L.N. 24 of 2007

COMPANIES (REVISION OF ACCOUNTS AND REPORTS) REGULATION

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COMPANIES (REVISION OF ACCOUNTS AND REPORTS) REGULATION

(Made by the Chief Executive in Council under section 359A of the Companies Ordinance (Cap. 32))

PART 1

PRELIMINARY

1. Commencement

(1) Subject to subsection (2), this Regulation shall come into operation on 20 April 2007.

(2) Part 4 shall come into operation on the day on which section 64 of the Financial Reporting Council Ordinance (18 of 2006) comes into operation.

2. Interpretation

(1) In this Regulation, unless the context otherwise requires—

"audit report" (核數報告) means a report on revised accounts referred to in section 10(1) or (2);

"date of revision" (修訂日期)—

(*a*) in relation to any revised accounts, means the date on which the revised accounts are approved by the board of directors of the company under section 129B(1) or 129C(2) of the Ordinance;

(*b*) in relation to a revised directors' report, means the date on which the revised directors' report is approved by the board of directors of the company under section 129D(2) or 141D(1)(*d*) of the Ordinance;

(*c*) in relation to a revised summary financial report, means the date on which the revised summary financial report is approved by the board of directors of the listed company under section 141CF(1)(*c*) of the Ordinance;

"date of the original accounts" (原帳目日期) means the date on which the original accounts are approved by the board of directors of the company under section 129B(1) or 129C(2) of the Ordinance;

"date of the original directors' report" (原董事報告書日期) means the date on which the original directors' report is approved by the board of directors of the company under section 129D(2) or 141D(1)(*d*) 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 by the board of directors of the listed company under section 141CF(1)(*c*) of the Ordinance;

"original accounts" (原帳目) means the accounts that are the subject of revision by revised accounts;

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

"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;

"revised accounts" (經修訂帳目)—

(*a*) in relation to Part 2, means—

(i) in the case of a revision under section 141E of the Ordinance by replacement, the accounts replacing the original accounts for the purpose of the revision; or

(ii) in the case of a revision under that section by supplementary note, the original accounts, together with the supplementary note for the purpose of the revision;

(*b*) in relation to Parts 3 and 4, means—

(i) in the case of a revision under section 336A of the Ordinance by replacement, the accounts replacing the original accounts for the purpose of the revision; or

(ii) in the case of a revision under that section by supplementary note, the original accounts, together with the supplementary note for the purpose of the revision;

"revised balance sheet" (經修訂資產負債表) means—

(*a*) in the case of a revision under section 141E of the Ordinance by replacement, the balance sheet replacing the original balance sheet for the purpose of the revision; or

(*b*) in the case of a revision under that section by supplementary note, the original balance sheet, together with the supplementary note for the purpose of the revision;

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

(*a*) in the case of a revision under section 141E of the Ordinance by replacement, the directors' report replacing the original directors' report for the purpose of the revision; or

(*b*) in the case of a revision under that section by supplementary note, the original directors' report, 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 under section 141E of the Ordinance 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 under that section by supplementary note, the original summary financial report, together with the supplementary note for the purpose of the revision.

(2) In this Regulation—

(*a*) a reference to revision of any accounts or report by replacement means revision by the preparation of a replacement set of accounts or report in substitution for the accounts or report; and

(*b*) a reference to revision of any accounts or report by supplementary note means revision by the preparation of a note indicating revisions made to the accounts or report.

(3) For the purposes of this Regulation, a translation of any document, revised accounts or supplementary note is a certified translation of the document, accounts or note if—

(*a*) it is certified to be a correct translation by the person making the translation; and

(*b*) the appropriate person, referred to in paragraph 6(2) of the Companies (Forms) Regulations (Cap. 32 sub. leg. B), certifies that he believes the person making the translation is competent in translating a document into English or Chinese, as the case may be.

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

PART 2

ACCOUNTS AND REPORTS REVISED UNDER SECTION 141E OF ORDINANCE

3. Matters to be included in revised accounts

(1) A provision of the Ordinance as to the matters to be included in the accounts of a company applies to revised accounts, as it applies to the original accounts, as if the revised accounts were approved by the board of directors of the company on the date of the original accounts.

(2) Without prejudice to the generality of subsection (1), sections 123(1) and 126(1) of the Ordinance apply to revised accounts, as they apply to the original accounts, so as to require those revised accounts to give a true and fair view of the matters mentioned in those provisions.

(3) If the directors of a company cause the accounts of the company to be revised under section 141E of the Ordinance by replacement, the directors shall cause to be made in a prominent position in the revised accounts—

(*a*) a statement that the revised accounts replace the original accounts for the financial year specified in the statement;

(*b*) a statement that the revised accounts—

(i) are taken as having been approved by the board of directors on the date of the original accounts instead of 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 accounts did not, as appears to the directors, comply with the Ordinance; and

(ii) the material revisions to the accounts that are made under section 141E of the Ordinance.

