

**FEEDBACK STATEMENT**  
Consultation on  
**COMPANIES (REVISION OF ACCOUNTS AND REPORTS)**  
**REGULATION**

In this Feedback Statement, the Administration responds to the comments received on the draft Companies (Revision of Accounts and Reports) Regulation for implementation of the statutory “revision of accounts” regime under sections 141E and 336A of the Companies Ordinance (“CO”, Cap. 32).

2. In November 2006, the Administration consulted various stakeholders in the accounting and legal professions, market regulators and operators, chambers of commerce, academic institutions and other professional bodies on the draft Regulation which was also uploaded to the website of the Financial Services and the Treasury Bureau.

3. A total of 21 responses were received, including that of the Hong Kong Institute of Certified Public Accountants (“HKICPA”), which is the statutory authority for setting accounting and auditing standards. We are grateful to all respondents for their submissions, and wish to record our special thanks to the HKICPA for their assistance in finalising the Regulation.

4. Respondents generally reaffirmed their support of the intent of the Regulation, with the comments being mainly requests for clarification of technical and drafting points. All comments received have been duly considered and incorporated in the gazetted Regulation as appropriate. The attached summary sets out the main issues raised by the respondents and the Administration’s feedback thereto.

5. Subject to negative vetting by the Legislative Council, the Regulation (except Part 4 thereof) shall come into operation on 20 April 2007.

6. This Feedback Statement is also published on the website of the Financial Services and the Treasury Bureau (<http://www.fstb.gov.hk/fsb/ppr/consult/index.htm>).

**Financial Services and the Treasury Bureau**  
**February 2007**

**Consultation on Companies (Revision of Accounts and Reports) Regulation**  
**Summary of Responses to Comments Received**

