

Explanatory Note

This Regulation prescribes the Hong Kong Institute of Certified Public Accountants for the purposes of section 380(8)(a) of the Companies Ordinance (Cap.622). Statements of standard accounting practice issued or specified by a body so prescribed are the accounting standards for the purposes of section 380 of that Ordinance.

COMPANIES (DIRECTORS' REPORT) REGULATION (CAP.622D)

1. Commencement

This Regulation comes into operation on the day on which section 452(3) of the Companies Ordinance (Cap.622) comes into operation.

2. Interpretation

In this Regulation—

directors' report (董事報告) means—

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

parent company (母公司) means a parent undertaking that is a company;

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

specified undertaking (指明企業), in relation to a company, means—

- (a) a parent company of the company;
- (b) a subsidiary undertaking of the company; or
- (c) a subsidiary undertaking of the company's parent company.

3. Directors' interests

- (1) A directors' report for a financial year must contain a statement that complies with subsection (3) if, at the end of the financial year, there subsists arrangements—
 - (a) to which the company or a specified undertaking of the company is a party; and
 - (b) whose objects are, or one of whose objects is, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.
- (2) A directors' report for a financial year must contain a statement that complies with subsection (3) if at any time in the financial year there have subsisted arrangements—
 - (a) to which the company or a specified undertaking of the company was a party; and
 - (b) whose objects were, or one of whose objects was, to enable directors of the company to acquire benefits by means of the acquisition of shares in, or debentures of, the company or any other body corporate.

- (3) The statement must—
- (a) explain the effect of the arrangements referred to in subsection (1) or (2); and
 - (b) give the names of the persons who at any time in that financial year were directors of the company and held, or whose nominees held, shares or debentures acquired under the arrangements.
- (3A) Subsections (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.
- (4) In this section—
shares (股份) has the meaning given by section 1 of Schedule 1 to the Ordinance.

4. Donations

- (1) If a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong)—
- (a) has no subsidiary undertakings; and
 - (b) has in a financial year made donations for charitable or other purposes to a total amount of not less than \$10,000, a directors' report for the financial year must state the total amount of those donations.
- (2) If—
- (a) a company (not being the wholly owned subsidiary of a company incorporated in Hong Kong) has subsidiary undertakings; and
 - (b) the company has in a financial year made donations (whether on its own or by its subsidiary undertakings) for charitable or other purposes to a total amount of not less than \$10,000,
- a directors' report for the financial year must state the total amount of those donations.
- (3) Subsections (1) and (2) do not apply in respect of a company that falls within the reporting exemption for the financial year.
- (4) For the purposes of subsections (1) and (2)—
wholly owned subsidiary (全資附屬公司) is to be construed in accordance with section 357(3) of the Ordinance.

5. Shares issued

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

- (a) the reason for making the issue;
- (b) the classes of shares issued; and
- (c) for each class of shares, the number of shares issued and the consideration received by the company for the issue.

5A. Debentures issued

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

- (a) the reason for making the issue;
- (b) the classes of debentures issued; and
- (c) for each class of debentures, the amount issued and the consideration received by the company for the issue.

6. Equity-linked agreements

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

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

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

7. Recommended dividend

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

8. Reasons for resignation, etc.

- (1) This section applies if—
- (a) a director of a company has in a financial year resigned from the office or refused to stand for re-election to the office; and
 - (b) the company has received a notice in writing from the director specifying that the resignation or refusal is due to reasons relating to the affairs of the company (whether or not other reasons are specified).
- (2) A directors' report for the financial year must contain a summary of the reasons relating to the affairs of the company.
- (3) This section does not apply in respect of a company that falls within the reporting exemption for the financial year.

9. Permitted indemnity provision

- (1) If, when a directors' report prepared by the directors of a company is approved in a financial year of the company in accordance with section 391(1)(a) of the Ordinance, a permitted indemnity provision (whether made by the company or otherwise) is in force for the benefit of one or more directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision is in force as required by section 470 of the Ordinance.

