

Part XV

Disclosure of Interests

299. Interpretation of Part XV

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"custodian" (保管人) means a corporation the principal business of which is to act as a custodian of securities or other property for another person,¹ whether on trust or by contract;

"founder ~~of the trust~~²" (成立人), in relation to a discretionary trust, means a person who -

- (a) has directly or indirectly provided, or undertaken to provide, property for the purpose of the trust; or
- (b) has entered into a reciprocal arrangement or understanding (whether having legal effect or not) with another person leading, directly or indirectly, to the creation of the trust, or has procured another person, directly or indirectly, to create the trust,

and whose consent is required as a condition (whether having legal effect or not) to the exercise by any trustee of his discretion

¹ Technical amendment for clarity.

² At the Bills Committee meeting on 11 December 2001, Members suggested ways to synchronise the English and Chinese text. Having reviewed this term in the context of clauses 313 and 336, the Law Draftsman proposes to delete the reference "of the trust" as it is not necessary for the purpose of the interpretation clause.

in connection with the trust property, or in accordance with whose wishes (whether having legal effect or not) any trustee is accustomed, or would be expected, to act;

to it by section 306(1);

"qualified lender" (合資格借出人) means a person who is -

- (a) an authorized financial institution;
- (b) an insurer authorized ~~within the meaning of~~ under³ the Insurance Companies Ordinance (Cap. 41);
- (c) an exchange participant of a recognized exchange company;
- (d) an intermediary licensed or registered for Type 1 or Type 8 regulated activity; or
- (e) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of ~~sub~~³section 304(11), 308(6), 314(5) or (6) or 332(5) by the Commission to carry on business -
 - (i) as a bank;
 - (ii) as an insurance company; or
 - (iii) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried on by an intermediary referred to in paragraph (d);

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³ Technical amendment for clarity.

300. Exemptions

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(4A) The Commission shall publish, by the use of an on-line medium,⁴ such particulars of the exemptions granted, suspended or withdrawn under this section as it considers appropriate.

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304. Circumstances in which duty of disclosure arises

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(7) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(c) is not under such a duty where -

- (a) the percentage level of his interest in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 305(1), immediately after the relevant time is the same as or less than the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

⁴ Members suggested at the Bills Committee meeting on 11 December 2001 that the means of publication be specified in the provision. We have incorporated this suggestion.

⁵ In the light of a comment made by the Legal Services Division of the Legislative Council, we have deleted the reference to “required to be” so that the last notification will be confined to the last notification actually given by the person concerned.

(b) the difference between -

(i) the percentage figure of his interest in shares so comprised, calculated in accordance with subsection (13)(a), at all times since the relevant event giving rise to the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

(ii) the percentage figure of his interest in shares so comprised disclosed in the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),

is less than 0.5%.

(7A) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (1)(d) is not under such a duty where the percentage level of his interest (excluding that part of his interest the nature of which has changed immediately after the relevant time) in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 305(1) (by construing the reference in that section to the aggregate nominal value of all the shares in which a person is interested as a reference to the aggregate nominal value of the shares the nature of the person's interest in which has not changed),

immediately after the relevant time -

- (a) is the same as the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(a), (c) or (d) (whichever is the latest); or
- (b) is the same as or less than the percentage level of his interest in shares so comprised at the time of the relevant event giving rise to the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c), and the difference between -
 - (i) the percentage figure of his interest in shares so comprised, calculated in accordance with subsection (13)(a) (by construing the reference in that subsection to section 305(1) in the manner aforementioned in this subsection), at all times since the relevant event giving rise to the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

(ii) the percentage figure of his interest in shares so comprised disclosed in the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),

is less than 0.5%.

(8) A person who would otherwise come under a duty of disclosure in the circumstances specified in subsection (4)(c) is not under such a duty where -

(a) the percentage level of his short position in shares comprised in the relevant share capital of the listed corporation concerned, calculated in accordance with section 305(4), immediately after the relevant time is the same as or less than the percentage level of his short position in shares so comprised at the time of the relevant event giving rise to the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and

(b) the difference between -

(i) the percentage figure of his short position in shares so comprised calculated in accordance with subsection (13)(b) at all times since the relevant event giving rise to the last notification ~~required to be~~⁵ given

by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c); and

- (ii) the percentage figure of his short position in shares so comprised disclosed in the last notification ~~required to be~~⁵ given by him where the duty of disclosure arose in the circumstances specified in subsection (4)(c),

is less than 0.5%.