	Comments Received (Summarized)	The Administration's Response
<b>Part 1: Preliminary</b>		
1	Please clarify whether the Regulation would prejudice any regulatory or disciplinary action taken or to be taken by a regulatory body, or any action taken or to be taken by members of a company, in relation to the content of the original accounts, the original directors' report or the original summary financial report.	To put beyond doubt, we have added the following provision under section 2(4) of the Regulation – <i>“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”.</i>
<b>Part 2: Accounts and Reports Revised under section 141E of the CO</b>		
2	<b>Section 3(1) and (2):</b> Sections 128, 129, 129A and 129C of the CO should also apply to the revised accounts in addition to sections 123 and 126 of the CO.	Section 3(1) of the Regulation provides that “a provision of the Ordinance as to the matters to be included in the accounts of a company” applies to revised accounts. In this regard, where sections 128, 129, 129A, 129C and other provisions of the CO concern matters to be included in the accounts of a company, they shall apply to revised accounts by virtue of section 3(1) of the Regulation. Section 3(2) of the Regulation mentions the application of sections 123(1) and 126(1) of the CO, specifically pointing to the “true and fair view” requirement, <i>without prejudice to the generality of section 3(1) of the Regulation.</i>
3	<b>Section 3(1):</b> Please consider whether it is necessary to add “ <i>prepared and</i> ” before “ <i>approved</i> ”, so that the phrase will read “..... <i>as if the revised accounts were prepared and approved by the board of directors of the company</i> .....”.	The phrase “ <i>as if</i> .....” in section 3(1) is to ensure that the CO provisions apply to the revised accounts on the basis that the latter do not deal with anything beyond the date of original accounts. Thus, we use “ <i>approval</i> ” as the cut-off point. Given that this is clear, it is not necessary to mention “ <i>prepared</i> ” – which is more a process than a “one-off” step.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
4	<p><b>Section 3(2):</b> The drafting of section 3(2) implies that sections 123(1) and 126(1) of the CO consist of a generic “<i>true and fair view</i>” requirement but this is not the case. For example, the phrase “<i>so far as concerns members of the company</i>” appears only in section 126(1) of the CO not section 123(1). It is not ideal to mix the two sections of the CO together under section 3(2) of the Regulation.</p>	<p>Section 3(2) of the Regulation specifies the application of sections 123(1) and 126(1) of the CO which require the revised accounts to “<i>give a true and fair view of the matters mentioned in those provisions</i>”. The wording “<i>mentioned in those provisions</i>” has the effect of preserving the meaning of the “<i>true and fair view</i>” referred to in sections 123(1) and 126(1) of the CO.</p>
5	<p><b>Section 3(2):</b> Please consider whether it is necessary to add “<i>viewed as at the date of the original accounts</i>” towards the end of the subsection so that it will read “<i>..... so as to require those revised accounts to give a true and fair view of the matters mentioned in those provisions <u>viewed as at the date of the original accounts</u></i>”.</p>	<p>Sections 3(3)(b) and (4)(b) require directors to make a statement in the revised accounts that such 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 accordingly do not deal with events between those two dates</i>”. Sections 10(4)(a)(ii), (4)(b)(ii) and (5)(b) require an auditor to state an opinion about whether the revised accounts give a true and fair view (or true and correct view, as the case may be) “<i>seen as at the date of the original accounts</i>”. Given these, the intention is already very clear that the revised accounts are to give a true and fair view seen as at the date of the original accounts. There is no apparent need for repetition across the provisions.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
6	<p><b>Sections 3(3), (4) and (5):</b> It is not entirely clear why, <i>on the one hand</i>, section 3(3)(b) or 3(4)(b) requires that the revised accounts should be taken as having been approved by the board of directors on the “<i>date of original accounts</i>” instead of “<i>date of revision</i>” and should accordingly not deal with events between the two dates, while, <i>on the other hand</i>, section 3(5) requires the board of directors to cause the date of approval (i.e. “<i>date of revision</i>” as defined in section 2(1)) to be stated in the revised accounts.</p>	<p>According to section 141E(1) of the CO, directors may cause the accounts to be revised if it appears to them that the accounts <i>did not</i> comply with the CO. In this light, revision of accounts should only be triggered if, subsequent to the issue of original accounts, the directors become aware of any non-compliances that existed on the date when the original accounts were approved. Such revision should not be considered as an attempt to update the original accounts with infinite events subsequent to the date of the original accounts. The statement in sections 3(3)(b) and (4)(b) of the Regulation carries this effect. We have consulted the Hong Kong Institute of Certified Public Accountants which is of the view that this approach is in order from an accounting and auditing point of view.</p> <p>At the same time, it is necessary for section 3(5) of the Regulation to require the date of approval of the revised accounts (i.e. the “<i>date of revision</i>” as defined in section 2(1) of the Regulation) to be stated in the accounts, as the CO has effect with respect to the revised accounts as if the revised accounts were, <i>as from the date of revision</i>, the accounts of the company in place of the original accounts pursuant to section 9(1) of the Regulation .</p>
7	<p><b>Sections 3(3)(b) and (4)(b):</b> The statement should be revised as that “(the statements) <i>have been prepared</i> as at the date of the original annual accounts and not as at the date of revision”. (Similar amendments should be made to sections 4(2)(b), 4(3)(b), 5(2)(b) and 5(3)(b).)</p>	<p>We consider that the present drafting of the provision that the revised accounts “<i>are taken as having been approved</i> by the board of directors on the date of the original accounts instead of the date of revision” better reflects the nature and the intent of the revision. See also point (3) above.</p>
8	<p><b>Section 3(3)(c)(i):</b> The wording “<i>as appears to the directors</i>” seems to be superfluous.</p>	<p>We do not consider that the wording “<i>as appears to the directors</i>” in section 3(3)(c)(i) to be superfluous as such wording has also been used in section 141E(1) of the CO.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
9	<p><b>Section 3(3)(c)(ii), 4(2)(c):</b> Please consider changing the wording “<i>material</i> revisions” to “<i>significant</i> amendments”. (Similar amendments should be made to sections 4(2)(c) and 5(2)(c)).</p>	<p>We consider that the wording “<i>material</i> revisions” reflects properly the intent that the directors’ statement shall cover the material revisions to the accounts made. The word “<i>material</i>” appears several times in the Tenth Schedule to the CO which concerns the accounting provisions.</p>
