

PART 9

ACCOUNTS AND AUDIT

Introduction

1. Part 9 contains the accounting and auditing provisions in relation to the keeping of accounting records, the preparation and circulation of annual financial statements, directors' and auditor's reports and the appointment and rights of auditors. Apart from amending the existing accounting and auditing provisions in sections 121 to 141E of the CO, there are new provisions to lessen the compliance burden on private companies and small guarantee companies through reporting exemptions. The financial reports and disclosure requirements under Part 9 will be complemented by other standards and rules governing the contents of accounts and reports i.e. the financial reporting standards issued by the HKICPA and, in the case of listed companies, Listing Rules of HKEx.
2. Part 9 operates prospectively so that it applies in relation to a financial year, whether of an existing company or a company incorporated under the new Ordinance, that begins on or after the commencement of Part 9. A financial year of a company that begins before or straddles the commencement date of Part 9 will continue to be governed by the existing CO. We will provide for transitional and saving provisions for Part 9 after consideration of the public's views.

- The significant changes¹ to be introduced under this Part are highlighted below:
 - (a) **Clarifying the financial year of a company by providing for an accounting reference period and an accounting reference date, with reference to which financial statements and reports are to be prepared and laid before the company in general meeting or circulated to members of the company;**
 - (b) **Relaxing the qualifying criteria for private companies to prepare simplified financial and directors' reports and allowing small guarantee companies and groups of private or guarantee**

¹ Directors' remuneration reports provided in Subdivision 5 of Division 4 is not covered here in view of the proposal not to pursue this recommendation, see Chapter 3 of the Consultation Paper.

companies to take advantage of the simplified accounting and reporting requirements;

- (c) Aligning the statutory accounting requirements with accounting standards and streamlining disclosure requirements that overlap with the accounting standards;**
- (d) Requiring companies to prepare a more comprehensive directors' report which includes an analytical and forward-looking business review whilst allowing companies qualified for simplified accounting to prepare a simplified directors' report;**
- (e) Enhancing auditor's right to information and strengthening enforcement by imposing criminal sanctions for breaches in relation to the provision of information to auditors;**
- (f) Improving transparency with regard to circumstances of cessation of office of auditor;**
- (g) Providing for the appointment and the deemed re-appointment of auditors and the term of office of an auditor; and**
- (h) Revamping the summary financial report provisions and extending their application to companies in general.**

Significant Changes

- (a) Clarifying the financial year of a company by providing for an accounting reference period and an accounting reference date, with reference to which financial statements and reports are to be prepared and laid before the company in general meeting or circulated to members of the company**

Background

3. At present, the CO does not provide for a company's financial year and accounting reference period. Section 122 of the CO requires accounts to be made out every year and to be laid before the company at its AGM, and those accounts shall be made up to a date falling not more than a specified

number of months before the date of the AGM. Section 111 of the CO requires that not more than 15 months shall elapse between the date of one AGM and the next. It therefore indirectly requires accounts to be made up for a period of not more than 15 months, but there are no rules on shorter accounting periods. In addition, there is currently no provision to regulate the first accounting period, except that the first AGM has to be held within 18 months of incorporation.

Proposal

4. ***For a company incorporated on or after the commencement of the new Ordinance, Clauses 9.12(2), 9.13(4) and (5)*** provide that the first accounting reference period is a period of not more than 18 months from the date of the company's incorporation and ending with its "primary accounting reference date" as appointed by directors, or the last day of the month in which the anniversary of its incorporation falls².
5. ***For an existing company, Clauses 9.12(1), 9.13(1) and (3)*** state that the first accounting reference period begins on the date immediately following the "primary accounting reference date" which is any one of the following dates and ends on the first anniversary of that date:
 - (a) for a company that, immediately before the commencement of Part 9, was required to hold an AGM under section 111(1) of the CO, either the date up to which the most recent accounts were made (in case the accounts have been laid before its AGM after the commencement of this Part and, in the case of a public or guarantee company, before a certain date to be appointed) or the last day of the month in which the first anniversary of its incorporation occurs; or
 - (b) for a company that was not required to hold an AGM in accordance with section 111(1) of the CO, it is the date up to which the last accounts provided to a member under section 111(6)(b) of CO were made.
6. **Clause 9.12(3)** stipulates that the subsequent accounting reference periods of a company are successive periods of 12 months beginning immediately after the end of the previous accounting reference period and ending with

