

**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Part XV of the Securities and Futures Bill  
Committee Stage Amendments**

Members examined on a clause-by-clause basis Part XV of the Securities and Futures Bill on 12 October 2001.

**Committee Stage Amendments**

2. We have made some amendments to Part XV in the light of Members' comments and to further refine the drafting. All the amendments are marked up in revision mode with corresponding explanations in the footnotes.

**About the marked-up version of the Bill**

3. All the proposed amendments shown in the attached version are marked up against the Blue Bill, notwithstanding that they might have appeared in earlier marked-up versions issued to Members. Where the amendments are made since Members last considered the relevant Part of the Bill, such **new amendments are explained in the footnotes in bold type**, to distinguish them from the footnotes for amendments which Members have considered and proposed no further changes at previous meetings.

Financial Services Bureau  
Securities and Futures Commission  
26 November 2001

PART XV

DISCLOSURE OF INTERESTS

**Division 1 - Preliminary**

**299. Interpretation of Part XV**

(1) In this Part, unless the context otherwise requires -  
"associated corporation" (相聯法團), in relation to a listed  
corporation, means a corporation -

(a) which is a subsidiary or holding company of the  
listed corporation or a subsidiary of the listed  
corporation's holding company; or

(b) (not being a subsidiary of the listed corporation)  
in which the listed corporation has an interest in  
the shares of ~~any~~<sup>1</sup> class comprised in its share  
capital exceeding in nominal value one-fifth of the  
nominal value of the issued shares of that class;

"cash settled equity derivatives" (現金結算股本衍生工具) means equity  
derivatives other than physically settled equity derivatives;

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<sup>1</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

"chief executive" (最高行政人員) means the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

"contract multiplier" (合約乘數), in relation to a stock futures contract, means the number specified by the recognized exchange company operating the futures market on which the stock futures contract is traded to be the contract multiplier for that stock futures contract under the rules of the recognized exchange company;

"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 whether on trust or by contract;

"deliver" (交付), in relation to any shares<sup>1</sup> or debentures ~~or~~ ~~equity derivatives~~, means deliver the shares<sup>1</sup> or debentures ~~or equity derivatives~~<sup>2</sup> either physically or by electronic means and, in the case of unissued shares, means deliver the shares after they are issued; and "take delivery" (提取) shall be construed accordingly;

"duty of disclosure" (披露責任) -

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<sup>2</sup> Technical amendment for clarity. The concept of delivery was not used in association with equity derivatives in Part XV.

- (a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means the duty of disclosure arising under section 301 which has to be performed in accordance with section 315; or
- (b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means the duty of disclosure arising under section 332 which has to be performed in accordance with section 338;

"equity derivatives" (股本衍生工具) means any -

- (a) rights, options or interests (whether described as units or otherwise) in, or in respect of, underlying shares;
- (b) contracts, the purpose or pretended purpose of which is to secure or increase a profit or avoid or reduce a loss, wholly or partly by reference to the price or value, or a change in the price or value, of -
  - (i) underlying shares; or
  - (ii) any rights, options or interests referred to in paragraph (a);
- (c) rights, options or interests (whether described as units or otherwise) in, or in respect of -
  - (i) any rights, options or interests referred to in paragraph (a); or
  - (ii) any contracts referred to in paragraph (b); or

(d) instruments or other documents creating, acknowledging or evidencing any rights, options or interests or any contracts referred to in paragraph (a), (b) or (c), including stock futures contracts, certificates of interest or participation in, temporary or interim certificates for, receipts (including depositary receipts) in respect of, or warrants to subscribe for or purchase -

(i) underlying shares; or

(ii) the rights, options or interests or the contracts,

whether or not -

(i) the rights, options or interests, the contracts or the instruments or documents are traded on a recognized stock market or a recognized futures market;

(ii) the rights, options or interests, the contracts or the instruments or documents are, where the underlying shares are shares in a listed corporation, issued or made available by the listed corporation; or

(iii) the obligations under the rights, options or interests, the contracts or the instruments or documents are settled by payment of cash or by delivery of the underlying shares or otherwise;

"Exchange Company"<sup>3</sup> (交易所公司) means the Exchange Company within the meaning of the repealed Securities (Disclosure of Interests) Ordinance;

"founder of the trust" (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 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;

"Hong Kong register" (香港登記冊), in relation to a listed corporation, means the register of members, or a branch register, of the listed corporation that is kept in Hong Kong;

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<sup>3</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

"inspector" (審查員) means an inspector appointed under section 347 or 348;

"issued equity share capital" (已發行權益股本), in relation to a listed corporation, means the listed corporation's issued share capital of a class the shares in which carry rights to vote in all circumstances at general meetings of the corporation;

"listed" (上市) means listed on a recognized stock market;

"listed corporation" (上市法團) means any corporation which has any of its securities listed;

"notifiable interest" (須具報權益) has the meaning assigned to it by section 302(3);

"notifiable percentage level" (須具報百分率水平) has the meaning assigned to it by section 306(1);

"off-exchange transaction" (場外交易) means any transaction, arrangement or occurrence of an event (other than an on-exchange transaction) under which a person becomes, or ceases to be, interested in shares;

"on-exchange transaction" (場內交易) means any transaction conducted on a recognized stock market or a recognized futures market under which a person becomes, or ceases to be, interested in shares;

"physically settled equity derivatives" (實物結算股本衍生工具) means equity derivatives that are, or are to be, settled by delivery of the underlying shares, including equity derivatives in respect of which ~~there is an option for~~<sup>4</sup> the holder, writer or issuer of the equity derivatives ~~to~~may choose ~~whether~~ to settle by payment of cash or by delivery of the underlying shares;

"qualified lender"<sup>5</sup> (合資格借出人) means a person who is -

- (a) an authorized financial institution;
- (b) an insurer authorized within the meaning of 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 subsection 304(11), 308(6), 314(5) or (6) or 332(5) by the Commission to carry on business -
  - (i) as a bank;

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<sup>4</sup> Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>5</sup> It is more appropriate to include the definition of 'qualified lender' here instead of in clause 314(5)(a), as the term is also used in clause 332(5). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Further technical amendment for clarity.

(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);

"register of directors' and chief executives' interests and short positions" (董事及最高行政人員權益及淡倉登記冊) means the register kept under section 343;

"register of interests in shares and short positions" (股份權益及淡倉登記冊) means the register kept under section 327 including, except where the context otherwise requires, that part of the register kept under section 328;

"regulations" (規例) means regulations made under section 365;

"relevant event" (有關事件) -

(a) for the purposes of, and otherwise in relation to, Divisions 2 to 6, means -

- (i) in a case under section 301(1)(a) or (b) or (4)(a) or (b), the event or change referred to in such section;
- (ii) in a case under section 301(2)(a), the event in consequence of which the corporation becomes a listed corporation;
- (iii) in a case under section 301(2)(b), the event in consequence of which the listed

corporation's share capital of a particular class becomes relevant share capital;

(iv) in a case under section 301(2)(c) or (5), the commencement of this Part; or

(v) in a case under section 301(3) or (6), the taking effect of the regulation providing for the reduction referred to in such section; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10, means -

(i) in a case under section 332(1)(a), (b), (c), (d), (e) or (f), the event referred to in such section;

(ii) in a case under section 332(2)(a), the event in consequence of which the corporation becomes a listed corporation;

(iii) in a case under section 332(2)(b), the commencement of this Part;

(iv) in a case under section 332(2)(c), the event in consequence of which the person becomes a director or chief executive of a listed corporation; or

(v) in a case under section 332(2)(d), the event in consequence of which the

corporation becomes an associated  
corporation of a listed corporation<sup>6</sup>; or

~~(vi) in a case under section 335(3)(a), (b) or  
(c), the event referred to in such  
section;~~<sup>7</sup>

"relevant exchange company" (有關交易所公司), in relation to a listed  
corporation, means the recognized exchange company operating  
the stock market on which the shares in the listed  
corporation are listed;

"relevant share capital" (有關股本), in relation to a listed  
corporation -

(a) means the listed corporation's issued share capital  
of a class the shares in which carry rights<sup>8</sup> to vote  
in all circumstances at general meetings of the  
corporation; and

(b) includes unissued shares in the listed  
corporation's share capital of ~~any~~<sup>9</sup> class which, if  
issued, would carry rights to vote in all

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<sup>6</sup> **Technical amendment for clarity.**

<sup>7</sup> **These words have been deleted as it is proposed that clause 335(3) be deleted. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>8</sup> **Some Members suggested that paragraph (a) would be clearer if "share capital of a class the shares in which carry rights" is replaced with "share capital of a class of shares which carry rights". We have carefully reviewed this suggestion but consider that the existing wording should be retained, as it is more consistent with other provisions in Part XV. In addition, the existing wording makes it clear that it is the shares, and not the share capital, which carry the rights to vote.**

<sup>9</sup> **Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

circumstances at general meetings of the corporation;

"relevant time" (有關時間) means the time of the occurrence of the relevant event;

"rights issue"<sup>10</sup> (供股) means an offer or issue by a listed corporation of shares in the listed corporation (whether issued or unissued) to all persons holding issued shares in the listed corporation at a certain date (other than a person whose address is in a place where such offer or issue is not permitted under the law of that place)<sup>11</sup> in proportion to the number of those issued shares held by them at that date, but does not include an offer or issue of shares in the listed corporation in lieu of all or part of a cash dividend;

"short position" (淡倉) means the position which a person has -

- (a) where the person is the holder, writer or issuer of any equity derivatives, by virtue of which the person -

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<sup>10</sup> New definition of "rights issue". This is added as part of changes explained in relation to clause 304(11)(iv). See Footnote (41) below. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>11</sup> **We have made minor refinement to definition of rights issue such that an offering does not cease to qualify simply because the offer of shares to certain overseas shareholders is not permitted under the law of the place where those shareholders reside.**

- (i) has a right to require another person to take delivery of the underlying shares of the equity derivatives;
  - (ii) is under an obligation to deliver the underlying shares of the equity derivatives to another person, if called upon to do so;
  - (iii) has a right to receive from another person an amount if the price of the underlying shares of the equity derivatives declines; or
  - (iv) has a right to avoid or reduce a loss if the price of the underlying shares of the equity derivatives declines,  
before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute; or
- (b) where the person is the borrower of shares under a securities borrowing and lending agreement, by virtue of which the person is under an obligation to deliver shares to another person who has lent ~~the~~ shares, if called upon to do so, before or on a certain date or within a certain period, whether or not the obligation to deliver shares is to be

settled by payment of cash or by delivery of ~~the~~<sup>12</sup>  
shares or otherwise;

"specified percentage level" (指明百分率水平) has the meaning  
assigned to it by section 306(2);

"stock futures contract" (股票期貨合約) means a contract which is of  
a class approved by the Commission as stock futures contracts  
for trading on a recognized futures market;

"target corporation" (目標法團), in relation to an agreement to  
which section 308 applies, means the particular listed  
corporation which is the target corporation for that  
agreement;

~~"trustee" (受託人) means a corporation the principal business of  
which is to hold property belonging to another person under  
the provisions of a trust deed;~~<sup>13</sup>

"underlying shares" (相關股份), in relation to any equity  
derivatives and subject to subsection (6), means -

(a) for the purposes of, and otherwise in relation to,  
Divisions 2 to 6 -

(i) the shares comprised in the relevant  
share capital of the listed corporation  
concerned which may be required to be

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<sup>12</sup> Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>13</sup> This definition has been moved to clause 307(8) as it is intended to be used only in relation to trustees mentioned in clause 307(5). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or

- (ii) the shares comprised in the relevant share capital of the listed corporation concerned by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined; or

(b) for the purposes of, and otherwise in relation to, Divisions 7 to 10 -

- (i) the shares in the listed corporation concerned, or any associated corporation of the listed corporation, which may be required to be delivered to, or by, the holder, writer or issuer of the equity derivatives on the exercise of rights or fulfilment of obligations under the equity derivatives, whether in any case the rights or obligations are conditional or absolute; or
- (ii) the shares in the listed corporation concerned, or any associated corporation

of the listed corporation, by reference to the price or value of which, wholly or partly, the price or value of the equity derivatives is derived or determined, \_\_\_\_\_whether in any case those shares are issued or unissued.

(2) ~~Where a listed corporation's share capital is divided into different classes of shares, a reference in this Part to a percentage of the nominal value of the listed corporation's issued equity share capital shall be construed as a reference to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately.~~<sup>14</sup>

(3) The temporary suspension of voting rights in respect of shares comprised in ~~any~~<sup>15</sup> class of the issued share capital of a listed corporation does not affect the application of this Part in relation to interests in those or any other shares comprised in that class.

(4) In section 308, and also in references elsewhere in this Part to an agreement to which that section applies, "agreement" (協議) includes any agreement or arrangement, and a reference in that section to provisions of an agreement -

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<sup>14</sup> Clause 299(2) has been moved to become clause 305(5), as the definition provided in that clause is only applicable to clause 305. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>15</sup> At the Bills Committee meeting on 12 October 2001, a Member suggested replacing "any class" with "a class" for consistency. We have incorporated this suggestion.

(a) accordingly includes a reference to undertakings, expectations or understandings operative under any arrangement; and

(b) (without prejudice to paragraph (a)) also includes a reference to any provisions, whether express or implied and whether absolute or not.

(5) For the purposes of any provision of this Part which provides that an officer of a corporation who is in default is liable to a fine or penalty, the expression "every officer of it who is in default" (其每名違責的高級人員) means every officer of the corporation who knowingly and wilfully authorizes or permits the default, refusal or contravention referred to in that provision.

(6)<sup>16</sup> In the case of equity derivatives -

(a) where -

(i) no less than 5 listed corporations'

shares will be required to be delivered on the exercise of rights or fulfilment of obligations under the equity derivatives; and

(ii) at the time of the issue of the equity

derivatives, no more than -

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<sup>16</sup> Clauses 299(6) to (8) establish an exemption for equity derivatives that derive their value from a basket of shares in several listed companies. In response to market comment, the features necessary to qualify for the exemption are now spelt out in greater detail in clauses 299(6) to (8). The eligibility for the exemption is determined at the point where the interest in derivatives is entered into. This removes uncertainty on whether subsequent fluctuations in value or number of particular shares would give rise to a disclosure obligation. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(A) subject to sub-subparagraph (B),

30%; or

(B) where any other percentage is

prescribed by regulations, such

other percentage,

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of the value of all the shares which, but

for this subsection, would have been the

underlying shares of the equity

derivatives is represented by the shares

in any one of those listed corporations;

or

(b) where -

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(i) the prices or values of no less than 5

listed corporations' shares play a part

in the derivation or determination of the

price or value of the equity derivatives;

and

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(ii) at the time of the issue of the equity

derivatives, no more than -

(A) subject to sub-subparagraph (B),

30%; or

(B) where any other percentage is

prescribed by regulations, such

other percentage,

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of the price or value of the equity

derivatives is derived from or determined

by the prices or values of the shares in  
any one of those listed corporations,  
those equity derivatives are taken to have no underlying shares.

~~———— (6) Where ———~~

~~(a) for the purposes of, and otherwise in relation to,  
Divisions 2 to 6 —~~

~~————— (i) a substantial number of shares comprised  
in the relevant share capital of more  
than one listed corporation may be  
required to be delivered to, or by, the  
holder, writer or issuer of any equity  
derivatives on the exercise of rights or  
fulfilment of obligations under the  
equity derivatives; or~~

~~————— (ii) the price or value of shares comprised in  
the relevant share capital of more than  
one listed corporation plays a  
substantial part in the derivation or  
determination of the price or value of  
any equity derivatives; or~~

~~(b) for the purposes of, and otherwise in relation to,  
Divisions 7 to 10 —~~

~~————— (i) a substantial number of shares in more  
than one listed corporation may be  
required to be delivered to, or by, the  
holder, writer or issuer of any equity  
derivatives on the exercise of rights or~~

~~fulfilment of obligations under the  
equity derivatives; or~~

~~(ii) the price or value of shares in more than  
one listed corporation plays a  
substantial part in the derivation or  
determination of the price or value of  
any equity derivatives,  
these equity derivatives shall be taken to have no underlying  
shares.~~

(7) In subsection (6), a reference to shares shall be  
construed as -

(a) for the purposes of, and otherwise in relation to,  
Divisions 2 to 6, a reference to shares in the  
relevant share capital of the listed corporation  
concerned; or

(b) for the purposes of, and otherwise in relation to,  
Divisions 7 to 10, a reference to shares in the  
listed corporation concerned.

(8) In subsections (6) and (7), a reference to a listed  
corporation includes a reference to a corporation that is listed  
on a specified stock exchange.<sup>17</sup>

### **300. Exemptions**

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<sup>17</sup> A "specified stock exchange" mentioned in clause 299(8) is a stock exchange listed in Part 3 of Schedule 1.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(1) The Commission may, after consultation with the Financial Secretary, publish guidelines for the exemption of any ~~corporation~~person<sup>18</sup> from all or any of the provisions of this Part.

(2) The Commission may, upon the application of a corporation, having regard to the guidelines published pursuant to subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant corporation<sup>19</sup> and any other person in relation to that corporation, from all or any of the provisions of this Part.

(3) The Commission may, upon the application of the holder, writer or issuer, or the prospective holder, writer or issuer, of any equity derivatives, having regard to the guidelines published pursuant to subsection (1) and imposing such conditions as it considers appropriate, exempt the applicant, and any other person who is taken to have an interest or ~~a~~<sup>19</sup> short position in the underlying shares of the equity derivatives by virtue of the holding, writing or issuing of the equity derivatives, from all or any of the provisions of this Part.

(4) The Commission may from time to time -

- (a) suspend or withdraw an exemption granted under subsection (2) or (3) on the ground that the conditions subject to which the exemption was granted have not been complied with or on such

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<sup>18</sup> Clause 300(3) covers “persons” and not simply corporations. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>19</sup> **Technical amendment for clarity.**

other ground as the Commission considers appropriate; or

(b) amend any condition imposed under subsection (2) or (3).

(4A) The Commission shall publish such particulars of the exemptions granted, suspended or withdrawn under this section as it considers appropriate.<sup>20</sup>

\_\_\_\_\_(5) Guidelines published pursuant to subsection (1) are not subsidiary legislation.

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<sup>20</sup> **Some Members suggested that the SFC should publish particulars of exemptions granted under clause 300. We have incorporated this suggestion in a new clause 300(4A). The particulars of the exemption will be published on the SFC's website.**

**Division 2 - Disclosure of interests  
and short positions**

**301. Duty of disclosure: cases in  
which it may arise**

(1) Where -

- (a) a person acquires an interest in shares comprised in the relevant share capital of a listed corporation or ceases to be interested in shares so comprised (whether or not having or<sup>21</sup> retaining an interest in other shares so comprised); or
- (b) any change occurs affecting facts relevant to the application of section 304 to a person's existing interest (or part thereof)<sup>21</sup> in shares comprised in a listed corporation's share capital of any description,

then in the circumstances specified in section 304(1), he comes under the duty of disclosure.

\_\_\_\_\_ (2) Where a person is -

- (a) interested in shares comprised in the relevant share capital of a corporation at the time when the corporation becomes a listed corporation;

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<sup>21</sup> The word "having" has been added to make it clear that the acquisition of interests in shares in addition to an existing interest still prompts disclosure. Similarly the words "or part thereof" make it clear that a change affecting part of a holding of shares may prompt disclosure. Technical amendments for clarity and consistency with amendments to clauses 304(4) and 304(1)(d). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

- (b) interested in shares comprised in a listed corporation's share capital of a particular class at the time when the listed corporation's share capital of that class becomes relevant share capital; or
- (c) interested in shares comprised in the relevant share capital of a listed corporation at the commencement of this Part, if such interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 392,

then in the circumstances specified in section 304(2), he comes under the duty of disclosure.

(3) Where a person is interested in shares comprised in the relevant share capital of a listed corporation at the time when there is a reduction in the notifiable percentage level made by regulations, then in the circumstances specified in section 304(3), he comes under the duty of disclosure.

(4) Where -

- (a) a person comes to have, or ceases to have, a short position in shares comprised in the relevant share capital of a listed corporation (whether or not

having or retaining a short position in other shares so comprised);<sup>22</sup> or

- (b) any change occurs affecting facts relevant to the application of section 304 to a person's existing short position (or part thereof) in shares comprised in a listed corporation's share capital of any description,<sup>23</sup>

~~the short position which a person has in shares comprised in the relevant share capital of a listed corporation changes,<sup>24</sup> then in the circumstances specified in section 304(4), he comes under the duty of disclosure.~~

(5) Where a person has a short position in shares comprised in the relevant share capital of a listed corporation at the commencement of this Part, then in the circumstances specified in section 304(5), he comes under the duty of disclosure.

(6) Where a person has a short position in shares comprised in the relevant share capital of a listed corporation at the time

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<sup>22</sup> The words “(whether or not having a short position in other shares so comprised)” have been added to make it clear that the disposal of part only of a short position still prompts disclosure. Similar words already appear in sub-clause (1)(a). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>23</sup> An increase or a reduction in the issued share capital of a listed corporation could affect the percentage level of a short position and this should prompt disclosure. A new paragraph (b) has been added which is the equivalent of 301(1)(b) for long positions.

<sup>24</sup> This provision has been deleted it is not intended that a change in the nature of a short position should prompt a disclosure obligation. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

when there is a reduction in the specified percentage level made by regulations, then in the circumstances specified in section 304(6), he comes under the duty of disclosure.

(7) The existence of the duty of disclosure in a particular case depends (in part) on the circumstances obtaining before and after whatever is in that case the relevant time.

### **302. Interests to be disclosed**

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section ~~300~~301<sup>25</sup> are those in shares comprised in the relevant share capital of the listed corporation concerned.

(2) In subsection (1), a reference to interests in shares comprised in the relevant share capital of the listed corporation concerned includes a reference to interests in shares so comprised, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of -

- (a) the holding, writing or issuing by him of the equity derivatives;

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<sup>25</sup> Correcting cross reference. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

- (b) the exercise by, or against,<sup>26</sup> him of rights under the equity derivatives; or
- (c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

(3) A person has a notifiable interest at any time when he is interested in shares comprised in the relevant share capital of the listed corporation concerned of an aggregate nominal value equal to or more than the nominal value of the percentage of the issued equity share capital which is the notifiable percentage level for the time being.

### **303. Short positions to be disclosed**

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 301 are those in shares comprised in the relevant share capital of the listed corporation concerned.

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<sup>26</sup> Clause 302 explains the range of interests in shares that are to be taken into account for the purposes of ascertaining whether a person has a duty of disclosure. These interests include the underlying shares of equity derivatives. The words “or against” have been added in clause 302(2)(b) so that it is clear that a person can acquire an interest or cease to have an interest in shares not just when he exercises rights under an equity derivative, but also when someone else exercises rights against him. If a person has, for example, an option (an equity derivative) exercised against him requiring him to take shares, or deliver shares, that is also an interest that may give rise to a duty of disclosure.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

**304. Circumstances in which duty of disclosure arises**

(1) The circumstances referred to in section 301(1) are those where -

- (a) the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time;
- (b) the person had a notifiable interest immediately before the relevant time, but does not have a notifiable interest immediately after the relevant time;
- (c) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the percentage levels of his interest immediately before and immediately after the relevant time are not the same; or
- (d) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, but the nature of his interest (or part thereof)<sup>27</sup>

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<sup>27</sup> Clause 304(1)(d), in conjunction with clause 301(1), requires disclosure if there is a change in the nature of a person's interest. Change in nature of interest is explained further in clause 304(11). The words "(or part thereof)" have been added to make it clear that a change in nature of part of an interest in shares still prompts disclosure.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

immediately before and immediately after the relevant time is not the same.

(2) The circumstances referred to in section 301(2) are those where the person has a notifiable interest immediately after the relevant time.

(3) The circumstances referred to in section 301(3) are those where the person has a notifiable interest immediately after the relevant time, but did not have a notifiable interest immediately before the relevant time.

