

**PART XV of the SECURITIES AND FUTURES ORDINANCE
(CAP. 571) (Disclosure of Interests)**

**Under Section 309 of the Securities and Futures Ordinance (Cap. 571),
the Securities and Futures Commission, after consulting the Financial Secretary,
publishes these guidelines for the exemption of listed corporations and other persons
from all or any of the provisions of Part XV the Securities and Futures Ordinance**

**Securities and Futures Commission
Guidelines for the Exemption of Listed Corporations and Other Persons from Part XV of
the Securities and Futures Ordinance (Disclosure of Interests)**

1. Definitions

Terms that are defined in section 308 of the SFO and Schedule 1 to the SFO have the same meaning in these Guidelines. In addition:

“corporate insiders” means substantial shareholders, directors, shadow directors and chief executives of a listed corporation;

“CIS” means collective investment schemes;

“corporate form CIS” means a CIS which takes the form of a mutual fund company or otherwise in corporate form;

“Guidelines” means these guidelines made pursuant to Section 309(1) of the SFO;

“SFC” means the Securities and Futures Commission;

“SFO” means the Securities and Futures Ordinance (Cap. 571);

“Part XV” means Part XV of the SFO;

“Stock Exchange” means the Stock Exchange of Hong Kong Limited; and

“substantial shareholder” means a person or corporation who has an interest in shares comprising 5% or more of a listed corporation’s relevant share capital.

2. Nature and Purpose of these Guidelines

2.1 Part XV requires the disclosure by corporate insiders of their interests in the securities of listed corporations. Disclosure of information to investors and the market is the cornerstone of a fair and orderly securities market. Disclosure of interests of corporate insiders is an important element of an informed market. Except in limited circumstances, the SFC would not propose to exempt any person from the obligation to provide disclosure of interests to the market. Circumstances where the SFC will consider granting an exemption fall into five categories. Part 1 of these Guidelines sets out three categories of exemptions for listed corporations (or corporations that are applying for listing) from Part XV. Part 2 of these Guidelines sets out two more categories of

exemption for other persons.

Enabling provisions and general qualification

- 2.2 Section 309(2) of the SFO gives the SFC the power to exempt any applicant corporation or any other person in relation to that corporation from all or any of the provisions of Part XV, subject to such conditions as it thinks fit, having regard to the Guidelines. Section 309(2) is the enabling provision for exemptions granted in circumstances falling within Categories 1, 2, 3, 4 and 5.
- 2.3 The Guidelines set out the criteria that the SFC will take into account when deciding whether to grant an exemption. The Guidelines are not exhaustive. They are simply intended to assist applicants in understanding the matters that the SFC will take into consideration when deciding whether to exercise its discretion to grant an exemption. They may be modified or varied as circumstances require. Similarly, an exemption, once granted, can be revoked or any conditions attached modified or varied by the SFC as circumstances change.

Part 1

3. Exemptions for listed corporations

Category 1 – Dual listing

- 3.1 For some corporations, either already listed or seeking a listing, the principal share trading market in their securities exists or will exist on a stock exchange other than Hong Kong. In some cases either no share trading or only nominal trading will take place on the Stock Exchange. In other cases the corporate insiders of such corporations will be subject to statutory disclosure of interest obligations in another jurisdiction that are comparable to those of Part XV. Requiring compliance by these corporate insiders with Part XV may result in additional costs without contributing to an informed market for the shares of the relevant corporation.

Category 2 – Issuers of securities other than shares

- 3.2 A corporation that has any of its securities listed on the Stock Exchange is regarded as being listed and its corporate insiders come under disclosure obligations under Part XV even if shares in the corporation are not listed on the Stock Exchange. Requiring compliance by the corporation and its corporate insiders with Part XV may result in additional costs without contributing to an informed market for the securities that are listed.

Category 3 – Open-ended CIS in corporate form

- 3.3 An open-ended CIS, which is in corporate form and listed on the Stock Exchange, is technically a listed corporation under Part XV and its corporate insiders therefore come under the disclosure obligations under Part XV. On the basis that the total number of outstanding shares of an open-ended corporate form CIS is constantly changing, due to the frequent subscription and redemption of shares by investors, requiring compliance by an open-ended corporate form CIS and its corporate insiders with Part XV may result in additional costs without contributing to an informed market for its shares.

4. Applications for Category 1, 2 and 3 exemptions

- 4.1 Only a listed corporation or corporation applying for listing may apply, in writing, to the SFC for an exemption from Part XV under section 309(2).
- 4.2 An application in respect of Category 1 or Category 2 must be directed to the Corporate Finance Division of the SFC. An application in respect of Category 3 must be directed to the Investment Products Division of the SFC.
- 4.3 The applicant, when deciding what matters to include in its written application, should have regard to the Guidelines. The SFC may request additional information or make such enquiries as it considers appropriate when considering any application.
- 4.4 These Guidelines provide for complete or partial exemptions. Exemptions, whether complete or partial, may be made subject to such conditions as the SFC reasonably considers appropriate.

