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L.N. 76 of 2001

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.

Mark DICKENS

Acting Chairman,

Securities and Futures Commission

28 March 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.