(4) The circumstances referred to in section 301(4) are those where the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time, and -

(a) the person -

(i) did not have a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately before the relevant time; or

(ii) had a short position in shares so comprised immediately before the relevant time of a percentage level less than the specified percentage level,

but has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level;

- (b) the person had a short position in shares so comprised immediately before the relevant time of a percentage level equal to or more than the specified percentage level, but does not have a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level; or
- (c) the person had a short position in shares so comprised immediately before the relevant time of a percentage level equal to or more than the specified percentage level, and has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level, but the percentage levels of his short position immediately before and immediately after the relevant time are not the same.

(5) The circumstances referred to in section 301(5) are those where the person has a notifiable interest immediately after the relevant time, and has a short position in shares comprised in the relevant share capital of the listed corporation concerned immediately after the relevant time of a percentage level equal to or more than the specified percentage level.<sup>28</sup>

(6) The circumstances referred to in section 301(6) are those where -

- (a) the person had a notifiable interest immediately before the relevant time, and has a notifiable interest immediately after the relevant time; and
- (b) the person had a short position in shares so comprised immediately before the relevant time of a percentage level less than the specified percentage level, but has a short position in shares so comprised immediately after the relevant time of a percentage level equal to or more than the specified percentage level.

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<sup>28</sup> Clause 304(5), in conjunction with clause 301(5), requires disclosure of short positions on commencement of Part XV. Under the Blue Bill, a person with a notifiable interest (i.e. an interest of 5% or more in shares of a listed corporation) must disclose any short position he has, even if it is less than 1%. In response to market comments, we propose amending clause 301(5) so that the requirement to disclose short positions on commencement of Part XV is limited to short positions of 1% or above. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(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<sup>29</sup> less than the percentage level of his interest in shares so comprised ~~disclosed at the time of the relevant event giving rise to~~<sup>30</sup>~~in~~ the last notification required to be given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and
- (b) the difference between -

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<sup>29</sup> **The words “the same as or” have been added so that the exemption is available to a person whose interest returns to the same percentage level as the last notification given by him, after dropping below that percentage level.**

<sup>30</sup> **As it is proposed to amend clause 317(1)(b) so that a person need not disclose the percentage level of his interest in the notification (as well as the percentage figure of his interest) the terminology used here needed to be revised. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

- (i) the percentage figure of his interest in shares so comprised, calculated in accordance with subsection (13)(a), ~~immediately after the relevant time~~<sup>31</sup> at all times since the relevant event giving rise to the last notification required to be 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 given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c),
- is less than 0.5%.

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<sup>31</sup> Clause 304(7) establishes the *de minimis* exemption (see paragraph 13 – 15 of Paper No.13/01 issued to Members on 16 May 2001). The intention is that the exemption will only be available if the change in the percentage figure of a person's interest (or short position) remains within a band of less than 0.5% from the percentage figure of his interest in the last notification filed by him. The amendments to clause 304(7)(b)(i) are proposed to ensure that the exemption works as intended. Without the amendment proposed this exemption would permit swings larger than 0.5% (almost 2%) in the percentage figure of a person's interest without any disclosure obligation arising. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(7A)<sup>32</sup> 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 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

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<sup>32</sup> A person who buys an interest or sells an interest in shares only has to report transactions that result in the percentage level of his long or short position crossing a whole number. In response to market comments, we propose that similar provisions will apply to changes in the nature of an interest. However when there is merely a change in the nature of an interest the percentage level of the shares in which a person has an interest does not change. We have therefore drafted the exemption by concentrating on the percentage levels of shares in which a person is interested other than those in which the nature of his interest has changed.

Similarly, in response to market comments it is proposed that the *de minimis* exemption should also be extended to apply to changes in the nature of an interest. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(b) is the same as<sup>33</sup> 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 given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c), and the difference between -

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(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 given by him where the duty of disclosure arose in the circumstances specified in subsection (1)(c); and

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

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<sup>33</sup> Same rationale as Footnote (29).

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<sup>34</sup> less than the percentage level of his short position in shares so comprised at the time of the relevant event giving rise to<sup>35</sup>~~disclosed in~~ the last notification required to be 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 given by him

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<sup>34</sup> **Same rationale as Footnote (29).**

<sup>35</sup> **Clause 304(8) establishes the *de minimis* exemption for short positions. The technical amendments proposed to clause 307(7)(a) are also proposed here. See Footnote (30). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

where the duty of disclosure arose in the circumstances specified in subsection (4)(c) immediately after the relevant time<sup>36</sup>; and

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

is less than 0.5%.

(9) Subject to subsection (9A), a qualified corporation which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) or (4) is not under such a duty if its holding company (or where its holding company is a qualified corporation of another holding company, that other holding company) -

(a) is, at the relevant time, taken under section 307(2) -

- (i) to be interested in any shares in which the qualified corporation is interested; and

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<sup>36</sup> The technical amendments proposed to clause 304(7)(b) are also proposed here. See Footnote ( 31). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(ii) to have a short position in any shares in which the qualified corporation has a short position; and

(b) accordingly complies with the duty of disclosure.

(9A) If a corporation ceases to be a qualified corporation of its holding company and in such circumstances the holding company is regarded as having ceased to be interested, or to have a short position, in shares under section 307(6), the corporation is taken to have acquired that interest or come to have that short position (as the case may be).<sup>37</sup>

(10) In subsections (9), (9A) and (11), "qualified corporation" (合資格法團), in relation to a holding company, means a wholly owned subsidiary of the holding company (whether or not the holding company is itself a wholly owned subsidiary of another holding company).~~(9)A corporation ("the first-mentioned corporation") which would otherwise come under a duty of disclosure in the circumstances specified in subsection (1) is not under such a duty where—~~

~~(a) the first-mentioned corporation acquires the interest referred to in section 301(1)(a) directly from a related corporation; or~~

~~(b) the first-mentioned corporation ceases to have the interest referred to in section 301(1)(a) when such~~

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<sup>37</sup> Please see Annex 1. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~interest is acquired directly from the first-  
mentioned corporation by a related corporation,~~

~~and—~~

~~————— (i) either —~~

~~(A) the first-mentioned corporation controls 100%  
of the voting power at general meetings of the  
related corporation; or~~

~~(B) the related corporation controls 100% of the  
voting power at general meetings of the first-  
mentioned corporation; or~~

~~————— (ii) both the first-mentioned corporation and the  
related corporation are subsidiaries of another  
corporation which controls 100% of the voting power  
at general meetings of both the first-mentioned  
corporation and the related corporation.~~

~~———— (10) A corporation ("the first-mentioned corporation") which  
would otherwise come under a duty of disclosure in the  
circumstances specified in subsection (4) is not under such a duty  
where—~~

~~(a) the first-mentioned corporation comes to have the  
short position referred to in section 301(4)(a)  
under an agreement made directly with a related  
corporation; or~~

~~(b) the first-mentioned corporation ceases to have the  
short position referred to in section 301(4)(a)  
when—~~

~~(i) (if such short position arose under an agreement made directly with a related corporation) such short position ceases to exist; or~~

~~(ii) a related corporation, under an agreement made directly with the first-mentioned corporation, comes to have such short position,~~

~~and~~

~~(i) either~~

~~(A) the first-mentioned corporation controls 100% of the voting power at general meetings of the related corporation; or~~

~~(B) the related corporation controls 100% of the voting power at general meetings of the first-mentioned corporation; or~~

~~(ii) both the first-mentioned corporation and the related corporation are subsidiaries of another corporation which controls 100% of the voting power at general meetings of both the first-mentioned corporation and the related corporation.~~

(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; ~~or~~

(b) any of the person's interests 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; or

(ii) the exercise by, or against, him of rights under the equity derivatives<sup>38</sup>; or

(c) any of the person's interest in shares so comprised in such other circumstances as are prescribed by rules made under section 365A,<sup>39</sup>

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;

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**<sup>38</sup> Clause 304(11)(ba) has been added to place it beyond doubt that there is a change in the nature of a person's interest in shares when he "writes" or "issues" equity derivatives in respect of those shares, or on exercise by him, or against him, of rights under equity derivatives.**

**<sup>39</sup> Paragraph (c) has been added as part of a series of amendments so that the SFC may establish a simpler disclosure regime for stock borrowing and lending transactions by making rules pursuant to clause 365A. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(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; or

(iii) ~~where the person is a qualified stock borrower and lender, if he~~

~~(A) borrows the shares under a securities borrowing and lending agreement for the purposes of his business as a qualified stock borrower and lender from another person (other than a related corporation of the qualified stock borrower and lender); and~~

~~(B) lends the shares, on the same day, under a securities borrowing and lending agreement, to a third person (other than a related corporation of the qualified stock borrower and lender).<sup>40</sup>~~

(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;<sup>41</sup>

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<sup>40</sup> Please see Annex 2. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>41</sup> We accept market comment that clause 305(2) should be amended so that a person who takes up rights to shares granted to him as part of a rights issue (and whose percentage interest remains the same) should not have to make a

(v) where another person, being a qualified lender, comes to have an interest in his shares by way of security;<sup>42</sup> 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.<sup>43</sup>

~~(12) For the purposes of subsection (11), a person is a qualified stock borrower and lender if he —~~

~~(a) is an intermediary licensed or exempt for Type 1 regulated activity;~~

~~(b) borrows and lends the shares in accordance with the rules of a recognized exchange company; and~~

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disclosure whilst a person who does not take up their rights (and whose percentage interest changes) will have to make a disclosure. Clause 304(11)(iv) has been added to ensure that in these circumstances the delivery of shares pursuant to a rights issue does not give rise to a disclosure obligation. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Clause 304(11)(iv) is further amended as a consequence to changes proposed to clause 305(2). See Footnote (49).**

<sup>42</sup> We accept market comment that a change in the nature of a person's interest in shares when he pledges his shares to a financial institution or a licensed intermediary should not give rise to a disclosure obligation. Clause 304(11)(v) has been added to ensure that pledging in these circumstances does not give rise to a disclosure obligation. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>43</sup> We accept market comment that the transfer of an interest in shares from one wholly owned subsidiary to another could be viewed as giving rise to a change in the nature of interest in the shares of the ultimate holding company thus prompting a disclosure obligation. The result is not intended and paragraph (vi) clarifies the position. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~(c) holds himself out at all normal times as willing to borrow and lend shares.<sup>44</sup>~~

(13) For the purposes of -

- (a) subsections (7)(b) and (7A)(b)<sup>45</sup> and section 317(1)(b)<sup>46</sup>, "percentage figure" (百分率數字) means the percentage figure referred to in section 305(1) before rounding down, if applicable, to the next whole number; and
- (b) subsection (8)(b) and section 317(1)(c)<sup>47</sup>, "percentage figure" (百分率數字) means the percentage figure referred to in section 305(4) before rounding down, if applicable, to the next whole number.

**305. Percentage level in relation to notifiable interests and short positions**

(1) Subject to subsections (2), ~~and~~ (3) and (5), "percentage level" (百分率水平), in section 304(1)(c), ~~and~~ (7) and (7A),<sup>48</sup> means

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<sup>44</sup> Same rationale as Footnote (40). Please see Annex 2. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>45</sup> Consequential amendment to adding a new clause 304(7A). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>46</sup> **An additional reference has been added as the term "percentage figure" is used in clause 317(1)(b)**

<sup>47</sup> **An additional reference has been added as the term "percentage figure" is used in clause 317(1)(c)**

<sup>48</sup> Consequential amendment to adding reference to the new clauses. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the relevant share capital of the listed corporation concerned in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the nominal value of the issued equity share capital of that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(2) For the purposes of subsection (1) and section 302(3), where the listed corporation concerned grants to the person rights to subscribe for, or offers to the person, as part of a rights issue, shares comprised in its relevant share capital, the nominal value of the issued equity share capital of the listed corporation at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of -

- (a) the nominal value of the issued equity share capital of the listed corporation immediately before the grant or offer (as the case may be); and
- (b) the nominal value of the new shares to be issued upon the completion of the rights issue.<sup>49</sup>

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<sup>49</sup> The reasons for the proposed amendment are explained in relation to the changes proposed to clause 304(11)(iv).

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. We have subsequently proposed further refinements. Clause 305(2) is intended to operate so that a person who takes up rights to shares granted to him as part of a rights issue (and whose percentage interest remains the same) should not have to make a disclosure whilst a person who does not take up their rights (and**

~~(2) Where the nominal value of the issued equity share capital of the listed corporation is greater immediately after the relevant time than it was immediately before the relevant time, the percentage level of the interest of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater amount.~~

(3) In determining the aggregate nominal value of shares comprised in the relevant share capital of the listed corporation in which a person is interested for the purposes of subsection (1) and section 302(3)<sup>50</sup>, there shall be disregarded any short position which that person has in shares so comprised which, if included in the calculation of the aggregate nominal value of the shares so comprised in which the person is interested, would reduce the aggregate nominal value of those shares.

(4) Subject to subsection (5), "percentage level" (百分率水平), in sections 304(4), (5), (6) and (8), 316(4)<sup>51</sup> and 317(1)(k)<sup>52</sup>,

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**whose percentage interest changes) will have to make a disclosure. This is welcome by market. Reference has been added to clause 302(3) as the same principle should apply to "notifiable interests".**

**<sup>50</sup> Clause 305(3) provides that in the calculation of aggregate nominal value of shares "netting off" long and short positions is disallowed. Reference has been added to clause 302(3) as the same principle should apply to "notifiable interests". This is an inadvertent omission in the Blue Bill. The same principle applies throughout this Part.**

**<sup>51</sup> Consequential amendments as references to "percentage level" have been added in the relevant clauses.**

**<sup>52</sup> Consequential amendment. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the relevant share capital of the listed corporation concerned in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the nominal value of the issued equity share capital of that listed corporation and rounding that figure down, if it is not a whole number, to the next whole number.

(5) Where the listed corporation's share capital is divided into different classes of shares -

(a) a reference in this section and section 302(3)<sup>53</sup> to the aggregate nominal value of shares comprised in the relevant share capital of the listed corporation in which the person is interested or has a short position shall be construed as a reference to the aggregate nominal value of the shares comprised in each of the classes taken separately;<sup>54</sup> and

(b) a reference in this section to a percentage of the nominal value of the listed corporation's issued

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<sup>53</sup> **Clause 305(5) provides that interests in separate classes of shares must be counted separately. Reference has been added to clause 302(3) as the same principle should apply to “notifiable interests”. This is an inadvertent omission in the Blue Bill. The same principle applies throughout this Part.**

<sup>54</sup> **In the light of the changes proposed to clause 305(2), clause 305(5) of the Blue Bill can be deleted. As mentioned above in Footnote (14), clause 299(2) has been moved to become new clause 305(5). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

equity share capital shall be construed as a reference to a percentage of the nominal value of the issued shares comprised in each of the classes taken separately.<sup>55</sup>

~~(5) Where the nominal value of the issued equity share capital of the listed corporation is greater immediately after the relevant time than it was immediately before the relevant time, the percentage level of the short position of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater amount.~~

(6) In subsection (2), "completion" (完成), in relation to a rights issue, means the issue of shares comprised in the relevant share capital of the listed corporation pursuant to the rights issue.<sup>56</sup>

### **306. Notifiable percentage level and specified percentage level**

~~(1) In sections 301(3) and 302(3), a<sup>57</sup> reference to notifiable percentage level in this Part shall be construed as a reference to -~~

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<sup>55</sup> In response to market comment that the draft provision in the Blue Bill did not anticipate separate classes of relevant share capital (only separate classes of issued equity share capital), we have added a new clause 305(5)(b) dealing with this, which replaces the original sub-clause (5). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>56</sup> This clause clarifies the meaning of the word "completed" which is a new term used in clause 305(2).

<sup>57</sup> The references to clause numbers are not required as the term "notifiable percentage level" is defined in clause 299.

- (a) subject to paragraph (b), 5%; or
- (b) where any other percentage is prescribed by regulations, such other percentage,

and different percentages may be prescribed in relation to corporations of different classes or descriptions.

(2) ~~In sections 301(6) and 304(4), a A~~ reference to specified percentage level in this Part<sup>58</sup> shall be construed as a reference to -

- (a) subject to paragraph (b), 1%; or
- (b) where any other percentage is prescribed by regulations, such other percentage.

**307. Notification of family and corporate interests and short positions**

(1) For the purposes of this Division and Divisions 3 and 4, a person is taken -

- (a) to be interested in any shares in which his spouse, or any minor child (natural or adopted) of his, is interested; and
- (b) to have a short position in any shares in which his spouse, or any minor child (natural or adopted) of his, has a short position.

(2) For the purposes of this Division and Divisions 3 and 4, a person is taken -

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<sup>58</sup> **Technical amendment for clarity.**

- (a) to be interested in any shares in which a corporation is interested; and
- (b) to have a short position in any shares in which a corporation has a short position,

if -

- (i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or
- (ii) subject to subsection (5), he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(3) Where -

- (a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and
- (b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"),

then, for the purposes of subsection (2)(ii), the effective voting power is taken as exercisable by that person.

(4) For the purposes of subsections (2) and (3), a person is entitled to exercise or control the exercise of voting power if -

- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

- (b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(5) For the purposes of subsections (2)~~(ii)~~ and (3)<sup>59</sup>, a person is not taken -

- (a) to be interested in any shares in which a corporation is interested; or
- (b) to have a short position in any shares in which a corporation has a short position,

if -

- (i) that corporation is interested in those shares or has a short position in those shares (as the case may be) by reason only of its obligation or power to invest in, manage, deal within<sup>59</sup> or hold interests in those shares on behalf of its customers in the ordinary course of its business as an investment manager, custodian or trustee;
- (ii) to the extent that the corporation has any right or power to vote in respect of those shares arising from or by reason of its capacity as an investment manager, custodian or trustee, such right or power is exercisable by that corporation independently

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<sup>59</sup> Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

without any reference to the person or any related<sup>60</sup>  
corporation of the person; and

- (iii) when performing its functions as an investment manager, custodian or trustee, the power of that corporation to invest in, manage, deal within or hold interests in those shares is exercised by that corporation independently without any reference to the person or any related corporation of the person<sup>60</sup>.

\_\_\_\_(6) A person who is taken to be interested, or have a short position, in shares under subsection (2) shall be regarded as having ceased to be interested, or have a short position, in the shares if subsection (2)(i) or (ii) no longer applies.

\_\_\_\_(7) ~~For the purposes of this section, a spouse or minor child (natural or adopted) of a person, or a corporation at the general meetings of which a person is entitled to exercise or control the exercise of one-third or more of the voting power, is taken to be interested, or have a short position, in shares in the same circumstances in which the person is taken to be interested~~

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<sup>60</sup> Clause 307(5) has been amended to make it clear that the rights or powers of the investment manager, custodian or trustee must be exercised independently not only of the person referred to in clause 307(2) (e.g. the holding company) but also independently of any related corporation of that person, for the exemption from aggregation of interests to apply. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~or have a short position, in shares (as the case may be) by virtue of section 313.~~<sup>61</sup>

\_\_\_\_ (8) In subsection (5) \_

~~-(a)~~ \_\_\_\_ "investment manager" (投資經理) means -

~~(a)~~ \_\_\_\_ (i) an intermediary licensed or ~~exempt~~ registered<sup>62</sup> for ~~Type 4 or~~<sup>63</sup> Type 9 regulated activity; or

~~(b)~~ \_\_\_\_ (ii) a corporation which is licensed, registered<sup>62</sup> or exempt in a place outside Hong Kong recognized for the purposes of this section by the Commission for an activity which is equivalent to ~~any of~~

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<sup>61</sup> We accept market comment that clause 307(7) is unnecessary as the provisions of clause 313 make it clear when a person is taken to be interested in shares. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>62</sup> We accept the comment of some Members that the term "exempt person" is a misnomer and does not reflect the proposed regulatory framework whereby authorised institutions engaging in regulated activities are subject to wider range of regulatory requirements and disciplinary sanctions. We informed Members at the meeting on 14 September 2001 that we would replace "exempt person" with "registered institution" and "exempt" with "registered" throughout the Bill to duly reflect the policy intention.

<sup>63</sup> "The reference to Type 4 regulated activity has been deleted because the category of persons who we are seeking to exempt as "investment managers" are those who are licensed to provide asset management services (Type 9 regulated activity) and not investment advisers (Type 4 regulated activity)." **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~the Type 9 regulated activities referred to in paragraph (a)<sup>64</sup>,~~

\_\_\_\_\_and is authorized to manage investments in securities for another person under a written agreement; and

(b) "trustee" (受託人) means a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed.<sup>65</sup>

**308. Agreement to acquire interests in particular listed corporation**

(1) This section applies in relation to an agreement between 2 or more persons which includes provisions for the acquisition by any one or more of them of interests in shares comprised in the relevant share capital of a particular listed corporation ("the target corporation"), if -

(a) the agreement also includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of their interests in shares

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<sup>64</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>65</sup> As mentioned in Footnote (13) this definition has been moved from clause 299. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

comprised in the relevant share capital of the target corporation acquired in pursuance of the agreement (whether or not together with any other interests of theirs in the shares comprised in the relevant share capital of the target corporation to which the agreement relates); or

- (b) the agreement provides for the making of a loan, or the providing of security for a loan, by a controlling person or a director of the target corporation to any person on the understanding or with the knowledge that such loan (or any part thereof) would be used or applied for the acquisition of an interest in shares comprised in the relevant share capital of the target corporation,

and an interest in shares comprised in the relevant share capital of the target corporation is in fact acquired by any of the parties in pursuance of such agreement.

(2) In subsection (1)(a), a reference to the use of interests in shares comprised in the relevant share capital of the target corporation shall be construed as a reference to the exercise of any rights, or of any control or influence, arising from those interests (including the right to enter into any agreement for the exercise, or for the control of the exercise, of any of those rights by another person).

(3) Once any interest in shares comprised in the relevant share capital of the target corporation has been acquired in

pursuance of an agreement to which this section applies, this section continues to apply to the agreement irrespective of -

- (a) whether or not any further acquisitions of interests in shares comprised in the relevant share capital of the target corporation take place in pursuance of the agreement;
- (b) any change in the persons who are for the time being parties to it; and
- (c) any variation of the agreement,

so long as the agreement continues to include provisions of any description referred to in subsection (1)(a) or (b).

(4) In subsection (3), a reference to the agreement includes a reference to any agreement having effect (whether directly or indirectly) in substitution for an earlier agreement.

(5) In subsection (1), a reference to an agreement, in so far as subsection (1)(a) applies, does not include -

- (a) a reference to an agreement which is not legally binding unless it involves mutuality in the undertakings, expectations or understandings of the parties to it; and
- (b) a reference to an agreement to underwrite or sub-underwrite any offer of shares in a corporation, if the agreement is confined to that purpose and any matters incidental to it.

(6) In subsection (1), a reference to an agreement, in so far as subsection (1)(b) applies, does not include a reference to an agreement under which a controlling person or a director of the

target corporation makes the loan in the ordinary course of his business as a qualified lender.<sup>66</sup>—

~~(a) an authorized financial institution;~~

~~(b) a licensed money lender within the meaning of the Money Lenders Ordinance (Cap. 163);~~

~~(c) an exchange participant of a recognized exchange company; or~~

~~(d) an intermediary licensed or exempt for Type 1 regulated activity.~~

(7) For the purposes of this section, "controlling person" (控權人士), in relation to a corporation, means a person who, either alone or with any of his associates -

(a) is entitled to exercise or control the exercise of not less than -

(i) subject to subparagraph (ii), ~~35~~30%;<sup>67</sup> or

(ii) where any other percentage is prescribed by rules made under section 384 for the

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<sup>66</sup> Clause 308(6) provides an exemption for certain persons. For consistency, we propose deleting paragraphs (a) to (d) and substituting "qualified lender", as this term is also used in connection with the exemption in clause 314(6).

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>67</sup> The Takeovers Code has been amended to reduce the threshold for "control" from 35% to 30%. As the reason for using 35% in this clause was consistency with the Takeovers Code we propose changing the figure to 30%. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

- purposes of this subsection, such other percentage,
- of the voting power at general meetings of the corporation;
- (b) has the right to nominate any of the directors of the corporation; or
- (c) has an interest in shares carrying the right to -
- (i) veto any resolution; or
  - (ii) amend, modify, limit or add conditions to any resolution,
- at general meetings of the corporation.

