

# LEGISLATIVE COUNCIL BRIEF

Companies Ordinance (Cap. 32)

## **COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES FROM COMPLIANCE WITH PROVISIONS) NOTICE**

### **INTRODUCTION**

Pursuant to sections 38A and 342A of the Companies Ordinance, the Securities and Futures Commission (“the Commission”) has made the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (“Exemption Notice”). The text of the Exemption Notice is at the Annex.

### **BACKGROUND AND ARGUMENT**

#### Current Requirements

2. The Companies Ordinance sets out specific requirements on prospectuses for offers of investments in shares and debentures. There are language requirements in sections 38(1) and 342(1)(b) as well as detailed content requirements listed out in the Third Schedule. Sections 38D and 342C of the Companies Ordinance allow the Commission to authorise registration of prospectuses that are issued by companies incorporated in Hong Kong and overseas respectively in relation to offers of shares or debentures to the public. The Commission’s power to authorise registration of prospectuses in respect of shares or debentures to be listed on The Stock Exchange of Hong Kong Limited (“SEHK”) has been transferred to the SEHK pursuant to a transfer order made under section 47 of the Securities and Futures Commission Ordinance in 1993.

3. The Commission also has powers pursuant to sections 38A and 342A to exempt any class of companies that are seeking registration of their prospectuses, or any class of prospectuses seeking registration, from compliance with requirements under sections 38(1) and (3), 42(1) and (4), 44A(2), 342(1) and (3) if the Commission considers that compliance with any or all of those requirements would be either irrelevant or unduly burdensome in the case of that class of companies or prospectuses. The

Commission considers it appropriate to apply general exemptions to certain of the requirements, which are currently subject to individual case by case exemption on a relatively regular basis. This will facilitate offers of investments without compromising the protection to investors.

### The Exemptions

4. A total of four general exemptions have been made. Details are set out below:

#### (a) Exemption in relation to offers made to certain persons

This seeks to exempt prospectuses issued by companies incorporated in Hong Kong from the bilingual requirement and the content requirements provided under section 38(1) and (3), as well as the restriction on the time of allotment under section 44A(2), where such prospectuses are issued in relation to offers of investments made only to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent. The Commission considers that such persons would have sufficient knowledge and experience to make a thorough assessment of any product before investing. The detailed requirements for prospectuses intended for retail investors are believed to be unduly burdensome for prospectuses intended for these “professional investors” only. It is noted that the Companies Ordinance already provides a similar relaxation for prospectuses intended for these “professional investors” issued by companies incorporated outside Hong Kong. This exemption will help level the playing field for all companies, whether incorporated in or outside Hong Kong.

#### (b) Exemptions from bilingual prospectus requirement

This provides that companies seeking listing on the main board of the SEHK or the Growth Enterprise Market (“GEM”) may distribute listing prospectuses in English and Chinese separately instead of one combined copy, provided that both versions are made available at the same time at each place where the prospectus is distributed by or on behalf of the company. This exemption is proposed pursuant to the joint policy announcement of the SEHK and SFC in September 2000. This policy has been incorporated in the listing rules of the main board of the SEHK and GEM since 22 September 2000.

(c) Exemptions relating to accounting period for GEM Companies

This serves to shorten the period to be covered in the accountant's report from three preceding years to two preceding years, for prospectuses issued by companies to be listed on GEM. This would bring the requirements under the Companies Ordinance in line with the two-year requirement under the GEM Listing Rules. In view of the nature of these growth companies and the requirement under the GEM Listing Rules, the Commission considers that it would be unduly burdensome for them to include a three-year accountant's report in their prospectuses.

(d) Exemption for valuation of operating leases

This provides that companies seeking listing on the main board of the SEHK or GEM are not required to include in the prospectuses a valuation report with respect to any interest of the companies in land or buildings as a lessee under an operating lease, if the value of the interest is determined to be zero. This reflects the listing rules requirements for both the main board of the SEHK and GEM which contain similar exemptions for operating leases.

5. The above exemptions relax the requirements in the Companies Ordinance which create a burden on the offeror of investment. The volume and cost of printing prospectuses may be reduced by allowing split language prospectuses and by having the exemption for valuation of operating leases. These measures are made in support of the overall Government policy on environmental protection, at the same time they reduce cost to companies without undermining the quality of information to investors.

**THE EXEMPTION NOTICE**

6. Section 3 exempts companies incorporated in Hong Kong from compliance with the bilingual requirement and content requirements in respect of prospectuses and the time limit on allotment if the relevant offers of investments are for persons whose ordinary business is to buy or sell shares or debentures only.