10	<p><b>Section 3(3) and (4):</b> The directors’ statement should detail the non-compliance being redressed and quantifies the impacts on the company’s profit or loss and financial position. Where it applies, the statement should explain why the auditor who has reported on the original accounts has not qualified the accounts in the original audit report and state whether actions have been taken against that auditor.</p>	<p>Sections 3(3)(c) and (4)(b) provide that the directors shall cause to be made in a prominent position in the revised accounts a statement as to the respects in which the original accounts did not, as appears to the directors, comply with the CO and the material revisions to the accounts that are made.</p> <p>However, the directors are not in the position to give an opinion on the auditors’ report on the original accounts. It would be up to the Financial Reporting Council or the Hong Kong Institute of Certified Public Accountants (depending on whether the company concerned is a listed company) to undertake an assessment of whether or not it is necessary to take action in respect of the auditors who audited the original accounts.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
11	<b>Section 3(6):</b> Since no offence is committed for any breach under section 126 or 129A of the CO in relation to the original accounts, section 3(6) of the Regulation should contain a carve-out in relation to sections 126 and 129A of the CO.	Section 123(6) of the CO provides that a director shall be liable if he fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section (i.e. section 123) and <i>with the other requirements of the CO as to the matters to be stated in accounts</i> . Therefore, an offence will be committed for any breach under section 126 or 129A of the CO. If, as respects any revised accounts, a director fails to take all reasonable steps to secure compliance with section 126 or 129A of the CO (insofar as they relate to the matters to be included in the revised accounts), the director commits an offence under section 3(6)(b) of the Regulation.
12	<b>Section 3(6)(a):</b> Please consider whether an offence will only be committed if a director fails to take all reasonable steps to secure compliance with <u>either</u> (i) sections 3(3) <i>and</i> (5) <u>or</u> (ii) sections 3(4) <i>and</i> (5).	The intent underpinning section 3(6)(a) is that an offence is committed if a director fails to take all reasonable steps to secure compliance with <i>any of section 3(3), (4) or (5)</i> . The current drafting is able to effect this intent.
13	<b>Section 3(8):</b> The carve-out in section 3(8) of the Regulation should cover section 3(6)(c) of the Regulation as section 141D(1)(a) of the CO allows the disapplication of section 123 of the CO in this circumstance.	Comment incorporated under section 3(8) of the Regulation.
14	<b>Sections 3(7) and (10):</b> The penalty for failing to satisfy an obligation imposed on a company by sections 128 and 129 of the CO should apply to revised accounts.	Comment incorporated under sections 3(7) and (10) of the Regulation, mirroring the relevant penalty level for an offence where a company fails to satisfy an obligation imposed under section 128(5) or (5A) or 129(5) or (5A) of the CO.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
15	<b><u>Sections 3(8) and 4(7)</u></b> : The current wording appears to suggest that it is possible for shareholders of a company to effectively agree that sections 3(6) and (7) do not apply, and to vary the penalty that may be imposed for an offence under section 4(5).	Section 141D of the CO contains special provisions applicable to the accounts of a private company where all the shareholders of the private company agree in writing that that section shall apply with respect to a financial year of the company. Sections 3(8) and 4(7) of the Regulation follow closely the scope and penalty level in relation to the offence provision under section 141D(4) of the CO.
16	<b><u>Section 4</u></b> : There may be circumstances where a directors' report may need to be revised but the revision may not impact on the accounts and therefore the issue of revised accounts will not be necessary. In these circumstances, there should be a requirement for a review by the auditor to ensure that the revised directors' report is not inconsistent with the original accounts.	This is outside the scope of the revisions permitted under section 141E of the CO. In any case, at present, there is no provision under the CO to require an auditor to review a directors' report.
17	<b><u>Sections 4(2) and (3)</u></b> : Please clarify whether directors of a company are at liberty to decide how to effect the revisions (i.e. either by replacement or by supplementary note).	Yes. We therefore do not stipulate provisions to govern the choice between revision by replacement or by supplementary note.
18	<b><u>Sections 4(6) and (7)</u></b> : Should the jail terms for the two situations are the same?	Sections 4(6) and (7) of the Regulation correspond to the penalty levels that apply to the offence provisions under sections 129F and 141D(4) of the CO.
19	<b><u>Section 5(6)</u></b> : We suggest that this penalty should only be limited to directors but not other officers of a company; or if other officers are to be liable, their penalty should be confined to a fine but not imprisonment, although it is noted that a similar offence and penalty created under section 141CF(3)(b) of the CO are extended to the officers concerned in relation to the original accounts.	Section 5(6) of the Regulation corresponds to the penalty level that applies to section 141CF(3) of the CO where the company and every officer of the company are guilty of the offence set out therein.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
20	<b><u>Section 6(1)</u></b> : Please clarify whose signature is required under this section.	Section 129B(1) of the CO provides that every balance sheet of a company shall be signed on behalf of the board by 2 of the directors or, in the case of a private company having only one director, by the sole director. Section 6(1) of the Regulation provides that section 129B of the CO 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. Therefore, a revised balance sheet shall be signed on behalf of the board by 2 of the directors or, in the case of a private company having only one director, by the sole director.
21	<b><u>Section 6(3) and (6)</u></b> : It is suggested that the company and every officer thereof should not be liable if they have reasonable excuses for the contravention.	The formulation of sections 6(3) and (6) of the Regulation follows closely the same under sections 129B(3) and 129C(3) of the CO.
