

L.N. 34 of 2013

Companies (Revision of Financial Statements and Reports) Regulation

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Companies (Revision of Financial Statements and Reports) Regulation

(Made by the Financial Secretary under section 450 of the Companies Ordinance (28 of 2012))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day on which section 450 of the Companies Ordinance (28 of 2012) comes into operation.

2. Interpretation

(1) In this Regulation—

auditor's report (核數師報告)—

- (a) in relation to original financial statements, has the meaning given by section 357(1) of the Ordinance; and
- (b) in relation to revised financial statements, means the report required to be prepared under section 13;

date of revision (修改日期)—

- (a) in relation to any revised directors' report, means the date on which the report is approved under section 391 of the Ordinance;
- (b) in relation to any revised financial statements, means—
 - (i) for a revision by replacement, the date required by section 3(6)(a)(i) or (b)(i) to be stated in the statements; or

- (ii) for a revision by supplementary note, the date required by section 3(6)(a)(ii) or (b)(ii) to be stated in the supplementary note;
- (c) in relation to any revised statement of financial position, means the date on which the statement is approved under section 387 of the Ordinance; and
- (d) in relation to any revised summary financial report, means the date on which the report is approved under section 440 of the Ordinance;

date of the original directors' report (原董事報告日期) means the date on which the original directors' report is approved under section 391 of the Ordinance;

date of the original financial statements (原財務報表日期) means the date on which a statement of financial position that forms part of the original financial statements is approved under section 387 of the Ordinance;

date of the original statement of financial position (原財務狀況表日期) means the date on which the original statement of financial position is approved under section 387 of the Ordinance;

date of the original summary financial report (原財務摘要報告日期) means the date on which the original summary financial report is approved under section 440 of the Ordinance;

directors' report (董事報告) has the meaning given by section 357(1) of the Ordinance;

financial statements (財務報表) has the meaning given by section 357(1) of the Ordinance;

original directors' report (原董事報告) means the directors' report that is the subject of revision by a revised directors' report;

original financial statements (原財務報表) means the financial statements that are the subject of revision by revised financial statements;

original statement of financial position (原財務狀況表) means the statement of financial position that is the subject of revision by a revised statement of financial position;

original summary financial report (原財務摘要報告) means the summary financial report that is the subject of revision by a revised summary financial report;

relevant Regulation (《有關規例》) means—

- (a) in sections 3 and 4, the Companies (Disclosure of Information about Benefits of Directors) Regulation;
- (b) in section 5, the Companies (Directors' Report) Regulation (L.N. 10 of 2013);
- (c) in section 6, the Companies (Summary Financial Reports) Regulation (L.N. 11 of 2013);

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

revised directors' report (經修改董事報告) means—

- (a) for a revision by replacement, the directors' report replacing the original directors' report for the purpose of the revision; or
- (b) for a revision by supplementary note, the original directors' report, together with the supplementary note for the purpose of the revision;

revised financial statements (經修改財務報表) means—

- (a) for a revision by replacement, the financial statements replacing the original financial statements for the purpose of the revision; or
- (b) for a revision by supplementary note, the original financial statements, together with the supplementary note for the purpose of the revision;

revised statement of financial position (經修改財務狀況表) means—

- (a) for a revision by replacement, the statement of financial position replacing the original statement of financial position for the purpose of the revision; or
- (b) for a revision by supplementary note, the original statement of financial position, together with the supplementary note for the purpose of the revision;

revised summary financial report (經修改財務摘要報告) means—

- (a) for a revision by replacement, the summary financial report replacing the original summary financial report for the purpose of the revision; or
- (b) for a revision by supplementary note, the original summary financial report, together with the supplementary note for the purpose of the revision;

revision (修改) means a revision made under section 449 of the Ordinance;

summary financial report (財務摘要報告) has the meaning given by section 357(1) of the Ordinance.

(2) In this Regulation—

- (a) a reference to revision of any statements or report by replacement is a reference to revision by the preparation of a replacement set of statements or report in substitution for the statements or report; and
- (b) a reference to revision of any statements or report by supplementary note is a reference to revision by the preparation of a note indicating revisions made to the statements or report.

