

For information on
20 September 2002

Paper No. 31/02

**Subcommittee on Draft Subsidiary Legislation to be made under the
Securities and Futures Ordinance**

**Companies Ordinance (Exemption of Companies and Prospectuses
from Compliance with Provisions) (Amendment) Notice 2002**

This paper sets out the proposal of the Securities and Futures Commission (“SFC”) to continue the current exemption granted in respect of mutual fund corporations authorized by it, from compliance with sections 38(1), 38(3), 342(1) and 342(3) of the Companies Ordinance (“CO”), including all of the requirements under the Third Schedule thereto.

Proposal

2. The SFC proposes to amend the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap 32L) through the notice (“the Exemption Notice”), now in draft at the **Annex**.

Power to make the Exemption Notice

3. Sections 38A and 342A of the CO empower the SFC to exempt any class of companies or prospectuses from compliance with any or all of the requirements of sections 38(1), 38(3), 342(1) and 342(3) if, having regard to the circumstances, the SFC considers that compliance with all or any of those requirements would be irrelevant or unduly burdensome in the case of that class of companies or prospectuses (as the case may be). For the reasons set out in paragraph 5 below, the SFC considers that it would be unduly burdensome to require companies which are collective investment schemes (i.e. mutual fund corporations) authorized under section 104(1) of the Securities and Futures Ordinance (Cap. 571) (“SFO”) to comply with sections 38(1), 38(3), 342(1) and 342(3) of the CO, including all of the requirements under the Third Schedule thereto. Accordingly, the SFC proposes to make the draft Exemption Notice.

Background

4. The draft Exemption Notice is proposed to replace the existing notice gazetted on 12 February 1993, which exempts any mutual fund corporation authorized by the SFC under section 15(1) of the Securities Ordinance (Cap. 333) (“SO”) from compliance with the requirements of sections 38(1), 38(3), 342(1) and 342(3) of the CO. The draft Exemption Notice is necessary as the SO will be repealed when the SFO comes into operation and the power of the SFC to authorize mutual fund corporations under the SO will be subsumed under the broader power to authorize any type of collective investment schemes under the SFO.

Justifications

5. The intention behind the exemption is to reduce unnecessary compliance burden by minimizing any regulatory overlap. In authorizing a mutual fund corporation under section 104(1) of the SFO, the SFC will, having regard to the features of the corporation, impose conditions regulating, among other matters, the content and language of documents prepared for offering to the public shares in the corporation. Such conditions serve similar regulatory purposes as the requirements under sections 38(1), 38(3), 342(1) and 342(3) of the CO (including the requirements prescribed under the Third Schedule to the Ordinance) which prescribe content and language requirements for prospectuses issued by companies incorporated in or outside Hong Kong in relation to offers of shares in or debentures of such companies to the public. Another consideration is that given the unique nature of mutual fund corporations, a number of requirements under the Third Schedule of the CO (such as items 7 to 9 of the Schedule) are actually not appropriate for application to them. As such, the SFC considers that it would be unduly burdensome to require mutual fund corporations so authorized under section 104(1) of the SFO to comply with the above provisions of the CO.

The draft Exemption Notice

6. Clause 3 proposes to add a new section to the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap 32L) to exempt companies which are collective investment schemes authorized by the SFC under section 104(1) of the SFO and prospectuses issued by those companies from compliance with the requirements of sections 38(1), 38(3), 342(1) and 342(3) of the CO, including all of the requirements under the Third Schedule thereto.

Public consultation

7. The draft Exemption Notice seeks only to continue the exemption which has been welcomed by market participants since its introduction in 1993. This is a technical amendment with no change in policy, and public consultation is considered not necessary. The SFC will inform the Standing Committee on Company Law Reform of the proposed amendment before making the Exemption Notice.

Way forward

8. Subject to Members' views, the SFC will proceed to make the proposed amendments under the authority vested in it and publish the Exemption Notice in the Gazette for tabling before the Legislative Council in the normal manner. The intention is that the Exemption Notice shall come into operation on the commencement of the SFO.

Securities and Futures Commission
Financial Services and the Treasury Bureau
13 September 2002

[Cf : sections 38(1), 38(3), 38A, 342(1), 342(3) and 342A of the Companies Ordinance, and section 104(1) of the Securities and Futures Ordinance]

COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES
FROM COMPLIANCE WITH PROVISIONS) (AMENDMENT)
NOTICE 2002

(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 the day on which Part IV of the Securities and Futures Ordinance (Cap. 571) comes into operation.

2. Interpretation

Section 2 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg.) is amended by adding -

"collective investment scheme" (集體投資計劃) has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);".

3. Section added

The following is added -

"7. Exemptions for companies that are collective investment schemes

(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 company is a collective investment scheme authorized by the Commission under section 104(1) of the Securities and Futures Ordinance (Cap. 571),

the company and the prospectus are exempted from compliance with the requirements of section 38(1) and (3) of the Ordinance.

(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 company is a collective investment scheme authorized by the Commission under section 104(1) of the Securities and Futures Ordinance (Cap. 571),

the company and the prospectus are exempted from compliance with the requirements of section 342(1) and (3) of the Ordinance.

(3) For the purposes of subsections (1) and (2), the exemption in respect of section 38(1) and (3) or 342(1) and (3) (as the case may be) of the Ordinance under this section

has effect with regard to all of the requirements of the Third Schedule to the Ordinance."

Chairman,
Securities and Futures Commission

2002

Explanatory Note

This Notice is made by the Securities and Futures Commission under section 38A and 342A of the Companies Ordinance (Cap. 32) ("the Ordinance"). It exempts companies which are collective investment schemes authorized by the Commission under section 104(1) of the Securities and Futures Ordinance (Cap. 571) and prospectuses issued by those companies from compliance with the requirements of sections 38(1) and (3) and 342(1) and (3) of the Ordinance, and the requirements of the Third Schedule to the Ordinance.