22	<b><u>Sections 3 to 8</u></b> : The Regulation provides for the procedures governing the approval and signature of revised accounts, directors' reports and summary financial reports. It is not clear about the extent of directors' liability in respect of the revised accounts in the situation where the directors are newly appointed after the original accounts have been approved. A section clarifying the liability of newly-elected directors may help address the concern.	Like their existing counterparts, newly-appointed directors have a statutory duty to take all reasonable steps to secure compliance with the relevant requirements as respects the revised accounts and reports. The accounting provisions in the principal Ordinance do not distinguish between the responsibilities of the newly-appointed and existing directors. The same shall apply to revised accounts.
23	<b><u>Section 8(3)(b)</u></b> : The penalty should only be limited to directors but not other officers of the listed company.	Section 8(3)(b) of the Regulation corresponds to the penalty level that applies to section 141CF(3) of the CO where the company and every officer of the company are guilty of the offence set out therein.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
24	<b><u>Sections 9(2) and (4)</u></b> : The wording “ <i>has yet been complied with</i> ” is not as easily understood as it should be.	Comment incorporated. We have amended the wording to read as “ <i>has yet to be complied with</i> ”.
25	<b><u>Sections 10(1) and (2)</u></b> : Please clarify why the directors of the company may resolve that the report on the revised accounts is to be made by a person other than the current auditor of the company.	There may be situations where a company has changed its auditor subsequent to the approval of the original accounts but it may be more appropriate and convenient for the previous auditor who has reported on the original accounts to report on the revised accounts. Therefore, sections 10(1) and (2) leave flexibility for the company to resolve that the revised accounts are to be audited by the previous auditor instead of the current auditor.
26	<b><u>Section 10(3)</u></b> : In the case of a revision by supplementary note, please clarify whether there is a need for the company's auditor to review and issue an audit opinion or revised audit report.	Section 10 requires an audit report to be made on any revised accounts. “ <i>Revised accounts</i> ” is defined in section 2(1) to include a revision by replacement or by supplementary note.
27	<b><u>Sections 10(4) and 10(5)</u></b> : The Regulation should clearly set out that the auditor is only required to consider post balance sheet events up to the date the original accounts were approved by the board of directors. Please clarify that the auditor's responsibility is to express an opinion on the revised accounts “ <i>seen as at the date the original accounts are approved</i> ”. There is an alternative suggestion concerning the need for auditors to consider the effect of subsequent events up to the date of the audit report on the revised accounts.	Sections 10(4)(a)(ii), (4)(b)(ii) and 5(b) have been reworded to expressly provide that the true and fair view (or true and correct view, as the case may be) shall be seen as at the date of the original accounts. The Hong Kong Institute of Certified Public Accountants is of the view that this approach is in order from an accounting and auditing point of view. See point (6) above.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
28	<b>Section 10(4):</b> Please consider whether it is necessary to make an express requirement for a person auditing the revised account to date the audit report.	As there is no statutory requirement for the auditor to date an audit report under section 141 of the CO, we consider that there is no need to stipulate a statutory requirement that applies to revised accounts. We understand that the auditing standards issued by the Hong Kong Institute of Certified Public Accountants have prescribed the requirement for dating an audit report.
29	<b>Section 11(1):</b> The words “ <i>on the revised accounts</i> ” should be added to the reference to “ <i>an audit report</i> ” at the end of the subsection.	Comment incorporated.
30	<b>Sections 11(2), (3) and (5):</b> The company or the officer should not be liable if they have reasonable excuses for the contravention. For section 11(5), it is suggested that the penalty of imprisonment should only be applicable to directors but not officers who are not directors, although a similar penalty has been imposed on all officers under section 134(1)(b) of the CO in relation to the original accounts.	The formulations of sections 11(2), (3) and (5) of the Regulation follow closely the same under sections 133(2), (3) and 134(1) of the CO.
31	<b>Section 12(1)(a):</b> Reference should be made to “ <i>every person</i> ” instead of “ <i>a person</i> ”.	Comment incorporated.
32	<b>Section 12(1)(b):</b> The list of persons set out in this subsection should be consistent with that set out in section 129G(1) of the CO.	The list of persons set out in section 12(1)(b) of the Regulation is consistent with that set out in section 129G(1) of the CO.
33	<b>Section 12(4):</b> A person should only be liable if there is no reasonable excuse.	The offence provision under section 12(4) of the Regulation follows closely the formulation under section 129G(3) of the CO.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
34	<b><u>Sections 13(2)(a) and (4)(a)</u></b> : Please consider whether it reflects the intent by making reference to “ <i>any entitled person</i> (who was sent a copy of the summary financial report concerned)”.	The intent is for the directors to send a note or revised summary financial report to every person who was sent a copy of the summary financial report before, so that the previous recipients of the original summary financial report can appraise the latest financial position of the company concerned. We consider that the present drafting of sections 13(2)(a) and (4)(a) of the Regulation reflects this intent. The term “ <i>entitled person</i> ” has a different meaning as defined in section 2(1) of the CO.
35	<b><u>Section 13(5)</u></b> : A person should only be liable if there is no reasonable excuse.	The offence provision in section 13(5) of the Regulation follows closely the formulation set out in section 141CA(2) of the CO.
36	<b><u>Section 14(1)(a)</u></b> : It is uncertain whether documents provided in the form of a floppy disk or other similar form of equipment delivered to the relevant party is allowed.	Section 14 of the Regulation is modelled on section 141CH of the CO to permit revised accounts or reports of listed companies to be sent to recipients by use of a computer network. The term “ <i>computer network</i> ” that appears in section 14 of the Regulation shall be construed in the same manner as that in section 141CH of the CO.
37	<b><u>Section 16(3)</u></b> : It is noted that “ <i>shadow directors</i> ” will be liable for this particular offence but not the other non-compliance with directors’ obligations under the Regulation. Moreover, a person should only be liable if there is no reasonable excuse.	The offence provision in section 16(3) of the Regulation follows closely the formulation set out in sections 109(4) and (5) of the CO.

