

Part 9—Division 1

Clause 356

Part 9

Accounts and Audit

Division 1

Preliminary

356. Interpretation

(1) In this Part—

annual consolidated financial statements (周年綜合財務報表) means the consolidated statements required to be prepared under section 375(2);

annual financial statements (周年財務報表) means the statements required to be prepared under section 375(1);

auditor's report (核數師報告) means the report required to be prepared under section 396;

directors' report (董事報告) means—

(a) the report required to be prepared under section 380(1); or

(b) the consolidated report required to be prepared under section 380(2);

financial statements (財務報表) means annual financial statements or annual consolidated financial statements;

Regulation (《規例》) means the regulations made under sections 442 and 443;

summary financial report (財務摘要報告) means a financial report prepared under section 430.

(2) In this Part, a reference to the reporting documents for a financial year is a reference to all of the following—

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- (a) the financial statements for the financial year;
 - (b) the directors' report for the financial year;
 - (c) the auditor's report on those financial statements.
- (3) For the purposes of this Part, a body corporate is a wholly owned subsidiary of another body corporate if it has only the following as members—
- (a) that other body corporate;
 - (b) a wholly owned subsidiary of that other body corporate;
 - (c) a nominee of that other body corporate or such a wholly owned subsidiary.

357. Application in relation to financial year beginning on or after commencement date of relevant provision etc.

- (1) Each of the following sections applies in relation to a financial year beginning on or after the commencement date of that section—
- (a) section 358;
 - (b) section 375;
 - (c) section 380;
 - (d) section 420;
 - (e) section 421;
 - (f) section 430.
- (2) Each of the following sections applies in relation to accounting records for a financial year beginning on or after the commencement date of that section—
- (a) section 369;
 - (b) section 370;
 - (c) section 372;
 - (d) section 373.

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- (3) Each of the following sections applies in relation to financial statements for a financial year beginning on or after the commencement date of that section—
 - (a) section 376;
 - (b) section 377;
 - (c) section 378;
 - (d) section 427;
 - (e) section 440.
- (4) Section 379 applies in relation to a statement of financial position for a financial year beginning on or after the commencement date of that section.
- (5) Each of the following sections applies in relation to a directors' report for a financial year beginning on or after the commencement date of that section—
 - (a) section 381;
 - (b) section 382.
- (6) Each of the following sections applies in relation to an appointment of an auditor for a financial year beginning on or after the commencement date of that section—
 - (a) section 385;
 - (b) section 386;
 - (c) section 387;
 - (d) section 389;
 - (e) section 390.
- (7) Each of the following sections applies in relation to a person appointed as auditor for a financial year beginning on or after the commencement date of that section—
 - (a) section 393;
 - (b) section 394;

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- (c) section 395.
- (8) Section 402 applies in relation to a general meeting of which notice is given on or after the commencement date of that section.
- (9) Each of the following sections applies in relation to a person who is appointed, or is deemed to be reappointed, as auditor for a financial year beginning on or after the commencement date of that section—
 - (a) section 403;
 - (b) section 407;
 - (c) section 408;
 - (d) section 409;
 - (e) section 410.
- (10) Section 406 applies to a provision made on or after the commencement date of that section.
- (11) Section 426 applies in relation to—
 - (a) any financial statements and directors' report for a financial year beginning on or after the commencement date of that section; and
 - (b) any auditor's report on those financial statements.
- (12) Section 431 applies in relation to a summary financial report for a financial year beginning on or after the commencement date of that section.
- (13) Schedule 4 applies in relation to financial statements for a financial year beginning on or after the commencement date of that Schedule.

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Division 2

Reporting Exemption

358. Company falling within reporting exemption

- (1) For the purposes of this Part, a company falls within the reporting exemption for a financial year if—
 - (a) it is qualified as a small private company or small guarantee company for the financial year; and
 - (b) it is not a company specified in subsection (4) at any time during the financial year.
- (2) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
 - (a) it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;
 - (b) it is the holding company of a group of companies, of which no member is a company specified in subsection (4) at any time during the financial year; and
 - (c) the group of companies is qualified as a group of small private companies for the financial year.
- (3) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
 - (a) it is a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;
 - (b) it is the holding company of a group of companies, of which no member is a company specified in subsection (4) at any time during the financial year; and
 - (c) the group of companies is qualified as a group of small guarantee companies for the financial year.

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- (4) The company specified for the purposes of subsections (1), (2) and (3) is—
- (a) one that carries on any banking business and holds a valid banking licence granted under the Banking Ordinance (Cap. 155);
 - (b) one that is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or
 - (c) one that—
 - (i) carries on any insurance business otherwise than solely as an agent; or
 - (ii) accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities.

359. Small private company

- (1) For the purposes of this Part, if a company is a private company formed and registered under this Ordinance, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied in its first financial year, the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (2) For the purposes of this Part, if a company is an existing private company, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied—
 - (a) in its first financial year after the coming into operation of this section; or

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- (b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,
the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (3) For the purposes of this Part, if—
(a) a company is a private company; and
(b) after its first financial year after the coming into operation of this section, any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied for 2 consecutive financial years,
the company is also qualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).
- (4) For the purposes of this Part, if, after a company is qualified as a small private company under subsection (1), (2) or (3), any 2 of the conditions specified in section 1(2) of Schedule 3 are not satisfied for 2 consecutive financial years, the company is disqualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

360. Small guarantee company

- (1) For the purposes of this Part, if a company is a company limited by guarantee formed and registered under this Ordinance, and the condition specified in section 1(3) of Schedule 3 is satisfied in its first financial year, the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).

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- (2) For the purposes of this Part, if a company is an existing company limited by guarantee, and the condition specified in section 1(3) of Schedule 3 is satisfied—
- (a) in its first financial year after the coming into operation of this section; or
 - (b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,
- the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (3) For the purposes of this Part, if—
- (a) a company is a company limited by guarantee; and
 - (b) after its first financial year after the coming into operation of this section, the condition specified in section 1(3) of Schedule 3 is satisfied for 2 consecutive financial years,
- the company is also qualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).
- (4) For the purposes of this Part, if, after a company is qualified as a small guarantee company under subsection (1), (2) or (3), the condition specified in section 1(4) of Schedule 3 is not satisfied for 2 consecutive financial years, the company is disqualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

361. Group of small private companies

- (1) For the purposes of this Part, if—

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- (a) the holding company of a group of companies is formed and registered under this Ordinance; and
- (b) the condition specified in section 1(5) of Schedule 3, and any 2 of the conditions specified in section 1(6) of that Schedule, are satisfied in the holding company's first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (2) For the purposes of this Part, if—
 - (a) the holding company of a group of companies is an existing company; and
 - (b) the condition specified in section 1(5) of Schedule 3, and any 2 of the conditions specified in section 1(6) of that Schedule, are satisfied—
 - (i) in the holding company's first financial year after the coming into operation of this section; or
 - (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the condition specified in section 1(5) of Schedule 3, and any 2 of the conditions specified in section 1(6) of that Schedule, are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

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- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), another company becomes a new member of the group in a financial year of the holding company such that either the condition specified in section 1(5) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(7) of that Schedule are not satisfied, for the financial year, the group is disqualified as a group of small private companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).
- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), either the condition specified in section 1(5) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(7) of that Schedule are not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

362. Group of small guarantee companies

- (1) For the purposes of this Part, if—
 - (a) the holding company of a group of companies is formed and registered under this Ordinance; and
 - (b) the conditions specified in section 1(8) of Schedule 3 are satisfied in the holding company's first financial year,

the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

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Clause 362

- (2) For the purposes of this Part, if—
- (a) the holding company of a group of companies is an existing company; and
 - (b) the conditions specified in section 1(8) of Schedule 3 are satisfied—
 - (i) in the holding company's first financial year after the coming into operation of this section; or
 - (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,
- the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(8) of Schedule 3 are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), another company becomes a new member of the group in a financial year of the holding company such that the conditions specified in section 1(9) of Schedule 3 are not satisfied for the financial year, the group is disqualified as a group of small guarantee companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).

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Clause 363

- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), the conditions specified in section 1(9) of Schedule 3 are not satisfied for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

Division 3

A Company's Financial Year

363. Financial year

- (1) A company's first financial year after the coming into operation of this section begins on the first day of its first accounting reference period and ends on the last day of that period or on any other date, not more than 7 days before or after that last day, that the directors think fit.
- (2) Every subsequent financial year of a company begins on the date immediately following the end of the previous financial year and ends on the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined, or on any other date, not more than 7 days before or after that last day, that the directors think fit.
- (3) If an undertaking is not a company, a reference in this Ordinance to its financial year is a reference to a period in respect of which a profit and loss account of the undertaking is required, by its constitution or by the law under which it is established, to be made up, whether or not the period is a year.

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Clause 364

- (4) A company's directors must secure that the financial year of each of its subsidiary undertakings coincides with the company's financial year unless, in the directors' opinion, there are good reasons against those financial years coinciding with each other.

364. Accounting reference period

- (1) For an existing company formed and registered before the commencement date of Division 1 of Part 3, the first accounting reference period begins on the date immediately following its primary accounting reference date and ends on the first anniversary of its primary accounting reference date.

- (2) For—
(a) a company formed and registered under this Ordinance; and
(b) a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1),

the first accounting reference period begins on the date of its incorporation and ends on its primary accounting reference date.

- (3) Every subsequent accounting reference period of a company is the period of 12 months beginning immediately after the end of the previous accounting reference period and ending on its accounting reference date, unless the accounting reference period is shortened or extended, as stated in a directors' resolution under section 367(3).