² For example, if a company is incorporated on 1 January 2013 and has not appointed any date as its accounting reference date, its first accounting reference period should start from 1 January 2013 and end on 31 January 2014 (i.e. the last day of the month within which the anniversary of its incorporation falls).

the company's accounting reference date unless the accounting reference period is shortened or extended.

7. **Clause 9.15** defines a company's accounting reference date to be the anniversary of its primary accounting reference date and **Clause 9.16** provides that it may be altered by a directors' resolution, subject to a number of conditions and exceptions.
 8. **Clause 9.11** determines a company's financial year following section 390 of the UK CA 2006. In gist, a company's first financial year is the same as its first accounting reference period, except that the directors may alter the last day of the financial year by plus or minus seven days, so as to allow for some flexibility in fixing the financial year.
- (b) Relaxing the qualifying criteria for private companies to prepare simplified financial and directors' reports and allowing small guarantee companies and groups of private or guarantee companies to take advantage of the simplified accounting and reporting requirements**

Background

9. Section 141D of the CO provides that a private company (other than a company which is a member of a corporate group, a banking/ deposit-taking company, an insurance company, a stock-broking company, a shipping company or an airline company) may, with the written agreement of all the shareholders, prepare simplified accounts and simplified directors' reports in respect of one financial year at a time. According to the SME Financial Reporting Framework (SME-FRF) issued by the HKICPA, a company incorporated under the CO qualifies for reporting under the SME-FRF if it satisfies the requirement under section 141D.

Proposal

10. We propose to relax the restrictive qualifying criteria to enable more private companies and small guarantee companies to prepare simplified financial and directors' reports³ to save business and compliance costs⁴. We note the implementation of the Hong Kong Financial Reporting Standard for

³ Further adjustments to the provisions may be required pending discussion with HKICPA on the applicable accounting and reporting standards.

⁴ Companies qualified to prepare simplified financial reports are also exempted from the preparation of business review and certain disclosure requirements (see para. 28, 31 and footnote 8).

Private Entities as a reporting option for eligible private entities on 30 April 2010. We would welcome views of the accounting profession on the implications of the following proposals.

Private Companies

11. **Clauses 9.2(1)(a), 9.4(1) and (2)** provide that a private company (except for a banking/deposit-taking company, an insurance company, or a stock-broking company)⁵, will automatically be qualified for simplified accounting, if it is a “small private company” that satisfies any two of the following conditions specified in **Clause 9.8(1)**:
 - Total annual revenue of not more than HK\$ 50 million.
 - Total assets of not more than HK\$ 50 million.
 - No more than 50 employees.
12. **Clause 9.4(3) and (4)** further provide that if a company is not qualified under paragraph 11 and subsequently becomes qualified it will be able to prepare simplified reports if it has been qualified for two consecutive reporting periods⁶. Similarly, a company previously qualified for simplified reporting will be disqualified after it is no longer qualified for two consecutive reporting periods.
13. Private companies that do not qualify as a “small company” can also enjoy the benefit of simplified financial and directors’ reports if members holding at least 75 % of the voting rights so resolves and no other member objects (**Clauses 9.2(1)(b) and 9.3(1)**). The resolution will remain in force until it is objected to by any member.
14. By **Clauses 9.2(3) and 9.6(1)**, a group of companies is qualified as a “small group” in a year if each company in the group is a small private company and the group satisfies any two out of the following conditions under **Clauses 9.8(6)**:

⁵ The current prohibition which prevents a company that owns and operates ships or aircraft engaged in the carriage of cargo between Hong Kong and a place outside Hong Kong from relying on section 141D will be removed. It is considered to be an anachronism which is no longer appropriate.

