

Subcommittee on Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011

This paper provides further information on the importance of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011 (“Exemption Notice”) to Hong Kong’s position as an international financial centre, and why reliance on the granting of waivers by the Securities and Futures Commission (SFC) on a case-by-case basis is undesirable.

2. No other international financial centre has a requirement for property valuations for each property regardless of its value, its materiality to the business or relevance of a valuation report to investors’ assessment of the business. Where valuation requirements exist they only apply to companies whose principal activity is property investment or development and only to material properties. The Exemption Notice is designed to bring Hong Kong’s requirements more in line with international practice but still provide stricter requirements.

3. The Exemption Notice is the result of wide market consultation. 52 responses were received to a consultation paper. Most respondents supported the proposals and careful consideration was given to the suggestions for changes most of which have been adopted.

4. The Exemption Notice will:

- (a) benefit investors by enabling prospectuses to provide more focused information;
- (b) still require valuations and disclosure for properties that form part of property activities except for immaterial properties; and
- (c) benefit Hong Kong as an international listing platform by removing valuation requirements for immaterial properties and properties whose valuation is not needed in order for investors to form a valid view of the company.

5. Notwithstanding the Exemption Notice information material to investors' assessment must be provided in a prospectus, failure to provide material information can result in civil and criminal liabilities.

6. The letters from the SFC and the Stock Exchange of Hong Kong at Annexes A and B respectively explain why reliance on the SFC granting waivers on a case-by-case basis is undesirable. Firstly companies considering a listing in Hong Kong will need to incur considerable costs and time to make a waiver application and there is no certainty that a waiver will be granted. Secondly other markets will be able to contrast their more relevant and simple rules with those in Hong Kong to the potential detriment of our market.

7. In conclusion, we appeal for Members' support to the Exemption Notice. The Exemption Notice is important for Hong Kong's development as an international financial centre and does not represent any reduction in investor protection.

The Securities and Futures Commission
December 2011