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365. Primary accounting reference date

- (1) For an existing company formed and registered before the commencement date of Division 1 of Part 3, the primary account reference date is—
 - (a) the date up to which the company's accounts are made up to if, on or after the commencement date of this section, the company's accounts—
 - (i) have been laid before the company in general meeting under section 122 of the predecessor Ordinance having a continuing effect under Schedule 10; or
 - (ii) have been provided to the members under section 111(6) of the predecessor Ordinance having a continuing effect under Schedule 10; or
 - (b) the date by which the company's accounts is required by section 122 to be laid before the company in general meeting if, on or after the commencement date of this section, the company's accounts have not been laid or provided as mentioned in paragraph (a)(i) or (ii).
- (2) Subsection (1) does not apply if those accounts are made up to a date falling more than one day before the commencement date of this section.
- (3) Subsection (1)(a)(i) does not apply unless the general meeting is held—
 - (a) in the case of the company's first general meeting, within 18 months of the company's incorporation; or
 - (b) in any other case, within 15 months, and in the year, after the company's last annual general meeting.
- (4) For a company formed and registered under this Ordinance or under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1), the primary accounting reference date is—

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Clause 366

- (a) a date specified by the directors before the relevant date for the purposes of this paragraph; or
 - (b) in the absence of such a specified date, the relevant date.
- (5) A date specified for the purposes of subsection (4)(a) must fall within 18 months after the date of the company's incorporation.
- (6) In this section—

relevant anniversary (有關周年日), in relation to a company's incorporation, means the anniversary of the company's incorporation that first occurs after this section comes into operation;

relevant date (有關日期) means the last day of the month in which the relevant anniversary of the company's incorporation falls.

366. Accounting reference date

Subject to section 367, a company's accounting reference date is the anniversary of its primary accounting reference date.

367. Alteration of accounting reference date

- (1) The directors of a company may specify a new accounting reference date in relation to—
 - (a) the company's current accounting reference period and every subsequent accounting reference period; or
 - (b) the company's previous accounting reference period and every subsequent accounting reference period.
- (2) If the directors of a public company or a company limited by guarantee specify a new accounting reference date under subsection (1), the company must, within 14 days after the date of the directors' resolution specifying the new accounting reference date, deliver a notice, in the specified form, of that new date to the Registrar for registration.

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Clause 367

- (3) A directors' resolution by which a new accounting reference date is specified, and a notice of that new date delivered to the Registrar, must state—
 - (a) whether the current or previous accounting reference period concerned is to be shortened, so as to end on the first occasion on which the new accounting reference date falls or fell after the beginning of that period; or
 - (b) whether the current or previous accounting reference period concerned is to be extended, so as to end on the second occasion on which the new accounting reference date falls or fell after the beginning of that period.
- (4) The directors of a company must not specify a new accounting reference date in relation to the previous accounting reference period if—
 - (a) the period for laying before the company in general meeting under section 420 a copy of the reporting documents for the financial year determined by reference to that accounting reference period has expired; or
 - (b) the period for sending a copy of the reporting documents for the financial year to the members under section 421(3) has expired.
- (5) The directors of a company must not specify a new accounting reference date in relation to an accounting reference period so as to extend the period to longer than 18 months.
- (6) The directors of a company must not specify a new accounting reference date in relation to the current or previous accounting reference period so as to extend that period if—

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Clause 368

- (a) those directors have specified a new accounting reference date in relation to an earlier accounting reference period so as to extend that earlier period; and
 - (b) the earlier accounting reference period ended within 5 years before the new accounting reference date is specified.
- (7) Subsection (6) does not apply if—
- (a) the new accounting reference date to be specified by the directors coincides with the accounting reference date of a holding company of the company; or
 - (b) the specification is approved by a members' resolution.
- (8) If a company contravenes subsection (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (9) In this section—

previous accounting reference period (對上的會計參照期), in relation to a company, means the accounting reference period of the company immediately preceding the company's current accounting reference period.

Division 4

Preparation of Financial Statements and Directors' Reports

Subdivision 1

Preliminary

368. Interpretation

In this Division—

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Clause 369

in electronic form (電子形式) means in the form of an electronic record;

in hard copy form (印本形式) means in a paper form or similar form capable of being read.

Subdivision 2

Accounting Records

369. Company must keep accounting records

- (1) A company must keep accounting records that comply with subsections (2) and (3).
- (2) The accounting records must be sufficient—
 - (a) to show and explain the company's transactions;
 - (b) to disclose with reasonable accuracy, at any time, the company's financial position and financial performance; and
 - (c) to enable the directors to ensure that the financial statements comply with this Ordinance.
- (3) In particular, the accounting records must contain—
 - (a) daily entries of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place; and
 - (b) a record of the company's assets and liabilities.
- (4) If subsection (1) does not apply in relation to a subsidiary undertaking of a company, the company must take all reasonable steps to secure that the subsidiary undertaking keeps accounting records that are sufficient to enable the company's directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.

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Clause 370

- (5) If a company contravenes subsection (1) or (4), every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (6) If a person is charged with an offence under subsection (5), it is a defence to establish that—
 - (a) the person acted honestly; and
 - (b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).

370. Where accounting records to be kept

- (1) A company's accounting records—
 - (a) must be kept at its registered office or any other place that the directors think fit; and
 - (b) must be open to inspection by the directors at all times without charge.
- (2) If a company's accounting records are kept at a place outside Hong Kong, the accounts and returns with respect to the business dealt with in those records—
 - (a) must be sent to, and kept at, a place in Hong Kong; and
 - (b) must be open to inspection by the directors at all times without charge.
- (3) Those accounts and returns—
 - (a) must disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and

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Clause 371

- (b) must be sufficient to enable the directors to ensure that any financial statements required to be prepared under Subdivision 3 of Division 4 comply with this Ordinance.
- (4) If subsection (1), (2) or (3) is contravened, every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (5) If a person is charged with an offence under subsection (4), it is a defence to establish that—
 - (a) the person acted honestly; and
 - (b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).

371. Director may obtain copies of accounting records during inspection

- (1) A company must allow a director of the company to make a copy of its accounting records in the course of inspection.
- (2) A company must provide a director of the company with a copy of its accounting records without charge if so requested by the director.
- (3) For the purposes of subsection (2)—
 - (a) if the director requests a copy of the company's accounting records in hard copy form, the company must provide the copy in hard copy form; and
 - (b) if the director requests a copy of the company's accounting records in electronic form, the company must provide the copy in any electronic form that the company thinks fit.

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Clause 372

- (4) Subsections (2) and (3) do not require a company to provide a director of the company with a copy of its accounting records in electronic form if it keeps its accounting records by recording the information in hard copy form only.
- (5) If any accounting records are kept by a company by recording the information in electronic form, a requirement under this Subdivision for the accounting records to be open to inspection is to be regarded as a requirement for a reproduction of the recording in hard copy form to be open to inspection.
- (6) If a company contravenes subsection (1) or (2), every responsible person of the company commits 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.
- (7) If a person is charged with an offence under subsection (6), it is a defence to establish that—
 - (a) the person acted honestly; and
 - (b) in the circumstances in which the company's business was carried on, it was excusable for the person to authorize or permit, participate in, or fail to take all reasonable steps to prevent, the company's contravention (as the case may be).

372. Form of accounting records

- (1) The information contained in a company's accounting records must be adequately recorded such that they are available for future reference.
- (2) Subject to subsection (1), a company's accounting records may be—
 - (a) kept in hard copy form or electronic form; and
 - (b) arranged in the manner that the directors think fit.

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Clause 373

- (3) If a company's accounting records are kept in electronic form, the company must ensure that those records are capable of being reproduced in hard copy form.
- (4) If any accounting records are kept by a company otherwise than by making entries in a bound book, the company—
 - (a) must take adequate precautions to guard against falsification; and
 - (b) must take adequate steps to facilitate the discovery of a falsification.
- (5) If subsection (1), (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

373. How long accounting records to be preserved

- (1) This section applies to any accounting records, or any accounts and returns, that are required by section 369(1) or 370(2) to be kept.
- (2) The company must preserve the records, or the accounts and returns, for 7 years after the end of the financial year to which the last entry made or matter recorded in the records, or the accounts and returns, relates.
- (3) If a company contravenes subsection (2), every responsible person of the company commits an offence, and each is liable to a fine of \$300,000 and to imprisonment for 12 months.

374. Court may order accounting records to be inspected on director's behalf

- (1) On application by a director of a company, the Court may by order authorize a person to inspect the company's accounting records on the director's behalf.

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Clause 375

- (2) Unless the Court otherwise directs, a person so authorized may make copies of the accounting records.
- (3) The Court may make any or all of the following orders—
 - (a) an order limiting the use that a person so authorized may make of the information obtained during the inspection;
 - (b) an order limiting the right of a person so authorized to make copies in accordance with subsection (2);
 - (c) any other order that it thinks fit.

Subdivision 3

Financial Statements

375. Directors must prepare financial statements

- (1) A company's directors must prepare for each financial year statements that comply with sections 376 and 378.
- (2) Despite subsection (1), if the company is a holding company at the end of the financial year, the directors must instead prepare for the financial year consolidated statements that comply with sections 376, 377 and 378.
- (3) Subsection (2) does not apply—
 - (a) if the company is a wholly owned subsidiary of another body corporate in the financial year; or
 - (b) if—
 - (i) the company is a partially owned subsidiary of another body corporate in the financial year;
 - (ii) at least 6 months before the end of the financial year, the directors notify the members in writing of the directors' intention not to prepare consolidated statements for the financial year, and the notification does not relate to any other financial year; and

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Clause 376

- (iii) as at a date falling 3 months before the end of the financial year, no member has responded to the notification by giving the directors a written request for the preparation of consolidated statements for the financial year.
- (4) If, as respects any financial statements a copy of which is laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, a director of the company fails to take all reasonable steps to secure compliance with subsection (1) or (2), the director commits an offence and is liable to a fine of \$300,000.
- (5) If, as respects any financial statements a copy of which is laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, a director of the company wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2), the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
- (6) If a person is charged with an offence under subsection (4), 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) or (2) (as the case may be) was complied with; and
 - (b) was in a position to discharge that duty.

