

Bills Committee on Companies Bill

Follow-up Action to the Meeting of 30 May 2012 – Qualifying Criteria for Private Companies to Prepare Simplified Financial and Directors' Reports

Purpose

This paper sets out our proposed Committee Stage Amendment in relation to the qualifying criteria for private companies to prepare simplified financial and directors' reports.

Qualifying Criteria for Private Companies to Prepare Simplified Financial and Directors' Reports

2. At the Bills Committee Meeting on 30 May 2012, Members considered our proposal in relation to the qualifying criteria for private companies to prepare simplified financial and directors' reports (LegCo Paper No. CB(1)2019/11-12(01)) and agreed to the followings –

- (a) doubling the size criteria for automatic qualification to HK\$100 million assets, HK\$100 million revenue and 100 employees while maintaining the “two out of three” approach ;
- (b) preserving the existing section 141D option for private companies (not being members of corporate groups) to adopt simplified reporting; and
- (c) allowing private companies/groups meeting the higher size criteria (HK\$200 million assets, HK\$200 million revenue and 100 employees) to prepare simplified report if members of the company holding 75% of the voting rights so resolve and no other member objects.

3. The relevant Committee Stage Amendments to effect the proposal are at **Annex**.

Advice Sought

4. Members are invited to note the contents of the paper and provide their views.

**Financial Services and the Treasury Bureau
Companies Registry
4 June 2012**

358. 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—

(a) it is qualified as a small private company or small guarantee company for the financial year; and

(b) 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 358A(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 no member is a company specified in subsection (4) at any time during the financial year; and

(c) either—

(i) the group of companies is qualified as a group of small private companies for the financial year; or

(ii) the group of companies is qualified as a group of eligible private companies for the financial year and the conditions specified in section 358A(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 no member is a company specified in subsection (4) at any time during the financial year; and
 - (c) the group of companies is qualified as a group of small guarantee companies for the financial year.
- (4) The company specified for the purposes of subsections (1), (2) and (3) is—
- (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.

358A. Conditions specified for section 358(1)(c)(iii) and (2)(c)(ii)

(1) The conditions specified for the purposes of section 358(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 358(2)(c)(ii) are—

(a) if the group of companies is not qualified as a group of small private companies for the financial year by reason only that the condition specified in section 1(5) of Schedule 3 is not satisfied in the relevant financial year or financial years—

(i) subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in each company in the group that is not qualified as a small private company to the effect that the company is to fall within the reporting exemption for the financial year; and

(ii) the members holding the remaining voting rights do not vote against the resolution;

(b) if the group of companies is not qualified as a group of small private companies for the financial year by reason only that any 2 of the conditions specified in section 1(6) of Schedule 3 are not satisfied in the relevant financial year or financial years—

(i) subject to subsection (3), a resolution is passed at the 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

(ii) the members holding the remaining voting rights do not vote against the resolution; or

(c) if the group of companies is not qualified as a group of small private companies for the financial year by reason

that both the condition specified in section 1(5) of Schedule 3 and any 2 of the conditions specified in section 1(6) of Schedule 3 are not satisfied in the relevant financial year or financial years—

(i) subject to subsection (3), a resolution is passed at a general meeting by the members holding at least 75% of the voting rights in each company in the group that is not qualified as a small private company, and in the holding company, to the effect that the company is to fall within the reporting exemption for the financial year; and

(ii) the members holding the remaining voting rights do not vote against the resolution.

(3) If—

(a) a resolution is passed for the purposes of subsection (1)(a) or (2)(a)(i), (b)(i) or (c)(i) 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 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.

(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)(i), (b)(i) or (c)(i).

Note—

See also section 568.

359A. 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(2A) 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(2A) 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(2A) 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(2B) 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).