5. General Criteria for Category 1, 2 and 3 exemptions

- 5.1 The SFC will take account of the following matters in deciding whether to grant an exemption for corporations with a dual listing (i.e. a Category 1 application):
- (i) the volume of the applicant corporation's worldwide share turnover (or in the case of a new applicant for listing, the anticipated turnover) that takes place on the Stock Exchange and on any other stock exchange or securities market;
 - (ii) the extent to which an applicant corporation's corporate insiders are subject to statutory disclosure requirements in any other jurisdiction that are comparable to those existing in Hong Kong; and
 - (iii) the reasons for the applicant corporation listing in Hong Kong including whether it intends raising capital or not.
- 5.2 The SFC will take account of the following matters in deciding whether to grant an exemption for a corporation and its corporate insiders seeking to issue securities other than shares that are to be listed on the Stock Exchange (i.e. a Category 2 application):
- (i) whether the issuer has raised, or proposes to raise, publicly traded equity capital in Hong Kong;
 - (ii) whether shares of the issuer are traded, or are proposed to be traded on the Stock Exchange;
 - (iii) whether an exemption has previously been given under section 309 for securities that the issuer has issued or proposes to issue and to list on the Stock Exchange;
 - (iv) whether the underlying shares of the securities that it proposes to issue are shares of the issuer or a member of the issuer's group;
 - (v) whether the securities that it proposes to issue are convertible into shares of the issuer or a member of the issuer's group; and

- (vi) if a related corporation of the issuer is listed on the Stock Exchange, whether the chief executive or any director of the issuer is also the chief executive or a director of such listed corporation.

5.3 The SFC will take account of the following matters in deciding whether to grant an exemption for a corporate form CIS that is listed or seeking a listing on the Stock Exchange (i.e. a Category 3 application):

- (i) the extent to which shares of such CIS can be issued/created without reference or consent from existing holders and, repurchased/redeemed, directly or indirectly, at the request of the holder of such shares (which may be subject to conditions or limitations as customarily or commonly found in open-ended CIS or otherwise acceptable to the SFC), taking into account factors including the dealing frequency, the period required for subscription or repurchase or redemption proceeds to be paid and whether shareholders' approval is required for such issue/creation and/or repurchase/redemption. The SFC will make reference to the Code on Unit Trusts and Mutual Funds, which is in force from time to time, in considering whether the above factors are fulfilled; and
- (ii) whether such CIS is authorised by the SFC under section 104 of the SFO.

6. Complete Exemption under section 309(2)

6.1 When a complete exemption is granted under section 309(2) Part XV, in its entirety, will not apply to the corporation concerned and its corporate insiders in relation to that corporation. Disclosures of interests made by an applicant and its corporate insiders in any other jurisdiction in relation to that corporation will not be required to be filed with Hong Kong regulatory authorities.

6.2 The SFC will take into account all relevant facts and circumstances, including those matters set out in paragraph 5 above, in considering an application for a complete exemption.

6.3 An applicant for a complete exemption under Category 1 must satisfy the SFC that only a nominal percentage of the average daily volume of its worldwide share turnover does, or is reasonably anticipated to, take place on the Stock Exchange. A nominal percentage will normally be 1% or less of the average daily volume of an applicant's worldwide share turnover. Average daily volume of worldwide share turnover shall be calculated on the basis of share turnover during the twelve month period immediately preceding the date of any application for exemption.

6.4 The SFC would not normally grant a complete exemption if the applicant corporation or its predecessor has raised capital, or if the applicant intends to raise capital, in Hong Kong. However, the fact that a corporation raises a pro-rata proportion of its capital in Hong Kong, for example through a rights offering or by way of a professional offering in Hong Kong that was part of a worldwide offering, would not automatically result in revocation of its exemption.

6.5 The SFC would normally consider granting a complete exemption to an application made under Category 3, subject to its powers and other matters described in paragraph 2 above, which include the power to grant a partial exemption (as described in paragraph 7

below).

6.6 The SFC does not propose to revoke a complete exemption or modify or vary any conditions attached thereto unless there is a material change in circumstances. The SFC will give reasonable notice of its intention to revoke or vary a complete exemption. If, after an application for complete exemption is granted, a corporation's daily volume of share turnover on the Stock Exchange exceeds 1% of worldwide turnover calculated over a 12 month period then the exemption may be varied to a partial exemption, so that the corporation will be required to file any disclosures of interest made in another jurisdiction with the Stock Exchange.

7. Partial Exemption under section 309(2)

7.1 When a partial exemption is granted the corporation concerned and its corporate insiders will not be required to prepare registers, maintain records or file with Hong Kong regulatory authorities disclosure of interest reports pursuant to Part XV. An applicant corporation will be required to file with the Stock Exchange any disclosures of interests made in another jurisdiction as soon as is practicable. The Stock Exchange will publish these disclosures in the same way as those it receives from other listed corporations pursuant to Part XV.

