an interest in a transaction, arrangement or contract entered into by the public company if a connected entity of such a director has an interest in that transaction, arrangement or contract.
- (4) In this section, a reference to a transaction, arrangement or contract, in relation to a company, is a reference to a

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transaction, arrangement or contract that is significant in relation to the company's business.

- (5) For the purposes of subsection (4), a transaction, arrangement or contract is not significant in relation to a company's business if, after consideration, the directors of the company are of the opinion that it is not so.
- (6) For the purposes of this section, an interest that a director of a company has in a transaction, arrangement or contract is not material if, after consideration, the directors of the company are of the opinion that it is not so.
- (7) This section does not apply to—
  - (a) a transaction, arrangement or contract between the company and another company in which a director of the former has an interest only by virtue of being a director of the latter;
  - (b) a director's contract of service; or
  - (c) a transaction, arrangement, or contract that was not entered into during the financial year concerned and did not subsist at any time during that year.

Secretary for Financial Services and  
the Treasury

## **Annex 11**

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Companies (Residential Addresses and Identification  
Numbers) Regulation

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### Companies (Residential Addresses and Identification Numbers) Regulation

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# Companies (Residential Addresses and Identification Numbers) Regulation

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# Companies (Residential Addresses and Identification Numbers) Regulation

(Made by the Secretary for Financial Services and the Treasury under sections 49, 51 and 58 of the Companies Ordinance (28 of 2012))

## Part 1

### Preliminary

#### 1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinances (28 of 2012).

#### 2. Interpretation

In this Regulation—

*company* (公司) has the meaning given by section 20(1) of the Ordinance;

*liquidator* (清盤人) means a person who is a liquidator or provisional liquidator under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

*public body* (公共機構) means—

- (a) the Executive Council;
- (b) the Legislative Council;
- (c) any District Council;
- (d) any undertaking of or by the Government;
- (e) any public authority or undertaking;

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### Companies (Residential Addresses and Identification Numbers) Regulation

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- (f) any board, commission, committee or other body, whether paid or unpaid, appointed by the Chief Executive or the Government; and
- (g) any board, commission, committee or other body that has power to act in a public capacity under or for the purposes of any enactment;

***scheduled person*** (表列人士) means a person specified in the Schedule;

***trustee*** (受託人) means a person who is a provisional trustee or trustee of the property of a bankrupt under the Bankruptcy Ordinance (Cap. 6).

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## **Part 2**

### **Application Made for Purposes of Section 49(1) of Ordinance**

**3. Application to withhold residential address or identification number from public inspection**

- (1) An application made for the purposes of section 49(1)(a) of the Ordinance must contain—
  - (a) the correspondence address required for the purposes of section 49(3) of the Ordinance; and
  - (b) any other information specified by the Registrar for the application.
- (2) The correspondence address referred to in subsection (1)(a) must not be a post office box number.
- (3) An application made for the purposes of section 49(1)(b) of the Ordinance must contain any information specified by the Registrar for the application.

**4. Powers of Registrar to require additional information and documents**

The Registrar may require a person who makes an application under section 49 of the Ordinance to provide additional information and documents for the purposes of determining the application.

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## **Part 3**

### **Application Made for Purposes of Section 51(3) of Ordinance**

#### **5. Interpretation of Part 3**

In this Part—

*data subject* (資料當事人) means a person whose address or other personal particulars are withheld from public inspection under section 49 of the Ordinance;

*withheld information* (不提供的資料) has the meaning given by section 47 of the Ordinance.

#### **6. Application for disclosure of withheld information**

An application made for the purposes of section 51(3) of the Ordinance—

- (a) must contain any information specified by the Registrar for the application; and
- (b) if the application is for disclosure of withheld information to a person authorized by a data subject to obtain the information, must be accompanied by documentary proof of the authorization.

#### **7. Powers of Registrar to require additional information and documents**

The Registrar may require a person who makes an application under section 51 of the Ordinance to provide additional information and documents for the purposes of determining the application.

