

新《公司條例》

為推行新《公司條例》而制訂的附屬法例

第二期 諮詢文件

二〇一二年十一月

財經事務及庫務局
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關於本文件

財經事務及庫務局和公司註冊處正就為推行新《公司條例》而制訂的配套附屬法例徵詢公眾意見。公眾諮詢分兩階段進行。第一章至第七章見於 2012 年 9 月 28 日發表的第一期諮詢文件；第二期諮詢文件（即本文件）則由第八章開始，共設五章。

請在 2012 年 12 月 14 日前以下列方式向我們提出你的意見：

郵遞：香港金鐘道 66 號
金鐘道政府合署 15 樓
“新《公司條例》附屬法例公眾諮詢”

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如對本文件有任何問題，可以致電(852) 2867 5844 或透過上述任何方式與我們聯絡。

本諮詢文件也載於財經事務及庫務局的網站（網址：http://www.fstb.gov.hk/fsb/co_rewrite/）和公司註冊處的網站（網址：<http://www.cr.gov.hk/>）。新《公司條例》的全文已上載至公司註冊處網站，供公眾瀏覽和下載。

我們可隨時以任何形式複製及公開所接獲的意見書的全部或部分內容，以及使用、修改或進一步闡釋所提出的任何建議，而無須向提出建議者徵求批准或作出致謝。

提出意見者的姓名及所屬機構的名稱及其意見，可能會載於上述網站，或在我們所發表的其他文件中提述。如你不願意公開你的姓名及／或所屬機構的名稱，請在提出意見時說明。所提

交的個人資料，只會用於與根據本諮詢文件所作諮詢直接有關的用途。該等資料可能會轉交其他政府部門／機構作相同用途。如欲查閱或更正意見書所載的個人資料，請聯絡我們。

序言

2006 年年中，政府展開全面重寫公司法的工作，從而提升香港作為主要國際商業和金融中心的競爭力。這包括重寫在現有《公司條例》(第 32 章)中有關現存公司的條文。於 2012 年 7 月 12 日，立法會通過《公司條例草案》，而該草案及後於 2012 年 8 月 10 日刊憲成為新《公司條例》(2012 年第 28 號條例)。

在新條例生效前，當局會制定配套的附屬法例，以訂明落實新條例的有關事宜。在訂立附屬法例前，政府希望聽取公眾，尤其是投資者、商界及相關專業人士，就我們的主要建議和刊載於各附件的附屬法例擬稿提出的意見。

我們希望就以下附屬法例諮詢公眾 —

- (a) 公司(財務摘要報告)規例
- (b) 公司(董事報告)規例
- (c) 公司(指明名稱)令
- (d) 公司(非香港公司)規例
- (e) 公司紀錄(查閱及提供文本)規例
- (f) 公司(章程細則範本)公告
- (g) 公司(會計準則(訂明團體))規例
- (h) 公司(營業披露)規例
- (i) 公司(修訂財務報表及報告)規例
- (j) 公司(披露董事利益資料)規例
- (k) 公司(住址及身分識別號碼)規例
- (l) 公司(不公平損害呈請)法律程序規則

公眾諮詢分兩階段進行。第一階段諮詢涵蓋上述(a)至(g)

項，並已於 2012 年 9 月 28 日展開。第二階段諮詢（即現階段）則涵蓋上述(h)至(l)項。

我們歡迎公眾就附屬法例提供意見和建議。為方便公眾了解擬議附屬法例，我們在每章概述了現行和新《公司條例》下的相關規定，並撮述主要建議內容。

第二階段公眾諮詢期將於 2012 年 12 月 14 日 結束。我們會參考所收集的意見，以期於 2013 年上半年擬定條文並訂立各項附屬法例。待完成有關程序後，各項附屬法例將暫定於 2014 年與新《公司條例》一併生效。

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第八章

《公司(營業披露)規例》

現行規定

- 8.1 根據現行《公司條例》第 93 條，公司須以可閱字樣，把其名稱髹在或緊附於每個辦事處或營業地點外面的顯眼處。第 94 條列出展示公司名稱時可使用的縮寫，例如“HK”、“Co.”及“Ltd.”。如違反有關規定，公司及其失責人員須承擔法律責任。
- 8.2 第 93 條又規定，公司須在業務函件、通告及其他正式刊物（“通訊文件”）內述明其名稱。這項規定也適用於合約、契據、匯票、發票及收據等（“交易文書”）。
- 8.3 有限公司如只以英文或中文名稱註冊，並以另一種語言（如為中文名稱，即以英文，反之亦然）展示或提及其名稱，則也須相應地在該種語言所示名稱的末端加上“Limited”一字或“有限公司”一詞，以免公眾對公司的有限責任地位有所誤會。如公司根據現行《公司條例》第 21 條獲批特許，在其名稱略去“Limited”一字或“有限公司”一詞，或根據現行條例第 93(2B)條獲批特許，可免遵從全部或部分規定，則上述規定並不適用。
- 8.4 如違反上文第 8.2 及 8.3 段的規定，公司須承擔法律責任。

新《公司條例》的規定

- 8.5 新《公司條例》的主體法例沒有載述上文第 8.1 至 8.3 段的規定，而第 659 條則述明可訂立附屬法例，以訂明這些事

宜。第 660 條進一步述明，違規的刑事責任亦可在附屬法例內訂明。

擬議附屬法例

8.6 我們建議訂立一項規例，名為《公司(營業披露)規例》，以訂明有關展示公司名稱和披露公司地位的各项規定。

8.7 就公司在辦事處或營業地點展示其名稱方面，有關規定將與時並進，容許以電子方式展示名稱。具體而言，我們建議，如辦事處或營業地點由超過六間公司共用，並使用電子裝置展示公司名稱，則只要公司名稱能以下述方式展示，便已符合有關展示公司名稱的規定（第 3(2)條）——

(a) 每隔四分鐘連續展示最少 20 秒；或

(b) 在透過該裝置作出要求後的四分鐘內展示。

8.8 考慮到公司服務提供者和清盤人的慣常做法，並參考英國的相關法例¹，我們建議在下列情況，豁免公司遵從在展示公司名稱方面的規定——

(a) 公司自成立以來一直沒有會計交易（第 3(3)條）；
及

(b) 公司已委任清盤人、接管人或經理人，而有關處所也是這些人士的業務地點（第 3(4)條）。

8.9 現行《公司條例》第 93 條訂明，必須在通訊文件及交易文書內披露公司名稱，有關規定將於擬議規例內保留。有見利用互聯網營商已非常普遍，我們建議擴大有關規定的適

¹ 第 (a) 及 (b) 項分別見於 Companies (Trading Disclosures) Regulations 2008 及 Companies (Trading Disclosures) (Amendment) Regulations 2009。

用範圍，以涵蓋公司網站和電子形式的通訊文件及交易文書（第 2(2)、2(3)條及第 4 條）。

8.10 就上文第 8.3 段所提及只用一種語言註冊名稱的公司，擬議規例大致上保留對該類公司的規定²（第 5 條）。現行《公司條例》第 94 條批准在展示公司名稱時可使用的縮寫，亦將在擬議規例內保留（第 6 條）。

8.11 現行《公司條例》規定，如公司沒有在處所外展示名稱，公司及其失責人員均須承擔法律責任。但是，就違反(i)於通訊文件及交易文書內述明公司名稱或(ii)列明有限公司地位的規定的情況，失責人員則不須承擔法律責任。考慮到上述各項規定的性質及背景相似，為求令擬議規例所訂的各項規定一致，我們建議公司及其每名責任人均須承擔違反規定的法律責任，並建議將刑罰定為第 3 級罰款（第 7 條）。

規例詳情

8.12 擬議《公司(營業披露)規例》包括七條條文：

- (a) 第 1 及 2 條分別訂明規例的生效日期及用語的釋義；
- (b) 第 3 條規定，除訂明的例外情況外，公司須在註冊辦事處、其他辦事處及營業地點外面的顯眼處，以可閱字樣持續展示其註冊名稱；

² 在新《公司條例》的制度下，公司註冊處處長不會再批予特許證，豁免公司遵從有關規定。不過，第 5(4)條會訂明（並受限於第 5(5)條），在規例生效前，公司若根據現行《公司條例》第 93(2)條獲批予特許證，將可繼續獲得豁免。

- (c) 第 4 條訂明必須載有公司註冊名稱的通訊文件或交易文書，也規定公司須在公司網站上載有其註冊名稱；
- (d) 第 5 條規定公司須以訂明方式披露是否屬有限責任公司；
- (e) 第 6 條容許公司在展示其名稱時使用某些縮寫；以及
- (f) 第 7 條訂明不遵從規例所訂規定的罪行。

8.13 擬議《公司(營業披露)規例》的擬稿（只有英文版）載於附件 8，以徵詢意見。

第九章

《公司(修訂財務報表及報告)規例》

現行規定

- 9.1 根據現行《公司條例》第 141E 條，在公司的帳目送交成員後，公司董事仍可修訂該等帳目，以及對財務摘要報告及董事報告作出必需的相應修訂。這類修訂只限於帳目內不符合《公司條例》規定的各方面，以及必需的相應修訂。
- 9.2 《公司(修訂帳目及報告)規例》(第 32 章，附屬法例 N)(“第 32N 章”)中訂明對帳目及報告(“報告文件”)³進行修訂的詳細規定。第 32N 章所訂的制度概述如下：
- (a) 董事可採用取代或補充文件的方式，以修訂公司的原報告文件。如採用前者，公司便須另外擬備一套文件，以取代原報告文件；如採用後者，則須擬備補充文件，示明對原報告文件的修訂(第 3 至 5 條)；
 - (b) 經修訂的報告文件須經由董事局批准或簽署(第 6 至 8 條)；
 - (c) 《公司條例》及附屬法例載有相關條文，就公司報告文件須交代事宜作出規定。一如適用於原報告文件般，該等規定亦適用於經修訂的報告文件(第 3 至 5 條)；

³

在新《公司條例》下，報告文件指財務報表(以取代帳目)，董事報告及財務摘要報告。參見第 9.7(a)段。

- (d) 一旦經修訂的報告文件獲批准，並符合相關規定後，《公司條例》即對該等經修訂的報告文件具有效力，猶如該等報告文件自修訂日期起是該公司的報告文件一樣（第 9 條）；
- (e) 規例亦訂明須就經修訂的帳目擬備核數報告。該報告可由當前核數師或曾就原帳目擬備核數師報告的核數師擬備（第 10 及 11 條）；以及
- (f) 公司須 —
 - (i) 在修訂日期後的 28 天內，把經修訂的報告文件及核數報告送交成員和其他相關人士（第 12 條）；
 - (ii) 在作出修訂後首次舉行的成員大會上，提交該等經修訂的報告文件及核數報告（第 15 條）；以及
 - (iii) 如已送交原報告文件予公司註冊處處長（“處長”），亦須送交經修訂的報告文件及核數報告予處長（第 16 條）。

