

**Part 9**  
**Accounts and Audit**  
**Division 1**  
**Preliminary**

**357. Interpretation**

**(1) In this Part—**

*annual consolidated financial statements* (周年綜合財務報表) means the consolidated statements required to be prepared under section 379(2);

*annual financial statements* (周年財務報表) means the statements required to be prepared under section 379(1);

*auditor's report* (核數師報告) means the report required to be prepared under section 405;

*directors' report* (董事報告) means—

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

*financial statements* (財務報表) means annual financial statements or annual consolidated financial statements;

*Regulation* («規例») means the regulations made under sections 451 and 452;

*summary financial report* (財務摘要報告) means a financial report prepared under section 439.

**(2) In this Part, a reference to the reporting documents for a financial year is a reference to all of the following—**

- (a) the financial statements for the financial year;
- (b) the directors' report for the financial year;
- (c) the auditor's report on those financial statements.

**(3) For the purposes of this Part, a body corporate is a wholly owned subsidiary of another body corporate if it has only the following as members—**

- (a) that other body corporate;
- (b) a wholly owned subsidiary of that other body corporate;
- (c) a nominee of that other body corporate or such a wholly owned subsidiary.

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**History**

This section is a new provision. Save for 'summary financial report', the words defined were not provided for under s 2 of the former Companies Ordinance (Cap 32).

**Overview**

The definition of 'summary financial report' differs from that in s 2 of the former Companies Ordinance. The previous provision covered reports for listed companies which complied with s 141CF(1). The new provision provides for that which is specifically prepared for the purpose of s 439.



Section 439 provides that the directors may prepare a financial report in summary form. The section applies to all types of companies.

Subsection (3) in relation to a body corporate being a wholly owned subsidiary of another body corporate is derived from s 124(3) of the former Companies Ordinance (Cap 32).

The Regulation means the regulations made under ss 451 and 452.

**358. Application in relation to financial year beginning on or after commencement date of relevant provision etc.**

(1) Each of the following sections applies in relation to a financial year beginning on or after the commencement date of that section—

- (a) section 359;
- (b) section 379;
- (c) section 388;
- (d) section 389;
- (e) section 429;
- (f) section 430;
- (g) section 439.

(2) Each of the following sections applies in relation to accounting records for a financial year beginning on or after the commencement date of that section—

- (a) section 373;
- (b) section 374;
- (c) section 376;
- (d) section 377.

(3) Each of the following sections applies in relation to financial statements for a financial year beginning on or after the commencement date of that section—

- (a) section 380;
- (b) section 381;
- (c) section 382;
- (d) section 383;
- (e) section 436;
- (f) section 449.

(4) Section 387 applies in relation to a statement of financial position for a financial year beginning on or after the commencement date of that section.

(5) Each of the following sections applies in relation to a directors' report for a financial year beginning on or after the commencement date of that section—

- (a) section 390;
- (b) section 391.

(6) Each of the following sections applies in relation to an appointment of an auditor for a financial year beginning on or after the commencement date of that section—

- (a) section 394;

- (b) section 395;
- (c) section 396;
- (d) section 398;
- (e) section 399.

(7) Each of the following sections applies in relation to a person appointed as auditor for a financial year beginning on or after the commencement date of that section—

- (a) section 402;
- (b) section 403;
- (c) section 404.

(8) Section 411 applies in relation to a general meeting of which notice is given on or after the commencement date of that section.

(9) Each of the following sections applies in relation to a person who is appointed, or is deemed to be reappointed, as auditor for a financial year beginning on or after the commencement date of that section—

- (a) section 412;
- (b) section 416;
- (c) section 417;
- (d) section 418;
- (e) section 419.

(10) Section 415 applies to a provision made on or after the commencement date of that section.

(11) Section 435 applies in relation to—

- (a) any financial statements and directors' report for a financial year beginning on or after the commencement date of that section; and
- (b) any auditor's report on those financial statements.

(12) Section 440 applies in relation to a summary financial report for a financial year beginning on or after the commencement date of that section.

(13) Schedule 4 applies in relation to financial statements for a financial year beginning on or after the commencement date of that Schedule.

### History and Overview

This is a new provision. The transitional provisions for Part 9 can be found at Schedule 11 Part 9 of Cap 622. The provisions under the former Companies Ordinance (Cap 32) will generally continue to apply in respect of financial years which commenced before the coming into force of Cap 622, i.e. 3 March 2014.



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

(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 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.

### History

This section is derived from s 141D(1) to (3) of the former Companies Ordinance (Cap 32).

For equivalent provisions for reporting exemptions in the UK (small companies regime), see UK Companies Act 2006, ss 381 to 384.

