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## Cap 622 Part 9

### Division 2—Reporting Exemption

#### 359. Company falling within reporting exemption

- (1) For the purposes of this Part, a company falls within the reporting exemption for a financial year—
  - (a) if—
    - (i) it is qualified as a small private company or small guarantee company for the financial year; and
    - (ii) it is not a company specified in subsection (4) at any time during the financial year;
  - (b) if—
    - (i) it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;
    - (ii) it does not have any subsidiary and is not a subsidiary of another company; and
    - (iii) all members of the company agree in writing that the company is to fall within the reporting exemption for the financial year only; or
  - (c) if—
    - (i) it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;
    - (ii) it is qualified as an eligible private company for the financial year; and
    - (iii) the conditions specified in section 360(1) are satisfied.
- (2) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
  - (a) it is a private company at all times, and is not a company specified in subsection (4) at any time, during the financial year;
  - (b) it is the holding company of a group of companies, of which, at any time during the financial year, no member is—
    - (i) a company specified in subsection (4); or

- (ii) a non-Hong Kong body corporate specified in subsection (5); and *(Replaced 35 of 2018 s. 33)*
- (c) the group of companies—
  - (i) is qualified as a group of small private companies for the financial year; or
  - (ii) is qualified as a group of eligible private companies for the financial year and the conditions specified in section 360(2) are satisfied.
- (3) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
  - (a) it is a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;
  - (b) it is the holding company of a group of companies, of which, at any time during the financial year, no member is—
    - (i) a company specified in subsection (4); or
    - (ii) a non-Hong Kong body corporate specified in subsection (5); and *(Replaced 35 of 2018 s. 33)*
  - (c) the group of companies is qualified as a group of small guarantee companies for the financial year.
- (3A) For the purposes of this Part, a company also falls within the reporting exemption for a financial year if—
  - (a) it is a private company or a company limited by guarantee at all times, and is not a company specified in subsection (4) at any time, during the financial year;
  - (b) it is the holding company of a group of companies, of which, at any time during the financial year, no member is—
    - (i) a company specified in subsection (4); or
    - (ii) a non-Hong Kong body corporate specified in subsection (5);
  - (c) the group of companies is qualified as a mixed group for the financial year; and
  - (d) (where any member of the group of companies is qualified as an eligible private company, but is not qualified as a small private company, for the financial year) the conditions specified in section 360(2) are satisfied. *(Added 35 of 2018 s. 33)*
- (4) The company specified for the purposes of subsections (1), (2), (3) and (3A) is— *(Amended 35 of 2018 s. 33)*
  - (a) one that carries on any banking business and holds a valid banking licence granted under the Banking Ordinance (Cap. 155);
  - (b) one that is a corporation licensed under Part V of the Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance; or
  - (c) one that—
    - (i) carries on any insurance business otherwise than solely as an agent; or
    - (ii) accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities.
- (5) The non-Hong Kong body corporate specified for the purposes of subsections (2), (3) and (3A) is—
  - (a) a non-Hong Kong body corporate that carries on any business that, had it been carried on in Hong Kong, would be required to be carried on under a valid banking licence granted under the Banking Ordinance (Cap. 155), or under a licence under Part V of the

Securities and Futures Ordinance (Cap. 571) to carry on a business in any regulated activity within the meaning of that Ordinance;

- (b) a non-Hong Kong body corporate that—
    - (i) carries on any insurance business otherwise than solely as an agent; or
    - (ii) accepts, by way of trade or business (other than banking business), loans of money at interest or repayable at a premium, otherwise than on terms involving the issue of debentures or other securities; or
  - (c) a non-Hong Kong body corporate that would have fallen within the meaning of public company in section 12 had it been incorporated under this Ordinance. (*Added 35 of 2018 s. 33*)
- (6) Despite section 358, the amendments made to subsections (2)(b) and (3)(b) by the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018), and subsections (3A)(b)(ii) and (5), apply only in relation to a financial year beginning on or after the commencement date\* of section 33 of that Ordinance. (*Added 35 of 2018 s. 33*)

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Editorial Note:

\* Commencement date: 1 February 2019.

