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 THE TREASURY BUREAU
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 SPECIAL ADMINISTRATIVE REGION

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 本函檔號 OUR REF.: G6/123/4C(2003) Pt. 14
 來函檔號 YOUR REF.:

24 October 2003

(Please refer to the distribution list at Annex)

Dear

**Consultation on proposed amendments to the
 Companies Ordinance to facilitate offers of shares and debentures**

We consulted the public in March 2003 on proposals to amend the Companies Ordinance for streamlining the procedures for registration and issue of prospectuses, as Phase II of our three-phased approach to overhaul the existing regulatory framework for offers of investment.

The objective of this legislative amendment exercise is to facilitate offers of shares and debentures by, amongst others, lowering the associated issuance costs without compromising investor protection. The consultation closed on 31 March 2003 and market views received during the consultation exercise have been incorporated into the Companies (Amendment) Bill 2003 (the Bill), where appropriate. The Bill was introduced into the Legislative Council on 25 June 2003 and is currently being examined by the Bills Committee.

One of the proposals in our consultation document issued in March was to replace the existing requirement in sections 38D and 342C with respect to registration of material contracts, together with the prospectus, with a new requirement that such material contracts be on display for not less than 14 days from the date of publication of the

prospectus at the company's registered office or, in case the company does not have a place of business in Hong Kong, other places in Hong Kong as specified by the Securities and Futures Commission. The purpose is to facilitate issuers by removing the requirement of registering "material contracts" with the Registrar of Companies without denying public access to the material contracts. As this particular proposal has not received any objection during public consultation, it has been included in clauses 7 and 19 of the finalised Bill. Relevant extract of the Bill is attached for your easy reference.

When examining the Bill on 17 October 2003, some Members of the Bills Committee of the Legislative Council have expressed concerns on whether the 14-day inspection period is sufficient and suggested that the period be lengthened to, say, cover the whole period during which the offer is made or the entire life of the financial product concerned. There is also a suggestion that the inspection period should last for at least a few years. In meeting these suggestions, Members noted that under the existing arrangement, the public could access the material contracts registered with the Registrar of Companies anytime and might make copies of the documents at a reasonable cost. They considered that our proposal in the Bill might limit public access to such documents by introducing the 14-day limit to the inspection period, thereby compromising information disclosure and investor protection. *In this connection, we would like to seek your views on whether the inspection period should be lengthened, and if so, how long the period should last for.*

You may wish to note that should the proposed inspection period be lengthened, the statutory safeguards to ensure that the public can access the material contracts and, where necessary, make copies at a reasonable cost provided for in the new section 342C(10) will apply during the entire inspection period.

As a related issue, some Members of the Bills Committee have expressed concerns on whether under the proposed arrangement, the company concerned can impose a charge on a request for inspection of the material contracts. It has also been suggested that consideration be given to requiring companies to allow public inspection of the material contracts free of charge. *In this connection, we would like to seek your views on whether the public should be allowed to inspect the material contracts kept by the company concerned free of charge.*

As the suggestions represent material departure from the original proposal exposed to the public in March 2003 and may impact on compliance cost and investor protection, we would like to hear your views before we revert to the Bills Committee on whether clauses 7 and 19 requires modifications. Since the Bills Committee is working against a very tight timetable, we should be grateful if you would let us have your response by **11 November 2003**.

The Bills Committee is in the process of examining the Bill, and there may be other new issues arising from the deliberation of the Bills Committee. Depending on the discussion of the Bills Committee, we may have to seek your views in the next few weeks on other major issues which would likely have significant impact on the market users and investors.

Thank you for your attention.

Yours sincerely,



(Mrs Dorothy Ma)
for Secretary for Financial Services and
the Treasury

Encl.

c.c. SFC (Attn.: Mr Ashley Alder)
Clerk to Bills Committee (Attn.: Ms Anita Sit)



7. 招股章程的註冊

第 38D 條現予修訂——

- (a) 廢除第 (3)(b)(i) 及 (ii) 款；
- (b) 加入——

“(3A) 如招股章程屬第 (3)(b) 款所述者，則——

- (a) 附表 3 第 17 段規定須在該招股章程內述明的任何合約的一份文本；
- (b) (在合約並非以書面記錄的情況下) 一份詳列該合約的細則的備忘錄；或
- (c) (如招股章程根據第 38A 條獲豁免而無符合第 38(1) 條的規定) 在規限該項豁免的任何條件中為施行本段而指明的任何合約的一份文本；

須自該招股章程刊登日期起，於有關公司在香港的註冊辦事處供公眾人士在正常辦公時間內查閱，為期不少於 14 天。”；

(c) 在第 (4) 款中——

(i) 廢除“(3)(b)(i) 款提述招股章程內規定須註明或隨附”而代以“(3A) 款有提述該款規定須供查閱的”；

(ii) 廢除在“均按”之後的所有字句而代以“第 (10) 款所指的訂明方式核證為正確譯本。”；

(d) 加入——

“(10) 第 (4) 款所述的譯本——

- (a) 須由該譯本的製備者核證為正確譯本；及
- (b) 的製備者如已由第 (i) 或 (ii) 節所述的適當的人核證為他相信是有足夠能力將有關文件譯成英文或中文(視屬何情況而定)，則該譯本須當作已按訂明方式核證——