**309. Interests of parties to agreement**

(1) In the case of an agreement to which section 308 applies, each party to the agreement is taken (for the purposes of the duty of disclosure) to be interested in any shares comprised in the relevant share capital of the target corporation in which any other party to the agreement is interested apart from the agreement (whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement).

(2) For the purposes of subsection (1) and sections 310 and 317(5)(b), an interest of a party to such an agreement in shares comprised in the relevant share capital of the target corporation is an interest apart from the agreement if he is interested in those shares otherwise than by the application of this section and section 308 in relation to the agreement.

(3) Accordingly, any such interest of the party to the agreement (apart from the agreement) includes, for the purposes of subsection (1) and section 310<sup>68</sup>, any interest which he is taken to have under section 307 or by the application of this section and section 308 in relation to any other agreement with respect to shares comprised in the relevant share capital of the target corporation to which he is a party.

**310. Duty of parties to agreement acting together to keep each other informed**

(1) A person who is a party to an agreement to which section 308 applies is subject to the requirements of this section at any time when -

- (a) the target corporation is a listed corporation, and he knows it to be so;
- (b) the shares in the target corporation to which the agreement relates consist of or include shares comprised in the relevant share capital of the target corporation, and he knows that to be the case; and
- (c) he knows the facts which make the agreement one to which section 308 applies.

(2) A person who is subject to the requirements of this section is under a duty to give notification to every other party

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<sup>68</sup> Technical amendment for clarity as clause 309(2) refers to "section 310". **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

to the agreement of the relevant particulars of his interest apart from the agreement (if any) in shares comprised in the relevant share capital of the target corporation -

- (a) on his first becoming subject to the requirements of this section; and
- (b) on each occurrence after that time and while he is still subject to those requirements of any event or change referred to in section 301(1), (2) or (3) (as it applies to his case otherwise than by reference to interests which he is taken to have under section 309 as applying to that agreement).

(3) The relevant particulars to be notified under subsection (2) are the number of shares (if any) comprised in the relevant share capital of the target corporation which the person giving the notification would be required to state as his interest if he were under the duty of disclosure with respect to that interest (apart from the agreement) immediately after the time when the duty to give notification under subsection (2) arose.

(4) A person who is a party to an agreement to which section 308 applies is under a duty to give notification to every other party to the agreement of his current address -

- (a) on his first becoming subject to the requirements of this section; and
- (b) on any change in his address occurring after that time and while he is still subject to those requirements.

(5) If a person is under a duty to give any notification required by this section to any other person, the notification shall be given within 3 business days after the day on which that duty arises.

**311. Circumstances in which persons have interests in shares or short positions by attribution**

(1) In sections 301 to 304 -

- (a) a reference to a person acquiring an interest in shares comprised in the relevant share capital of a listed corporation or ceasing to be interested in shares so comprised includes a reference to his becoming or ceasing to be interested in those shares by virtue of another person's interest;
- (b) a reference to the nature of a person's interest in shares comprised in the relevant share capital of a listed corporation as being not the same includes a reference to a change in the nature of his interest in those shares by virtue of a change in the nature of another person's interest; and
- (c) a reference to a person coming to have a short position in shares comprised in the relevant share capital of a listed corporation or ceasing to have a short position in shares so comprised includes a reference to his coming to have or ceasing to have a short position in those shares by virtue of another person's short position.

(2) Subsection (1) applies where -

- (a) a person becomes or ceases to be interested in shares comprised in the relevant share capital of a listed corporation;
- (b) the nature of a person's interest in shares so comprised changes; or
- (c) a person comes to have or ceases to have a short position in shares so comprised,

under section 307 or 309 (as the case may be) whether -

- (i) by virtue of the fact that the other person who is interested, or has a short position, in those shares becomes or ceases to be a person by reference to whose interests or short positions (if any) he is taken to have an interest or short position (as the case may be) under section 307 or 309;
- (ii) in consequence of the fact that the other person has become or ceased to be interested in those shares, the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be);
- (iii) in consequence of the fact that he himself becomes or ceases to be a party to an agreement to which section 308 applies to which the other person interested in those shares is for the time being a party; or

(iv) in consequence of the fact that an agreement to which both he and the other person are parties becomes or ceases to be one to which section 308 applies.

(3) Upon -

- (a) a person becoming or ceasing to be interested in shares comprised in the relevant share capital of a listed corporation;
- (b) a change in the nature of a person's interest in shares so comprised; or
- (c) a person coming to have or ceasing to have a short position in shares so comprised,

(as the case may be) in the circumstances specified in subsection (2), the person shall be deemed to know that he has acquired an interest in those shares or has ceased to be interested in those shares, or that the nature of his interest in those shares has changed, or that he has come to have a short position in those shares or has ceased to have a short position in those shares (as the case may be), when he knows both -

- (i) the relevant facts with respect to the other person's interest or short position (as the case may be) in those shares; and
- (ii) the relevant facts by virtue of which he himself has become or ceased to be interested, or come to have or ceased to have a short position (as the case may be) in those shares under section 307 or 309.

- (4) A person has the knowledge referred to in subsection (3)(i) if he knows (whether contemporaneously or not) either -
- (a) of the fact that the other person is interested in those shares, or the nature of the other person's interest in those shares changes, or the other person has a short position in those shares (as the case may be) at any material time; or
  - (b) of the fact that the other person has become or ceased to be interested in those shares, or the nature of the other person's interest in those shares has changed, or the other person has come to have or ceased to have a short position in those shares (as the case may be) at any material time.
- (5) A person shall be deemed to know of the fact that -
- (a) the other person is interested in those shares or the nature of the other person's interest in those shares changes (as the case may be); or
  - (b) the other person has become or ceased to be interested in those shares or the nature of the other person's interest in those shares has changed (as the case may be),

if he has been notified under section 310 of facts which indicate that the other person is or has become or ceased to be interested in those shares or the nature of the other person's interest in those shares changes or has changed (as the case may be), whether on the other person's own account or by virtue of a third party's interest in them.

(6) In subsection (4), "material time" (關鍵時間) means any time at which the interests or short positions (as the case may be) of the person concerned which are taken to be his under section 307 or 309 fall or fell to be so taken.

### **312. Notification by agents**

Where a person authorizes another person ("the agent") -

- (a) to acquire or dispose of, on his behalf, interests in shares comprised in relevant share capital of a listed corporation; or
- (b) to have or cease to have, on his behalf, short positions in shares so comprised,

he shall secure that the agent notifies him immediately of acquisitions or disposals of interests, or having or ceasing to have short positions, effected by the agent which will or may give rise to any duty of disclosure or any duty to give notification under any provision of this Division or Division 3 or 4 with respect to his interests or short positions in those shares.

### **Division 3 - Interests and short positions to be notified or disregarded**

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

(1) This section applies, subject to section 314, in determining for the purposes of Divisions 2, 4 and 5 whether a person has, or ceases to have, an interest or short position in

shares comprised in the relevant share capital of a listed corporation that is notifiable.

(2) A reference to an interest in shares shall be construed as including a reference to an interest of any kind whatsoever in the shares, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest, or short position, in shares is comprised in that property -

(a) a beneficiary of the trust who apart from this section does not have an interest, or short position, in the shares is taken to have such an interest or short position (as the case may be); and

——(b) in the case of a discretionary trust, the founder of the trust is taken to have an interest or short position (as the case may be) in the shares.

(5) A person is taken to have an interest in shares if -

(a) he enters into a contract for their purchase by him (whether for cash or other consideration); or

(b) he is entitled to -

(i) exercise any right conferred by the holding of the shares; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares if -

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares if, otherwise than by virtue of having an interest under a trust -

(a) he has a right to subscribe for the shares or<sup>69</sup> call for delivery of the shares to himself or to his order; or

(b) he has a right to acquire an interest in the shares or is under an obligation to take delivery of the shares,

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the

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<sup>69</sup> The words “subscribe for the shares or” have been added for consistency with clause 313(10).

underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives -

- (a) he has a right to require another person to deliver the underlying shares to him;
- (b) he is under an obligation to take delivery of the underlying shares;
- (c) he has a right to receive from another person an amount if the price of the underlying shares increases; or
- (d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is -

- (a) the number of the underlying shares of the equity derivatives -

- (i) which he has a right to require another person to deliver to him; or

- (ii) of which he is under an obligation to take delivery;

- (b) the number of the underlying shares of the equity derivatives by reference to which, wholly or partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or

issuing of the equity derivatives, is derived or determined; or

- (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute, and the aggregate nominal value of the shares in which the person is taken to be interested shall be calculated accordingly.

(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; ~~or~~

- (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.<sup>70</sup>

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<sup>70</sup> **Clause 313(10)(a) refers to the delivery of shares from one person to another person pursuant to the exercising of an option. It should also cover the exercise of a put option. The new paragraph (iii) provides for this.**

- (b) his right to subscribe for or<sup>71</sup> 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<sup>72</sup> settlement of any cash settled equity derivatives; ~~or.~~
- ~~(e) he assigns his rights under a stock futures contract to another person.~~<sup>72</sup>

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is -

- (a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
- (b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

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<sup>71</sup> Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>72</sup> Technical amendment for clarity. The amendment to (d) covers assignment of cash settled equity derivatives, which includes stock futures contracts. Subsection (10)(e) can therefore be deleted.

and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under that subsection shall be calculated accordingly.

~~(12) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(e) is the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of each stock futures contract, and the aggregate nominal value of the shares in which the person is regarded as having ceased to be interested under that subsection shall be calculated accordingly.<sup>73</sup>~~

(13) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is -

- (a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;
- (b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
- (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

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<sup>73</sup> **Consequential amendment to deleting clause 313(10)(e).**

and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

(14) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may be settled by payment of cash or ~~settled by delivery of the shares~~ or otherwise<sup>74</sup>, and the aggregate nominal value of the shares in which the person is regarded as so having a short position shall be calculated accordingly.

(15) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(16) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

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

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<sup>74</sup> Technical amendment for clarity.

(1) The following interests, and short positions,<sup>75</sup> in shares comprised in the relevant share capital of a listed corporation shall be disregarded for the purposes of Divisions 2 to 4 -

(a) where property is held on trust and an interest in shares is comprised in that property -

- (i) an interest in reversion or remainder;
- (ii) an interest of a bare trustee; and
- (iii) any discretionary interest;

(aa) an exempt custodian interest;<sup>76</sup>

(b) subject to subsection (3), an interest in shares comprised in the property under -

(i) ~~of or held by a holder, trustee or~~ eustodian of a collective investment scheme authorized under section 103;

(ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);<sup>77</sup> or

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<sup>75</sup> We have included express reference to short positions in the introductory words to make it clear that the regulations made under 314(1)(i) and rules made under 314(1)(j) can be extended to short positions. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>76</sup> The exemption for “bare trustees” does not exempt custodians who are not trustees. Following consultation with market players it is proposed to clarify that custodians (by trust or by contract) are exempt if they exercise no discretionary powers in respect of the shares that they hold. Please also see clause 314(2A). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Further technical amendment for clarity.**

<sup>77</sup> We accept market comment that some pension funds would not qualify as “collective investment schemes”. We therefore propose including reference to those pension schemes that are excluded from the definition of “collective

~~or~~ (iii) a qualified and approved overseas scheme, of a holder, trustee or custodian of the scheme;<sup>78</sup>

- (c) an interest of a person subsisting by virtue of -
  - (i) a charitable scheme made by order of any court of competent jurisdiction; or
  - (ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration;
- (d) an interest for the life of himself, or of another, of a person under a settlement in the case of which the property comprised in the settlement consists of or includes shares, and the following conditions are satisfied -
  - (i) the settlement is irrevocable; and
  - (ii) the settlor has no interest in any income arising under, or property comprised in, the settlement;
- (e) an exempt security interest;

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investment scheme". **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>78</sup> Technical amendment for clarity. The term "qualified overseas scheme" is used in clause 314(4). See Footnote (85).

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

- (f) an interest in shares ~~held by of~~<sup>79</sup> a recognized clearing house;
- (g) an interest in shares ~~held by of~~<sup>79</sup> the Registrar of the High Court held<sup>79</sup> in his official capacity;
- (h) an interest in shares of an intermediary licensed or ~~exempt~~registered<sup>80</sup> for Type 1 regulated activity where -
  - (i) the interest is acquired by the intermediary as an agent only for the purposes of a transaction entered into in the ordinary course of his business as such an intermediary;
  - (ii) the principal in that transaction is a person other than a related corporation of the intermediary;
  - (iii) the interest is acquired from a person other than a related corporation of the intermediary; and

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<sup>79</sup> **Technical amendment for clarity.**

<sup>80</sup> **We accept the comment of some Members that the term “exempt person” is a misnomer and does not reflect the proposed regulatory framework whereby authorised institutions engaging in regulated activities are subject to wider range of regulatory requirements and disciplinary sanctions. We informed Members at the meeting on 14 September 2001 that we would replace “exempt person” with “registered institution” and “exempt” with “registered” throughout the Bill to duly reflect the policy intention.**

(iv) the intermediary has been interested in the shares for not more than 3 business days; ~~and~~

(i) such interests, ~~or interests of such a class, or such short positions or short positions of such a class,~~<sup>81</sup> ~~as are~~ ~~may be~~ prescribed for the purposes of this section by regulations; ~~and~~

~~(j) subject to section 365A(3) to (4), such interests or interests of such a class, or such short positions or short positions of such a class,~~<sup>81</sup> ~~as are prescribed for the purposes of this section by rules made under section 365A.~~<sup>82</sup>

(2) A person is not taken to be interested in shares under section 313(5)(b) by reason only that he -

(a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or of any class of its members and at any adjournment of that meeting; or

(b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or of any class of its members.

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<sup>81</sup> **Technical amendment for clarity.**

<sup>82</sup> **Provision has been made for the Commission to prescribe interests to be disregarded in the limited circumstances set out in clause 365A – stock borrowing and lending – as explained in relation to clause 304(11)(iii). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(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 that carries on a business 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.<sup>83</sup>

(3) An interest in shares of a holder, trustee or custodian of a scheme referred to in subsection (1)(b)(i), (ii) or (iii),<sup>84</sup> comprised in the property under ~~of or~~ held by a holder, trustee or custodian of a collective investment the scheme, authorized under ~~section 103~~ shall not be disregarded under subsection (1)(b) if the holder, trustee or custodian (as the case may be) is also a manager of the ~~collective investment scheme~~.

(4) For the purposes of subsection (1)(b), "qualified~~approved~~<sup>85</sup> overseas scheme" (合資格核准海外計劃) means a

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<sup>83</sup> **Consequential amendment; see Footnote (76) above. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. We have further improved the definition for exempt custodian interest so that corporations that carry on a custody business as one of the several businesses (but not its principal business) can still qualify for the exemption.**

<sup>84</sup> **Sub-clause (3) has been amended to refer to all of the categories of persons now proposed to be exempt under sub-clause (1)(b). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>85</sup> **We accept market comment that overseas managers are unlikely to be willing to incur the costs and administrative burdens associated with the approval procedure for overseas schemes proposed in clauses 314(4) and (8) to (11) of the Blue Bill. We therefore propose dropping the approval procedure for overseas schemes. Provided an overseas scheme**

collective investment scheme, pension scheme or provident fund scheme which -

- (a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and
- (b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of ~~collective investment~~ such schemes in the place where it is established, and complies with the requirements of such authority,

but does not include -

(i) an arrangement operated by a person otherwise than by way of business;

(ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly,

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satisfies the requirements of clause 314(4) it will be a qualifying overseas scheme eligible for the exemption.

Paragraphs (i) to (iv) of clause 314(4) have been moved from clause 314(9). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.;

~~(c) is accepted by the Commission as being a bona fide widely held investment scheme;~~

~~(d) is approved by the Commission; and~~

~~(e) complies with such conditions as the Commission may impose on granting the approval under paragraph (d).<sup>85</sup>~~

(5) An interest in shares is an exempt security interest for the purposes of subsection (1)(e) if it is held by a qualified lender<sup>86</sup>, -

~~(a) by a person who is -~~

~~(i) an authorized financial institution;~~

~~(ii) an insurer authorized within the meaning of the Insurance Companies Ordinance (Cap. 41);~~

~~(iii) an exchange participant of a recognized exchange company;~~

~~(iv) an intermediary licensed or exempt for Type 1 or Type 8 regulated activity; or~~

<sup>86</sup> The term “qualified lender” has now been defined in clause 299 - with reference to the same persons as are mentioned in clause 314(5)(a) which can therefore be deleted. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Further technical amendment for clarity.**

~~(v) a corporation authorized under the law of any place outside Hong Kong recognized for the purposes of this subsection by the Commission to carry on business —~~  
~~(A) as a bank;~~  
~~(B) as an insurance company; or~~  
~~(C) in an activity that is in the opinion of the Commission equivalent to any of the regulated activities carried out by a person referred to in subparagraph (iv); and~~

~~(b) by way of security only for the purposes of a transaction entered into in the ordinary course of his business as such a qualified lender person.~~

(6) An interest in shares shall cease to be an exempt security interest for the purposes of subsection (1)(e), and the qualified lender<sup>86</sup> ~~person~~ holding the interest in the shares by way of security ~~referred to in subsection (5) ("the lender")~~ shall be taken to have acquired that interest for the purposes of Divisions 2 to 5, when -

(a) the qualified<sup>86</sup> lender -

(i) becomes entitled to exercise voting rights in respect of the interest in the shares held as security as a result of, or following, a default by the person giving the interest in the shares as security; and

(ii) has -

(A) evidenced an intention to exercise the voting rights or control their exercise; or

(B) taken any step to exercise the voting rights or control their exercise; or

(b) the power of sale in respect of the interest in the shares held as security becomes exercisable, and the qualified<sup>86</sup> lender or its agent offers the interest in the shares held as security, or any part of that interest, for sale.

(7) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that -

(a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for the payment of any duty, tax, cost or other outgoings.

~~<sup>87</sup>(8) An application for approval of a scheme under subsection (4)(d) shall be—~~

~~(a) made by the manager of the scheme; and~~

~~(b) accompanied by—~~

~~————— (i) a certified copy of the constitution of the scheme; and~~

~~————— (ii) such information about—~~

~~(A) the scheme;~~

~~(B) the persons who hold, or have the right to become holders of, units or shares or other interests under the scheme; and~~

~~(c) the persons who are trustees or custodians of the scheme,~~

~~as the Commission may require to satisfy itself that the collective investment scheme complies with the requirements of subsection (4)(a), (b) and (c).~~

~~—————<sup>87</sup>(9) The following arrangements are not bona fide widely held investment schemes for the purposes of subsection (4)(c)—~~

~~(a) an arrangement operated by a person otherwise than by way of business;~~

~~(b) an arrangement under which less than 100 persons hold, or have the right to become holders of, units~~

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<sup>87</sup> Clauses 314(8) to (11) can be deleted as the approval process for overseas schemes has been dropped. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

~~or shares or other interests that entitle the holders, directly or indirectly, to the income or property of the arrangement;~~

- ~~(c) an arrangement under which less than 50 persons hold, or have the right to become holders of, units or shares or other interests that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and~~
- ~~(d) such other arrangement as may be specified by the Commission by notice published in the Gazette.~~

~~<sup>87</sup>(10) In subsection (8), "constitution" (章程), in relation to a scheme, means—~~

~~(a) where the scheme is a unit trust, the trust deed of the unit trust; or~~

~~(b) in any other case, the instrument providing for the establishment or constitution of the scheme, including, where the scheme is established by a company, the memorandum and articles of the company, and also includes, if the trust deed, instrument or memorandum and articles are not written in the English or Chinese language, a translation thereof in English or Chinese.~~

~~<sup>87</sup>(11) For the purposes of subsection (10)—~~

~~"company" (公司) means a company incorporated outside Hong Kong which does not have a place of business in Hong Kong;~~

~~"memorandum and articles" (章程大綱及章程細則), in relation to a company, means the charter, statutes or memorandum and articles of~~

~~the company or other instrument constituting or defining the constitution of the company.~~

(8) A notice published pursuant to subsection (4)(a) or (iv) is not subsidiary legislation.<sup>88</sup>

#### **Division 4 - Requirements for giving notification**

##### **315. Notification to be given**

(1) Where a person comes under a duty of disclosure under section 301, he shall give notification to the listed corporation concerned and to the relevant exchange company of -

- (a) the interests which he has, or ceases to have, in shares comprised in the relevant share capital of the listed corporation; and
- (b) the short position (if any) which he has, or ceases to have, in shares so comprised.

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<sup>88</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(2) A notification required by this section shall be given ~~in such manner so as to ensure that it is received by<sup>89</sup> to the~~ listed corporation concerned and the relevant exchange company at the same time or, (if it is not practicable to do so), ~~that it is received by the listed corporation and the relevant exchange company<sup>89</sup>~~ one immediately after the other.

(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.

(4) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(5) Subject to subsection (6), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 301, the duty shall not be regarded as having been performed unless the notification -

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<sup>89</sup> **We agree with Members that it was not possible for a person to control when a notification was “received”, as he could only control when it was sent. The amendment is drawn up accordingly.**

- (a) is in the form specified;
- (b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and
- (c) is accompanied by such documents as are specified in the form.

(6) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded as being in that form, if the deviation does not affect the substance of the form.

(7) A notice published pursuant to subsection (3) is not subsidiary legislation.

### **316. Time of notification**

(1) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(1) or (4) -

- (a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or
- (b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(2) or (3) -

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that at the time at which the relevant event occurs<sup>90</sup> the person concerned is not aware -

~~(i) that he has ana notifiable interest, in shares comprised in the relevant share capital of the listed corporation concerned; or~~

~~(ii) that he has an interest in shares comprised in the relevant share capital of the listed corporation of an aggregate nominal value equal to or more than the nominal value of a percentage of that relevant share capital which is the notifiable percentage level for the time being,~~<sup>90</sup>

within 10 business days after the day on which he becomes aware that he has such an interest.

(3) ~~A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(5) -~~

~~(a) within 10 business days after the day on which the relevant event occurs; or~~

~~(b) in the case that the person concerned is not aware that he has a short position in shares comprised in the relevant share capital of the listed corporation concerned, within 10 business days~~

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<sup>90</sup> Technical amendment for clarity.

~~after the day on which he becomes aware that he has such a short position.<sup>91</sup>~~

(4) A notification required by section 315 shall be given, where the duty of disclosure arises under section 301(5) or<sup>91</sup> (6) -

(a) within 10 business days after the day on which the relevant event occurs; or

(b) in the case that at the time at which the relevant event occurs the person concerned is not aware—

~~(i) that he has a short position in shares~~

~~comprised in the relevant share capital of the listed corporation concerned; or~~

~~(ii) that he has a short position in shares~~

~~comprised in the relevant share capital of the~~

~~listed corporation of an aggregate nominal value of a percentage level~~ equal to or more than the

~~nominal value of a percentage of that relevant~~

~~share capital which is the specified percentage~~

~~level, for the time being<sup>91</sup>, within 10 business days~~

~~after the day on which he becomes aware that he has~~

~~such a short position.~~

### **317. Particulars to be contained in notification**

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<sup>91</sup> As a result of raising the disclosure threshold for short positions on commencement of this part to 1%, clauses 316(3) and (4) can be combined.