	Comments Received (Summarized)	The Administration's Response
<b>Parts 3 and 4: Accounts of Oversea Companies / Non-Hong Kong Companies under Section 336A of the CO</b>		
38	Please clarify the operation of, and the relationship between, Parts 3 and 4 of the Regulation.	Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) replaces the references to “ <i>oversea companies</i> ” under the CO with those to “ <i>non-Hong Kong companies</i> ”. The Schedule has not yet come into operation, pending enhancements to the information system of the Companies Registry. Parts 3 and 4 deal with accounts, respectively in relation to oversea companies and non-Hong Kong companies, that have been revised under section 336A of the CO which applies to oversea companies and section 336A of the CO which applies to non-Hong Kong companies. Part 3 will operate when the former section 336A is in operation, whereas Part 4 will operate when the latter section 336A is in operation.
39	The Regulation should provide flexibility for H-share companies which are not incorporated in Hong Kong, in view of any difficulties in complying with the relevant provisions.	Schedule 2 to the Companies (Amendment) Ordinance 2004 contains amendments to streamline and modernise the filing arrangement that applies to non-Hong Kong companies. Part 4 of the Regulation is formulated accordingly.
40	<b><u>Sections 20(2) and (3)</u></b> : Please clarify whether an audit report on the revised accounts should be filed with Registrar of Companies.	Since the new section 336 of the CO (as amended under Companies (Amendment) Ordinance 2004) does not require the filing of an audit report on the revised accounts, there is no such requirement in sections 20(2) and (3) of the Regulation.
41	<b><u>Section 20(4)</u></b> : A person should only be liable if there is no reasonable excuse.	The offence provision in section 20(4) of the Regulation follows closely the formulation set out in section 340 of the CO.