9.3 第 32N 章也訂明未有按訂明規定擬備、簽署或分發報告文件的罪行。有關刑罰可包括罰款或監禁，或兩者兼施。

新《公司條例》的規定

9.4 新《公司條例》第 449 條重述現行《公司條例》第 141E 條，允許公司自發修改其財務報表。一如現行《公司條例》下的制度，新《公司條例》第 450 條規定各項有關修改財務報表及報告的事宜，將以附屬法例訂明。

擬議附屬法例

- 9.5 我們建議訂立一項規例，名為《公司(修訂財務報表及報告)規例》，以訂明新《公司條例》第 450 條所述的事宜。
- 9.6 作為擬議規例的總體原則，新《公司條例》對原報告文件作出的各項規定和安排，應同樣適用於經修訂的報告文件，並在有需要的情況下作出改動。擬議規例透過(i)訂明新《公司條例》內的條文如何適用於經修訂的報告文件，或(ii)重述新《公司條例》內的條文，並在重述時作出必須的改動，以落實上述原則。
- 9.7 擬議規例主要根據現行第 32N 章制訂，並略加修訂，使之與新《公司條例》第 9 部有關帳目及審計的條文一致。這些旨在令條文一致的改動包括 —
- (a) 令條文用語一致：以“財務報表”取代“帳目”一詞，並以“財務狀況表”及“全面收益表”分別取代“資產負債表”及“損益表”；
 - (b) 修訂有關簽署和分發經修訂的報告文件的規定，使之與新《公司條例》下的新規定或安排一致，例如有關述明代表董事簽署文件者的姓名的規定。而在新《公司條例》的制度下，公司可透過網站發表文件，或無須舉行週年成員大會。有見及此，擬議規例須增補條文，訂明在上述情況下分發報告文件的安排；
 - (c) 有關對經修訂的財務報表擬備的核數報告方面，規例在規定該報告的內容和簽署，以及訂明核數師權利和受約制特權等適用的條文亦將與新《公司條例》第 9 部的條文一致；以及

- (d) 規例所訂明的刑罰亦將與在新《公司條例》下適用於原報告文件的相關罪行所訂的刑罰一致。

9.8 如上文所述，經修訂的財務報表須經審計。為求與新《公司條例》的安排一致，擬議規例第 15 條訂明，新《公司條例》第 407 條亦適用於該核數報告，即核數師如認為經修訂的財務報表與會計記錄並不吻合，或未能為審計工作取得必需的資料或解釋，核數師須作出有關陳述。同樣地，擬議規例的第 16 條套用新《公司條例》第 408 條，訂明明知或罔顧後果地導致上述所須陳述沒有載於報告內，將屬刑事罪行。

9.9 在立法會審議新《公司條例》期間，我們留意到第 408 條的草擬方式尚有改善空間，以回應業界關注並消除法例實施時可能出現的問題。我們會與香港會計師公會探討，可以如何因應立法會及相關持份者的意見進一步改善第 408 條的條文。如因此而決定對第 408 條進行修訂，我們亦會對《公司(修訂財務報表及報告)規例》第 16 條作出相應修訂。

擬議規例

9.10 擬議《公司(修訂財務報表及報告)規例》由以下六部組成：

- (a) 第 1 部為導言。第 2 條界定或闡釋規例的某些用語；
- (b) 第 2 部就經修訂的報告文件的內容作出規定；
- (c) 第 3 部訂明與批准和簽署經修訂的財務狀況表、董事報告及財務摘要報告有關的規定；

- (d) 第 4 部述明，自修訂日期起，新《公司條例》即就經修訂的報告文件具有效力；
- (e) 第 5 部訂明須就經修訂的財務報表擬備核數報告以及相關事宜；以及
- (f) 第 6 部訂明，如曾對報告文件作任何修訂，公司須通知有關人士。

9.11 擬議《公司(修訂財務報表及報告)規例》的擬稿（只有英文版）載於附件 9，以徵詢意見。

第十章

《公司(披露董事利益資料)規例》

現行規定

- 10.1 目前，現行《公司條例》若干條文規定公司須披露有關向董事提供利益的資料，當中包括董事薪酬、向董事提供的貸款，以及涉及董事利害關係的公司合約等利益。
- 10.2 現行《公司條例》第 161 條規定公司須在帳目附註內披露若干項有關董事利益的資料。這些資料包括 —
- (a) 董事薪酬總額；
 - (b) 董事或過去董事的退休金總額；以及
 - (c) 董事或過去董事就失去職位所獲得的補償總額。
- 10.3 如公司有任何惠及董事或其他相關人士的交易，當中涉及貸款、類似貸款或信貸交易⁴，或曾就這些交易訂立擔保和提供保證，現行《公司條例》第 161B 條規定公司帳目須披露這些交易的詳情。
- 10.4 第 129D(3)(j)條規定，如有任何合約對公司的業務關涉重大，而董事直接或間接在該合約中有具關鍵性的利害關係，則公司須在董事報告內披露該等合約的資料，包括事實陳述、合約及利害關係的性質，以及相關詳情。

⁴ 類似貸款及信貸交易的定義，載於現行《公司條例》第 157H(10)條，而在新《公司條例》中，有關定義則分別載於第 493 及 494 條。

新《公司條例》的規定

10.5 新《公司條例》第 383(1)條就披露董事利益的資料作出規定，並訂明財務報表的附註內須載列以下資料：

- (a) 董事薪酬；
- (b) 董事的退休利益；
- (c) 就董事終止服務而作出的付款或提供的利益（不論該董事是以董事的身分提供該服務，或是在出任董事期間以其他身分提供該服務）；
- (d) 向以下人士作出的貸款及類似貸款和惠及以下人士的其他交易——
 - (i) 有關公司的董事，以及該公司的控權公司的董事；
 - (ii) 受該等董事控制的法人團體；以及
 - (iii) 與該等董事有關連的實體；
- (e) 董事在該公司所訂立的或同一公司集團中另一公司所訂立的交易、安排或合約中具有具相當分量的利害關係；以及
- (f) 就獲提供以下服務而給予第三者的代價，或第三者可就提供以下服務而收取的代價：委派某人出任董事，或委派某人在出任董事期間以其他身分提供服務。

- 10.6 根據新《公司條例》第 451 和 452 條，規定須予披露的詳情將在附屬法例內訂明。

擬議附屬法例

- 10.7 我們建議訂立一項規例，名為《公司(披露董事利益資料)規例》，以訂明公司就第 383(1)條所指的各類利益和交易，在財務報表的附註內所須披露的詳情。
- 10.8 在不少方面而言，《公司(披露董事利益資料)規例》均重述了現行《公司條例》內所訂的披露要求。在合適情況下，部分規定將有所改動，以釐清法例的規定，使這些規定與在新《公司條例》引入的改動一致，便利合規或加強透明度。下文說明《公司(披露董事利益資料)規例》所作的主要改動。

薪酬、退休利益等

- 10.9 有關董事薪酬、退休利益、終止職位的付款、及第三者提供董事服務的付款的改動如下 —
- (a) *新增闡釋條文*：除現行《公司條例》第 161 條所載條文外，擬議規例將增補闡釋條文，令披露制度更為完善。這些闡釋條文將涵蓋*向董事作出的付款*⁵和*由某人作出的付款*⁶（第 9(1)及 9(2)條）；

⁵ *向董事作出的付款*包括(i)向與董事有關連的實體作出的付款；及(ii)按董事或與董事有關連的實體的指示，或為這些人的利益而向某人作出的付款。

⁶ *某人作出的付款*包括由另一人按該人的指示，或代表該人作出的付款。

- (b) *加入披露非現金利益性質的規定*：根據現行《公司條例》，非現金利益的估計金錢價值須計入薪酬內（《公司(披露董事利益資料)規例》亦將沿用這項規定）。我們建議訂明這些非現金利益的性質亦須予以披露。我們也建議，在適用情況下，在披露退休利益、終止職位的付款，以及第三者提供董事服務的付款時，亦應套用此項規定（第 3(1)(b)，4(1)(b)，5(1)(b)及 6(1)(b)條）；
- (c) *釐清董事薪酬涵蓋範圍*：一如現行《公司條例》，擬議規例亦將會訂明須披露董事薪酬的總額。為求清晰，擬議規例將在第 3(2)及 3(3)條以明文訂明“薪酬”一詞包括花紅及因某人接受董事職位而付給該人的款項；
- (d) *以現代化方式改寫退休金及退休計劃的定義*：根據現行《公司條例》第 161 條，“退休金”一詞包括任何離職津貼、離職酬金或類似的款項。擬議規例將以“退休利益”代替“退休金”一詞，並進一步釐清其定義包括在多個不同情況下與董事退休有關的現金或非現金利益⁷（第 2 條）；
- (e) *釐清終止職位的付款範圍*：現行《公司條例》規定公司須披露因董事失去職位而所支付的補償總額。

⁷

這些利益包括：

- (a) 在下列情況下給予或擬給予的利益——
- (i) 在該人退休或去世當日或之後，或；
 - (ii) 預期該人退休，或；
 - (iii) 關乎該人的過去服務，或；
- (b) 在該人的服務性質有變時，或因預期出現該項轉變或就該項轉變而給予或擬給予的利益。

擬議規例將保留此項規定（第 5(1)條），並將按新《公司條例》第 517 條詮釋何謂“就失去職位而作出的付款”。為求清晰，規例將以明文訂明兩種付款⁸ 包括在內（第 5(2)條）；以及

- (f) 規定就第三者提供董事服務的付款所須披露的資料：新《公司條例》第 383(1)(f)條引入一項新規定，訂明須披露第三者為公司或其任何附屬企業提供董事服務的代價的資料。我們建議在第 6 條訂明，在這方面須予披露的詳情為公司就所有董事作出有關付款的總額。該條也就第三者一詞作出釋義。

惠及董事的貸款或類似貸款等（“指明交易”）

10.10 有關涉及指明交易，即貸款、類似貸款、信貸交易，以及公司就交易提供擔保或保證的改動如下：

- (a) 減省披露惠及公司高級人員的指明交易資料的規定：現行《公司條例》的披露規定適用於“高級人員”，包括經理和公司秘書。考慮到董事比高級人員對公司的營運決策有更大影響力，新《公司條例》制度將不再要求披露惠及高級人員的指明交易資料。換言之，擬議規例只會規定公司須披露惠及董事、與董事有關聯的實體或受其控制的法人團體（如適用）的指明交易資料。儘管如此，若一名高級人員同時屬公司董事，惠及該人的指明交易仍須遵從披露制度；及

⁸ 該兩種付款即：

- (a) 如某人退休涉及違反現行法律義務，或與終止其職位有關而引致申索，則為支付損害賠償或就申索達成和解而作出的任何付款（第 5(2)(a)條）；以及
- (b) 就終止董事的合資格服務而作出的任何付款（第 5(2)(b)條）。