(4) If the directors of a company cause the accounts of the company to be revised under section 141E of the Ordinance by supplementary note, the directors shall cause to be made in a prominent position in the supplementary note—

(*a*) a statement that the note—

(i) revises in certain respects the original accounts of the company; and

(ii) is to be treated as forming part of those accounts; and

(*b*) a statement that the revised accounts—

(i) are taken as having been approved by the board of directors on the date of the original accounts instead of the date of revision; and

(ii) accordingly do not deal with events between those 2 dates.

(5) When approving any revised accounts under section 129B(1) or 129C(2) of the Ordinance, the board of directors of the company shall cause the date of approval to be stated in—

(*a*) in the case of a revision by replacement, the revised accounts; or

(*b*) in the case of a revision by supplementary note, the supplementary note.

(6) Subject to subsection (8), a director of a company commits an offence if, as respects any revised accounts, he fails to take all reasonable steps to secure compliance with—

(*a*) subsection (3), (4) or (5);

(*b*) a provision of the Ordinance as to the matters to be included in those accounts; or

(*c*) section 123(1) or 126(1) of the Ordinance.

(7) Subject to subsection (8), if, as respects any revised accounts, a company fails to satisfy an obligation imposed on it by section 128(5) or (5A) or 129(5) or (5A) of the Ordinance, the company, and every officer of the company who is in default, commit an offence.

(8) If the shareholders of the company have agreed, for the purposes of section 141D of the Ordinance, that that section applies with respect to a financial year of that company, subsections (6) and (7) do not apply to any revised accounts for that financial year.

(9) A director of a company who commits an offence under subsection (6) is liable to imprisonment for 12 months and a fine of $300,000.

(10) A person who commits an offence under subsection (7) is liable to a fine at level 6 and, in the case of a conviction for the offence after continued failure, to a further fine of $300 for each day during which the failure is continued.

(11) A reference in subsection (1), (2), (6)(*b*) or (*c*) or (7) to a provision of the Ordinance is to be construed, where the provision has been amended after the date of the original accounts but before the date of revision, as a reference to the provision as in force at the date of the original accounts.

4. Matters to be included in revised directors' reports

(1) A provision of the Ordinance 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 was approved by the board of 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 under section 141E of the Ordinance by replacement, the directors shall cause to be made in a prominent position in the revised directors' report—

(*a*) a statement that the revised directors' report replaces the original directors' report for the financial year specified in the statement;

(*b*) a statement that the revised directors' report—

(i) is taken as having been approved by the board of directors on the date of the original directors' report instead of 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 that are made under section 141E of the Ordinance.

(3) If the directors of a company make revisions to a directors' report under section 141E of the Ordinance by supplementary note, the directors shall cause to be made in a prominent position in the supplementary 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 board of directors on the date of the original directors' report instead of the date of revision; and
(ii) accordingly does not deal with events between those 2 dates.

(4) When approving a revised directors' report under section 129D(2) or 141D(1)(*d*) of the Ordinance, the board of directors of the company shall cause the date of approval to be stated in—
(*a*) in the case of a revision by replacement, the revised directors' report; or
(*b*) in the case of a revision by supplementary note, the supplementary note.

(5) A director of a company commits an offence if, as respects a revised directors' report, he fails to take all reasonable steps to secure compliance with—
(*a*) subsection (2), (3) or (4); or
(*b*) a provision of the Ordinance as to the matters to be included in that directors' report.

(6) Subject to subsection (7), a director of a company who commits an offence under subsection (5) is liable to imprisonment for 6 months and a fine of $150,000.

(7) If the shareholders of the company have agreed, for the purposes of section 141D of the Ordinance, that that section applies with respect to a financial year of that company, a director of the company who commits an offence under subsection (5) as respects a revised directors' report for that financial year is liable to imprisonment for 6 months and a fine at level 5.

(8) A reference in subsection (1) or (5)(*b*) to a provision of the Ordinance is to be construed, where 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.

5. Matters to be included in revised summary financial reports

(1) A provision of the Ordinance or the 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 was approved by the board of directors of the listed company on the date of the original summary financial report.

(2) If the directors of a listed company make revisions to a summary financial report under section 141E of the Ordinance by replacement, the directors shall cause to be made 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 board of directors on the date of the original summary financial report instead of 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 that are made under section 141E of the Ordinance.

(3) If the directors of a listed company make revisions to a summary financial report under section 141E of the Ordinance by supplementary note, the directors shall cause to be made in a prominent position in the supplementary 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—

(i) is taken as having been approved by the board of directors on the date of the original summary financial report instead of the date of revision; and

(ii) accordingly does not deal with events between those 2 dates.

(4) When approving a revised summary financial report under section 141CF(1)(*c*) of the Ordinance, the board of directors of the listed company shall cause the date of approval to be stated in—

(*a*) in the case of a revision by replacement, the revised summary financial report; or

(*b*) in the case of a revision by supplementary note, the supplementary note.

