

**Bills Committee on Securities and Futures and Companies Legislation
(Structured Products Amendment) Bill 2010**

**Meaning of “Persons Outside Hong Kong” and Regulatory
Arrangements for the Disposal of Unlisted Structured Products to
Persons Outside Hong Kong**

Purpose

This paper briefs Members on the meaning of “persons outside Hong Kong” in section 103(3)(j) of Part IV of the Securities and Futures Ordinance (“SFO”) (Cap. 571) and the regulatory arrangements for the disposal of unlisted structured products to intermediaries or persons outside Hong Kong, where the transaction or part of the transaction process takes place in Hong Kong.

**Meaning of “Persons Outside Hong Kong” and the Regulatory
Arrangements**

2. Section 103(1) of Part IV of the SFO provides that “a person commits an offence if he issues ... whether in Hong Kong or elsewhere, an advertisement, invitation or document ... which ... contains an invitation to the public to enter into ... an agreement to acquire ... securities ..., unless the issue is authorized by the [Securities and Futures] Commission ...”. The word “public” is defined in Part 1 of Schedule 1 to the SFO to mean “the public of Hong Kong, and includes any class of that public”. Section 103(3)(j) of the SFO provides that section 103(1) does not apply to “the issue ... of any advertisement, invitation or document made in respect of securities ..., which are or are intended to be disposed of only to persons outside Hong Kong”.

3. The combined effect of sections 103(1) and 103(3)(j) is that if a person issues an advertisement, invitation or document containing an invitation to the public of Hong Kong, the issue of such advertisement, invitation or document (collectively referred to as “offer document” in this paper for the sake of simplicity) would require an authorization from the Securities and Futures Commission. Whether the offer document is issued

in Hong Kong or elsewhere, and whether part of the transaction process takes place in Hong Kong are irrelevant. In considering whether the authorization requirements in Part IV of the SFO will apply to a specific offer, the totality of all the facts of the offer needs to be considered.

4. Section 103 of the SFO is concerned with the target of the offer (i.e. the Hong Kong public), not where a specific act occurs. As such, the authorization requirement is not applicable to invitations in respect of securities which are intended to be disposed of only to persons outside Hong Kong. Again, whether the offer document was issued in Hong Kong or elsewhere is irrelevant. Such an offer will be subject to the regulatory regime (if any) of the jurisdiction where the offer takes place.

5. In general, the Offers of Investment regime in Part IV of the SFO regulates public offers targeting the public within Hong Kong. This approach is broadly similar to the regulatory approach adopted in other major markets like the UK, US, Australia and Singapore. These common law jurisdictions have also built in a territorial concept in their securities law regimes when regulating public offers.

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