

L.N. 10 of 2013**Companies (Directors' Report) Regulation**

(Made by the Financial Secretary under section 452(3) of the Companies Ordinance (28 of 2012))

1. Commencement

This Regulation comes into operation on the day on which section 452(3) of the Companies Ordinance (28 of 2012) comes into operation.

2. Interpretation

In this Regulation—

directors' report (董事報告) means—

- (a) the report required to be prepared under section 388(1) of the Ordinance; or
- (b) the consolidated report required to be prepared under section 388(2) of the Ordinance;

reporting exemption (提交報告豁免) means a reporting exemption within the meaning of Division 2 of Part 9 of the Ordinance.

3. Directors' interests

- (1) A directors' report for a financial year must contain a statement that complies with subsection (3) if, at the end of the financial year, there subsists arrangements—
 - (a) to which the company or the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company is a party; and

- (b) whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in the company or any other body corporate.
- (2) A directors' report for a financial year must contain a statement that complies with subsection (3) if at any time in the financial year there have subsisted arrangements—
 - (a) to which the company or the company's subsidiary undertaking or holding company or a subsidiary undertaking of the company's holding company was a party; and
 - (b) whose objects were, or one of whose objects was, to enable directors of the company to acquire benefits by means of the acquisition of shares in the company or any other body corporate.
- (3) The statement must—
 - (a) explain the effect of the arrangements referred to in subsection (1) or (2); and
 - (b) give the names of the persons who at any time in that financial year were directors of the company and held, or whose nominees held, shares acquired under the arrangements.
- (4) In this section—
shares (股份) has the meaning given by section 1 of Schedule 1 to the Ordinance.

4. Donations

- (1) If a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong)—
 - (a) has no subsidiary undertakings; and
 - (b) has in a financial year made donations for charitable or other purposes to a total amount of not less than \$10,000,

a directors' report for the financial year must state the total amount of those donations.

(2) If—

(a) a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong) has subsidiary undertakings; and

(b) the company has in a financial year made donations (whether on its own or by its subsidiary undertakings) for charitable or other purposes to a total amount of not less than \$10,000,

a directors' report for the financial year must state the total amount of those donations.

(3) Subsections (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.

(4) For the purposes of subsections (1) and (2)—

wholly owned subsidiary (全資附屬公司) is to be construed in accordance with section 357(3) of the Ordinance.

5. Shares issued

If, in any financial year of a company, the company has issued any shares, a directors' report for the financial year must state—

(a) the reason for making the issue;

(b) the classes of shares issued; and

(c) for each class of shares, the number of shares issued and the consideration received by the company for the issue.

6. Equity-linked agreements

(1) If, in any financial year of a company, the company has entered into an equity-linked agreement, a directors' report for the financial year must state—

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- (a) the reason for entering into the agreement;
 - (b) the nature and terms of the agreement including, if applicable—
 - (i) the conditions that must be met before the company issues any shares;
 - (ii) the conditions that must be met before a third party may require the company to issue any shares; and
 - (iii) any monetary or other consideration that the company has received or will receive under the agreement;
 - (c) the classes of shares issued under the agreement; and
 - (d) for each class of shares, the number of shares that have been issued under the agreement.
- (2) If, at the end of a financial year of a company, there subsists an equity-linked agreement entered into by the company, a directors' report for the financial year must state—
- (a) the classes of shares that may be issued under the agreement;
 - (b) for each class of shares, the number of shares that may be issued under the agreement;
 - (c) any monetary or other consideration that the company has received or will receive under the agreement; and
 - (d) any other conditions or terms that remain to be met before the shares are issued.
- (3) In this section—
- equity-linked agreement*** (股票掛鈎協議)—
- (a) means—
 - (i) an agreement that will or may result in the company issuing shares; or

- (ii) an agreement requiring the company to enter into the agreement specified in subparagraph (i); and
- (b) includes—
 - (i) an option to subscribe for shares;
 - (ii) an agreement for the issue of securities that are convertible into, or entitle the holder to subscribe for, shares in the company;
 - (iii) an employee share scheme; and
 - (iv) a share option scheme; but
- (c) does not include—
 - (i) an agreement to subscribe for shares in a company that is entered into pursuant to the company's offer of its shares to the public; and
 - (ii) an agreement to subscribe for shares in a company that is entered into pursuant to an offer made to the members of the company in proportion to their shareholdings;

offer (要約) includes an invitation to the public to subscribe for shares in a company.

7. **Recommended dividend**

A directors' report for a financial year must state the amount (if any) that the directors of the company recommend should be paid by way of dividend for the financial year.

8. **Reasons for resignation etc.**

- (1) If a director of a company—
 - (a) has resigned or given notice declining to stand for re-election during a financial year because of disagreement with the board of directors of the company; and

- (b) has given a notice of the reasons for disagreement to the company,
- a directors' report for the financial year must contain a summary of the reasons.
- (2) Subsection (1) does not apply in respect of a company that falls within the reporting exemption for the financial year.

9. Permitted indemnity provision

- (1) If, when a directors' report prepared by the directors of a company is approved in a financial year of the company in accordance with section 391(1)(a) of the Ordinance, a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision is in force as required by section 470 of the Ordinance.
- (2) If, at any time in the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision was in force as required by section 470 of the Ordinance.
- (3) In this section—
- permitted indemnity provision*** (獲准許的彌償條文), in relation to a company, means a provision that—
- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
- (b) meets the requirements specified in section 469(2) of the Ordinance;

third party (第三者), in relation to a company, means a person other than the company or its associated company.

John TSANG
Financial Secretary

29 January 2013

Explanatory Note

This Regulation is made under Part 9 of the Companies Ordinance (28 of 2012) (*the Ordinance*). It provides for the information that is required to be contained in a directors' report under section 388(1) and (2) of the Ordinance and other requirements prescribed for the report.

2. The information that is required to be contained in a directors' report includes—
 - (a) directors' interests under certain arrangements involving acquisition of shares entered into by the company or another company in the same corporate group;
 - (b) donations no less than \$10,000 made by the company and its subsidiary undertakings;
 - (c) shares issued by the company;
 - (d) equity-linked agreements entered into by the company that will or may result in the issuing of shares;
 - (e) dividends recommended to be paid by the directors;
 - (f) if a director has resigned because of disagreement with the board of directors, a summary of the reasons for the disagreement; and
 - (g) directors' permitted indemnity provision.
3. A director of a company who fails, or wilfully fails, to take all reasonable steps to secure compliance with the Regulation commits an offence and is liable to a fine, or a fine and imprisonment, under section 388(6) or (7) of the Ordinance.