376. General requirements for financial statements

- (1) The annual financial statements for a financial year—
 - (a) must give a true and fair view of the financial position of the company as at the end of the financial year; and

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Clause 376

- (b) must give a true and fair view of the financial performance of the company for the financial year.
- (2) The annual consolidated financial statements for a financial year—
 - (a) must give a true and fair view of the financial position of the company, and all the subsidiary undertakings, as a whole as at the end of the financial year; and
 - (b) must give a true and fair view of the financial performance of the company, and all the subsidiary undertakings, as a whole for the financial year.
- (3) The financial statements for a financial year must comply with—
 - (a) if the company falls within the reporting exemption for the financial year, Part 1 of Schedule 4; or
 - (b) if the company does not fall within the reporting exemption for the financial year, Parts 1 and 2 of Schedule 4.
- (4) The financial statements for a financial year must also comply with—
 - (a) any other requirements of this Ordinance in relation to the financial statements; and
 - (b) the accounting standards applicable to the financial statements.
- (5) If, in relation to any financial statements, compliance with subsections (3) and (4) would be insufficient to give a true and fair view under subsection (1) or (2), the financial statements must contain all additional information necessary for that purpose.
- (6) If, in relation to any financial statements, compliance with subsection (3) or (4) would be inconsistent with a requirement to give a true and fair view under subsection (1) or (2), the financial statements—

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Clause 377

- (a) must depart from subsection (3) or (4) (as the case may be) to the extent necessary for it to give a true and fair view; and
 - (b) must contain the reasons for, and the particulars and effect of, the departure.
- (7) Subsections (1), (2), (5) and (6) do not apply if the company falls within the reporting exemption for the financial year.
- (8) In this section—
- (a) **accounting standards** (會計準則) means statements of standard accounting practice issued by a body prescribed by the Regulation; and
 - (b) a reference to accounting standards applicable to any financial statements is a reference to accounting standards as are, in accordance with their terms, relevant to the company's circumstances and to the financial statements.

377. Subsidiary undertakings to be included in annual consolidated financial statements

- (1) Subject to subsections (2) and (3), the annual consolidated financial statements for a financial year must include all the subsidiary undertakings of the company.
- (2) Where the company falls within the reporting exemption for the financial year, one or more subsidiary undertakings may be excluded from the annual consolidated financial statements in compliance with the accounting standards applicable to the statements.
- (3) Where the company does not fall within the reporting exemption for the financial year—
 - (a) one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of the subsidiary undertaking is not material

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Clause 378

for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 376(2)(a) and (b); and

- (b) more than one subsidiary undertaking may be excluded from the annual consolidated financial statements if the inclusion of those subsidiary undertakings taken together is not material for the purpose of giving a true and fair view of the financial position, and of the financial performance, mentioned in section 376(2)(a) and (b).

378. Notes to financial statements to contain information on directors' emoluments etc.

- (1) The financial statements for a financial year must contain, in the notes to the statements, the information prescribed by the Regulation for the purposes of this subsection about the following—
 - (a) the directors' emoluments;
 - (b) the directors' retirement benefits;
 - (c) compensation to directors for loss of office;
 - (d) loans, quasi-loans and other dealings in favour of directors.
- (2) Despite subsection (1)(d), the financial statements for a financial year are not required to contain the information prescribed by the Regulation about loans, quasi-loans and other dealings in favour of directors if the company complies with the requirements prescribed by the Regulation for the purposes of this subsection.
- (3) The notes to any financial statements must also comply with other requirements prescribed by the Regulation.
- (4) A person who is, or has been during the preceding 5 years, a director or shadow director of a company must give notice to the company of any matter that—

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Clause 380

- (a) is prescribed by the Regulation;
 - (b) relates to the person; and
 - (c) is necessary for the purposes of subsection (1).
- (5) A person who contravenes subsection (4) commits an offence and is liable to a fine at level 5.

379. Statement of financial position to be approved and signed

- (1) A statement of financial position that forms part of any financial statements—
 - (a) must be approved by the directors; and
 - (b) must be signed—
 - (i) by 2 directors on the directors' behalf; or
 - (ii) in the case of a company having only one director, by the director.
- (2) If, as respects any financial statements a copy of which is circulated, published or issued by the company, 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.

Subdivision 4

Directors' Report

380. Directors must prepare directors' report

- (1) A company's directors must prepare for each financial year a report that—
 - (a) complies with section 381 and Schedule 5;
 - (b) contains the information prescribed by the Regulation; and

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- (c) complies with other requirements prescribed by the Regulation.
- (2) Despite subsection (1), if the company is a holding company in a financial year, and the directors prepare annual consolidated financial statements for the financial year, the directors must instead prepare for the financial year a consolidated report that—
 - (a) complies with section 381 and Schedule 5;
 - (b) contains the information prescribed by the Regulation; and
 - (c) complies with other requirements prescribed by the Regulation.
- (3) Subsection (1) or (2) does not require the directors' report for a financial year to comply with Schedule 5 if—
 - (a) the company falls within the reporting exemption for the financial year;
 - (b) the company is a wholly owned subsidiary of another body corporate in the financial year; or
 - (c) the company is a private company that does not fall within the reporting exemption for the financial year, and a special resolution is passed by the members to the effect that the company is not to prepare a business review required by that Schedule for the financial year.
- (4) A resolution for the purposes of subsection (3)(c)—
 - (a) may be passed in relation to—
 - (i) a financial year; or
 - (ii) a financial year and every subsequent financial year;
 - (b) must be passed at least 6 months before the end of the financial year to which the directors' report relates; and

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Clause 381

- (c) may only be revoked by a special resolution.
- (5) A director of a company who fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of \$150,000.
- (6) A director of a company who wilfully fails to take all reasonable steps to secure compliance with subsection (1) or (2) commits an offence and is liable to a fine of \$150,000 and to imprisonment for 6 months.
- (7) If a person is charged with an offence under subsection (5), 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) or (2) (as the case may be) was complied with; and
 - (b) was in a position to discharge that duty.

381. Contents of directors' report: general

- (1) A directors' report for a financial year must contain—
 - (a) the name of every person who was a director of the company—
 - (i) during the financial year; or
 - (ii) during the period beginning with the end of the financial year and ending on the date of the report; and
 - (b) the principal activities of the company in the course of the financial year.
- (2) A directors' report must contain particulars of any other matter—
 - (a) that is material for the members' appreciation of the state of the company's affairs; and

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Clause 382

- (b) the disclosure of which will not, in the directors' opinion, be harmful to the business of the company.
- (3) This section has effect in relation to a directors' report required to be prepared under section 380(2) as if a reference to the company in subsection (1) or (2) were a reference to—
 - (a) the company; and
 - (b) the subsidiary undertakings included in the annual consolidated financial statements for the financial year.

382. Directors' report to be approved and signed

- (1) A directors' report—
 - (a) must be approved by the directors; and
 - (b) must be signed on the directors' behalf by a director or by the company secretary.
- (2) Every copy of a directors' report laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, must state the name of the person who signed the report on the directors' behalf.
- (3) If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Part 9—Division 5—Subdivision 1

Clause 383

Division 5

Auditor and Auditor's Report

Subdivision 1

Preliminary

383. Interpretation

In this Division—

appointment period (委任期), in relation to a financial year, means the period of 28 days beginning on whichever is the earlier of the following—

- (a) the date on which a copy of the reporting documents for the previous financial year is sent or provided to every member of the company under section 421(3) or 602(1)(b) (as the case may be);
- (b) the last date on which a copy of the reporting documents for the previous financial year must be sent or provided to every member of the company under section 421(3) or 602(1)(b) (as the case may be);

cessation statement (停任陳述) means a statement given under section 413(1), (2) or (3) or 414(2)(a);

practice unit (執業單位) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50);

statement of circumstances (情況陳述) means a statement given under section 415(a) or 416(1)(a).

Part 9—Division 5—Subdivision 2

Clause 384

Subdivision 2

Appointment of Auditor

384. Eligibility for appointment

- (1) Only a practice unit is eligible for appointment as auditor of a company under this Subdivision.
- (2) The following are disqualified for appointment as auditor of a company under this Subdivision—
 - (a) a person who is an officer or employee of the company;
 - (b) a person who is a partner or employee of a person mentioned in paragraph (a);
 - (c) a person who—
 - (i) is, by virtue of paragraph (a) or (b), disqualified for appointment as auditor of any other undertaking that is a subsidiary undertaking, or a parent undertaking, of the company or is a subsidiary undertaking of that parent undertaking; or
 - (ii) would be so disqualified if the undertaking were a company.
- (3) In this section, a reference to an officer or employee of a company excludes an auditor of the company.

385. Auditor must be appointed for each financial year

- (1) An auditor must be appointed for each financial year of a company.
- (2) An auditor may be appointed only under this Subdivision.

Part 9—Division 5—Subdivision 2

Clause 386

386. Appointment of first auditor by directors

- (1) This section applies to—
 - (a) a company formed and registered under this Ordinance; and
 - (b) a company formed and registered under a provision of the predecessor Ordinance having a continuing effect under Schedule 10 or by virtue of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).
- (2) If the company is required to hold an annual general meeting in accordance with section 600 in respect of its first financial year, the directors may appoint the auditor of the company for that first financial year at any time before the annual general meeting.
- (3) If, by virtue of section 602(1) or (2), the company is not required to hold an annual general meeting in accordance with section 600 in respect of its first financial year, the directors may appoint the auditor of the company for that first financial year at any time before the appointment period in relation to the next financial year.

387. Appointment of auditor by company members

- (1) A company must appoint the auditor of the company for a financial year by a resolution passed at the annual general meeting held in respect of the previous financial year.
- (2) Subsection (1) does not apply to a company that, by virtue of section 602(2), is not required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year.
- (3) A company must appoint the auditor of the company for a financial year by a resolution passed at a general meeting if—

Part 9—Division 5—Subdivision 2

Clause 388

- (a) by virtue of section 602(2), it is not required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year; and
 - (b) no person is deemed to be reappointed as auditor of the company for the financial year under section 394.
- (4) An appointment under subsection (3) must be made before the end of the appointment period in relation to the financial year.
- (5) If, at the annual general meeting held in respect of the previous financial year, a company has not appointed the auditor of the company for a financial year, the company must make the appointment by a resolution passed at another general meeting.
- (6) A company to which section 386 applies may, by a resolution passed at a general meeting, appoint the auditor of the company for its first financial year if the directors have not done so under that section.

388. Appointment to fill casual vacancy

- (1) The directors may appoint a person to fill a casual vacancy in the office of auditor of the company.
- (2) If the directors have not done so within one month after the casual vacancy occurs, the members may, by a resolution passed at a general meeting, appoint a person to fill the casual vacancy.