(b) *優化所須披露的詳情*：就類似貸款和信貸交易（以及所提供的擔保及保證），現時公司須披露在財政年度開始及終結時分別所承擔的最大法律責任。我們將修改這項規定，規定公司須披露的詳情為(i)在財政年度開始及終結時分別所承擔的法律責任，以及(ii)在該年度期間所承擔的最大法律責任(*第 11(2)(c) 及 11(2)(d) 條*)。就惠及與董事有關連的實體的指明交易，我們建議加入新規定，訂明須披露該關連實體與該名董事的關係。(*第 11(2)(b)(ii) 條*)。

10.11 根據現行的《公司條例》，公司可選擇以簡化方式披露其類似貸款和信貸交易的資料，即可於帳目附註內交代每人的交易總額，而無須述明每宗交易詳情，惟有關交易詳情需載於登記冊內並在全年期間予公司成員查閱。上述簡化披露安排並不適用於包含貸款的交易。擬議規例第 12 條重述此簡化方案，而適用於登記冊的規定則於新《公司條例》第 384 至 386 條內訂明。

10.12 現行《公司條例》第 161B(8)、(9)及(10)條訂明認可財務機構⁹可於帳目附註內提供所有符合資格的指明交易（包括貸款）的交易總額。根據第 161BA 條，認可機構須把每宗指明交易的詳情載於陳述書，並於週年成員大會兩星期前至一星期後期間予公眾查閱。

10.13 新《公司條例》的各項規定應同等地適用於所有公司。雖然如此，我們理解借貸乃銀行業的其中一項主要業務，而且認可財務機構借貸予其董事亦並非罕見。如要求認可財務機構遵從適用於一般公司的規定，將導致認可財務機構須在其財務報表加入大量詳細資料，然而這些詳情可能沒有太多實質用途，且可能構成不便。因此，我們建議，一

⁹ 認可財務機構指在銀行業條例(第 155 章)下的持牌銀行，有限制牌照銀行及接受存款公司。

如現行《公司條例》，擬議規例將為認可財務機構另訂披露指明交易的安排（第 11(6)及 13 條），即認可財務機構可於財務報表附註內提供所有符合資格的指明交易（包括貸款）的總額資料，並把每宗交易詳情載於登記冊。然而，適用於認可財務機構登記冊的規定，將與在新《公司條例》第 384 至 386 條訂明適用於其他公司的規定一致，即認可財務機構的登記冊須在全年期間予公司成員查閱。

涉及具相當分量利害關係的交易、安排及合約

10.14 有關涉及具相當分量利害關係的交易、安排及合約的改動如下：

- (a) *擴大披露範圍以涵蓋交易及安排，並將涵蓋範圍延伸至與董事有關連的實體*：現行《公司條例》第 162 條訂明，如董事在某合約中有具關鍵性的利害關係，而該合約對公司的業務關涉重大，便須向董事局申報其在該合約中的利害關係。在新《公司條例》第 536(1)條下，此方面的申報範圍將擴大至涵蓋涉及具相當分量利害關係且對公司的業務關涉重大的交易及安排。第 536(2)條又規定，如屬公眾公司，董事亦須申報與其有關連的實體所涉及的具相當分量利害關係。因應新《公司條例》在申報利害關係方面訂立更完善的制度，我們建議在擬議規例下相應地擴大須披露資料的範圍，使有關規定與新《公司條例》一致。（第 17 條）。
- (b) *釐清須披露的資料*：現行《公司條例》規定須披露的詳情包括“性質”一項。我們建議改為規定須披露交易、安排或合約的“主要條款”（第 17(2)(a)條）；以及

- (c) 豁免擬備簡明財務報告的私人公司遵從披露要求：相關的披露規定只適用於有關財政年度內在提交報告方面不獲豁免的公司（第16(2)條）。

規例詳情

10.15 擬議《公司(披露董事利益資料)規例》由以下四部份組成：

- (a) 第1部訂明規例的生效日期；
- (b) 第2部訂明須披露以下有關公司董事的資料：薪酬（第3條）、退休利益（第4條）、終止服務的付款（第5條），以及第三者提供董事服務的付款（第6條）。適用於本部的釋義條文，載於第2、7及8條。
- (c) 第3部訂明就惠及董事的指明交易所須披露的資料（第11條）。第12至13條重述替代披露方式，即披露每人所涉款額的總額，以取代所需詳情；以及重述現行《公司條例》第161B條適用於認可財務機構的披露規定。適用於本部的釋義條文，載於第10、14及15條。
- (d) 第4部訂明須披露涉及具相當分量利害關係的交易、安排及合約的資料（第17條）。適用這部份的闡釋條文載於第16條。

10.16 擬議《公司(披露董事利益資料)規例》的擬稿（只有英文版）載於附件10，以徵詢意見。

第十一章

《公司(住址及身分識別號碼)規例》

現行規定

- 11.1 現時，董事及公司秘書如果是自然人，便須在交付處長登記的文件（例如公司提交的周年申報表）內提供其通常住址及完整身分識別號碼（“個人資料”）。另外，在某些情況下，其他人（例如清盤人）或須在交付登記的文件內提供其完整身分識別號碼。
- 11.2 在繳付相關費用後（如適用），公眾可查閱這些載有個人資料的文件。

新《公司條例》的規定

- 11.3 新《公司條例》的特點，是加強保障登記文件內所載個人資料的私隱。經考慮公眾諮詢所收集的意見後，我們在新《公司條例》下訂立一套安排，在保障私隱與顧及公眾取得部分個人資料的需要兩者間作出平衡。
- 11.4 新《公司條例》有關保護個人資料或不提供個人資料予公眾查閱的安排，現概述如下：
- (a) 就新《公司條例》下的文件，新《公司條例》第 54 條訂明載於該等文件內的董事及其他人士個人資料，將不予公眾查閱（即“受保護資料”）；
 - (b) 就已交付登記的文件（尤指在新《公司條例》生效前已交付的文件），新《公司條例》第 49 條訂明可

向處長提出申請，要求不把該等文件所載的個人資料提供予公眾查閱（即“不供查閱資料”）；以及

- (c) 就上述(a)及(b)項而言，如某人的住址不提供予公眾查閱或因受保護而不予公眾查閱，則公眾可查閱該人所提供的通訊地址。身分識別號碼方面，公眾仍可查閱號碼的其中一部分。

- 11.5 在正當情況下，如要取得不供查閱或受保護資料，第 51(3) 及 58(3)條准許處長向規例所指明的數類人士披露該等資料。

擬議附屬法例

- 11.6 新《公司條例》第 47 至 59 條就不供查閱或保護個人資料，以及披露該等資料，訂明了整體安排。至於申請將載於已交付文件內的個人資料列為不供查閱資料，以及申請披露不供查閱或受保護的資料，與該等申請有關的詳細規定和程序事宜，則會在一項名為《公司(住址及身分識別號碼)規例》的附屬法例中訂明。
- 11.7 如有人根據新《公司條例》第 49 條提出申請，要求將個人資料列為不供查閱資料，該名申請人須向處長提交申請表格。申請須指明不欲提供予公眾查閱的地址及／或身分識別號碼，以及述明資料載於哪份文件（第 3(1)及(3)條）。
- 11.8 申請人如要求不提供住址予公眾查閱，亦須提供通訊地址，以代替該住址供公眾查閱。郵政信箱號碼不被接納為通訊地址（第 3(1)(a)及(2)條）。
- 11.9 根據新《公司條例》第 51 或 58 條，下列類別人士可提出申請，要求取得不供查閱或受保護資料（第 8 及 12 條）：

- (a) 一名資料當事人可取得有關其本人的不供查閱或受保護資料；
- (b) 獲資料當事人書面授權的人士，可申請取得當事人的不供查閱或受保護資料，惟該申請必須附有授權文件佐證；
- (c) 一間公司的成員，經作出書面陳述確認其為該公司的成員後，可申請取得載於與該公司有關文件內的不供查閱或受保護資料；
- (d) 公職人員、公共機構及附表¹⁰所列明的某些人士，若有正當需要，可申請取得不供查閱或受保護資料。申請人須以書面確認所取得的資料將不會作其他用途；
- (e) 根據第 32 章獲委任的清盤人和在破產條例(第 6 章)下破產人的產業的信託人，如因工作需要，也可申請取得不供查閱或受保護資料。同樣地，申請人須以書面確認所取得的資料將不會作其他用途。

11.10 如申請將個人資料列為不供查閱資料，或申請取得受保護或不供查閱資料，處長均有權索取額外資料及文件，以決定是否接納該宗申請（第 4、7 及 11 條）。

¹⁰ 附表內列明的人士包括 —

- (i) 新《公司條例》下負責調查公司事務的審查員；
- (ii) 《受託人條例》(第 29 章)下的視察員；
- (iii) 《保險公司條例》(第 41 章)下的保險業界自律規管機構；及
- (iv) 《證券及期貨條例》(第 571 章)下的認可結算所，認可交易所，認可控制人和認可投資者賠償公司。

- 11.11 任何人如申請將個人資料列為不供查閱資料，或申請取得不供查閱或受保護資料，均須繳付訂明的費用。

規例詳情

- 11.12 擬議《公司(住址及身分識別號碼)規例》由四部分及一個附表組成：

- (a) 第 1 部訂明規例的生效日期和用語的釋義；
- (b) 第 2 部就根據新《公司條例》第 49(1)條提出將個人資料列為不供查閱資料的申請，訂明有關事宜；以及
- (c) 第 3 及 4 部分別訂明與申請取得不供查閱資料和受保護資料有關的事宜，以及向每類人士（部分在附表中指明）提供該等資料的條件。

- 11.13 擬議《公司(住址及身分識別號碼)規例》的擬稿（只有英文版）載於附件 11，以徵詢意見。

第十二章

《公司(不公平損害呈請)法律程序規則》

現行規定

- 12.1 現行《公司條例》第 168A 條訂明，如公司的事務正以或曾以不公平地損害成員(包括過去成員)權益的方式處理，成員可向法院提出呈請。為了結遭投訴的事項，法院可根據該條作出給予濟助的命令。
- 12.2 根據第 168A 條進行的法律程序，受《公司(清盤)規則》(第 32 章，附屬法例 H)(“第 32H 章”)內的適用條文所規管；該規則由終審法院首席法官依據現行《公司條例》第 296 條訂立。具體而言，有關規則就呈請書的格式(第 22 條及表格 3A)、提交呈請書(第 23 條)、草擬命令(第 35(1)條)，以及把命令送達公司及處長(第 36(3)條)等事宜作出規定。

新《公司條例》的規定

- 12.3 新《公司條例》第 724 至 726 條大致重述現行《公司條例》第 168A 條的安排，並作出改動。該條文釐清呈請的適用範圍，訂明如公司擬作出或擬不作出某項作為，將不公平地損害成員的權益，成員也可提出呈請。新《公司條例》第 725 條又以明文擴大法院可命令作出補救的範圍，容許法院作出命令，規定公司作出其擬不作出的作為。

