

Companies Act (Overseas Incorporated Companies—Australian Wholly-owned Entities) Exemption Notice 2015

Pursuant to section 207L of the Companies Act 1993, the Registrar of Companies gives the following notice (to which is appended a statement of reasons of the Registrar).

Notice

1. Title—This notice is the Companies Act (Overseas Incorporated Companies—Australian Wholly-owned Entities) Exemption Notice 2015.

2. Commencement—This notice comes into force on its notification in the *New Zealand Gazette*.

3. Expiry—This notice expires on the close of **31 July 2020**.

4. Application—An exemption granted by this notice applies to the following accounting periods of an exempt overseas company:

- a. an accounting period of the exempt overseas company that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if:
 - i. in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under sections 201 or 202 of the Act, the exemption is granted before those documents are required to be delivered for registration under that section; or
 - ii. in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed; and
- b. subsequent accounting periods.

5. Interpretation—In this notice, unless the context otherwise requires:

Act means the Companies Act 1993;

Class Order means the Australian Securities and Investment Commission's Class Order [98/1418] Wholly-owned entities;

exempt overseas company means a company that:

- a. is incorporated in Australia;
- b. is a company to which sections 201 or 202 of the Act applies; and
- c. has been granted relief under the Class Order;

specified financial statements, in relation to an exempt overseas company, means the consolidated financial statements that are required to be prepared in accordance with the relief granted under the Class Order in respect of the exempt overseas company;

Australian GAAP means generally accepted accounting principles in Australia.

6. Exemptions for directors of exempt overseas companies—Every director of an exempt overseas company is exempted from the following provisions in respect of the exempt overseas company:

- a. sections 201 and 202 of the Act, except to the extent that these sections require financial statements to be prepared for the exempt overseas company's New Zealand business in accordance with section 204 of the Act; and
- b. section 207E of the Act to the extent that it requires copies of the financial statements and group financial statements of the exempt overseas company to be delivered to the Registrar for registration.

For the avoidance of doubt, this notice does not exempt an exempt overseas company from the requirement to prepare audited financial statements for its large New Zealand business.

7. Conditions—The exemptions in clause 6 are subject to the conditions that:

- a. the specified financial statements comply with Australian GAAP; and
- b. the specified financial statements are audited by a qualified auditor in accordance with the relevant standards relating to auditing or assurance that are in force in Australia;
- c. the directors of the exempt overseas company ensure that, within 20 working days after the specified financial statements are required to be signed, the following documents are delivered to the Registrar for registration:
 - i. a copy of the specified financial statements together with a copy of the auditor's report on those statements;
 - ii. a memorandum signed by the directors of the exempt overseas company which states that:
 - A. the specified financial statements are the consolidated financial statements that are required to be prepared under the Class Order and are not the financial statements of the exempt overseas company; and
 - B. the exempt overseas company has been granted relief under the Class Order and the basis for which the exempt overseas company qualifies for such relief; and
 - C. the nature of the relief granted.
 - iii. a copy of the Class Order.

Dated at Wellington this 15th day of June 2015.

Statement of reasons

This notice, which comes into force on its notification in the *New Zealand Gazette* and expires on 31 July 2020, exempts the directors of certain overseas companies incorporated in Australia from various provisions of the Companies Act 1993 ("the Act").

The effect of the exemptions is to allow overseas companies incorporated in Australia, which are wholly-owned subsidiaries that have been granted relief under the Australian Securities and Investment Commission's (ASIC) Class Order [98/1418] Wholly-owned entities (the Class Order), to provide the consolidated financial statements that they are required to prepare under financial reporting requirements in Australia.

The Class Order provides that certain wholly-owned subsidiaries may be relieved from the requirement to prepare and lodge audited financial statements under Chapter 2M of the Corporations Act 2001 (Aust), where they enter into deeds of cross guarantee with their parent

entity and meet certain other conditions. The relief is granted on the basis that the deed of cross guarantee makes the group of companies that are parties to that deed akin to a single legal entity in many respects. Creditors and potential creditors can then focus on the consolidated financial position for those entities rather than the individual financial statements of the wholly-owned subsidiaries that are parties to the deed.

The principal differences in financial statements provided by overseas companies relying on the exemptions are:

- a. the directors of the overseas company will prepare and register audited financial statements for the New Zealand business and the consolidated financial statements prepared for the parent entity only (not stand-alone parent company financial statements):
- b. the consolidated financial statements will comply with generally accepted accounting practice in Australia (rather than generally accepted accounting practice in New Zealand):
- c. the consolidated financial statements will be audited in accordance with auditing and assurance standards in force in Australia (rather than the applicable auditing and assurance standards in force in New Zealand).

The Registrar considers that it is appropriate to grant the exemptions because:

- the Registrar has had regard to the financial reporting requirements that must be complied with by Australian incorporated companies who rely on the exemptions. The exemptions are limited to overseas companies that have been granted relief by ASIC under the Class Order;
- an overseas company relying on the exemptions will still be required to file audited financial statements for the group's New Zealand business prepared in accordance with New Zealand generally accepted accounting practice as if the members of the group were companies formed and registered in New Zealand;
- the Registrar is satisfied that the consolidated financial statements for the parent company that are required to be prepared under the Class Order provide sufficient information to avoid any detriment to members of the public who have dealings with companies incorporated in Australia who have been granted relief under the Class Order; and
- the exemptions address the particular difficulties experienced by Australian incorporated companies that carry on business in New Zealand, and that have been granted relief under the Class Order from the requirement to prepare stand-alone parent company financial statements in Australia. The exemptions are not broader than what is reasonably necessary to address these difficulties and still require that consolidated financial statements be filed in New Zealand.

Dated this 18th day of June 2015.

This notice is administered by the Registrar of Companies.

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