(3) Nothing in this Regulation is to be construed as affecting any right accrued, or any obligation or liability incurred, in relation to any original directors' report, original financial statements or original summary financial report.

Part 2

Contents of Revised Documents

- 3. Requirements regarding contents of revised financial statements**
- (1) A provision of the Ordinance or relevant Regulation as to the requirements regarding the contents of the financial statements of a company (other than a company falling within the reporting exemption for the financial year concerned) applies to revised financial statements, as it applies to the original financial statements, as if the revised financial statements were prepared by the directors of the company on the date of the original financial statements.
 - (2) Without limiting subsection (1), section 380(1) and (2) of the Ordinance applies to the revised financial statements of a company (other than a company falling within the reporting exemption for the financial year concerned), as it applies to the original financial statements, so as to require the revised financial statements to give a true and fair view of the matters mentioned in that section.
 - (3) A provision of the Ordinance or relevant Regulation as to the requirements regarding the contents of the financial statements of a company falling within the reporting exemption for a financial year applies to revised financial statements, as it applies to the original financial statements, as if the revised financial statements were prepared by the directors of the company on the date of the original financial statements.
 - (4) If the directors of a company cause any financial statements to be revised by replacement, the directors must make in a prominent position in the revised financial statements—
 - (a) a statement that the revised financial statements replace the original financial statements for the financial year specified in the statement;

- (b) a statement that the original financial statements—
 - (i) are taken as having been revised by the directors on the date of the original financial statements instead of on the date of revision; and
 - (ii) accordingly do not deal with events between those 2 dates; and
- (c) a statement as to—
 - (i) the respects in which the original financial statements did not, as appears to the directors, comply with the Ordinance or relevant Regulation; and
 - (ii) the material revisions to the original financial statements.
- (5) If the directors of a company cause any financial statements to be revised by supplementary note, the directors must make in a prominent position in the supplementary note—
 - (a) a statement that the supplementary note—
 - (i) revises in certain respects the original financial statements; and
 - (ii) is to be treated as forming part of those statements; and
 - (b) a statement that the original financial statements—
 - (i) are taken as having been revised by the directors on the date of the original financial statements instead of on the date of revision; and
 - (ii) accordingly do not deal with events between those 2 dates.
- (6) In addition to the requirements under subsection (4) or (5) (as the case may be), the directors must also—
 - (a) for a revision to a statement of financial position, cause the date of revision to be stated—

- (i) for a revision by replacement, in the revised financial statements; or
 - (ii) for a revision by supplementary note, in the supplementary note; or
 - (b) in any other case, cause the date specified by the directors as the date on which the financial statements are taken as having been revised to be stated—
 - (i) for a revision by replacement, in the revised financial statements; or
 - (ii) for a revision by supplementary note, in the supplementary note.
- (7) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original financial statements but before the date of revision, a reference to the provision as in force at the date of the original financial statements.

4. Offences relating to section 3

- (1) This section applies in respect of any revised financial statements of a company a copy of which—
 - (a) is laid before the company in general meeting under section 429 of the Ordinance;
 - (b) is sent to a member under section 430 of the Ordinance; or
 - (c) is otherwise circulated, published or issued by the company.
- (2) If a director of a company fails to take all reasonable steps to secure compliance with any of the following provisions as respects any revised financial statements of the company, the director commits an offence and is liable to a fine of \$300,000—

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- (a) for a company not falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(1) or (2);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6); or
 - (b) for a company falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(3);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6).
- (3) If a director of a company wilfully fails to take all reasonable steps to secure compliance with any of the following provisions as respects any revised financial statements of the company, the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months—
- (a) for a company not falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(1) or (2);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6); or
 - (b) for a company falling within the reporting exemption for the financial year concerned—
 - (i) a provision mentioned in section 3(3);
 - (ii) section 3(4) or (5) (as the case may be) or section 3(6).
- (4) If a person is charged with an offence under subsection (2) for failing to take all reasonable steps to secure compliance with a provision mentioned in subsection (2)(a)(i) or (ii) or (b)(i) or (ii), 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 the provision was complied with; and
 - (b) was in a position to discharge that duty.
- (5) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original financial statements but before the date of revision, a reference to the provision as in force at the date of the original financial statements.