### Overview

This section provides the qualifying conditions for a company to fall within the reporting exemption relating to simplified financial and directors' reports. When a company is a private company, the company will be automatically qualified if it falls within the criteria of a 'small private company' (see s 361). This will be satisfied if any two of the conditions are satisfied:

1. total annual revenue of not more than HK\$100 million;
2. total assets of not more than HK\$100 million; or
3. no more than 100 employees.<sup>1</sup>

If the private company falls within the category of a holding company of a 'group of small private companies' (see s 364), and falls within any two of the following:

1. aggregate total annual revenue of not more than HK\$100 million;
  2. aggregate total assets of not more than HK\$100 million;
  3. no more than 100 employees,
- then it would automatically qualify for simplified reporting.<sup>2</sup>

<sup>1</sup> See s 359(1)(a)(i); Schedule 3 s 1(1), (2).

<sup>2</sup> See ss 359(2)(a), (b) and (c)(i), s 364, Sch 3 s 1(7), (8) and (9).



**Part 13**  
**Arrangements, Amalgamation, and Compulsory Share**  
**Acquisition in Takeover and Share Buy-Back**  
**Division 1**  
**Preliminary**

**666. Interpretation**

**In this Part—**

- child* (子女) includes a step-child, an illegitimate child and a child adopted in any manner recognized by the law of Hong Kong;
- cohabitation relationship* (同居關係) means a relationship between 2 persons (whether of the same sex or of the opposite sex) who live together as a couple in an intimate relationship;
- offer period* (要約期), in relation to an offer, means the period within which the offer can be accepted;
- repurchasing company* (回購公司), in relation to a general offer, means the listed company that makes the offer.

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**History**

This is a new provision.

**Overview**

The definitions are relevant to compulsory share acquisitions in takeovers and share buy-backs. The definition of 'child' is derived from s 157H(9) of the former Companies Ordinance (Cap 32), 'offer period' is derived from the Ninth Schedule of the former CO, and 'repurchasing company' is derived from the Thirteenth Schedule of the former CO.

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**667. Associate**

- (1) In this Part, a reference to an associate of an offeror or member, is—
- (a) if the offeror or member is a natural person, a reference to—
- (i) the offeror's or member's spouse;
  - (ii) a person who is in a cohabitation relationship with the offeror or member;
  - (iii) a child of the offeror or member;
  - (iv) a child of a person falling within subparagraph (ii) who—
    - (A) is not a child of the offeror or member;
    - (B) lives with the offeror or member; and
    - (C) has not attained the age of 18;
  - (v) a parent of the offeror or member;
  - (vi) a body corporate in which the offeror or member is substantially interested; or
  - (vii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member; or



- (b) if the offeror or member is a body corporate, a reference to—
- (i) a body corporate in the same group of companies as the offeror or member;
  - (ii) a body corporate in which the offeror or member is substantially interested; or
  - (iii) a person who is a party, or a nominee of a party, to an acquisition agreement with the offeror or member.
- (2) In this Part, a reference to an associate of a repurchasing company is a reference to—
- (a) a body corporate in the same group of companies as the repurchasing company;
  - (b) a body corporate in which the repurchasing company is substantially interested; or
  - (c) a person who is a party, or a nominee of a party, to an acquisition agreement with the repurchasing company.
- (3) For the purposes of subsections (1) and (2), an offeror, member or repurchasing company is substantially interested in a body corporate if—
- (a) the body corporate, or its directors or a majority of its directors, are accustomed to act in accordance with the directions or instructions of the offeror, member or repurchasing company; or
  - (b) the offeror, member or repurchasing company is entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of the body corporate.
- (4) In subsection (3), a reference to voting power the exercise of which is controlled by an offeror, member or repurchasing company includes voting power the exercise of which is controlled by another body corporate if the offeror, member or repurchasing company is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of that other body corporate.
- (5) For the purposes of subsections (1) and (2), an agreement is an acquisition agreement if—
- (a) it is an agreement for the acquisition of—
    - (i) any of the shares to which the takeover offer or general offer relates; or
    - (ii) an interest in those shares; and
  - (b) it includes provisions imposing obligations or restrictions on any of the parties to it with respect to the use, retention or disposal of the party's interests in the shares acquired pursuant to the agreement.

### History and Overview

The section is derived from s 168(3)(a) of the former Companies Ordinance (Cap 32) and s 988 of the UK Companies Act 2006. It is relevant to compulsory share acquisitions in takeovers and share buy-backs.

## Division 2 Arrangements and Compromises

### 668. Interpretation

#### (1) In this Division—

**arrangement** (安排) includes a reorganization of the company's share capital by the consolidation of shares of different classes, or by the division of shares into different classes, or both;

**company** (公司), except in section 675, means a company liable to be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

(2) In this Division, a reference to a company's articles, in the case of a company not having articles, is to be read as the instrument constituting or defining the constitution of the company.

### History

This is a new provision. It is derived from ss 166(5) and 167(5) of the former Companies Ordinance (Cap 32), and s 895(2) of the UK Companies Act 2006.