擬議附屬法例

- 12.4 新《公司條例》第 727(1)(a)條訂明，終審法院首席法官可訂立規則，規管就不公平損害提起的法律程序。有關規則須經立法會批准。我們建議終審法院首席法官為此訂立一套規則，名為《公司(不公平損害呈請)法律程序規則》。
- 12.5 第 32H 章（將經新《公司條例》附表 9 第 7 部作出相應修訂）會與擬議規則同時存在。前者適用於純粹請求將公司清盤的呈請。後者適用於不公平損害呈請。如不公平損害呈請亦包含將公司清盤的請求，第 32H 章的適用條文亦同時適用於該項呈請¹¹（第 3 條）。
- 12.6 擬議規則第 4、5、6 及 9 條是參照英國 Companies (Unfair Prejudice Applications) Proceedings Rules 2009 所制訂，內容概述如下：
- (a) 呈請人必須以訂明格式提出呈請，並述明理由及所尋求的命令（第 4 條）。附表中的訂明格式以第 32H 章表格 3A 為依據，並經適當修訂，以反映上文第 12.3 段所述的改動；
 - (b) 法院會把呈請書的蓋章文本交回呈請人，並註明呈請聆訊的提訊日及時間。呈請人須在提訊日最少 14 天前，把蓋章文本送達涉案公司及呈請書所列的每名答辯人（如適用的話）（第 4 及 5 條）；以及
 - (c) 在提訊日當天或之後，法院可按第 6 條就程序及其他事宜發出指示，包括刊登呈請公告，以及作出擱置命令，以待進行調解或採用其他方法解決爭議。

¹¹ 如在把不公平損害呈請中把公司清盤的請求撤除，則第 32H 章不再適用。

第 9 條訂明，法院可發出指示，規定就提供濟助的法院命令刊登公告的方式和時間。

- 12.7 擬議規則第 7 及 8 條重述目前載於第 32H 章第 35(1)及 36(3)條有關草擬和送達命令的程序規定。

規則詳情

- 12.8 擬議《公司(不公平損害呈請)法律程序規則》包括九條規則及一個附表：

- (a) 第 1 及 2 條分別訂明規則的生效日期和用語的釋義；
- (b) 第 3 條列明在不同情況下，第 32H 章的有關條文及擬議規則所指明的新訂規則是否適用於就不公平損害提起的法律程序；
- (c) 第 4 條指明呈請的格式，並列明提出呈請和訂定提訊日（即法庭就呈請程序發出指示的那一天）的安排；
- (d) 第 5 條列明呈請人送達呈請的規定；
- (e) 第 6 條訂明法庭可在提訊日發出指示的事宜；
- (f) 第 7 及 8 條分別就草擬和送達命令作出規定，基本上重述第 32H 章第 35(1)及 36(3)條；
- (g) 第 9 條訂明法庭有權就刊登命令公告事宜發出指示；以及
- (h) 附表載錄第 32H 章附錄內的表格 3A，並作出修訂。

12.9 擬議《公司(不公平損害呈請)法律程序規則》的擬稿（只有英文版）載於附件 12，以徵詢意見。

附件 8

公司(營業披露)規例
(只有英文版)

Companies (Trading Disclosures) Regulation

(Made by the Secretary for Financial Services and the Treasury under sections 659 and 660 of the Companies Ordinance (28 of 2012))

1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

2. Interpretation

(1) In this Regulation—

communication document (通訊文件), in relation to a company, means any business letter, notice or other official publication of the company;

registered name (註冊名稱), in relation to a company, means the name by which the company is registered under the Ordinance;

transaction instrument (交易文書), in relation to a company, means—

- (a) any contract or deed purporting to be signed by or on behalf of the company;
 - (b) any bill of exchange, promissory note or endorsement purporting to be signed by or on behalf of the company;
 - (c) any cheque or order for money or goods purporting to be signed by or on behalf of the company; or
 - (d) any consignment note, invoice, receipt or letter of credit of the company.
- (2) A reference to a communication document or transaction instrument is a reference to it in hard copy, electronic or any other form.

- (3) In relation to a company, a reference to its websites includes any part of a website relating to that company which that company has caused or authorized to appear.
- 3. Display of registered name at registered office, etc.**
- (1) A company must display continuously its registered name in legible characters prominently on the outside of—
- (a) its registered office;
 - (b) any other office of the company; and
 - (c) any place of business of the company.
- (2) If a location is an office (whether or not the registered office) or a place of business of more than 6 companies, and any of the companies, in purported compliance with subsection (1), displays its registered name through an electronic device, the registered name is taken to be displayed continuously for the purposes of that subsection if—
- (a) the registered name is displayed for at least 20 continuous seconds at least once in every 4 minutes; or
 - (b) the registered name is capable of being displayed within 4 minutes after a request to make the display is made through the electronic device.
- (3) Subsections (1) and (2) do not apply to a company that has had no accounting transaction at any time since its incorporation.
- (4) If—
- (a) a liquidator, receiver or manager of the property of a company has been appointed; and
 - (b) the registered office, any other office or any place of business of the company is also a place of business of the liquidator, receiver or manager,

subsections (1) and (2) do not apply to that registered office, other office or place of business.

4. Registered name to appear in communication documents, etc.

A company must state its registered name in legible characters—

- (a) in any communication document of the company;
- (b) in any transaction instrument of the company; and
- (c) on any website of the company.

5. Duty to disclose company's status of limited liability or otherwise

- (1) A limited company licensed under section 103 of the Ordinance to be exempt from section 102 of the Ordinance must state in legible characters in any communication document and transaction instrument of the company and on any website of the company the fact that it is incorporated with limited liability.
- (2) An unlimited company must state in legible characters in any communication document and transaction instrument of the company and on any website of the company the fact that it is incorporated without limited liability.
- (3) If a limited company registered by a name in English only (other than a company licensed under section 103 of the Ordinance to be registered without “Limited” as the last word of its name) displays or states any name of or for the company in Chinese characters (whether or not the name is a transliteration or translation of its registered name)—
 - (a) outside or inside the registered office, any other office or any place of business of the company;

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(b) in any communication document or transaction instrument of the company or any other document on which the company's common seal is affixed; or

(c) on any website of the company,

the company must append to the name so displayed or stated the Chinese characters “有限公司”.

(4) Subject to subsection (5), a limited company that was, immediately before the commencement date of this Regulation, exempt from section 93(2) of the predecessor Ordinance by a licence issued under the proviso to that section, is exempt from subsection (3).

(5) Subsection (4) does not apply if—

(a) for the purposes of the licence the Registrar had approved in writing a manner in which the name in Chinese characters was to be used; and

(b) that name is displayed or stated in a manner different from the approved manner.

(6) If a limited company registered by a name in Chinese only (other than a company licensed under section 103 of the Ordinance to be registered without “有限公司” as the last 4 characters of its name) displays or states any name of or for the company in English (whether or not the name is a transliteration or translation of its registered name)—

(a) outside or inside the registered office, any other office or any place of business of the company;

(b) in any communication document or transaction instrument of the company or any other document on which the company's common seal is affixed; or

(c) on any website of the company,

the company must append to the name so displayed or stated the English word “Limited”.

6. Adequacy of certain descriptions of companies

The description of a company is not inadequate or incorrect only by reason of—

- (a) the use of—
 - (i) the abbreviation “Co.” or “Coy.” in lieu of the word “Company” contained in the name of the company;
 - (ii) the abbreviation “Ltd.” in lieu of the word “Limited” contained in the name of the company;
 - (iii) the abbreviation “HK” or “H.K.” in lieu of the words “Hong Kong” contained in the name of the company;
 - (iv) the symbol “&” in lieu of the word “and” contained in the name of the company;
 - (v) any of those words in lieu of the corresponding abbreviation or symbol contained in the name of the company; or
 - (vi) any type or case of letters, spaces between letters, accents or punctuation marks which are not the same as those appearing in the name of the company; or
- (b) the use or omission of the definite article as the first word in the description.

7. Offences

- (1) If a company contravenes sections 3(1), 4 or 5(1), (2), (3) or (6), the company and every responsible person of the company commit an offence, and each is liable to a fine at level 3.
- (2) If, on behalf of a company, a person other than a responsible person of the company—

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- (a) issues or authorizes the issue of any communication document of the company in respect of which section 4(a) or 5(1), (2), (3)(b) or (6)(b) is contravened;
 - (b) signs or authorizes to be signed on behalf of the company any contract, deed, bill of exchange, promissory note, endorsement, cheque or order for money or goods in respect of which section 4(b) or 5(1), (2), (3)(b) or (6)(b) is contravened;
 - (c) issues or authorizes the issue of any consignment note, invoice, receipt or letter of credit of the company in respect of which section 4(b) or 5(1), (2), (3)(b) or (6)(b) is contravened; or
 - (d) causes or authorizes the appearance of a website of the company in respect of which section 4(c) or 5(1), (2), (3)(c) or (6)(c) is contravened,
- the person commits an offence and is liable to a fine at level 3.

Secretary for Financial Services and
the Treasury

2012

附件 9

公司(修訂財務報表及報告)規例
(只有英文版)

Annex 9

Companies (Revision of Financial Statements and Reports) Regulation

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Companies (Revision of Financial Statements and Reports) Regulation

(Made by the Secretary for Financial Services and the Treasury under section 450 of the Companies Ordinance (28 of 2012))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

2. Interpretation

(1) In this Regulation—

audit report (核數報告) means a report on revised financial statements mentioned in section 13(1) or (2);

auditor's report (核數師報告) has the meaning given by section 357(1) of the Ordinance;

date of revision (修訂日期)—

(a) in relation to any revised financial statements, means—

(i) in the case of a revision by replacement, the date required by section 3(6)(a)(i) or (b)(i) to be stated in the revised financial statement; or

(ii) in the case of a revision by supplementary note, the date required by section 3(6)(a)(ii) or (b)(ii) to be stated in the note;

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- (b) in relation to any revised directors' report, means the date on which the report is approved under section 391 of the Ordinance; and
- (c) 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 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;

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relevant Regulation (《有關規例》) means—

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

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

revised directors' report (經修訂董事報告) means—

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

revised financial statements (經修訂財務報表) means—

- (a) in the case of a revision by replacement, the financial statements replacing the original financial statements for the purpose of the revision; or
- (b) in the case of 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 (經修訂財務狀況表) means—

- (a) in the case of a revision by replacement, the statement of financial position replacing the original statement of financial position for the purpose of the revision; or

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- (b) in the case of 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 (經修訂財務摘要報告) means—

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

revision (修訂) 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 means 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 means 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) 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), as it applies to the original financial statements, so as to require those 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 the 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 the financial statements of the company to be revised by replacement, the directors must

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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 the financial statements of the company to be revised by supplementary note, the directors must make in a prominent position in the note—

- (a) a statement that the 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

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- (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) in the case of a revision to a statement of financial position, cause the date on which the revised statement of financial position is approved under section 387 of the Ordinance to be stated—
 - (i) in the case of a revision by replacement, in the revised financial statements; or
 - (ii) in the case of 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 regarded as having been revised to be stated—
 - (i) in the case of a revision by replacement, in the revised financial statements; or
 - (ii) in the case of 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 to be construed, if the provision has been amended after the date of the original financial statements but before the date of revision, as 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;

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- (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 the 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—
 - (a) in the case of a company not falling within the reporting exemption for the financial year—
 - (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) in the case of a company falling within the reporting exemption for the financial year—
 - (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 the 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) in the case of a company not falling within the reporting exemption for the financial year—
 - (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) in the case of a company falling within the reporting exemption for the financial year—
 - (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 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 to be construed, if the provision has been amended after the date of the original financial statements but before the date of revision, as 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 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—

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- (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 note—
 - (a) a statement that the 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) in the case of a revision by replacement, in the revised directors' report; or

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- (b) in the case of 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 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 to be construed, if the provision has been amended after the date of the original directors' report but before the date of revision, as 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 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;
 - (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 note—
 - (a) a statement that the 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—

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- (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) in the case of a revision by replacement, in the revised summary financial report; or
 - (b) in the case of a revision by supplementary note, in the supplementary note.
- (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.