5. Matters to be included in revised directors' report

- (1) A provision of the Ordinance or relevant Regulation as to the matters to be included in a directors' report of a company applies to a revised directors' report, as it applies to the original directors' report, as if the revised directors' report were approved by the directors of the company on the date of the original directors' report.
- (2) If the directors of a company make revisions to a directors' report by replacement, the directors must make in a prominent position in the revised directors' report—
 - (a) a statement that the revised directors' report replaces the original directors' report for the financial year specified in the statement;
 - (b) a statement that the revised directors' report—
 - (i) is taken as having been approved by the directors on the date of the original directors' report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates; and
 - (c) a statement as to the material revisions to the original directors' report.
- (3) If the directors of a company make revisions to a directors' report by supplementary note, the directors must make in a prominent position in the supplementary note—

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- (a) a statement that the supplementary note—
 - (i) revises in certain respects the original directors' report; and
 - (ii) is to be treated as forming part of that report; and
 - (b) a statement that the revised directors' report—
 - (i) is taken as having been approved by the directors on the date of the original directors' report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates.
 - (4) In addition to the requirements under subsection (2) or (3) (as the case may be), the directors must also cause the date of revision to be stated—
 - (a) for a revision by replacement, in the revised directors' report; or
 - (b) for a revision by supplementary note, in the supplementary note.
 - (5) If a director of a company fails to take all reasonable steps to secure compliance with any of the following provisions as respects a revised directors' report of the company, the director commits an offence and is liable to a fine of \$150,000—
 - (a) a provision mentioned in subsection (1);
 - (b) subsection (2) or (3) (as the case may be) or subsection (4).
 - (6) If a director of a company wilfully fails to take all reasonable steps to secure compliance with any of the following provisions as respects a revised directors' report of the company, the director commits an offence and is liable to a fine of \$150,000 and to imprisonment for 6 months—

- (a) a provision mentioned in subsection (1);
 - (b) subsection (2) or (3) (as the case may be) or subsection (4).
- (7) If a person is charged with an offence under subsection (5) for failing to take all reasonable steps to secure compliance with a provision mentioned in subsection (5)(a) or (b), 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 the provision was complied with; and
 - (b) was in a position to discharge that duty.
- (8) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original directors' report but before the date of revision, a reference to the provision as in force at the date of the original directors' report.

6. Matters to be included in revised summary financial report

- (1) A provision of the Ordinance or relevant Regulation as to the matters to be included in a summary financial report of a company applies to a revised summary financial report, as it applies to the original summary financial report, as if the revised summary financial report were approved by the directors of the company on the date of the original summary financial report.
- (2) If the directors of a company make revisions to a summary financial report by replacement, the directors must make in a prominent position in the revised summary financial report—
 - (a) a statement that the revised summary financial report replaces the original summary financial report for the financial year specified in the statement;

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- (b) a statement that the revised summary financial report—
 - (i) is taken as having been approved by the directors on the date of the original summary financial report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates; and
 - (c) a statement as to the material revisions to the original summary financial report.
- (3) If the directors of a company make revisions to a summary financial report by supplementary note, the directors must make in a prominent position in the supplementary note—
- (a) a statement that the supplementary note—
 - (i) revises in certain respects the original summary financial report; and
 - (ii) is to be treated as forming part of that report; and
 - (b) a statement that the revised summary financial report—
 - (i) is taken as having been approved by the directors on the date of the original summary financial report instead of on the date of revision; and
 - (ii) accordingly does not deal with events between those 2 dates.
- (4) In addition to the requirements under subsection (2) or (3) (as the case may be), the directors must also cause the date of revision to be stated—
- (a) for a revision by replacement, in the revised summary financial report; or
 - (b) for a revision by supplementary note, in the supplementary note.