⁶ An existing company that qualifies as an SME in its first financial year following the commencement of Part 9 or in the preceding financial year or a company incorporated under the new Ordinance that qualifies as an SME in its first financial year would qualify for reporting under the SME-FRF. There is no need to satisfy the two years’ rule.

- Aggregate total annual revenue of not more than HK\$50 million net.
 - Aggregate total assets of not more than HK\$50 million net.
 - No more than 50 employees.
15. Under **Clauses 9.2(3), 9.3(2) and (3)**, if the above conditions cannot be met, an election for simplified reporting can still be made with the approval of members holding at least 75% of the voting rights (with no member objecting) in the holding company or in the non-small private companies, depending on the circumstances.

Companies Limited by Guarantee

16. Guarantee companies are often set up for non-profit making purposes, such as educational, charitable, religious or community-related purposes and are subject to certain tighter requirements than private companies, such as the requirement to file annual accounts with the Registrar. However, guarantee companies vary in size and it would be inappropriate to require those small guarantee companies to be subject to the Hong Kong Financial Reporting Standards (HKFRSs) that are primarily used for reporting by large or public companies.
17. We believe that small guarantee companies should be allowed to take advantage of the simplified reporting and disclosure requirements applicable to private companies. Nevertheless, the total assets and number of employees may not be suitable criteria to distinguish large guarantee companies from the small ones. We suggest using a total annual revenue of not more than HK\$25 million as a bright line rule for guarantee companies. Under **Clauses 9.2(2), 9.5 and 9.8(3)**, a small guarantee company with a total annual revenue of HK\$25 million or less, or under **Clauses 9.2(4), 9.7 and 9.8(8)** a holding company of a group of such companies with a total aggregate annual revenue of HK\$25 million net or less, can take advantage of the simplified accounting and reporting requirements.
18. To sum up, the 7 types of companies that will be allowed to prepare simplified financial and directors' reports are:
- (a) a small private company;

- (b) other private company with the requisite members' approval;
 - (c) a small private company which is a holding company of a group of small companies;
 - (d) a private company which is a holding company of a group of one or more non-small private companies with the requisite members' approval;
 - (e) a small private company which is a holding company of a group of small companies with the requisite members' approval;
 - (f) a small guarantee company; and
 - (g) a guarantee company which is the holding company of a group of small guarantee companies.
- (c) **Aligning the statutory accounting requirements with accounting standards and streamlining disclosure requirements that overlap with the accounting standards**

Background

19. At present, there are certain inconsistencies between the accounting requirements under the CO and the accounting standards, particularly in respect of the simplified accounting requirements in section 141D. Compared to the requirements under section 141D, the SME Financial Reporting Standard (SME-FRS) requires a more complete set of accounts and more disclosures. For example, pursuant to section 141D(1)(e), the auditor's report of a company which applies section 141D covers only the balance sheet but not the profit and loss account.
20. Another incongruity is that there is no obligation on a company applying section 141D to prepare accounts showing a "true and fair view". Yet section 141D(1)(e)(ii) requires the auditor's report of a company applying section 141D to state "whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view

of the state of the company's affairs...". The phrase "true and correct" may be inappropriate in certain circumstances⁷.

21. The CO also provides for certain disclosure requirements as to the contents of the financial statements in the Tenth and Eleventh Schedules. These requirements essentially overlap with the disclosure requirements in HKFRSs and SME-FRS respectively. As accounting standards are constantly evolving, it is very difficult to keep the statutory requirements in the CO up-to-date. This can give rise to possible conflicts between the two.