361A. 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 condition specified in section 1(7A) of Schedule 3, and any 2 of the conditions specified in section 1(7B) 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 condition specified in section 1(7A) of Schedule 3, and any 2 of the conditions specified in section 1(7B) of that Schedule, are satisfied—

(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 condition specified in section 1(7A) of Schedule 3, and any 2 of the conditions specified in section 1(7B) 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 becomes a new member of the group in a financial year of the holding company such that either the condition specified in section

1(7A) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(7C) 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 the condition specified in section 1(7A) of Schedule 3 is not satisfied, or any 2 of the conditions specified in section 1(7C) 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).

612. Registration of and requirements relating to certain resolutions, etc. (CSAs not relevant to simplified reporting are not shown / 不顯示與簡明報告無關的修正案)

- (1) This section applies to—
 - (a) ...;
 - (b) ...;
 - (c) ...;
 - (d) ...;
 - (da) an agreement made for the purposes of section 358(1)(b);
 - (db) a resolution passed for the purposes of section 358A(1)(a), (2)(a)(i), (2)(b)(i) and (2)(c)(i);
 - (dc) ...;
 - (e) ...;
 - (f) ...;
 - (g) ...; and
 - (h) an order of the Court which alters a resolution or an agreement referred to in paragraph (a), (b), (c), (d), (da), (db), (dc), (e) or (f).
- (2) The company must deliver a copy of the order under subsection (1)(h), resolution or agreement to the Registrar for registration within 15 days after it is passed or made.
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...
- (9) ...

Schedule 3

[ss. 358A, 359, 359A,
360, 361,
361A, 362 &
899]

Specified Qualifying Conditions for Sections 359 to 362

1. Qualifying conditions

- (1) The conditions specified for the purposes of section 359(1), (2) and (3) are—
 - (a) that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company iswere qualified as a small private company for the financial year, does not exceed \$50100 million;
 - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company iswere qualified as a small private company for the financial year, does not exceed \$50100 million; and
 - (c) that the average number of the company's employees during the financial year does not exceed 50100.
- (2) The conditions specified for the purposes of section 359(4) are—
 - (a) that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$50100 million;
 - (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$50100 million; and
 - (c) that the average number of the company's employees during the financial year does not exceed 50100.

(2A) The conditions specified for the purposes of section 359A(1), (2) and (3) are—

- (a) that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual

financial statements for the financial year if the company were qualified as an eligible private company for the financial year, does not exceed \$200 million;

(b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company were qualified as an eligible private company for the financial year, does not exceed \$200 million; and

(c) that the average number of the company's employees during the financial year does not exceed 100.

(2B) The conditions specified for the purposes of section 359A(4) are—

(a) that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$200 million;

(b) that the amount of the company's total assets at the date of the statement of financial position for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$200 million; and

(c) that the average number of the company's employees during the financial year does not exceed 100.

(3) The condition specified for the purposes of section 360(1), (2) and (3) is that the amount of the company's total revenue for the financial year, as would be reflected in the company's annual financial statements for the financial year if the company ~~were~~is qualified as a small guarantee company for the financial year, does not exceed \$25 million.

(4) The condition specified for the purposes of section 360(4) is that the amount of the company's total revenue for the financial year, as reflected in the company's annual financial statements for the financial year, does not exceed \$25 million.

(5) The condition specified for the purposes of section 361(1), (2), (3), (4) and (5) is that each company in the group is qualified as a small private company for the financial year.

(6) The conditions specified for the purposes of section 361(1), (2) and (3) are—

(a) that the aggregate amount of the group's total revenue for the financial year does not exceed ~~\$50~~100 million;

