Response to Linklaters

Schedule 1 – Amendments updating the prospectus regime

Resale Restrictions

Section 41(2) only applies to the resale of shares to the effect that the issuer, upon the allotment of shares/debentures, allots shares/debentures with the intention of on-selling such shares/debentures through the allottee to the public. The scope of the proposed new section 38AA is wider as it prevents shares/debentures acquired pursuant to an offer under the proposed 17th Schedule from being sold to the public, regardless of the intention of the issuer upon allotment, unless a prospectus is issued or shares/debentures of the same class are listed. The policy intent of the new section 38AA is to prevent abuse of the exemption provided for in the 17th schedule and getting around the prospectus requirements.

2. As regards practices in overseas jurisdictions, there are similar provisions in the Securities and Futures Act 2001 (SFA) of Singapore. Under section 276 of SFA, where shares or debentures initially acquired under an exemption in section 274 (i.e. offers made to licensed banks, registered insurance companies, statutory bodies, pension funds/collective investment schemes, etc.) or section 275 (i.e. offers made to sophisticated investors) are first sold to any person falling outside these exemptions, the offer for sale of such shares or debentures shall be regarded as an offer to the public requiring a prospectus unless the shares or debentures to which the offer relates are listed or quoted on a securities exchange and at least six months have elapsed since the date they were initially acquired pursuant to either of the aforesaid exemptions.

3. The imposition of the resale restriction does not alter our existing regulatory philosophy concerning offers of investments, where issuers, rather than end purchasers, are generally regulated. As far as the resale restriction is concerned, we are regulating the offerors of shares/debentures,

regardless of whether or not they are the issuers.

Legending Requirements in Prospectuses

4. Offers falling within the scope of sections 1, 5, 6 and 12 of the proposed 17th Schedule (i.e. offers to professional investors, offers in connection with an underwriting agreement, takeover/repurchase offers in compliance with the Codes on Takeovers and Mergers and Share Repurchases, and offers in connection with collective investment schemes authorised by the Securities and Futures Commission) are not required to satisfy the legending requirement.

5. The legending requirement is to alert potential offerees of the need to exercise caution in relation to the offer. This is of particular importance as the relevant offer document has not been reviewed by any regulator. We believe that the legending requirement for certain exempted offers under the proposed 17th Schedule would not impose a significant administrative burden on issuers in global offerings. If an issuer proposes to offer shares/debentures in Hong Kong, it and/or its advisers should be responsible for ensuring compliance with all local legal and regulatory requirements. If a decision to offer to a limited group of Hong Kong investors is taken only after printing of the relevant documents, we believe that it would not be too onerous for the issuer to simply add a cover sheet or sticker, etc. to satisfy this legending requirement.

Dual Prospectus Provisions

6. It is up to the issuers to decide when they update their programme prospectuses. The policy intent is that once a new annual report is published or the first anniversary of the date of publication of the programme prospectus occurs (whichever is the earlier), no further offers of shares or debentures shall be made on the basis of the previous financial statements contained in the programme prospectus. In fact, issuers will only have to update the programme prospectus in time for an offer made after the new financial statements are issued. If no offer is contemplated after an annual report is published, there is no need for the issuer to update

its programme prospectus.

Financial Services and the Treasury Bureau
Securities and Futures Commission

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