Proposal

22. To align with the terminology used in the HKFRSs, the requirements under the CO to prepare annual "accounts" for companies and "group accounts" for holding companies will respectively be changed to the requirement to prepare a "financial statement" and "consolidated financial statement". The terms "balance sheet" and "profit and loss account" used in the CO will respectively be replaced by "statement of financial position" and "statement of comprehensive income".
23. To avoid any potential conflicts between the Tenth Schedule and HKFRSs and between the Eleventh Schedule and SME-FRS, the Tenth and Eleventh Schedules will be repealed, with only a small number of public interest disclosure requirements not covered by the HKFRSs or SME-FRS being retained in the form of a **Schedule**⁸.
24. To align with the SME-FRS, companies that are qualified to prepare simplified financial and directors' reports will be required to prepare a full set of financial statements dealing with the financial position and financial performance of the company. Holding companies of a corporate group that prepares simplified financial and directors' reports are similarly required to prepare consolidated financial statements dealing with the financial position and financial performance of the company and its subsidiary undertakings as a whole. The auditor's report will be expanded to cover the financial statements and consolidated financial statements of such companies.

⁷ For example, as the amount of depreciation shown in the accounts is an estimate, the use of the word "correct" to describe the amount is inappropriate.

⁸ Such disclosures include auditor's remuneration (which applies to companies other than those that fall within the reporting exemption), the aggregate amount of any outstanding loans to directors and employees to acquire shares in the employing company made under the authority of sections 47C(4)(b) and (c) of the CO and information regarding a company's ultimate parent undertaking required under section 129A of the CO.

25. Under **Clause 9.25**, the requirement for financial statements to show the “true and fair view” will also apply to companies that are qualified to prepare simplified financial reports so that there will be a common requirement for all companies incorporated in Hong Kong to prepare financial statements that give a true and fair view of the financial position and financial performance of the company, or of the company and its subsidiary undertakings as a whole.
26. The HKFRSs and SME-FRS will be given indirect statutory recognition as **Clause 9.25(4)** requires a financial statement to comply with the applicable accounting standards which are issued by a body to be prescribed by regulation (i.e. HKICPA). **Paragraph 4 of the Schedule** further requires a statement to be made in the financial statement as to whether it has been prepared in accordance with the applicable accounting standards, and to give the particulars of, and the reasons for, any material departure from those standards.
- (d) **Requiring companies to prepare a more comprehensive directors’ report which includes an analytical and forward-looking business review while allowing companies qualified for simplified accounting to prepare a simplified directors’ report**

Background

27. Section 129D of the CO sets out the detailed information required in a directors’ report. A copy of the report must be sent to every member and debenture holder of the company together with a copy of the accounts and the auditor’s report. To enhance transparency, we propose that all public companies and “large” private and guarantee companies (i.e. other than those qualified to apply the simplified accounting and reporting requirements, see paragraph 18 above) should be required to prepare more analytical and forward-looking information.

Proposal

28. **Clauses 9.29 and 9.31** provide that companies (except for those qualified to apply the simplified accounting and reporting requirements) are required to prepare, as part of the directors’ report, a business review which is more analytical and forward-looking than the information currently required. The proposed business review is similar to the business review which all

companies (except small companies) in the UK have to include in their directors' reports under section 417 in the UKCA 2006. Specifically, the business review should include:

- (a) a fair review of the business of the company;
 - (b) a description of the principal risks and uncertainties facing the company;
 - (c) particulars of any important events affecting the company which have occurred since the end of the financial year;
 - (d) an indication of likely future development in the business of the company; and
 - (e) a balanced and comprehensive analysis of the development, performance or position of the business of the company and, to the extent necessary for an understanding thereof, including:
 - (i) analysis using financial key performance indicators; and
 - (ii) if having a significant impact on the company,
 - a discussion on the company's environmental policies and performance, including compliance with the relevant laws and regulations; and
 - an account of the company's key relationships with employees, customers, suppliers and others, on which its success depends.
29. The requirement to include in the business review information relating to environmental and employee matters is in line with international trends to promote corporate social responsibility⁹.
30. **Clause 9.29(1)** requires the disclosure of other matters prescribed in regulations to be made by the FS. We envisage that the information will include:

⁹ Reference can also be made to paragraph 52(vi) and (viii) of Appendix 16 to the Listing Rules (Main Board) which sets out the recommended additional disclosures to be made in the management discussion and analysis prepared by listed companies.