(11) In subsection (1)(d), a reference to the nature of a person's interest as being not the same includes a reference to a change in the nature of -

- (a) the person's title to shares comprised in the relevant share capital of the listed corporation concerned;
- (b) any of the person's interest whether legal or equitable in shares so comprised;
- (ba) any of the person's interest in shares so comprised, which are the underlying shares of equity derivatives, on -

~~(i) the writing or issuing by him of the equity derivatives; or⁶~~

~~(ii) the exercise by, or against, him of rights under the equity derivatives; or~~

⁶ This paragraph has been deleted as the writing and issuing of equity derivatives should not be considered as a change in interest. They should be considered as acquiring an interest or coming to have a short position which is covered under clause 301.

- (c) any of the person's interest in shares so comprised in such other circumstances as are prescribed by rules made under section 365A,

but does not include a reference to a change in the nature of the person's interest in shares so comprised -

- (i) on delivery of the shares to him, if his equitable interest in those shares is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 3 or 4;
- (ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a change in the number of the underlying shares in issue;
- (iii) -
- (iv) on -
 - (A) the exercise of rights to subscribe for shares granted to him as part of a rights issue; or
 - (B) delivery of shares to him pursuant to a rights issue;
- (v) where another person, being a qualified lender, comes to have an interest in his shares by way of security; or
- (vi) where the person is a holding company, due to the acquisition of an interest in those shares by a qualified corporation of the person from another qualified corporation of the person.

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313. Interests and short positions to
taken into account for the
purpose of notification

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(10) A person shall be regarded as having ceased to be
interested in shares if -

(a) he delivers the shares to another person or to another
person's order -

(i) in accordance with a contract under which he
agreed to sell the shares to the other person;

(ii) in fulfilling an obligation to do so when
called upon by the other person to deliver
the shares; or

(iii) pursuant to a right to require the other
person to take the shares;⁷

(b) his right to subscribe for or call for delivery of the
shares lapses or he assigns such a right to another
person;

(c) his obligation to take delivery of the shares lapses
or he assigns such an obligation to another person; or

(d) he receives from another person an amount, or avoids
or reduces a loss, on assignment or settlement of any
cash settled equity derivatives.

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⁷ Technical amendment for clarity.

314. Interests and short positions
to be disregarded for the purpose of notification

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(2A) For the purposes of subsection (1)(aa), an interest in shares is an exempt custodian interest if -

- (a) it is held by a corporation which carries on a business of⁸ holding securities in custody for another person, whether on trust or by contract; and
- (b) the corporation has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest.

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⁸ Technical amendment for clarity.

315. Notification to be given

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(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form -

- (a) notwithstanding section 384(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and
- (b) specify documents by which it is to be accompanied.

(3A) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3)⁹.

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⁹ Sub-clause (3A) is designed to facilitate the promulgation of electronic forms. Such forms would be, for example, accessed over the internet on the SFC's website. These electronic forms could be interactive and might not be reproduced in hard copy, hence the alternative of enabling notice to be given in the Gazette specifying that an electronic form is available on the SFC's website. The SFC would continue to make available physical forms. The format of physical forms may be different from that of electronic forms but the information required would be the same in substance. This provision is similar to clause 388(1A), which Members considered at the Bills Committee meeting on 11 December 2001 and accepted.

**332. Duty of disclosure by director and
chief executive**

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(5) In subsection (1)(e), a reference to a change in the nature of the interest of a director or chief executive in shares or debentures includes a reference to a change in the nature of -

- (a) his title to the shares or debentures;
- (b) any of his interest whether legal or equitable in the shares or debentures; or
- (c) any of his interest in the shares, which are the underlying shares of equity derivatives, on—
 - ~~(i) the writing or issuing by him of the equity derivatives; or¹⁰~~
 - ~~(ii) the exercise by, or against, him of rights under the equity derivatives,~~

but does not include a reference to a change in the nature of his interest in the shares or debentures -

- (i) on delivery of the shares or debentures to him, if his equitable interest in those shares or debentures is notifiable, or has previously been notified to the listed corporation concerned and the relevant exchange company, under any provision of this Division or Division 8 or 9;
- (ii) due to a change in the terms on which rights under any equity derivatives may be exercised resulting from a

¹⁰ Same rationale as footnote (6).

change in the number of the underlying shares in issue;

or

- (iii) where another person, being a qualified lender, comes to have an interest in his shares or debentures by way of security.

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**338. Notification to be given by director
and chief executive**

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(3) The Commission may, by notice published in the Gazette, specify the form in respect of a notification required by this section, either generally or in any particular case, and, without limiting the generality of the foregoing, may in the form -

- (a) notwithstanding section 384(1), include directions and instructions relating to the manner in which the form is to be completed, signed, executed and authenticated; and
- (b) specify documents by which it is to be accompanied.

(3A) For the purposes of subsection (3), the Commission may specify any form by referring in a notice published in the Gazette to the form as separately published by such electronic means as the Commission considers appropriate, instead of setting out the form in a notice published in the Gazette, whereupon the Commission shall for all purposes be regarded as having duly specified the form under subsection (3).¹¹

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¹¹ Same rationale as footnote (9).