- (2) If, at any time in the financial year to which a directors' report prepared by the directors of a company relates, a permitted indemnity provision (whether made by the company or otherwise) was in force for the benefit of one or more persons who were then directors of the company, or of its associated company, the directors' report for the financial year must contain a statement that the permitted indemnity provision was in force as required by section 470 of the Ordinance.

- (3) In this section—

permitted indemnity provision (獲准許的彌償條文), in relation to a company, means a provision that—

- (a) provides for indemnity against liability incurred by a director of the company to a third party; and
- (b) meets the requirements specified in section 469(2) of the Ordinance;

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

10. Material interests in transaction, arrangement or contract

- (1) A directors' report for a financial year of a company must state the particulars of any transaction, arrangement or contract—
- (a) entered into by a specified undertaking of the company; and
 - (b) in which a person who at any time in the financial year of the company 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) the fact that the transaction, arrangement or contract was entered into or subsisted in the financial year;
 - (c) the names of the parties to the transaction, arrangement or contract;
 - (d) the name of the director having the material interest and the nature of that interest; and
 - (e) (if the director is treated as having the material 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, a director of a public company is treated as having a material interest in a transaction, arrangement or contract entered into by a specified undertaking of the company if a connected entity of that director has a material interest in that transaction, arrangement or contract.
- (4) In this section, a reference to a transaction, arrangement or contract is a reference to a transaction, arrangement or contract that is significant in relation to the company's business.

PART 3

DECISION-TAKING BY MEMBERS

DIVISION 1

ORGANIZATION OF GENERAL MEETINGS

38. General meetings

- (1) Subject to sections 611, 612 and 613 of the Ordinance, the company must, in respect of each financial year of the company, hold a general meeting as its annual general meeting in accordance with section 610 of the Ordinance.
- (2) The directors may, if they think fit, call a general meeting.
- (3) If the directors are required to call a general meeting under section 566 of the Ordinance, they must call it in accordance with section 567 of the Ordinance.
- (4) If the directors do not call a general meeting in accordance with section 567 of the Ordinance, the members who requested the meeting, or any of them representing more than one half of the total voting rights of all of them, may themselves call a general meeting in accordance with section 568 of the Ordinance.

39. Notice of general meetings

- (1) An annual general meeting must be called by notice of at least 21 days in writing.
- (2) A general meeting other than an annual general meeting must be called by notice of at least 14 days in writing.
- (3) The notice is exclusive of—
 - (a) the day on which it is served or deemed to be served; and
 - (b) the day for which it is given.
- (4) The notice must—
 - (a) specify the date and time of the meeting;
 - (b) specify the place of the meeting (and if the meeting is to be held in 2 or more places, the principal place of the meeting and the other place or places of the meeting);
 - (c) state the general nature of the business to be dealt with at the meeting;
 - (d) for a notice calling an annual general meeting, state that the meeting is an annual general meeting;
 - (e) if a resolution (whether or not a special resolution) is intended to be moved at the meeting—

- (i) include notice of the resolution; and
 - (ii) include or be accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution;
- (f) if a special resolution is intended to be moved at the meeting, specify the intention and include the text of the special resolution; and
 - (g) contain a statement specifying a member's right to appoint a proxy under section 596(1) and (3) of the Ordinance.
- (5) Paragraph (4)(e) does not apply in relation to a resolution of which—
 - (a) notice has been included in the notice of the meeting under section 567(3) or 568(2) of the Ordinance; or
 - (b) notice has been given under section 615 of the Ordinance.
 - (6) Despite the fact that a general meeting is called by shorter notice than that specified in this article, it is regarded as having been duly called if it is so agreed—
 - (a) for an annual general meeting, by all the members entitled to attend and vote at the meeting; and
 - (b) in any other case, by a majority in number of the members entitled to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

40. Persons entitled to receive notice of general meetings

- (1) Notice of a general meeting must be given to—
 - (a) every member; and
 - (b) every director.
- (2) In paragraph (1), the reference to a member includes a transmittee, if the company has been notified of the transmittee's entitlement to a share.
- (3) If notice of a general meeting or any other document relating to the meeting is required to be given to a member, the company must give a copy of it to its auditor (if more than one auditor, to everyone of them) at the same time as the notice or the other document is given to the member.