(1) Where a duty of disclosure arises under section 301, a person shall, in performing the duty of disclosure, specify in the notification his name and address, and (so far as he is aware) -

(a) the date on which the relevant event occurred and -

(i) the date (if later) on which he became aware of the occurrence of the relevant event; or

(ii) in the case referred to in section 316(2)(b), ~~(3)(b)~~<sup>92</sup> or (4)(b), the date on which he became aware that he has the interest or short position (as the case may be) in the shares comprised in the relevant share capital of the listed corporation concerned;

(b) the total number and class of -

(i) shares comprised in the relevant share capital of the listed corporation concerned in which he was interested immediately before the relevant time specifying ~~the percentage level and~~<sup>93</sup> the

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<sup>92</sup> **Consequential amendment to the deletion of clause 316(3).**

<sup>93</sup> **We accept market comment that substantial shareholders need not be asked to complete both the “percentage level” and the “percentage figure” of their interest, as the “percentage level” can be calculated from the “percentage figure” which still has to be given. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

percentage figure of his interest in the shares in each class; and

(ii) shares so comprised in which he is interested immediately after the relevant time specifying ~~the percentage level and~~ the percentage figure of his interest in the shares in each class;

(c) the total number and class of -

(i) shares comprised in the relevant share capital of the listed corporation concerned in which he had a short position immediately before the relevant time specifying ~~the percentage level and~~ the percentage figure of his short position in the shares in each class; and

—(ii) shares so comprised in which he has a short position immediately after the relevant time specifying ~~the percentage level and~~ the percentage figure of his short position in the shares in each class;

(d) the circumstances in which he comes under the duty of disclosure;

(e) where the duty of disclosure arises under section 301(1) or (4), the total number and class of shares comprised in the relevant share capital of the listed corporation in which -

- (i) he has acquired an interest, or ceased to have an interest, at the relevant time;
  - (ii) he has come to have, or ceased to have, a short position at the relevant time; or
  - (iii) the nature of his interest changes at the relevant time;
- (f) where he acquires or disposes of the interest referred to in paragraph (e)(i) -
- (i) through an on-exchange transaction, the highest price and the average price paid or received per share<sup>94</sup> for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or
  - (ii) through an off-exchange transaction, ~~the amount and nature of~~ nature of the consideration given or received, and the highest amount and the average amount of<sup>95</sup> the consideration given or received per share, for the interest he acquires or disposes of (or, in the case that no

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<sup>94</sup> For consistency and ease of reference it is proposed that all prices/consideration paid or received should be stated in the forms “per share” for both on-exchange and off-exchange transactions. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>95</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

consideration is given or received, that fact);

(g) ~~where he comes to have, or ceases to have, the~~

~~short position referred to in paragraph (e)(ii)~~

~~(i) through an on-exchange transaction, the~~

~~highest price and the average price paid~~

~~or received for the short position which~~

~~he comes to have or ceases to have (or,~~

~~in the case that no price is paid or~~

~~received, that fact); or~~

~~(ii) through an off-exchange transaction, the~~

~~amount and nature of the consideration~~

~~given or received for the short position~~

~~which he comes to have or ceases to have~~

~~(or, in the case that no consideration is~~

~~given or received, that fact);<sup>96</sup>~~

(h) the capacity in which the interest, or short

position, in shares comprised in the relevant share

capital of the listed corporation is held

immediately after the relevant time and, if the

interest or short position in the shares is held in

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<sup>96</sup> Most short positions are established using derivatives and the Commission has already accepted market comment that consideration paid in respect of derivatives should not be disclosed. Other short positions are established as a result of stock borrowing where information about the premium paid for the borrowing is not of use to investors generally. It is therefore proposed that paragraph (g) be deleted. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

more than one capacity, the number of shares held in each capacity;

(i) where the duty of disclosure arises in the circumstances in which the nature of his interest in shares comprised in the relevant share capital of the listed corporation is not the same immediately before and immediately after the relevant time, the nature of his interest immediately before and immediately after the relevant time;

(j) where he is taken to be interested or have a short position in shares comprised in the relevant share capital of the listed corporation under section 307(1), 307(2) or 313(15) -

(i) the number and class of the shares; and

(ii) the name and address of, and his relationship with,<sup>97</sup> each of the other persons having an interest or short position in the shares,

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<sup>97</sup> In view of the exemption proposed under clause 304(9), in relation to companies that are wholly owned subsidiaries of a holding company, it is proposed that the holding company should be required to state its relationship with the other corporation having an interest in shares in which it is taken to be interested. Hence, if the shares were acquired by a wholly owned subsidiary it would be required to state "wholly owned subsidiary". **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

\_\_\_\_\_ in which he is so taken to be interested or have a short position under each of those sections taken separately;

(k) where\_\_

\_\_\_\_\_ (i) he no longer has ~~ana~~ notifiable<sup>98</sup> interest; or

\_\_\_\_\_ (ii) he has a notifiable interest, but he no longer has a short position of a percentage level equal to or more than the specified percentage level<sup>99</sup>, in shares comprised in the relevant share capital of the listed corporation,

the fact that he no longer has such an interest or short position; and

(l) such other information as may be required in the form specified for the purpose.

\_\_\_\_\_ (2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (c), (e), (i) or (j) are the underlying shares of equity

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<sup>98</sup> This amendment has been made because disclosure of changes in a short position is not required when a person has ceased to have a notifiable interest i.e. has ceased to have an interest in 5% or more of the shares of the listed corporation concerned.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>99</sup> Technical and consequential amendment. See Footnote (27). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

derivatives, the person shall also specify separately in the notification the total number of -

- (a) shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time -
  - (i) cash settled equity derivatives; or
  - (ii) physically settled equity derivatives;
- (b) shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time -
  - (i) cash settled equity derivatives; or
  - (ii) physically settled equity derivatives;
- (c) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time; and
- (d) shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time.

(3) In determining the number of shares in which a person is interested for the purposes of this section -

(a) there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of the shares in which the person is interested; and

(b) particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(4) Unless a corporation is -

(a) a listed corporation;~~or~~

(b) a wholly owned subsidiary of a listed corporation;~~i~~

(c) a corporation listed on a specified stock exchange;  
or

(d) a wholly owned subsidiary of a corporation listed on a specified stock exchange,<sup>100</sup>

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<sup>100</sup> Concern was expressed by the market about corporations listed on major overseas exchanges, and subsidiaries of such corporations, having to disclose the names of the directors who controlled the local operations. It was not intended to require disclosure of details of directors in these circumstances and we propose amending clause 317(4) to exempt wholly owned subsidiaries of corporations listed on internationally recognized exchanges. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Further technical amendment for clarity.**

it shall, in performing a duty of disclosure arising under section 301, also specify in the notification the name and address of any person in accordance with whose directions or instructions it, or its directors, are accustomed or obliged to act.

(4A) For the purposes of subsection (4), a person shall not be regarded as a person in accordance with whose directions or instructions a corporation or its directors are accustomed or obliged to act by reason only that the corporation or its directors act on advice given by him in a professional capacity.<sup>101</sup>

(5) A notification given by a person who is for the time being a party to an agreement to which section 308 applies shall also -

(a) state that the person giving the notification is a party to such an agreement;

(b) include -

(i) the names and (so far as he is aware) the addresses of the other parties to the agreement, identifying them as such; and

(ii) the number and class of shares in which each of those other parties is interested (apart from the agreement)<sup>102</sup>;

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<sup>101</sup> We have proposed that when a person is accustomed or obliged to act on professional advice, it is not necessary for the person to disclose the particulars of the professional who gives the advice. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>102</sup> Technical amendment for clarity.

- (c) state whether or not any of the shares to which the notification relates are shares in which he is interested by the application of sections 308 and 309 and, if so, the total number and class of those shares;
- (d) include a copy of any written agreement, contract, document or other instrument which records any terms or details of the agreement to which section 308 applies; and
- (e) (where there is no written agreement, contract, document or other instrument of the type referred to in paragraph (d) or where the agreement is only partly recorded in writing) include a written memorandum recording the material terms of the agreement to which section 308 applies, which are not otherwise recorded in writing, including, but not limited to -
  - (i) any cash or other consideration involved; and
  - (ii) the identity of all persons between whom such cash or other consideration is passed or is intended to pass.

(6) A notification given by a person in consequence of his ceasing to be interested in any shares by virtue of the fact that he or any other person has ceased to be a party to an agreement to which section 308 applies shall also -

- (a) state that he or that other person (as the case may be) has ceased to be a party to the agreement; and
- (b) (in the latter case) include the name and (so far as he is aware) the address of that other person.

\_\_\_\_\_(7) Nothing in subsection (1) or (2) shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

**318. Duty to publish and notify Monetary Authority of information given under Division 4**

(1) Upon receipt of any information under any provision of this Division or any regulations made, or rules made by the Commission, for the purposes of this Division,<sup>103</sup> the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a person under any provision of this Division, the listed corporation is under a duty to notify the Monetary Authority of that information.

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<sup>103</sup> Provision has been made for disclosure of information provided to the Exchange pursuant to the provisions of any regulations or rules made. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

### **319. Offences for non-compliance with notification requirements**

(1) A person -

(a) who, without reasonable excuse<sup>104</sup>, fails to perform, within the specified period specified in section 316(1)(a) or (b), (2)(a) or (b), (3)(a) or (b) or (4)(a) or (b) (as the case may be)<sup>105</sup>, a duty of disclosure arising under Division 2 in accordance with the provisions of this Part~~Division~~ and ~~Divisions 2 and 3~~<sup>106</sup> applicable to that duty;

(b) who -

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<sup>104</sup> **Please see Annex 3.**

<sup>105</sup> **Technical amendment for clarity.**

<sup>106</sup> **The references to “this Division and Division 2 and 3” in paragraphs (a) and (c) have been changed to “this Part” as there are provisions in other divisions e.g. clause 363 that regulate how a notice must be given.**

- (i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and
  - (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular;
- (c) who, without reasonable excuse<sup>104</sup>, fails to perform, within the ~~specified period specified in section 310(5)~~, a duty to give another person a notification required by section 310 in accordance with the provisions of this ~~Division and Divisions 2 and 3 Part<sup>106</sup>~~ applicable to that duty; or
- (d) who, without reasonable excuse,<sup>104</sup> fails, ~~without reasonable excuse,~~ to comply with section 312 to secure the giving of notification to him by the agent,

commits an offence and is liable -

- (i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) <sup>107</sup>~~To the extent that an offence under subsection (1)(a) consists of a failure to comply with section 315(2) in that the notification referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the same time or not one immediately after the other, it is a defence for a person charged with that offence to prove that he took all reasonably practicable steps to comply with that section.~~

(3) ~~It is a defence for a person charged with an offence under subsection (1)(c) to prove that it was not possible for him to give the notification to the other person required by section 310 within the specified period, and either—~~

~~(a) that it has not since become possible for him to give the notification so required; or~~

~~(b) that he gave the notification as soon after the end of that period as it became possible for him to do so.~~

(4) <sup>108</sup>~~Where a person is convicted of an offence under this section, the Financial Secretary may by order direct that—~~

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<sup>107</sup> **The defences in clauses 319(2) and (3) are subsumed by the “without reasonable excuse” defence and they are therefore deleted.**

<sup>108</sup> **We accept the comment of Members that clauses 319(4) to (6) should be moved to Division 12 so that the circumstances in which restrictions would be applied was clearer. Following Member’s suggestion, clauses 319(4) to (6) now appear as clause 357A. For consistency similar provisions in clauses 325(1) to (3) and 355 have also been moved to Division 12 appearing as clauses 357B and 357C. Consequential amendments have been made to clauses 358 to 361.**

~~(a) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or~~

~~(b) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register,~~

~~shall, until further order, be subject to the restrictions under Division 12.~~

~~(5) <sup>108</sup>Without prejudice to subsection (4), where a person is convicted of an offence under this section and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under Division 12.~~

~~(6) <sup>108</sup>An order under subsection (4) or (5) may be made notwithstanding any power in a corporation's memorandum or articles enabling the corporation to impose similar restrictions on those shares or equity derivatives.~~

**Division 5 - Listed corporation's powers to investigate ownership**

**320. Power of listed corporation to investigate ownership of interests in its shares, etc.**

(1)<sup>109</sup>A listed corporation may carry out an investigation in relation to -

- (a) any interest in shares comprised in its relevant share capital;
- (b) any short position in shares comprised in its relevant share capital; or
- (c) where shares comprised in its relevant share capital are the underlying shares of any equity derivatives, any interest in those equity derivatives,

by requiring, by notification, a person whom the listed corporation knows or has reasonable cause to believe to be interested in those shares or equity derivatives or have a short position in those shares or, at any time during the 3 years

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<sup>109</sup> Clause 320 enables a listed company to commence an investigation to discover the true identity of persons having an interest in its shares. Such self-enforcement arrangement has been in force in Hong Kong for over 10 years and operating without any problem. Similar provisions providing for investigations by listed companies are also found in the disclosure legislation in the UK, Australia and Singapore.

We noted that at an earlier Bills Committee meeting held on 21 May 2001, a Member of the Bills Committee had expressed concern that the investigation might create a cost burden on brokers assisting an investigation and the cost involved should be reimbursed, while others had commented that the cost was part of the total compliance cost for conducting business in the securities and futures market. In the UK and Singapore, there is no provision for the reimbursement of cost. In Australia there is a provision in the Corporations Law for the regulator to make regulations to prescribe fees that companies carrying out an investigation have to pay to persons for complying with the directions given.

**Members considered the provision and did not propose change at the Bills Committee meeting on 12 October 2001.**

immediately before the day on which the notification is given, to have been interested in those shares or equity derivatives or had a short position in those shares -

\_\_\_\_\_ (i) to confirm that fact or to indicate whether or not it is the case (as the case may be); and

\_\_\_\_\_ (ii) where he has, or has during that time had, an interest in those shares or equity derivatives or a short position in those shares, to give such further information as may be required in accordance with subsection (2).

(2) A notification under subsection (1) may require the person to whom it is addressed -

(a) to give particulars of -

(i) his own present interest in those shares or equity derivatives or his own present short position in those shares; or

(ii) his own past interest in those shares or equity derivatives or his own past short position in those shares (which he had at any time during the 3-year period referred to in subsection (1));

(b) where -

(i) his interest in those shares or equity derivatives is a present interest and any other person has an interest in those shares or equity derivatives; or

- (ii) in any case, any other person had an interest in those shares or equity derivatives during that 3-year period at any time when he himself had an interest in those shares or equity derivatives, to give (so far as he is aware) such particulars with respect to the other person's interest as may be required by the notification;
- (c) where his interest in those shares or equity derivatives was a past interest, to give (so far as he is aware) particulars of the identity of the person who had that interest immediately upon his ceasing to have it;
- (d) where -
  - (i) his short position in those shares is a present short position and any other person has an interest or short position in those shares; or
  - (ii) in any case, any other person had an interest or short position in those shares during that 3-year period at any time when he himself had a short position in those shares,  
\_\_\_\_\_to give (so far as he is aware) such particulars with respect to the other person's interest or short position as may be required by the notification; or

(e) where his short position in those shares was a past short position, to give (so far as he is aware) particulars of the identity of the person who had that short position or had an interest in those shares immediately upon his ceasing to have that short position.

(3) The particulars referred to in subsection (2)(a), (b) and (d) include -

(a) particulars of the identity of persons interested in the shares or equity derivatives in question, or having a short position in the shares in question; and

(b) particulars of whether persons interested in the same shares are or were -

(i) parties to any agreement to which section 308 applies; or

(ii) parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares.

(4) A notification under subsection (1) shall require any information given in response to the notification to be given within such reasonable time as may be specified in the notification.

(5) The Financial Secretary may by notice published in the Gazette exempt a person from the operation of this section.

(6) A notice published pursuant to subsection (5) is not subsidiary legislation.

(7) Sections 307 to 309 and 313 (with the omission of the reference in section 313 to section 314) apply -

(a) for the purposes of construing -

(i) references in this section to a person interested in shares and to an interest in shares respectively; and

(ii) references in this section to a person having a short position in shares and to a short position in shares respectively,

\_\_\_\_\_as they apply for the purposes of Divisions 2 to 4;

and

(b) for the purposes of this Division as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(8) This section applies in relation to a person who has or previously had, or is or was entitled to acquire, a right to subscribe for shares in a listed corporation which would on issue be comprised in the relevant share capital of that corporation as it applies in relation to a person who is or was interested in shares so comprised; and in this section, a reference to an interest in shares and to shares shall be construed accordingly in any such case as including a reference respectively to any such right and shares which would on issue be so comprised.

**321. Duty to notify relevant exchange company,  
Commission and Monetary Authority of  
information given under  
section 320**

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 320 the listed corporation receives any information, the listed corporation is under a duty to notify the relevant exchange company and the Commission of that information.

(2) Upon receipt of any information under subsection (1), the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(3) Whenever in pursuance of a requirement imposed by a listed corporation that is, or is the holding company of, an authorized financial institution on a person under section 320 the listed corporation receives any information, the listed corporation is under a duty (in addition to the duty imposed by subsection (1)) to notify the Monetary Authority of that information.

(4) If a listed corporation is under a duty to give any notification required by subsection (1) or (3), the notification shall be given before the end of the business day after the day on which that duty arises.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

**322. Listed corporation to investigate ownership of interests in its shares, etc. on requisition by members**

(1) A listed corporation may be required to exercise its powers under section 320 on the requisition of members of the corporation holding, at the date of the deposit of the requisition, shares comprised in the paid-up capital of the corporation carrying at that date the right of voting at general meetings of the corporation of an aggregate nominal value not less than the nominal value of one-tenth of that paid-up capital.

(2) The requisition must -

(a) state that the requisitionists are requiring the listed corporation to exercise its powers under section 320;

(b) specify the manner in which they require those powers to be exercised; and

(c) give reasonable grounds for requiring the listed corporation to exercise those powers in the manner specified,

and, subject to subsection (3), must be signed by the requisitionists and deposited at the listed corporation's registered office.

(3) The requisition may consist of several documents in like form each signed by one or more requisitionists.

(4) On the deposit of a requisition complying with this section, it is the duty of the listed corporation to exercise its

powers under section 320 in the manner specified in the requisition.

(5) If default is made in complying with subsection (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable -

(a) on conviction on indictment to a fine at level 6;

or

(b) on summary conviction to a fine at level 3.

(6) In this section and in sections 323 and 324, a reference to a corporation's registered office shall, where the corporation does not have a registered office in Hong Kong, be deemed to be a reference to the corporation's principal place of business in Hong Kong.

**323. Listed corporation to report to members**

(1) On the conclusion of an investigation carried out by a listed corporation in pursuance of a requisition under section 322, it is the duty of the corporation to cause a report of the information received in pursuance of that investigation to be prepared.

(2) The report prepared under subsection (1) shall be made available at the listed corporation's registered office within 10 business days after the conclusion of the investigation.

(3) Where -

(a) a listed corporation carries out an investigation in pursuance of a requisition under section 322; and

(b) the investigation is not concluded before the end of 3 months beginning with the day next following the date of the deposit of the requisition,

it is the duty of the listed corporation to cause to be prepared, in respect of that period and each successive period of 3 months ending before the conclusion of the investigation, an interim report of the information received during the respective period in pursuance of the investigation.

(4) Each report prepared under subsection (3) shall be =

(a) made available at the listed corporation's registered office within 10 business days after the end of the period to which it relates; ~~and~~

(b) published by the listed corporation at such time, in such manner and for such period as may be specified by the Commission by notice published in the Gazette.<sup>110</sup>

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<sup>110</sup> **A Member suggested that a report prepared under clause 323(3) should be posted on a listed company's website. We agree that a means for the report to be accessed electronically is desirable but currently not all listed companies have websites, we have therefore proposed a provision for the Commission to specify the manner in which the reports shall be published. Thus, making it possible for these reports to be filed in a central electronic registry when one is set up.**

(5) A report prepared under this section shall not include any information with respect to a corporation entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32); but where any such information is omitted, that fact shall be stated in the report.

(6) The listed corporation shall, within 3 business days after making any report prepared under this section available at its registered office, notify the requisitionists that the report is so available.

(7) An investigation carried out by a listed corporation in pursuance of a requisition under section 322 shall be regarded for the purposes of this section as concluded when the listed corporation has made all such inquiries as are necessary or expedient for the purposes of the requisition and, in the case of each such inquiry, either a response has been received by the corporation or the time allowed for a response has expired.

(8) A report prepared under this section -

(a) shall be kept at the corporation's registered office from the day on which it is first made available there in accordance with subsection (2) or (4) until the expiry of 6 years beginning with the day next following that day; and

(b) shall be made available for inspection in accordance with section 326 so long as it is so kept.

(9) If default is made in complying with subsection (1), (2), (3), (4)(a) or (b)<sup>111</sup>, (6) or (8)(a), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable -

(a) on conviction on indictment to a fine at level 6;

or

(b) on summary conviction to a fine at level 3.

(10) A notice published pursuant to subsection (4)(b) is not subsidiary legislation.<sup>111</sup>

**324. Duty to deliver report prepared under section 323 to relevant exchange company, Commission and Monetary Authority**

(1) Whenever a report is prepared under section 323, the listed corporation is under a duty to deliver a copy of the report to the relevant exchange company and the Commission.

(2) Upon receipt of any report under subsection (1), the relevant exchange company shall forthwith publish such report in such manner and for such period as may be approved by the Commission.

(3) Whenever a report is prepared under section 323 by a listed corporation that is, or is the holding company of, an authorized financial institution, the listed corporation is under

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<sup>111</sup> Consequential amendment to the addition of clause 323(4)(b).

a duty (in addition to the duty imposed by subsection (1)) to deliver a copy of the report to the Monetary Authority.

(4) The duty imposed on a listed corporation by subsection (1) or (3) shall be performed before the end of the business day after the day on which the report is first made available at the corporation's registered office.

(5) If default is made in complying with subsection (1), (3) or (4), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

**325. Offences for failure to provide information  
required by listed corporation ~~and power  
to impose restrictions~~**

          <sup>112</sup>(1) -

          (2) -

          (3) -

~~(1) Where~~

~~(a) a notification is given by a listed corporation  
              under section 320 to a person who is or was  
              interested in shares comprised in the relevant  
              share capital of the corporation that are  
              registered on the Hong Kong register; and~~

~~(b) that person fails to give the corporation any  
              information required by the notification within the  
              time specified in it,~~

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<sup>112</sup> For consistency, clauses 325(1) to (3) have been moved to Division 12. See also Footnote (108).

~~the listed corporation may apply to the Court of First Instance for an order directing that the shares in question be subject to the restrictions under Division 12.~~

~~— (2) Where —~~

~~(a) a notification is given by a listed corporation under section 320 to a person who is or was interested in equity derivatives; and~~

~~(b) that person fails to give the corporation any information required by the notification within the time specified in it,~~

~~the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under Division 12.~~

~~— (3) An order under subsection (1) or (2) (as the case may be) may be made by the Court of First Instance notwithstanding any power contained in the applicant corporation's memorandum or articles enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question.~~

(4) Subject to subsections ~~(5) and~~<sup>113</sup> (6), a person -

(a) who, without reasonable excuse<sup>114</sup>, fails to comply with a notification under section 320; or

(b) who -

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<sup>113</sup> **Consequential amendment to deletion of clause 325(5).**

<sup>114</sup> **We agree with Members that a person should be allowed to ignore a request from a listed company if it was frivolous or vexatious, without committing an offence in the first place. This is achieved by adding the words “without reasonable excuse” in clause 325(4)(a).**

(i) in purported compliance with such a notification, makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable -

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(5) ~~A person is not guilty of an offence for failing to comply with a notification under section 320 if he proves that the requirement to give the information was frivolous or vexatious<sup>115</sup>.~~

(6) A person is not obliged to comply with a notification under section 320 if he is for the time being exempted by the Financial Secretary under section 320(5).

### **326. Inspection of reports**

(1) Any report which is required by section 323(8)(b) to be made available for inspection in accordance with this section shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed

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<sup>115</sup> Clause 325(5) has been deleted as this defence is subsumed by “without reasonable excuse”.

for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such report, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of any report required under this section is refused or a copy so required is not sent within the ~~specified period~~ specified in subsection (2)<sup>116</sup>, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of any report required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the ~~specified period~~ specified in subsection (2)<sup>116</sup> a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

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<sup>116</sup> **Technical amendment for clarity.**

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

### **Division 6 - Keeping of register**

#### **327. Register of interests in shares and short positions**

(1) Every listed corporation shall keep a register of interests in shares and short positions ~~for the purposes of Divisions 2 to 5~~<sup>117</sup>.

(2) Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provision of Divisions 2 to 5, the listed corporation is under a duty to record in the register, against the person's name, the information received and the date of the entry.

