

## **LEGISLATIVE COUNCIL BRIEF**

### **COMPANIES ORDINANCE (CAP. 32)**

#### **COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES FROM COMPLIANCE WITH PROVISIONS) (AMENDMENT) NOTICE 2003**

#### **INTRODUCTION**

1. Pursuant to sections 38A and 342A of the Companies Ordinance (Cap. 32) (“**CO**”), the Securities and Futures Commission (“**SFC**”) has made the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2003 (“**Amendment Notice**”) at the Annex.

#### **BACKGROUND AND ARGUMENT**

2. Pursuant to sections 38 and 342 of the CO, every prospectus issued, circulated or distributed in Hong Kong must comply with certain content requirements, including those described in the Third Schedule to the CO. Pursuant to sections 38A and 342A of the CO, the SFC may exempt any class of prospectuses from any or all of such content requirements, if, having regard to the circumstances, the SFC considers that compliance with any or all of those requirements would be either irrelevant or unduly burdensome in the case of that class.

3. The Amendment Notice exempts prospectuses relating to offers of debentures from compliance with a number of content requirements under the Third Schedule to the CO. The exemption differs depending on whether the debentures will be listed or not.

4. In the case of debentures that will be listed in Hong Kong, the exemption is granted in respect of –

- (1) content requirements which are the same as or similar to those imposed under the relevant listing rules (provided no waiver, modification or other dispensation has been granted from such listing rule requirements), and hence unduly burdensome to require issuers to comply with twice; and
- (2) content requirements relating to the disclosure of information which is irrelevant for the purposes of an investor in debentures making an informed investment decision, and hence compliance therewith would be irrelevant and/or unduly burdensome.

5. In the case of debentures that will not be listed in Hong Kong, the exemption is granted in respect of content requirements relating to the disclosure of information which is irrelevant for the purposes of an investor in debentures making an informed investment decision, and hence compliance therewith would be irrelevant and/or unduly burdensome.

6. The exemptions are intended to lessen the practical difficulties encountered in the conduct of offerings of debentures, and thereby facilitate the development of the debt market in Hong Kong.

## **THE AMENDMENT NOTICE**

7. Section 2 of the Amendment Notice adds new sections 8 and 9 to the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 Sub. Leg.), as amended by the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice (L.N. 204 of 2002) which is scheduled to come into operation on 1 April 2003.

8. New section 8 deals with exemptions in relation to debentures that will not be listed in Hong Kong, while new section 9 deals with exemptions in relation to debentures that will be listed in Hong Kong.

## **PUBLIC CONSULTATION**

9. The following bodies have been consulted on and welcome the exemptions –

- (1) the Working Group on Debt Market (set up in December 2001 under the Financial Market Development Task Force (“**FMDTF**”) to pursue initiatives for the development of the debt market in Hong Kong), which comprises representatives of the SFC, Hong Kong Mortgage Corporation, Hong Kong Monetary Authority, Financial Services Branch of the Financial Services and the Treasury Bureau and Hong Kong Exchanges and Clearing Limited;

- (2) the Securities Offering Issues Subgroup (set up under the Securities and Futures Market Development Working Group of the FMDTF to review the statutory and regulatory regimes governing the offerings of securities), which comprises representatives from large international investment banks;
- (3) the Hong Kong Capital Markets Association; and
- (4) the Hong Kong Association of Banks.

#### **FINANCIAL AND STAFFING IMPLICATIONS**

10. There are no financial or staffing implications for the Government.

#### **COMMENCEMENT DATE**

11. The Amendment Notice shall come into operation on 23 May 2003.

#### **PUBLICITY**

12. The Amendment Notice will be published in the Gazette on 28 March 2003. The SFC will issue a press release on the same day to publicise the exemptions.

## **ENQUIRIES**

13. For any enquiries on this brief, please contact Ms Sonia Leung, Senior Manager of the Corporate Finance Division of the SFC at 2283 6170 or Ms Thrity Mukadam, Senior Counsel of the Legal Services Division of the SFC at 2840 9209.

Securities and Futures Commission

25 March 2003

**COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES  
FROM COMPLIANCE WITH PROVISIONS) (AMENDMENT) NOTICE 2003**

(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 23 May 2003.