- (b) that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$~~10050~~ million; and
 - (c) that the aggregate of the average number of employees of each company in the group during the financial year does not exceed ~~10050~~.
- (7) The conditions specified for the purposes of section 361(4) and (5) are—
- (a) that the aggregate amount of the group's total revenue for the financial year does not exceed \$~~10050~~ million;
 - (b) that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$~~10050~~ million; and
 - (c) that the aggregate of the average number of employees of each company in the group during the financial year does not exceed 10050.
- (7A) The condition specified for the purposes of section 361A(1), (2), (3), (4) and (5) is that each company in the group is qualified as an eligible private company for the financial year.
- (7B) The conditions specified for the purposes of section 361A(1), (2) and (3) are—
- (a) that the aggregate amount of the group's total revenue for the financial year does not exceed \$200 million;
 - (b) that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$200 million; and
 - (c) that the aggregate of the average number of employees of each company in the group during the financial year does not exceed 100.
- (7C) The conditions specified for the purposes of section 361A(4) and (5) are—
- (a) that the aggregate amount of the group's total revenue for the financial year does not exceed \$200 million;
 - (b) that the aggregate amount of the group's total assets at the date of the statement of financial position for the financial year does not exceed \$200 million; and
 - (c) that the aggregate of the average number of employees of each company in the group during the financial year does not exceed 100.

- (8) The conditions specified for the purposes of section 362(1), (2) and (3) are—
 - (a) that each company in the group is qualified as a small guarantee company for the financial year; and
 - (b) that the aggregate amount of the group’s total revenue for the financial year does not exceed \$25 million.
- (9) The conditions specified for the purposes of section 362(4) and (5) are—
 - (a) that each company in the group is qualified as a small guarantee company for the financial year; and
 - (b) that the aggregate amount of the group’s total revenue for the financial year does not exceed \$25 million.
- (10) In subsections (1), ~~(2A)~~, (3), (5), (6), ~~(7A)~~, ~~(7B)~~ and (8)—
 - (a) a reference to a financial year of a company for the purposes of section 359(2), ~~359A(2)~~, 360(2), 361(2), ~~361A(2)~~ or 362(2) includes a financial year of the company for the purposes of the predecessor Ordinance that immediately precedes the company’s first financial year after the coming into operation of this section; and
 - (b) a reference to a company’s annual financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance, a reference to the company’s accounts for the financial year.

2. Provisions supplementary to section 1 of this Schedule

- (1) For the purposes of section 1(1)(a), (2)(a), (2A)(a), (2B)(a), (3), (4), (6)(a), (7)(a), (7B)(a), (7C)(a), (8)(b) and (9)(b) of this Schedule, the amount of total revenue for a financial year that is shorter or longer than 12 months is to be calculated on a pro-rata basis as if the length of the financial year were 12 months.
- (2) For the purposes of section 1(6), 1(7B) and (8)(b) of this Schedule, the aggregate amount of the group's total revenue or assets—
 - (a) is to be calculated by aggregating the total revenue or assets (as the case may be) of each company in the group, as would be reflected in the company's annual financial statements or annual consolidated financial statements for the financial year if the group were qualified as a group of small private companies, eligible private companies or small guarantee companies (as the case may be); and
 - (b) is to be calculated on the basis that the set-offs and other adjustments for transactions between companies in the group have been made.
- (3) For the purposes of section 1(7), 1(7C) and (9)(b) of this Schedule, the aggregate amount of the group's total revenue or assets—
 - (a) is to be calculated by aggregating the total revenue or assets (as the case may be) of each company in the group, as reflected in the company's annual financial statements or annual consolidated financial statements for the financial year; and
 - (b) is to be calculated on the basis that the set-offs and other adjustments for transactions between companies in the group have been made.
- (4) For the purposes of section 1(1)(c), (2)(c), (2A)(c), (2B)(c), (6)(c), ~~and~~ (7)(c), (7B)(c) and (7C)(c) of this Schedule, the average number of a company's employees during a financial year is to be calculated by using the following formula—

$$\frac{M}{N}$$

where—

M represents the aggregate of the number of the company's employees as at the end of each month during the financial year;

N represents the number of months in the financial year.

- (5) In subsections (2)(a) and (3)(a), a reference to a company's annual financial statements or annual consolidated financial statements is, in the case of a financial year of the company for the purposes of the predecessor Ordinance mentioned in section 1(10)(a) of this Schedule, a reference to the company's accounts or group accounts for the financial year.