(3) Without prejudice to subsection (2), where a listed corporation receives a notification which includes a statement that the person giving the notification, or any other person, has ceased to be a party to an agreement to which section 308 applies, the listed corporation is under a duty to record that information against the name of the person who has ceased to be a party to that agreement in every place where his name appears in the

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<sup>117</sup> Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

register as a party to that agreement (including any entry relating to him made against another person's name).

(4) A duty imposed by subsection (2) or (3) shall be performed within 3 business days after the day on which that duty arises.

(5) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or equity derivatives.

(6) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(7) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(8) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(9) Subject to section 283 of the Companies Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation.

(10) The register and any index -

(a) shall be kept -

- (i) if the corporation's register of members is kept at its registered office, at the corporation's registered office;
- (ii) if the corporation's register of members is not so kept, at the corporation's registered office or the place where the register of members is kept; or
- (iii) if the corporation does not have a registered office in Hong Kong, at the corporation's principal place of business in Hong Kong; and

~~(b) subject to subsection (11), shall be made available for inspection in accordance with section 331.(b)~~  
\_\_\_\_\_ shall, for the purposes of Divisions 2 to 5 and for the purposes of -

(i) enabling members of the public to ascertain -

- (A) the identities and the particulars of persons who are or were the true owners of, or have or had any interest or short position in, shares in the relevant share capital of the listed corporation;
- (B) the nature and the particulars of the interest or short position; and

(C) the capacity in which a person holds  
or held the interest or short  
position; and

(ii) providing investors with information to  
enable them to make informed investment  
decisions,<sup>118</sup>

be made available, subject to subsection (11), for  
inspection in accordance with section 331.

(11) Neither the register nor any index shall be made available for inspection in accordance with section 331 in so far as it contains information with respect to a corporation for the time being entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32).

(12) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of -

- (a) the place where the register is kept; and
- (b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

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<sup>118</sup> The purpose for which information in the registers is published is spelt out in clause 327(10) for consistency with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486). The words deleted appear at the end of the new paragraph.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(13) The duty imposed by subsection (12) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(14) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(15) For the purposes of this section, a reference to books and papers in section 283 of the Companies Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.

**328. Registration of interests and short positions disclosed under section 320**

(1) Whenever in pursuance of a requirement imposed by a listed corporation on a person under section 320 the listed corporation receives any information, the listed corporation is under a duty to record, against the name of the person interested in those shares or having a short position in those shares (as the case may be), in a separate part of its register of interests in shares and short positions -

- (a) the fact that the requirement was imposed and the date on which it was imposed; and
- (b) any information received in pursuance of the requirement.

(2) Section 327(4) to (14) applies in relation to any part of the register kept in accordance with subsection (1) as it applies in relation to the remainder of the register.

~~(3) A duty imposed on a listed corporation by this section shall be performed before the end of the business day after the day on which it receives the information.~~

~~(4) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.<sup>119</sup>~~

### **329. Removal of entries from register**

(1) A corporation may remove an entry against a person's name from its register of interests in shares and short positions if more than 6 years have expired since the date of the entry being made, and either -

- (a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 2 to 5 in shares comprised in the relevant share capital of the corporation; or

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<sup>119</sup> Sub-clauses 328(3) and (4) are not necessary as these matters are covered in clause 327(4) and (14). This follows the pattern of existing Securities (Disclosure of Interests) Ordinance (SDIO) (Cap. 386). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(b) it has been superseded by a later entry made under section 327 against the same person's name, and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 2 to 5 gives to a listed corporation the name and address of another person as being interested in shares comprised in the relevant share capital of the corporation or having a short position in shares so comprised, the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification -

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of interests in shares and short positions; and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of interests in shares and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If a person who is identified in a corporation's register of interests in shares and short positions as being a party to an agreement to which section 308 applies (whether by an entry against his own name or by an entry relating to him made against another person's name as referred to in subsection (2)(a)) ceases to be a party to that agreement, he may apply in writing to the corporation for the inclusion of that information in the register; and if the corporation is satisfied that he has ceased to be a party to that agreement, it shall record that information (if not already recorded) in every place where his name appears as a party to that agreement in the register.

(5) If an application under subsection (3) or (4) is refused (in a case under subsection (4), otherwise than on the ground that the information has already been recorded), the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register or to include the information in question in the register (as the case may be); and the Court of First Instance may, if it considers appropriate, make such an order.

(6) Where a name or an entry is removed from a corporation's register of interests in shares and short positions in pursuance of subsection (1) or (3) or an order under subsection (5), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

(7) If default is made in complying with subsection (2) or (6), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a

fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**330. Otherwise, entries not to be removed from register**

(1) Entries in a corporation's register of interests in shares and short positions shall not be removed except in accordance with section 329.

(2) If an entry is removed from a corporation's register of interests in shares and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**331. Inspection of register**

(1) Any register of interests in shares and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of

\$10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the ~~specified period~~ specified in subsection (2)<sup>120</sup>, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

(5) In the case of a failure to send within the ~~specified period~~ specified in subsection (2)<sup>120</sup> a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

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<sup>120</sup> Technical amendment for clarity.

**Division 7 - Disclosure of interests and  
short positions of directors  
and chief executives**

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

(1) A director or chief executive of a listed corporation comes under a duty of disclosure on the occurrence, while he is a director or chief executive of the listed corporation, of any of the following events -

- (a) any event in consequence of which he becomes, or ceases to be, interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining an interest in other shares or debentures of that corporation);<sup>121</sup>
- (b) the entering into by him of a contract to sell any such shares or debentures;
- (c) the assignment by him of a right granted to him by the listed corporation to subscribe for shares in or debentures of the listed corporation;
- (d) the grant to him by another corporation, being an associated corporation of the listed corporation<sup>122</sup>,

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<sup>121</sup> The words “(whether or not having an interest in other shares or debentures of that corporation)” have been added to make it clear that the disposal of part only of an interest still prompts disclosure. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>122</sup> We accept the clarification suggested by Legal Services Division of the Legislative Council.

of a right to subscribe for shares in or debentures of that associated corporation, the exercise of such a right granted to him and the assignment by him of such a right so granted;

- (e) any event in consequence of which the nature of his interest (or part thereof)<sup>123</sup> in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, which has previously been notified to the listed corporation and the relevant exchange company where the duty of disclosure arose under paragraph (a), (b), (c) or (d) or subsection (2), changes; and
- (f) any event in consequence of which he comes to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation (whether or not having or retaining a short position in other shares of that corporation)<sup>124</sup>, ~~or the short position he has in those shares changes.~~

(2) A person who -

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<sup>123</sup> The words “or part thereof” make it clear that a change affecting part only of a holding of shares may prompt disclosure. Similar words are proposed to be added to clause 301(1)(b). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>124</sup> The words “(whether or not having a short position in other shares or debentures of that corporation)” have been added to make it clear that the disposal of part only of a short position still prompts disclosure. Similar words already appear in clause 301(4)(a). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

- (a) is ~~the~~ director or chief executive of a corporation when the corporation becomes a listed corporation and at that time -
- (i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or
  - (ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;
- (b) at the commencement of this Part is a director or chief executive of a listed corporation and at that time -
- (i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation, and that interest has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 392;<sup>125</sup> or

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<sup>125</sup> Clause 332(2)(b)(ii) of the Blue Bill requires disclosure of a short position on commencement only if that short position has not previously been disclosed under the existing SDIO. As there is no provision for disclosure of short positions under the existing SDIO the words at the end of clause 332(2) have been amended to remove the reference to

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation;<sup>125</sup>  
~~and that interest or short position (as the case may be) has not previously been disclosed to the listed corporation and the Exchange Company under the Securities (Disclosure of Interests) Ordinance (Cap. 396) before its repeal under section 392;~~

(c) becomes a director or chief executive of a listed corporation and at the time when he does so -

(i) is interested in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; or

(ii) has a short position in shares in the listed corporation or any associated corporation of the listed corporation; or

(d) is ~~the~~ a director or chief executive of a listed corporation when ~~a~~ the corporation becomes an associated corporation of the listed corporation<sup>126</sup>  
and at that time -

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short positions and now qualify only clause 332(2)(b)(i). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>126</sup> In clause 332(2)(d) of the Blue Bill it is not clear that the associated corporation referred to must be an associated corporation of the listed corporation of which the person is a director. The amendment clarifies this point and brings

- (i) is interested in shares in or debentures of the associated corporation; or
- (ii) has a short position in shares in the associated corporation,

comes under a duty of disclosure.

(3) A person who would otherwise come under a duty of disclosure under subsection (2) is not under such a duty where the occurrence of the relevant event comes to his knowledge after he has ceased to be a director or chief executive.

(4) Nothing in this section operates so as to impose a duty with respect to shares in a corporation which is the wholly owned subsidiary of another corporation for the purposes of section 124 of the Companies Ordinance (Cap. 32).

(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;~~or~~
- (b) any of his interest whether legal or equitable in the shares or debentures;or
- (c) <sup>127</sup>any of his interest in the shares, which are the underlying shares of equity derivatives, on -

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clause 332(2)(d) in line with the existing section 28(2)(d) of the SDIO. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>127</sup> Clause 332(5)(c) has been added to make it beyond doubt that there is a change in the nature of a person's interest in shares when he "writes" or "issues" equity derivatives, or on exercise by him, or against him, of rights under equity derivatives. This clause mirrors Clause 304(11)(ba).

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

(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<sup>128</sup>-

(i) ~~the nature of his interest in the shares or debentures~~<sup>128</sup>-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;  
or

(ii) due to a change in<sup>128</sup>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; or

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<sup>128</sup> Technical amendments for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(iii) where another person, being a qualified lender, comes to have an interest in his shares or debentures by way of security.<sup>129</sup>

**333. Interests to be disclosed by director and chief executive**

(1) Subject to subsection (2), the interests to be taken into account for the purposes of the duty of disclosure arising under section 332 are those in shares in and debentures of the listed corporation concerned or any associated corporation of the listed corporation (whether issued or unissued)<sup>130</sup>.

(2) In subsection (1), a reference to interests in shares in the listed corporation concerned or any associated corporation of the listed corporation includes a reference to interests in such shares, which are the underlying shares of equity derivatives, that a person has, or ceases to have, by virtue of -

(a) the holding, writing or issuing by him of the equity derivatives;

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<sup>129</sup> As with the amendment proposed to clause 304(11)(v) we accept market comment that a change in the nature of a director's interest in shares when he pledges his shares to a financial institution or a licensed intermediary should not give rise to a disclosure obligation. This is reflected in clause 332(5)(iii). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. This clause has been further refined to conform to clause 304(11)(v).**

<sup>130</sup> We have added the words at the end of clause 333(1) to highlight that directors have obligation to disclose interests in unissued shares. There is no widening of disclosure obligation; the words supplement the definition of "underlying shares" and serve to avoid inadvertent omission in disclosure.

- (b) the exercise by, or against<sup>131</sup>, him of rights under the equity derivatives; or
- (c) the assignment by him, or the lapsing without exercise, of rights under the equity derivatives.

**334. Short positions to be disclosed by director and chief executive**

The short positions to be taken into account for the purposes of the duty of disclosure arising under section 332 are those in shares in the listed corporation concerned or any associated corporation of the listed corporation.

**335. Notification of family and corporate interests and short positions by director and chief executive**

- (1) For the purposes of this Division and Divisions 8 and 9

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- (a) a director or chief executive of a listed corporation is taken -
  - (i) to be interested in any shares or debentures in which his spouse (not being

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<sup>131</sup> The words "or against" have been added in clause 333(2)(b) so that it is clear that a person can acquire an interest or cease to have an interest in shares not just when he exercises rights under an equity derivative – but also when someone else exercises rights against him. If a person has, for example, an option (an equity derivative) exercised against him requiring him to take shares, or deliver shares, that is also an interest that may give rise to a duty of disclosure.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

herself or himself a director or chief executive of the listed corporation) is interested; and

(ii) to have a short position in any shares in which his spouse (not being herself or himself a director or chief executive of the listed corporation) has a short position; and

(b) the same applies with respect to -

(i) an interest which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares or debentures; and

(ii) a short position which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares.

(2) For the purposes of this Division and Divisions 8 and 9

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(a) a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, the spouse of a director or chief executive of

a listed corporation (not being herself or himself a director or chief executive of the listed corporation) shall be taken also to have been entered into, exercised or made by, or as having been made to (as the case may be) the director or chief executive; and

- (b) the same applies with respect to a contract, assignment or right of subscription entered into, exercised or made by, or a grant made to, a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation).

~~<sup>132</sup>(3) A director or chief executive of a listed corporation is under a duty to give notification to the listed corporation and the relevant exchange company on the occurrence, while he is a director or chief executive, of any of the following events —~~

- ~~(a) the grant by the corporation to his spouse, or to any minor child (natural or adopted) of his, of a~~

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<sup>132</sup> The combined effect of clauses 335(1) and (2) and clauses 335(3) to (5) is that the grant of rights to the spouse or a child of a director will mean that two forms have to be submitted by a director in respect of a single transaction. In order to reduce the disclosure burden on directors we propose deleting clauses 335 (3),(4) and (5).

Consequential amendments are as follows :

- The reference to section 335(3) in paragraph 340(1)(k) should be deleted.
- A reference to section 335(2) in paragraph 340(1)(k) should be added.
- The whole of paragraph 340(3)(c) should be deleted.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~right to subscribe for shares in or debentures of the corporation;~~

~~(b) the exercise by his spouse, or by any minor child (natural or adopted) of his, of such a right granted by the corporation to the spouse or the child; and~~

~~(c) any event in consequence of which his spouse, or any minor child (natural or adopted) of his, come to have or ceases to have a short position in shares in the listed corporation or any associated corporation of the listed corporation.~~

<sup>132</sup>(4) ~~A notification required by subsection (3) shall provide~~

~~(a) in the case of the grant of a right, the like information as is required by section 338 to be notified by the director or chief executive on the grant to him by another corporation, being an associated corporation, of a right to subscribe for shares in or debentures of that associated corporation;~~

~~(b) in the case of the exercise of a right, the like information as is required by section 338 to be notified by the director or chief executive on the exercise of a right granted to him by another corporation, being an associated corporation, to subscribe for shares in or debentures of that associated corporation; or~~

~~(c) in the case of the occurrence of an event referred to in subsection (3)(c), the like information as is required by section 338 to be notified by the director or chief executive on the occurrence of an event in consequence of which he has a short position in shares in the listed corporation concerned or any associated corporation of the listed corporation.~~

~~<sup>132</sup>(5) If a director or chief executive is under a duty to give any notification required by subsection (3), the notification shall be given—~~

~~(a) in the case that at the time at which the relevant event occurs he knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or~~

~~(b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge,~~

~~and, subject to subsection (4), in the manner specified in section 338(2).<sup>132</sup>~~

(6) For the purposes of this Division and Divisions 8 and 9, a person is taken -

(a) to be interested in any shares in or debentures of the listed corporation or any associated corporation of the listed corporation in which a corporation is interested; and

- (b) to have a short position in any shares in the listed corporation or any associated corporation of the listed corporation in which a corporation has a short position,

if -

- \_\_\_\_\_ (i) that corporation or its directors are accustomed or obliged to act in accordance with his directions or instructions; or
- \_\_\_\_\_ (ii) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that corporation.

(7) Where -

- (a) a person is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of a corporation; and
- (b) that corporation is entitled to exercise or control the exercise of any of the voting power at general meetings of another corporation ("the effective voting power"),

then, for the purposes of subsection (6)(ii), the effective voting power is taken as exercisable by that person.

(7A) For the purposes of subsections (6) and (7), a person is entitled to exercise or control the exercise of voting power if -

- (a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.<sup>133</sup>

(8) A person who is taken to be interested in shares or debentures, or have a short position in shares, under subsection (6) shall be regarded as having ceased to be interested in the shares or debentures, or have a short position in the shares, if subsection (6)(i) or (ii) no longer applies.

~~(9) For the purposes of this Division and Divisions 8 and 9, a duty to give any notification imposed on a director or chief executive by this section shall be deemed to be a duty of disclosure arising under section 332.~~<sup>134</sup>

**Division 8 -Interests and short positions to be notified  
by director and chief executive or disregarded**

**336. Interests and short positions to be  
taken into account for the purpose  
of notification by director  
and chief executive**

(1) This section applies, subject to section 337, in determining for the purposes of Divisions 7 and 9 whether a person

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<sup>133</sup> Clauses 335(6) and (7) follow closely the words of clauses 307(2) and (3) which deem a person to be interested in shares in which a corporation that he controls (one third of the voting power) is interested. Clause 335 (7A) follows the words of clause 307(4) and has been added for consistency. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>134</sup> Clause 335(9) is no longer required as clauses 335(3) to (5) have been deleted and Divisions 8 and 9 do not provide for other duties of disclosure.

has, or ceases to have, an interest in shares in or debentures of, or short position in shares in, a listed corporation or any associated corporation of the listed corporation that is notifiable.

(2) A reference to an interest in shares or debentures shall be construed as including a reference to an interest of any kind whatsoever in the shares or debentures, and for that purpose any restraint or restriction to which the exercise of a right attached to the interest may be subject shall be disregarded.

(3) In construing a reference to a short position in shares, any restraint or restriction to which the exercise of a right or the settlement of an obligation, by virtue of the short position, may be subject shall be disregarded.

(4) Where property is held on trust and an interest in shares or debentures, or short position in shares, is comprised in that property -

(a) a beneficiary of the trust who apart from this section does not have an interest in the shares or debentures, or a short position in the shares, is taken to have such an interest or short position (as the case may be); and

(b) in the case of a discretionary trust, the founder of the trust is taken to have an interest in the shares or debentures or a short position in the shares (as the case may be).

(5) A person is taken to have an interest in shares or debentures if -

(a) he enters into a contract for their purchase by him  
(whether for cash or other consideration); or

(b) he is entitled to -

(i) exercise any right conferred by the  
holding of the shares or debentures; or

(ii) control the exercise of any such right.

(6) For the purposes of subsection (5)(b), a person is taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if -

(a) he has a right (whether subject to conditions or not) the exercise of which would make him so entitled; or

(b) he is under an obligation (whether subject to conditions or not) the fulfilment of which would make him so entitled.

(7) A person is taken to have an interest in shares or debentures if, otherwise than by virtue of having an interest under a trust -

(a) he has a right to subscribe for or<sup>135</sup> call for delivery of the shares or debentures to himself or to his order; or

-(b) he has a right to acquire an interest in the shares or debentures or is under an obligation to take delivery of the shares or debentures,

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<sup>135</sup> **Technical amendment for clarity.**

whether in any case the right or obligation is conditional or absolute.

(8) A person who is the holder, writer or issuer of equity derivatives is taken to have an interest in shares which are the underlying shares of the equity derivatives if, by virtue of his holding, writing or issuing of the equity derivatives -

- (a) he has a right to require another person to deliver the underlying shares to him;
- (b) he is under an obligation to take delivery of the underlying shares;
- (c) he has a right to receive from another person an amount if the price of the underlying shares increases; or
- (d) he has a right to avoid or reduce a loss if the price of the underlying shares increases,

before or on a certain date or within a certain period, whether in any case the right or obligation is conditional or absolute.

(9) The number of shares in which a person is taken to be interested under subsection (8) is -

- (a) the number of the underlying shares of the equity derivatives -
  - (i) which he has a right to require another person to deliver to him; or
  - (ii) of which he is under an obligation to take delivery;
- (b) the number of the underlying shares of the equity derivatives by reference to which, wholly or

partly, the amount which he has a right to receive or the loss which he has a right to avoid or reduce, by virtue of his holding, writing or issuing of the equity derivatives, is derived or determined; or

- (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract,

whether in any case the right or obligation is conditional or absolute.

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

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

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

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

—(iii) pursuant to a right to require the other person to take delivery of the shares or debentures;<sup>136</sup>

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<sup>136</sup> **Clause 336(10)(a) refers to the delivery of shares from one person to another person pursuant to the exercising of an option. It should cover the exercise of a put option. The new paragraph (iii) provides for this.**

- (b) his right to subscribe for or<sup>137</sup> call for delivery of the shares or debentures lapses or he assigns such a right to another person;
- (c) his obligation to take delivery of the shares or debentures 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<sup>136</sup> settlement of any cash settled equity derivatives; ~~or~~
- ~~(e) he assigns his rights under a stock futures contract to another person.~~<sup>136</sup>

(11) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(d) is -

- (a) the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
- (b) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

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**The amendment to clause 336(10)(d) means that the clause now covers the assignment of all cash settled equity derivatives (which includes stock futures contracts). Clause 336 (10)(e) can therefore be deleted.**

<sup>137</sup> **Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~(12) The number of shares in which a person is regarded as having ceased to be interested under subsection (10)(e) is the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of each stock futures contract.<sup>138</sup>~~

(13) The number of shares in which a person is regarded as having a short position by virtue of his holding, writing or issuing of any equity derivatives is -

- (a) the number of the underlying shares of the equity derivatives which he is entitled, or may be required, to deliver;
- (b) in the case of cash settled equity derivatives, the number of the underlying shares which are to be used in calculating the amount he may receive, or the loss he may avoid or reduce; or
- (c) in the case of a stock futures contract, the contract multiplier which is to be used in calculating the amount he may receive in respect of his holding of the stock futures contract.

(14) The number of shares in which a person is regarded as having a short position under a securities borrowing and lending agreement is the number of shares which he is obliged to deliver under the securities borrowing and lending agreement, if called upon to do so, whether or not the obligation to deliver shares may

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<sup>138</sup> Consequential amendment to deleting clause 336(10)(e).

be settled by payment of cash or ~~settled by~~ delivery of the shares or otherwise.<sup>139</sup>

(15) Persons having a joint interest or short position are taken each of them to have that interest or short position (as the case may be).

(16) It is immaterial that shares in which a person has an interest or short position are unidentifiable.

**337. Interests and short positions to be disregarded for the purpose of notification by director and chief executive**

(1) The following interests, and short positions<sup>140</sup>, in shares in or debentures of a listed corporation or any associated corporation of the listed corporation shall be disregarded for the purposes of Divisions 7 to 9 -

- (a) so long as a person is entitled to receive income from trust property comprising shares or debentures during the lifetime of himself or another person, an interest in the shares or debentures in reversion or remainder;
- (b) an interest of a person in shares or debentures if, and so long as, he holds the shares or debentures as a bare trustee;

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<sup>139</sup> **Technical amendment for clarity.**

<sup>140</sup> **Technical amendment for clarity, mirroring the amendments proposed in the introductory words to sub-clause 314(1). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(c) subject to subsection (3), an interest in shares or debentures comprised in the property under ~~of or~~ held by a holder, trustee or custodian of -

\_\_\_\_\_ (i) a collective investment scheme authorized under section 103; ~~or an approved~~

\_\_\_\_\_ (ii) a pension scheme or a provident fund scheme registered under section 21 or 21A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); or

\_\_\_\_\_ (iii) a qualified ~~overseas~~ scheme,

of a holder, trustee or custodian of the scheme;<sup>141</sup>

(d) an interest of a person subsisting by virtue of -

(i) a charitable scheme made by order of any court of competent jurisdiction; or

(ii) the vesting of a deceased's estate in any judicial officer between the time of death of the deceased and the grant of letters of administration; and

(e) such interests, ~~or interests of such a class,~~ or such short positions or short positions<sup>142</sup> of such a

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<sup>141</sup> We accept market comment that some pension funds would not qualify as “collective investment schemes”.

Following consultation with the market, we propose including reference to those pension schemes that are excluded from the definition of “collective investment scheme”. Similar changes are proposed in relation to sub-clause 314(1)(b).

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

class as ~~are~~ may be prescribed for the purposes of this section by regulations.

(2) A person is not taken to be interested in shares or debentures under section 336(5)(b) by reason only that he -

- (a) has been appointed as a proxy to vote at a specified meeting of the listed corporation or associated corporation or of any class of its members and at any adjournment of that meeting; or
- (b) has been appointed by a corporation to act as its representative at a meeting of the listed corporation or associated corporation or of any class of its members.