	Comments Received (Summarized)	The Administration's Response
<b>Part 5: Miscellaneous</b>		
42	<b>Section 23:</b> It is suggested that the situation where the offence was committed with “ <i>reckless disregard</i> ” to the consequences be also included.	Section 23 of the Regulation mirrors sections 122(3), 123(6), 124(3), 129F and 141D(4) of the CO in providing for the condition upon satisfaction of which a court may sentence a person to imprisonment for certain offences under the Regulation. We thus have not included the situation where the offence was committed with reckless disregard to the consequences.
<b>Other Relevant Issues</b>		
43	Sections 141E and 336A of the CO provides that, if it appears to the directors of the company that the accounts did not comply with the CO, the directors may cause the accounts to be revised. This is interpreted as covering all situations where a “ <i>true and fair view</i> ” is not given by the original accounts. This may create ambiguity as it involves judgment to determine a “ <i>true and fair view</i> ”.	There is a body of case law as to how “ <i>true and fair view</i> ” should be interpreted and determined. We consider that sections 141E and 336A of the CO provides the clarity necessary for implementation of a statutory avenue for companies to take appropriate and timely action to revise the original accounts.

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
44	<p>Section 141E of the CO does not provide that the directors may cause the accounts to be revised if it appears to them that the accounts do not comply with the <u>non-statutory accounting standards or Listing Rules</u>. In addition, it may be necessary for section 141E of the CO to be amended to make it clear that the “revision of accounts” regime does not apply to any revision made necessary by change of accounting standards taking effect after the date of the original accounts.</p>	<p>The CO concerns the statutory accounting requirements. While other non-statutory standards or rules may provide in such standards or rules the avenue for remedying a non-compliance with a non-statutory accounting requirement in a financial statement, the CO is principally concerned with a <i>statutory</i> avenue for companies to take appropriate and timely action to revise those aspects of the original accounts which did not, as appears to the directors, comply with the CO.</p> <p>In light of the construction of sections 141E(1) and 336A(1) of the CO, revision of accounts should only be triggered if, subsequent to the issue of accounts, the directors become aware of any non-compliances (with the provisions in the CO that were in force) that existed on the date when the original accounts were approved. Hence, it is clear that the statutory “revision of accounts” regime does not apply to any revision, if any, made necessary by changes to accounting standards taking effect after the date of the original accounts.</p>
45	<p>Instead of restating the detailed provisions appearing in the principal Ordinance (e.g. sections 11(2) to (6) of the Regulation), it may be preferable to activate, by reference, the relevant sections of the principal Ordinance.</p>	<p>We consider that the present drafting of the Regulation provides the necessary certainty for the purposes of sections 359A(3) to (6) of the CO.</p> <p>In particular, sections 11(2) to (5) create offences. We consider it more appropriate to create an offence by an express provision rather than by a provision that applies another offence provisions by reference.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
46	<p>Insofar as the revised accounts do not contain personal data or involving the handling of personal data, the Personal Data (Privacy) Ordinance (Cap. 486) has no application. Although data security is not a direct issue touching upon the provisions of the Regulation, in situations where the revision of the accounts canvasses the accuracy of personal data, if any, contained in the original accounts, the relevant Data Protection Principles should be complied with.</p>	<p>Noted. The Regulation should be construed as not affecting the obligation on a company or a data user in relation to any personal data, if any, contained in the original accounts or revised accounts under the Personal Data (Privacy) Ordinance.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
47	<p>Please clarify whether the present arrangement may convey to directors a wrong message that they do not have to make any correction even if they are aware of certain material wrongs or deficiencies in the accounts. It seems that the Regulation does not deal with the procedures to be followed where revision of accounts is mandatory. Alternatively, in some situations, directors may adopt the current practice of issuing an announcement of the errors identified and making appropriate adjustments in the next accounts by way of prior year adjustment.</p>	<p>The “revision of accounts” regime under sections 141E and 336A of the CO should not be construed as giving directors the liberty to choose not to secure compliance of the accounts with the CO. Under section 123 of the CO, the directors of a company formed and registered under the CO commit an offence if they fail to take all reasonable steps to secure compliance of the accounts of the company with the CO (including section 123(1) which requires the accounts to give a true and fair view of the state of affairs of the company). In addition, as regards locally-incorporated listed companies which draw a greater public interest, the Financial Reporting Council is empowered under section 50 of the Financial Reporting Council Ordinance (Cap. 588) to apply to the Court of First Instance to secure removal of non-compliances in relation to the accounts of such companies. The Regulation is intended to provide a statutory mechanism as to the detailed procedures which directors shall follow in taking necessary remedial action regarding the original accounts, but nothing in the Regulation is to be construed as affecting any right, or any obligation or liability incurred, in relation to the original accounts (c.f. section 2(4) of the Regulation). The Hong Kong Institute of Certified Public Accountants will issue guidelines or technical bulletins as regards the relevant arrangements under the accounting standards.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
48	<p>Currently, there is no mention of a materiality threshold or conditions which would trigger a revision to accounts and revisions can be made at the discretion of the directors. It is therefore possible that there may be more than one revision to a company's accounts in any one year and consideration should be given to providing guidance or limiting the number of revisions permitted.</p>	<p>The condition triggering revision is specified in sections 141E(1) and 336A(1) of the CO. The purpose of the Regulation is to implement the "revision of accounts" regime by providing for how the requirements in the CO are extended to apply to revised accounts, as these requirements apply to original accounts, subject to the necessary additions, exceptions and modifications as specified in the Regulation to suit the purposes of the Regulation.</p> <p>Since the purpose of the revision is to secure compliance of the accounts of the company with the CO, we do not see the need to specify a materiality threshold (which in fact is hard to be defined for a statutory purpose) or to limit the number of revision.</p>
49	<p>Under section 50 of the Financial Reporting Council Ordinance, it is possible for the Financial Reporting Council to apply to the Court of First Instance to order a company's accounts to be revised. However, this course of action is only available where the listed company is incorporated in Hong Kong.</p>	<p>The Administration, in consultation with the Securities and Futures Commission and Hong Kong Exchanges and Clearing Limited, is preparing a legislative proposal to give statutory backing to major listing requirements. We will consider expanding the scope of application of section 50 of the Financial Reporting Council Ordinance in due course.</p>
50	<p>Despite sections 141E and 336A of the CO, the Administration may wish to consider whether the law on revision of accounts should go beyond that of voluntary revision, after the Regulation has been in operation for a period of time and in the light of the experience gained.</p>	<p>Noted. See also point (47) above.</p>