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**8. To whom withheld information may be disclosed and conditions in accordance with which withheld information may be disclosed**

- (1) Subject to subsections (2), (3), (4), (5), (6), (7), (8) and (9), the Registrar may on an application made for the purposes of section 51(3) of the Ordinance disclose withheld information to the following persons—
  - (a) a data subject;
  - (b) a person who is authorized in writing by a data subject to obtain withheld information;
  - (c) a member of a company;
  - (d) a liquidator;
  - (e) a trustee;
  - (f) a public officer or public body;
  - (g) a scheduled person.
- (2) On an application made for the purposes of section 51(3) of the Ordinance to disclose withheld information to a data subject, the Registrar may only disclose to the data subject withheld information relating to the subject.
- (3) On an application made for the purposes of section 51(3) of the Ordinance to disclose withheld information to a person referred to in subsection (1)(b), the Registrar may only disclose to the person withheld information relating to the data subject who authorizes the person to obtain the information.
- (4) On an application made for the purposes of section 51(3) of the Ordinance to disclose withheld information to a member of a company, the Registrar may only disclose to the member withheld information in a document delivered to the Registrar for registration in respect of the company.

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### Companies (Residential Addresses and Identification Numbers) Regulation

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- (5) Despite subsection (4), the Registrar must not disclose any withheld information under that subsection to the member if the member fails to provide the Registrar with a written statement, made by the member, confirming that the member is a member of the company concerned.
  - (6) The Registrar must not disclose any withheld information to a liquidator if the liquidator fails to provide the Registrar with a written statement, made by the liquidator, confirming that the information is required by the liquidator for the performance of their functions and that the information would be used only for the purpose.
  - (7) The Registrar must not disclose any withheld information to a trustee if the trustee fails to provide the Registrar with a written statement, made by the trustee, confirming that the information is required by the trustee for the performance of their functions and that the information would be used only for the purpose.
  - (8) The Registrar must not disclose any withheld information to a public officer or public body if the officer or body fails to provide the Registrar with a written statement, made by the officer or body, confirming that the information is required by the officer or body for the performance of their functions (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
  - (9) The Registrar must not disclose any withheld information to a scheduled person if the person fails to provide the Registrar with a written statement, made by the person, confirming that the information is required by the person for the performance of, or in relation to the performance of, the functions conferred or imposed on them under any enactment (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
-

## Part 4

### Application Made for Purposes of Section 58(3) of Ordinance

#### 9. Interpretation of Part 4

In this Part—

*data subject* (資料當事人) means a person whose address or other personal particulars are contained in a document to which section 54(2) of the Ordinance applies;

*protected information* (受保護資料) has the meaning given by section 53(1) of the Ordinance.

#### 10. Application for disclosure of protected information

An application made for the purposes of section 58(3) of the Ordinance—

- (a) must contain any information specified by the Registrar for the application; and
- (b) if the application is for disclosure of protected information to a person authorized by a data subject to obtain the information, must be accompanied by documentary proof of the authorization.

#### 11. Powers of Registrar to require additional information and documents

The Registrar may require a person who makes an application under section 58 of the Ordinance to provide additional information and documents for the purposes of determining the application.

## Annex 11

### Companies (Residential Addresses and Identification Numbers) Regulation

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### **12. To whom protected information may be disclosed and conditions in accordance with which protected information may be disclosed**

- (1) Subject to subsections (2), (3), (4), (5), (6), (7), (8) and (9), the Registrar may on an application made for the purposes of section 58(3) of the Ordinance disclose protected information to the following persons—
  - (a) a data subject;
  - (b) a person who is authorized in writing by a data subject to obtain protected information;
  - (c) a member of a company;
  - (d) a liquidator;
  - (e) a trustee;
  - (f) a public officer or public body;
  - (g) a scheduled person.
- (2) On an application made for the purposes of section 58(3) of the Ordinance to disclose protected information to a data subject, the Registrar may only disclose to the data subject protected information relating to the subject.
- (3) On an application made for the purposes of section 58(3) of the Ordinance to disclose protected information to a person referred to in subsection (1)(b), the Registrar may only disclose to the person protected information relating to the data subject who authorizes the person to obtain the information.
- (4) On an application made for the purposes of section 58(3) of the Ordinance to disclose protected information to a member of a company, the Registrar may only disclose to the member protected information in a document delivered to the Registrar for registration in respect of the company.