(3) ~~An interest in shares or debentures of a holder, trustee or custodian of a scheme referred to in subsection (1)(c)(i), (ii) or (iii)<sup>143</sup>, comprised in the property under of or held by a holder, trustee or custodian of a collective investment the scheme, authorized under section 103 shall not be disregarded under subsection (1)(c) if the holder, trustee or custodian (as~~

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<sup>142</sup> Same rationale as Footnote (140) above. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Further technical amendments have been proposed for clarity.**

<sup>143</sup> Clause 337(3) has been amended to refer to all of the categories of persons now proposed to be exempt under sub-clause (1)(c). Similar changes are proposed in relation to sub-clause 314(3). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001. Further technical amendments have been proposed for clarity.

the case may be) is also a manager of the ~~collective investment~~ scheme.

(4) For the purposes of subsection (1)(c), "~~approved~~qualified overseas scheme" (核准合資格海外計劃) means a collective investment scheme, pension scheme or provident fund scheme<sup>144</sup> which -

- (a) is established in a place outside Hong Kong recognized for the purposes of this section by the Commission by notice published in the Gazette; and
- (b) is authorized by or registered with the authority (if any) responsible for the authorization or registration of ~~collective investment such schemes~~ in the place where it is established, and complies with the requirements of such authority,<sup>145</sup>

but does not include -

- (i) an arrangement operated by a person otherwise than by way of business;

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<sup>144</sup> Same rationale as Footnote (141). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>145</sup> We accept market comment that overseas managers are unlikely to be willing to incur the costs and administrative burdens associated with the approval procedure for overseas schemes proposed in clauses 337(4) and (6) to (9) of the Blue Bill. Following consultation with the market, we propose dropping the approval procedure for overseas schemes. Provided an overseas scheme satisfies the requirements of clause 337(4), it will be a qualifying overseas scheme eligible for the exemption. Paragraphs (i) to (iv) of clause 337(4) have been moved from clause 314(7). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

(ii) an arrangement under which less than 100 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to the income or property of the arrangement;

(iii) an arrangement under which less than 50 persons hold, or have the right to become holders of, interests (whether described as units or otherwise) that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and

(iv) such other arrangement as may be specified by the Commission by notice published in the Gazette.;

~~(c) is accepted by the Commission as being a bona fide widely held investment scheme;~~

~~(d) is approved by the Commission; and~~

~~(e) complies with such conditions as the Commission may impose on granting the approval under paragraph (d).~~

(5) For the purposes of subsection (1), a person shall not be considered as not being a bare trustee in respect of any property by reason only that -

(a) the person for whose benefit the property is held is not absolutely entitled thereto as against the trustee only because he is a minor or is a person under a disability; or

(b) the trustee has the right to resort to the property to satisfy any outstanding charge or lien or for

the payment of any duty, tax, cost or other outgoings.

~~<sup>145</sup>(6) An application for approval of a scheme under subsection (4)(d) shall be —~~

~~(a) made by the manager of the scheme; and~~

~~(b) accompanied by —~~

~~———— (i) a certified copy of the constitution of the scheme; and~~

~~———— (ii) such information about —~~

~~(A) the scheme;~~

~~(B) the persons who hold, or have the right to become holders of, units or shares or other interests under the scheme; and~~

~~(C) the persons who are trustees or custodians of the scheme, as the Commission may require to satisfy itself that the collective investment scheme complies with the requirements of subsection (4)(a), (b) and (c).~~

~~————<sup>145</sup>(7) The following arrangements are not bona fide widely held investment schemes for the purposes of subsection (4)(c) —~~

~~(a) an arrangement operated by a person otherwise than by way of business;~~

~~(b) an arrangement under which less than 100 persons hold, or have the right to become holders of, units or shares or other interests that entitle the~~

~~holders, directly or indirectly, to the income or property of the arrangement;~~

~~(c) an arrangement under which less than 50 persons hold, or have the right to become holders of, units or shares or other interests that entitle the holders, directly or indirectly, to 75% or more of the income or property of the arrangement; and~~

~~(d) such other arrangement as may be specified by the Commission by notice published in the Gazette.~~

~~—<sup>145</sup>(8) In subsection (6), "constitution" (章程), in relation to a scheme, means—~~

~~(a) where the scheme is a unit trust, the trust deed of the unit trust; or~~

~~(b) in any other case, the instrument providing for the establishment or constitution of the scheme, including, where the scheme is established by a company, the memorandum and articles of the company, and also includes, if the trust deed, instrument or memorandum and articles are not written in the English or Chinese language, a translation thereof in English or Chinese.~~

~~—<sup>145</sup>(9) For the purposes of subsection (8)—~~

~~"company" (公司) means a company incorporated outside Hong Kong~~

~~which does not have a place of business in Hong Kong;~~

~~"memorandum and articles" (章程大綱及章程細則), in relation to a company, means the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the~~

~~constitution of the company. (6) A notice published pursuant to subsection (4)(a) or (iv) is not subsidiary legislation.~~<sup>146</sup>

**Division 9 - Requirements for giving notification  
by director and chief executive**

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

(1) Where a person comes under a duty of disclosure under section 332, he shall give notification to the listed corporation concerned and to the relevant exchange company of -

(a) the interests which he has, or ceases to have, in shares in or debentures of the listed corporation or any associated corporation of the listed corporation; and

(b) the short position (if any) which he has, or ceases to have, in shares in the listed corporation or any associated corporation of the listed corporation.

(2) A notification required by this section shall be given ~~in such manner so as to ensure that it is received by to~~<sup>147</sup> the listed corporation concerned and the relevant exchange company at the same time or, (if it is not practicable to do so,) ~~that it is received by the listed corporation and the relevant exchange~~<sup>147</sup> ~~company~~ one immediately after the other.

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<sup>146</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>147</sup> **Same rationale as Footnote (89).**

(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.

(4) For the purposes of subsection (3), the Commission may specify that different forms are to be used in different circumstances.

(5) Subject to subsection (6), where the Commission has specified any form under subsection (3) in respect of a notification required by this section to be given when a duty of disclosure arises under section 332, the duty shall not be regarded as having been performed unless the notification -

(a) is in the form specified;

(b) is completed, signed, executed and authenticated in accordance with such directions and instructions as are included in the form; and

(c) is accompanied by such documents as are specified in the form.

(6) A notification required by this section shall not by reason of any deviation from a form specified in respect of it by notice published pursuant to subsection (3) cease to be regarded

as being in that form, if the deviation does not affect the substance of the form.

(7) A notice published pursuant to subsection (3) is not subsidiary legislation.

**339. Time of notification by director and chief executive**

\_\_\_\_\_ (1) A notification required by section 338 shall be given, where the duty of disclosure arises under section 332(1)(a), (b), (c), (d), (e) or (f) -

- (a) in the case that at the time at which the relevant event occurs the person concerned knows of its occurrence, within 3 business days after the day on which the relevant event occurs; or
- (b) otherwise, within 3 business days after the day on which the occurrence of the relevant event comes to his knowledge.

(2) A notification required by section 338 shall be given, where the duty of disclosure arises under section 332(2) -

- (a) within 10 business days after the day on which the relevant event occurs; or
- (b) in the case that at the time which the relevant event occurs<sup>148</sup> the person concerned is not aware -

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<sup>148</sup> **Technical amendment for clarity.**

- (i) that he has an interest in shares in or debentures of the listed corporation concerned or any associated corporation of the listed corporation; or
- (ii) that he has a short position in shares in the listed corporation or any associated corporation of the listed corporation, \_\_\_\_\_ within 10 business days after the day on which he becomes aware that he has such an interest or short position (as the case may be).

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

(1) Where a duty of disclosure arises under section 332, a person shall, in performing the duty of disclosure, specify in the notification his name, identifying him also as a director or chief executive (as the case may be),<sup>149</sup> and his address, and (so far as he is aware) -

- (a) the date on which the relevant event occurred and -
  - (i) the date (if later) on which he became aware of the occurrence of the relevant event; or
  - (ii) in the case referred to in section 339(2)(b)<sup>149</sup>, the date on which he became aware that he has the interest in the

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<sup>149</sup> **Technical amendment for clarity.**

shares in or debentures of, or the short position in the shares in, the listed corporation or the associated corporation of the listed corporation (as the case may be);

(b) subject to subsection (3), the total number and class of -

(i) shares in the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time specifying the percentage figure of his interest in the shares in each class; and

(ii) shares in the listed corporation and any associated corporation of the listed corporation in which he is interested immediately after the relevant time specifying the percentage figure of his interest in the shares in each class;

(c) subject to subsection (3), the amount of -

(i) debentures of the listed corporation and any associated corporation of the listed corporation in which he was interested immediately before the relevant time; and

(ii) debentures of the listed corporation and any associated corporation of the listed

- corporation in which he is interested  
immediately after the relevant time;
- (d) subject to subsection (3), the total number and  
class of -
- (i) shares in the listed corporation and any  
associated corporation of the listed  
corporation in which he had a short  
position immediately before the relevant  
time specifying the percentage figure of  
his short position in the shares in each  
class; and
- (ii) shares in the listed corporation and any  
associated corporation of the listed  
corporation in which he has a short  
position immediately after the relevant  
time specifying the percentage figure of  
his short position in the shares in each  
class;
- (e) the circumstances in which he comes under the duty  
of disclosure;
- (f) where the duty of disclosure arises under section  
332(1) -
- (i) the number and class of shares in the  
listed corporation or any associated  
corporation of the listed corporation in  
which -

(A) he has acquired an interest, or  
ceased to have an interest, at the  
relevant time;

(B) he has come to have, or ceased to  
have, a short position at the  
relevant time; or

(C) the nature of his interest changes  
at the relevant time; and

(ii) the amount of debentures of the listed  
corporation or any associated corporation  
of the listed corporation in which -

(A) he has acquired an interest, or  
ceased to have an interest, at the  
relevant time; or

(B) the nature of his interest changes  
at the relevant time;

~~(g)(fa)~~ where he acquires or disposes of the interest  
referred to in paragraph (f)(i)(A)<sup>150</sup> ~~or (ii)(A)~~ -

(i) through an on-exchange transaction, the  
highest price and the average price paid  
or received per share<sup>151</sup> for the interest

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<sup>150</sup> **Technical amendment to clarify that clause 340(1)(fa) deals with shares, whereas clause 340(1)(g) deals with debentures.**

<sup>151</sup> **For consistency and ease of reference it is proposed that all prices/consideration paid or received should to be stated in the forms “per share” for both on-exchange and off-exchange transactions. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

- (ii) through an off-exchange transaction, the amount and nature of the consideration given or received, and the highest amount and the average amount<sup>152</sup> of the consideration given or received per share,<sup>151</sup> for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

(g) where he acquires or disposes of the interest referred to in paragraph (f)(ii)(A)<sup>153</sup> -

- 
- (i) through an on-exchange transaction, the highest price and the average price paid or received per unit for the interest he acquires or disposes of (or, in the case that no price is paid or received, that fact); or

- 
- (ii) through an off-exchange transaction, the nature of the consideration given or

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<sup>152</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>153</sup> Technical amendment for clarity. **Clause 340(1)(g) deals with debentures and clause 340(1)(fa) deals with shares.**

received, and the highest amount and the average amount of the consideration given or received per unit, for the interest he acquires or disposes of (or, in the case that no consideration is given or received, that fact);

~~-(h) where he comes to have, or ceases to have, the short position referred to in paragraph (f)(i)(B)~~

~~——— (i) through an on-exchange transaction, the highest price and the average price paid or received for the short position which he comes to have or ceases to have (or, in the case that no price is paid or received, that fact); or~~

~~——— (ii) through an off-exchange transaction, the amount and nature of the consideration given or received for the short position which he comes to have or ceases to have (or, in the case that no consideration is given or received, that fact);<sup>154</sup>~~

(i) subject to subsection (3), the capacity in which the interest in shares in or debentures of, or the short position in shares in, the listed corporation

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<sup>154</sup> The premium paid for stock borrowing is not of use to investors generally. It is therefore proposed that paragraph (h) be deleted. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

or any associated corporation of the listed corporation is held immediately after the relevant time and, if the interest in the shares or debentures, or the short position in the shares, is held in more than one capacity, the number of shares or amount of debentures held in each capacity;

(j) subject to subsection (3), where the duty of disclosure arises on the occurrence of an event in consequence of which the nature of his interest in shares in or debentures of the listed corporation or any associated corporation of the listed corporation changes, the nature of his interest immediately before and immediately after the relevant time;

(k) subject to subsection (3), where he is taken to be interested in shares in or debentures of, or have a short position in shares in, the listed corporation or any associated corporation of the listed corporation under section 335(1), ~~335(3)(2)~~<sup>155</sup>, ~~335(76)~~<sup>156</sup> or 336(15) -

(i) the number and class of the shares or amount of the debentures; and

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<sup>155</sup> Consequential amendment. See Footnote (132). Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.

<sup>156</sup> Technical amendment to correct a typographical error.

(ii) the name and address of, and his relationship with,<sup>157</sup> each of the other persons having an interest in the shares or debentures or having a short position in the shares,

\_\_\_\_\_in which he is so taken to be interested or have a short position under each of those sections taken separately;

- (1) where he no longer has an interest in shares in or debentures of, or a short position in shares in, the listed corporation or any associated corporation of the listed corporation, the fact that he no longer has such an interest or short position; and
- (m) such other information as may be required in the form specified for the purpose.

(2) Where any shares the particulars of which have to be specified in a notification by a person under subsection (1)(b), (d), (f), (j) or (k) are the underlying shares of equity derivatives, the person shall also specify, subject to subsection (3), separately in the notification -

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<sup>157</sup> This amendment mirrors the change to clause 317(1)(j) and serves to identify whether the shares are, for example, shares owned by the director's spouse in which he is taken to be interested under clause 335(1) or (2). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(a) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are listed or traded on a recognized stock market or traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time -

(i) cash settled equity derivatives  
(specifying separately if they are futures or options); or

(ii) physically settled equity derivatives  
(specifying separately if they are futures or options);

(b) the total number of shares which are the underlying shares of any of the following categories of equity derivatives that are neither listed or traded on a recognized stock market nor traded on a recognized futures market, in which he was interested, or had a short position, immediately before the relevant time -

(i) cash settled equity derivatives  
(specifying separately if they are futures or options); or

(ii) physically settled equity derivatives  
(specifying separately if they are futures or options);

- (c) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (a) in which he is interested, or has a short position, immediately after the relevant time;
  - (d) the total number of shares which are the underlying shares of any of the equity derivatives referred to in paragraph (b) in which he is interested, or has a short position, immediately after the relevant time;
  - (e) the period within which rights under each of the equity derivatives may be exercised ("exercise period"); and
  - (f) the expiry date of the exercise period.
- (3) Where a duty of disclosure arises under section 332(1)-
- (a) subsection (1)(b), (c) and (d) shall apply in relation to a person as if a reference to the listed corporation and any associated corporation of the listed corporation in that subsection was a reference to the corporation ~~in which~~<sup>158</sup> -
    - (i) in the shares in or debentures of which<sup>158</sup> he has acquired an interest, or ceased to have an interest, at the relevant time;

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<sup>158</sup> **Technical amendment for clarity.**

- (ii) in the shares in or debentures of which<sup>158</sup>  
he has come to have, or ceased to have, a  
short position at the relevant time; or
  - (iii) the nature of his interest in the shares  
in or debenture of which<sup>158</sup> changes at the  
relevant time;
- (b) the particulars required to be specified under  
subsection (1)(i), (j) or (k) or (2) shall relate  
only to -
- (i) the shares in which -
    - (A) he has (or is taken to have)  
acquired an interest, or ceased to  
have an interest, at the relevant  
time;
    - (B) he has (or is taken to have) come to  
have, or ceased to have, a short  
position at the relevant time; or
    - (C) the nature of his interest changes  
(or is taken to change) at the  
relevant time; and
  - (ii) the debentures in which -
    - (A) he has (or is taken to have)  
acquired an interest, or ceased to  
have an interest, at the relevant  
time; or

~~(B)(B) the nature of his interest  
changes (or is taken to change) at  
the relevant time, and~~

~~<sup>159</sup>(c) in the case referred to in section  
335(3) where he is taken to have~~

~~————— (i) acquired or disposed of the interest  
referred to in paragraph (b)(i)(A) or  
(ii)(A) —~~

~~(A) through an on-exchange transaction,  
he shall also specify in the  
notification the highest price and  
the average price paid or received  
for the interest he is taken to have  
acquired or disposed of (or, in the  
case that no price is paid or  
received, that fact); or~~

~~(B) through an off-exchange transaction,  
he shall also specify in the  
notification the amount and nature  
of the consideration given or  
received for the interest he is  
taken to have acquired or disposed  
of (or, in the case that no~~

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<sup>159</sup> The deletion of this paragraph is consequential to the proposed deletion of clause 335(3) (deleted to reduce duplicated reporting by a director and his spouse/child). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~consideration is given or received,  
that fact); or~~

~~(ii) come to have, or ceased to have, the  
short position referred to in paragraph  
(b)(i)(B) —  
(A) through an on-exchange transaction,  
he shall also specify in the  
notification the highest price and  
the average price paid or received  
for the short position which he is  
taken to have come to have or ceased  
to have (or, in the case that no  
price is paid or received, that  
fact); or~~

~~(B) through an off-exchange transaction, he shall  
also specify in the notification the amount and  
nature of the consideration given or received for  
the short position which he is taken to have come  
to have or ceased to have (or, in the case that no  
consideration is given or received, that fact).~~

(4) Where a duty of disclosure arises under section 332(2)(a)(i), (b)(i), (c)(i) or (d)(i), a person shall, in performing the duty of disclosure, also specify in the notification -

(a) in respect of his interest in the shares which are the subject of the disclosure acquired -

(i) through an on-exchange transaction, the highest price and the average price paid per share<sup>160</sup> for the interest ~~in the shares that were~~ acquired within 4 months immediately before the day on which the relevant event occurred; ~~and/or~~

                 (ii) ~~(b) in respect of his interest in the shares which are the subject of the disclosure acquired through an off-exchange transaction, the amount and nature of the consideration given, and the highest amount and the average amount of the consideration given per share, for the interest in the shares that were acquired within 4 months immediately before the day on which the relevant event occurred; and~~

(b) <sup>161</sup>in respect of his interest in the debentures which are the subject of the disclosure acquired -

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<sup>160</sup> For consistency it is proposed that all prices/consideration paid or received should to be stated in the forms “per share” for both on-exchange and off-exchange transactions. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>161</sup> Clause 340(a) refers to “shares” which does not include debentures. A new clause 340(b) has been added to cover interests in debentures. This is an inadvertent omission in the Blue Bill as debentures should be treated the same as shares in this respect.

- (i) through an on-exchange transaction, the highest price and the average price paid per unit for the interest acquired within 4 months immediately before the day on which the relevant event occurred; or
- (ii) through an off-exchange transaction, the nature of the consideration given, and the highest amount and the average amount<sup>162</sup> of the consideration given per unit, for the interest acquired within 4 months immediately before the day on which the relevant event occurred.

(5) ~~Subject to subsections (6) and (7),~~ For the purposes of subsection (1)(b), "percentage figure" (百分率數字), subject to subsections (6) and (7), in subsection (1)(b),<sup>163</sup> means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or ~~any~~ the associated corporation of the listed corporation in which the person is interested immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the

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<sup>162</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>163</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

issued shares ~~of the same class~~ in the listed corporation or associated corporation (as the case may be).

(6) ~~Where the number of the issued shares of the same class in the listed corporation or associated corporation (as the case may be) is greater immediately after the relevant time than it was immediately before the relevant time, the percentage figure of the interest of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater number.~~For the purposes of subsection (5), where the listed corporation concerned or the associated corporation of the listed corporation grants to the person rights to subscribe for, or offers to the person, its shares, as part of a rights issue, the number of the issued shares in the listed corporation or associated corporation (as the case may be) at all times from the grant or offer (as the case may be) up to the completion or termination of the rights issue (whichever is the earlier) is taken to be the aggregate of -

(a) the number of the issued shares in the listed corporation or associated corporation (as the case may be) immediately before the grant or offer (as the case may be); and

(b) the number of the new shares to be issued ~~or offered~~ upon the completion of the rights issue.<sup>164</sup>

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<sup>164</sup> Same rationale as the amendment to clause 305(2). See Footnotes (41) and (49).

(7) ~~In determining the number of shares in which a person is interested~~ ~~FF~~<sup>165</sup> or the purposes of subsection (5) -

- (a) in determining the number of shares in which a person is interested,<sup>165</sup> there shall be disregarded any short position which that person has in the shares which, if included in the calculation of the number of shares in which the person is interested, would reduce the number of shares in which the person is interested; and
- (b) the<sup>165</sup> particulars of the shares in which that person has a short position, or has ceased to have a short position, shall be specified separately in the notification.

(8) ~~Subject to subsection (9),~~ For the purposes of subsection (1)(d), "percentage figure" (百分率數字), ~~in subsection (1)(d),~~<sup>166</sup> means the percentage figure found by expressing the number of all the shares in the listed corporation concerned or ~~the~~<sup>any</sup> associated corporation of the listed corporation in which the person has a short position immediately before or immediately after (as the case may be) the relevant time as a percentage of the number of the issued shares ~~of the same class~~ in the listed corporation or associated corporation (as the case may be).

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<sup>165</sup> **Technical amendment for clarity.**

<sup>166</sup> **Technical amendment for clarity. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

<sup>167</sup>(9) =

<sup>168</sup>(9A) 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.<sup>168</sup>

<sup>169</sup>(9B) 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. ~~Where the number of the issued shares of the same class in the listed corporation or~~

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<sup>167</sup> **Clause 340(9) can be deleted as a rights issue does not increase the size of a person's short position and does not give rise to a duty of disclosure.**

<sup>168</sup> **This clarifies the situation where the share capital of the listed corporation or associated corporation is divided into different class of shares. This mirrors clause 305(5) closely.**

<sup>169</sup> **This clause clarifies the meaning of the word "completion" used in subsection (6).**

~~associated corporation (as the case may be) is greater immediately after the relevant time than it was immediately before the relevant time, the percentage figure of the short position of the person immediately before (as well as immediately after) the relevant time is determined by reference to the greater number.~~

(10) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 332 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of debentures or rights to subscribe for debentures, or the exercise or assignment of those rights so granted, the notification shall also specify -

(a) the -

(i) price paid or received -

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(ii) consideration given or received -

(A) for the grant of those debentures or those rights; or

(B) on the exercise or assignment of those rights,

\_\_\_\_\_ (or, in the case that no consideration is given or received, that fact),

(as the case may be);

(b) the period within which those rights may be exercised ("exercise period"); and

(c) the expiry date of the exercise period.

(11) Where an event on the occurrence of which a director or chief executive comes under a duty of disclosure under section 332 arises from the grant by the listed corporation, or any associated corporation of the listed corporation, of equity derivatives or rights under any equity derivatives, or the exercise or assignment of those rights so granted, the notification shall also specify the-

(a) price paid or received -

(i) for the grant of those equity derivatives or those rights; or

(ii) on the exercise or assignment of those rights,

(or, in the case that no price is paid or received, that fact); or

(b) consideration given or received -

(i) for the grant of those equity derivatives or those rights; or

(ii) on the exercise or assignment of those rights,

(or, in the case that no consideration is given or received, that fact),

(as the case may be).

(12) Subject to subsection (11), nothing in this section shall require details of the price that has been paid or may be payable, or the consideration that has been given or may be given, for or under equity derivatives (where the underlying shares of the equity derivatives are shares which are the subject of the disclosure) to be specified in the notification.

**341. Duty to publish and notify Monetary Authority of information given under Division 9**

(1) Upon receipt of any information under any provision of this Division or ~~section 335~~<sup>170</sup>any regulations made, or rules made by the Commission, for the purposes of this Division,<sup>171</sup> the relevant exchange company shall forthwith publish such information in such manner and for such period as may be approved by the Commission.

(2) Whenever a listed corporation that is, or is the holding company of, an authorized financial institution receives information from a director or chief executive under any provision of this Division ~~or section 335,~~<sup>170</sup> the listed corporation is under a duty to notify the Monetary Authority of that information.