389. Appointment of auditor by Court

- (1) The Court may, on application by a member of a company, appoint the auditor of the company for a financial year if—
 - (a) in the case of a company required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year—

Part 9—Division 5—Subdivision 2

Clause 390

- (i) at the annual general meeting, no person has been appointed as auditor of the company for the financial year; or
 - (ii) an annual general meeting has not been held in accordance with that section; or
- (b) in the case of a company not required to hold an annual general meeting in accordance with section 600 in respect of the previous financial year by virtue of section 602(2)—
- (i) at the end of the appointment period in relation to the financial year, no person has been appointed as auditor of the company for the financial year; and
 - (ii) no person is deemed to be reappointed as auditor of the company for the financial year under section 394.
- (2) The Court may, on application by a member of a company to which section 386 applies, appoint the auditor of the company for its first financial year if an appointment has not been made under sections 386(2) or (3) and 387(6).
- (3) The Court may, on application by a member of a company, appoint a person to fill a casual vacancy in the office of auditor of the company if an appointment has not been made under section 388.

390. Effect of appointing a firm as auditor

If a firm is appointed, by the firm name, as auditor of a company, the appointment is to be regarded as an appointment of those persons who—

- (a) are the partners in the firm from time to time during the currency of the appointment; and
- (b) are eligible, and not disqualified, for appointment as auditor of the company under this Subdivision.

Part 9—Division 5—Subdivision 2

Clause 391

391. Special notice required for resolution for appointing auditor in some cases

- (1) Special notice is required for—
 - (a) a resolution proposed for the purposes of section 387(1), (3) or (5) for appointing a person as auditor in place of a specified incumbent; and
 - (b) a resolution proposed for the purposes of section 388(2).
- (2) Special notice is also required for a resolution proposed for the purposes of section 387(1), (3) or (5) for appointing a specified incumbent as auditor if that incumbent holds office by virtue of an appointment by the directors to fill a casual vacancy under section 388(1).
- (3) On receipt of a special notice, the company must send a copy of it—
 - (a) to the person proposed to be appointed as auditor; and
 - (b) in the case of—
 - (i) a proposed appointment under section 387(1), (3) or (5) of a person in place of a specified incumbent, to that incumbent; or
 - (ii) a proposed appointment under section 387(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 388(1) or (2) to fill a casual vacancy caused by a resignation, to the person who resigned.
- (4) In this section—

specified incumbent (指明在任人) means—
 - (a) the person who is the last auditor of the company and whose term of office as auditor has expired; or

Part 9—Division 5—Subdivision 2

Clause 392

- (b) the person whose term of office as auditor will expire—
 - (i) at the end of the general meeting; or
 - (ii) at the end of the appointment period in relation to the financial year concerned.

392. Copies of written resolution for appointment must be sent to new and old auditors

- (1) This section applies if an appointment of an auditor specified in subsection (2) is proposed to be effected by a written resolution of the members of a company.
- (2) The appointment is—
 - (a) an appointment under section 387(1), (3) or (5) of a person in place of a specified incumbent; or
 - (b) an appointment under section 387(1), (3) or (5) of a specified incumbent who holds office by virtue of an appointment under section 388(1) or (2) to fill a casual vacancy caused by a resignation.
- (3) On receipt of a copy of the proposed resolution, the company must send a copy of it—
 - (a) to the person proposed to be appointed as auditor; and
 - (b) in the case of—
 - (i) subsection (2)(a), to the specified incumbent; or
 - (ii) subsection (2)(b), to the person who resigned.
- (4) If a company contravenes subsection (3), the written resolution is ineffective.
- (5) In this section—

specified incumbent (指明在任人) means—

Part 9—Division 5—Subdivision 2

Clause 393

- (a) the person who is the last auditor of the company and whose term of office as auditor has expired; or
- (b) the person whose term of office as auditor will expire at the end of the appointment period in relation to the financial year concerned.

393. Terms of office of auditor

- (1) A person appointed as auditor of a company holds office in accordance with the terms of the appointment.
- (2) Despite subsection (1)—
 - (a) a person appointed as auditor of a company does not take office until the previous auditor's appointment is terminated; and
 - (b) a person appointed as auditor of a company for a financial year under section 386, 387, 388 or 389 holds office until—
 - (i) if the company holds an annual general meeting in accordance with section 600 in respect of the financial year, the end of the annual general meeting;
 - (ii) if, by virtue of section 602(1), the company does not hold an annual general meeting in accordance with section 600 in respect of the financial year, the date of the written resolution passed for the purposes of section 602(1); or
 - (iii) if, by virtue of section 602(2), the company does not hold an annual general meeting in accordance with section 600 in respect of the financial year, the end of the appointment period in relation to the next financial year.

Part 9—Division 5—Subdivision 2

Clause 394

394. Person deemed to be reappointed as auditor

- (1) If—
- (a) by virtue of section 602(2), a company is not required to hold an annual general meeting in accordance with section 600 in respect of a financial year; and
 - (b) at the end of the appointment period in relation to the next financial year, no person has been appointed as auditor of the company for that next financial year,
- the person who is the auditor of the company as at the end of that appointment period is deemed to be reappointed, at that time, as auditor of the company for that next financial year on the same terms of appointment.
- (2) Despite subsection (1), the person is not deemed to be reappointed as auditor of the company for the next financial year if—
- (a) the person was appointed as auditor under section 386 or 388(1);
 - (b) the company's articles require an actual appointment;
 - (c) before the person is deemed to be reappointed under that subsection, the members have by a resolution passed at a general meeting resolved that the person should not be reappointed as auditor for that next financial year;
 - (d) the person declines the reappointment in a written notice sent to the company at least 14 days before the end of the appointment period in relation to that next financial year; or
 - (e) members representing at least the requisite percentage of the voting rights of all the members who would be entitled to vote on a resolution that the person should not be reappointed give the company a notice complying with subsection (5).

Part 9—Division 5—Subdivision 2

Clause 395

- (3) Special notice is required for a resolution proposed for the purposes of subsection (2)(c).
- (4) On receipt of a special notice, the company must send a copy of it to the person proposed not to be reappointed.
- (5) A notice for the purposes of subsection (2)(e)—
 - (a) must state that the person should not be reappointed;
 - (b) must be authenticated by the member or members giving it;
 - (c) must be delivered to the company in hard copy form or electronic form; and
 - (d) must be received by the company before the end of the accounting reference period immediately preceding the time when the reappointment would have effect.
- (6) This section does not affect the operation of Subdivision 6.
- (7) In ascertaining the amount of any compensation or damages payable to a person on ceasing to hold office of auditor for any reason, no account is to be taken of any loss of the opportunity of being deemed to be reappointed as auditor under this section.
- (8) In this section—

requisite percentage (所需百分比) means 5%, or a lower percentage specified for the purposes of this section in the company's articles.

395. Auditor's remuneration

- (1) The remuneration of an auditor of a company appointed by the members may be fixed—
 - (a) by a resolution passed at a general meeting; or
 - (b) in the manner specified in such a resolution.

Part 9—Division 5—Subdivision 3

Clause 396

- (2) The remuneration of an auditor of a company appointed by the directors—
 - (a) may be fixed by the directors when making the appointment; or
 - (b) if it has not been fixed by the directors, may be fixed—
 - (i) by a resolution passed at a general meeting; or
 - (ii) in the manner specified in such a resolution.
- (3) The remuneration of an auditor of a company appointed by the Court—
 - (a) may be fixed by the Court when making the appointment; or
 - (b) if it has not been fixed by the Court, may be fixed—
 - (i) by a resolution passed at a general meeting; or
 - (ii) in the manner specified in such a resolution.
- (4) In this section—

remuneration (酬金), in relation to an auditor of a company, includes any sum paid by the company in respect of the expenses of the auditor.

Subdivision 3

Auditor's Report

396. Auditor's duty to report

A company's auditor must prepare a report for the members on any financial statements prepared by the directors, a copy of which is laid before the company in general meeting under section 420, or is sent to a member under section 421 or otherwise circulated, published or issued by the company, during the auditor's term of office.

Part 9—Division 5—Subdivision 3

Clause 397

397. Auditor's opinion on financial statements, directors' report, etc.

- (1) An auditor's report must state, in the auditor's opinion—
 - (a) whether the financial statements have been properly prepared in compliance with this Ordinance; and
 - (b) in particular, whether the financial statements—
 - (i) in the case of annual financial statements of a company that does not fall within the reporting exemption for the financial year, give a true and fair view of the financial position and financial performance of the company as required by section 376; or
 - (ii) in the case of annual consolidated financial statements of a company that does not fall within the reporting exemption for the financial year, give a true and fair view of the financial position and financial performance of the company and all the subsidiary undertakings as required by section 376.
- (2) If a company's auditor is of the opinion that the information in a directors' report for a financial year is not consistent with the financial statements for the financial year, the auditor—
 - (a) must state that opinion in the auditor's report; and
 - (b) may bring that opinion to the members' attention at a general meeting.

398. Auditor's opinion on other matters

- (1) In preparing an auditor's report, the auditor must carry out an investigation that will enable the auditor to form an opinion as to—
 - (a) whether adequate accounting records have been kept by the company; and

Part 9—Division 5—Subdivision 3

Clause 399

- (b) whether the financial statements are in agreement with the accounting records.
- (2) A company's auditor must state the auditor's opinion in the auditor's report if the auditor is of the opinion that—
 - (a) adequate accounting records have not been kept by the company; or
 - (b) the financial statements are not in agreement with the accounting records in any material respect.
- (3) If a company's auditor fails to obtain all the information or explanations that, to the best of the auditor's knowledge and belief, are necessary and material for the purpose of the audit, the auditor must state that fact in the auditor's report.
- (4) If the financial statements do not comply with section 378(1), the auditor must include in the auditor's report, so far as the auditor is reasonably able to do so, a statement giving the particulars that are required to be, but have not been, contained in the financial statements.

399. Offences relating to contents of auditor's report

- (1) Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes a statement required to be contained in an auditor's report under section 398(2)(b) or (3) to be omitted from the report.
- (2) The persons are—
 - (a) if the auditor who prepares the auditor's report is a natural person—
 - (i) the auditor; and
 - (ii) every employee and agent of the auditor who is eligible for appointment as auditor of the company;

Part 9—Division 5—Subdivision 3

Clause 400

- (b) if the auditor who prepares the auditor's report is a firm, every partner, employee and agent of the auditor who is eligible for appointment as auditor of the company; or
 - (c) if the auditor who prepares the auditor's report is a body corporate, every officer, member, employee and agent of the auditor 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.

