

New Companies Ordinance

Briefing Notes on Companies (Revision of Financial Statements and Reports) Regulation (Cap. 622F)

BACKGROUND

Pursuant to section 141E of the old Companies Ordinance, Cap. 32 (“the old Ordinance”), 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 or the directors' report. Such revisions are confined to aspects of the accounts which do not comply with the old Ordinance and the necessary consequential revisions. The detailed requirements that apply to the revision of accounts and reports are prescribed in the subsidiary legislation, namely the Companies (Revision of Accounts and Reports) Regulation (Cap. 32N) (*repealed*) (“Cap. 32N”).

2. As in the old Ordinance, the new Companies Ordinance (“new CO”) provides in section 449 that the directors of a company may cause the financial statements to be revised and make necessary consequential revisions to the summary financial report or the directors' report (“revised statements and reports”). Section 450 of the new CO further provides for the making of subsidiary legislation to prescribe, among others, the detailed requirements concerning the revised statements and reports, the manner in which relevant provisions in the new CO apply to the revised statements and reports as well as the relevant offences.

3. The Companies (Revision of Financial Statements and Reports) Regulation (“the Regulation”) was made by the Financial Secretary under section 450 of the new CO for such purposes.

4. The Regulation mainly reinstates Cap. 32N, which is based on the general principle that the obligations and arrangements concerning the original set of statements and reports also apply to the revised statements and reports.

THE SUBSIDIARY LEGISLATION

Companies (Revision of Financial Statements and Reports) Regulation

Major Changes

5. The Regulation basically re-enacts Cap. 32N with necessary modifications to align with the provisions on accounts and audit in Part 9 of the new CO. The major changes include –

- (a) alignment of terms, namely replacing “accounts” by “financial statements” and “balance sheet” by “statement of financial position” respectively (**section 2**);
- (b) alignment of requirements prescribed in respect of the signing and distribution of the revised statements and reports with those under the new CO (**Part 3 and Part 6**);
- (c) alignment of provisions on the auditor's report on revised financial statements and auditor's rights and privileges with the relevant provisions under the new CO, including the provisions and offences relating to contents of auditor's report in sections 407 and 408 of the new CO¹ (**Part 5**); and
- (d) alignment of offences and penalties with those in the new CO in respect of the original set of statements and reports.

¹ Section 407 of the new CO requires auditors to state first, *inter alia*, his opinion if the 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. Section 408 imposes criminal sanction on relevant persons for knowingly or recklessly causing the omission of the required statement of opinion or fact. As revised financial statements are also required to be audited, to maintain consistency and following the general principle mentioned in paragraph 4 above, this Regulation contains, *inter alia*, a mirror provision of section 408 of the new CO, viz. section 16 of the Regulation with regard to the liability of the person who prepares an auditor's report on revised financial statements.

- (e) to align with the scope of the empowering section 450 in the new CO², sections 20(4)(a) and 20(4A) provide that the penalty for an offence committed by a person who makes a misleading, false or deceptive statement to the person preparing an auditor's report on revised financial statements (**section 20(3)**) is a maximum period of imprisonment of 12 months, and a person may be sentenced to imprisonment only if the offence is committed wilfully.

The Regulation

- 6. The Regulation comprises six parts, namely –
 - (a) **Part 1** contains preliminary provisions;
 - (b) **Part 2** provides for the contents of the revised statements and reports;
 - (c) **Part 3** sets out the requirements relating to the approval and signature of revised statement of financial position, revised directors' report and revised summary financial report;
 - (d) **Part 4** states that, from the date of revision, the new CO has effect with respect to the revised statements and reports as if the revised statements and reports were the original set of statements and reports;
 - (e) **Part 5** provides for the preparation of an auditor's report on revised financial statements; and
 - (f) **Part 6** imposes obligations on a company to inform relevant parties of the revisions made to the company's financial statements, directors' report or summary financial report.

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² Section 450(4) in the new CO provides that the maximum penalty that may be prescribed in the Regulation for an offence committed wilfully is a fine of \$300,000 and imprisonment for 12 months; and for an offence not committed wilfully is a fine of \$300,000.