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- (5) Despite subsection (4), the Registrar must not disclose any protected information under that subsection to the member if the member fails to provide the Registrar with a written statement, made by the member, confirming that the member is a member of the company concerned.
  - (6) The Registrar must not disclose any protected information to a liquidator if the liquidator fails to provide the Registrar with a written statement, made by the liquidator, confirming that the information is required by the liquidator for the performance of their functions and that the information would be used only for the purpose.
  - (7) The Registrar must not disclose any protected information to a trustee if the trustee fails to provide the Registrar with a written statement, made by the trustee, confirming that the information is required by the trustee for the performance of their functions and that the information would be used only for the purpose.
  - (8) The Registrar must not disclose any protected information to a public officer or public body if the officer or body fails to provide the Registrar with a written statement, made by the officer or body, confirming that the information is required by the officer or body for the performance of their functions (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
  - (9) The Registrar must not disclose any protected information to a scheduled person if the person fails to provide the Registrar with a written statement, made by the person, confirming that the information is required by the person for the performance of, or in relation to the performance of, the functions conferred or imposed on them under any enactment (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
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## Annex 11

### Companies (Residential Addresses and Identification Numbers) Regulation Schedule

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## Schedule

[s. 2]

### Scheduled Persons

1. A body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41).
2. A person who is required to issue a code of practice under section 67(1) of the Insurance Companies (Cap. 41).
3. An inspector appointed under section 95 of the Trustee Ordinance (Cap. 29).
4. An inspector as defined by section 838(1) of the Ordinance.
5. A recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
6. A recognized exchange company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
7. A recognized exchange controller within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
8. A recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

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### Companies (Residential Addresses and Identification Numbers) Regulation

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Secretary for Financial Services and  
the Treasury

2013

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## **Annex 12**

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### **Companies (Unfair Prejudice Proceedings) Rules**

## Companies (Unfair Prejudice Proceedings) Rules

(Made by the Chief Justice under section 727 of the Companies Ordinance (28 of 2012) subject to the approval of the Legislative Council)

### 1. Commencement

These Rules come into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012) .

### 2. Interpretation

In these Rules—

*new rules* (新訂規則) means rules 4, 5, 6, 7, 8 and 9;

*Registrar* (司法常務官) has the meaning given by rule 4(1) of Order 1 of the Rules of the High Court (Cap. 4 sub. leg. A);

*unfair prejudice petition* (不公平地損害呈請) means a petition presented to the Court by a member, or a past member, of a company under section 724(1) or (3) of the Ordinance, or by the Financial Secretary under section 879(3) of the Ordinance;

*Winding-up Rules* (《清盤規則》) means the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

### 3. Application

- (1) These Rules apply to an unfair prejudice petition.
- (2) If an unfair prejudice petition includes a prayer to wind up the company, provisions of the Winding-up Rules applicable to proceedings in a winding up by the Court (with any necessary modifications that the circumstances may require) also apply to the petition.

## Annex 12

### Companies (Unfair Prejudice Proceedings) Rules

- (3) An unfair prejudice petition to which subrule (2) applies must be in the form set out in Form 2 of the Appendix to the Winding-up Rules.
- (4) If the prayer to wind up the company included in an unfair prejudice petition is removed by order of the Court, the Winding-up Rules cease to apply to the petition, and the new rules apply to the petition.
- (5) The cessation of the application of the Winding-up Rules under subrule (4) does not affect the previous application of the Winding-up Rules to the petition or anything duly done or suffered under the Winding-up Rules in respect of the petition.
- (6) If an unfair prejudice petition does not include a prayer to wind up the company, the new rules apply to the petition.
- (7) If the new rules apply to a petition under subrule (4) or (6), the rules and practice of the High Court for the time being for regulating the ordinary civil procedure of the court, so far as may be applicable and not inconsistent with the new rules, also apply to the petition.

#### **4. Presentation of petition**

- (1) An unfair prejudice petition to which the new rules apply must be in the form set out in the Schedule (with any necessary modifications that the circumstances may require).
- (2) The petition must specify the grounds on which it is presented and the terms of any order that is sought by the petitioner, and must be delivered to the Court for filing with sufficient copies for service under rule 5.
- (3) The Court is to fix a return day on which, unless the Court otherwise directs, the petitioner and any respondent (including the company) must attend before the Registrar or a judge of

the Court for directions to be given in relation to the procedure on the petition.

- (4) On fixing the return day, the Court is to return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing of the petition.