(3) If a listed corporation is under a duty to give any notification required by subsection (2), the notification shall be

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<sup>170</sup> **Technical amendment. As clauses 335(3) to (5) have been deleted, there is no need to refer to clause 335.**

<sup>171</sup> **Provision has been made for disclosure of information provided to the Exchange pursuant to the provisions of any regulations or rules. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

given before the end of the business day after the day on which that duty arises.

(4) If default is made in complying with subsection (2) or (3), the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1.

**342. Offences for non-compliance with notification requirements by director and chief executive**

(1) A person -

(a) who, without reasonable excuse,<sup>172</sup> fails to perform, within the ~~specified period specified in section 339(1)(a) or (b) or (2)(a) or (b) (as the case may be),~~<sup>173</sup> a duty of disclosure arising under Division 7 in accordance with the provisions of this ~~Part~~Division and ~~Divisions 7 and 8~~<sup>173</sup> applicable to that duty; or

(b) who -

(i) in purported performance of any such duty makes to a listed corporation or to the relevant exchange company a statement which is false or misleading in a material particular; and

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<sup>172</sup> We accept Members' suggestion and have added the "without reasonable excuse" qualification in this clause.

<sup>173</sup> Technical amendment for clarity.

- (ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable -

- (i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or
- (ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

(2) <sup>174</sup>~~To the extent that an offence under subsection (1)(a) consists of a failure to comply with section 338(2) in that the notification referred to in that section was received by the listed corporation concerned and the relevant exchange company not at the same time or not one immediately after the other, it is a defence for a person charged with that offence to prove that he took all reasonably practicable steps to comply with that section.~~

**Division 10 - Keeping of register of directors'  
and chief executives' interests  
and short positions**

**343. Register of directors' and chief  
executives' interests and  
short positions**

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<sup>174</sup> The defence in clauses 342(2) has been rendered unnecessary in the light of the changes suggested to clause 338(2).

(1) Every listed corporation shall keep a register of directors' and chief executives' interests and short positions ~~for the purposes of Divisions 7 to 9.~~<sup>175</sup>

(2) Whenever a listed corporation receives information from a director or chief executive given in performance of a duty of disclosure imposed on him by any provision of Divisions 7 to 9, the listed corporation is under a duty to record in the register, against the director's name or the chief executive's name (as the case may be), the information received and the date of the entry.

(3) The listed corporation is also under a duty, whenever it grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, to record in the register against his name -

- (a) the date on which the right is granted;
- (b) the period during which, or the time at which, the right is exercisable;
- (c) the consideration for the grant (or, if there is no consideration, that fact); and
- (d) the description of the shares or debentures involved, the number of those shares or amount of those debentures, and the price to be paid for them (or the consideration, if otherwise than in money).

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<sup>175</sup> Technical amendment for clarity. **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(4) Whenever the right referred to in subsection (3) is exercised by a director or chief executive, the listed corporation is under a duty to record in the register against his name -

(a) that fact (identifying the right);

(b) the number of shares or amount of debentures in respect of which it is exercised; and

(c) if -

(i) they were registered in his name, that fact; or

(ii) they were not registered in his name, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number of the shares or amount of the debentures registered in the name of each of them.

(5) A duty imposed by subsection (2), (3) or (4) shall be performed within 3 business days after the day on which that duty arises.

(6) A listed corporation is not, by virtue of anything done for the purposes of this section, affected with notice of, or put upon enquiry as to, the rights of any person in relation to any shares or debentures or equity derivatives.

(7) The register must be so made up that the entries against the several names recorded in it appear in chronological order.

(8) Unless the register is in such form as to constitute in itself an index, the listed corporation shall keep an index of the names recorded in the register which shall in respect of each name contain a sufficient indication to enable the information recorded against it to be readily found.

(9) The listed corporation shall, within 10 business days after the day on which a name is recorded in the register, make any necessary alteration in the index.

(10) Subject to section 283 of the Companies Ordinance (Cap. 32), if the corporation ceases to be a listed corporation, it shall continue to keep the register and any index until the end of the period of 6 years beginning with the day next following that on which it ceases to be a listed corporation.

(11) The register and any index -

(a) shall be kept at the place where the corporation's register of interests in shares and short positions is kept; and

~~(b) subject to subsection (12), shall be made available for inspection in accordance with section 346.(b)~~

shall, for the purposes of Divisions 7 to 9 and for the purposes of -

(i) enabling members of the public to

ascertain -

(A) the identities and the particulars

of directors and chief executives

(as well as their spouses and minor

children) who have or had any

interest or short position in shares  
in, or any interest in debentures  
of, the listed corporation or any  
association corporation of the  
listed corporation;

(B) the nature and the particulars of  
the interest or short position; and

(C) the capacity in which a person holds  
or held the interest or short  
position; and

(ii) providing investors with information to  
enable them to make informed investment  
decisions,<sup>176</sup>

be made available, subject to subsection (12), for  
inspection in accordance with section 346.

(12) Neither the register nor any index shall be made available for inspection in accordance with section 346 in so far as it contains information with respect to a corporation for the time being entitled to avail itself of the benefit conferred by section 128(3) or 129(3) of the Companies Ordinance (Cap. 32).

(13) The corporation shall send notice in the form specified by the Commission for the purposes of this section to the Registrar of Companies of -

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<sup>176</sup> The purpose for which information in the registers is published is spelt out in clause 343(11) for consistency with the provisions of the Personal Data (Privacy) Ordinance (Cap. 486). **Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

(a) the place where the register is kept; and

(b) any change in that place,

unless the register has at all times been kept at the corporation's registered office.

(14) The duty imposed by subsection (13) shall be performed within 10 business days after the day on which the register is so kept or the change takes place (as the case may be).

(15) The register shall be produced at the commencement of the corporation's annual general meeting and remain open and accessible during the continuance of the meeting to any person attending the meeting.

(16) If default is made in complying with any provision of this section, the listed corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(17) For the purposes of this section, a reference to books and papers in section 283 of the Companies Ordinance (Cap. 32) shall be construed as including a reference to the register and index required to be kept by a corporation under this section.

**344. Removal of entries from register of directors' and chief executives' interests and short positions**

(1) A corporation may remove an entry against a person's name from its register of directors' and chief executives'

interests and short positions if more than 6 years have expired since the date of the entry being made, and either -

(a) that entry recorded the fact that the person in question had ceased to have an interest notifiable under any provision of this Division or Divisions 7 to 9 in shares in or debentures of the corporation or any associated corporation of the corporation;<sup>177</sup>

or

(b) it has been superseded by a later entry made under section 343 against the same person's name,

and, in a case under paragraph (a), the corporation may also remove that person's name from the register.

(2) If a person in pursuance of a duty imposed on him by any provision of this Division or Divisions 7 to 9 gives to a listed corporation the name and address of another person as being interested in shares in or debentures of, or having a short position in shares in, the corporation or any associated corporation of the corporation,<sup>177</sup> the corporation shall, within 10 business days after the day on which it was given that information, notify the other person that he has been so named and shall include in that notification -

(a) particulars of any entry relating to him made, in consequence of its being given that information, by the corporation in its register of directors' and

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<sup>177</sup> **Technical amendment for clarity.**

chief executives' interests and short positions;  
and

(b) a statement informing him of his right to apply to have the entry removed in accordance with the following provisions of this section.

(3) A person who has been notified by a listed corporation under subsection (2) that an entry relating to him has been made in the corporation's register of directors' and chief executives' interests and short positions may apply in writing to the corporation for the removal of that entry from the register; and the corporation shall remove the entry if satisfied that the information in pursuance of which the entry was made was incorrect.

(4) If an application under subsection (3) is refused, the applicant may apply to the Court of First Instance for an order directing the corporation to remove the entry in question from the register ~~or to include the information in question in the register (as the case may be);~~<sup>178</sup> and the Court of First Instance may, if it considers appropriate, make such an order.

(5) Where a name or an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in pursuance of subsection (1) or (3) or an order under subsection (4), the corporation shall within 10 business days after the date of that removal make any necessary alteration in any index.

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<sup>178</sup> **Technical amendment for clarity.**

(6) If default is made in complying with subsection (2) or (5), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**345. Otherwise, entries not to be removed  
from register of directors' and  
chief executives' interests  
and short positions**

(1) Entries in a corporation's register of directors' and chief executives' interests and short positions shall not be removed except in accordance with section 344.

(2) If an entry is removed from a corporation's register of directors' and chief executives' interests and short positions in contravention of subsection (1), the corporation shall restore that entry to the register as soon as reasonably practicable.

(3) If default is made in complying with subsection (1) or (2), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

**346. Inspection of register of directors'  
and chief executives' interests  
and short positions**

(1) Any register of directors' and chief executives' interests and short positions shall, during business hours (subject to such reasonable restrictions as the corporation concerned may in general meeting impose, but so that not less than 2 hours in each day are allowed for inspection), be open to inspection by any member of the corporation without charge or by any other person on payment of \$10, or such less sum as the corporation may determine, for each inspection.

(2) Any member of the corporation or any other person may require a copy of any such register, or any part of it, on payment of \$2, or such less sum as the corporation may determine, for each page required to be copied; and the corporation shall cause any copy so required by a member or person to be sent to him within 10 business days after the day on which the requirement is received by the corporation.

(3) If an inspection of the register required under this section is refused or a copy so required is not sent within the ~~specified period specified in subsection (2)~~<sup>179</sup>, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

(4) In the case of a refusal of an inspection of the register required under this section, the Court of First Instance may by order compel an immediate inspection of it.

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<sup>179</sup> **Technical amendment for clarity.**

\_\_\_\_(5) In the case of a failure to send within the ~~specified period specified in subsection (2)~~<sup>179</sup> a copy required under this section, the Court of First Instance may by order direct that the copy required shall be sent to the person requiring it.

(6) The Commission may by rules amend the sum specified in subsection (1) or (2).

**Division 11 - Power to investigate listed  
corporation's ownership**

**347. Power to investigate ownership  
of listed corporation**

(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 influence its policy<sup>180</sup>~~do so~~, he may appoint one or more inspectors to investigate and report~~on~~ -

- (a) on the ownership of shares in or debentures of ~~any~~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;

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<sup>180</sup> **In response to Members' comments, we have proposed the amendment to make clear the reasons for commencing an investigation.**

(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, ~~for the purposes of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the listed corporation or able to control or materially to influence its policy<sup>180</sup>~~ for such purposes.

(2) The Financial Secretary may, on appointing an inspector under this section, define the scope of the investigation (whether with respect to the matter or the period to which it is to extend or otherwise) and, in particular, may limit the investigation to matters connected with particular shares or debentures or equity derivatives.

(3) If application for an investigation under this section with respect to particular shares in or debentures of a listed corporation, or particular equity derivatives the underlying shares of which are shares in a listed corporation, is made to the Financial Secretary by members of the listed corporation, and the number of applicants or the number of shares held by them is not less than the number required for an application for the appointment of inspectors under section 142(1) of the Companies Ordinance (Cap. 32) -

(a) the Financial Secretary may appoint an inspector to conduct the investigation if he is satisfied that

there are reasonable grounds for conducting the investigation; and

- 
- (b) the Financial Secretary shall not, on appointing an inspector, exclude from the scope of the investigation any matter which the application seeks to have included, except in so far as the Financial Secretary is satisfied that it is unreasonable for that matter to be investigated.

(4) Subject to the terms of his appointment, an inspector's powers extend to the investigation of any circumstances suggesting the existence of an arrangement or understanding which, though not legally binding, is or was observed or likely to be observed in practice and which is relevant to the purposes of the investigation.

(5) <sup>181</sup>~~The Financial Secretary may, before appointing an inspector upon application under subsection (3), the Financial Secretary —~~

~~(a) — shall give the applicants an estimate of the amount of the costs and expenses that may be incurred in connection with the investigation; and~~

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<sup>181</sup> **At the Bills Committee held on 12 October 2001, some Members commented that an applicant should be given an estimate of the cost of investigation and should not be required to pay an amount more than the estimate. Clause 347(5) has been amended to provide that an estimate of the costs of conducting the investigation should be given. The contribution towards the costs that an applicant will have to pay under clause 354(1)(e) will be limited to the amount of the estimate.**

(b) may require anthe applicants to give security in such amount as he may specify, which shall not be greater than the amount of the estimated costs and expenses, for payment of the costs and expenses of the investigation.

(6) Sections 307 to 309 and 313 (with the omission of the reference in section 313 to section 314) apply, in relation to any person ~~other than a director or chief executive of a listed corporation who is subject to the requirements of Divisions 2 to 4~~  
182\_

(a) for the purposes of construing -

(i) references in this Division and Division 12 to a person interested in shares and to an interest in shares respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

\_\_\_\_\_as they apply for the purposes of Divisions 2 to 4; and

(b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an

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<sup>182</sup> Sub-clauses (6) and (7) appear to be mutually exclusive yet some directors may be substantial shareholders.

The drafting has been clarified.

interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

(7) Sections ~~308, 309,~~<sup>183</sup>335 and 336 (with the omission of the reference in section 336 to section 337) apply, in relation to any person who is ~~a director or chief executive of a listed corporation subject to the requirements of Divisions 7 to 9~~<sup>182</sup>-

(a) for the purposes of construing -

(i) references in this Division and Division 12 to a person interested in shares or debentures and to an interest in shares or debentures respectively; and

(ii) references in this Division and Division 12 to a person having a short position in shares and to a short position in shares respectively,

as they apply for the purposes of Divisions 7 to 9; and

(b) for the purposes of this Division and Division 12 as if, in those sections, a reference to an interest in shares includes, where those shares are the underlying shares of any equity derivatives, an interest in those equity derivatives.

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<sup>183</sup> **Clauses 308 and 309 only apply to shareholders who have a 5% or larger interest and are not relevant for the purposes of construing interests in shares or debentures of persons who are simply directors.**

**348. Investigation of contraventions  
of sections 332 to 340**

(1) If it appears to the Financial Secretary that there are circumstances suggesting that contraventions of any provision of sections 332 to 340 may have occurred in relation to the shares in or debentures of a listed corporation or, where the shares in a listed corporation are the underlying shares of any equity derivatives, to those equity derivatives, he may appoint one or more inspectors to carry out such investigations as are requisite to establish whether or not such contraventions have occurred and to report the result of the investigations to him.

(2) The Financial Secretary may, on appointing an inspector under this section, limit the period to which the investigation is to extend or confine it to shares or debentures or equity derivatives of a particular class, or both.

**349. Inspector's powers during investigation**

(1) If an inspector considers it necessary for the purposes of his investigation to investigate also -

- (a) the ownership of shares in or debentures of any other corporation which is or has been an associated corporation of the listed corporation concerned;
- (b) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; and

- (c) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

he shall have power to do so, and shall report on the ownership of those shares or debentures and persons who have or had an interest in those shares or debentures or equity derivatives or a short position in those shares, so far as he considers that the results of his investigation with respect to those shares or debentures or equity derivatives are relevant to the investigation of -

- (i) the ownership of shares in or debentures of the listed corporation;
- (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the listed corporation; or
- (iii) where the shares in the listed corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives.

(2) An inspector may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Secretary of matters coming to his knowledge as a result of the investigation tending to show that an offence has been committed.

**350. Production of records and evidence to inspectors**

(1) When an inspector has been appointed under section 347 or 348, it is the duty of -

(a) all officers and agents of the listed corporation concerned; and

(b) all officers and agents of any other corporation, if -

(i) the ownership of shares in or debentures of the other corporation;

(ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or

(iii) where the shares in the other corporation are the underlying shares of any equity derivatives, persons who have or had an interest in those equity derivatives,

are investigated under section 349,

to -

(i) produce to the inspector all records of or relating to the listed corporation or the other corporation (as the case may be) which are in their possession;

(ii) attend before the inspector when required to do so; and

(iii) otherwise give the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) If an inspector considers that a person other than an officer or agent of the listed corporation or the other corporation is or may be in possession of information concerning the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation, he may require that person to -

- (a) produce to him any records of or relating to the listed corporation or the other corporation (as the case may be) which are in that person's possession;
- (b) attend before him; and
- (c) otherwise give him all assistance in connection with the investigation which that person is reasonably able to give,

and it shall be the duty of that person to comply with the requirement.

(3) An inspector may -

- (a) examine on oath the officers and agents of the listed corporation or the other corporation, and any such person referred to in subsection (2), with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are shares in the listed corporation or the other corporation; and
- (b) administer an oath accordingly.

(4) A person is not excused from answering a question put to him under this section by an inspector on the ground that the answer might tend to incriminate the person, but if the answer might tend to incriminate him and he so claims before giving the answer, the question and the answer are not admissible in evidence against him in criminal proceedings in a court of law other than those in which he is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer.

(4A) Where an inspector requires a person to answer a question put to him under this section, the inspector shall ensure that the person has first been informed or reminded (as the case may be) of the limitations imposed by subsection (4) on the admissibility in evidence of the requirement and of the question and answer.<sup>184</sup>

(5) In this section and sections 351 and 352 -

- (a) a reference to officers or to agents includes a reference to past, as well as present, officers or agents (as the case may be); and
- (b) "agents" (代理人), in relation to a corporation, includes its bankers and solicitors and persons employed or otherwise engaged by it as auditors,

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<sup>184</sup> **Technical amendment for consistency. A new clause 350(4A) has been added for consistency with clause 180 which adds a requirement that a person must be informed or reminded of his right against self-incrimination.**

whether those persons are or are not officers of the corporation.

### **351. Delegation of powers by inspectors**

(1) An inspector may, by instrument in writing, delegate to any person the powers conferred by section 350 to require the production of any records and to put questions to officers and agents otherwise than on oath, or either of those powers.

(2) Where 2 or more inspectors are appointed in respect of the same investigation, the power conferred by this section may be exercised by any of them.

### **352. Obstruction of inspectors**

(1) When an inspector is appointed under section 347 or 348, this section applies in relation to -

- (a) any officer or agent of the listed corporation concerned;
- (b) any officer or agent of any other corporation, if -
  - (i) the ownership of shares in or debentures of the other corporation;
  - (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, the other corporation; or
  - (iii) where the shares in the other corporation are the underlying shares of any equity

derivatives, persons who have or had an interest in those equity derivatives, \_\_\_\_\_are investigated under section 349; and

(c) any such person referred to in section 350(2).

(2) If that officer, agent or person (as the case may be) refuses to comply with an inspector's requirement to<sup>185</sup> -

(a) ~~refuses to produce to an the inspector~~ any records which it is his duty under section 350 to produce;

(b) ~~refuses to attend before an the inspector when required to do so;~~ or

(c) ~~refuses to answer~~ any question put to him by an inspector with respect to the shares in or debentures of the listed corporation or the other corporation, or the equity derivatives the underlying shares of which are the shares in the listed corporation or the other corporation,

the inspector may, by originating summons or originating motion, make an application certify the refusal in writing to the Court of First Instance in respect of the refusal.<sup>185</sup>

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

(a) ~~thereupon enquire into the case; and if the Court is satisfied that there is no reasonable ground for the officer, agent or person (as the case may be)~~

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<sup>185</sup> **Technical amendment for consistency with other amendments proposed in clauses 130B and 204(1).**

**Members considered similar amendments in respect of those clauses and did not propose further changes.**

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<sup>185</sup>

- (b) ~~after hearing any witness who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of court.~~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 involved in the refusal, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.<sup>185</sup>

(4) In this section, a reference to an inspector includes a reference to any person to whom the powers of an inspector are delegated under section 351.

### **353. Inspector's reports**

(1) An inspector may, and if so directed by the Financial Secretary shall, make interim reports to the Financial Secretary, and on the conclusion of an investigation shall make a final report to the Financial Secretary.

(2) Any such report shall be made within such time and in such manner as the Financial Secretary may direct.

(3) The Financial Secretary may, if he considers appropriate -

(a) forward a copy of any report made by an inspector to the registered office or principal place of business in Hong Kong of the listed corporation or the other corporation (as the case may be) which is the subject of the report;

(b) on request and on payment of such fee as is prescribed by regulations, furnish a copy of any such report to -

- (i) any member of the listed corporation or the other corporation (as the case may be) which is the subject of the report;
- (ii) any person whose conduct is referred to in the report;
- (iii) the auditors of the listed corporation or the other corporation (as the case may be);
- (iv) the applicants for the investigation; or
- (v) any other person whose financial interests appear to the Financial Secretary to be affected by the matters dealt with in the report, whether as a creditor of the listed corporation or the

other corporation (as the case may be) or otherwise; and

(c) cause any such report to be printed and published.

**354. Expenses of investigation of affairs of corporation**

(1) The expenses of and incidental to an investigation by an inspector shall be defrayed in the first instance out of the general revenue, but the following persons shall, to the following extent, be liable to repay such expenses to the Government -

- (a) any person who is convicted by a court on a prosecution instituted as a result of the investigation shall be liable to such extent (if any) as may be ordered by such court;
- (b) the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;
- (c) the director and the chief executive of the listed corporation or the other corporation (as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct;
- (d) any person who has an interest or short position notifiable under any provision of Divisions 2 to 5 in shares comprised in the relevant share capital of the listed corporation or the other corporation

(as the case may be) dealt with by the investigation shall be liable to such extent (if any) as the Financial Secretary may direct; and

(e) the applicants for the investigation, where the inspector was appointed under section 347(3), shall be liable to such extent (if any), subject to the limit of the estimate given under section 347(5),<sup>186</sup> as the Financial Secretary may direct.

(2) An inspector appointed under section 347(3) may, if he considers appropriate, and shall if the Financial Secretary so directs, include in a report made by him a recommendation as to the directions (if any) he considers appropriate, in the light of his investigation, to be given under subsection (1)(b), (c), (d) or (e).

(3) A person to whom a direction is given under subsection (1)(b), (c), (d) or (e) may appeal against the direction to the Court of First Instance.

(4) Notwithstanding rule 3(3) of Order 55 of the Rules of the High Court (Cap. 4 sub. leg.), a direction under subsection (1)(b), (c), (d) or (e) shall not take effect, if an appeal against the direction has been made under subsection (3), until the appeal is heard or otherwise disposed of.

(5) ~~Any liability to repay the Government imposed by subsection (1)(a) shall, subject to the satisfaction of the right~~

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<sup>186</sup> **In response to the Members' comment, the contribution towards the costs that an applicant will have to pay under clause 354(1)(e) will be limited to the amount of the estimate. See also Footnote (181).**

~~of the Government to repayment, be a liability also to indemnify all persons against liability under subsection (1)(b), (c), (d) and (e).~~<sup>187</sup>

(6) Any person liable under paragraph (a), (b), (c), (d) or (e) of subsection (1) shall be entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities thereunder or, if an appeal is made, according to the amount of their respective liabilities as determined by the Court of First Instance.

### 355. 355-

#### 355.<sup>188</sup>~~Power to impose restrictions on shares, etc. in connection with investigation~~

~~(1) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), he may by order direct that—~~

- ~~(a) the shares registered on the Hong Kong register; or~~
- ~~(b) the unissued shares which on issue are to be registered on the Hong Kong register,~~

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<sup>187</sup> **In response to Members' comments, we have reconsidered clause 354(5) and believe that it may be inconsistent with clause 354(1)(a). Furthermore, the issue of whether the person convicted of an offence under clause 354(1)(a) should indemnify the others persons mentioned in subclause (1)(b)-(e) is best left with the court to decide. We have therefore proposed the deletion of this clause.**

<sup>188</sup> **Clause 355 has been moved to clause 357(c) for greater consistency.**

~~shall, until further order, be subject to the restrictions under Division 12.~~

~~(2) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under Division 12.~~

**356. Power to obtain information  
as to those interested  
in shares, etc.**

- (1) If it appears to the Financial Secretary that -
- (a) there are reasonable grounds<sup>189</sup> to investigate -
- (i) the ownership of shares in or debentures of a listed corporation;
  - (ii) persons who have or had an interest or short position in the shares in, or an interest in the debentures of, a listed corporation; and
  - (iii) where the shares in the listed corporation are the underlying shares of

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<sup>189</sup> **At the Bills Committee meeting held on 12 October 2001, a Member suggested that the grounds for the Financial Secretary to require a person to give him information should be clarified. We have not set out in greater detail the grounds on which such a request can be made because the reasons are numerous and it is difficult to have an exhaustive list. The following are some examples of the reasons: reasonable grounds to believe that an offence under the Ordinance may have been committed, or reasonable grounds to believe that there has been a breach of the Takeovers Code, a breach of the Listing Rules, a breach of the Companies Ordinance, etc.**

any equity derivatives, persons who have or had an interest in those equity derivatives; and

- (b) it is unnecessary to appoint an inspector for the purpose,

the Financial Secretary may require any person whom he has reasonable cause to believe to have, or to be able to obtain, any information as to -

- (i) the present and past interests in those shares or debentures or equity derivatives;
- (ii) the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to those shares or debentures or equity derivatives;
- (iii) the present and past short positions in those shares; or
- (iv) the names and addresses of the persons having those short positions and of any persons who act or have acted on their behalf in relation to those short positions,

to give any such information to the Financial Secretary.