(5) A revised summary financial report of a listed company is not to be issued, circulated or published by the listed company to any other person unless the revised summary financial report—

(*a*) complies with subsection (2) or (3);

(*b*) complies with a provision of the Ordinance or the relevant Regulation as to the matters to be included in that summary financial report; and

(*c*) has the date of approval stated in the revised summary financial report or the supplementary note in accordance with subsection (4).

(6) If subsection (5) is contravened, then unless there is reasonable excuse—

(*a*) the listed company commits an offence and is liable to a fine of $300,000; and

(*b*) every officer of the listed company commits an offence and each is liable to imprisonment for 12 months and a fine of $300,000.

(7) If there is a conviction for an offence under this section, the court may—

(*a*) by order prohibit the listed company and any person from issuing, circulating or publishing the revised summary financial report concerned to any other person for such period as the court specifies; and

(*b*) in making the order impose conditions.

(8) In this section, "relevant Regulation" (《有關規例》) means the Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32 sub. leg. M).

(9) A reference in subsection (1) or (5)(*b*) to a provision of the Ordinance or the relevant Regulation is to be construed, where 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.

6. Approval and signature of revised accounts

(1) Section 129B of the Ordinance applies to a revised balance sheet, as it applies to the original balance sheet, except that, in the case of a revision by supplementary note, it applies as if it required a signature on the supplementary note instead of on the balance sheet of the company.

(2) A revised balance sheet is not to be issued, circulated or published unless the revised balance sheet has been signed as required by section 129B of the Ordinance.

(3) If subsection (2) is contravened, the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine at level 4.

(4) Section 129C of the Ordinance applies in relation to a revised balance sheet except that—

(*a*) both of the following are required to be annexed to the revised balance sheet—

(i) the profit and loss account or, where the profit and loss account has been revised under section 141E of the Ordinance, the profit and loss account so revised;

(ii) so far as not incorporated in the balance sheet or profit and loss account, any group accounts laid before the company in general meeting or, where such group accounts have been revised under section 141E of the Ordinance, such group accounts so revised; and

(*b*) the audit report on the revised accounts, instead of the auditor's report on the original accounts, is required to be attached to the revised balance sheet.

(5) A revised balance sheet is not to be issued, circulated or published—

(*a*) without having annexed to it—

(i) the profit and loss account or revised profit and loss account; and

(ii) any group accounts or revised group accounts,

required by section 129C of the Ordinance to be so annexed; and

(*b*) without having attached to it the audit report on the revised accounts.

(6) If subsection (5) is contravened, the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine of $150,000.

(7) In this section, "original balance sheet" (原資產負債表) means the balance sheet that is the subject of revision by a revised balance sheet.

7. Approval and signature of revised directors' reports

(1) Section 129D(2) or 141D(1)(*d*) 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, it applies as if it required a signature on the supplementary note instead of on the directors' report.

(2) A director of a company commits an offence if, as respects a revised directors' report, he fails to take all reasonable steps to secure compliance with—

(*a*) section 129D(2) of the Ordinance; or

(*b*) section 141D(1)(*d*) of the Ordinance.

(3) A director of a company—

(*a*) who commits an offence under subsection (2)(*a*) is liable to imprisonment for 6 months and a fine of $150,000; or

(*b*) who commits an offence under subsection (2)(*b*) is liable to imprisonment for 6 months and a fine at level 5.

8. Approval of revised summary financial reports

(1) Section 141CF(1)(*c*) of the Ordinance applies to a revised summary financial report, as it applies to the original summary financial report.

(2) A revised summary financial report of a listed company is not to be issued, circulated or published by the listed company to any other person unless the revised summary financial report complies with section 141CF(1)(*c*) of the Ordinance.

(3) If subsection (2) is contravened, then unless there is reasonable excuse—

(*a*) the listed company commits an offence and is liable to a fine of $300,000; and

(*b*) every officer of the listed company commits an offence and each is liable to imprisonment for 12 months and a fine of $300,000.

9. Effect of revision after approval of revised accounts, directors' reports or summary financial reports

(1) On the board of directors of a company approving any revised accounts under section 129B(1) or 129C(2) of the Ordinance, and complying with section 3(3) or (4), as the case may require, and with section 3(5), the Ordinance has effect with respect to the revised accounts as if the revised accounts were, as from the date of revision, the accounts of the company in place of the original accounts.

(2) Without prejudice to the generality of subsection (1), if, as at the date of revision, section 109, 122(1) or (2), 124(1) or 129G(2) of the Ordinance has yet to be complied with, the revised accounts are, as from that date, the accounts of the company for the relevant financial year for the purposes of that section.

(3) On the board of directors of a company approving a revised directors' report under section 129D(2) or 141D(1)(*d*) of the Ordinance, and complying with section 4(2) or (3), as the case may require, and with section 4(4), the Ordinance has effect with respect to the revised directors' report as if the revised directors' report was, as from the date of revision, the directors' report of the company in place of the original directors' report.