- (a) the directors' interests in the company, its subsidiary undertakings, its holding company or a subsidiary undertaking of the company's holding company,
 - (b) directors' permitted indemnity provisions
 - (c) donations by the company and its subsidiary undertakings,
 - (d) the shares issued and equity-linked agreements entered into by the company,
 - (e) the management contracts entered into by the company,
 - (f) the amount (if any) that the directors recommend should be paid by way of dividend, and
 - (g) if any director has resigned or given notice declining to stand for re-election during the financial year on the ground of his disagreement with the management of the company, a summary of his reasons for disagreement with the management of the company, if he has given such reasons to the company.
31. Companies which are qualified to apply the simplified accounting and reporting requirements will be exempted from disclosure of information about company donations, recommended dividends and the resigning director's reasons for disagreement with the management of the company.
32. The requirement to prepare a business review will not impose a significant burden on private companies as only a small number of "large" private companies where the members have not opted for the simplified accounts and simplified directors' report would be subject to that requirement.

(e) **Enhancing auditor’s right to information and strengthening enforcement by imposing criminal sanctions for breaches in relation to the provision of information to auditors**

Background

33. To ensure that an auditor will be in a position to perform his oversight functions in an effective manner, it is important for him to have access to the relevant information regarding the state of affairs of the company. The auditors’ current rights to information as set out in sections 133(1) and 141(5) of the CO are considered to be too restrictive¹⁰. A new provision should be drafted along the lines of sections 499 and 500 in the UKCA 2006. It should allow auditors to require a wider range of persons to provide them with information, explanations or assistance as they think necessary for the performance of their duties as auditors.
34. To ensure effective and continuous oversight, there should be proper transitional arrangements in the event of any changes in the auditor of a company. In practice, sudden or frequent changes in auditors often lead to market speculation. Thus, while noting that there are legitimate reasons for changes in auditors, such as disagreement on fees, the existing provisions regarding the rights as well as the duties of the outgoing and incoming auditors should be enhanced. At present, an outgoing auditor needs to seek the company’s permission to discuss the affairs of the company with the incoming auditor because of the principle of confidentiality. The lack of consent may prevent the dissemination of relevant “work-related information” to the incoming auditor.

Proposal

35. **Clause 9.56** provides that auditors will be empowered to require a wider range of persons, including the employees of the company and the officers and employees of its Hong Kong subsidiary undertakings, and any person holding or accountable for any of the company’s or the subsidiary undertakings’ accounting records, to provide them with information, explanations or assistance as they think necessary for the performance of their duties as auditors. The range of persons also covers the officers,

¹⁰ For example, under section 133(1), only a Hong Kong subsidiary and its auditor have the duty to give information and explanation. Under section 141(5), the auditor may request only the “officers” (namely, directors, managers and secretary) of the company, but not company employees, to provide information.

employees or auditor of a subsidiary undertaking which is not a company incorporated in Hong Kong.

36. To tighten enforcement, **Clause 9.57** provides for offences caused by a failure to comply with the obligations under **Clause 9.56** by the company or the responsible person of the company concerned.
37. **Clause 9.58** provides that an outgoing auditor does not contravene any duty just because he gives “work-related information” to an incoming auditor. “Work-related information” means information of which the person became aware in the capacity as such auditor. (**Clause 9.58(3)**)

(f) Improving transparency with regard to circumstances of cessation of office of auditor

Background

38. Under sections 132(3) and 140B of the CO, an auditor who is proposed to be removed or not to be re-appointed and a resigning auditor has the respective right to make written representations or a statement (collectively “cessation statement”) to the company with regard to his cessation of office and request for circulation of such written representations or statement to members of the company. The auditor is entitled to attend, to be heard and to receive all notices of the relevant meetings of the company in respect of his cessation of office. The written representations and statement need not be sent to members of the company if the court is satisfied, on the application of the company or a person who claims to be aggrieved, that the outgoing auditor’s rights are being used to secure needless publicity for defamatory matter.
39. Under section 140A(1) and (2) of the CO, a resigning auditor is required to make a statement in the notice of resignation as to whether there are any circumstances in relation to his resignation that he considers should be brought to the notice of the members or creditors of the company, and if so, a statement of any such circumstance (“statement of circumstances”). Auditors who have ceased office owing to other reasons, e.g. removal or not being re-appointed as auditor after expiration of his term of office, are not required to make such a statement.

