INTERNATIONAL COMPARISON

Due to the differences in the disclosure regimes in overseas jurisdictions, we will present a summary of the relevant proposals in the Bill as they are relevant in the overseas jurisdiction, instead of presenting a country by country comparison.

Disclosure threshold

2. In 1994, the Asian Development Bank commissioned a comparative study of the securities regulations and practices of 13 countries in Asia including Hong Kong. In the discussion paper issued by the study group in July 1994, "Securities Market Regulation & Supervision" (the "ADB Paper"), it was recommended that countries in the Asian region should adopt a 5% disclosure threshold[1].

3. Furthermore, a review of the securities regulations of other jurisdictions shows that Hong Kong's 10% threshold is the highest among international and regional centres -

• The U.K. :	3%[2]	The U.S. :	5%[3]
• Australia :	5%[4]	New Zealand :	5%[5]
• Japan :	5%[6]	Singapore :	5%[7]
• Malaysia :	5%[8]	Thailand :	5%[9]
• Indonesia :	5%[10]	The P.R.C. :	5%[11]

Notification Period

4. The S(DI)O requires a person under a duty of disclosure to perform that duty within 5 calendar days next following the day on which the duty arises[12]. Therefore, if a duty of disclosure arises on the 1st day of a particular month, notification must be made to the SEHK and the listed company concerned no later than on the 6th day of that month.

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1 Section E of the ADB Paper at p.29.

2 Section 199(2) of the U.K. Companies Act 1985.

3 Section 13(d)(1) of the U.S. Securities Exchange Act 1934, as amended.

4 Section 708 of the Australian Corporations Law.

5 Sections 2 and 20 of the New Zealand Securities Amendment Act 1988.

6 The Securities and Exchange Law, Cabinet Order for the Enforcement of the Securities and Exchange Law, and Ordinance of the Ministry of Finance Concerning the Disclosure of the State of Large Holdings of Shares.

7 Section 81 of the Singapore Companies Act.

8 Section 69D of the Malaysian Companies Act 1965.

9 Section 246 of the Securities and Exchange Act B.E. 2535.

10 Article 87 of the Capital Market Law 1995 of Indonesia.

11 Article 47 of the Interim Regulations on the Administration of Stock Issuance and Trading promulgated by the State Council in April 1993.

12 Section 7(1)(a) of, and Paragraph 14(1) of the Schedule to, the S(DI)O.

5. The ADB Paper recommends that a 2 days' notification period be adopted[13].

6. The notification period adopted by other jurisdictions is as follows -

- The U.K. : 2 business days[14]
- The U.S. : 10 days[15]
- The P.R.C. : 3 working days[16]
- Singapore : 2 days[17]
- Malaysia : 14 days[18]
- Indonesia : 10 days[19]
- Thailand : 1 business day[20]
- Australia : 2 business days[21]
- New Zealand : Notification must be given as soon as the person knows, or ought to know, that he is or ceases to be a substantial security holder, or as soon as he knows, or ought to know, that any change in his interest takes place[22].

Disclosure of consideration

7. U.S. laws require detailed particulars to be disclosed by substantial security holders. These include the source and the amount of funds or other consideration used, or to be used, in the purchase of securities. Substantial security holders are also required to classify the source of funds and to file copies of all written agreements, arrangements, understanding or proposals relating to the borrowing of funds, acquisition of control or transfer of securities.

8. Australian regulations require substantial shareholders to disclose the consideration they paid in the acquisition of interest in voting shares and with respect to any change in such interest. With respect to interests acquired off-exchange, substantial shareholders are required to provide a copy of the contract, scheme or arrangement that gives rise to the duty of disclosure. If the relevant interest was acquired other than because of a contract, scheme or arrangement or where such contract, scheme or arrangement was not in writing, a memorandum must be attached to the notification disclosing full particulars of the circumstance giving rise to the duty of disclosure.