7. Section 4 exempts prospectuses which offer shares or debentures to be listed on the main board of the SEHK or GEM from compliance with the bilingual prospectus requirement, subject to the specified conditions.

8. Section 5 exempts prospectuses which offer shares or debentures to be listed on GEM from compliance with the three-year accountant's report requirement, subject to the specified conditions.

9. Section 6 exempts prospectuses which offer shares or debentures to be listed on the main board of the SEHK or GEM from compliance with the valuation report requirements in relation to the companies' interest in land or buildings under an operating lease, where the value of such interest has been determined by an independent qualified valuer as zero.

### **PUBLIC CONSULTATION**

10. The Hong Kong Exchanges and Clearing Limited, the Hong Kong Capital Markets Association and the Hong Kong Monetary Authority have been consulted and welcome the exemptions.

### **FINANCIAL AND STAFFING IMPLICATIONS**

11. There are no financial or staffing implications to the Government.

### **LEGISLATIVE TIMETABLE**

12. The Exemption Notice will be published in the Gazette on 30 March 2001 and will be tabled before the Legislative Council on 4 April 2001. It will come into effect on 11 May 2001 after negative vetting.

### **PUBLICITY**

13. The Commission will issue a press release to publicise the exemptions.

### **ENQUIRIES**

14. For any enquiries on this brief, please contact Ms. Alice Law, Senior Manager of Corporate Finance Division of the Commission, at 2840 9224 or Mr. Guan Tan, Legal Executive of Legal Services Division of the Commission, at 2840 9292.

The Securities and Futures Commission  
30 March 2001

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**COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES  
FROM COMPLIANCE WITH PROVISIONS) NOTICE**

(Made by the Securities and Futures Commission under sections  
38A and 342A of the Companies Ordinance (Cap. 32))

**1. Commencement**

This Notice shall come into operation on 11 May 2001.

**2. Interpretation**

In this Notice -

"GEM" (創業板) means the Growth Enterprise Market operated by the  
Unified Exchange;

"GEM Listing Rules" (《創業板上市規則》) means the rules governing  
the listing of securities on GEM, made by the Unified  
Exchange under section 34 of the Stock Exchanges Unification  
Ordinance (Cap. 361);

"SEHK Listing Rules" (《聯交所上市規則》) means the rules governing  
the listing of securities on the Unified Exchange, made by  
the Unified Exchange under section 34 of the Stock Exchanges  
Unification Ordinance (Cap. 361).

**3. Exemptions in relation to offers made to  
certain persons**

(1) Where it is proposed to offer any shares in or  
debentures of a company incorporated under the Ordinance by a  
prospectus issued generally, the company, or any other company or

person, and the prospectus are exempted, in relation to the offer, from compliance with the requirements of sections 38(1) and (3) and 44A(2) of the Ordinance if the offer is made only to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent.

(2) For the purposes of subsection (1), the exemption in respect of section 38(1) of the Ordinance under this section has effect with regard to all of the requirements of the Third Schedule to the Ordinance.

#### **4. Exemptions from bilingual prospectus requirements**

(1) Where -

- (a) it is proposed to offer any shares in or debentures of a company incorporated under the Ordinance by a prospectus issued generally; and
- (b) the shares or debentures have been approved by the Unified Exchange for listing on the Unified Exchange or on GEM,

then, subject to the conditions specified in subsection (3), the prospectus is exempted from compliance with the requirements of section 38(1) of the Ordinance to the extent that it does not have to be in the English language and contain a Chinese translation, or to be in the Chinese language and contain an English translation, as the case may be.

(2) Where -

- (a) it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong by a prospectus issued generally; and
- (b) the shares or debentures have been approved by the Unified Exchange for listing on the Unified Exchange or on GEM,

then, subject to the conditions specified in subsection (3), the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance to the extent that it does not have to be in the English language and contain a Chinese translation, or to be in the Chinese language and contain an English translation, as the case may be.

(3) The conditions referred to in subsections (1) and (2) are that -

- (a) the company must be a new applicant in the context of the SEHK Listing Rules or the GEM Listing Rules, as the case may be; and
- (b) copies of the prospectus in the English language and of its Chinese translation, or copies of the prospectus in the Chinese language and of its English translation, as the case may be, must be made available to the public at the same time at each place where the prospectus is distributed by or on behalf of the company.

(4) For the purposes of subsections (1) and (2), the exemption in respect of sections 38(1) and 342(1)(b) of the Ordinance under this section has no effect with regard to the requirements of the Third Schedule to the Ordinance.