**360. Conditions specified for section 359(1)(c)(iii), (2)(c)(ii) and (3A)(d)**

*(Amended 35 of 2018 s. 34)*

- (1) The conditions specified for the purposes of section 359(1)(c)(iii) are—
  - (a) subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in the company to the effect that the company is to fall within the reporting exemption for the financial year; and
  - (b) the members holding the remaining voting rights do not vote against the resolution.
- (2) The conditions specified for the purposes of section 359(2)(c)(ii) and (3A)(d) are—
  - (a) subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in the holding company to the effect that the holding company is to fall within the reporting exemption for the financial year; and
  - (b) the members holding the remaining voting rights do not vote against the resolution. (*Replaced 35 of 2018 s. 34*)
- (3) If—
  - (a) a resolution is passed for the purposes of subsection (1)(a) or (2)(a) to the effect that a company is to fall within the reporting exemption for a financial year;
  - (b) by notice in writing to the company, a member holding voting rights in the company objects to the company falling within the reporting exemption for the financial year; and
  - (c) the notice is given at least 6 months before the end of the financial year to which the objection relates,

the resolution is regarded as not being passed in relation to the financial year to which the objection relates. (*Amended 35 of 2018 s. 34*)
- (4) Within 14 days after receiving a notice under subsection (3)(b), a company must notify its members of the objection.
- (5) Special notice is required for a resolution mentioned in subsection (1)(a) or (2)(a). (*Amended 35 of 2018 s. 34*)

**Note—**

See also section 578 which sets out the requirements regarding special notice.

**361. Small private company**

- (1) For the purposes of this Part, if a company is a private company formed and registered under this Ordinance, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied in its first financial year, the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (2) For the purposes of this Part, if a company is an existing private company, and any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied—
  - (a) in its first financial year after the coming into operation of this section; or
  - (b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,the company is qualified as a small private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (3) For the purposes of this Part, if—
  - (a) a company is a private company; and
  - (b) after its first financial year after the coming into operation of this section, any 2 of the conditions specified in section 1(1) of Schedule 3 are satisfied for 2 consecutive financial years,the company is also qualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).
- (4) For the purposes of this Part, if, after a company is qualified as a small private company under subsection (1), (2) or (3), any 2 of the conditions specified in section 1(2) of Schedule 3 are not satisfied for 2 consecutive financial years, the company is disqualified as a small private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

**362. Eligible private company**

- (1) For the purposes of this Part, if a company is a private company formed and registered under this Ordinance, and any 2 of the conditions specified in section 1(3) of Schedule 3 are satisfied in its first financial year, the company is qualified as an eligible private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (2) For the purposes of this Part, if a company is an existing private company, and any 2 of the conditions specified in section 1(3) of Schedule 3 are satisfied—
  - (a) in its first financial year after the coming into operation of this section; or
  - (b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,the company is qualified as an eligible private company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (3) For the purposes of this Part, if—
  - (a) a company is a private company; and
  - (b) after its first financial year after the coming into operation of this section, any 2 of the conditions specified in section 1(3) of Schedule 3 are satisfied for 2 consecutive financial years,

the company is also qualified as an eligible private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).

- (4) For the purposes of this Part, if, after a company is qualified as an eligible private company under subsection (1), (2) or (3), any 2 of the conditions specified in section 1(4) of Schedule 3 are not satisfied for 2 consecutive financial years, the company is disqualified as an eligible private company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