400. Auditor's reports to be signed

- (1) An auditor's report must be signed—
 - (a) if the auditor is a natural person, by the auditor; or
 - (b) if the auditor is a firm or body corporate, by a natural person authorized to sign the auditor's name on the auditor's behalf.
- (2) An auditor's report must state the auditor's name.
- (3) Every copy of an auditor's report laid before a company in general meeting under section 420, or sent to a member under section 421 or otherwise circulated, published or issued by the company, must state the auditor's name.
- (4) If subsection (3) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

Part 9—Division 5—Subdivision 4

Clause 401

Subdivision 4

Auditor's Rights and Privileges, etc.

401. Qualified privileges

- (1) In the absence of malice, an auditor of a company is not liable to any action for defamation at the suit of any person in respect of any statement made by the auditor in the course of performing duties as auditor of the company.
- (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 an auditor of a company in the course of performing duties as auditor of the company; and
 - (b) required by this Ordinance—
 - (i) to be delivered to the Registrar; or
 - (ii) to be sent to any member of the company or any other person.
- (3) This section does not limit or affect any other right, privilege or immunity that an auditor of a company, or any other person, has as defendant in an action for defamation.
- (4) In this section, a reference to performing duties as auditor of a company includes—
 - (a) making a cessation statement, giving the statement to the company, and requiring the company to comply with section 413(5) and (6) in relation to the statement; and
 - (b) making a statement of circumstances, and giving the statement to the company.

Part 9—Division 5—Subdivision 4

Clause 402

402. Rights in relation to general meeting

- (1) A person appointed as auditor of a company is entitled—
 - (a) to attend any of the company's general meetings; and
 - (b) to be heard, at any of the company's general meetings, on any part of the business of the meeting that concerns the person as auditor of the company.
- (2) A person's entitlement under subsection (1)(a) or (b) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.

403. Rights in relation to information

- (1) An auditor of a company has a right of access to the company's accounting records.
- (2) An auditor of a company may require a person that is a related entity of the company, or was a related entity of the company at the time to which the information or explanation relates, to provide the auditor with any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.
- (3) If an auditor has required a person to provide any information or explanation under subsection (2), the person must provide the information or explanation as soon as practicable after being required.
- (4) If a subsidiary undertaking of a company is not a company incorporated in Hong Kong, an auditor of the company may require the company to obtain from any of the persons specified in subsection (5) any information or explanation that the auditor reasonably requires for the performance of the duties as auditor of the company.
- (5) The persons are—

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Clause 403

- (a) the subsidiary undertaking;
 - (b) a person who—
 - (i) is an officer or auditor of the subsidiary undertaking; or
 - (ii) was an officer or auditor of the subsidiary undertaking at the time to which the information or explanation relates; and
 - (c) a person who—
 - (i) holds or is accountable for any of the subsidiary undertaking's accounting records; or
 - (ii) held or was accountable for the subsidiary undertaking's accounting records at the time to which the information or explanation relates.
- (6) If an auditor has required a company to obtain any information or explanation from a person under subsection (4), the company must take all reasonable steps to obtain the information or explanation as soon as practicable after being required.
- (7) A statement made by a person in response to a requirement under subsection (2) or (4) may not be used in evidence against the person in any criminal proceedings except proceedings for an offence under section 404.
- (8) This section does not compel a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (9) In this section—
related entity (有關連實體), in relation to a company, means—
 - (a) an officer of the company;
 - (b) a subsidiary undertaking of the company that is a company incorporated in Hong Kong;

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Clause 404

- (c) an officer or auditor of such a subsidiary undertaking; or
- (d) a person holding or accountable for any of the accounting records of the company or such a subsidiary undertaking.

404. Offences relating to section 403

- (1) A person who contravenes section 403(3) 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 an auditor of a company that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, under section 403(2) or (4); and
 - (b) 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
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) If a company contravenes section 403(6), 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.

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Clause 405

- (6) This section does not affect an auditor's right to apply for an injunction to enforce any of the auditor's rights under section 403.

405. Auditor may provide information to incoming auditor without contravening duties

- (1) A person who is or has been an auditor of a company does not contravene any duty owed by the person as such auditor in law by reason only that the person gives work-related information to another person—
- (a) who is an auditor of the company;
 - (b) who has been appointed as auditor of the company but whose term of office has not yet begun; or
 - (c) to whom the company has offered the position as auditor but who has not yet been appointed.
- (2) Subsection (1) does not apply unless the person who gives work-related information to another person—
- (a) does so in good faith; and
 - (b) reasonably believes that the information is relevant to the performance of that other person's duties as auditor of the company.
- (3) In this section—

work-related information (工作資料), in relation to a person who is or has been an auditor of a company, means information of which the person became aware in the capacity of auditor.

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Clause 406

Subdivision 5

Auditor's Liability

406. Avoidance of provisions protecting auditor from liability

- (1) This section applies to a provision contained in a company's articles, or in a contract entered into by a company, or otherwise.
- (2) If a provision purports to exempt an auditor of the company from any liability that would otherwise attach to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company, the provision is void.
- (3) If, by a provision, the company directly or indirectly provides an indemnity for an auditor of the company, or an auditor of an associated company of the company, against any liability attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust occurring in the course of performance of the duties as auditor in relation to the company or associated company (as the case may be), the provision is void.
- (4) Subsection (3) does not prevent a company from taking out and keeping in force insurance for an auditor of the company, or an auditor of an associated company of the company, against—
 - (a) any liability to any person attaching to the auditor in connection with any negligence, default, breach of duty or breach of trust (except for fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be); or

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Clause 407

- (b) any liability incurred by the auditor in defending any proceedings (whether civil or criminal) taken against the auditor for any negligence, default, breach of duty or breach of trust (including fraud) occurring in the course of performance of the duties of auditor in relation to the company or associated company (as the case may be).
- (5) Subsection (3) does not prevent a company from indemnifying an auditor of the company against any liability incurred by the auditor—
 - (a) in defending any proceedings (whether civil or criminal) in which judgment is given in the auditor's favour or the auditor is acquitted; or
 - (b) in connection with an application under section 891 or 892 in which relief is granted to the auditor by the Court.
- (6) In this section, a reference to performance of the duties of auditor includes—
 - (a) making a cessation statement, giving the statement to the company, and requiring the company to comply with section 413(5) and (6) in relation to the statement; and
 - (b) making a statement of circumstances, and giving the statement to the company.

Subdivision 6

Termination of Auditor's Appointment

407. When appointment is terminated

- (1) A person's appointment as auditor of a company is terminated if—
 - (a) the term of office expires;

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Clause 408

- (b) the person resigns from office under section 408(1);
 - (c) the person ceases to be auditor under section 409;
 - (d) the person is removed from office under section 410(1); or
 - (e) a winding up order is made in respect of the company.
- (2) Where a firm is appointed, by the firm name, as auditor of a company, the appointment is also terminated if every person who is regarded as being appointed as auditor by virtue of section 390—
- (a) ceases to be a partner in the firm before the term of office expires; or
 - (b) ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2 before the term of office expires.
- (3) Where a body corporate is appointed as auditor of a company, the appointment is also terminated if the body corporate is dissolved.
- (4) If 2 or more persons are appointed as auditor of a company, and the appointment of any of the persons is terminated, the termination does not affect the appointment of the other person.

408. Resignation of auditor

- (1) A person may resign from the office of auditor by giving the company a notice in writing that is accompanied by a statement required to be given under section 415.
- (2) Such a person's term of office expires—
 - (a) at the end of the day on which notice is given to the company under subsection (1); or
 - (b) if the notice specifies a time on a later day for the purpose, at that time.

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Clause 409

- (3) Within 14 days beginning on the date on which a company receives a notice of resignation, the company must deliver a notification in the specified form of that fact to the Registrar for registration.
- (4) If a company contravenes subsection (3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

409. Cessation of office

- (1) If, while holding office as auditor of a company, a person ceases to be eligible, or becomes disqualified, for appointment as auditor of the company under Subdivision 2, the person—
 - (a) immediately ceases to be auditor of the company; and
 - (b) must notify the company of the cessation immediately.
- (2) A person who contravenes subsection (1)(b) commits an offence and is liable to a fine at level 4.
- (3) If a person is charged with an offence under subsection (2), it is a defence to establish that the person did not know, and had no reason to believe, that the person had ceased to be eligible, or had become disqualified, for appointment as auditor of the company under Subdivision 2.

410. Company may remove auditor

- (1) A company may by an ordinary resolution passed at a general meeting remove a person from the office of auditor despite—
 - (a) any agreement between the person and the company; or

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Clause 412

- (b) anything in the company's articles.
- (2) Special notice is required for an ordinary resolution proposed for the purposes of subsection (1).
- (3) On receipt of a special notice, the company must send a copy of it to the person proposed to be removed.
- (4) If an ordinary resolution for the removal is passed, the company must deliver a notice in the specified form of that fact to the Registrar for registration within 14 days beginning on the date on which it is passed.
- (5) If a company contravenes subsection (4), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.

411. Removed auditor not deprived of compensation, damages, etc.

Section 410 does not deprive a person of compensation or damages payable to the person in respect of the person ceasing—

- (a) to hold office as auditor of a company; or
- (b) to hold any appointment that is terminated with the termination of the person's appointment as auditor.

Subdivision 7**Outgoing Auditor's Right to Requisition Meeting of Company and Make Representation****412. Resigning auditor may requisition meeting**

- (1) If a person gives under section 408(1) a notice of resignation that is accompanied by a statement of circumstances given under section 415(a), the person may, by another notice given to the company with the notice of

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Clause 413

resignation, require the directors to convene a general meeting of the company for receiving and considering the explanation of the circumstances connected with the resignation that the person places before the meeting.