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- (5) A revised summary financial report of a company must not be circulated, published or issued by the company unless the report complies with subsection (2) or (3) (as the case may be), subsection (4) and the provision mentioned in subsection (1).
 - (6) If a director of a company fails to take all reasonable steps to secure compliance with subsection (5), the director commits an offence and is liable to a fine of \$300,000.
 - (7) If a director of a company wilfully fails to take all reasonable steps to secure compliance with subsection (5), the director commits an offence and is liable to a fine of \$300,000 and to imprisonment for 12 months.
 - (8) If a person is charged with an offence under subsection (6), 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 (5) was complied with; and
 - (b) was in a position to discharge that duty.
 - (9) In this section, a reference to a provision of the Ordinance or relevant Regulation is, if the provision has been amended after the date of the original summary financial report but before the date of revision, a reference to the provision as in force at the date of the original summary financial report.
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Part 3

Approval and Signature of Revised Documents

- 7. Approval and signature of revised statement of financial position**
- (1) Section 387(1) and (2) of the Ordinance applies to a revised statement of financial position, as it applies to the original statement of financial position, except that, for a revision by supplementary note—
 - (a) section 387(1)(b) of the Ordinance applies as if it required a signature on the supplementary note instead of on the statement of financial position; and
 - (b) section 387(2) of the Ordinance applies as if it required the name of the person who signed the supplementary note to be stated on a copy of the supplementary note instead of on a copy of the statement of financial position.
 - (2) If, as respects any revised statement of financial position a copy of which is circulated, published or issued by the company, section 387(1) of the Ordinance that is applicable to the statement by virtue of 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.
 - (3) If, as respects any revised statement of financial position, section 387(2) of the Ordinance that is applicable to the statement by virtue of 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.
 - (4) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original statement of financial position but before the date of revision, a reference to the provision as in force at the date of the original statement of financial position.

8. Approval and signature of revised directors' report

- (1) Section 391(1) and (2) of the Ordinance applies to a revised directors' report, as it applies to the original directors' report, except that, for a revision by supplementary note—
 - (a) section 391(1)(b) of the Ordinance applies as if it required a signature on the supplementary note instead of on the directors' report; and
 - (b) section 391(2) of the Ordinance applies as if it required the name of the person who signed the supplementary note to be stated on a copy of the supplementary note instead of on a copy of the directors' report.
- (2) If, as respects any revised directors' report a copy of which is circulated, published or issued by the company, section 391(1) of the Ordinance that is applicable to the report by virtue of 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.
- (3) If, as respects any revised directors' report, section 391(2) of the Ordinance that is applicable to the report by virtue of 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.
- (4) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original directors' report but before the date of revision, a reference to the provision as in force at the date of the original directors' report.

9. Approval and signature of revised summary financial report

- (1) Section 440(1) and (2) of the Ordinance applies to a revised summary financial report, as it applies to the original summary financial report, except that, for a revision by supplementary note—

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- (a) section 440(1)(b) of the Ordinance applies as if it required a signature on the supplementary note instead of on the summary financial report; and
 - (b) section 440(2) of the Ordinance applies as if it required the name of the person who signed the supplementary note to be stated on a copy of the supplementary note instead of on a copy of the summary financial report.
- (2) If, as respects any revised summary financial report a copy of which is circulated, published or issued by the company, section 440(1) of the Ordinance that is applicable to the report by virtue of 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.
 - (3) If, as respects any revised summary financial report, section 440(2) of the Ordinance that is applicable to the report by virtue of 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.
 - (4) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original summary financial report but before the date of revision, a reference to the provision as in force at the date of the original summary financial report.
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Part 4

Effect of Revised Documents

10. Effect of revised financial statements

- (1) On the directors of a company causing any financial statements of the company to be revised, and complying with section 3(4) or (5) (as the case may be) and section 3(6), the Ordinance has effect with respect to the revised financial statements as if the revised financial statements were, as from the date of revision, the financial statements of the company in place of the original financial statements.
- (2) Without limiting subsection (1), if, as at the date of revision, any of the following provisions has yet to be complied with by the company, the revised financial statements are, as from that date, the financial statements of the company for the financial year concerned for the purposes of that provision—
 - (a) where a copy of the original financial statements was sent to a member under section 430(1) of the Ordinance—
 - (i) section 429(1) of the Ordinance;
 - (ii) section 435(1) of the Ordinance;
 - (iii) section 662 of the Ordinance; or
 - (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance—
 - (i) section 435(1) of the Ordinance;
 - (ii) section 662 of the Ordinance.