41. Accidental omission to give notice of general meetings

Any accidental omission to give notice of a general meeting to, or any non-receipt of notice of a general meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

42. Attendance and speaking at general meetings

- (1) A person is able to exercise the right to speak at a general meeting when the person is in a position to communicate to all those attending the meeting, during

the meeting, any information or opinions that the person has on the business of the meeting.

- (2) A person is able to exercise the right to vote at a general meeting when—
 - (a) the person is able to vote, during the meeting, on resolutions put to the vote at the meeting; and
 - (b) the person's vote can be taken into account in determining whether or not those resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.
- (4) In determining attendance at a general meeting, it is immaterial whether any 2 or more members attending it are in the same place as each other.
- (5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have rights to speak and vote at the meeting, they are able to exercise them.

43. Quorum for general meetings

- (1) Two members present in person or by proxy constitute a quorum at a general meeting.
- (2) No business other than the appointment of the chairperson of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

44. Chairing general meetings

- (1) If the chairperson (if any) of the board of directors is present at a general meeting and is willing to preside as chairperson at the meeting, the meeting is to be presided over by him or her.
- (2) The directors present at a general meeting must elect one of themselves to be the chairperson if—
 - (a) there is no chairperson of the board of directors;
 - (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting;
 - (c) the chairperson is unwilling to act; or
 - (d) the chairperson has given notice to the company of the intention not to attend the meeting.
- (3) The members present at a general meeting must elect one of themselves to be the chairperson if—
 - (a) no director is willing to act as chairperson; or

(b) no director is present within 15 minutes after the time appointed for holding the meeting.

- (4) A proxy may be elected to be the chairperson of a general meeting by a resolution of the company passed at the meeting.

45. Attendance and speaking by non-members

- (1) Directors may attend and speak at general meetings, whether or not they are members of the company.
- (2) The chairperson of a general meeting may permit other persons to attend and speak at a general meeting even though they are not—
 - (a) members of the company; or
 - (b) otherwise entitled to exercise the rights of members in relation to general meetings.

46. Adjournment

- (1) If a quorum is not present within half an hour from the time appointed for holding a general meeting, the meeting must—
 - (a) if called on the request of members, be dissolved; or
 - (b) in any other case, be adjourned to the same day in the next week, at the same time and place, or to another day and at another time and place that the directors determine.
- (2) If at the adjourned meeting, a quorum is not present within half an hour from the time appointed for holding the meeting, the member or members present in person or by proxy constitute a quorum.
- (3) The chairperson may adjourn a general meeting at which a quorum is present if—
 - (a) the meeting consents to an adjournment; or
 - (b) it appears to the chairperson that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.
- (4) The chairperson must adjourn a general meeting if directed to do so by the meeting.
- (5) When adjourning a general meeting, the chairperson must specify the date, time and place to which it is adjourned.
- (6) Only the business left unfinished at the general meeting may be transacted at the adjourned meeting.
- (7) If a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (8) If a general meeting is adjourned for less than 30 days, it is not necessary to give any notice of the adjourned meeting.

DIVISION 2

VOTING AT GENERAL MEETINGS

47. General rules on voting

- (1) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with these articles.
- (2) If there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, is entitled to a second or casting vote.
- (3) On a vote on a resolution on a show of hands at a general meeting, a declaration by the chairperson that the resolution—
 - (a) has or has not been passed; or
 - (b) has passed by a particular majority,
 is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (4) An entry in respect of the declaration in the minutes of the meeting is also conclusive evidence of that fact without the proof.