340. Particulars to be contained in notification
by director and chief executive

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(9A)¹² Where the share capital of the listed corporation or the associated corporation of the listed corporation is divided into different classes of shares –

- (a) a reference in this section to the number of shares in the listed corporation or associated corporation (as the case may be) in which the person is interested or has a short position shall be construed as a reference to the number of the shares in each of the classes taken separately; and
- (b) a reference in this section to a percentage of the number of the issued shares in the listed corporation or associated corporation (as the case may be) shall be construed as a reference to a percentage of the number of the issued shares in each of the classes taken separately.

(9AB)¹² In subsection (6), "completion" (完成), in relation to a rights issue, means the issue of shares in the listed corporation or the associated corporation of the listed corporation pursuant to the rights issue.

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¹² Consequential amendments on the numbering of clauses.

347. Power to investigate ownership
of listed corporation

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(1) If it appears to the Financial Secretary that there are reasonable grounds to conduct an investigation for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of a listed corporation or able to control or materially ~~to~~¹³ influence its policy, he may appoint one or more inspectors to investigate and report ~~for such purposes~~¹³—

- (a) on the ownership of shares in or debentures of the listed corporation;
- (b) on persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation;
- (c) where the shares in the listed corporation are the underlying shares of any equity derivatives, on persons who have or had an interest in those equity derivatives; and
- (d) otherwise with respect to the listed corporation~~7~~

~~for such purposes~~¹³.

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¹³ Technical amendment for clarity as suggested by a Member at the Bills Committee meeting on 11 December 2001.

352. Obstruction of inspectors

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(3) The Court of First Instance may then inquire into the case and -

- (a) if the Court is satisfied that there is no reasonable ground for the officer, agent or person (as the case may be) not to comply with the requirement under subsection (2), order the officer, agent or person (as the case may be) to comply with the requirement within the period specified by the Court; and
- (b) if the Court is satisfied that the refusal was without reasonable excuse, punish the officer, agent or person (as the case may be), and any other person ~~who appears to have been~~ knowingly¹⁴ involved in the refusal, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

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¹⁴ Technical amendment for consistency with amendments proposed to clauses 130B(3)(b), 178(1)(b) and 204(1)(b).

361. Further provisions on sale by court
order of restricted shares, etc.

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(3) Any person who had an interest in the shares or equity derivatives from which the proceeds, which have been paid into court under subsection (1) or (2), were derived may apply to the Court of First Instance for an order that the whole or a¹⁵ part of those proceeds be paid to him.

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¹⁵ Technical amendment for clarity.

363. Method of giving notification and delivering report

Notwithstanding section 386, any notification, requirement report or other document (however described) to be, or required to be, given, delivered, issued or sent for the purposes of this Part shall be regarded as duly given, delivered, issued or sent if -

(a) in the case of a corporation, it is -

(ia) delivered to any officer of the corporation
by hand;¹⁶

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¹⁶ We propose this amendment for consistency with clause 386(b)(ia) in Part XVI.

365A. Rules by Commission

(1) The Commission may, ~~subject to subsections (3) and (4)~~after consultation with the Financial Secretary¹⁷, make rules which are not inconsistent with regulations made by the Chief Executive in Council under section 365, to -

- (a) prescribe interests and short positions in shares comprised in the relevant share capital of a listed corporation, that are or are to be dealt with pursuant to the provisions of a securities borrowing and lending agreement, to be disregarded for the purposes of section 314 subject to such conditions as may be specified in the rules;
- (b) prescribe circumstances of change in the nature of interests for the purposes of section 304(11);
- (c) provide for exclusions, subject to such conditions as may be specified in the rules, from the requirement to give notification under any provision of this Part in respect of interests, or short positions, in shares comprised in the relevant share capital of a listed corporation that are or are to be dealt with pursuant

¹⁷ We propose to delete sub-clauses (3) and (4) and subsume the consultation requirement under the general market consultation provision in clause 384A of Part XVI. The obligation to consult with the Financial Secretary on the draft rules after consultation with the public is preserved in sub-clause (1).

to the provisions of a securities borrowing and lending agreement.

~~(2)~~

~~(3) Where the Commission proposes to make rules under subsection (1), it shall prepare and publish a draft of the rules, in such manner as it considers appropriate, for the purpose of inviting representations on the rules by the public.~~

~~(4) After a draft of the rules which the Commission proposes to make under subsection (1) is published under subsection (3), the Commission may, after consultation with the Financial Secretary, modify the rules, taking into consideration any representation on the rules received as a result of the publication, in such manner as it considers appropriate, for the purpose of having the rules made under subsection (1).¹⁷~~

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Securities and Futures Commission
Financial Services Bureau
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