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- (9) In this section, a reference to a provision of the Ordinance or relevant Regulation is to be construed, if the provision has been amended after the date of the original summary financial report but before the date of revision, as a reference to the provision as in force at the date of the original summary financial report.
-

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, in the case of 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 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 to be construed, if the provision has been amended after the date of the original statement of financial position but before

the date of revision, as 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, in the case of 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 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 to be construed, if the provision has been amended after the date of the original directors' report but before the date of revision, as 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, in the case of a revision by supplementary note—
 - (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 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 respect 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 to be construed, if the provision has been amended after the date of the original summary financial report but before the date of revision, as 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 relevant financial year 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, section 429(1), 435(1) or 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, section 435(1) or 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 relevant financial year 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, section 429(1), 435(1) or 662 of the Ordinance;
 - (b) where a copy of the original financial statements was sent to a member under section 430(3) of the Ordinance, section 435(1) or 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 relevant financial year for the purposes of section 446(1) and (2) of the Ordinance.
-

Part 5

Audit Report on Revised Financial Statements

13. Audit report

- (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 that person if—
 - (a) that person agrees to do so; and
 - (b) that 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 audit report 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) in the case of a company that does not fall within the reporting exemption for the financial year, 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 audit report 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 audit report; and
 - (b) may bring that opinion to the members' attention at a general meeting.
- (3) A reference in subsection (1) to a provision of the Ordinance is to be construed, if the provision has been amended after the date of the original financial statements but before the date of revision, as 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 audit report, as it applies to an auditor's report; and
- (b) applies to a person preparing an audit report, as it applies to a company's auditor preparing an auditor's report.

16. Offences relating to contents of audit report

- (1) Every person specified in subsection (2) commits an offence if the person knowingly or recklessly causes to be omitted from an audit report 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 audit report 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. Audit reports to be signed

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

- (1) For a person preparing an audit report who is not the current auditor of the company (*relevant person*), in the absence of malice, the relevant person 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 audit report.

- (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 audit report; 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 company.
- (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.

19. Rights of person preparing audit report

- (1) Section 411 of the Ordinance applies to a person preparing an audit report, 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 audit report, 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 audit report that conveys or purports to convey any information or explanation that the person preparing the audit 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 audit report to apply for an injunction to enforce any of the person's right granted under section 412 of the Ordinance by virtue of section 19(2).

21. Audit report 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 those

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statements unless the audit report on the revised financial statements are attached to those statements.

- (2) If subsection (1) is contravened, the company, and every responsible person of the company who is in default, commit an offence, and each is liable to a fine of \$150,000.

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 in relation to the financial statements or directors' report (as the case may be), 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) in the case of revised financial statements, a copy of the audit 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 note; or
 - (b) in the case of 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 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 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) in the case of 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) in the case of 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 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 notice 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 a note that complies with subsection (3), together with a copy of the audit report on the revised financial statements, to—
 - (a) every member of the company who was sent a copy of the summary financial report; and
 - (b) every member of the company 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 that 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 a copy of the revised summary financial report, together with a statement of the revisions made and their effect, to—

- (a) every member of the company who was sent a copy of the summary financial report; and
 - (b) every member of the company 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 444(1) or 445(2) of the Ordinance.
- (5) If a company contravenes subsection (2) or (4), 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 the 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 at 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 of the company 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 before general meeting etc.

- (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 audit 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 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 in relation to the revised financial statements or revised directors' report (as the case may be), deliver to the Registrar for registration—
 - (a) in the case of any revised financial statements, a certified copy of the audit 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 note; or
 - (b) in the case of 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 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 a company contravenes subsection (1) or (2), the company, and every responsible person of the company, commit an offence, and each is liable to a fine at level 5 and, in the case of a continuing offence, to a further fine of \$1,000 for each day during which the offence continues.

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- (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.

Secretary for Financial Services and
the Treasury

2012

附件 10

公司(披露董事利益資料)規例
(只有英文版)

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Companies (Disclosure of Information about Benefits of Directors) Regulation

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Companies (Disclosure of Information about Benefits of Directors) Regulation

(Made by the Secretary for Financial Services and the Treasury under sections 451 and 452 of the Companies Ordinance (28 of 2012))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012).

Part 2

Disclosure of Directors' Emoluments, Retirement Benefits, Payments in Respect of Termination of Services and Consideration for Directors' Services

Division 1—Interpretation

2. Interpretation of Part 2

(1) In this Part—

company contributions (公司供款), in relation to a director of a company, means any payment (including insurance premium) paid, or treated as paid, under a retirement benefits scheme in respect of the qualifying services of the director by the company or any other person;

qualifying services (合資格服務), in relation to a person, means—

- (a) the person's services as a director of the company concerned; and
- (b) while a director of the company, the person's services—
 - (i) as a director of any subsidiary undertaking of the company; or
 - (ii) otherwise in connection with the management of the affairs of the company or any subsidiary undertaking of the company;

retirement benefits (退休利益), in relation to a person—

- (a) includes any lump sum, gratuity, periodical payment or other like benefit, any other property, or any other benefit whether in cash or otherwise—

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- (i) given or to be given on or after the retirement or death of the person (including any annuity or other benefit paid or payable under any medical, accident or life insurance policy on or after the retirement or death of the person), or in anticipation of the retirement of the person;
- (ii) given or to be given in connection with the person's past service; or
- (iii) given or to be given on, or in anticipation of, or in connection with any change in the nature of the person's service,

and includes any benefit paid or to be paid under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); but

(b) excludes—

- (i) any benefit which has or is to be afforded solely by reason of the person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment; and
- (ii) any retirement gift of a value not exceeding \$50,000;

retirement benefits scheme (退休利益計劃) means a scheme for the provision of retirement benefits, and includes—

- (a) a recognized occupational retirement scheme as defined by section 2 of the Inland Revenue Ordinance (Cap. 112);
- (b) a mandatory provident fund scheme as defined by that section; and
- (c) a retirement insurance scheme;

retirement insurance scheme (退休保險計劃)—

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- (a) means a scheme for the provision of medical, accident or life insurance coverage—
 - (i) on or after the retirement or death of a person;
 - (ii) in connection with a person's past service; or
 - (iii) on or in connection with any change in the nature of a person's service; but
 - (b) excludes a scheme for the provision of insurance coverage for a person's personal injury (including any incapacity or death caused by such injury) by accident arising out of and in the course of employment.
- (2) In this Part, a reference to a director—
- (a) in the case of section 4, includes a former director; and
 - (b) in the case of section 5, includes a former director and shadow director.
- (3) In this Part, a reference to a subsidiary undertaking of a company—
- (a) subject to paragraphs (b) and (c), if a person, while a director of the company, is or was also a director of any other undertaking by virtue of the company's nomination, whether direct or indirect, includes that other undertaking, whether or not that other undertaking is or was in fact a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance);
 - (b) for the purposes of section 6, is a reference to a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance) at the time the qualifying services of the person concerned are or were rendered; and
 - (c) in paragraph (b) of the definition of *qualifying services* in subsection (1)—

- (i) for the purposes of sections 3, 4 and 6, is a reference to a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance); and
 - (ii) for the purposes of section 5, is a reference to a subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance) immediately before the loss of office as director of the company.
- (4) In this Part, a reference to an entity connected with a director has the meaning given by section 486 of the Ordinance.

Division 2—Information to be Contained in Notes to Financial Statements

3. Information about directors' emoluments

- (1) The information about the directors' emoluments prescribed for the purposes of section 383(1)(a) of the Ordinance is—
 - (a) the aggregate amount of the emoluments paid to or receivable by the directors in respect of their respective qualifying services; and
 - (b) if any such emoluments consist of a benefit otherwise than in cash, the nature of that benefit.
- (2) Any emoluments paid or receivable in respect of a person accepting office as a director are to be treated as emoluments paid or receivable in respect of that person's services as a director.
- (3) In this section—

emoluments (薪酬), in relation to a director of a company—

 - (a) includes—
 - (i) the director's salaries, fees and bonuses;

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- (ii) any sums paid to the director by way of expenses allowance less the amounts actually spent on the expenses for which the allowance was made;
 - (iii) any company contributions paid, or treated as paid, in respect of the qualifying services of the director under any retirement benefits scheme; and
 - (iv) the estimated money value of any other benefits received by the director otherwise than in cash; but
- (b) excludes any retirement benefits to which the director is entitled under any retirement benefits scheme.

4. Information about directors' retirement benefits

- (1) The information about the directors' retirement benefits prescribed for the purposes of section 383(1)(b) of the Ordinance is—
- (a) the excess of the retirement benefits paid over the retirement benefits entitled; and
 - (b) (where there is such an excess) if any such retirement benefits consist of a benefit otherwise than in cash, the nature of that benefit.
- (2) In subsection (1)—
- (a) a reference to the retirement benefits paid is a reference to the aggregate amount of the retirement benefits paid to or receivable by the directors under any retirement benefits scheme in respect of their qualifying services; and
 - (b) a reference to the retirement benefits entitled is a reference to the aggregate amount of the retirement benefits to which the directors are or were entitled on the date on which those benefits first become or became

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payable or on the commencement date of this Regulation, whichever is the later.

- (3) For the purposes of subsection (2)(a), any amount of retirement benefits is to be disregarded if—
 - (a) the funding of the retirement benefits scheme was such that the amount was or could have been paid without recourse to additional company contributions; and
 - (b) the amount was paid to or receivable by all scheme members of the retirement benefits scheme on the same basis.
- (4) For the purposes of this section, if any retirement benefits consist of a benefit otherwise than in cash, to that extent, a reference to the amount of the retirement benefits is a reference to the estimated money value of that benefit.
- (5) In this section—

scheme member (計劃成員), in relation to a retirement benefits scheme, means any person who is entitled to the present payment of retirement benefits under the scheme.

5. Information about payments made or benefit provided in respect of termination of directors' services

- (1) The information about the payments made or benefit provided in respect of the termination of the service of directors, whether in the capacity of directors or in any other capacity while directors, prescribed for the purposes of section 383(1)(c) of the Ordinance is—
 - (a) the aggregate amount of payments for loss of office made to the directors; and
 - (b) if any such payments for loss of office consist of a benefit otherwise than in cash, the nature of that benefit.