### **363. Small guarantee company**

- (1) For the purposes of this Part, if a company is a company limited by guarantee formed and registered under this Ordinance, and the condition specified in section 1(5) of Schedule 3 is satisfied in its first financial year, the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (2) For the purposes of this Part, if a company is an existing company limited by guarantee, and the condition specified in section 1(5) of Schedule 3 is satisfied—
  - (a) in its first financial year after the coming into operation of this section; or
  - (b) in the financial year of the company for the purposes of the predecessor Ordinance that immediately precedes that first financial year,the company is qualified as a small guarantee company for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4).
- (3) For the purposes of this Part, if—
  - (a) a company is a company limited by guarantee; and
  - (b) after its first financial year after the coming into operation of this section, the condition specified in section 1(5) of Schedule 3 is satisfied for 2 consecutive financial years,the company is also qualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4).
- (4) For the purposes of this Part, if, after a company is qualified as a small guarantee company under subsection (1), (2) or (3), the condition specified in section 1(6) of Schedule 3 is not satisfied for 2 consecutive financial years, the company is disqualified as a small guarantee company for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

### **364. Group of small private companies**

- (1) For the purposes of this Part, if—
  - (a) the holding company of a group of companies is formed and registered under this Ordinance; and
  - (b) the conditions specified in section 1(7) of Schedule 3, and any 2 of the conditions specified in section 1(8) of that Schedule, are satisfied in the holding company's first financial year,the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (2) For the purposes of this Part, if—
  - (a) the holding company of a group of companies is an existing company; and
  - (b) the conditions specified in section 1(7) of Schedule 3, and any 2 of the conditions specified in section 1(8) of that Schedule, are satisfied— (*Amended 35 of 2018 s. 35*)

- (i) in the holding company's first financial year after the coming into operation of this section; or
- (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of small private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(7) of Schedule 3, and any 2 of the conditions specified in section 1(8) of that Schedule, are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company such that either a condition specified in section 1(7) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(9) of that Schedule are not satisfied, for the financial year, the group is disqualified as a group of small private companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).
- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small private companies under subsection (1), (2) or (3), either a condition specified in section 1(7) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(9) of that Schedule are not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

*(Amended 35 of 2018 s. 35)*

### **365. Group of eligible private companies**

- (1) For the purposes of this Part, if—
  - (a) the holding company of a group of companies is formed and registered under this Ordinance; and
  - (b) the conditions specified in section 1(10) of Schedule 3, and any 2 of the conditions specified in section 1(11) of that Schedule, are satisfied in the holding company's first financial year,
 the group is qualified as a group of eligible private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (2) For the purposes of this Part, if—
  - (a) the holding company of a group of companies is an existing company; and
  - (b) the conditions specified in section 1(10) of Schedule 3, and any 2 of the conditions specified in section 1(11) of that Schedule, are satisfied— *(Amended 35 of 2018 s. 36)*
    - (i) in the holding company's first financial year after the coming into operation of this section; or
    - (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,

the group is qualified as a group of eligible private companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).

- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(10) of Schedule 3, and any 2 of the conditions specified in section 1(11) of that Schedule, are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of eligible private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of eligible private companies under subsection (1), (2) or (3), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company such that either a condition specified in section 1(10) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(12) of that Schedule are not satisfied, for the financial year, the group is disqualified as a group of eligible private companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).
- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of eligible private companies under subsection (1), (2) or (3), either a condition specified in section 1(10) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(12) of that Schedule are not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of eligible private companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

*(Amended 35 of 2018 s. 36)*

### **366. Group of small guarantee companies**

- (1) For the purposes of this Part, if—
  - (a) the holding company of a group of companies is formed and registered under this Ordinance; and
  - (b) the conditions specified in section 1(12A) and (13) of Schedule 3 are satisfied in the holding company's first financial year,
 the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (2) For the purposes of this Part, if—
  - (a) the holding company of a group of companies is an existing company; and
  - (b) the conditions specified in section 1(12A) and (13) of Schedule 3 are satisfied—  
*(Amended 35 of 2018 s. 37)*
    - (i) in the holding company's first financial year after the coming into operation of this section; or
    - (ii) in the holding company's financial year for the purposes of the predecessor Ordinance that immediately precedes that first financial year,
 the group is qualified as a group of small guarantee companies for that first financial year, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (3) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the conditions specified in section 1(12A) and (13) of Schedule 3 are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (4) or (5).
- (4) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), another company or non-Hong Kong

body corporate becomes a new member of the group in a financial year of the holding company such that a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied, for the financial year, the group is disqualified as a group of small guarantee companies for the financial year, and every subsequent financial year, until it is qualified again under subsection (3).

