

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

Purpose

This paper provides information relating to the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011 (“Amendment Notice”) in addition to the Legislative Council Brief issued on 18 October 2011.

Background

2. Every prospectus offering shares or debentures to the public must comply with various requirements under the Companies Ordinance (Cap. 32) (“CO”). One of the requirements is to set out a valuation report that contains specified particulars with respect to **all** interests in land or buildings of a company and its subsidiaries if the property interests have a value exceeding 10% of the group’s assets or have a value of not less than HK\$3,000,000. These property valuation requirements do not differentiate whether the property interests are the listing applicant’s core business.

3. Pursuant to section 6 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32L), a listing applicant is exempt from the requirement to set out a valuation report in the prospectus in respect of operating leases which have zero value. However, full valuation reports for such operating leases are still required and must be made available for public inspection. The latter requirements may not be justified in view of the said exemption.

The proposed exemptions

4. The Amendment Notice will impose different valuation requirements for property interests depending on whether they are property activities (i.e. holdings, purchasing or developing properties for sale, letting or retention as investments) or not.

5. For property interests falling into the category of property activities (referred to as “Type B interest” in the Amendment Notice), the requirement to set out a valuation report in the prospectus is exempted for individual Type B interest with carrying amount less than 1% of the company’s total assets¹. However, the listing applicant is still required to provide an overview of such property interests in the prospectus (referred to as “exempt Type B interest” in the Amendment Notice) setting out the information including the total number, the nature, the approximate size range, the uses, and a general description of the locations.

6. In addition, the total carrying amount of all the exempt Type B interest shall not exceed 10% of the company’s total assets. For any exempt Type B interest that is beyond the 10% threshold and for all other Type B interests, full valuation reports must be set out in the prospectus, except that a summary setting out the key information of the valuation report (instead of the full text of the report) is allowed for any individual property interest with a value of less than 5% of the total value of all non-exempt Type B interest.

7. For property interests which do not fall into the category of property activities (referred to as “Type A interest” in the Amendment Notice), the requirement of setting out a valuation report in the prospectus is exempted, except individual property interest with carrying amount of 15% or more of the company’s total assets. Full valuation report shall be set out in the prospectus for any such latter interest.

8. For mining companies, if the prospectus contains a valuation report regarding the valuation, as a business or operating entity, of any such mining property interest, the requirement of setting out a valuation report in the prospectus will be exempted even for Type A interest with carrying amount of 15% or more of the company’s total assets.

Investor protection

9. The Amendment Notice is in investors’ interest as it will enhance the quality of information provided to investors by differentiating the circumstances in which a valuation report must be obtained for a listing applicant’s property activities and non-property activities and imposing different disclosure requirements in the prospectus.

¹ Calculation of the thresholds will be based on figures in the latest financial statements.

10. In addition, issuers are still obliged under the CO to ensure that the prospectus contain sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus, taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them. Notwithstanding the proposed exemptions in the Amendment Notice, if particulars and information on a listing applicant's property interests is necessary for investors to make an informed decision, a listing applicant must disclose such information in the prospectus.

Consultation process

11. In formulating proposals for public consultation, the Securities and Futures Commission ("SFC") and the Stock Exchange of Hong Kong Ltd. ("the Exchange") held focus group meetings with key stakeholders to gather their views on the initial proposals. These included the Public Shareholders Group to solicit their views on the proposals. Participants generally supported these proposals.

12. In December 2010 the SFC and the Exchange published a Joint Consultation Paper on Proposed Changes to Property Valuation Requirements. A total of 52 responses were received from market practitioners, issuers, professional associations and individuals. Most respondents supported the proposals.

13. On 20 October 2011, the Joint Consultation Conclusions were published. The joint Consultation Paper, Responses and Conclusions are available at the SFC website and the Exchange's website.

The Securities and Futures Commission November 2011