(4) Without prejudice to the generality of subsection (3), if, as at the date of revision, section 109, 129D(1) or 129G(2) of the Ordinance has yet to be complied with, the revised directors' report is, as from that date, the directors' report for the relevant financial year for the purposes of that section.

(5) On the board of directors of a listed company approving a revised summary financial report under section 141CF(1)(*c*) of the Ordinance, and complying with section 5(2) or (3), as the case may require, and with section 5(4), the Ordinance has effect with respect to the revised summary financial report as if the revised summary financial report was, as from the date of revision, the summary financial report of the listed company in place of the original summary financial report.

(6) Without prejudice to the generality of subsection (5), the revised summary financial report is, as from the date of revision, the summary financial report for the purposes of sections 141CC and 141CE of the Ordinance.

10. Audit report on revised accounts

(1) Subject to subsection (2), the current auditor of a company shall make a report to the members of the company on the revised accounts.

(2) Where the auditors' report on the original accounts has been 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 accounts is to be made by that person if the person—

(*a*) agrees to do so; and

(*b*) would be qualified under the Professional Accountants Ordinance (Cap. 50) for, and would not be disqualified under section 140 of the Ordinance from, appointment as auditor of the company.

(3) An audit report on any revised accounts—

(*a*) is to be read before the company in the general meeting at which the revised accounts are laid; and

(*b*) is open to inspection by any member.

(4) Subject to subsection (5), an audit report on any revised accounts is to state whether in the opinion of the person making the audit report—

(*a*) in the case of a company that is entitled to avail itself, and has availed itself, of the benefit of Part III of the Tenth Schedule to the Ordinance—

(i) the revised accounts have been properly prepared in accordance with the provisions of the Ordinance applicable to the company; and

(ii) on that basis, the revised accounts give a true and fair view, seen as at the date of the original accounts, with respect to the matters set out in section 141(3)(*b*)(i), (ii) or (iii) of the Ordinance; or

(*b*) in the case of any other company—

(i) the revised accounts have been properly prepared in accordance with the provisions of the Ordinance; and

(ii) the revised accounts give a true and fair view, seen as at the date of the original accounts, with respect to the matters set out in section 141(3)(*a*)(i), (ii) or (iii) of the Ordinance.

(5) If the shareholders of the company have agreed, for the purposes of section 141D of the Ordinance, that that section applies with respect to a financial year of that company, an audit report on any revised accounts for that financial year is to state—

(*a*) whether or not the person making the audit report has obtained all the information and explanations that he has required; and

(*b*) in the case where the audit report refers to a revised balance sheet, whether, in that person's opinion, the revised balance sheet is properly drawn up so as to exhibit a true and correct view, seen as at the date of the original balance sheet, of the state of the company's affairs according to the best of his information and the explanations given to him, and as shown by the books of the company.

(6) Section 141(4), (5), (6), (7) and (8) of the Ordinance—

(*a*) applies to an audit report on any revised accounts, as it applies to a report made by an auditor under that section 141 on the original accounts; and

(*b*) applies to a person making an audit report on any revised accounts, as it applies to an auditor making a report under that section 141 on the original accounts.

(7) In this section—

"date of the original balance sheet" (原資產負債表日期) means the date on which the original balance sheet is approved by the board of directors of the company under section 129B(1) of the Ordinance;

"original balance sheet" (原資產負債表) means the balance sheet that is the subject of revision by a revised balance sheet.

(8) A reference in subsection (4) to a provision of the Ordinance is to be construed, where the provision has been amended after the date of the original accounts but before the date of revision, as a reference to the provision as in force at the date of the original accounts.

11. Supplementary provisions for audit report on revised accounts

(1) Section 133(1) of the Ordinance applies to a person making an audit report on any revised accounts of a company, as it applies to the auditors of the company, so that a duty towards the auditors imposed on a person by that section is also imposed on that person towards the person making an audit report on the revised accounts.

(2) If a subsidiary or holding company, as mentioned in section 133 of the Ordinance, fails to comply with subsection (1) of that section as having effect under this Part, the subsidiary or holding company, and every officer of it who is in default, commit an offence, and each is liable to a fine at level 3.

(3) If an auditor of a subsidiary, as mentioned in section 133 of the Ordinance, fails without reasonable excuse to comply with subsection (1)(*a*) of that section as having effect under this Part, the auditor commits an offence and is liable to a fine at level 3.

(4) An officer of a company shall not knowingly or recklessly make to a person making an audit report a relevant statement that is misleading, false or deceptive in a material particular.

(5) If an officer of a company contravenes subsection (4), he commits an offence and is liable—

(*a*) on conviction on indictment to imprisonment for 2 years and a fine of $150,000; or

(*b*) on summary conviction to imprisonment for 6 months and a fine at level 5.