11. Effect of revised directors' report

- (1) On the directors of a company approving a revised directors' report of the company, and complying with section 5(2) or (3) (as the case may be) and section 5(4), the Ordinance has effect with respect to the revised directors' report as if the revised directors' report were, as from the date of revision, the directors' report of the company in place of the original directors' report.
- (2) Without limiting subsection (1), if, as at the date of revision, any of the following provisions has yet to be complied with by the company, the revised directors' report is, as from that date, the directors' report of the company for the financial year concerned for the purposes of that provision—
 - (a) where a copy of the original financial statements was sent to a member under section 430(1) of the Ordinance—
 - (i) section 429(1) of the Ordinance;
 - (ii) section 435(1) of the Ordinance;
 - (iii) section 662 of the Ordinance; or
 - (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance—
 - (i) section 435(1) of the Ordinance;
 - (ii) section 662 of the Ordinance.

12. Effect of revised summary financial report

- (1) On the directors of a company approving a revised summary financial report of the company, and complying with section 6(2) or (3) (as the case may be) and section 6(4), the Ordinance has effect with respect to the revised summary financial report as if the revised summary financial report were, as from the date of revision, the

summary financial report of the company in place of the original summary financial report.

- (2) Without limiting subsection (1), the revised summary financial report is, as from the date of revision, the summary financial report of the company for the financial year concerned for the purposes of section 446(1) and (2) of the Ordinance.
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Part 5

Auditor's Report on Revised Financial Statements

13. Auditor's report on revised financial statements

- (1) Subject to subsection (2), the current auditor of a company must prepare a report for the members of the company on any revised financial statements of the company.
- (2) If the auditor's report on the original financial statements was made by a person other than the current auditor of the company, the directors of the company may resolve that the report on the revised financial statements is to be prepared by the person if—
 - (a) the person agrees to do so; and
 - (b) the person is eligible, and not disqualified, for appointment as auditor of the company under Subdivision 2 of Division 5 of Part 9 of the Ordinance.

14. Opinion on revised financial statements

- (1) An auditor's report on revised financial statements must state, in the opinion of the person preparing the report—
 - (a) whether the revised financial statements have been properly prepared in compliance with the provisions of the Ordinance; and
 - (b) for a company not falling within the reporting exemption for the financial year concerned, whether the revised financial statements give a true and fair view, seen as at the date of the original financial statements, with respect to the matters set out in section 406(1)(b) of the Ordinance.

- (2) If the person preparing an auditor's report on revised financial statements is of the opinion that the information in a directors' report or revised directors' report for a financial year is not consistent with the revised financial statements for the financial year, the person—
 - (a) must state that opinion in the auditor's report; and
 - (b) may bring that opinion to the members' attention in a general meeting.
- (3) In this section, a reference to a provision of the Ordinance is, if the provision has been amended after the date of the original financial statements but before the date of revision, a reference to the provision as in force at the date of the original financial statements.

15. Opinion on other matters

Section 407 of the Ordinance—

- (a) applies to an auditor's report on revised financial statements, as it applies to an auditor's report on original financial statements; and
- (b) applies to a person preparing an auditor's report on revised financial statements, as it applies to a company's auditor preparing an auditor's report on original financial statements.

16. Offences relating to contents of auditor's report on revised financial statements

- (1) Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes to be omitted from an auditor's report on revised financial statements a statement required to be contained in the report by virtue of section 15.

- (2) The persons are—
 - (a) if the person who prepares an auditor's report on revised financial statements is a natural person—
 - (i) the person; and
 - (ii) every employee and agent of the person who is eligible for appointment as auditor of the company;
 - (b) if the person is a firm, every partner, employee and agent of the person who is eligible for appointment as auditor of the company; or
 - (c) if the person is a body corporate, every officer, member, employee and agent of the person 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.

17. Auditor's reports on revised financial statements to be signed

- (1) Section 409(1), (2) and (3) of the Ordinance applies to an auditor's report on revised financial statements, as it applies to an auditor's report on original financial statements, except that—
 - (a) section 409(1)(a) of the Ordinance applies as if it required a signature of the person preparing the auditor's report on revised financial statements;
 - (b) section 409(1)(b) of the Ordinance applies as if it required a signature of the natural person authorized to sign the name of the person preparing the auditor's report on revised financial statements on that person's behalf; and
 - (c) section 409(2) and (3) of the Ordinance applies as if it required the name of the person preparing the auditor's report on revised financial statements to be stated.

