

## SECURITIES (DISCLOSURE OF INTERESTS) ORDINANCE (CAP.396)

### Securities and Futures Commission

#### Guidelines for the Exemption of Listed Companies from the Securities (Disclosure of Interest) Ordinance

##### 1. Definitions

Save for the terms hereinafter defined, terms used in these Guidelines have the meanings ascribed to them by the Securities (Disclosure of Interests) Ordinance and any amendments thereto. In these Guidelines:

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

“Guidelines” means these guidelines made pursuant to Section 2 A(1) of the Ordinance;

“Ordinance” means the Securities (Disclosure of Interests) Ordinance;

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

“Substantial shareholder” means a person or company who has an interest in shares comprising 10% or more of a listed company’s issued share capital of a class carrying rights to vote in all circumstances at general meeting of the company.

##### 2. Nature and Purpose of these Guidelines for Exemption

2.1 The Ordinance requires the disclosure by corporate insiders of their interests in the securities of listed companies. 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 Commission would not propose to exempt a listed company and its corporate insiders from the obligation to provide disclosure of interests to the market.

2.2 For some companies, 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 companies will be subject to statutory disclosure of interest obligations in another jurisdiction that are comparable to those of the Ordinance. Requiring compliance by these corporate insiders with the Ordinance may result in additional costs without contributing to an informed market for the shares of the relevant company.

2.3 Section 2A(2) of the Ordinance gives the Commission the power to exempt any listed company from all or any of the provisions of the Ordinance, subject to such conditions as it thinks fit, having regard to the Guidelines. The Guidelines set out the criteria which the Commission 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 Commission 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 Commission as circumstances change.

### 3. Application for an Exemption

3.1 Only a listed company or company applying for listing may apply, in writing, to the Commission for an exemption from the Ordinance. An application must be directed to the Corporate Finance Division of the Commission.

3.2 The applicant, when deciding what matters to include in its written application, should have regard to the Guidelines. The Commission may request additional information or make such enquiries as it considers appropriate when considering any application.

3.3 These Guidelines provide for complete or partial exemptions. Exemptions, whether complete or partial, may be made subject to such conditions as the Commission reasonably considers appropriate.

#### 4. General Criteria for Exemption

4.1 The Commission will take account of the following matters in deciding whether to grant an exemption:

- (i) the volume of the applicant company'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 company'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 company listing in Hong Kong including whether it intends raising capital or not.

4.2 The Commission will confer with the Stock Exchange and take account of its views when considering an application for an exemption

#### 5. Complete Exemption

5.1 When a complete exemption is granted the Ordinance, in its entirety, will not apply to the company concerned and its corporate insiders. Disclosures of interest made by an applicant and its corporate insiders in any other jurisdiction will not be required to be filled with Hong Kong regulatory authorities.

5.2 The Commission will take into account all relevant facts and circumstances, including those matters set out in section 4 above, in considering an application for a complete exemption.

5.3 An applicant for a complete exemption must satisfy the Commission that only a nominal percentage of the average 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.

5.4 The Commission would not normally grant a complete exemption if the applicant company or its predecessor has raised capital, or if the applicant intends to raise capital, in Hong Kong. However, the fact that a company 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.

5.5 The Commission does not propose to revoke a complete exemption or modify or vary any conditions attached thereto unless there is a material change in circumstance. The Commission will give reasonable notice of its intention to revoke a complete exemption. If, after an application for complete exemption is granted, a company'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 company will be required to file any disclosures of interest made in another jurisdiction with the Stock Exchange.

## 6. Partial Exemption

6.1 When a partial exemption is granted the company 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 the Ordinance. An applicant company 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 companies pursuant to the Ordinance.

6.2 Parts IV and V of the Ordinance will continue to apply to the applicant company and its corporate insiders in the case of a partial exemption. Part IV of the Ordinance sets out the powers of the Financial Secretary to investigate listed company ownership and Part V sets out the orders that can be made imposing restrictions on shares.

- 6.3 The Commission will take account of all relevant facts and circumstances, including of all relevant facts and circumstances, including those set out at section 4 above, in considering an application for a partial exemption but will take particular account of:
- (i) The location of the principal trading market in and applicant company's securities. An application for a partial exemption is unlikely to be granted if 20% or more of the applicant company'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 company and its corporate insiders other than those imposed by the Ordinance. A partial exemption from the Ordinance will not normally be granted to an applicant company if no statutory disclosure of interest obligations comparable to those imposed by the Ordinance apply to its corporate insiders in any other jurisdiction.
- 6.4 The fact that a company has or proposes to raise capital in Hong Kong will not prevent it from obtaining a partial exemption from the Ordinance.
- 6.5 The Commission 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 Commission will give six months notice to the listed company concerned of its intention to revoke a partial exemption.

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