	<b>Comments Received (Summarized)</b>	<b>The Administration's Response</b>
51	<p>Section 141E(3) of the CO provides that if the directors of a company decide to cause any accounts of the company to be revised, the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised. The Regulation does not address the arrangement for the registration of a warning statement. Moreover, it is uncertain as to how “<i>as soon as practicable</i>” would be construed in relation to the offence set out in section 141E(4) of the CO.</p>	<p>The Registrar of Companies will specify the forms in relation to the warning statement under section 2A of the CO prior to the commencement of section 141E. Like other terms in statute, the words “<i>as soon as practicable</i>” will be construed according to the principles of statutory interpretation.</p>
52	<p>Please consider whether sections 74 and 109 of the Mandatory Provident Fund Schemes (General) Regulation should be amended to ensure that recipients of the MPF-related original accounts (i.e. the approved trustee and the Authority) should be notified of the proposed revisions in advance and should receive the revised accounts thereafter.</p>	<p>Section 31 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) contains a general provision for the Authority to require the approved trustee to give to the Authority any information/document relating to the Scheme. Likewise, section 74(1) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) contains a general provision empowering the approved trustee to require each service provider to submit to the trustee such reports as will enable the trustee to perform the trustee's duties under that Ordinance. We may review the need to make consequential amendments to the Mandatory Provident Fund Schemes Ordinance and Mandatory Provident Fund Schemes (General) Regulation in due course.</p>

**Financial Services and the Treasury Bureau**  
**February 2007**