(i) 如該譯本在香港以外製備——

- (A) 製備該譯本所在的地方的公證人；
- (B) 監察委員會指明的其他人；或
- (C) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人；

(ii) 如該譯本在香港製備——

- (A) 香港的公證人；
- (B) 香港高等法院律師；
- (C) 監察委員會指明的其他人；或
- (D) 屬於監察委員會為施行本段藉在憲報刊登的公告指明的某類別人士的其他人。

(11) 除第 (12) 款另有規定外，凡某公司為遵守第 (3A) 款須提供文件供公眾人士查閱，該公司須在第 (3A) 款指明的限期內，在——

- (a) 有任何查閱該文件的人要求時；及
- (b) 該公司提供該文件的全部或部分內容的副本所需的合理開支獲支付後；

提供該副本。

(12) 如任何文件——

(a) 在電腦互聯網上的某個輕易可達的網頁上以令該文件能夠輕易列印的形式；及

(b) 於第 (3A) 款指明的限期內，

供公眾人士查閱，則有關公司無須遵守第 (11) 款。

(13) 根據第 (10)(b)(i)(C) 或 (ii)(D) 款刊登的公告並非屬屬法例。

(14) 如任何公司沒有遵守第 (11) 款，該公司以及其每名失責高級人員均可處罰款。”。

7. Registration of prospectus

Section 38D is amended—

- (a) by repealing subsection (3)(b)(i) and (ii);
- (b) by adding—

“(3A) In the case of a prospectus mentioned in subsection (3)(b)—

- (a) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus;
- (b) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; or
- (c) in the case of a prospectus exempted under section 38A from compliance with the requirements of section 38(1), a copy of any contract specified for the purposes of this paragraph in any of the conditions to which the exemption is subject,

shall be available for inspection by the public, during normal business hours, for not less than 14 days from the date of publication of the prospectus, at the company's registered office in Hong Kong.”;

(c) in subsection (4)—

- (i) by repealing “subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus” and substituting “subsection (3A) to the copy of a contract required thereby to be available for inspection”;
- (ii) by repealing everything after “prescribed manner” and substituting “under subsection (10) to be a correct translation.”;

(d) by adding—

“(10) A translation mentioned in subsection (4) shall be—

- (a) certified by the person making the translation as a correct translation; and
- (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say—

(i) if the translation be made outside Hong Kong—

- (A) a notary public in the place where the translation is made;
- (B) such other person as may be specified by the Commission; or
- (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;

(ii) if the translation be made in Hong Kong—

- (A) a notary public in Hong Kong;
- (B) a solicitor of the High Court of Hong Kong;
- (C) such other person as may be specified by the Commission; or
- (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph.

(11) Subject to subsection (12), where a company is required to make a document available for inspection by the public in compliance with subsection (3A), it shall, during the period specified in subsection (3A), provide a copy of all or any part of the document—

- (a) on the request of any person inspecting the document; and
- (b) on payment of the reasonable expenses of the company in providing the copy.

(12) A company is not required to comply with subsection (11) in the case of any document available for inspection by the public—

- (a) on the Internet on a readily accessible web page in a format which enables the document to be readily printed; and
- (b) during the period specified in subsection (3A).

(13) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

(14) If any company fails to comply with subsection (11), the company and every officer of the company who is in default shall be liable to a fine.”。

第 342C 條現予修訂——

- (a) 在第 (1) 款中，在“認購”之後加入“或購買”；
- (b) 在第 (2)(a) 款中，在“負責”之後加入“，如該招股章程獲得或將會獲得認可交易所核實根據《證券及期貨條例》(第 571 章) 第 25 條作出的轉移令而授權發出，則述明監察委員會、認可交易所及處長對該招股章程的內容概不負責”；
- (c) 廢除第 (3)(b)(i) 及 (ii) 條；
- (d) 加入——

“(3A) 如招股章程屬第 (3)(b) 款所述者，則——

- (a) 附表 3 第 17 段規定須在該招股章程內述明的任何合約的一份文本；
- (b) (在合約並非以書面記錄的情況下) 一份詳列該合約的細則的備忘錄；或
- (c) (如招股章程根據第 342A 條獲豁免而無符合第 342(1) 條的規定) 在規限該項豁免的任何條件中為履行本段而指明的任何合約的一份文本，

須自該招股章程刊登日期起，於下述地點供公眾人士在正常辦公時間內查閱，為期不少於 14 天——

- (d) 除 (c) 段另有規定外，有關公司在香港的主要營業地點；
- (e) (如有關公司在香港並無主要營業地點) 監察委員會在個別個案中指明的的一個或多於一個在香港的地點。”；

(e) 在第 (4) 款中——

- (i) 廢除“(3)(b)(i) 款提述招股章程內規定須註明或隨附”而代以“(3A) 款有提述該款規定須供查閱的”；
- (ii) 廢除在“均按”之後的所有字句而代以“第 (9) 款所指的訂明方式核證為正確譯本。”；