48. Errors and disputes

- (1) Any objection to the qualification of any person voting at a general meeting may only be raised at the meeting or adjourned meeting at which the vote objected to is tendered, and a vote not disallowed at the meeting is valid.
- (2) Any objection must be referred to the chairperson of the meeting whose decision is final.

49. Demanding a poll

- (1) A poll on a resolution may be demanded—
 - (a) in advance of the general meeting where it is to be put to the vote; or
 - (b) at a general meeting, either before or on the declaration of the result of a show of hands on that resolution.
- (2) A poll on a resolution may be demanded by—
 - (a) the chairperson of the meeting;
 - (b) at least 2 members present in person or by proxy; or
 - (c) any member or members present in person or by proxy and representing at least 5% of the total voting rights of all the members having the right to vote at the meeting.
- (3) The instrument appointing a proxy is regarded as conferring authority to demand or join in demanding a poll on a resolution.

- (4) A demand for a poll on a resolution may be withdrawn.

50. Number of votes a member has

- (1) On a vote on a resolution on a show of hands at a general meeting—
 - (a) every member present in person has 1 vote; and
 - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has 1 vote.
- (2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands.
- (3) On a vote on a resolution on a poll taken at a general meeting—
 - (a) every member present in person has 1 vote for each share held by him or her; and
 - (b) every proxy present who has been duly appointed by a member has 1 vote for each share in respect of which the proxy is appointed.
- (4) This article has effect subject to any rights or restrictions attached to any shares or class of shares.

51. Votes of joint holders of shares

- (1) For joint holders of shares, only the vote of the most senior holder who votes (and any proxies duly authorized by the holder) may be counted.
- (2) For the purposes of this article, the seniority of a holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

52. Votes of mentally incapacitated members

- (1) A member who is a mentally incapacitated person may vote, whether on a show of hands or on a poll, by the member's committee, receiver, guardian or other person in the nature of a committee, receiver or guardian appointed by the Court.
- (2) The committee, receiver, guardian or other person may vote by proxy on a show of hands or on a poll.

53. Content of proxy notices

- (1) A proxy may only validly be appointed by a notice in writing (*proxy notice*) that—
 - (a) states the name and address of the member appointing the proxy;
 - (b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed;
 - (c) is authenticated, or is signed on behalf of the member appointing the proxy; and
 - (d) is delivered to the company in accordance with these articles and any instructions contained in the notice of the general meeting in relation to which the proxy is appointed.

PART 5

PARTICULARS REQUIRED FOR ANNUAL RETURN

9. Particulars to be contained in annual return

- (1) For the purposes of section 788(2)(b) of the Ordinance, an annual return of a registered non-Hong Kong company must contain—
- (a) the date of the annual return, which must be the date of the most recent anniversary of the date of registration of the company under—
 - (i) Part 16 of the Ordinance; or
 - (ii) Part XI of the predecessor Ordinance;
 - (b) the place of incorporation of the company;
 - (c) the corporate name or approved name of the company;
 - (d) the date of registration of the company and its registered number under—
 - (i) Part 16 of the Ordinance; or
 - (ii) Part XI of the predecessor Ordinance;
 - (e) the address of—
 - (i) the principal place of business of the company in Hong Kong;
 - (ii) the principal place of business (if any) of the company in its place of incorporation; and
 - (iii) the registered office (or its equivalent) of the company in its place of incorporation;
 - (f) the particulars specified in section 3(1)(d)(ii) and (iii) with respect to each person who, at the date of the annual return, is a director of the company;
 - (g) the particulars specified in section 3(1)(e)(ii) and (iii) with respect to each person who, at the date of the annual return, is the company secretary (or, if there are joint company secretaries, with respect to each of them) of the company;
 - (h) the following particulars with respect to each person who, at the date of the annual return, is an authorized representative of the company—
 - (i) the name and address of the representative; and
 - (ii) if the representative is a natural person—
 - (A) the number of the representative's identity card; or
 - (B) if the representative does not have an identity card, the number and issuing country of any passport held by the representative;