(6) In this section, "relevant statement" (相關陳述), in relation to a person making an audit report, means an oral or written statement that conveys, or purports to convey, any information or explanation that the person requires, or is entitled to require, as a person making an audit report.

12. Distribution of revised accounts or directors' reports

(1) If the directors of a company cause the accounts of the company to be revised, or make revisions to a directors' report, under section 141E of the Ordinance, the company shall, within 28 days after the date of revision—

(*a*) send to every person entitled to be sent a copy of the original accounts or directors' report under section 129G of the Ordinance—

(i) in the case of a revision of accounts by replacement, a copy of the revised accounts together with a copy of the audit report on those accounts;

(ii) in the case of a revision of a directors' report by replacement, a copy of the revised directors' report;
(iii) in the case of a revision of accounts by supplementary note, a copy of the note together with a copy of the audit report on the revised accounts; or
(iv) in the case of a revision of a directors' report by supplementary note, a copy of the note; and

(*b*) send a copy of the revised accounts together with a copy of the audit report on those accounts, or a copy of the revised directors' report, as the case may be, to every other person who, at the date of revision—
(i) is—
(A) a member of the company;
(B) a holder of a debenture of the company; or
(C) a person entitled to receive notices of general meetings of the company; and
(ii) is not a person to whom the company shall send a copy of a summary financial report in compliance with section 141CA of the Ordinance.

(2) Subsection (1)(*b*) does not require a company not having a share capital to send a copy of any document mentioned in that subsection to a member of the company, or a holder of a debenture of the company, who is not entitled to receive notices of general meetings of the company.

(3) Subsection (1)(*b*) does not require a company to send a copy of any document mentioned in that subsection—

(*a*) to a member of the company who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;
(*b*) to a holder of a debenture of the company who is not entitled to receive notices of general meetings of the company and of whose address the company is unaware;
(*c*) in the case of joint holders of any shares or debentures none of whom are entitled to receive notices of general meetings of the company, to more than one of the joint holders; or
(*d*) in the case of joint holders of any shares or debentures some of whom are, and some of whom are not, entitled to receive notices of general meetings of the company, to the joint holders who are not so entitled.

(4) If a company fails to comply with subsection (1), the company, and every officer of the company who is in default, commit an offence, and each is liable to a fine at level 3.

(5) In this section, "summary financial report" (財務摘要報告) includes a revised summary financial report.

13. Notifying recipients of summary financial reports after revision of accounts

(1) This section applies if—

(*a*) the directors of a listed company cause the accounts of the listed company to be revised under section 141E of the Ordinance; and

(*b*) a copy of the summary financial report concerned is sent to a person in compliance with section 141CA of the Ordinance.

(2) If the directors have not made revisions to the summary financial report under section 141E of the Ordinance, the listed company shall, within 28 days after the date of revision in relation to the revised accounts, send a note that complies with subsection (3), together with a copy of the audit report on the revised accounts, to—

(*a*) every person who was sent a copy of the summary financial report; and

(*b*) every person to whom the listed company shall, as at the date of revision in relation to the revised accounts, send a copy of the summary financial report for the current financial year in compliance with section 141CA of the Ordinance.

(3) The note is to state that the accounts of the listed 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 revisions to the summary financial report under section 141E of the Ordinance, the listed company shall, within 28 days after the date of revision in relation to the revised accounts, send a copy of the revised summary financial report, together with a statement of the revisions made and their effect, to—

(*a*) every person who was sent a copy of the summary financial report concerned; and

(*b*) every person to whom the listed company shall, as at the date of revision in relation to the revised accounts, send a copy of the summary financial report for the current financial year in compliance with section 141CA of the Ordinance.

(5) If a listed company fails to comply with subsection (2) or (4), the listed company, and every officer of the listed company who is in default, commit an offence, and each is liable to a fine at level 3 and, in the case of a conviction for the offence after continued failure, to a further fine of $300 for each day during which the failure is continued.

14. Documents sent under section 12 or 13 by use of computer network

(1) Subject to subsection (2), a listed company is taken as having sent a copy of a specified document to a person in compliance with section 12 or 13 if—

(*a*) pursuant to a notice of intent or other notice that is in force, the person has agreed with the listed company that, instead of being sent a copy of the document, he is to have access to the document on a computer network to which he, or any other person entitled to be sent a copy of the document, has access; and

(*b*) the person is notified, in a manner for the time being agreed between the person and the listed company, of—

(i) the publication of the document on the computer network;

(ii) the address of the computer network;

(iii) the location on the computer network where the document may be accessed; and

(iv) how the document may be so accessed.

(2) The copy is not to be taken as having been sent to the person in compliance with section 12 or 13 within 28 days after the date of revision concerned unless—

(*a*) the notification for the purposes of subsection (1)(*b*) is given within 28 days after that date; and

(*b*) the document is published on the computer network throughout the period beginning on a date falling within 28 days after that date and ending on the date of the following general meeting in which relevant financial documents are required to be laid before the listed company under the Ordinance or in accordance with a direction of the court.