- (2) Within 21 days beginning on the date on which the company receives that other notice, the directors must convene a general meeting for a date falling within 28 days after the date on which the notice convening the meeting is given.
- (3) If the directors of a company contravene subsection (2), every director who failed to take all reasonable steps to secure that a general meeting was convened as required by that subsection commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

413. Cessation statement in relation to, and attendance at, general meeting

- (1) If a general meeting is convened under section 412(2), the person who resigns from the office of auditor—
 - (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the resignation;
 - (b) may require the company to comply with subsections (5) and (6) in relation to the statement; and
 - (c) is entitled—
 - (i) to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;

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Clause 413

- (ii) to attend the general meeting; and
 - (iii) to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.
- (2) If special notice is given under section 391(1)(a) for a resolution for appointing a person as auditor in place of another person, that other person—
- (a) may give the company a statement by that other person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor;
 - (b) may require the company to comply with subsections (5) and (6) in relation to the statement; and
 - (c) is entitled—
 - (i) to be given every notice of, and every other item of communication, relating to the general meeting, that a member of the company is entitled to be given;
 - (ii) to attend the general meeting; and
 - (iii) to be heard at the general meeting on any part of the business of the meeting that concerns the person as auditor or former auditor of the company.
- (3) If special notice is given under section 410(2) for an ordinary resolution for removing a person from the office of auditor, the person—
- (a) may give the company a statement by the person that sets out in reasonable length the circumstances surrounding the proposed removal; and
 - (b) may require the company to comply with subsections (5) and (6) in relation to the statement.

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- (4) A person's entitlement under subsection (1)(c)(ii) or (iii) or (2)(c)(ii) or (iii) is, if the person is a firm or body corporate, exercisable by a natural person authorized by the person to act as the person's representative at the meeting.
 - (5) Unless the company receives the statement within 2 days before the last day on which notice may be given under section 561(1) to call the general meeting, the company—
 - (a) must, in every notice of the meeting given to the members, state that the statement has been made; and
 - (b) must send a copy of the statement to every member to whom a notice of the meeting is or has been given.
 - (6) The company must ensure that the statement is read out at the meeting if it has not sent a copy of the statement to every member to whom a notice of the meeting is or has been given.
 - (7) Unless exempted by an order under subsection (8)(a), the company must comply with a requirement made under subsection (1)(b), (2)(b) or (3)(b).
 - (8) On application by the company or by anyone who claims to be aggrieved, the Court may, if satisfied that the person who has given a statement and made a requirement under subsection (1)(a) and (b), (2)(a) and (b) or (3) has abused the right to do so, order—
 - (a) that the company is exempted from complying with the requirement; and
 - (b) that the applicant's costs on the application are to be paid in whole or in part by the person even though the person is not a party to the application.
 - (9) If a company contravenes subsection (7), 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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414. Cessation statement in relation to written resolution

- (1) This section applies if a company sends a copy of a written resolution to a person under section 392(3)(b)(i).
- (2) The person may, within 14 days after receiving a copy of the written resolution from the company—
 - (a) give the company a statement by the person that sets out in reasonable length the circumstances surrounding the termination of the appointment as auditor; and
 - (b) require the company to send a copy of the statement to every member at the same time when the written resolution is circulated under section 540 or 542.
- (3) Section 543 applies to the circulation of the written resolution as if the reference to 21 days in section 543(3) were replaced by a reference to 28 days.
- (4) Unless exempted by an order under subsection (5)(a), the company must comply with a requirement made under subsection (2)(b).
- (5) On application by the company or by anyone who claims to be aggrieved, the Court may, if satisfied that the person who has given a statement and made a requirement under subsection (2) has abused the right to do so, order—
 - (a) that the company is exempted from complying with the requirement; and
 - (b) that the applicant's costs on the application are to be paid in whole or in part by the person even though the person is not a party to the application.
- (6) If a company contravenes subsection (4), the written resolution is ineffective.

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Clause 415

Subdivision 8

Outgoing Auditor's Statement of Circumstances

415. Duty of resigning auditor to give statement

A person who resigns from office under section 408(1) must, on the resignation, give the company—

- (a) if the person considers that there are circumstances connected with the resignation that should be brought to the attention of the company's members or creditors, a statement of those circumstances; or
- (b) if the person considers that there are no such circumstances, a statement to that effect.

416. Duty of auditor who retires or is removed to give statement

- (1) Subject to subsection (3), a person whose appointment as auditor is terminated under section 407(1)(a) or (d) must, on the termination, give the company—
 - (a) if the person considers that there are circumstances connected with the termination that should be brought to the attention of the company's members or creditors, a statement of those circumstances; or
 - (b) if the person considers that there are no such circumstances, a statement to that effect.
- (2) Such a person must send a statement mentioned in subsection (1) to the company so that it will be received by the company—
 - (a) where the person's term of office expires because the person is not deemed to be reappointed as auditor under section 394(2)(d), at least 14 days before the end of the appointment period in relation to the next financial year; or

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Clause 417

- (b) in any other case, within 14 days beginning on the date of termination.
- (3) Subsection (1) does not apply if—
 - (a) the person's appointment is terminated under section 407(1)(a); and
 - (b) the person—
 - (i) is appointed as auditor of the company for a term immediately following the term of office that expires; or
 - (ii) is deemed by section 394 to be reappointed as auditor of the company for the next financial year.
- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (5) If a person is charged with an offence under subsection (4), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1) or (2) (as the case may be).

417. Company's and aggrieved person's responses to statement of circumstances

- (1) If a company is given a statement of circumstances, the company must, within 14 days beginning on the date on which it receives the statement—
 - (a) send a copy of the statement to every member of the company; or
 - (b) apply to the Court for an order directing that copies of the statement are not to be sent under paragraph (a).

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- (2) If a company makes an application under subsection (1)(b), it must give notice of the application to the person who has given the statement of circumstances to the company.
- (3) A person who claims to be aggrieved by a statement of circumstances may, within 14 days beginning on the date on which the company receives the statement, apply to the Court for an order directing that copies of the statement are not to be sent under subsection (1)(a).
- (4) If a person makes an application under subsection (3), the person must give notice of the application to—
 - (a) the company; and
 - (b) the person who has given the statement of circumstances to the company.
- (5) If—
 - (a) a person gives a company a statement of circumstances; and
 - (b) within 21 days beginning on the date on which the company receives the statement, the person has not received notice of an application under subsection (2) or (4),the person must within the next 7 days deliver a copy of the statement to the Registrar for registration.
- (6) If a company contravenes subsection (1), the company, and every responsible person of the company, commit an offence, and each is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

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- (7) If a person contravenes subsection (5), the person commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (8) If a person is charged with an offence under subsection (7), it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (5).

418. Court may order statement of circumstances not to be sent

- (1) This section applies if an application has been made under section 417(1)(b) or (3) in relation to a statement of circumstances given by a person to a company.
- (2) If the Court is satisfied that the person has abused the use of the statement of circumstances, the Court—
 - (a) must direct that copies of the statement are not to be sent under section 417(1)(a); and
 - (b) may order the person, though not a party to the application, to pay the applicant's costs on the application in whole or in part.
- (3) If the Court gives directions under subsection (2)(a), the company must, within 14 days beginning on the date on which the directions are given—
 - (a) send a notice setting out the effect of the directions to—
 - (i) every member of the company; and
 - (ii) unless already named as a party to the proceedings, the person who has given the statement of circumstances to the company; and
 - (b) deliver a copy of the notice to the Registrar for registration.

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Clause 419

- (4) If the Court decides not to grant the application, the company must, within 14 days beginning on the date on which the decision is made or on which the proceedings are discontinued for any reason—
 - (a) give notice of the decision to the person who has given the statement of circumstances to the company; and
 - (b) send a copy of the statement of circumstances to every member of the company and to that person.
- (5) Within 7 days beginning on the date on which a person receives a notice under subsection (4)(a), the person must deliver a copy of the statement of circumstances to the Registrar for registration.

419. Offences relating to section 418

- (1) If a company contravenes section 418(3) or (4), the company, and every responsible person of the company, commit an offence, and each is liable—
 - (a) on conviction on indictment to a fine of \$150,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.
- (2) A person who contravenes section 418(5) commits an offence and is liable to a fine at level 3 and, in the case of a continuing offence, to a further fine of \$300 for each day during which the offence continues.
- (3) If a person is charged with an offence under subsection (2) for contravening section 418(5), it is a defence to establish that the person took all reasonable steps to secure compliance with that section.

Division 6

Laying and Publication of Financial Statements and Reports

420. Directors must lay financial statements etc. before company in general meeting

- (1) A company's directors must, in respect of each financial year, lay before the company in annual general meeting, or in any other general meeting directed by the Court, a copy of the reporting documents for the financial year within the period specified in section 422.

Note—

See the exception in section 602(3).

- (2) If a company's directors contravene subsection (1), every person who at the end of the specified period was a director of the company commits an offence and is liable to a fine of \$300,000.
- (3) If a company's directors wilfully contravene subsection (1), every person who at the end of the specified period was a director of the company 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)—
 - (a) it is a defence to establish that the person took all reasonable steps to secure compliance with subsection (1); and
 - (b) it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

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Clause 421

421. Company must send copies of financial statements etc. to members before general meeting

- (1) If a company is required to hold an annual general meeting in accordance with section 600 in respect of a financial year, the company must send a copy of the reporting documents for the financial year to every member at least 21 days before the date of the meeting at which the copy is required by section 420 to be laid.
- (2) For the purposes of subsection (1), even though a copy of the reporting documents for the financial year is sent to a member less than 21 days before the date of the meeting at which the copy is required by section 420 to be laid, the copy is to be regarded as having been sent to the member at least 21 days before that date if so agreed by all members entitled to attend and vote at that meeting.
- (3) If, by virtue of section 602(2), a company is not required to hold an annual general meeting in accordance with section 600 in respect of a financial year, the company must send a copy of the reporting documents for the financial year to every member within the period specified in section 422.
- (4) For the purposes of section 821(3)(c), a notification is to be sent—
 - (a) in the case of subsection (1), at least 21 days before the date of the general meeting at which a copy of the reporting documents is required by section 420 to be laid; or
 - (b) in the case of subsection (3), at least 21 days before the date on which a copy of the reporting documents is sent to every member under that subsection.
- (5) The period specified for the purposes of section 821(3)(d)(i) is—

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- (a) in the case of subsection (1), the period beginning at least 21 days before the date of the general meeting at which a copy of the reporting documents is required by section 420 to be laid and ending on the date of that meeting; or
 - (b) in the case of subsection (3), the period of 21 days after the date on which a notification under section 821(3)(c) is sent.
- (6) If a copy or copies of the reporting documents are sent under this section over a period of days, the copy or copies are to be regarded as having been sent on the last day of the period for the purpose of a reference in this Ordinance to the day on which the copy or copies are sent under this section.

