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COMPANIES ACT (CHAPTER 50)

COMPANIES (REVISION OF DEFECTIVE FINANCIAL STATEMENTS, OR CONSOLIDATED FINANCIAL STATEMENTS OR BALANCE-SHEET) REGULATIONS 2018

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In exercise of the powers conferred by section 411, read with section 202A(5), of the Companies Act, the Minister for Finance makes the following Regulations:

Citation and commencement

1. These Regulations are the Companies (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance-sheet) Regulations 2018 and come into operation on 20 April 2018.

Application

2. These Regulations apply in relation to a company in respect of any financial year of the company.

Definitions

3. In these Regulations —

“auditor”, in relation to a company, means the accounting entity or accounting entities appointed as the auditor or auditors of the company under section 205 of the Act;

“balance-sheet” means the balance-sheet, by whatever name called, prepared in accordance with the Accounting Standards and includes, where applicable, the balance-sheet dealing with the state of affairs of the holding company required to be made out and laid before the company at its annual general meeting under section 201 of the Act as in force immediately before 1 July 2015;

“consolidated financial statements” has the same meaning as in the Accounting Standards and includes, where applicable, the consolidated accounts dealing with the profit or loss and the state of affairs of the company and its subsidiaries required to be made out and laid before the company at its annual general meeting under section 201 of the Act as in force immediately before 1 July 2015;

“date of revision” means the date on which the directors of the company approve the revised financial statements, or the revised consolidated financial statements or balance-sheet, of the company;

- “date of the original financial statements, or original consolidated financial statements or balance-sheet” means the date on which the original directors’ statement was signed on behalf of the directors of the company;
- “financial statements” means the financial statements of a company required to be prepared by the Accounting Standards and includes, where applicable, the profit and loss account and the balance-sheet of the company required to be laid before the company at its annual general meeting under section 201 of the Act as in force immediately before 1 July 2015;
- “new directors’ statement” means the statement signed on behalf of the directors of the company as at the date of revision in accordance with regulation 4(2)(c)(i) and containing the statements and information mentioned in regulations 4(2)(c)(ii) to (v) and 6(2)(a) to (d);
- “original”, in relation to any financial statements, or consolidated financial statements or balance-sheet, means the financial statements, or consolidated financial statements or balance-sheet, that are the subject of revision under section 202A or 202B(4) of the Act;
- “original directors’ statement” means the statement signed on behalf of the directors under section 201(16) of the Act that accompanied the original financial statements, or original consolidated financial statements or balance-sheet, and includes, where applicable, the report of the directors of the company and the statement of the directors of the company made under section 201(5) and (15), respectively, of the Act as in force immediately before 1 July 2015;
- “revised”, in relation to any financial statements, or consolidated financial statements or balance-sheet, means the resulting financial statements, or consolidated financial statements or balance-sheet, after being revised under section 202A or 202B(4) of the Act.

Application of section 201 of Act to revised financial statements, etc.

4.—(1) Subject to this regulation and regulations 5 to 10, the provisions of section 201 of the Act (other than subsections (10) and (12) of that section), which applied to the preparation and audit of the original financial statements, or original consolidated financial statements or balance-sheet, of a company apply in respect of the revised financial statements, or revised consolidated financial statements or balance-sheet, of the company.

(2) For the purposes of paragraph (1) —

- (a) a reference in section 201 of the Act to the requirement to lay, or the laying of, the financial statements, or consolidated financial statements or balance-sheet, of the company at the annual general meeting of the company is a reference (as the case may be) to the requirement to send, or the sending of, the revised financial statements, or revised consolidated financial statements or balance-sheet, under regulation 7(1)(a);
- (b) the reference in section 201 of the Act to “this Part” is a reference to “these Regulations”;
- (c) a reference in section 201 of the Act to a statement signed on behalf of the directors by 2 directors of the company containing the information set out in the Twelfth Schedule to the Act is a reference to a statement that —
 - (i) is signed on behalf of the directors of the company as at the date of revision, by 2 of those directors;
 - (ii) states whether, in the opinion of the directors —
 - (A) the revised financial statements, or revised consolidated financial statements or balance-sheet, are drawn up so as to give a true and fair view of the financial position and performance of the company and, if applicable, of the financial position and performance of the group, for the period covered by the original

financial statements, or original consolidated financial statements or balance-sheet; and