**2. Sections added**

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

**"8. Exemptions for prospectuses relating to offers  
of debentures not proposed to be listed**

(1) Where -

(a) it is proposed to offer any debentures of a  
company incorporated under the Ordinance by a  
prospectus issued generally; and

(b) the debentures will not be listed on a  
recognized stock market,

then, subject to subsection (3), the prospectus is exempted  
from compliance with the requirements of section 38(1) of the  
Ordinance, in relation to paragraphs 4, 5, 12(1), 13, 14, 15,  
16, 19, 22, 26(b), 31 and 45 of the Third Schedule to the  
Ordinance.

(2) Where -

- (a) it is proposed to offer any debentures of a company incorporated outside Hong Kong by a prospectus issued generally; and
- (b) the debentures will not be listed on a recognized stock market,

then, subject to subsection (3), the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance, in relation to paragraphs 4, 5, 12(1), 13, 14, 15, 16, 19, 22, 26(b), 31 and 45 of the Third Schedule to the Ordinance.

(3) For the purposes of subsections (1) and (2) -

- (a) the exemption in relation to paragraph 12(1) of the Third Schedule to the Ordinance shall not have effect with respect to that part of paragraph 12(1)(c) of that Schedule concerning short particulars of any transaction relating to the property completed within the 2 preceding years in which any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company concerned had any interest direct or indirect;
- (b) the exemption in relation to paragraph 31 of the Third Schedule to the Ordinance shall have effect subject to the condition that there are set out in the prospectus -
  - (i) the auditor's report and the audited financial statements of the company

and of any guarantor corporation referred to in the prospectus for the 2 financial years immediately preceding the issue of the prospectus; or

- (ii) if the auditor's report or the audited financial statements of either the company or such guarantor corporation for the financial year immediately preceding the issue of the prospectus are not available at the time of the issue of the prospectus, a statement of that fact and the auditor's report and the audited financial statements of the company and of any such guarantor corporation for the 2 financial years immediately preceding that financial year,

and, if no accounts have been made up in respect of any part of the period of 2 years ending on a date 3 months before the issue of the prospectus, a statement of that fact; and

- (c) the exemption in relation to paragraph 45 of the Third Schedule to the Ordinance shall have effect only for the purposes of the interpretation of paragraph 6 of that Schedule and subject to the condition that the business



address of the natural person in question is disclosed in substitution for the place of his usual residence.

**9. Exemptions for prospectuses relating to offers of debentures proposed to be listed**

(1) Where -

- (a) it is proposed to offer any debentures of a company incorporated under the Ordinance by a prospectus issued generally;
- (b) the debentures have been approved by a recognized exchange company for listing on a stock market it operates; and
- (c) the debentures constitute debt securities and are regulated as such under the relevant listing rules,

then,

- (d) subject to subsection (3)(a) and (c), the prospectus is exempted from compliance with the requirements of section 38(1) of the Ordinance, in relation to paragraphs 4, 5, 12(1), 13, 14, 15, 16, 19, 22, 26(b) and 45 of the Third Schedule to the Ordinance; and
- (e) subject to subsection (3)(b) and the condition specified in subsection (4), the prospectus is exempted from compliance with the requirements of section 38(1) of the Ordinance, in relation to paragraphs 1, 2, 8, 10, 11, 18, 23, 24, 25,

26(a) and (c), 27, 29, 30, 31, 32, 33(1) and 43 of the Third Schedule to the Ordinance.

(2) Where -

- (a) it is proposed to offer any debentures of a company incorporated outside Hong Kong by a prospectus issued generally;
- (b) the debentures have been approved by a recognized exchange company for listing on a stock market it operates; and
- (c) the debentures constitute debt securities and are regulated as such under the relevant listing rules,

then,

- (d) subject to subsection (3)(a) and (c), the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance, in relation to paragraphs 4, 5, 12(1), 13, 14, 15, 16, 19, 22, 26(b) and 45 of the Third Schedule to the Ordinance; and
- (e) subject to subsection (3)(b) and the condition specified in subsection (4), the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance, in relation to paragraphs 1, 2, 8, 10, 11, 18, 23, 24, 25, 26(a) and (c), 27, 29, 30, 31, 32, 33(1) and 43 of the Third Schedule to the Ordinance.