422. Period for laying and publishing financial statements etc.

- (1) Subject to subsection (2), the period specified for the purposes of sections 420(1) and 421(3) is—
 - (a) where the company is a private company described in subsection (3), or a company limited by guarantee, at the end of the accounting reference period by reference to which the financial year is determined—
 - (i) subject to subparagraph (ii), the period of 9 months, or any longer period directed by the Court, after the end of that accounting reference period; or
 - (ii) if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (4)(a) and (b) expires last; or
 - (b) where the company is neither a private company described in subsection (3), nor a company limited by guarantee, at the end of that accounting reference period—

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- (i) subject to subparagraph (ii), the period of 6 months, or any longer period directed by the Court, after the end of that accounting reference period; or
 - (ii) if that accounting reference period is the company's first accounting reference period and is longer than 12 months, whichever of the periods set out in subsection (5)(a) and (b) expires last.
- (2) If, after a new accounting reference date is specified under section 367(1), the accounting reference period by reference to which the financial year is determined is shortened, the period specified for the purposes of section 420(1) and 421(3) is whichever of the following expires last—
- (a) the period specified in subsection (1);
 - (b) the period of 3 months after the date of the directors' resolution.
- (3) For the purposes of subsection (1)(a) or (b), the private company is one that is not a subsidiary of a public company at any time during the financial year.
- (4) The periods set out for the purposes of subsection (1)(a)(ii) are—
- (a) the period of 9 months, or any longer period directed by the Court, after the first anniversary of the company's incorporation; and
 - (b) the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.
- (5) The periods set out for the purposes of subsection (1)(b)(ii) are—
- (a) the period of 6 months, or any longer period directed by the Court, after the first anniversary of the company's incorporation; and

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- (b) the period of 3 months after the end of the accounting reference period by reference to which the financial year is determined.

423. Exception to section 421

- (1) Section 421 does not require a company to send a copy of any document to a member whose address is unknown to the company.
- (2) Section 421 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 the company's general meeting, to more than one of the holders; or
 - (b) in the case of joint holders of shares some of whom is so entitled and some not, to those who are not entitled.
- (3) Section 421 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 432, or in compliance with a request under section 435.
- (4) If a company does not have a share capital, section 421 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.

424. Company must send to non-voting members other documents

A company must send to every member who is not entitled to vote at a general meeting of the company—

- (a) a copy of any document issued by the company and circulated by the company with a copy of the reporting documents under section 421; and

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- (b) a copy of any other document intended for the purpose of providing information about the company's affairs that is so circulated.

425. Offences relating to section 421

- (1) If a company contravenes section 421(1), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.
- (2) If a company contravenes section 421(3), the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$300,000.
- (3) If a company wilfully contravenes section 421(3), 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.
- (4) If a person is charged with an offence under subsection (1) or (2), it is not a defence to establish that the financial statements or report was not in fact prepared as required by this Ordinance.

426. Company must send copies of financial statements etc. to members and others on demand

- (1) Within 7 days after a demand is made by a member or a member's personal representative, a company must send to the member or personal representative—
 - (a) one copy of the latest financial statements;
 - (b) one copy of the latest directors' report; or
 - (c) one copy of the auditor's report on those latest financial statements.
- (2) A copy of a document that a person is entitled to be sent under subsection (1) is in addition to any copy of the document that the person is entitled to be sent under section 421.

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- (3) If a company contravenes subsection (1), 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.

427. Requirement in connection with publication of financial statements etc.

- (1) This section applies if a company—
- (a) circulates, publishes or issues—
 - (i) any specified financial statements in relation to the company; or
 - (ii) any non-statutory accounts in relation to the company; or
 - (b) otherwise makes such financial statements or accounts available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the financial statements or accounts.
- (2) The specified financial statements must be accompanied by the auditor's report on those statements.
- (3) The non-statutory accounts must be accompanied by a statement indicating—
- (a) that those accounts are not specified financial statements in relation to the company;
 - (b) whether the specified financial statements for the financial year with which those accounts purport to deal have been delivered to the Registrar;
 - (c) whether an auditor's report has been prepared on the specified financial statements for the financial year; and
 - (d) whether the auditor's report—

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- (i) was qualified or otherwise modified;
 - (ii) referred to any matter to which the auditor drew attention by way of emphasis without qualifying the report; or
 - (iii) contained a statement under section 397(2) or 398(2) or (3).
- (4) The non-statutory accounts must not be accompanied by any auditor's report on the specified financial statements.
- (5) If subsection (2), (3) or (4) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$150,000.
- (6) In this section—

non-statutory accounts (非法定帳目), in relation to a company, means—

- (a) any statement of financial position or statement of comprehensive income, otherwise than as part of any financial statements prepared by the directors, relating to, or purporting to deal with, a financial year of the company; or
- (b) accounts in any form, otherwise than as part of any financial statements prepared by the directors, purporting to be a statement of financial position or statement of comprehensive income for a group of companies consisting of the company and its subsidiary undertakings relating to, or purporting to deal with, a financial year of the company;

specified financial statements (指明財務報表), in relation to a company, means any financial statements prepared by the directors—

- (a) a copy of which is required by section 420(1) to be laid before the company in general meeting; or

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- (b) a copy of which is required by section 421(3) to be sent to every member or is otherwise circulated, published or issued by the company.

Division 7

Summary Financial Reports

428. Interpretation

In this Division—

potential member (潛在成員), in relation to a company, means a person who is entitled, whether conditionally or unconditionally, to become a member of the company.

429. Application of Division

This Division applies to a company in relation to a financial year if the company does not fall within the reporting exemption for the financial year.

430. Directors may prepare financial report in summary form

- (1) The directors of a company may prepare for a financial year a financial report, in summary form, derived from the reporting documents for the financial year, a copy of which is required to be sent to every member of the company under section 421.
- (2) A financial report prepared under subsection (1)—
 - (a) must contain the information prescribed by the Regulation; and
 - (b) must comply with other requirements prescribed by the Regulation.
- (3) If subsection (2) is contravened—

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- (a) a director who failed to take all reasonable steps to secure compliance with that subsection commits an offence and is liable to a fine of \$300,000; and
 - (b) a director who wilfully failed to take all reasonable steps to secure compliance with that subsection 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 (3)(a), 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 (2) was complied with; and
 - (b) was in a position to discharge that duty.

431. Summary financial report to be approved and signed

- (1) A summary financial report—
 - (a) must be approved by the directors; and
 - (b) must be signed on the directors' behalf by a director.
- (2) Every copy of a summary financial report sent to a member under this Division or otherwise circulated, published or issued by the company must state the name of the director who signed the report on the directors' behalf.
- (3) If subsection (1) or (2) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 4.

432. Company may send copy of summary financial report to member

- (1) If a company is required to send a copy of the reporting documents for a financial year to a member under section 421, the company may send a copy of the summary financial report for the financial year (if any) to the member instead.

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- (2) If a company sends a copy of the summary financial report for a financial year to a member under subsection (1), the copy must be sent during the period within which a copy of the reporting documents for the financial year would be required to be sent to the member by the company under section 421.

433. Company may seek member's intent on receiving summary financial report

- (1) A company may notify every member or potential member to give the company a notice of intent under subsection (3).
- (2) A notification to a member or potential member—
- (a) must be given in writing; and
 - (b) must be given in relation to a financial year.
- (3) In response to a notification, a member or potential member may give the company a notice of intent to—
- (a) request—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (b) in the case of paragraph (a)(i), request the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.
- (4) If a notice of intent is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421, the notice of intent has effect in relation to that financial year, and every subsequent financial year, until it ceases to have effect by virtue of subsection (6).
- (5) If a notice of intent is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421—

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- (a) the notice of intent has effect in relation to every financial year subsequent to that financial year until it ceases to have effect by virtue of subsection (6); and
 - (b) the member or potential member is to be regarded as—
 - (i) having requested a copy of the summary financial report for the financial year; and
 - (ii) having requested the summary financial report to be sent by the company in hard copy form.
- (6) A notice of intent ceases to have effect if the person who gave the notice—
- (a) is no longer a member of the company; or
 - (b) revokes the notice by giving the company a written notice of revocation.
- (7) If a member or potential member does not give the company a notice of intent in response to a notification before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421, the member or potential member is to be regarded as—
- (a) having requested a copy of the summary financial report for the financial year and every subsequent financial year; and
 - (b) having requested the summary financial report to be sent by the company in hard copy form.
- (8) Subsection (7) ceases to have effect in relation to a person if—
- (a) the person is no longer a member of the company; or
 - (b) the person gives the company a written notice of cessation of statutory election.

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434. Notice of revocation and notice of cessation of statutory election

- (1) A notice of revocation given by a person for the purposes of section 433(6)(b)—
 - (a) must state the financial year to which it relates;
 - (b) must state that the notice of intent previously given by the person is revoked;
 - (c) must state that the person requests—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (d) in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.
- (2) The request stated in a notice of revocation under subsection (1)(c) must be different from the request stated in the notice of intent revoked by the notice of revocation.
- (3) A notice of cessation of statutory election given by a person for the purposes of section 433(8)(b)—
 - (a) must state the financial year to which it relates;
 - (b) must state that the person is no longer regarded as having made the requests mentioned in section 433(7);
 - (c) must state that the person requests—
 - (i) either a copy of the reporting documents or a copy of the summary financial report; or
 - (ii) none of those copies; and
 - (d) in the case of paragraph (c)(i), must state that the person requests the copy to be sent by the company in hard copy form, in electronic form, or by making it available on a website.

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- (4) If a notice of revocation, or a notice of cessation of statutory election, is received by the company at least 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 421, the notice has effect in relation to that financial year, and every subsequent financial year.
- (5) If a notice of revocation, or a notice of cessation of statutory election, is received by the company less than 28 days before the first date on which a copy of the reporting documents for the financial year to which the notice relates is sent to a member under section 421, the notice has effect in relation to every financial year subsequent to that financial year.