(3) Subsection (2) does not invalidate the proceedings of a general meeting if—

(*a*) a specified document that is required to be published on the computer network under paragraph (*b*) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and

(*b*) the failure to publish the document throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the listed company to prevent or avoid.

(4) In this section, "specified document" (指明文件) means any accounts, report, note or statement.

15. Laying of revised accounts or directors' reports before general meetings

(1) If—

(*a*) the directors of a company cause the accounts of the company to be revised, or make revisions to a directors' report, under section 141E of the Ordinance; and

(*b*) the original accounts or directors' report has been laid before the company at its general meeting under section 122, 124 or 129D of the Ordinance,

the directors shall lay before the first general meeting of the company held after the date of revision the revised accounts together with the audit report on those accounts, or the revised directors' report, as the case may be.

(2) If, as respects any revised accounts, a director of the company fails to take all reasonable steps to secure compliance with subsection (1), he commits an offence and is liable to imprisonment for 12 months and a fine of $300,000.

(3) If, as respects a revised directors' report, a director of the company fails to take all reasonable steps to secure compliance with subsection (1), he commits an offence and is liable to imprisonment for 6 months and a fine of $150,000.

16. Revised accounts or directors' reports to be forwarded to Registrar

(1) This section applies if—

(*a*) the directors of a company cause the accounts of the company to be revised, or make revisions to a directors' report, under section 141E of the Ordinance; and

(*b*) a copy of the original accounts or directors' report has been forwarded to the Registrar under section 109 of the Ordinance.

(2) Within 28 days after the date of revision, the company shall—

(*a*) forward to the Registrar—

(i) in the case of a revision of accounts by replacement, a certified copy of the revised accounts together with a certified copy of the audit report on those accounts;

(ii) in the case of a revision of a directors' report by replacement, a certified copy of the revised directors' report;

(iii) in the case of a revision of accounts by supplementary note, a certified copy of the note together with a certified copy of the audit report on those accounts; or

(iv) in the case of a revision of a directors' report by supplementary note, a certified copy of the note; and

(*b*) if a document forwarded to the Registrar is not in English or Chinese, annex to the document a certified translation of the document.

(3) If a company fails to comply with subsection (2), the company, and every officer and shadow director of the company who is in default, commit an offence, and each is liable to a fine at level 5 and, in the case of a conviction for the offence after continued failure, to a further fine of $700 for each day during which the failure is continued.

(4) In this section, "certified copy" (核證副本), in relation to any accounts, report or note, means a copy, certified by a director or the manager or the secretary of the company to be a true copy of the accounts, report or note.

PART 3

ACCOUNTS OF OVERSEA COMPANIES REVISED UNDER SECTION 336A OF ORDINANCE

17. Delivery of revised accounts, etc. to Registrar

(1) If the directors of an oversea company have caused the accounts of the company to be revised under section 336A of the Ordinance, the company shall comply with subsection (2) or (3) within 28 days after whichever is the earlier of the following—

(*a*) the revised accounts are published;

(*b*) copies of the revised accounts are delivered to a person in whose office the revised accounts may be inspected as of right by members of the public.

(2) In the case of a revision by replacement, the oversea company shall—

(*a*) cause to be made in a prominent position in the revised accounts—

(i) a statement that the revised accounts replace the original accounts for the financial year specified in the statement; and

(ii) a statement as to—

(A) the respects in which the original accounts did not, as appears to the directors, comply with the relevant requirements; and

(B) the material revisions to the accounts that are made under section 336A of the Ordinance;

(*b*) deliver to the Registrar for registration—

(i) a certified copy of the revised accounts that comply with the relevant requirements or, if the revised accounts are not in English or Chinese, a certified translation of the revised accounts, in English or Chinese, that comply with the relevant requirements; and

(ii) a certified copy of the auditors' report on the revised accounts that comply with the relevant requirements or, if the auditors' report is not in English or Chinese, a certified translation of the auditors' report, in English or Chinese; and

(*c*) where the directors of the company have made consequential revisions to the directors' report concerned under section 336A of the Ordinance, also deliver to the Registrar for registration—

(i) a certified copy of the revised directors' report; or

(ii) if the revised directors' report is not in English or Chinese, a certified translation of the revised directors' report, in English or Chinese.

(3) In the case of a revision by supplementary note, the oversea company shall—

(*a*) cause to be made in a prominent position in the supplementary note a statement that the note—

(i) revises in certain respects the original accounts of the oversea company; and

(ii) is to be treated as forming part of those accounts;

(*b*) deliver to the Registrar for registration—

(i) a certified copy of the supplementary note that complies with the relevant requirements or, if the supplementary note is not in English or Chinese, a certified translation of the supplementary note, in English or Chinese, that complies with the relevant requirements; and

(ii) a certified copy of the auditors' report on the revised accounts that comply with the relevant requirements or, if the auditors' report is not in English or Chinese, a certified translation of the auditors' report, in English or Chinese; and

(*c*) where the directors of the company have made consequential revisions to the directors' report concerned under section 336A of the Ordinance, also deliver to the Registrar for registration—

(i) a certified copy of the revised directors' report; or

(ii) if the revised directors' report is not in English or Chinese, a certified translation of the revised directors' report, in English or Chinese.