7.2 Divisions 5, 11 and 12 of Part XV will continue to apply to the applicant corporation and its corporate insiders in the case of a partial exemption. Divisions 5 and 11 of Part XV set out the powers of the listed corporation and the Financial Secretary to investigate listed corporation ownership and related matters and Division 12 sets out the orders that can be made imposing restrictions on shares and equity derivatives.

7.3 The SFC will take account of all relevant facts and circumstances, including those set out at paragraph 5 above, in considering an application for a partial exemption but will take particular account of:

(i) The location of the principal trading market in an applicant corporation's securities. An application for a partial exemption is unlikely to be granted if 20% or more of the applicant corporation's average daily worldwide share turnover during a twelve month period immediately preceding the date of the application for exemption takes place on the Stock Exchange.

(ii) The nature and scope of any statutory disclosure of interest obligations that apply to an applicant corporation and its corporate insiders other than those imposed by Part XV. A partial exemption from Part XV will not normally be granted to an applicant corporation if no statutory disclosure of interest obligations comparable to those imposed by Part XV apply to its corporate insiders in any other jurisdiction.

7.4 The fact that a corporation has or proposes to raise capital in Hong Kong will not prevent it from obtaining a partial exemption from Part XV.

7.5 The SFC does not propose to revoke a partial exemption or modify or vary any of the conditions attached thereto unless there has been a material change in circumstances. Except in exceptional circumstances, the SFC will give six months notice to the listed corporation concerned of its intention to revoke a partial exemption.

Part 2

8. Exemptions for other persons

8.1 In this Part:

- (i) The term “clearing house” does not have the same meaning as that defined in Schedule 1 to the SFO. In this Part, the term “clearing house” means a financial market infrastructure that provides clearing and settlement services for transactions in securities, futures contracts or other financial instruments. It may also provide custody and nominee services.

Category 4 – Exchange participants of the Stock Exchange

- 8.2 Orders placed by exchange participants that are executed on the Stock Exchange are transactions entered into under the name of the exchange participant. Consequently the exchange participant acquires an interest in the securities. Currently, intermediaries who are licensed by or registered with the SFC to conduct Type 1 regulated activity are exempt from the Part XV disclosure obligations for SEHK listed securities if the interests are acquired as agent on behalf of principals who are not related corporations in the ordinary course of business and the interest is transient (he has been interested in the shares for not more than three business days)¹. An exchange participant’s interest arising from transactions conducted for an unrelated client on the Stock Exchange is no different and should be treated equally even if the exchange participant is not licensed or registered to conduct Type 1 regulated activity.

Category 5 – Clearing houses that are clearing participants

- 8.3 A clearing house performs clearing and settlement of transactions and may also provide custody and nominee services to beneficial investors. It therefore comes under the disclosure obligations under Part XV. Under current law, recognized clearing houses are not subject to the disclosure obligations in Part XV². Where a clearing house becomes a participant of a recognized clearing house to provide clearing and settlement of transactions as well as depository and nominee services in securities of Hong Kong-listed corporations for investors in its home market, the position of the overseas clearing house is similar to that of a recognized clearing house. Accordingly, the overseas clearing house should be treated equally with respect to its disclosure of interest obligations.

9. Applications for Category 4 and 5 exemptions

- 9.1 An application in respect of Category 4 or 5 should be directed to the SFC’s Corporate Finance Division.

10. General Criteria for Category 4 and 5 exemptions

- 10.1 The SFC will take account of the following matters in deciding whether to grant an exemption to an exchange participant of the Stock Exchange (i.e. a Category 4 application):

¹ Section 323(1)(i) of the SFO.

² Section 323(1)(g) of the SFO.

- (i) the exchange participant must be admitted as a participant of a recognized exchange company in accordance with rules made under section 23 or section 36 of the SFO; and
- (ii) the exemption will only apply to the following interests:
 - the interest is acquired by the exchange participant as an agent for his principal;
 - the principal in the transaction is a person other than a related corporation of the exchange participant;
 - the interest is acquired from a person other than a related corporation of the exchange participant; and
 - the exchange participant has been interested in the shares for not more than 3 business days.

10.2 The SFC will take account of the following matters in deciding whether to grant an exemption to a clearing participant that is itself a clearing house (i.e. a Category 5 application):

- (i) the clearing house must be admitted as a participant of a recognized clearing house in accordance with rules made under section 40 of the SFO;
- (ii) the clearing house must be regulated by a home regulator who has entered into a memorandum of understanding with the SFC; and
- (iii) the exemption will only apply to interests in securities of Hong Kong listed corporations held by the clearing house that are incidental to the clearing and settlement services or are held for beneficial investors.

11. Complete exemption under section 309(2)

11.1 The SFC would normally consider granting a complete exemption to an application made under Category 4 or 5, subject to its powers and other matters described in paragraph 2 above, which includes the power to grant a partial exemption. The SFC does not propose to revoke a complete exemption unless there is a material change in circumstances. The SFC will give reasonable notice of its intention to revoke or vary a complete exemption.

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