435. Company must comply with member's request in notice of intent etc.

- (1) If a person requests a copy of the reporting documents, or a copy of the summary financial report, in a relevant notice, the company must comply with the request unless it is prohibited from doing so by section 437.
- (2) The request must be complied with during the period within which a copy of the reporting documents for the relevant financial year would be required to be sent to the person by the company under section 421.
- (3) Subsection (1) does not require a company to comply with a potential member's request unless the potential member becomes a member of the company at least 28 days before the first date on which a copy of the reporting documents for the financial year is sent to a member under section 421(1) or (3).
- (4) In this section—

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relevant financial year (有關財政年度) means the financial year in relation to which the relevant notice has effect under section 433 or 434;

relevant notice (有關通知) means—

- (a) a notice of intent given under section 433(3);
- (b) a notice of revocation given for the purposes of section 433(6)(b); or
- (c) a notice of cessation of statutory election given for the purposes of section 433(8)(b).

436. Additional copy of reports etc. to be sent by company

- (1) If a company has sent a copy of the summary financial report for a financial year to a person under section 432, or in compliance with a request under section 435, the company must, at the person's request, send a copy of the reporting documents for the financial year to the person at the time specified in subsection (3).
- (2) If a company has sent a copy of the reporting documents for a financial year to a person under section 421, the company must, at the person's request, send a copy of the summary financial report for the financial year to the person at the time specified in subsection (3) unless it is prohibited from doing so by section 437.
- (3) The time specified for subsection (1) or (2) is—
 - (a) where a copy of the reporting documents for the financial year is to be laid before the company in general meeting under section 420(1), and the company receives the person's request more than 14 days before the date of that meeting, any time falling at least 7 days before the date of that meeting; or
 - (b) in any other case, any time within 14 days after the date on which the company receives the person's request.

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- (4) Subsection (1) or (2) does not require a company to send a copy of the summary financial report or reporting documents for a financial year to a person if—
 - (a) where a copy of the reporting documents for the financial year is laid before the company in general meeting under section 420(1), the person's request is made at least 6 months after the date of that meeting; or
 - (b) where a copy of the reporting documents for the financial year is sent to every member under section 421(3), the person's request is made at least 6 months after the date on which the copy is sent.
- (5) Subsection (2) does not require a company to send a copy of the summary financial report for a financial year to a person unless—
 - (a) the company has prepared the summary financial report for the financial year; and
 - (b) when the company sent a copy of the reporting documents for the financial year to the person, the company gave the person a right to request a copy of the summary financial report for the financial year.
- (6) 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.

437. Company must not send summary financial report under some circumstances

- (1) A company must not send a copy of the summary financial report for a financial year to a member if—

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- (a) the company's articles require that a copy of the reporting documents for the financial year must be sent to each member; or
 - (b) the company's articles prohibit the company from sending a copy of the summary financial report for the financial year to a member.
- (2) A company must not send a copy of the summary financial report for a financial year to a member if—
- (a) an auditor's report has not been prepared on the financial statements for the financial year;
 - (b) the summary financial report has not been approved by the directors;
 - (c) the summary financial report has not been signed on the directors' behalf; or
 - (d) the summary financial report does not comply with section 430(2).
- (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.

Division 8

Miscellaneous

438. Exemption applicable to dormant company

- (1) The following provisions do not apply to a company that is a dormant company under section 5(1)—
- (a) section 363(4);
 - (b) Subdivisions 3 and 4 of Division 4;
 - (c) Subdivisions 2 and 3 of Division 5;
 - (d) sections 402 and 403;

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- (e) Subdivisions 6, 7 and 8 of Division 5;
 - (f) Divisions 6 and 7.
- (2) If such a company enters into an accounting transaction—
- (a) subsection (1) ceases to have effect on and after the date of the accounting transaction; and
 - (b) a member of the company who knew or ought to have known about the accounting transaction and every director of the company, are personally liable for any debt or liability of the company arising out of the accounting transaction.
- (3) In this section—
- director* (董事) includes a shadow director.

439. Liability for untrue or misleading statement in reports

- (1) This section applies to—
- (a) a directors' report; and
 - (b) a summary financial report so far as it is derived from a directors' report.
- (2) A director of a company is liable to compensate the company for any loss suffered by the company as a result of—
- (a) any untrue or misleading statement in the report; or
 - (b) the omission from the report of anything required to be included in it.
- (3) A director is not liable unless—
- (a) in the case of subsection (2)(a), the director knew the statement to be untrue or misleading or was reckless as to whether it was untrue or misleading; or

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- (b) in the case of subsection (2)(b), the director knew the omission to be a dishonest concealment of a material fact.
- (4) A person is not subject to any liability to another person other than the company resulting from reliance, by that other person or any other person, on information contained in the report.
- (5) For the purposes of subsection (4), a person is also subject to a liability to another person if that other person is entitled against the person—
 - (a) to be granted any civil remedy; or
 - (b) to rescind or repudiate an agreement.
- (6) This section does not affect liability for criminal offence.

440. Voluntary revision of financial statements etc.

- (1) If—
 - (a) a copy of any financial statements prepared by the directors of a company has been sent under section 421 to a member; and
 - (b) it subsequently appears to the directors of the company that the financial statements did not comply with this Ordinance,

the directors may cause the financial statements to be revised and make necessary consequential revisions to the summary financial report or directors' report concerned.
- (2) Such revision of the financial statements is to be confined to—
 - (a) those aspects of the financial statements that did not comply with this Ordinance; and
 - (b) other necessary consequential revisions.
- (3) If—

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- (a) the directors of a company decide to cause any financial statements to be revised under subsection (1); and
 - (b) a copy of the financial statements has been delivered to the Registrar in compliance with section 655(3)(b),
the company must, within 7 days after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the financial statements will be so revised.
- (4) If a company contravenes subsection (3), 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.

441. Financial Secretary may make regulation regarding revision of financial statements etc.

- (1) The Financial Secretary may make regulations providing for the application of this Ordinance in relation to the financial statements, summary financial report or directors' report that has been revised under section 440.
- (2) The regulations may—
 - (a) make different provisions according to whether the financial statements, summary financial report or directors' report has been revised by—
 - (i) supplementing the financial statements or report with another document that shows the revisions; or
 - (ii) replacing the financial statements or report;
 - (b) provide for the functions of the auditors of a company in relation to the financial statements, summary financial report or directors' report that has been revised;

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(c) where—

- (i) the financial statements or directors' report, or a copy of the statements or report, has, before the revision, been laid before the company in general meeting under section 420, been sent to members under section 421, or been delivered to the Registrar in compliance with section 655(3)(b); or
- (ii) a copy of a summary financial report has, before the revision, been sent to a member under section 432, or in compliance with a request under section 435 or 436(2),

require the company or the directors of the company to take the steps specified in the regulations in relation to the financial statements or report that has been revised; and

- (d) provide for the application of this Ordinance to the financial statements, summary financial report or directors' report that has been revised, subject to such additions, exceptions and modifications as may be specified in the regulations.

(3) The regulations may provide that any of the following is an offence—

- (a) a failure to take all reasonable steps to secure compliance with, as respects the financial statements, summary financial report or directors' report that has been revised—

- (i) a specified provision of the regulations; or

- (ii) a specified provision of this Ordinance as having a continuing effect under the regulations;

- (b) a contravention of—

- (i) a specified provision of the regulations; or

- (ii) a specified provision of this Ordinance as having a continuing effect under the regulations.

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- (4) The maximum fine that may be prescribed for an offence committed wilfully is \$300,000 and the maximum imprisonment is 12 months. The maximum fine that may be prescribed for an offence not committed wilfully is \$300,000. In addition, in the case of a continuing offence, a further fine not exceeding \$2,000 for each day during which the offence continues may be prescribed.
- (5) The regulations may provide for defences to any such offence.

442. Financial Secretary may make regulation regarding disclosures of certain information

- (1) The Financial Secretary may make regulations prescribing the following requirements for the purposes of section 378(2)—
 - (a) a requirement that the financial statements for the financial year are to contain a statement showing the particulars of the loans, quasi-loans and other dealings in favour of directors that are specified in the regulations;
 - (b) a requirement that the company is to enter into a register any particulars that would, but for section 378(2), be required by section 378(1)(d) to be contained in the notes to the financial statements for the financial year.
- (2) The regulations may—
 - (a) provide for—
 - (i) the maintenance and inspection of such a register;
 - (ii) the keeping of particulars in the register; and
 - (iii) the supply of a copy of the register by the company to a member of the company; and
 - (b) provide that any of the following is an offence—

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- (i) a failure to take all reasonable steps to secure compliance with a specified provision of the regulations; or
 - (ii) a contravention of a specified provision of the regulations.
- (3) The maximum fine that may be prescribed for an offence is level 4 and the maximum imprisonment is 6 months. In addition, in the case of a continuing offence, a further fine not exceeding \$700 for each day during which the offence continues may be prescribed.
- (4) The regulations may provide for defences to any such offence.
- (5) The regulations may provide that the Court may order—
 - (a) if an offence is committed for a failure to allow inspection of a register, that the register be opened to inspection; or
 - (b) if an offence is committed for a failure to provide a copy of a register to a member, that such a copy be sent to the member.

443. Financial Secretary may make other regulations

- (1) The Financial Secretary may make regulations prescribing a body for the purposes of section 376(8)(a).
- (2) The Financial Secretary may make regulations—
 - (a) prescribing information that is required to be contained in the notes to any financial statements under section 378(1); and
 - (b) prescribing other requirements for notes to any financial statements.
- (3) The Financial Secretary may make regulations—

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- (a) prescribing information that is required to be contained in a directors' report under section 380(1) and (2); and
 - (b) prescribing other requirements for a directors' report.
- (4) The Financial Secretary may make regulations—
- (a) prescribing information that is required to be contained in a summary financial report under section 430(2); and
 - (b) prescribing other requirements for a summary financial report.
- (5) The Financial Secretary may make regulations—
- (a) providing for the form and contents of—
 - (i) a notification under section 433(2);
 - (ii) a notice of intent under section 433(3); or
 - (iii) any document attached to such a notification or notice; and
 - (b) providing that any such document is to be postage prepaid.
-