9. Where the substantial security holder is a beneficial owner of voting securities, New Zealand regulations require him to disclose the consideration and other terms of any transaction as a result of which he becomes a beneficial owner. If the person concerned is

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13 Section E of the ADB Paper at p.29.

14 Sections 202(1) and 220(2) of the U.K. Companies Act 1985.

15 Section 13(d)(1) of the U.S. Securities Exchange Act 1934, as amended.

16 Article 47 of the Interim Regulations on the Administration of Stock Issuance and Trading promulgated by the State Council in April 1993.

17 Sections 82 to 84 of the Companies Act of Singapore.

18 Sections 69E, 69F and 69G of the Companies Act of Malaysia.

19 Article 87 of the Company Law of Indonesia.

20 Section 246 of the Securities and Exchange Act of Thailand.

21 Sections 709(4), 710(4) and 711(4) of the Australian Corporations Act.

22 Sections 20(4), 21(4) and 22(4) of the New Zealand Securities Amendment Act 1988.

not a beneficial owner of voting securities, he is required to provide a copy of each contract, agreement or instrument pursuant to which he becomes interested in the relevant securities. Where there is no such document, he is required to provide a memorandum specifying the material terms of any trust, agreement, arrangement or understanding pursuant to which the interest arises.

Disclosure of interests in shares through equity derivatives

United Kingdom

10. In the UK, Part VI of the Companies Act 1985 governs the disclosure obligations of substantial shareholders and directors. In Part VI there is no specific mentioning of equity derivatives. However, sections 208 (2) and (5) contain provisions (identical to sections 13 (2) and (5) of the S(DI)O) which make it clear that a range of derivative interests must be disclosed.

11. In 1995 the Securities and Investments Board (the SIB") considered whether to introduce arrangements for disclosure of economic interests in shares. However, the SIB took the view that the need for change was reduced by the introduction by the London Takeover Panel of a new Rule 8.3 requiring disclosure of such interests during offer periods.

12. One of the reasons that the Panel introduced Rule 8.3 in 1996 was stated to be because persons with large positions in derivatives might influence the outcome of a takeover bid and it was concerned that there was not sufficient transparency under the previous rules. The Panel was also concerned that positions in derivatives may have a significant influence on prices and, indirectly, through associated hedging, the location of the stock.

13. The issue of disclosure does not arise in relation to directors in the UK as directors are prohibited from dealing in derivatives in the UK.

United States

14. In the US there are two separate provisions requiring disclosure of interests in shares - including interests held through derivatives[23]. The SEC takes slightly different approaches under the separate provisions with respect to derivatives, as follows.

<u>Directors and 10% shareholders</u>

15. Every officer, director, and beneficial owner of more than 10% of a class of equity securities must file with the SEC a statement of ownership regarding such security. Derivative securities and non-derivative securities must be disclosed separately. Derivative securities are described as "puts, calls, options, warrants, convertible securities, or other rights or obligations to buy or sell securities".

16. Recently, the SFC has asked the SEC whether the disclosure provisions in the US apply to purely cash-settled derivatives. According to the SEC, it adopted in 1996 amendments that apply the reporting provisions to cash-only instruments to the same extent as other issuer equity securities. Also, in the US, any beneficial owner of more than 10% of

[23] Sections 13 and 16 of the US Securities Exchange Act 1934, as amended.

any class of equity security as well as the issuer's directors or officers, may not sell the security if he does not own the security sold. The SEC interprets that section as prohibiting any short sales by these insiders.

5% shareholders

17. Generally, the extent of the disclosure obligations imposed in the US are greater than in Hong Kong. A 5% shareholder must give information including - the number of shares that he owns; his identity and background; the source and amount of the consideration; the purpose of the acquisition and his plans for further acquisitions. It also includes information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, etc.

18. Although the provision relating to persons holding 5% of a listed corporation does not prohibit short sales by persons, the SEC has taken the view that, because of the range of matters that must be disclosed, any short sales would probably have to be reported in the filing.