(2) For the purposes of subsection (1), a person shall be deemed to have an interest in shares or debentures if -

- (a) he has any right -
  - (i) to acquire or dispose of the shares or debentures or any interest in them; or

- (ii) to vote in respect of them;
- (b) his consent is necessary for the exercise of any right referred to in paragraph (a) of any other person; or
- (c) any other person having any right referred to in paragraph (a) can be required, or ~~is~~are accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(3) For the purposes of subsection (1), a person shall be deemed to have an interest in equity derivatives if -

- (a) he has any right to acquire or dispose of the equity derivatives or any interest in them;
- (b) his consent is necessary for the exercise of the right referred to in paragraph (a) of any other person; or
- (c) any other person having the right referred to in paragraph (a) can be required, or ~~is~~are accustomed or obliged, to exercise the other person's right in accordance with his directions or instructions.

(4) A person -

- (a) who, without reasonable excuse,<sup>190</sup> fails to give information required of him under this section; or
- (b) who -

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<sup>190</sup> **We accept Members' comments and have added "without reasonable excuse" in clause 356(4).**

(i) in giving such information makes any statement which is false or misleading in a material particular; and

(ii) knows that, or is reckless as to whether, the statement is false or misleading in a material particular,

commits an offence and is liable -

(i) on conviction on indictment to a fine at level 6 and to imprisonment for 2 years; or

(ii) on summary conviction to a fine at level 3 and to imprisonment for 6 months.

### **357. Privileged information**

Nothing in sections 347 to 356 shall require disclosure to the Financial Secretary, or to an inspector appointed by him, by an authorized financial institution acting as a corporation's banker or financial adviser of information as to the affairs of any of its customers other than the corporation concerned.

#### **Division 12 - Orders imposing restrictions on shares, etc. ~~under section 319, 325 or 355~~**

#### **<sup>191</sup>357A.- Power of Court of First Instance to impose restrictions on shares, etc. in case of failure to provide information required**

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<sup>191</sup> **For consistency, provisions in clauses 325(1) to (3) have been moved to Division 12, appearing as clauses**

by listed corporation

(1) Where -

(a) a notification is given by a listed corporation under section 320 to a person who is or was interested in shares comprised in the relevant share capital of the corporation that are registered on the Hong Kong register; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the shares in question be subject to the restrictions under this Division.

(2) Where -

(a) a notification is given by a listed corporation under section 320 to a person who is or was interested in equity derivatives; and

(b) that person fails to give the corporation any information required by the notification within the time specified in it,

the listed corporation may apply to the Court of First Instance for an order directing that the equity derivatives in question be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) (as the case may be) may be made by the Court of First Instance notwithstanding any power contained in the applicant corporation's memorandum or

articles enabling the listed corporation itself to impose similar restrictions on the shares or equity derivatives in question.

**<sup>192</sup>357B. Power of Financial Secretary to impose restrictions on shares, etc. in case of conviction of offences for non-compliance of notification requirements**

(1) Where a person is convicted of an offence under section 319 or 342, the Financial Secretary may by order direct that -

(a) the shares in relation to which the offence was committed that are registered on the Hong Kong register; or

(b) if the shares in relation to which the offence was committed are unissued shares, those unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) Without prejudice to subsection (1), where a person is convicted of an offence under section 319 or 342 and the shares in relation to which the offence was committed are the underlying shares of any equity derivatives, the Financial Secretary may by

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<sup>192</sup> **We agree with Members' comments that clause 319(4) to (6) should be moved to Division 12 for consistency. Clause 319(4) to (6) has been moved to 357B. Applying the same principle as the existing clause 319(4) to (6), if a director is convicted of an offence under clause 342, the Financial Secretary should be able to direct that the director's shares are subject to restriction. We have therefore added reference to clause 342.**

order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

(3) An order under subsection (1) or (2) may be made notwithstanding any power in a corporation's memorandum or articles enabling the corporation to impose similar restrictions on those shares or equity derivatives.

**<sup>193</sup>357C. Power of Financial Secretary to impose restrictions on shares, etc. in connection with investigation**

(1) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any shares (whether issued or unissued), he may by order direct that -

- (a) the shares registered on the Hong Kong register; or
- (b) the unissued shares which on issue are to be registered on the Hong Kong register,

shall, until further order, be subject to the restrictions under this Division.

(2) If, in connection with an investigation under section 347, 348 or 349, it appears to the Financial Secretary that there is difficulty in finding out the relevant facts about any equity derivatives, he may by order direct that the equity derivatives shall, until further order, be subject to the restrictions under this Division.

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<sup>193</sup> For consistency, provisions in clause 355 have been moved to Division 12, appearing as clause 357C.

**358. Consequence of order imposing restrictions**

(1) So long as any shares are directed to be subject to the restrictions under this Division -

- (a) any transfer of those shares;
- (b) in the case of unissued shares -
  - (i) any transfer of the right to be issued with those shares; and
  - (ii) any issue of those shares;
- (c) any cancellation of those shares or of the relevant certificates for those rights; and
- (d) any removal of the registration of those shares to a register of members other than the Hong Kong register,

are void.

(2) Where shares are subject to the restrictions of subsection (1), any agreement to transfer -

- (a) those shares; or
- (b) in the case of unissued shares, the right to be issued with those shares,

is void (except an agreement to sell those shares on the making of an order under section 360(4)).

(3) So long as any equity derivatives are directed to be subject to the restrictions under this Division -

- (a) any transfer or assignment of -
  - (i) those equity derivatives; or

- (ii) any rights under those equity derivatives;
- (b) the exercise of any rights under those equity derivatives; and
- (c) any removal of the registration of those equity derivatives to a register of holders of equity derivatives other than ~~thea register maintained in Hong Kong register,~~<sup>194</sup>

are void.

(4) Where equity derivatives are subject to the restrictions of subsection (3), any agreement to -

- (a) transfer or assign -
  - (i) those equity derivatives; or
  - (ii) any rights under those equity derivatives; or

(b) exercise any rights under those equity derivatives, is void (except an agreement to sell those equity derivatives on the making of an order under section 360(4)).

### **359. Offences for attempted evasion of restrictions**

- (1) A person who -
  - (a) exercises or purports to exercise any right to dispose of -

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<sup>194</sup> **Technical amendment for clarity.**

(i) any shares or equity derivatives ~~which, to his knowledge, are for the time being subject to the restrictions under this Division;~~ or

(ii) any right to be issued with any ~~such~~ shares or any right under any ~~such~~ equity derivatives; ~~or,~~

knowing that such shares or equity derivatives are, for the time being, subject to the restrictions under this Division;<sup>195</sup> or

(b) having an interest in any ~~such~~ shares or equity derivatives which, to his knowledge, are for the time being subject to the restrictions under the Division<sup>196</sup>, or being entitled to any right to be issued with other shares or under other equity derivatives in right of them, enters into any agreement which is void under section 358(2) or (4),

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

\_\_\_\_ (2) If -

(a) any shares in a corporation are registered as transferred;

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<sup>195</sup> In response to Members' comment, we have amended clause 359(1) to make clear that the "knowledge" element specified in clause 359(1)(a)(i) would apply to clause 359(1)(a)(ii).

<sup>196</sup> Technical amendment to make clear that the "knowledge" element would apply.

- (b) any shares in a corporation are issued;
- (c) any shares in a corporation are cancelled; or
- (d) the registration of any shares in a corporation is removed to a register of members other than the Hong Kong register,

in contravention of the restrictions under this Division, the corporation and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

(3) If -

- (a) any equity derivatives, or any rights under any equity derivatives, are registered as transferred or assigned;
- (b) any rights under any equity derivatives are registered as having been exercised; or
- (c) the registration of any equity derivatives is removed to a register of holders of equity derivatives other than ~~the~~ a register maintained in Hong Kong register,<sup>197</sup>

in contravention of the restrictions under this Division, the corporation maintaining such register and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

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<sup>197</sup> **Technical amendment for clarity.**

### 360. Relaxation and removal of restrictions

(1) Where shares or equity derivatives are by order made subject to the restrictions under this Division, application may be made to the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section ~~319~~357B or ~~355~~357C)<sup>198</sup> for an order directing that the shares or equity derivatives (as the case may be) shall cease to be so subject.

(2) If the order applying the restrictions was made -

(a) by the Court of First Instance under section ~~325~~357A or subsection (14)(a)<sup>198</sup>, the application under subsection (1) may be made by any person aggrieved or by the corporation concerned; or

(b) by the Financial Secretary under section ~~319~~357B or ~~355~~357C,<sup>198</sup> the application under subsection (1) may be made by any person aggrieved.

(3) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application to the Court of First Instance under subsection (1).

(4) Subject to this section, an order of the Court of First Instance or the Financial Secretary directing that shares or equity derivatives (as the case may be) shall cease to be subject to the restrictions may be made only if -

(a) the Court of First Instance or the Financial Secretary (as the case may be) is satisfied that -

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<sup>198</sup> Consequential amendments to correct the reference to clause numbers.

- (i) all relevant facts about the interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be); and
  - (ii) no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or
- (b) the shares or equity derivatives are to be sold and the Court of First Instance (in any case) or the Financial Secretary (if the order applying the restrictions was made by the Financial Secretary under section ~~319~~357B or ~~355~~357C)<sup>198</sup> approves the sale.

(5) Where shares or equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that the shares or equity derivatives shall be sold, subject to the Court's approval as to the sale, and may further order<sup>199</sup>~~also direct~~ that the shares or equity derivatives shall cease to be subject to the restrictions.

(6) An application to the Court of First Instance under subsection (5) may be made -

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<sup>199</sup> **Technical amendment for clarity.**

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section ~~325~~357A or subsection (14)(a))<sup>198</sup>; or

(b) by the corporation concerned.

(7) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (5).

(8) Where an order has been made under subsection (5), the Court of First Instance may on application make such further order relating to the sale of the shares or equity derivatives as it considers appropriate.

(9) An application to the Court of First Instance under subsection (8) may be made -

(a) by the Financial Secretary (unless the restrictions were imposed by court order under section ~~325~~357A or subsection (14)(a))<sup>198</sup>;

(b) by the corporation concerned;

(c) by the person appointed by, or in pursuance of, the order to effect the sale; or

(d) by any person interested in the shares or equity derivatives.

(10) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (8).

(11) Where equity derivatives are by order made subject to the restrictions under this Division, the Court of First Instance may on application order that rights under the equity derivatives

shall be exercised, subject to the Court's approval as to the manner in which, and the time at which, those rights are to be exercised, and may ~~also direct~~ further order<sup>199</sup> that the equity derivatives shall cease to be subject to the restrictions.

(12) An application to the Court of First Instance under subsection (11) may be made -

- (a) by the Financial Secretary (unless the restrictions were imposed by court order under section ~~325~~357A or subsection (14)(a)<sup>198</sup>);
- (b) by the corporation concerned; or
- (c) by any person interested in the equity derivatives.

(13) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of the application under subsection (11).

(14) Where an order has been made under subsection (11), the Court of First Instance may ~~also direct~~ further order,<sup>200</sup> in the case of the exercise of a right under the equity derivatives to call for delivery of shares, or to require another person to take delivery of shares, that the shares due to be delivered on the exercise of the right shall, upon delivery, be -

- (a) subject to the restrictions under this Division; or
- (b) sold.

(15) In this section, "the corporation concerned" (有關法團) -

- (a) in relation to shares in a corporation that are subject to the restrictions under this Division, means that corporation; or
- (b) in relation to equity derivatives that are subject to the restrictions under this Division, where the underlying shares of those equity derivatives are shares in a corporation, means that corporation.

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

(1) Subject to subsection (2), where shares or equity derivatives are sold in pursuance of an order of the Court of First Instance, or with the approval of the Court of First Instance or the Financial Secretary,<sup>201</sup> under section 360, the proceeds of the sale, less the costs of the sale, shall be paid into court.

(2) Where a right under equity derivatives is exercised in pursuance of an order of the Court of First Instance under section 360(11) and -

- (a) an amount is received on settlement of the equity derivatives, the proceeds, less the costs incurred in exercising the right; or

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<sup>200</sup> **Technical amendment for clarity.**

<sup>201</sup> **Technical amendment such that clause 361 would apply to a sale “approved” by the court or the Financial Secretary under section 360(4) or (5) and not simply a sale “ordered” under section 360.**

(b) shares are sold in pursuance of an order of the Court of First Instance under section 360(14)(b), the proceeds of the sale, less the costs of the sale and the costs incurred in exercising the right,

shall be paid into court.

(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 part of those proceeds be paid to him.

(4) The Financial Secretary has a right to be heard, and to call evidence, at the hearing of an application under subsection (3).

(5) The Court of First Instance may on application under subsection (3) -

(a) if it is satisfied that -

(i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and no other person had an interest in the shares or equity derivatives at that time; and

- (ii) all relevant facts about the applicant's interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be),

order the payment to the applicant, subject to subsection (6), of the whole of the proceeds, together with any interest thereon;

- (b) if it is satisfied that -

- (i) the applicant was interested in the shares or equity derivatives at the time of the sale or (in the case of the exercise of any right under equity derivatives) at the time of the exercise of the right, and another person also had an interest in the shares or equity derivatives at that time; and

- (ii) all relevant facts about the applicant's interests in the shares or equity derivatives have been disclosed to the corporation concerned or an inspector (as the case may be) by the applicant,

order the payment to the applicant, subject to subsection (6), of such part of the proceeds as is equal to the proportion which the value of the applicant's interests in the shares or equity derivatives bears to the total value of the shares

or equity derivatives, together with any interest thereon; or

(c) make such other order as it considers appropriate.

(6) On making an order under subsection (5) or section 360(5), (8), ~~or~~ (11) or (14)(b)<sup>202</sup>, the Court of First Instance may further order that the costs of the applicant, and the costs of the Financial Secretary (where appropriate), be paid out of the proceeds.

### Division 13 - Miscellaneous

#### 362. Liability of members for offences by corporations

Where the affairs of a corporation are managed by its members, section 378(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the corporation.

#### 362. Method of giving notification and delivering report

Notwithstanding section 386, any notification, requirement ~~or report or other document (however described)~~<sup>203</sup> ~~required under~~

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<sup>202</sup> **Technical amendment for consistency.**

<sup>203</sup> **There is no provision in Part XV for giving notice to corporations that are shareholders. The proposed amendments to clause 363 would permit notices to be given to overseas individuals and corporations (whether listed or not) as well as individuals and corporations (whether listed or not) resident in Hong Kong. Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

~~any provision of this Part to be, or required to be, given, or delivered, issued or sent shall~~ for ~~the~~ all purposes of this Part ~~shall~~ be regarded as duly given, ~~or delivered, issued or sent only~~ if -

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

- (i) left at, or sent by post to, the registered office, or the last known principal place of business, of the ~~listed~~ corporation;
- (ii) ~~where the listed corporation does not have a registered office in Hong Kong, left at, or sent by post to, the listed corporation's principal place of business in Hong Kong;~~
- (iii) sent by facsimile transmission to the facsimile number of the ~~listed~~ corporation;
- (iv) sent by electronic mail transmission to the electronic mail address of the ~~listed~~ corporation; or
- (v) sent by such other method as is prescribed by rules made under section 384;

(b) in the case of the relevant exchange company, it is -

- (i) left at, or sent by post to, the registered office of the relevant exchange company;
  - (ii) sent by facsimile transmission to the facsimile number of the relevant exchange company;
  - (iii) sent by electronic mail transmission to the electronic mail address of the relevant exchange company; or
  - (iv) sent by such other method as is prescribed by rules made under section 384;
- (c) in the case of the Commission, it is -
- (i) left at, or sent by post to, the registered office of the Commission;
  - (ii) sent by facsimile transmission to the facsimile number of the Commission;
  - (iii) sent by electronic mail transmission to the electronic mail address of the Commission; or
  - (iv) sent by such other method as is prescribed by rules made under section 384;
- (d) in the case of the Monetary Authority, it is -
- (i) left at, or sent by post to, the registered office of the Monetary Authority;

- (ii) sent by facsimile transmission to the facsimile number of the Monetary Authority;
  - (iii) sent by electronic mail transmission to the electronic mail address of the Monetary Authority; or
  - (iv) sent by such other method as is prescribed by rules made under section 384; or
- (e) in any other case, it is sent in the manner (as appropriate) specified in section 386.

**364. Form of registers and indices**

(1) Any register or index required by this Part to be kept by a corporation may be kept either by making entries in a bound book or by recording the matters in question in any other manner.

(2) For the purposes of subsection (1), the corporation may record the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(3) If any register or index required by this Part to be kept by a corporation is kept by the corporation by recording the matters in question otherwise than in a legible form, any duty imposed on the corporation by this Part to allow inspection of, or to furnish a copy of, the register or index or any part of it shall be deemed to be a duty to allow inspection of, or to

furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) If any such register or index is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery.

(5) If default is made in complying with subsection (4), the corporation concerned and every officer of it who is in default commit an offence and each is liable on conviction to a fine at level 1 and, in the case of a continuing offence, to a further fine of \$200 for every day during which the offence continues.

### **365. Regulations by Chief Executive in Council**

(1) The Chief Executive in Council may make regulations to -

- (a) prescribe anything required or permitted by any provision of this Part to be prescribed by regulations;
- (b) provide for exclusions from the requirement to give notification under any provision of this Part;
- (c) provide for any other matters for the better carrying out of the objects and purposes of this Part.

(2) Without limiting the generality of the regulations which may be made under subsection (1), such regulations may include any savings, transitional, incidental, supplemental, evidential and consequential provisions (whether involving the provisions of any

principal legislation or provisions of any subsidiary legislation).

**365A. Rules by Commission**

<sup>204</sup>(1) The Commission may, subject to subsections (3) and (4), 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 to the

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<sup>204</sup> This new clause would enable the SFC to make rules in relation to SBL transactions as explained in Annex 2.

**Members considered the amendment and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

provisions of a securities borrowing and lending agreement.

(2) <sup>-205</sup>

(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).

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<sup>205</sup> We propose deleting clause 365A(2) because the point on saving and transitional provisions is already covered by clause 384A (8)(e) (i.e. clause 384(10)(e) of the Blue Bill).

## **Intra-group transactions and chain holding of wholly-owned subsidiaries**

### **Background**

Clause 304(9) is intended to establish an exemption for intra-group transactions on the basis that disclosure of transfers within a wholly owned group of companies is of limited value to investors. However, there are concerns over detailed drafting of the exemption. A related issue for groups of companies also arises from the provisions of clause 307(2) which requires several members of a chain of companies (if each company owns one third or more of voting power over the next company in the chain) to give a separate notification. We accept market comment that such companies should be permitted to file a single notification as there is little value to investors in seeing duplicate notifications.

### **The Proposal**

To address these points we propose that a wholly owned subsidiary of a holding company (both defined in Schedule 1) should have no reporting obligations (for transaction with other group companies or outside the group) provided the holding company complies with its duties under clause 307(2), which requires a holding company to aggregate all interests of its wholly owned subsidiaries (amongst others). This effectively places the disclosure obligations for the group on the holding company. Investors will be able to see the interests in shares controlled by a group of companies whilst minimising the disclosure burden.

To ensure that only the ultimate holding company has to make a disclosure (and not each link in the chain of companies) we have used the term “qualifying corporation”, which is defined in clause 304(10).

A qualifying corporation whose interest in shares is not aggregated with that of the holding company (i.e. under clause 307(5)) will not qualify for the exemption. If the qualifying corporation leaves the group (ceases to be controlled by the holding company) the holding company will cease to be interested in shares of the qualifying corporation under clause 304(6). The qualifying corporation will also be taken to have acquired an interest in those shares under clause 304(10A). This will prompt a disclosure by the holding company and by the qualifying corporation.

**Members considered this paper and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

## Exemption on Stock Borrowing and Lending

### Background and Proposal

Clause 304(11)(iii) was intended to provide an exemption for certain stock borrowing and lending (“SBL”) transactions. We accept market comment that a broader exemption is required. In view of the complexity of SBL and similar transactions, the Commission established a Working Group in April 2001 to consider how the reporting obligations might be limited. The consensus of the Working Group is that the Commission should be given limited powers to make rules establishing a simplified disclosure regime in relation to certain SBL transactions – rather than incorporating these provisions in the primary legislation. The enabling provision for these rules is proposed as a new Clause 365A.

### The simplified disclosure regime

With the assistance of the Working Group we are in the course of finalising draft Rules establishing a scheme that will limit the disclosure obligations of key players in the stock borrowing and lending market whilst providing investors with sufficient information regarding the amount of stock available for lending. It is proposed that the Rules will establish a simplified disclosure regime for –

- “institutional investors” - the managers of local or overseas collective investment schemes or pension funds and local or overseas insurance companies;
- “approved lending agents” - custodians or lending agents that are approved by the Commission; and
- “regulated persons” - local brokers and overseas brokers in approved jurisdictions.

Institutional investors and their approved lending agents, who make a disclosure when shares are authorised to be lent, and cease to be authorised to be lent, are to be relieved of the duty of disclosing any subsequent lending and return of those shares.

Interests in shares of regulated persons that merely act as a conduit (i.e. regulated persons who borrow and on-lend the shares within 5 business days) are to be disregarded.

Persons taking advantage of the simplified disclosure regime will have to keep records of the shares borrowed/lent and returned.

**Members considered this paper and did not propose further changes at the Bills Committee meeting on 12 October 2001.**

### Defence and Penalty Levels

At the Bills Committee on 12 October 2001, Members expressed concern over the complexity of Part XV and on the possibility that inadvertent mistakes would lead to prosecution and conviction. Some Members further commented that clause 319(1) created a strict liability offence and the defences in clause 319(2) and (3) were insufficient and suggested that a “reasonable excuse defence” should be added. We accept members comments and have qualified paragraphs (a), (c) and (d) in clause 319(1) with the words “without reasonable excuse”. We have not added these words to paragraph (b) in view of the nature of the offence.

Some Members also asked that we consider whether the penalty levels might be adjusted to better match the severity of the breach. The levels of penalties stated in Part XV are simply the maximum penalties that may be imposed, and the court will determine the actual penalty taking into account the particular facts of each case. We believe there are practical difficulties in covering the wide range of breaches that could occur. For example, a shareholder may be late in reporting a purchase of shares but the level of the penalty may depend upon the interaction of several factors, some of which are listed out below —

- (a) the period that they were late;
- (b) the number of shares that were involved;
- (c) the number of transactions that were not reported;
- (d) the circumstances in which the breach came to light (did the shareholder acknowledge the breach when it was noticed or was it discovered in the course of an investigation);
- (e) whether the breach was deliberate (e.g. using a string of nominee companies or so as to avoid detection of a breach of other regulations such as the Listing Rules or the Code on Takeovers and Mergers).

As it is difficult to predetermine how the above factors would interact with each other and there could be numerous other factors, we believe the appropriate level of fine to impose is best left with the courts to decide on the facts of each case. This is in line with the practice in the existing Securities (Disclosure of Interest) Ordinance.

26 November 2001