- (2) If, as respects any auditor's report on revised financial statements, section 409(3) of the Ordinance that is applicable to the report by virtue of 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.

18. Qualified privileges of person preparing auditor's report on revised financial statements etc.

- (1) In the absence of malice, a relevant person 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 relevant person in the course of performing duties as a person preparing an auditor's report on revised financial statements.
- (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 a relevant person in the course of performing duties as a person preparing an auditor's report on revised financial statements; and
 - (b) required by the 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 a relevant person, or any other person, has as defendant in an action for defamation.
- (4) In this section—

relevant person (有關人士), in relation to a company, means a person—

- (a) who is not the current auditor of the company; and
- (b) who prepares an auditor's report on revised financial statements for the company.

19. Rights of person preparing auditor's report on revised financial statements

- (1) Section 411 of the Ordinance applies to a person preparing an auditor's report on revised financial statements, as it applies to a person appointed as auditor of a company.
- (2) Section 412(1), (2), (3), (4), (5), (6) and (9) of the Ordinance applies to and in relation to a person preparing an auditor's report on revised financial statements, as it applies to and in relation to an auditor of a company, so that if the person makes a requirement under section 412(2) or (4) of the Ordinance, the person or company to whom the requirement is made (*relevant person*) must comply with section 412(3) or (6) (as the case may be) of the Ordinance accordingly.
- (3) Section 412(7) and (8) of the Ordinance applies to and in relation to a relevant person, as it applies to and in relation to a person mentioned in that section.

20. Offences relating to section 19

- (1) If, as respects a requirement made under section 412(2) of the Ordinance by virtue of section 19(2), section 412(3) of the Ordinance is contravened by the person to whom the requirement is made, the person 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 a person preparing an auditor's report on revised financial statements, that conveys or purports to convey any information or explanation that the person preparing the report requires, or is entitled to require, under section 412(2) or (4) of the Ordinance by virtue of section 19(2);
 - (b) the statement is misleading, false or deceptive in a material particular; and
 - (c) the person knows that, or is reckless as to whether or not, 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, as respects a requirement made under section 412(4) of the Ordinance by virtue of section 19(2), section 412(6) of the Ordinance is contravened by the company to which the requirement is made, 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.
- (6) If a person is charged with an offence under subsection (5) for failing to obtain any information or explanation from a subsidiary undertaking or another person, it is a defence to establish that—
 - (a) it would be an offence under the law of a place outside Hong Kong for the subsidiary undertaking or that other person to provide the information or explanation to the defendant; and

- (b) the subsidiary undertaking or that other person did not provide the information or explanation to the defendant on that ground.
- (7) This section does not affect the right of a person preparing an auditor's report on revised financial statements to apply for an injunction to enforce any of the person's rights granted under section 412 of the Ordinance by virtue of section 19.

21. Auditor's report on revised financial statements to be attached to revised financial statements in certain cases

- (1) The revised financial statements of a company must not be circulated, published, issued or otherwise made available for public inspection in a manner calculated to invite members of the public generally, or any class of them, to read the statements unless the auditor's report on the revised financial statements is attached to the statements.
 - (2) If subsection (1) is contravened, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$150,000.
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Part 6

Company's Obligations Regarding Revised Documents

- 22. Company to send revised financial statements or revised directors' report**
- (1) Subject to section 23, if revisions are made to a company's financial statements or directors' report for a financial year, the company must, within 28 days after the date of revision, send to every member who is entitled under section 430(1) or (3) or 434 of the Ordinance to be sent a copy of documents for the financial year—
 - (a) for revised financial statements, a copy of the auditor's report on the revised financial statements and—
 - (i) for a revision by replacement, a copy of the revised financial statements; or
 - (ii) for a revision by supplementary note, a copy of the supplementary note; or
 - (b) for a revised directors' report—
 - (i) for a revision by replacement, a copy of the revised directors' report; or
 - (ii) for a revision by supplementary note, a copy of the supplementary note.
 - (2) If a company contravenes subsection (1) in respect of a member who is entitled under section 430(1) or 434 of the Ordinance to be sent a copy of documents, the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5.
 - (3) If a company contravenes subsection (1) in respect of a member who is entitled under section 430(3) of the Ordinance to be sent a copy of documents, the company, and every responsible person of the company, commit an offence, and each is liable to a fine of \$300,000.

