

New Companies Ordinance

Briefing Notes on Companies (Disclosure of Information about Benefits of Directors) Regulation (Cap. 622G)

BACKGROUND

Section 161 of the old Companies Ordinance (Cap. 32) (“the old Ordinance”) provides for the disclosure of various types of payments to directors in respect of their services. The information required to be disclosed in the company’s accounts include –

- (a) the aggregate amount of the directors’ emoluments;
- (b) the aggregate amount of directors or former directors’ pensions; and
- (c) the aggregate amount of any compensation to directors or former directors in respect of loss of office.

2. Section 161B of the old Ordinance sets out the particulars to be disclosed in a company’s accounts for any dealings entered into by the company in favour of its directors and other relevant persons which involve loans, quasi-loans or credit transactions, as well as guarantees entered into and any security provided by the company in relation to such dealings. It also allows a company to simplify its disclosure of information on quasi-loans or credit transactions (and guarantees entered into and any security provided in connection with such transactions) in statement form containing the aggregate figures for each person in lieu of the particulars of individual transactions, which will be entered into a separate register available for inspection instead. The section also contains specific provisions which apply exclusively to authorized financial institutions (the “AFIs”)¹.

¹ Authorized financial institutions refer to licensed banks, restricted licence banks and deposit-taking companies under the Banking Ordinance (Cap.155). Section 161B(8), (9) and (10) applies exclusively to AFIs.

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

THE SUBSIDIARY LEGISLATION

Companies (Disclosure of Information about Benefits of Directors) Regulation ("the Regulation")

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

- (a) directors' emoluments;
- (b) directors' retirement benefits;
- (c) payments made or benefits provided in respect of the termination of the service of directors;
- (d) loans, quasi-loans and credit transactions² as well as guarantees entered into and security provided in connection with such dealings (hereafter "specified dealings") in favour of directors;
- (e) material interests of directors in transactions, arrangements or contracts which are significant to the company's business; and
- (f) consideration provided to or receivable by third parties for making available the services of a person as director.

² Quasi-loans and credit transactions are defined in sections 493 and 494 of the new CO respectively.

5. The Regulation mainly restates and consolidates the disclosure requirements set out in the old Ordinance, with necessary modifications for alignment with the relevant provisions on fair dealings by directors under Part 11 of the new CO. There are also some amendments and modifications to improve the disclosure regime.

Major Changes

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

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

7. For specified dealings, the Regulation mainly restates the requirements and arrangements prescribed under section 161B of the old Ordinance. The scope of application of the disclosure requirements in respect of controlled bodies corporate and connected entities of a director³ is widened in line with provisions under Division 2 of Part 11 of the new CO. The types of particulars to be disclosed in respect of a specified dealing have also been refined. For instance, in the case of a specified dealing in favour of a connected entity of a director, the Regulation contains a new requirement which requires the nature of the connection between the entity and the director concerned to be stated in the notes to financial statements.

³ Controlled bodies corporate and connected entities of a director are defined in sections 492 and 486 of the new CO respectively.

8. The Regulation also specifies the particulars to be disclosed in the notes to financial statements in respect of material interests of directors in transactions, arrangements and contracts which are significant to the reporting company's business. The detailed disclosure requirements prescribed by the Regulation are identical to those in respect of transactions, arrangements and contracts entered into by specified undertakings of the reporting company⁴ prescribed under the Companies (Directors' Report) Regulation (Cap. 622D) for disclosure in the directors' report⁵.

The Regulation

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

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⁴ Specified undertakings refer to (i) the parent company of the reporting company, (ii) a subsidiary undertaking of the reporting company; and (iii) a subsidiary undertaking of the reporting company's parent company.

⁵ The requirements are specified under section 10 of the Companies (Directors' Report) Regulation (Cap. 622D).