(f) 加入——

“(9) 第 (4) 款所述的譯本——

- (a) 須由該譯本的製備者核證為正確譯本；及
- (b) 的製備者如已由第 (i) 或 (ii) 條所述的適當的人核證為他相信是有足夠能力將有關文件譯成英文或中文(視屬何情況而定)，則該譯本須當作已按訂明方式核證——

- (i) 如該譯本在香港以外製備——
- (A) 製備該譯本所在的地方的公證人；
- (B) 監察委員會指明的其他人；或
- (C) 屬於監察委員會為履行本段藉在憲報刊登的公告指明的某類別人士的其他人；

- (ii) 如該譯本在香港製備——
- (A) 香港的公證人；
- (B) 香港高等法院律師；
- (C) 監察委員會指明的其他人；或
- (D) 屬於監察委員會為履行本段藉在憲報刊登的公告指明的某類別人士的其他人。

(10) 廢除 (11) 款另有規定外，凡其公司為遵守第 (3A) 款須提供文件供公眾人士查閱，則該公司須在第 (3A) 款指明的限期內，在——

- (a) 有任何查閱該文件的人要求時；及
- (b) 該公司提供該文件的全部或部分內容的副本所需的合理開支獲支付後，

提供該副本。

(11) 如任何文件——

- (a) 在電腦互聯網上的某個輕易可達的網頁上以令該文件能夠輕易列印的形式；及

(b) 於第 (3A) 款指明的限期內，

供公眾人士查閱，則有關公司無須遵守第 (10) 款。

(12) 根據第 (9)(b)(i)(C) 或 (ii)(D) 款刊登的公告並非附屬法例。

(13) 如任何公司沒有遵守第 (10) 款，該公司以及其每名失責高級人員均可處罰款。”。

19. Registration of prospectus

Section 342C is amended—

- (a) in subsection (1), by adding “or purchase” after “subscription”;
- (b) in subsection (2)(a), by adding “or, where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus” after “prospectus”;
- (c) by repealing subsection (3)(b)(i) and (ii);
- (d) by adding—

“(3A) In the case of a prospectus mentioned in subsection (3)(b)—

- (a) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus;
- (b) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; or
- (c) in the case of a prospectus exempted under section 342A from compliance with the requirements of section 342(1), a copy of any contract specified for the purposes of this paragraph in any of the conditions to which the exemption is subject,

shall be available for inspection by the public, during normal business hours, for not less than 14 days from the date of publication of the prospectus, at—

- (d) subject to paragraph (e), the company’s principal place of business in Hong Kong;
- (e) if the company does not have a principal place of business in Hong Kong, such place or places in Hong Kong as is or are specified by the Commission in the particular case.”;

(e) in subsection (4)—

- (i) by repealing “subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus” and substituting “subsection (3A) to the copy of a contract required thereby to be available for inspection”;
- (ii) by repealing everything after “prescribed manner” and substituting “under subsection (9) to be a correct translation.”;

(f) by adding—

“(9) A translation mentioned in subsection (4) shall be—

- (a) certified by the person making the translation as a correct translation; and
- (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say—

(i) if the translation be made outside Hong Kong—

- (A) a notary public in the place where the translation is made;
- (B) such other person as may be specified by the Commission; or
- (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;

(ii) if the translation be made in Hong Kong—

- (A) a notary public in Hong Kong;
- (B) a solicitor of the High Court of Hong Kong;
- (C) such other person as may be specified by the Commission; or
- (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph.

(10) Subject to subsection (11), where a company is required to make a document available for inspection by the public in compliance with subsection (3A), it shall, during the period specified in subsection (3A), provide a copy of all or any part of the document—

- (a) on the request of any person inspecting the document; and
- (b) on payment of the reasonable expenses of the company in providing the copy.

(11) A company is not required to comply with subsection (10) in the case of any document available for inspection by the public—

- (a) on the Internet on a readily accessible web page in a format which enables the document to be readily printed; and
- (b) during the period specified in subsection (3A).

(12) A notice published under subsection (9)(b)(i)(C) or (ii)(D) is not subsidiary legislation.

(13) If any company fails to comply with subsection (10), the company and every officer of the company who is in default shall be liable to a fine.”.

Distribution list

1. Consumer Council
2. Hong Kong Capital Market Association
3. Hong Kong Chinese Enterprises Association
4. Hong Kong Exchange and Clearing Limited
5. Hong Kong Institute of Investors
6. Hong Kong Investment Funds Association
7. Hong Kong Mortgage Corporation Limited
8. Hong Kong Society of Accountants
9. Standing Committee on Company Law Reform
10. The Chinese General Chamber of Commerce
11. The Hong Kong Association of Banks
12. The Hong Kong Bar Association
13. The Hong Kong General Chamber of Commerce
14. The Hong Kong Institute of Company Secretaries
15. The Hong Kong Institute of Directors
16. The Law Society of Hong Kong