- (B) as at the date of the original directors' statement, there were reasonable grounds to believe that the company would be able to pay its debts as and when they fell due;
- (iii) states the names of the persons who are the directors in office at the date of revision;
- (iv) states the name of every person who was a director of the company at any time during the period starting on the date of the original financial statements, or original consolidated financial statements or balance-sheet, and ending on the date of revision, together with the date of appointment and cessation of appointment (if any) of each such person; and
- (v) contains the information mentioned in paragraphs 2, 3, 4, 5, 6, 8 and 9 of the Twelfth Schedule to the Act; and
- (d) a reference in section 201 of the Act to the Accounting Standards is a reference to the Accounting Standards applicable at the time that the original financial statements, or original consolidated financial statements or balance-sheet, were made up, subject to the modification in paragraph (3).

(3) The modification mentioned in paragraph (2)(d) is that, where the applicable Accounting Standards provide for a choice between alternative accounting policies, the applicable Accounting Standards are to be read as requiring the accounting policy that was chosen at the time that the original financial statements, or original consolidated financial statements or balance-sheet, were made up.

(4) To avoid doubt, for the purposes of paragraph (1) —

- (a) the directors must ascertain the facts mentioned in section 201(7)(a), (b) and (c) (or, if applicable, the previous corresponding provision) of the Act as they existed at the time that the original financial statements, or

original consolidated financial statements or balance-sheet, were made up;

- (b) any order of the Minister under section 201(15) (or, if applicable, the previous corresponding provision) of the Act substituting other accounting standards for the Accounting Standards in respect of the original financial statements, or original consolidated financial statements or balance-sheet, applies to the revised financial statements, or revised consolidated financial statements or balance-sheet;
- (c) any modification or exception to the provisions of the Act as to the form or content of directors and annual financial statements that is applied to the original directors' statement, or original financial statements or original consolidated financial statements or balance-sheet, of the company by section 201(18) (or, if applicable, the previous corresponding provision) of the Act, applies also to the new directors' statement, or revised financial statement or revised consolidated financial statements or balance-sheet, of the company; and
- (d) any modification to the requirements of section 201 of the Act as to the form or content of a company's financial statements, or consolidated financial statements or balance-sheet, being in compliance with the Accounting Standards, that is applied to the original financial statements or original consolidated financial statements or balance-sheet, of the company by section 201(19) (or, if applicable, the previous corresponding provision) of the Act, applies also to the revised financial statement, or revised consolidated financial statements or balance-sheet, of the company.

Auditing of revised financial statements, etc.

5.—(1) Section 201(8) and (9) of the Act applies in respect of the revised financial statements, or revised consolidated financial statements or balance-sheet, of a company with the following modifications:

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- (a) the reference in section 201(8) and (9) of the Act to financial statements, in relation to a company, is a reference to —
- (i) in the case where the company is not a parent company, the revised financial statements of the company required to be sent under regulation 7(1)(a); or
 - (ii) in the case where the company is a parent company, the revised consolidated financial statements or balance-sheet of the company required to be sent under regulation 7(1)(a);
- (b) the reference in section 201(8) of the Act to the financial statements being laid before the company at its annual general meeting is a reference to the revised financial statements, or revised consolidated financial statements or balance-sheet, being sent under regulation 7(1)(a);
- (c) the reference in section 201(8) of the Act to the auditor's report that is required by section 207 of the Act is a reference to the auditor's report mentioned in regulation 10(1);
- (d) the reference in section 201(9)(b) of the Act to the auditor's report that is furnished to the directors under section 207(1A) of the Act is a reference to the auditor's report furnished to the directors under regulation 10(4);
- (e) the requirement in section 201(9)(a) of the Act for the financial statements to be audited not less than 14 days before the annual general meeting of the company, unless all the persons entitled to receive notice of general meetings of the company agree that the financial statements may be audited less than 14 days before the annual general meeting of the company, is to be read as a requirement for the revised financial statements, or revised consolidated financial statements or balance-sheet, to be audited before being sent under regulation 7(1)(a).