(4) If an oversea company fails to comply with this section, the company, and every officer or agent of the company who authorizes or permits the default, commit an offence, and each is liable to a fine at level 5 and, in the case of a conviction for the offence after continued failure, to a further fine of $700 for each day during which the failure is continued.

(5) In this section—

"certified copy" (核證副本), in relation to any revised accounts, supplementary note or report, means a copy of the accounts, note or report certified as a true copy of the accounts, note or report by the appropriate person referred to in paragraph 3(2) of the Companies (Forms) Regulations (Cap. 32 sub. leg. B);

"relevant requirements" (有關規定) has the meaning assigned to it by section 336A(4) of the Ordinance.

18. Effect of revision after delivery of revised accounts, etc. to Registrar

(1) If an oversea company complies with section 17 with respect to any revised accounts and revised directors' report, Part XI of the Ordinance has effect with respect to the revised accounts and revised directors' report as if the revised accounts and revised directors' report were, as from the date of their registration with the Registrar, the accounts and directors' report of the company in place of the original accounts and original directors' report.

(2) Without prejudice to the generality of subsection (1), if, as at the date of registration of the revised accounts with the Registrar, section 336 of the Ordinance has yet to be complied with, the revised accounts and revised directors' report are, as from that date, the accounts and directors' report of the oversea company for the relevant financial year for the purposes of that section.

19. Expiry of Part 3

This Part shall expire at the end of the day immediately before the day on which Part 4 comes into operation.

PART 4

ACCOUNTS OF NON-HONG KONG COMPANIES REVISED UNDER SECTION 336A OF ORDINANCE

20. Delivery of revised accounts to Registrar

(1) If the directors of a non-Hong Kong company have caused the accounts of the company to be revised under section 336A of the Ordinance, the company shall comply with subsection (2) or (3) within 28 days after whichever is the earlier of the following—

(*a*) the revised accounts are published;

(*b*) copies of the revised accounts are delivered to a person in whose office the revised accounts may be inspected as of right by members of the public.

(2) In the case of a revision by replacement, the non-Hong Kong company shall—

(*a*) cause to be made in a prominent position in the revised accounts—

(i) a statement that the revised accounts replace the original accounts for the financial year specified in the statement; and

(ii) a statement as to—

(A) the respects in which the original accounts did not, as appears to the directors, comply with the relevant requirements; and

(B) the material revisions to the accounts that are made under section 336A of the Ordinance; and

(*b*) deliver to the Registrar for registration—

(i) a certified copy of the revised accounts that comply with the relevant requirements; or

(ii) if the revised accounts are not in English or Chinese, a certified translation of the revised accounts, in English or Chinese, that comply with the relevant requirements.

(3) In the case of a revision by supplementary note, the non-Hong Kong company shall—

(*a*) cause to be made in a prominent position in the supplementary note a statement that the note—

(i) revises in certain respects the original accounts of the non-Hong Kong company; and

(ii) is to be treated as forming part of those accounts; and

(*b*) deliver to the Registrar for registration—

(i) a certified copy of the supplementary note that complies with the relevant requirements; or

(ii) if the supplementary note is not in English or Chinese, a certified translation of the supplementary note, in English or Chinese, that complies with the relevant requirements.

(4) If a non-Hong Kong company fails to comply with this section, the company, and every officer or agent of the company who authorizes or permits the default, commit an offence, and each is liable to a fine at level 5 and, in the case of a conviction for the offence after continued failure, to a further fine of $700 for each day during which the failure is continued.

(5) In this section—

"certified copy" (核證副本), in relation to any revised accounts or supplementary note, means a copy of the accounts or note certified as a true copy of the accounts or note by the appropriate person referred to in paragraph 3(2) of the Companies (Forms) Regulations (Cap. 32 sub. leg. B);

"relevant requirements" (有關規定) has the meaning assigned to it by section 336A(4) of the Ordinance.

21. Effect of revision after delivery of revised accounts to Registrar

(1) If a non-Hong Kong company complies with section 20 with respect to any revised accounts, Part XI of the Ordinance has effect with respect to the revised accounts as if the revised accounts were, as from the date of their registration with the Registrar, the accounts of the company in place of the original accounts.

(2) Without prejudice to the generality of subsection (1), if, as at the date of registration of the revised accounts with the Registrar, section 336 of the Ordinance has yet to be complied with, the revised accounts are, as from that date, the accounts of the non-Hong Kong company for the relevant financial year for the purposes of that section.