- (5) For the purposes of this Part, if, after a group of companies is qualified as a group of small guarantee companies under subsection (1), (2) or (3), a condition specified in section 1(12A) of Schedule 3 is not satisfied, or the condition specified in section 1(14) of that Schedule is not satisfied, for 2 consecutive financial years of the holding company, the group is also disqualified as a group of small guarantee companies for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (3).

*(Amended 35 of 2018 s. 37)*

### **366A. Mixed group**

- (1) For the purposes of this Part, if—
- (a) the holding company of a group of companies is a company;
  - (b) the group only consists of—
    - (i) one or more bodies corporate specified in subsection (2); and
    - (ii) one or more bodies corporate specified in subsection (3); and
  - (c) the specified conditions are satisfied—
    - (i) in the first financial year of the holding company after the coming into operation of this section; or
    - (ii) in the financial year of the holding company that immediately precedes that first financial year,
- the group is qualified as a mixed group for that first financial year, and every subsequent financial year, until it is disqualified under subsection (6) or (7).
- (2) A body corporate specified for the purposes of subsection (1)(b)(i) is—
- (a) a small private company;
  - (b) a non-Hong Kong body corporate that would have been qualified as a small private company had it been incorporated under this Ordinance;
  - (c) an eligible private company; or
  - (d) a non-Hong Kong body corporate that would have been qualified as an eligible private company had it been incorporated under this Ordinance.
- (3) A body corporate specified for the purposes of subsection (1)(b)(ii) is—
- (a) a small guarantee company; or
  - (b) a non-Hong Kong body corporate that would have been qualified as a small guarantee company had it been incorporated under this Ordinance.
- (4) For the purposes of subsection (1)(c), a reference to specified conditions is a reference to—
- (a) if the holding company is a small private company—any 2 of the conditions specified in section 1(8) of Schedule 3;
  - (b) if the holding company is an eligible private company—any 2 of the conditions specified in section 1(11) of that Schedule;
  - (c) if the holding company is a small guarantee company—the condition specified in section 1(13) of that Schedule.



- (5) For the purposes of this Part, if, after the first financial year of the holding company of a group of companies after the coming into operation of this section, the condition under subsection (1)(b), and the conditions specified in subsection (4)(a), (b) or (c), are satisfied for 2 consecutive financial years of the holding company, the group is also qualified as a mixed group for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is disqualified under subsection (6) or (7).
- (6) For the purposes of this Part, if, after a group of companies is qualified as a mixed group under subsection (1) or (5), another company or non-Hong Kong body corporate becomes a new member of the group in a financial year of the holding company and, for the financial year—
- (a) either—
- (i) that other company is not a small private company, an eligible private company or a small guarantee company; or
- (ii) that other body corporate would not have been qualified as a small private company, an eligible private company or a small guarantee company had it been incorporated under this Ordinance; or
- (b) the specified conditions are not satisfied,
- the group is disqualified as a mixed group for the financial year, and every subsequent financial year, until it is qualified again under subsection (5).
- (7) For the purposes of this Part, if, after a group of companies is qualified as a mixed group under subsection (1) or (5), for 2 consecutive financial years of the holding company, either—
- (a) the condition under subsection (1)(b) is not satisfied; or
- (b) the specified conditions are not satisfied,
- the group is also disqualified as a mixed group for the financial year immediately following those 2 financial years, and every subsequent financial year, until it is qualified again under subsection (5).
- (8) For the purposes of subsections (6)(b) and (7)(b), a reference to specified conditions is a reference to—
- (a) if the holding company is a small private company—any 2 of the conditions specified in section 1(9) of Schedule 3;
- (b) if the holding company is an eligible private company—any 2 of the conditions specified in section 1(12) of that Schedule;
- (c) if the holding company is a small guarantee company—the condition specified in section 1(14) of that Schedule.

*(Added 35 of 2018 s. 38)*