

**New Companies Ordinance**

**Briefing Notes on**

**Companies (Directors' Report) Regulation**

**BACKGROUND**

Section 129D of the Companies Ordinance (Cap. 32) (“Cap. 32”) provides that a directors' report shall be attached to the balance sheet laid before a company in general meeting and shall be approved by the board of directors. A list of matters to be stated in a directors' report is prescribed in section 129D(3). These matters include the principal activities of the company, matters relating to shares issued, management contracts, arrangements and other contracts involving director's interest or benefits, donations and any other matters which are material for appreciation of the state of the company's affairs.

2. In the new Companies Ordinance (“new CO”) the requirements concerning the preparation and approval of a directors' report are generally restated in sections 388 and 391 respectively. The requirements regarding the contents of a directors' report are provided for in various provisions including sections 390, 470, 543 and Schedule 5 (on the inclusion of a business review). Specifically, section 388 requires a directors' report to contain the information and comply with other requirements prescribed by regulations made under section 452(3).

**THE SUBSIDIARY LEGISLATION**

**Companies (Directors' Report) Regulation (“the Regulation”)**

Major Changes

3. The Regulation re-enacts certain requirements concerning the contents of a directors' report prescribed in section 129D(3) of Cap 32 with modifications. To enhance corporate governance and transparency the scope of disclosure is expanded to require the inclusion of –

- (a) information on equity-linked agreements entered into by the company (**section 6**)<sup>1</sup>;
  - (b) a summary of reasons relating to the affairs of the company given by a director who has resigned or refused to stand for re-election and has given written notice to the company specifying that the resignation or refusal is due to reasons relating to the affairs of the company (**section 8**)<sup>1</sup>. The requirement does not apply to companies that fall within the reporting exemption under Division 2 of Part 9 of the new CO (“the reporting exemption); and
  - (c) the new disclosure requirement regarding permitted indemnity provisions of directors provided under section 470 of the new CO such that non-compliance will constitute an offence (**section 9**).
4. Other changes to the requirements on the contents of a directors’ report include –
- (a) raising the upper limit of donations made by the company and its subsidiary undertakings which are exempted from disclosure to \$10,000 (\$1,000 in section 129D(3)(e) of Cap 32) ( **section 4**); and
  - (b) modifying the requirement under section 129D(3)(j) of Cap 32 by requiring the disclosure of that part of the information that concerns material interests of directors in contracts of significance entered into by a specified undertaking of the company<sup>2</sup>. The requirement is expanded to cover transactions and arrangements in addition to contracts and, where the company is a public company, material interests of a connected entity of a director of that company. In line with the approach under Cap. 32, the requirement does not apply to companies falling within the reporting exemption (**section 10**).

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<sup>1</sup> The Companies Registry will issue an external circular to provide guidance on compliance by companies with the new disclosure requirements under sections 6 and 8 of the Regulation.

<sup>2</sup> “Specified undertaking” is defined in section 2 of the Regulation and means a parent company or subsidiary undertaking of the company, or a subsidiary undertaking of the company’s parent company.

For material interests of directors in transactions, arrangements and contracts entered into by the company, disclosure of the information is required to be made in the notes to financial statements. The requirement is prescribed in the Companies (Disclosure of Information about Benefits of Directors) Regulation.

## The Regulation

5. The Regulation comprises ten sections –
  - (a) **Sections 1 and 2** provide for the commencement of the Regulation and the interpretation of the terms used; and
  - (b) **Sections 3 to 10** provide for the information that is required to be contained in a directors' report, including the new requirements to provide information on equity-linked agreements entered into by the company, the reasons for the resignation of any director, directors' permitted indemnity provisions and the modified requirement to provide information concerning material interests of directors in transaction, arrangement or contract.
  
6. Specifically, **section 3** of the Regulation restates section 129D(3)(k) of Cap 32 which requires the disclosure of arrangements to which the company or a specified undertaking of the company is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate. Disclosure of an arrangement is required if the object of the arrangement is to enable directors of the company to acquire benefits by means of the acquisition of shares or debentures of the company, or any other body corporate, even though there is no actual or additional benefit. The effect of the arrangement must be explained and the names of the persons who at any time in the financial year concerned were directors of the company who held, or whose nominees held, shares or debentures acquired under the arrangement must be given in the report.

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