**5. Service of petition**

- (1) The petitioner must, at least 14 days before the return day, serve a sealed copy of the petition on the company.
- (2) For a petition under section 724(1) or (3) of the Ordinance, the petitioner must also, at least 14 days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

**6. Return of petition**

On the return day, or at any time after it, the Court may give any directions that it thinks appropriate with respect to the following matters—

- (a) service of the petition on any person, whether in connection with the time, date and place of a further hearing, or for any other purpose;
- (b) whether any statement of claim and defence are to be delivered;
- (c) whether, and if so by what means, the petition is to be advertised;
- (d) the manner in which any evidence is to be adduced at any hearing before the judge, particularly—
- (i) the taking of evidence wholly or in part by witness statement or orally;
- (ii) the cross-examination of a person making a witness statement;

## Annex 12

### Companies (Unfair Prejudice Proceedings) Rules

- (iii) the matters to be dealt with in evidence;
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition; and
- (f) any orders, including an order for a stay for any period, that the Court thinks fit, with a view to mediation or other alternative dispute resolution.

#### **7. Drawing up of order**

- (1) The petitioner, or the petitioner's solicitor, and all other persons who have appeared at the hearing of the petition must, before the expiry of the day following the day on which an order under section 725 of the Ordinance is pronounced in the Court, leave with the Registrar a draft of the order and all other documents required for the purpose of enabling the Registrar to complete the order immediately.
- (2) The Registrar may make an appointment to settle the order.

#### **8. Service of order, etc.**

- (1) Unless the Court otherwise directs, the petitioner must serve an office copy of the order on the company and on the Registrar of Companies.
- (2) If the order involves a reduction of capital or an alteration of the company's articles, those provisions of the Ordinance and of the Rules of the High Court (Cap. 4 sub. leg. A) relative to these matters are to apply as the Court may direct.

#### **9. Advertisement of order**

If the Court considers that the order should be advertised, it must give directions as to the manner and time of advertisement.

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**Annex 12**

Companies (Unfair Prejudice Proceedings) Rules

Schedule

**Schedule**

[r. 4]

**Petition on Ground that Members Unfairly Prejudiced**

To the High Court of Hong Kong

- (a) Insert full name(s) and address(es) of petitioner(s)      The petition of (a) .....  
.....  
.....  
.....
  
- (b) Insert full name of company subject to petition      1. (b) .....  
.....  
**(the company)** was incorporated on (c) .....
- (c) Insert date of incorporation      .....
  
- (d) Insert address of registered office      2. The registered office of the company is at (d) ....  
.....  
.....
  
- (e) Insert amount of share capital and how it is divided      3. The share capital of the company is divided into (e) ..... shares. The amount of the capital paid up or credited as paid up is (e) \$.....

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### Companies (Unfair Prejudice Proceedings) Rules

Schedule

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4. The principal business which is carried on by the company is:

.....

(f) Set out the grounds on which the petition is presented

5. (f) .....

.....

.....

In these circumstances the petitioner submits that<sup>#</sup>:

- the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of [the members generally]/[one or more members (including the petitioner)]\*.
- the company's affairs were conducted in a manner unfairly prejudicial to the interests of [the members generally at the time when the petitioner was a member of the company]/[one or more members (including the petitioner) at the time when the petitioner was a member of the company]\*.
- [the act or omission]/[the proposed act or omission] referred to in paragraph 5 above [is]/[would be] unfairly prejudicial to the interests of [the members generally]/[one or more members (including the petitioner)]\*.

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Companies (Unfair Prejudice Proceedings) Rules

Schedule

the act or omission referred to in paragraph 5 above was unfairly prejudicial to the interests of [the members generally at the time when the petitioner was a member of the company]/[one or more members (including the petitioner) at the time when the petitioner was a member of the company]\*.

# Please tick the box(es) as applicable.

\* Delete as applicable.

(g) Set out the terms of the order(s) sought

The petitioner therefore prays as follows:

(g) .....  
.....

or

that any other order may be made as the Court thinks fit.

(h) Insert the name(s) of the intended respondent(s)

It is intended to serve this petition on (h) .....  
.....  
.....  
.....

## Annex 12

### Companies (Unfair Prejudice Proceedings) Rules

Schedule

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Chief Justice

2012

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