- (4) If a company wilfully contravenes subsection (1) in respect of a member who is entitled under section 430(3) of the Ordinance to be sent a copy of documents, 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.

23. Exception to section 22

- (1) This section applies to a member of a company who is entitled under section 430(1) or (3) of the Ordinance to be sent a copy of documents for a financial year.
- (2) Section 22 does not require a company to send a copy of any document to a member whose address is unknown to the company.
- (3) Section 22 does not require a company to send a copy of any document—
 - (a) for joint holders of shares none of whom is entitled to receive notices of general meeting of the company, to more than one of the joint holders; or
 - (b) for joint holders of shares some of whom are so entitled and some not, to those who are not entitled.
- (4) Section 22 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 concerned under section 441 of the Ordinance or in compliance with a request under section 444 of the Ordinance.
- (5) If a company does not have a share capital, section 22 does not require the company to send a copy of any document to a member who is not entitled to receive notices of general meeting of the company.

24. Company to notify recipient of summary financial report after revising financial statements

- (1) This section applies if the directors of a company cause any financial statements of the company to be revised and a copy of the summary financial report concerned is sent to a person under section 441 of the Ordinance or in compliance with a request under section 444(1) or 445(2) of the Ordinance.
- (2) If the directors have not made to the summary financial report necessary revisions that are consequential to the revisions to the financial statements, the company must, within 28 days after the date of revision in relation to the revised financial statements, send in the manner specified in subsection (5) or (6) a note that complies with subsection (3), together with a copy of the auditor's report on the revised financial statements, to—
 - (a) every member who was sent a copy of the summary financial report; and
 - (b) every member to whom the company must, as at the date of revision in relation to the revised financial statements, send a copy of the summary financial report in compliance with a request under section 444(1) or 445(2) of the Ordinance.
- (3) The note must state that the financial statements of the company for the financial year specified in the note have been revised in a way that has no bearing on the summary financial report for the financial year.
- (4) If the directors have made to the summary financial report necessary revisions that are consequential to the revisions to the financial statements, the company must, within 28 days after the date of revision in relation to the revised financial statements, send in the manner specified in subsection (5) or (6) a copy of the revised summary financial report, together with a statement of the revisions made and their effect, to—

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- (a) every member who was sent a copy of the summary financial report; and
 - (b) every member to whom the company must, as at the date of revision in relation to the revised financial statements, send a copy of the summary financial report in compliance with a request under section 444(1) or 445(2) of the Ordinance.
- (5) Where a member of a company has given the company a notice of intent under section 442(3) of the Ordinance, or a notice of revocation or notice of cessation of statutory election for the purposes of section 442(7)(b) or (9)(b) of the Ordinance, requesting a copy of the summary financial report to be sent to the member in a particular manner and that notice has effect in relation to the financial year concerned under section 442(5) or 443(5) of the Ordinance, any document required to be sent to the member under subsection (2) or (4) must be sent in that particular manner or in any other manner expressly agreed to by the company and the member.
- (6) Where a member of a company is regarded as having requested a copy of the summary financial report to be sent to the member in hard copy form under section 442(6)(b) or (8)(b) of the Ordinance, any document required to be sent to the member under subsection (2) or (4) must be sent in hard copy form or in any other manner expressly agreed to by the company and the member.
- (7) If subsection (2) 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 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