(2) Despite paragraph (1), a company is exempt from audit requirements in respect of the revised financial statements, or revised consolidated financial statements or balance-sheet, if, in respect of the financial year in respect of which the revised financial statements, or revised consolidated financial statements or balance-sheet are made, the company satisfies the requirements for exemption from audit requirements under section 205B or 205C of the Act.

Additional statements to be added to revised financial statements, etc.

6.—(1) Where a company's financial statements, or consolidated financial statements or balance-sheet, are revised under section 202A or 202B(4) of the Act, the directors of the company must, apart from complying with the requirements of section 201 of the Act as modified by these Regulations and unless the Registrar otherwise allows, set out in a prominent position in the revised financial statements, or revised consolidated financial statements or balance-sheet —

- (a) a statement that the revised financial statements, or revised consolidated financial statements or balance-sheet, for a financial year, replace the original financial statements, or original consolidated financial statements or balance-sheet, for the same financial year specified in the original financial statements, or original consolidated financial statements or balance-sheet;
- (b) a statement that the revised financial statements, or revised consolidated financial statements or balance-sheet —
 - (i) are taken as having been prepared on the date of the original financial statements, or original consolidated financial statements or balance-sheet, instead of on the date of revision; and
 - (ii) accordingly do not deal with events after the date of the original financial statements, or original consolidated financial statements or balance-sheet;

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- (c) a statement as to —
- (i) the aspects in which the original financial statements, or original consolidated financial statements or balance-sheet, did not, as appear to the directors, comply with the Act; and
 - (ii) the material revisions to the original financial statements, or original consolidated financial statements or balance-sheet; and
- (d) a statement that the directors have approved the revised financial statements, or revised consolidated financial statements or balance-sheet, and the date on which the revised financial statements, or revised consolidated financial statements or balance-sheet were approved.

(2) Where a company's financial statements, or consolidated financial statements or balance-sheet, are revised under section 202A or 202B(4) of the Act, the directors of the company must, apart from complying with the requirements of section 201 of the Act as modified by these Regulations and unless the Registrar otherwise allows, set out in a prominent position in the new directors' statement —

- (a) the date on which the revised financial statements, or revised consolidated financial statements or balance-sheet, were approved;
- (b) a statement that the new directors' statement replaces the original directors' statement;
- (c) a statement that the new directors' statement, together with the revised financial statements, or consolidated financial statements or balance-sheet, have been prepared in accordance with these Regulations; and
- (d) a statement that the new directors' statement, other than the matters required to be stated under regulation 4(2)(c)(iii) and (iv) —
 - (i) is taken as having been prepared on the date of the original directors' statement; and

- (ii) accordingly does not deal with events after the date of the original directors' statement.

(3) If paragraph (1) or (2) is not complied with, the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000.

Sending and laying of revised financial statements, etc.

7.—(1) Where a company's financial statements, or consolidated financial statements or balance-sheet, are revised under section 202A or 202B(4) of the Act, the directors of the company must —

- (a) take reasonable steps to ensure that, within 30 days after the date of revision, or such longer period as the Registrar may allow, the revised financial statements, or the revised consolidated financial statements or balance-sheet, are sent —
 - (i) to all persons to whom a copy of the original financial statements, or original consolidated financial statements or balance-sheet, had been sent;
 - (ii) to all persons to whom a copy of a summary financial statement, instead of a copy of the original financial statements, or original consolidated financial statements or balance-sheet, had been sent under section 203A of the Act; and
 - (iii) to all persons entitled, as at the date of revision, to receive notice of general meetings of the company;
- (b) within 30 days after the date of a request from a person mentioned in sub-paragraph (i) or (ii), send without charge the revised financial statements, or the revised consolidated financial statements or balance-sheet, to —
 - (i) any member of the company (whether the member is or is not entitled to have sent to him or her copies of the revised financial statements, or revised consolidated financial statements or balance-sheet) to whom copies have not been sent; and

(ii) any holder of a debenture; and

(c) unless the Registrar otherwise allows, lay the revised financial statements, or revised consolidated financial statements or balance-sheet, before the company at the next general meeting of the company held after the date of revision.