Proposal

40. To improve transparency and corporate governance, an outgoing auditor's right to make and request for circulation of a cessation statement and the mandatory requirement to make a statement of circumstances will be expanded.

Cessation statement

- (a) The right to make a cessation statement will apply where an auditor resigns or where a resolution removing an auditor from office or having the effect of appointing another person as auditor instead of the retiring auditor is proposed to be passed (**Clauses 9.66 and 9.67**).

Statement of circumstances

- (b) Under **Clauses 9.68 and 9.69**, the mandatory requirement to make and circulate the statement of circumstances will cover not only resigning auditors but will also be extended to an auditor who has been removed and a retiring auditor who has not been re-appointed so that such auditors are also required to provide a statement of circumstances, or if there are no such circumstances, a statement to that effect.

In either case, the company will be required to circulate the statement to members of the company unless the company, or a person who claims to be aggrieved, applies to the court for an order not to publicize the statement.

41. Under **Clause 9.54**, auditors will be provided with qualified privilege for statements made in the course of their duties as auditors. A cessation statement and a statement of circumstances made by an auditor in respect of his ceasing to hold office as auditor will be covered by such privilege. Accordingly, an auditor will not, in the absence of malice on his part, be liable to any action for defamation in respect of any statement made by him in the course of his duties as auditor and in respect of his ceasing to hold office as auditor.

(g) Providing for the appointment and the deemed re-appointment of auditors and the term of office of an auditor

Background

42. One aspect affected by the dispensation of the AGM is the appointment and term of office of an auditor. Section 131(1) of the CO provides that every company shall at each AGM appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next AGM. We need to provide for these matters where the AGM is dispensed with under **Clause 12.75(2)**¹¹.

Proposal

43. We propose to follow the approach in sections 485, 487 and 488 of the UKCA 2006 to make provisions for an “appointment period” and the deemed re-appointment of auditors. It will also be made clear that an auditor deemed to be appointed does not take office until the retiring auditor ceases to hold office.

Appointment of another person as auditor in place of the retiring auditor

44. If a company is not required to hold an AGM:
- (a) **Clause 9.40(4)** provides that an auditor must be appointed before the end of the “appointment period” which is defined in **Clause 9.36** as the period of 28 days beginning with:
- the last date on which copies of the company’s financial statements and reports for the previous financial year must be sent to its members under **Clause 9.74(3)** or **12.75(1)(b)** as the case may be, or
 - if earlier, the date on which copies of such financial statements and reports are sent out under such clauses.
- (b) The retiring auditor ceases to hold office at the end of that period unless re-appointed or deemed to be re-appointed and the new auditor

¹¹ See Part 12 in FSTB, *Companies Bill Consultation Draft – Parts 1, 2, 10 - 12 & 14 – 18* (December 2009).

will not take office until the retiring auditor ceases to hold office (**Clause 9.46**).

- (c) **Clauses 9.40, 9.44 and 9.45** set out the procedure for appointing an auditor in place of the retiring auditor.

Deemed re-appointment of current auditor where no appointment of auditor has been made

45. If no auditor is appointed by the end of the appointment period, **Clause 9.47** provides that the current auditor is deemed to be re-appointed on the same terms at that time. However, the deemed re-appointment can be prevented by any of the circumstances mentioned in **Clause 9.47(2)**, including where the auditor gives written notice to the company to decline the re-appointment.
- (h) **Revamping the summary financial report provisions and extending their application to companies in general**