**5. Exemptions for GEM companies**

(1) Where -

- (a) it is proposed to offer any shares in or debentures of a company incorporated under the Ordinance by a prospectus issued generally; and
- (b) the shares or debentures have been approved by the Unified Exchange for listing on GEM,

the prospectus is exempted from compliance with the requirements of section 38(1) of the Ordinance, in relation to paragraphs 27 and 31 and, if applicable, paragraphs 32 and 33 of the Third Schedule to the Ordinance, if it complies with the requirements of those paragraphs as modified by subsection (3).

(2) Where -

- (a) it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong by a prospectus issued generally; and
- (b) the shares or debentures have been approved by the Unified Exchange for listing on GEM,

the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance, in relation to paragraphs 27 and 31 and, if applicable, paragraphs 32 and 33 of the Third Schedule to the Ordinance, if it complies with the requirements of those paragraphs as modified by subsection (3).

(3) For the purposes of subsections (1) and (2), paragraphs 27, 31, 32 and 33 of the Third Schedule to the Ordinance are modified so that for any reference to "3 preceding years", "3 financial years" and "3 years" in those paragraphs, there is

substituted a reference to "2 preceding years", "2 financial years" and "2 years" respectively.

**6. Exemptions for valuation of operating leases**

(1) Where -

- (a) it is proposed to offer any shares in or debentures of a company incorporated under the Ordinance by a prospectus issued generally; and
- (b) the shares or debentures have been approved by the Unified Exchange for listing on the Unified Exchange or on GEM,

then, subject to the conditions specified in subsection (3), the prospectus is exempted from compliance with the requirements of section 38(1) of the Ordinance, in relation to paragraph 34(2) of the Third Schedule to the Ordinance, with respect to any interest of the company, or any of its subsidiaries, in land or buildings as a lessee under an operating lease.

(2) Where -

- (a) it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong by a prospectus issued generally; and
- (b) the shares or debentures have been approved by the Unified Exchange for listing on the Unified Exchange or on GEM,

then, subject to the conditions specified in subsection (3), the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance, in relation to paragraph 34(2)

of the Third Schedule to the Ordinance, with respect to any interest of the company, or any of its subsidiaries, in land or buildings as a lessee under an operating lease.

(3) The conditions referred to in subsections (1) and (2) are that -

- (a) the value of the interest of the company, or any of its subsidiaries, in the land or buildings has been determined by an independent qualified valuer as required by the SEHK Listing Rules or the GEM Listing Rules, as the case may be;
- (b) the value of the interest so determined is zero;
- (c) a report of the valuer setting out the particulars required by paragraph 34(2) of the Third Schedule to the Ordinance -
  - (i) has been made available to the Unified Exchange before the prospectus is issued;  
and
  - (ii) is referred to in the prospectus and made available to the public for inspection;  
and
- (d) a summary of all interests of the company and its subsidiaries in the land or buildings covered by the exemption is included in the prospectus.

(4) In this section -

"operating lease" (營運租約) means a lease under which an interest in land or buildings is leased, and -

- (a) the lease confers on the lessee no unilateral right to transfer, sublet, mortgage or otherwise dispose of the interest without the consent of the lessor;
- (b) the term of the lease is for a period substantially less than the estimated useful economic life of the land or buildings; and
- (c) the substantive risks and rewards of ownership of the land or buildings have not been, and are not proposed to be, transferred from the lessor to the lessee.

Acting Chairman,  
Securities and Futures Commission

2001

#### **Explanatory Note**

The purpose of this Notice is to exempt certain companies and prospectuses from compliance with the requirements of certain provisions of the Companies Ordinance (Cap. 32).

2. Section 3, in relation to an offer of shares in or debentures of a company incorporated under the Ordinance to professional investors, exempts companies and prospectuses from compliance with

the requirements of sections 38(1) and (3) and 44A(2) of the Ordinance.

3. Section 4, in relation to an offer of shares or debentures to be listed on the Unified Exchange or the Growth Enterprise Market, exempts prospectuses from compliance with the bilingual requirements of sections 38(1) and 342(1)(b) of the Ordinance, subject to certain conditions.

4. Section 5, in relation to an offer of shares or debentures to be listed on the Growth Enterprise Market, exempts prospectuses from compliance with the accountant's report requirements of paragraphs 27 and 31 and, if applicable, paragraphs 32 and 33 of the Third Schedule to the Ordinance, subject to certain conditions.

5. Section 6, in relation to an offer of shares in or debentures of a company, exempts prospectuses from compliance with the valuation report requirements of paragraph 34(2) of the Third Schedule to the Ordinance with respect to any interest of the company, or any of its subsidiaries, in land or buildings as a lessee under an operating lease, subject to certain conditions.