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- (2) In this section, a reference to payment for loss of office is a reference to payment for loss of office within the meaning of section 517 of the Ordinance and includes—
 - (a) in the case of section 517(1)(c) and (d) of the Ordinance, if a person's retirement is occasioned by a breach of an existing legal obligation or a claim arising in connection with the termination of the person's office or employment—
 - (i) any payment made by way of damages for the breach; and
 - (ii) any payment made by way of settlement or compromise of the claim; and
 - (b) any other payment paid to or receivable by a person in connection with the termination of the person's qualifying services.
 - (3) For the purposes of this section, if any payment for loss of office consists of a benefit otherwise than in cash, to that extent, a reference to the amount of the payment is a reference to the estimated money value of that benefit.
- 6. Information about consideration provided to or receivable by third parties for making available directors' services**
- (1) The information about the consideration provided to or receivable by third parties for making available the services of a person as director of a company, or in any other capacity while director, prescribed for the purposes of section 383(1)(f) of the Ordinance is—
 - (a) the aggregate amount of the consideration paid to or receivable by any third party for making available the qualifying services of any person; and
 - (b) if any such considerations consist of a benefit otherwise than in cash, the nature of that benefit.

- (2) In this section—
 - (a) a reference to consideration includes benefits otherwise than in cash; and
 - (b) a reference to any third party is a reference to any person other than—
 - (i) the director;
 - (ii) an entity connected with the director;
 - (iii) the company; or
 - (iv) any subsidiary undertaking of the company.
- (3) For the purposes of this section, if any consideration consists of a benefit otherwise than in cash, to that extent, a reference to the amount of the consideration is a reference to the estimated money value of that benefit.

Division 3—Supplementary Provisions Relating to Information Prescribed by this Part

7. Only information contained in company's records required to be given

This Part requires information to be given by a company only so far as—

- (a) the information is contained in the company's records (as defined by section 838(1) of the Ordinance); or
- (b) the company has the right to obtain it from the persons concerned.

8. What amounts to be shown

- (1) For the purposes of this Part, an amount to be shown for any financial year in the notes to the financial statements prepared for that year is—

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- (a) the sums receivable in respect of that year (whenever paid); or
 - (b) in the case of sums not receivable in respect of a period, the sums paid during that year.
- (2) If—
 - (a) any sums are not shown for any financial year in the notes to the financial statements prepared for that year on the ground that the person receiving them is liable to account for them as mentioned in section 9(3); and
 - (b) the liability is, wholly or partly, released subsequently or not enforced within a period of 2 years after the date on which the sums are received by the person,those sums must, to the extent that the liability is so released or not enforced, be shown in the notes to the first financial statements in which it is practicable to show them, and must be distinguished from the amounts to be shown apart from this provision.
- (3) If an amount is to be shown for any financial year in the notes to the financial statements prepared for that year in relation to the information required to be given under this Part, the corresponding amount for the immediately preceding financial year must also be shown in those notes.
- (4) If a provision of this Part requires any distinction to be made in any amount to be shown, the directors may, for the purpose of complying with that provision, apportion any payment among the matters in respect of which the payment is paid or receivable in the manner that the directors think fit.

9. Certain payments and amounts covered for the purposes of this Part

- (1) In this Part, a reference to a payment to a director includes—

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- (a) a payment to an entity connected with the director; and
 - (b) a payment to a person made at the direction of, or for the benefit of, the director or an entity connected with the director.
 - (2) In this Part, a reference to a payment by a person includes a payment by another person made at the direction of, or on behalf of, the person.
 - (3) In this Part, a reference to an amount paid by or receivable from a company includes all relevant sums paid by or receivable from—
 - (a) the company;
 - (b) any subsidiary undertaking of the company; or
 - (c) any other person,except sums to be accounted for by the person receiving them to the company or any subsidiary undertaking of the company or, by virtue of section 529 of the Ordinance, to those who have sold their shares in the company or a subsidiary of the company as a result of a takeover offer (within the meaning of section 689 of the Ordinance).
 - (4) In this Part, a reference to an amount paid to or receivable by a person includes all relevant sums paid to or receivable by an entity connected with the person.
-

Part 3

Disclosure of Loans, Quasi-loans and Other Dealings in Favour of Directors

Division 1—Interpretation

10. Interpretation of Part 3

(1) In this Part—

authorized financial institution (認可財務機構) means an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155);

credit transaction (信貸交易) has the meaning given by section 494 of the Ordinance;

guarantee (擔保) means a guarantee as defined by section 491(1) of the Ordinance;

quasi-loan (類似貸款) has the meaning given by section 493 of the Ordinance;

specified company (指明公司) means a specified company as defined by section 491(1) of the Ordinance;

transaction (交易) means—

- (a) any loan, quasi-loan or credit transaction; or
- (b) any guarantee or security in connection with any loan, quasi-loan or credit transaction.

(2) In this Part, a reference to a director includes a shadow director.

(3) In this Part, a reference to a subsidiary undertaking of a company is a reference to a subsidiary undertaking at the end of the company's financial year, whether or not it was in fact a

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subsidiary undertaking of the company (within the meaning of section 4 of Schedule 1 to the Ordinance) on the date of the transaction in question.

- (4) In this Part, a reference to a connected entity, in relation to a director, is a reference to an entity connected with a director within the meaning of section 486 of the Ordinance.
- (5) In this Part, a reference to a controlled body corporate, in relation to a director, is a reference to a body corporate controlled by a director within the meaning of section 492 of the Ordinance.
- (6) In this Part, a reference to a loan, quasi-loan or credit transaction, or a guarantee or security in connection with a loan, quasi-loan or credit transaction, includes—
 - (a) any arrangement under which the loan, quasi-loan or credit transaction is made or entered into, or under which the guarantee or security is made or provided; and
 - (b) any arrangement for an assignment or assumption of any rights, obligations or liabilities under the loan, quasi-loan or credit transaction or under the guarantee or security.
- (7) In this Part, a reference to a person for whom a transaction is entered into has the meaning given by section 495 of the Ordinance and, for the purposes of this subsection, a reference to an arrangement in subsection (2) of that section is to be construed as a reference to an arrangement referred to in subsection (6)(a) or (b).

Division 2—Information to be Contained in Notes to Financial Statements

11. Information about loans, quasi-loans and other dealings in favour of directors, controlled bodies corporate and connected entities

- (1) Subject to section 12, the information about loans, quasi-loans and other dealings in favour of the directors of a company and of its holding company, their controlled bodies corporate and their connected entities prescribed for the purposes of section 383(1)(d) of the Ordinance is—
 - (a) the particulars of any transaction entered into by the company for a person who at any time during the financial year concerned was—
 - (i) a director of the company or of its holding company;
 - (ii) a controlled body corporate of such a director; or
 - (iii) in the case of a specified company, a connected entity of such a director; and
 - (b) the particulars of any transaction entered into by a subsidiary undertaking of the company for a person who at any time during the financial year concerned was a director of the company.
- (2) The particulars referred to in subsection (1) are—
 - (a) the principal terms of the transaction;
 - (b) the name of the person for whom the transaction was entered into, and—
 - (i) if that person was a controlled body corporate of a director of the company or of its holding company, the name of that director; or

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- (ii) if that person was a connected entity of a director of the company or of its holding company, the name of that director and the nature of the connection;
- (c) if the transaction consists of or relates to a loan, quasi-loan or credit transaction—
 - (i) the amount of the liability of the person to whom the loan or quasi-loan was made or for whom the credit transaction was entered into, in respect of the principal and interest or otherwise, both at the beginning and at the end of the financial year concerned;
 - (ii) the maximum amount of that liability during the financial year;
 - (iii) the amount (if any) that, having fallen due, has not been paid; and
 - (iv) the amount of any provision made in respect of any failure or anticipated failure by the person referred to in subparagraph (i) to repay the whole or part of the loan, quasi-loan or credit transaction, or to pay the whole or part of any interest or otherwise on the loan, quasi-loan or credit transaction; and
- (d) if the transaction consists of or relates to a guarantee or security in connection with a loan, quasi-loan or credit transaction—
 - (i) the amount for which the company or its subsidiary undertaking was liable under the guarantee, or in respect of the security, both at the beginning and at the end of the financial year concerned;
 - (ii) the maximum amount for which the company or its subsidiary undertaking may become so liable; and

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- (iii) any amount paid and any liability incurred by the company or its subsidiary undertaking for the purpose of fulfilling the guarantee or discharging the security, including any loss incurred by reason of the enforcement of the guarantee or security.
- (3) This section applies—
 - (a) whether or not the transaction is prohibited under Division 2 of Part 11 of the Ordinance;
 - (b) whether or not the person for whom the transaction was entered into was, at the time the transaction was entered into—
 - (i) a director of the company or of its holding company;
 - (ii) a controlled body corporate of such a director; or
 - (iii) a connected entity of such a director; and
 - (c) in the case of a transaction entered into by an undertaking that at any time during a financial year was a subsidiary undertaking of a company, whether or not that undertaking was a subsidiary undertaking of the company at the time the transaction was entered into.
- (4) This section does not apply to a transaction that was not entered into during the financial year concerned and did not subsist at any time during that year.
- (5) This section does not apply to a loan or quasi-loan made by a company or its subsidiary undertaking to an employee of the company or the subsidiary undertaking, or a credit transaction entered into by a company or its subsidiary undertaking as a creditor for an employee of the company or the subsidiary undertaking, if—
 - (a) the value of the loan, quasi-loan or credit transaction does not exceed \$100,000;

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- (b) the loan, quasi-loan or credit transaction is certified by the directors of the company or the subsidiary undertaking, as the case may be, to have been made or entered into in accordance with the relevant practice (if any) adopted by the company or of the subsidiary undertaking;
 - (c) the loan, quasi-loan or credit transaction is not made or entered into by the company under a guarantee given, or on a security provided, by a subsidiary undertaking of the company; and
 - (d) the loan, quasi-loan or credit transaction is not made or entered into by the subsidiary undertaking under a guarantee given, or on a security provided, by the company or any other subsidiary undertaking of the company.
- (6) Subject to section 13, the particulars of any transaction entered into by a company that is, or a company's subsidiary undertaking that is, an authorized financial institution for any person are not required to be contained in the notes to the financial statements by virtue of section 383(3) of the Ordinance if—
 - (a) the value of the loan, quasi-loan, credit transaction, guarantee or security concerned is not greater, and the terms of it are not more favourable, than what is reasonable to expect the authorized financial institution to have offered to a person of the same financial standing but unconnected with the institution; or
 - (b) in any other case, the aggregate of the following amounts does not exceed \$10,000,000 or an amount equivalent to 10% of the paid up capital and reserves of the authorized financial institution, whichever is the lower—

- (i) the maximum amount outstanding, in respect of the principal and interest or otherwise, during the financial year concerned on all loans and quasi-loans (except those falling within paragraph (a)) made by the institution to, and all credit transactions (except those falling within that paragraph) entered into by the institution as a creditor for, that person; and
- (ii) the maximum amount of the liability of the institution during the financial year under all guarantees (except those falling within paragraph (a)) given, and all security (except those falling within that paragraph) provided, by the institution to that person in connection with any loan or quasi-loan made to or any credit transaction entered into for that person.