25. Communication for purposes of sections 22 and 24 by website

- (1) This section applies if a company sends or supplies any document or information for the purposes of section 22 or 24 by making it available on a website.
- (2) For the purposes of section 833(3)(c) of the Ordinance, a notification must be sent within 28 days after the date of revision concerned.
- (3) The period specified for the purposes of section 833(3)(d)(i) of the Ordinance is—
 - (a) for a company that is required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date of the following general meeting in which a copy of the reporting documents for the financial year is required to be laid before the company under section 429 of the Ordinance;
 - (b) for a company that, by virtue of section 612(1) of the Ordinance, is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the circulation date of the written resolution mentioned in section 612(1)(a) of the Ordinance; or
 - (c) for a company that, by virtue of section 612(2) of the Ordinance, is not required to hold an annual general meeting in accordance with section 610 of the Ordinance in respect of a financial year, the period beginning on a date falling within 28 days after the date of revision concerned and ending on the date on which a copy of the reporting documents for the financial year is required to be sent to every member under section 430(3) of the Ordinance.

- (4) In this section—
circulation date (傳閱日期) has the meaning given by section 547(1) of the Ordinance.
- (5) In this section, a reference to the reporting documents for a financial year is a reference to the reporting documents for a financial year within the meaning of section 357(2) of the Ordinance.

26. Company to lay revised financial statements or revised directors' report etc. before general meeting

- (1) If the directors of a company cause any financial statements of the company to be revised or make revisions to a directors' report of the company after the original financial statements or original directors' report (as the case may be) has been laid before the company in general meeting under section 429 of the Ordinance, the directors must lay before the first general meeting of the company held after the date of revision—
- (a) the revised financial statements or revised directors' report (as the case may be); and
 - (b) the auditor's report on the revised financial statements.
- (2) If a director of a company fails to take all reasonable steps to secure compliance with subsection (1) as respects any revised financial statements or revised directors' report of the company, the director commits an offence and is liable to a fine of \$300,000.
- (3) If a director of a company wilfully fails to take all reasonable steps to secure compliance with subsection (1) as respects any revised financial statements or revised directors' report of the company, the director 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), 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) was complied with; and
 - (b) was in a position to discharge that duty.

27. Company to deliver revised financial statements or revised directors' report to Registrar

- (1) If the directors of a company cause any financial statements of the company to be revised or make revisions to a directors' report of the company after a copy of the original financial statements or original directors' report (as the case may be) has been delivered to the Registrar for registration as required by section 662 of the Ordinance, the company must, within 28 days after the date of revision, deliver to the Registrar for registration—
- (a) for any revised financial statements, a certified copy of the auditor's report on the revised financial statements and—
 - (i) for a revision by replacement, a certified copy of the revised financial statements; or
 - (ii) for a revision by supplementary note, a certified copy of the supplementary note; or
 - (b) for a revised directors' report—
 - (i) for a revision by replacement, a certified copy of the revised directors' report; or
 - (ii) for a revision by supplementary note, a certified copy of the supplementary note.
- (2) If any copy mentioned in subsection (1) is not in English or Chinese, the copy must be accompanied by a certified translation of the copy in English or Chinese.

- (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 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.
- (4) If a person is convicted of an offence under subsection (3), the magistrate may, in addition to any penalty that may be imposed, order that the person must, within a time specified in the order, do the act that the person has failed to do.
- (5) A person who contravenes an order under subsection (4) commits an offence and 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.
- (6) For the purposes of this section, a copy of any document of a company is a certified copy if it is certified as a true copy of the document by a director or company secretary of the company.

John TSANG
Financial Secretary

19 March 2013

Explanatory Note

The principal object of this Regulation is to provide for the application of the Companies Ordinance (28 of 2012) (*the Ordinance*) in relation to the financial statements, directors' reports or summary financial reports that have been revised under section 449 of the Ordinance.

2. Part 1 contains preliminary provisions. Section 2 defines or otherwise explains certain expressions used in the Regulation.
3. Part 2 provides for the contents of revised financial statements, revised directors' reports and revised summary financial reports.
4. Part 3 sets out the requirements relating to the approval and signature of revised statements of financial position, revised directors' reports and revised summary financial reports.
5. Part 4 states that, from the date of revision onwards, the Ordinance has effect with respect to the revised financial statements, revised directors' reports and revised summary financial reports.
6. Part 5 provides for the preparation of an auditor's report on revised financial statements.
7. Part 6 imposes obligations on a company to inform relevant parties of the revisions made to the company's financial statements or directors' reports.