

CB(1)617/10-11(04)



**SECURITIES AND FUTURES AND COMPANIES LEGISLATION
 (STRUCTURED PRODUCTS AMENDMENTS) BILL 2010
 LAW SOCIETY'S SUBMISSIONS**

1. Safe Harbour provisions

The object of the bill is to transfer the regulation of public offers of structured products in the form of shares or debentures currently regulated under the Companies Ordinance prospectus regime to the offers of investments regime of the Securities and Futures Ordinance ("SFO").

From a regulatory perspective, our view is that the safe harbour provisions of "no more than 50 persons" and the minimum denomination HK\$500,000 currently available under the Companies Ordinance should be retained.

Exemptions that market participants have in the past relied upon and which in fact work should be preserved unless there are strong policy reasons for removing them.

2. Drafting comments:

In view of the extensive definition of a "*structured product*", certain exclusions are necessary to avoid "*products*" bearing the features of a structured product but are not intended to be regulated under the SFO regime:

(1) In Clause 15(8) that amends Schedule 1 to the SFO – a "structured product" does not include:

"(a) a debenture issued for capital fund raising purposes that is convertible or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer or of a related corporation of the issuer", we recommend the following words should be added after the expression "issued for capital fund raising",

"or as consideration or part consideration for the acquisition of any assets or to satisfy any obligations on the part of the issuer or of a related corporation";

" (b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer", we recommend the following words should be added after the expression "issued for capital fund raising",

“or as consideration or part consideration for the acquisition of any assets or to satisfy any obligations on the part of the issuer or of a related corporation”;

“(f) a product that is offered by a corporation only to a person who is (i) a bona fide employee or former employee of the corporation or of another corporation in the same group of companies”, we recommend the following words should be added after the expression *“in the same group of companies”*,

“or of another corporation which is its related corporation”; and

- (2) There should be an exemption for all share option schemes. The exemption should not be limited to share option schemes which are only offered to employees.

**The Law Society of Hong Kong
Securities Law Committee
Company and Financial Law Committee
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