### Overview

A proposal falling within s 670 tends to be called a 'scheme', whatever its nature, but there is a clear distinction between an arrangement and a compromise. Under a compromise, a creditor agrees to accept a lesser sum than is due, or agrees to accept repayment by instalments over a period instead of in one lump sum immediately due. It can also cover a situation where a claimant agrees to modify undoubted rights. A compromise presupposes some dispute or difficulty in enforcing rights. Usually in a compromise situation, the debtor company retains, or resumes, control of its assets and the creditor/claimant recovers less than he might otherwise be entitled to.

An arrangement covers any other type of agreement modifying rights, including situations where the modification is not detrimental to the rights holder: see *Sneath v Valley Gold Ltd* [1893] 1 Ch 477 at 494; *Mercantile Investment and General Trust Co v International Co of Mexico* [1893] 1 Ch 484 (CA) at 489 and 491; *Re Guardian Assurance Co* [1917] 1 Ch 431 (CA). There does not have to be a dispute and the proposal may relate solely to the company and its shareholders and creditors and involve no other parties. Thus an arrangement includes a reorganisation of share capital: see *Re Hong Kong and Shanghai Banking Corp Ltd* [1991] 2 HKLR 111 (see Overview to s 673). For where the scheme is part of a wider restructuring see *Re Uniq Plc* [2011] EWHC 749 (Ch) (to deal with a pension scheme deficit). As to the differences between compromise and arrangement: see *Re Wah Nam Group Ltd (No 2)* [2003] 1 HKLRD 282.



The definition of arrangement in s 668(1) states certain inclusions in the word 'arrangement'. In an insolvency situation, an arrangement may involve assets being taken out of the control of the debtor company and put under the control of a trustee.

A company has an implied power to compromise<sup>1</sup> and to enter into arrangements.

A power to compromise, however, does not avoid the problem of the recalcitrant member or creditor. Power to bind a dissenting minority is vital and this is the value of the provisions in Division 2, except as mentioned in the Overview to s 673 the binding effect is too late, as there is no moratorium.

Save under a scheme sanctioned by the court under these provisions, a conveyance or assignment by a company of all its property to trustees for the benefit of its creditors is void: Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) s 266(2).

Note the extended definition of 'company' above for this Division, except for s 675.

Companies liable to be wound up under the C(WUMP)O include unregistered companies as defined in s 326 of C(WUMP)O. See s 327 of C(WUMP)O for the exercise of jurisdiction in that context.

#### 669. Application of Division

This Division applies if an arrangement or compromise is proposed to be entered into by a company with either or both of the following—

- (a) the creditors, or any class of the creditors, of the company;
- (b) the members, or any class of the members, of the company.

#### History and Overview

This section is new. There was no equivalent provision under the former Companies Ordinance (Cap 32), but compare s 166(1) of the former CO.

#### 670. Court may order meeting of creditors or members to be summoned

(1) The Court may, on application made for the purposes of this subsection—

- (a) order a meeting specified in subsection (2)(a), or a meeting specified in subsection (2)(b), or both (as the case may be) to be summoned in any manner that the Court directs; and
- (b) for the purposes of section 674(4), declare a person to be a person specified under that section.

<sup>1</sup> See *Re Norwich Provident Insurance Society, Bath's Case* (1878) 8 Ch D 334 (CA).

#### (2) The meeting is—

- (a) if the arrangement or compromise is proposed to be entered into—
  - (i) with the creditors of the company, a meeting of those creditors; or
  - (ii) with a class of the creditors of the company, a meeting of that class of creditors; and
- (b) if the arrangement or compromise is proposed to be entered into—
  - (i) with the members of the company, a meeting of those members; or
  - (ii) with a class of the members of the company, a meeting of that class of members.

#### (3) Subject to subsection (4), an application for the purposes of subsection (1) may be made only by—

- (a) in the case of a meeting of creditors, the company or any of the creditors;
- (b) in the case of a meeting of a class of creditors, the company or any creditor of that class;
- (c) in the case of a meeting of members, the company or any of the members; or
- (d) in the case of a meeting of a class of members, the company or any member of that class.

#### (4) If the company is being wound up, an application for the purposes of subsection (1) may be made only by the liquidator or provisional liquidator.

#### (5) An application for the purposes of subsection (1) must be made in a summary way.

#### History

This section is derived from s 166(1) of the former Companies Ordinance (Cap 32).

For equivalent provisions:

1. UK: Companies Act 2006, s 896;
2. Australia: Corporations Act 2001, s 411;
3. Singapore: Companies Act (Chapter 50), s 210.

#### Overview

This section gives the Court the power upon an application by the relevant parties to call a meeting or class meeting with creditors or members, where an arrangement or compromise (scheme) has been proposed.

The application under this section may be made by the company, its creditors, members, or in the case of the company being wound up, the liquidators or provisional liquidators (where given power on their appointment to attempt a rescue), as appropriate, in a 'summary way': subs (5). Application to the Court is made by way of originating summons: see Ord 102 r 2(1) and (2) of the Rules of the High Court (Cap 4A). For