Background

46. Under sections 141CA to 141CH of the CO, a listed company may send a summary financial report to its members and debenture holders in place of the accounts, together with directors' and auditor's reports required to be sent under section 129G of the CO ("the reporting documents") provided that it has obtained the agreement of those persons.
47. Sections 141CA to 141CH, and the Companies (Summary Financial Reports of Listed Companies) Regulation came into effect on 4 January 2002 but very few listed companies have offered the alternative of providing summary financial reports to members partly due to cost considerations and partly because the company has to obtain the members' consent by complying with complex rules for sending notification to and receiving a response from the members. Currently, there is no exemption for listed companies incorporated in Hong Kong not to send out the reporting documents or summary financial reports. However, in some jurisdictions those documents need not be sent if the members so request¹².

¹² See section 316(1)(a) of the ACA 2001 and section 203A(3) of the SCA and regulation 3(1)(f)(iii) of the Singaporean Companies (Summary Financial Statement) Regulations.

Proposal

48. Against this background, we will make the summary financial reports provisions more user-friendly so as to encourage the publication of summary financial reports and help save operating costs. The key proposals are summarised as follows:
- (a) Under **Clause 9.86**, companies (except for those that prepare simplified accounts) are given a choice of sending a copy of the summary financial report instead of a copy of the reporting documents to their members. This will avoid the complex rules which require a company to ask its members in advance before it can send them a copy of the summary financial report. Members receiving summary financial reports may, under **Clause 9.90**, request a copy of the reporting documents from the company.
 - (b) Under **Clause 9.87**, the company can at any time ascertain the wishes of its members through a “notification” which allows the members to elect to receive a copy of the reporting documents, or a copy of the summary financial report in hard copy form, or electronic form, or by making it available on a website; or not to receive any copies of the documents.
 - (c) The technical requirements as to the form and contents of summary financial reports will be prescribed in regulations to be made by the FS.

Other Changes

- (a) **Requiring directors to make a declaration whether in their opinion the financial statements give a true and fair view of the financial position and financial performance of the company**
49. Section 129B of the CO requires every balance sheet of a company to be approved and signed on behalf of the board of directors. With reference to similar provisions in Australia and Singapore¹³, we propose to repeal section 129B and replace it by a directors’ declaration in respect of the financial statements of the company so as to remind the directors of their

¹³ See section 201(15) of the SCA and section 295(4) and (5) of the ACA 2001.

obligation to prepare financial statements that give a true and fair view of the financial position and financial performance of the company.

50. **Clause 9.28** provides that a financial statement laid before a company in general meeting, or otherwise sent to a member, circulated, published or issued, must be accompanied by a declaration that states whether, in the directors' opinion, the financial statement or consolidated financial statement, gives a true and fair view of the company or the group's financial position and financial performance as required by **Clause 9.25**.

(b) Providing new offences relating to contents of auditor's report

51. At present, there is no offence in the CO relating to intentional or reckless omissions in the auditor's statement concerning problems in the accounts or audit. Some comparable jurisdictions such as the UK have introduced new offences relating to such omissions¹⁴. We propose that similar provisions should also be introduced to enhance the integrity of auditor's reports.

52. **Clause 9.52(1)**, modelled on section 507(2)(a) and (b) of the UKCA 2006, provides the offence where an auditor knowingly or recklessly causes an auditor's report to omit a statement required by:

- (a) **Clause 9.51(2)(b)** (statement that the company's financial statement does not agree with accounting records), or
- (b) **Clause 9.51(3)** (statement that necessary information and explanation not obtained).

53. **Clause 9.52(2)** defines the persons liable to be caught by **Clause 9.52(1)** as:

- (a) the auditor, if he is an individual, and his employees and agents;
- (b) the members, employees and agents of an audit firm; and
- (c) the officers, members, employees or agents of an auditor which is a body corporate.

¹⁴ See section 507 of the UKCA 2006. The section also provides for an offence of "commission", where a person knowingly or recklessly causes an auditor's report to include anything that is misleading, false or deceptive. This will be taken care of by widening the scope of the offence of false statements in Clause 20.1. See Explanatory Notes on Part 20, paragraphs 2 to 6.