PART 5

MISCELLANEOUS

22. Defences

(1) If a person is charged under section 3(6), 4(5), 7(2) or 15(2) or (3) for failure to take all reasonable steps to secure compliance with the relevant provision, it is a defence to prove that he had reasonable ground to believe, and did believe, that a competent and reliable person—

(*a*) was charged with the duty of seeing that provision was complied with; and

(*b*) was in a position to discharge that duty.

(2) In this section, "relevant provision" (有關條文) means a provision of this Regulation or of the Ordinance.

23. No imprisonment for offence unless committed wilfully

Unless satisfied that the offence was committed wilfully, a court shall not sentence a person to imprisonment for an offence under section 3(6), 4(5), 7(2) or 15(2) or (3).

LAM Chik-ting, Tony
Clerk to the Executive Council

COUNCIL CHAMBER
6 February 2007

Explanatory Note

The principal object of this Regulation is to provide for the application of the Companies Ordinance (Cap. 32) ("Ordinance") in relation to—

(*a*) accounts, directors' reports and summary financial reports that have been revised under section 141E of the Ordinance; and

(*b*) accounts and directors' reports that have been revised—

(i) under section 336A of the Ordinance applying to oversea companies; and

(ii) under section 336A of the Ordinance applying to non-Hong Kong companies (when it replaces the section 336A mentioned in sub-subparagraph (i)).

2. Part 1 contains preliminary provisions. Section 2 defines the terms as used in the Regulation.

3. Part 2 deals with accounts, directors' reports and summary financial reports that have been revised under section 141E of the Ordinance. In particular—

(*a*) section 3 provides for the application, in relation to any accounts so revised, of a provision of the Ordinance as to the matters to be included in accounts and requires the directors of a company to include in such revised accounts certain information on the revision;

(*b*) section 4 provides for the application, in relation to a directors' report so revised, of a provision of the Ordinance as to the matters to be included in directors' reports and requires the directors of a company to include in such a revised directors' report certain information on the revision;

(*c*) section 5 provides for the application, in relation to a summary financial report so revised, of a provision of the Ordinance and the Companies (Summary Financial Reports of Listed Companies) Regulation (Cap. 32 sub. leg. M) as to the matters to be included in summary financial reports and requires the directors of a listed company to include in such a revised summary financial report certain information on the revision;

(*d*) section 6 provides for the application, in relation to a balance sheet so revised, of sections 129B and 129C of the Ordinance and prohibits the issue of such a revised balance sheet that has not complied with those sections;

(*e*) section 7 provides for the application, in relation to a directors' report so revised, of sections 129D(2) and 141D(1)(*d*) of the Ordinance;

(*f*) section 8 provides for the application, in relation to a summary financial report so revised, of section 141CF(1)(*c*) of the Ordinance and prohibits the issue of such a revised summary financial report that has not complied with that section;

(*g*) section 9 provides that the Ordinance has effect with respect to any accounts, directors' report and summary financial report so revised;

(*h*) section 10 sets out the requirements for an audit report to be made on accounts so revised;

(*i*) section 12 sets out the requirements for a company to distribute any accounts or directors' report so revised;

(*j*) section 13 sets out the requirements for a listed company to notify recipients of a summary financial report after accounts have been so revised, whether or not the summary financial report has also been so revised;

(*k*) section 15 sets out the requirements for the directors of a company to lay before a general meeting of the company any accounts or directors' report so revised; and

(*l*) section 16 requires a company to forward to the Registrar of Companies ("Registrar") a copy of any accounts or directors' report so revised that has been certified in the manner specified in the Regulation.

4. Part 3 deals with accounts that have been revised under section 336A of the Ordinance applying to oversea companies. In particular—

(*a*) section 17 requires an oversea company to include in any accounts so revised certain information on the revision and sets out the requirements for the oversea company to deliver to the Registrar for registration a copy of such revised accounts, of the auditors' report on the revised accounts, and of the revised directors' report, that have been certified in the manner specified in the Regulation;

(*b*) section 18 provides that Part XI of the Ordinance has effect with respect to any accounts and directors' reports so revised; and

(*c*) section 19 provides that Part 3 shall expire immediately before the commencement of Part 4.

5. Part 4 deals with accounts that have been revised under section 336A of the Ordinance applying to non-Hong Kong companies. That Part will come into operation when section 336A mentioned in paragraph 4 is replaced by section 336A of the Ordinance applying to non-Hong Kong companies. In particular—

(*a*) section 20 requires a non-Hong Kong company to include in any accounts so revised certain information on the revision and sets out the requirements for the non-Hong Kong company to deliver to the Registrar for registration a copy of such revised accounts that has been certified in the manner specified in the Regulation; and

(*b*) section 21 provides that Part XI of the Ordinance has effect with respect to any accounts so revised.

6. Part 5 contains miscellaneous provisions. In particular, section 22 provides for a defence for a charge under section 3(6), 4(5), 7(2) or 15(2) or (3).