Division 3—Alternative Method to Provide Information Required

12. Other particulars may be provided by statement in lieu of particulars to be contained in notes to financial statements as specified in section 11

- (1) Subject to the compliance with the requirement prescribed in subsection (2), the following particulars are not required to be contained in the notes to the financial statements by virtue of section 383(3) of the Ordinance—
 - (a) the particulars specified in section 11(2)(c) in respect of a quasi-loan or credit transaction; and
 - (b) the particulars specified in section 11(2)(d) in respect of a guarantee or security in connection with a quasi-loan or credit transaction.

- (2) The requirement referred to in subsection (1) is that the financial statements must contain a statement in the notes to those statements showing, in respect of each person named in the financial statements under section 11(2)(b), the following information in lieu of the particulars referred to in that subsection—
 - (a) in relation to all the quasi-loans made to or credit transactions entered into for each such person, each of the amounts referred to in section 11(2)(c)(i), (ii), (iii) and (iv) in respect of those quasi-loans in aggregate or credit transactions in aggregate; and
 - (b) in relation to all the guarantees or security in connection with quasi-loans made to or credit transactions entered into for each such person, each of the amounts referred to in section 11(2)(d)(i), (ii) and (iii) in respect of those guarantees in aggregate or security in aggregate.
- 13. Statement made by company that is or where its subsidiary undertaking is authorized financial institution**
 - (1) Section 11(6) has effect subject to the compliance with the requirement prescribed in subsection (2) or (3).
 - (2) In the case of a company that is an authorized financial institution, the financial statements of the company must contain a statement in the notes to those statements showing—
 - (a) the aggregate of the following amounts as at the end of the financial year concerned—
 - (i) the amount outstanding, in respect of the principal and interest or otherwise, on every loan or quasi-loan made by the company to, or every credit transaction entered into as a creditor by the company for, a person who at any time during the financial year concerned was—

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- (A) a director of the company or of its holding company;
 - (B) a controlled body corporate of such a director; or
 - (C) in the case of a specified company, a connected entity of such a director; and
- (ii) the maximum amount of liability of the company under all guarantees given, and all security provided, by the company in connection with any transaction referred to in subparagraph (i); and
- (b) the maximum aggregate of the amounts referred to in paragraph (a) at any time during the financial year.
- (3) In the case of a company of which any of its subsidiary undertakings is an authorized financial institution, the financial statements of the company must contain a statement in the notes to those statements showing—
 - (a) the aggregate of the following amounts as at the end of the financial year concerned—
 - (i) the amount outstanding, in respect of the principal and interest or otherwise, on every loan or quasi-loan made by the authorized financial institution to, or every credit transaction entered into as a creditor by the institution for, a director of the company (whether or not that director was a director of the company at the time the loan, quasi-loan or credit transaction was made or entered into); and
 - (ii) the maximum amount of liability of the authorized financial institution under all guarantees given, and all security provided, by the institution in connection with any transaction referred to in subparagraph (i); and

- (b) the maximum aggregate of the amounts referred to in paragraph (a) at any time during the financial year.

**Division 4—Supplementary Provisions Relating to
Information Prescribed by this Part**

14. What amounts to be shown

If an amount is to be shown for any financial year in the notes to the financial statements prepared for that year in relation to the information required to be given under this Part, the corresponding amount for the immediately preceding financial year must also be shown in the notes.

15. Value of transaction

In this Part, section 497 of the Ordinance applies in determining the value of a transaction.

Part 4

Disclosure of Directors' Material Interests in Transactions, Arrangements or Contracts

Division 1—Interpretation

16. Interpretation of Part 4

(1) In this Part—

public company (公眾公司) has the meaning given by section 12 of the Ordinance.

(2) In this Part, a reference to a company is a reference to a company that does not fall within the reporting exemption (within the meaning of Division 2 of Part 9 of the Ordinance) for the financial year concerned.

(3) In this Part, a reference to a director includes a shadow director.

(4) In this Part, a reference to a connected entity in relation to a director is a reference to an entity connected with a director within the meaning of section 486 of the Ordinance.

Division 2—Information to be Contained in Notes to Financial Statements

17. Information about material interests of directors in transactions, arrangements or contracts

(1) The information about material interests of directors in transactions, arrangements or contracts entered into by a company or another company in the same group of companies prescribed for the purposes of section 383(1)(e) of the

Ordinance is the particulars of any transaction, arrangement or contract entered into by—

- (a) the company;
- (b) a holding company of the company;
- (c) a subsidiary undertaking of the company; or
- (d) a subsidiary undertaking of the holding company,

in which a person who at any time during the financial year was a director of the company had, directly or indirectly, a material interest.

(2) The particulars referred to in subsection (1) are—

- (a) the principal terms of the transaction, arrangement or contract;
- (b) a statement of the fact that the transaction, arrangement or contract was entered into or subsisted during the financial year concerned;
- (c) the names of the parties to the transaction, arrangement or contract; and
- (d) the name of the director having the material interest and the nature of that interest and, if that director is treated as having the interest by virtue of subsection (3), the name of the director's connected entity and the nature of the connection.

(3) For the purposes of this section, in the case of a public company, a director of the public company is treated as having an interest in a transaction, arrangement or contract entered into by the public company if a connected entity of such a director has an interest in that transaction, arrangement or contract.

(4) In this section, a reference to a transaction, arrangement or contract, in relation to a company, is a reference to a

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transaction, arrangement or contract that is significant in relation to the company's business.

- (5) For the purposes of subsection (4), a transaction, arrangement or contract is not significant in relation to a company's business if, after consideration, the directors of the company are of the opinion that it is not so.
- (6) For the purposes of this section, an interest that a director of a company has in a transaction, arrangement or contract is not material if, after consideration, the directors of the company are of the opinion that it is not so.
- (7) This section does not apply to—
 - (a) a transaction, arrangement or contract between the company and another company in which a director of the former has an interest only by virtue of being a director of the latter;
 - (b) a director's contract of service; or
 - (c) a transaction, arrangement, or contract that was not entered into during the financial year concerned and did not subsist at any time during that year.

Secretary for Financial Services and
the Treasury

附件 11

公司(住址及身分識別號碼)規例
(只有英文版)

Annex 11

Companies (Residential Addresses and Identification Numbers) Regulation

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Companies (Residential Addresses and Identification Numbers) Regulation

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Companies (Residential Addresses and Identification Numbers) Regulation

(Made by the Secretary for Financial Services and the Treasury under sections 49, 51 and 58 of the Companies Ordinance (28 of 2012))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on the day appointed for the commencement of the Companies Ordinances (28 of 2012).

2. Interpretation

In this Regulation—

company (公司) has the meaning given by section 20(1) of the Ordinance;

liquidator (清盤人) means a person who is a liquidator or provisional liquidator under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

public body (公共機構) means—

- (a) the Executive Council;
- (b) the Legislative Council;
- (c) any District Council;
- (d) any undertaking of or by the Government;
- (e) any public authority or undertaking;

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Companies (Residential Addresses and Identification Numbers) Regulation

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- (f) any board, commission, committee or other body, whether paid or unpaid, appointed by the Chief Executive or the Government; and
- (g) any board, commission, committee or other body that has power to act in a public capacity under or for the purposes of any enactment;

scheduled person (表列人士) means a person specified in the Schedule;

trustee (受託人) means a person who is a provisional trustee or trustee of the property of a bankrupt under the Bankruptcy Ordinance (Cap. 6).

Part 2

Application Made for Purposes of Section 49(1) of Ordinance

3. Application to withhold residential address or identification number from public inspection

- (1) An application made for the purposes of section 49(1)(a) of the Ordinance must contain—
 - (a) the correspondence address required for the purposes of section 49(3) of the Ordinance; and
 - (b) any other information specified by the Registrar for the application.
- (2) The correspondence address referred to in subsection (1)(a) must not be a post office box number.
- (3) An application made for the purposes of section 49(1)(b) of the Ordinance must contain any information specified by the Registrar for the application.

4. Powers of Registrar to require additional information and documents

The Registrar may require a person who makes an application under section 49 of the Ordinance to provide additional information and documents for the purposes of determining the application.

Part 3

Application Made for Purposes of Section 51(3) of Ordinance

5. Interpretation of Part 3

In this Part—

data subject (資料當事人) means a person whose address or other personal particulars are withheld from public inspection under section 49 of the Ordinance;

withheld information (不提供の資料) has the meaning given by section 47 of the Ordinance.

6. Application for disclosure of withheld information

An application made for the purposes of section 51(3) of the Ordinance—

- (a) must contain any information specified by the Registrar for the application; and
- (b) if the application is for disclosure of withheld information to a person authorized by a data subject to obtain the information, must be accompanied by documentary proof of the authorization.

7. Powers of Registrar to require additional information and documents

The Registrar may require a person who makes an application under section 51 of the Ordinance to provide additional information and documents for the purposes of determining the application.

8. To whom withheld information may be disclosed and conditions in accordance with which withheld information may be disclosed

- (1) Subject to subsections (2), (3), (4), (5), (6), (7), (8) and (9), the Registrar may on an application made for the purposes of section 51(3) of the Ordinance disclose withheld information to the following persons—
 - (a) a data subject;
 - (b) a person who is authorized in writing by a data subject to obtain withheld information;
 - (c) a member of a company;
 - (d) a liquidator;
 - (e) a trustee;
 - (f) a public officer or public body;
 - (g) a scheduled person.
- (2) On an application made for the purposes of section 51(3) of the Ordinance to disclose withheld information to a data subject, the Registrar may only disclose to the data subject withheld information relating to the subject.
- (3) On an application made for the purposes of section 51(3) of the Ordinance to disclose withheld information to a person referred to in subsection (1)(b), the Registrar may only disclose to the person withheld information relating to the data subject who authorizes the person to obtain the information.
- (4) On an application made for the purposes of section 51(3) of the Ordinance to disclose withheld information to a member of a company, the Registrar may only disclose to the member withheld information in a document delivered to the Registrar for registration in respect of the company.

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- (5) Despite subsection (4), the Registrar must not disclose any withheld information under that subsection to the member if the member fails to provide the Registrar with a written statement, made by the member, confirming that the member is a member of the company concerned.
 - (6) The Registrar must not disclose any withheld information to a liquidator if the liquidator fails to provide the Registrar with a written statement, made by the liquidator, confirming that the information is required by the liquidator for the performance of their functions and that the information would be used only for the purpose.
 - (7) The Registrar must not disclose any withheld information to a trustee if the trustee fails to provide the Registrar with a written statement, made by the trustee, confirming that the information is required by the trustee for the performance of their functions and that the information would be used only for the purpose.
 - (8) The Registrar must not disclose any withheld information to a public officer or public body if the officer or body fails to provide the Registrar with a written statement, made by the officer or body, confirming that the information is required by the officer or body for the performance of their functions (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
 - (9) The Registrar must not disclose any withheld information to a scheduled person if the person fails to provide the Registrar with a written statement, made by the person, confirming that the information is required by the person for the performance of, or in relation to the performance of, the functions conferred or imposed on them under any enactment (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
-

Part 4

Application Made for Purposes of Section 58(3) of Ordinance

9. Interpretation of Part 4

In this Part—

data subject (資料當事人) means a person whose address or other personal particulars are contained in a document to which section 54(2) of the Ordinance applies;

protected information (受保護資料) has the meaning given by section 53(1) of the Ordinance.

