

L.N. 158 of 2010

Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2010

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

1. Commencement

This Notice comes into operation on 1 February 2011.

2. Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice amended

The Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg. L) is amended as set out in section 3.

3. Section 9A added

After section 9—

Add

“9A. Exemptions from requirement to issue form of application for shares or debentures with prospectus

(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;
- (b) the shares or debentures have been approved by a recognized exchange company for listing on a stock market it operates; and

- (c) a form of application for the shares or debentures in printed form is issued,
- then, subject to the conditions specified in subsection (3), the offeror is exempted from compliance with the requirements of section 38(3) of the Ordinance to the extent that the offeror may issue the printed application form without it being accompanied by a printed form prospectus relating to the offer.
- (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;
- (b) the shares or debentures have been approved by a recognized exchange company for listing on a stock market it operates; and
- (c) a form of application for the shares or debentures in printed form is issued,
- then, subject to the conditions specified in subsection (3), the offeror is exempted from compliance with the requirements of section 342(3) of the Ordinance to the extent that the offeror may issue the printed application form without it being accompanied by a printed form prospectus relating to the offer.
- (3) The conditions referred to in subsections (1) and (2) are—
- (a) during the period of 5 business days prior to the commencement of the offer period, adequate disclosure is made to the public that a printed application form will be issued without it being accompanied by a printed form prospectus relating to the offer;

- (b) throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public;
- (c) throughout the offer period, at least 3 copies of the printed form prospectus are available for inspection at every location where the printed application forms are distributed;
- (d) throughout the offer period, the electronic form prospectus relating to the offer is in a form which is reasonably tamper-resistant;
- (e) the electronic form prospectus is readily accessible by the public—
 - (i) at the commencement of the offer period, from both the company's designated website and the recognized exchange company's designated website; and
 - (ii) at any time during the offer period after its commencement, subject to subsection (5), from either the company's designated website or the recognized exchange company's designated website;
- (f) the electronic form prospectus that is on the company's designated website is directly linked from—
 - (i) the homepage of that designated website; or
 - (ii) another webpage within that designated website that is directly linked from the homepage;
- (g) the webpage (other than the homepage) within the company's designated website displaying—
 - (i) the link to the electronic form prospectus; or

- (ii) the electronic form prospectus,
does not contain any promotional information
about the offeror or the offer;
- (h) when the electronic form prospectus is accessed
from the company's designated website, a notice is
to be displayed stating that the securities are being
offered solely on the basis of the information
provided in the prospectus;
- (i) the typeface, format and contents of the electronic
form prospectus are identical to those of the
printed form prospectus;
- (j) each of the electronic form prospectus and the
printed form prospectus contains, in a prominent
place on the face of the prospectus, a statement in
a clear and legible form—
 - (i) that the contents of the electronic form
prospectus and the printed form prospectus
are identical;
 - (ii) that throughout the offer period, copies of
the printed form prospectus are available for
collection at specified locations, free of
charge, upon request by any member of the
public;
 - (iii) of the particulars of the specified locations;
and
 - (iv) that throughout the offer period, at least 3
copies of the printed form prospectus are
available for inspection at every location
where the printed application forms are
distributed; and
- (k) the printed application form is to state in a
prominent place—

- (i) that throughout the offer period, prospective investors may access and download the electronic form prospectus from either the company's designated website or the recognized exchange company's designated website;
 - (ii) the address of each of the designated websites, the place on the website where the electronic form prospectus may be accessed and how that prospectus may be accessed;
 - (iii) that throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public;
 - (iv) the particulars of the specified locations;
 - (v) that throughout the offer period, at least 3 copies of the printed form prospectus are available for inspection at every location where the printed application forms are distributed; and
 - (vi) that prospective investors should read the prospectus prior to submitting an application.
- (4) For the purposes of subsection (3)(a), adequate disclosure is regarded as having been made during the period of 5 business days prior to the commencement of the offer period if—
- (a) an announcement is published in accordance with the requirements of the relevant listing rules on at least one of those 5 business days; and
 - (b) the announcement contains the following information—

- (i) that the offeror proposes to offer shares in or debentures of a company by a prospectus issued generally;
- (ii) that the shares or debentures are the subject of an application to a recognized exchange company for listing;
- (iii) that the offeror intends to rely on this section and issue a printed application form for the shares or debentures without it being accompanied by a printed form prospectus relating to the offer;
- (iv) that throughout the offer period, prospective investors may access and download the electronic form prospectus relating to the offer from either the company's designated website or the recognized exchange company's designated website;
- (v) the address of each of the designated websites, the place on the website where the electronic form prospectus may be accessed and how that prospectus may be accessed;
- (vi) that throughout the offer period, copies of the printed form prospectus will be available for collection at specified locations, free of charge, upon request by any member of the public;
- (vii) the particulars of the specified locations; and
- (viii) that throughout the offer period, at least 3 copies of the printed form prospectus will be available for inspection at every location where the printed application forms are distributed.