(2) Paragraph (1)(c) does not apply in respect of a private company that has dispensed with the holding of an annual general meeting.

(3) If paragraph (1)(c) is not complied with, every director who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000.

(4) In this regulation, a reference to the revised financial statements, or revised consolidated financial statements or balance-sheet, includes a reference to —

(a) the new directors' statement on the revised financial statements, or revised consolidated financial statements or balance-sheet; and

(b) where applicable, the auditor's report on the revised financial statements, or revised consolidated financial statements or balance-sheet.

Non-application of Accounting Standards

8. The revised financial statements, or revised consolidated financial statements or balance-sheet, of a company need not comply with a requirement of the Accounting Standards if the Registrar, on the application of the directors of the company, approves the non-compliance.

Relief from requirements as to form and content of revised financial statements, etc., and new directors' statement

9.—(1) The directors of a company may apply to the Registrar for an order relieving them from any requirement of these Regulations relating to either or both of the following:

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- (a) the form and content of revised financial statements, or revised consolidated financial statements or balance-sheet, other than a requirement of the Accounting Standards;
- (b) the form and content of the new directors' statement.
- (2) Upon receipt of an application under paragraph (1), the Registrar may make an order either —
- (a) unconditionally; or
- (b) on condition that the directors of the company comply with such other requirements relating to the form and content of the documents mentioned in paragraph (1) as the Registrar thinks fit to impose.
- (3) The Registrar must not make an order under paragraph (2) unless the Registrar is of the opinion that compliance with the requirements of these Regulations would —
- (a) render the documents mentioned in paragraph (1) misleading or inappropriate to the circumstances of the company; or
- (b) impose an unreasonable burden on the company or any officer of the company.
- (4) The Registrar may make an order under paragraph (2) that is limited to a specific period.
- (5) The Registrar may, on the application of the directors of the company, revoke or suspend the operation of any order made under paragraph (2).
- (6) The Registrar may, without any application by the directors but after giving the directors of the company an opportunity to be heard, revoke or suspend the operation of any order made under paragraph (2).

Appointment and duties of auditor upon revision of financial statements, etc.

10.—(1) Subject to paragraph (2), where a company's financial statements, or consolidated financial statements or balance-sheet, are revised under section 202A or 202B(4) of the Act, the auditor of the company must report to the members of the company on the revised financial statements, or revised consolidated financial statements or balance-sheet, of the company.

(2) Instead of the auditor of the company, an accounting entity that reported to the members of the company on the original financial statements, or original consolidated financial statements or balance-sheet, may make the report under paragraph (1) if —

- (a) the directors of the company resolve that the accounting entity reports to the members of the company on the revised financial statements, or revised consolidated financial statements or balance-sheet, of the company; and
- (b) the accounting entity agrees to report to the members of the company on the revised financial statements, or revised consolidated financial statements or balance-sheet, of the company.

(3) If a company that revises its financial statements, or consolidated financial statements or balance-sheet, under section 202A or 202B(4) of the Act does not have an auditor, the company must appoint an accounting entity to make the report under paragraph (1).

(4) A report by an auditor of a company under paragraph (1) must be furnished by the auditor to the directors of the company in sufficient time to enable the directors to comply with the requirements of regulation 7(1)(a) in relation to that report.

(5) Paragraph (4) only applies if the directors submit the revised financial statements, or revised consolidated financial statements or balance-sheet, for audit in sufficient time, having regard to the complexity of the revised financial statements, or revised consolidated financial statements or balance-sheet, for the auditor to make the auditor's report.

(6) Section 207(2) to (9D) of the Act applies to the auditor making the report under paragraph (1), subject to the following modifications:

- (a) references in those provisions to the financial statements and consolidated financial statements are references to the revised financial statements and revised consolidated financial statements or balance-sheet;
- (b) references in those provisions to a true and fair view of any matter are references to a true and fair view of that matter as at the date of the original financial statements, or original consolidated financial statements or balance-sheet;
- (c) the reference to section 201(12) of the Act in section 207(2)(aa) of the Act is a reference to regulation 8;
- (d) the reference to section 201 of the Act in section 207(2)(aa) of the Act is a reference to section 201 of the Act as applied by regulation 4.