10. Application for disclosure of protected information

An application made for the purposes of section 58(3) of the Ordinance—

- (a) must contain any information specified by the Registrar for the application; and
- (b) if the application is for disclosure of protected information to a person authorized by a data subject to obtain the information, must be accompanied by documentary proof of the authorization.

11. Powers of Registrar to require additional information and documents

The Registrar may require a person who makes an application under section 58 of the Ordinance to provide additional information and documents for the purposes of determining the application.

12. To whom protected information may be disclosed and conditions in accordance with which protected information may be disclosed

- (1) Subject to subsections (2), (3), (4), (5), (6), (7), (8) and (9), the Registrar may on an application made for the purposes of section 58(3) of the Ordinance disclose protected information to the following persons—
 - (a) a data subject;
 - (b) a person who is authorized in writing by a data subject to obtain protected information;
 - (c) a member of a company;
 - (d) a liquidator;
 - (e) a trustee;
 - (f) a public officer or public body;
 - (g) a scheduled person.
- (2) On an application made for the purposes of section 58(3) of the Ordinance to disclose protected information to a data subject, the Registrar may only disclose to the data subject protected information relating to the subject.
- (3) On an application made for the purposes of section 58(3) of the Ordinance to disclose protected information to a person referred to in subsection (1)(b), the Registrar may only disclose to the person protected information relating to the data subject who authorizes the person to obtain the information.
- (4) On an application made for the purposes of section 58(3) of the Ordinance to disclose protected information to a member of a company, the Registrar may only disclose to the member protected information in a document delivered to the Registrar for registration in respect of the company.

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Companies (Residential Addresses and Identification Numbers) Regulation

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- (5) Despite subsection (4), the Registrar must not disclose any protected information under that subsection to the member if the member fails to provide the Registrar with a written statement, made by the member, confirming that the member is a member of the company concerned.
 - (6) The Registrar must not disclose any protected information to a liquidator if the liquidator fails to provide the Registrar with a written statement, made by the liquidator, confirming that the information is required by the liquidator for the performance of their functions and that the information would be used only for the purpose.
 - (7) The Registrar must not disclose any protected information to a trustee if the trustee fails to provide the Registrar with a written statement, made by the trustee, confirming that the information is required by the trustee for the performance of their functions and that the information would be used only for the purpose.
 - (8) The Registrar must not disclose any protected information to a public officer or public body if the officer or body fails to provide the Registrar with a written statement, made by the officer or body, confirming that the information is required by the officer or body for the performance of their functions (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
 - (9) The Registrar must not disclose any protected information to a scheduled person if the person fails to provide the Registrar with a written statement, made by the person, confirming that the information is required by the person for the performance of, or in relation to the performance of, the functions conferred or imposed on them under any enactment (other than the functions of a liquidator or trustee) and that the information would be used only for the purpose.
-

Schedule

[s. 2]

Scheduled Persons

1. A body of insurance brokers approved by the Insurance Authority under section 70 of the Insurance Companies Ordinance (Cap. 41).
2. A person who is required to issue a code of practice under section 67(1) of the Insurance Companies (Cap. 41).
3. An inspector appointed under section 95 of the Trustee Ordinance (Cap. 29).
4. An inspector as defined by section 838(1) of the Ordinance.
5. A recognized clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
6. A recognized exchange company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
7. A recognized exchange controller within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).
8. A recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

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Companies (Residential Addresses and Identification Numbers) Regulation

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Secretary for Financial Services and
the Treasury

2013

附件 12

公司(不公平損害呈請)法律程序規則
(只有英文版)

Companies (Unfair Prejudice Proceedings) Rules

(Made by the Chief Justice under section 727 of the Companies Ordinance (28 of 2012) subject to the approval of the Legislative Council)

1. Commencement

These Rules come into operation on the day appointed for the commencement of the Companies Ordinance (28 of 2012) .

2. Interpretation

In these Rules—

new rules (新訂規則) means rules 4, 5, 6, 7, 8 and 9;

Registrar (司法常務官) has the meaning given by rule 4(1) of Order 1 of the Rules of the High Court (Cap. 4 sub. leg. A);

unfair prejudice petition (不公平地損害呈請) means a petition presented to the Court by a member, or a past member, of a company under section 724(1) or (3) of the Ordinance, or by the Financial Secretary under section 879(3) of the Ordinance;

Winding-up Rules (《清盤規則》) means the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

3. Application

- (1) These Rules apply to an unfair prejudice petition.
- (2) If an unfair prejudice petition includes a prayer to wind up the company, provisions of the Winding-up Rules applicable to proceedings in a winding up by the Court (with any necessary modifications that the circumstances may require) also apply to the petition.

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Companies (Unfair Prejudice Proceedings) Rules

Rule 4

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- (3) An unfair prejudice petition to which subrule (2) applies must be in the form set out in Form 2 of the Appendix to the Winding-up Rules.
- (4) If the prayer to wind up the company included in an unfair prejudice petition is removed by order of the Court, the Winding-up Rules cease to apply to the petition, and the new rules apply to the petition.
- (5) The cessation of the application of the Winding-up Rules under subrule (4) does not affect the previous application of the Winding-up Rules to the petition or anything duly done or suffered under the Winding-up Rules in respect of the petition.
- (6) If an unfair prejudice petition does not include a prayer to wind up the company, the new rules apply to the petition.
- (7) If the new rules apply to a petition under subrule (4) or (6), the rules and practice of the High Court for the time being for regulating the ordinary civil procedure of the court, so far as may be applicable and not inconsistent with the new rules, also apply to the petition.

4. Presentation of petition

- (1) An unfair prejudice petition to which the new rules apply must be in the form set out in the Schedule (with any necessary modifications that the circumstances may require).
- (2) The petition must specify the grounds on which it is presented and the terms of any order that is sought by the petitioner, and must be delivered to the Court for filing with sufficient copies for service under rule 5.
- (3) The Court is to fix a return day on which, unless the Court otherwise directs, the petitioner and any respondent (including the company) must attend before the Registrar or a judge of

the Court for directions to be given in relation to the procedure on the petition.

- (4) On fixing the return day, the Court is to return to the petitioner sealed copies of the petition for service, each endorsed with the return day and the time of hearing of the petition.

5. Service of petition

- (1) The petitioner must, at least 14 days before the return day, serve a sealed copy of the petition on the company.
- (2) For a petition under section 724(1) or (3) of the Ordinance, the petitioner must also, at least 14 days before the return day, serve a sealed copy of the petition on every respondent named in the petition.

6. Return of petition

On the return day, or at any time after it, the Court may give any directions that it thinks appropriate with respect to the following matters—

- (a) service of the petition on any person, whether in connection with the time, date and place of a further hearing, or for any other purpose;
- (b) whether any statement of claim and defence are to be delivered;
- (c) whether, and if so by what means, the petition is to be advertised;
- (d) the manner in which any evidence is to be adduced at any hearing before the judge, particularly—
- (i) the taking of evidence wholly or in part by witness statement or orally;
- (ii) the cross-examination of a person making a witness statement;

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Companies (Unfair Prejudice Proceedings) Rules

- (iii) the matters to be dealt with in evidence;
- (e) any other matter affecting the procedure on the petition or in connection with the hearing and disposal of the petition; and
- (f) any orders, including an order for a stay for any period, that the Court thinks fit, with a view to mediation or other alternative dispute resolution.

7. Drawing up of order

- (1) The petitioner, or the petitioner's solicitor, and all other persons who have appeared at the hearing of the petition must, before the expiry of the day following the day on which an order under section 725 of the Ordinance is pronounced in the Court, leave with the Registrar a draft of the order and all other documents required for the purpose of enabling the Registrar to complete the order immediately.
- (2) The Registrar may make an appointment to settle the order.

8. Service of order, etc.

- (1) Unless the Court otherwise directs, the petitioner must serve an office copy of the order on the company and on the Registrar of Companies.
- (2) If the order involves a reduction of capital or an alteration of the company's articles, those provisions of the Ordinance and of the Rules of the High Court (Cap. 4 sub. leg. A) relative to these matters are to apply as the Court may direct.

9. Advertisement of order

If the Court considers that the order should be advertised, it must give directions as to the manner and time of advertisement.

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Companies (Unfair Prejudice Proceedings) Rules

Schedule

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Schedule

[r. 4]

Petition on Ground that Members Unfairly Prejudiced

To the High Court of Hong Kong

- | | |
|--|---|
| (a) Insert full name(s) and address(es) of petitioner(s) | The petition of (a)
.....
.....
..... |
| (b) Insert full name of company subject to petition | 1. (b)
..... |
| (c) Insert date of incorporation | <i>(the company)</i> was incorporated on (c)
..... |
| (d) Insert address of registered office | 2. The registered office of the company is at (d)
.....
..... |
| (e) Insert amount of share capital and how it is divided | 3. The share capital of the company is divided into (e) shares. The amount of the capital paid up or credited as paid up is (e) \$..... |

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Companies (Unfair Prejudice Proceedings) Rules

Schedule

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4. The principal business which is carried on by the company is:

.....

(f) Set out the grounds on which the petition is presented

5. (f)

.....

.....

In these circumstances the petitioner submits that[#]:

☐ the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of [the members generally]/[one or more members (including the petitioner)]*.

☐ the company's affairs were conducted in a manner unfairly prejudicial to the interests of [the members generally at the time when the petitioner was a member of the company]/[one or more members (including the petitioner) at the time when the petitioner was a member of the company]*.

☐ [the act or omission]/[the proposed act or omission] referred to in paragraph 5 above [is]/[would be] unfairly prejudicial to the interests of [the members generally]/[one or more members (including the petitioner)]*.

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Companies (Unfair Prejudice Proceedings) Rules

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- ☐ the act or omission referred to in paragraph 5 above was unfairly prejudicial to the interests of [the members generally at the time when the petitioner was a member of the company]/[one or more members (including the petitioner) at the time when the petitioner was a member of the company]*.

Please tick the box(es) as applicable.

* Delete as applicable.

- (g) Set out the terms
of the order(s)
sought

The petitioner therefore prays as follows:

(g)
.....

or

that any other order may be made as the Court
thinks fit.

- (h) Insert the name(s)
of the intended
respondent(s)

It is intended to serve this petition on (h)
.....
.....
.....

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Companies (Unfair Prejudice Proceedings) Rules

Schedule

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Chief Justice

2012