- (i) for a company to which section 789 of the Ordinance applies, a statement specifying that the latest published accounts of the company are delivered to the Registrar under that section together with the annual return;
 - (j) for a company to which section 789 of the Ordinance does not apply, a statement specifying that fact;
 - (k) if the company has been incorporated for less than 18 months prior to the date of delivery of the annual return under section 788(1) of the Ordinance, and the accounts of the company that are required to be published have not been made up, a statement in the specified form specifying that fact;
 - (l) if the company has a share capital, the particulars relating to the authorized share capital (if any) and issued share capital (or their equivalents) of the company; and
 - (m) the particulars of the total amount of the indebtedness of the company in respect of all mortgages and charges that are required to be registered with the Registrar under—
 - (i) Part 8 of the Ordinance; or
 - (ii) Part III of the predecessor Ordinance.
- (2) For the purposes of subsection (1)(g), if all the partners in a firm are joint company secretaries of the registered non-Hong Kong company, the name and principal office of the firm may be substituted for the particulars specified in section 3(1)(e)(ii) and (iii).
- (3) In subsection (1)(c)—
- approved name* (經批准名稱) has the meaning given by section 774(1) of the Ordinance.

PART 6

REVISION OF ACCOUNTS UNDER SECTION 790
OF ORDINANCE

10. Interpretation

(1) In this Part—

original accounts (原有帳目) means the accounts that are the subject of revision by revised accounts;

regulatory requirement (規管性規定) has the meaning given by section 790(2) of the Ordinance;

revised accounts (經修改帳目) means—

- (a) for a revision under section 790 of the Ordinance by replacement, the accounts replacing the original accounts for the purpose of the revision; or
- (b) for a revision under that section by supplementary note, the original accounts together with the supplementary note for the purpose of the revision.

(2) In this Part—

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

(3) This Part is not to be construed as affecting any right accrued, or any obligation or liability incurred, in relation to any original accounts.

11. Company to deliver revised accounts to Registrar

(1) If the directors of a registered non-Hong Kong company have revised the accounts of the company under section 790 of the Ordinance, the company must comply with subsection (2) or (3) within 28 days after whichever is the earlier of the following—

- (a) the date on which the revised accounts of the company are published;
- (b) the date on which copies of the revised accounts of the company are delivered to any person in whose office the revised accounts may be inspected as of right by members of the public.

(2) If the original accounts of a registered non-Hong Kong company are revised by replacement, the company must—

- (a) make in a prominent position in the revised accounts of the company—

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

- (ii) a statement specifying—

- (A) the respects in which the original accounts did not, as appears to the directors of the company, comply with the regulatory requirement; and
- (B) the material revisions to the original accounts that are made under section 790 of the Ordinance; and

(b) deliver to the Registrar for registration—

- (i) a certified copy of the revised accounts that comply with the regulatory requirement; or
- (ii) if the revised accounts are in a language other than English or Chinese, a certified translation of the revised accounts, in English or Chinese, that comply with the regulatory requirement.

(3) If the original accounts of a registered non-Hong Kong company are revised by supplementary note, the company must—

(a) make in a prominent position in the supplementary note a statement specifying that the note—

- (i) revises in certain respects the original accounts; and
- (ii) is to be treated as forming part of the original accounts; and

(b) deliver to the Registrar for registration—

- (i) a certified copy of the supplementary note that complies with the regulatory requirement; or
- (ii) if the supplementary note is in a language other than English or Chinese, a certified translation of the supplementary note, in English or Chinese, that complies with the regulatory requirement.

(4) If a registered non-Hong Kong company contravenes subsection (1), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, 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.

(5) If a person is convicted of an offence under subsection (4), the magistrate may, in addition to any penalty that may be imposed, order that the person must do the act that the person has failed to do as required by subsection (2)(b) or (3)(b) within a time specified in the order.

(6) A person who contravenes an order under subsection (5) 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.