(3) For the purposes of subsections (1) and (2) -

- (a) the exemption in relation to paragraph 12(1) of the Third Schedule to the Ordinance shall not have effect with respect to that part of paragraph 12(1)(c) of that Schedule concerning short particulars of any transaction relating to the property completed within the 2 preceding years in which any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company concerned had any interest direct or indirect;
- (b) the exemption in relation to paragraphs 31, 32 and 33(1) of the Third Schedule to the Ordinance shall have effect only in relation to prospectuses issued by an issuer who has previously offered by a prospectus issued generally shares or debentures that have been approved for listing on a recognized stock market and such shares or debentures continue to be listed on that recognized stock market; and
- (c) the exemption in relation to paragraph 45 of the Third Schedule to the Ordinance shall have effect only for the purposes of the interpretation of paragraph 6 of that Schedule and subject to the condition that the business address of the natural person in question is

disclosed in substitution for the place of his usual residence.

(4) The condition referred to in subsections (1)(e) and (2)(e) is that the prospectus complies with -

- (a) the specified requirements without any waiver, modification or other dispensation thereof having been granted by the relevant recognized exchange company (and to the extent that the prospectus so complies with only some of the specified requirements, the exemptions under subsections (1)(e) and (2)(e) shall have effect only in relation to those paragraphs of the Third Schedule to the Ordinance referred to in subsections (1)(e) and (2)(e) that impose requirements which are the same as or similar to those specified requirements); and
- (b) all other requirements of the relevant listing rules applicable to the prospectus (except to the extent that compliance with such requirements is, in accordance with those rules, waived, modified or otherwise dispensed with by the relevant recognized exchange company).

(5) In this section -

- (a) "debt securities" (債務證券) has the meaning assigned to it in the relevant listing rules;

(b) "relevant listing rules" (《有關上市規則》) means the listing rules applicable to the stock market referred to in subsection (1)(b) or (2)(b) (as the case may be);

(c) "relevant recognized exchange company" (有關認可交易所) means the recognized exchange company that makes the relevant listing rules; and

(d) "specified requirements" (指明規定) means those requirements of the relevant listing rules which -

(i) apply to the content of prospectuses offering debt securities; and

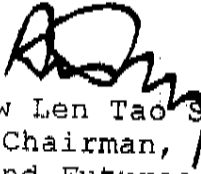
(ii) are the same as or similar to those imposed by virtue of paragraphs 1, 2, 8, 10, 11, 18, 23, 24, 25, 26(a) and (c), 27, 29, 30, 31, 32, 33(1) and 43 of the Third Schedule to the Ordinance,

and, for the purpose of determining whether a requirement of the relevant listing rules is the same as or similar to a requirement imposed by virtue of any of paragraphs 1, 2, 8, 10, 11, 18, 23, 24, 25, 26(a) and (c), 27, 29, 30, 31, 32, 33(1) and 43 of the Third Schedule to the Ordinance, it is immaterial that the requirement of the relevant listing

rules imposes a more or less onerous obligation than the requirement of paragraph 1, 2, 8, 10, 11, 18, 23, 24, 25, 26(a) or (c), 27, 29, 30, 31, 32, 33(1) or 43 of the Third Schedule to the Ordinance if they relate to the same matter.

**10. Prospectus to state exemptions relied on**

Where a prospectus is issued in reliance of any exemption under this Notice, it must contain a statement identifying the exemptions that the issuer of the prospectus has relied on under this Notice."

  
Andrew Len Tao SHENG  
Chairman,  
Securities and Futures Commission

**24** March 2003

**Explanatory Note**

This Notice is made by the Securities and Futures Commission ("the Commission") under sections 38A and 342A of the Companies Ordinance (Cap. 32) ("the Ordinance"). It amends the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg. L) ("the Notice") to exempt certain prospectuses from compliance with certain requirements under section 38(1) or 342(1)(b) of the Ordinance in relation to the Third Schedule to the Ordinance.

2. The new section 8 of the Notice applies to prospectuses issued in relation to debentures that are not proposed to be listed and exempts such prospectuses from compliance with requirements which the Commission considers to be irrelevant.

3. The new section 9 of the Notice applies to prospectuses issued in relation to debentures that are proposed to be listed and exempts such prospectuses from compliance with requirements which are already imposed under the relevant listing rules (whether or not they are more or less onerous) and with requirements which the Commission considers to be irrelevant.

4. The new section 10 of the Notice requires that issuers of prospectuses who rely on any exemption provided for under the Notice must specify this in the relevant prospectus.