(7) The auditor must, in the auditor's report made under paragraph (1), unless the Registrar otherwise allows —

- (a) refer to the statement made by the directors of the company under regulation 6(1)(c); and
- (b) state whether, in the auditor's opinion, the revised financial statements, or revised consolidated financial statements or balance-sheet, seen as at the date of the original financial statements, or original consolidated financial statements or balance-sheet, comply with the requirements of the Act as applied by these Regulations.

(8) If default is made in complying with paragraph (3), the company and every director of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000.

(9) For the purposes of paragraphs (4), (5) and (7) and section 207(2) to (9D) of the Act as applied by paragraph (6), a

reference to the auditor, or the auditor of the company, includes any accounting entity mentioned in paragraph (2) or (3).

(10) To avoid doubt, this regulation does not apply where the company that revises its financial statements, or consolidated financial statements or balance-sheet, under section 202A or 202B(4) of the Act is exempt from audit requirements in respect of its revised financial statements, or revised consolidated financial statements or balance-sheet, under regulation 5(2).

Effect of revision of financial statements, etc.

11. Where a company's financial statements, or consolidated financial statements or balance-sheet are revised under section 202A or 202B(4) of the Act —

- (a) starting on the date of revision, the revised financial statements, or revised consolidated financial statements or balance-sheet, replace the original financial statements, or original consolidated financial statements or balance-sheet, of the company;
- (b) the revised financial statements, or revised consolidated financial statements or balance-sheet, are taken as having been prepared on the date of the original financial statements, or original consolidated financial statements or balance-sheet instead of on the date of revision;
- (c) starting on the date of revision, the new directors' statement replaces the original directors' statement; and
- (d) the new directors' statement, other than the matters required to be stated under regulation 4(2)(c)(iii) and (iv), is taken as having been prepared on the date of the original directors' statement.

Application of section 201AA of Act to revised financial statements, etc.

12.—(1) Subject to this regulation, section 201AA of the Act applies to the revised financial statements, or revised consolidated financial statements or balance-sheet, of a company as it applies to the documents mentioned in subsection (1) of that section.

(2) Subject to the modifications in paragraph (3), section 201AA(1)(a) of the Act applies in respect of the revised financial statements, or revised consolidated financial statements or balance-sheet, of a private company that had not dispensed with the holding of an annual general meeting as it applies to the documents mentioned in that provision.

(3) For the purposes of paragraph (2), the reference in section 201AA(1)(a) of the Act to the annual general meeting under section 201 of the Act is a reference to the general meeting at which the revised financial statements, or revised consolidated financial statements or balance-sheet, are laid under regulation 7(1)(c).

(4) Subject to the modification in paragraph (5), section 201AA(1)(b) of the Act applies in respect of the revised financial statements, or revised consolidated financial statements or balance-sheet, of a private company that had dispensed with the holding of an annual general meeting as it applies to the documents referred to in that provision.

(5) For the purposes of paragraph (4), the reference in section 201AA(1)(b) of the Act to the documents that were sent in accordance with section 203(1) of the Act is a reference to the documents mentioned in paragraph (4) that were sent in accordance with regulation 7(1)(a).

(6) The reference to “subsection (1)” in section 201AA(2) of the Act is a reference to subsection (1) of section 201AA of the Act, as applied by this regulation.

(7) The reference to “subsection (3)” in section 201AA(4)(a) of the Act is a reference to subsection (3) of section 201AA of the Act, as applied by this regulation.

(8) In this regulation, a reference to the revised financial statements, or revised consolidated financial statements or balance-sheet, includes a reference to —

- (a) the new directors’ statement on the revised financial statements, or revised consolidated financial statements or balance-sheet; and

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- (b) the auditor's report on the revised financial statements, or revised consolidated financial statements or balance-sheet.

Filing of revised financial statements, etc.