- (5) The condition specified in subsection (3)(e)(ii) is regarded as being satisfied even if the electronic form prospectus relating to the offer is, for a period of less than 4 consecutive hours during the offer period after its commencement, not readily accessible by the public from both the company's designated website and the recognized exchange company's designated website.
- (6) For the purposes of subsection (5)—
- (a) an hour, or part of an hour, falling on a Saturday, Sunday or public holiday; or
 - (b) an hour, or part of an hour, between midnight and 6:00 a.m. from Monday to Friday,
- is not included in determining the time during which the electronic form prospectus is not readily accessible by the public.
- (7) If, after the offeror has published an announcement in accordance with subsection (4), the offeror knows that any of the conditions specified in subsection (3) will not be satisfied or is not satisfied in relation to the offer, the offeror—
- (a) must, as soon as practicable, publish a suspension announcement in accordance with the rules of the recognized exchange company; and
 - (b) must not issue the printed application form during the offer period without it being accompanied by a printed form prospectus relating to the offer.
- (8) After the publication of a suspension announcement under subsection (7)(a), the offeror may, during the offer period, issue the printed application form without it being accompanied by a printed form prospectus relating to the offer if—
- (a) each of the conditions specified in subsection (3) has been or is satisfied in relation to the offer; and

(b) it has published a resumption announcement in accordance with the rules of the recognized exchange company.

(9) In this section—

business day (營業日) means a day other than—

- (a) a public holiday;
- (b) a Saturday; or
- (c) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

designated website (指定網站)—

- (a) in relation to a company, means a website designated by the company for the purposes of this section;
- (b) in relation to a recognized exchange company, means the website of the company designated by it;

offer period (要約期), in relation to an offer of shares in or debentures of a company by a prospectus, means the period during which the shares or debentures are offered;

offeror (要約人), in relation to an offer of shares in or debentures of a company by a prospectus, means any company that makes the offer;

printed application form (印刷本申請表格), in relation to an offer of shares in or debentures of a company by a prospectus, means the form of application for the shares or debentures in printed form;

printed form prospectus (印刷本招股章程) means the printed version of a prospectus offering shares in or debentures of a company which—

- (a) complies with the relevant listing rules of the recognized exchange company concerned;
- (b) complies with—
 - (i) if the company is incorporated under the Ordinance, Part II of the Ordinance; or
 - (ii) if the company is incorporated outside Hong Kong, Part XII of the Ordinance; and
- (c) without limiting paragraph (b), has been registered under—
 - (i) if the company is incorporated under the Ordinance, section 38D of the Ordinance; or
 - (ii) if the company is incorporated outside Hong Kong, section 342C of the Ordinance;

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);

relevant stock market (有關證券市場) means the stock market referred to in subsection (1)(b) or (2)(b);

specified locations (指明地點) means—

- (a) for an offer of shares in a company by a prospectus—
 - (i) if any of the shares in the company are already listed on the relevant stock market, the depository counter of Hong Kong Securities Clearing Company Limited, the designated branches of the receiving banks specified in the prospectus, if any, and the

- place of business of the company's approved share registrar in Hong Kong; or
- (ii) if none of the shares in the company are listed on the relevant stock market, the depository counter of Hong Kong Securities Clearing Company Limited, the designated branches of the receiving banks specified in the prospectus, if any, and the principal place of business of the sponsors acting in respect of the application for listing of the shares; or
- (b) for an offer of debentures of a company by a prospectus, the depository counter of Hong Kong Securities Clearing Company Limited, the designated branches of the placing banks specified in the prospectus and the principal place of business of the co-ordinator for the offer specified in the prospectus.
- (10) For the purposes of this section, an electronic form prospectus is readily accessible from a website if it is capable of being viewed, downloaded, retained and printed as a copy from the website in its entirety, whether as a single file or as multiple files, by the public without a password or paying any charges.”.

Alexa LAM
Acting Chief Executive Officer,
Securities and Futures Commission

19 November 2010

Explanatory Note

The Securities and Futures Commission may, by notice published in the Gazette under sections 38A(2) and 342A(2) of the Companies Ordinance (Cap. 32) (*the Ordinance*), exempt any class of companies from the requirements of sections 38(3) and 342(3) of the Ordinance, respectively. Section 38(3) of the Ordinance provides that it is not lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus that complies with section 38 of the Ordinance. Section 342(3) of the Ordinance provides that it is not lawful to issue any form of application for shares in or debentures of a company incorporated outside Hong Kong unless the form is issued with a prospectus that complies with Part XII of the Ordinance.

2. This Notice exempts an offeror company which issues a printed application form for shares in or debentures of a company (*relevant company*) from the requirement to issue it together with a printed form prospectus relating to the offer. The exemption is subject to certain conditions. One of the conditions is that, at the commencement of the offer period, an electronic form prospectus relating to the offer must be readily accessible by the public from the relevant website of the relevant company and the relevant website of the recognized exchange company which has approved the shares or debentures for listing. During the offer period after its commencement, the electronic form prospectus must also be readily accessible by the public from either of the above websites.