13.—(1) Subject to paragraph (2), where a company's financial statements, or consolidated financial statements or balance-sheet are revised under section 202A or 202B(4) of the Act, the company must file with the Registrar within 30 days after the date of revision, or such longer period as the Registrar may allow —

- (a) a copy of the revised financial statements, or (where the consolidated financial statements or balance-sheet are revised under section 202A or 202B(4) of the Act) a copy of the revised consolidated financial statements or balance-sheet;
- (b) a copy of the new directors' statement on the revised financial statements, or revised consolidated financial statements or balance-sheet; and
- (c) where applicable, a copy of the auditor's report on the revised financial statements, or revised consolidated financial statements or balance-sheet.

(2) Paragraph (1) does not apply to a company that —

- (a) was not required to, and did not, lodge the original financial statements, or consolidated financial statements and balance-sheet, with the Registrar; and
- (b) is an exempt private company that is able to meet its liabilities as and when they fall due as at the date of revision.

(3) If paragraph (1) is not complied with, the company and every officer of the company who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$2,000.

Application of sections 203(3A), 204 and 207 of Act

14.—(1) Subject to the modification in paragraph (2) —

- (a) section 203(3A) of the Act applies to a default in complying with regulation 7(1)(a) as it applies to a default in complying with section 203(1) of the Act; and
- (b) section 203(3A) of the Act applies to a default in complying with regulation 7(1)(b) as it applies to a default in complying with section 203(3) of the Act.

(2) The modification mentioned in paragraph (1) is that the reference to “a copy of the financial statements, or consolidated financial statements and balance-sheet, and all documents referred to in subsection (1) or (3)” in section 203(3A) of the Act is a reference to —

- (a) a copy of the revised financial statements, or revised consolidated financial statements or balance-sheet;
- (b) a copy of the new directors’ statement on the revised financial statements, or revised consolidated financial statements or balance-sheet; and
- (c) a copy of the auditor’s report on the revised financial statements, or revised consolidated financial statements or balance-sheet.

(3) Subject to the modifications in paragraph (4), section 204 of the Act applies to the failure of a director to comply with the provisions of section 201 of the Act, as applied by regulation 4.

(4) The modifications mentioned in paragraph (3) are —

- (a) the reference to “section 201(2) or (5)” in section 204(1) of the Act is a reference to “section 201(2) or (5) of the Act, as applied by regulation 4”;

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- (aa) the reference to “section 201(16)” in section 204(1AA) of the Act is a reference to “section 201(16), as applied by regulation 4”;

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- (b) the reference to “any provision of this Division (other than section 201(2), (5) or (16))” in section 204(1A)(a) of the Act is a reference to “any provision of section 201 of the Act, other than subsection (2), (5) or (16), as applied by regulation 4”;
 - (c) the reference to “the preceding provisions of this Division” in section 204(2) of the Act is a reference to “the provisions of section 201 of the Act, as applied by regulation 4”;
 - (d) the references to “financial statements” in section 204(2) of the Act are references to “revised financial statements”;
 - (e) the references to “consolidated financial statements” in section 204(2) of the Act are references to “revised consolidated financial statements”; and
 - (f) the reference to “section 201” in section 204(2) of the Act is a reference to “section 201 of the Act, as applied by regulation 4”.
- (5) Subject to the modification in paragraph (6), section 207(10) of the Act applies to —
- (a) the refusal or failure of an officer of a corporation or an auditor of a corporation to allow access to an auditor in accordance with section 207 of the Act, as applied by regulation 10(6), to accounting and other records of the corporation;
 - (b) the refusal or failure of an officer of a corporation or an auditor of a corporation to give any information or explanation to an auditor as and when required under section 207 of the Act, as applied by regulation 10(6); and
 - (c) any other hindrance, obstruction or delay by an officer of a corporation or an auditor of a corporation of an auditor preparing a report under regulation 10(1) in the performance of the duties of the auditor or the exercise of the powers of the auditor.

(6) The modification mentioned in paragraph (5) is that the references to “this section” in section 207(10) of the Act are references to “section 207 of the Act, as applied by regulation 10(6)”.

Made on 17 April 2018.

TAN CHING YEE
*Permanent Secretary,
Ministry of Finance,
Singapore.*

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