



# SECURITIES AND FUTURES COMMISSION

證券及期貨事務監察委員會

8th Floor, Chater House, 8 Connaught Road Central, Hong Kong  
香港中環干諾道中八號遮打大廈八樓

Ashley Alder 歐達禮  
Chief Executive Officer 行政總裁

CB(1)542/11-12(01)

5 December 2011

By Post & By Fax  
Fax No: 2391 6882

~~PRIVATE AND CONFIDENTIAL~~

The Hon James To Kun-sun  
Chairman of the Subcommittee on Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011  
Legislative Council Complex  
1, Legislative Council Road  
Central, Hong Kong

Dear James,

## **Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011**

1. I am writing further to our conversation last week. On reflection I still think that it would be useful to hold a further meeting of the Subcommittee considering the merits of the Companies Ordinance (Exemption of Companies and Prospectus from Compliance with Provisions) (Amendment) Notice 2011 (Exemption Notice). We are concerned that the Subcommittee may not have fully appreciated the potential impact on Hong Kong's position as an international financial centre were LegCo to repeal the Exemption Notice. The purpose of this letter is to briefly recap on the policy objective.
2. No other major international financial centre has a blanket requirement for property valuations to be included in prospectuses. Where requirements exist, in the UK and Singapore, they only apply to companies whose principal activity is property investment or development. In these two jurisdictions the requirements only apply to material properties, in the UK, or principal properties, in Singapore. By contrast Hong Kong's property valuations requirements apply to each and every property regardless of its value, its materiality to the business or the relevance of the valuation report to investors' understanding and assessment of the business.
3. The Exemption Notice will in our view benefit investors by enabling prospectuses to provide more focused information of real relevance to investors' assessment of companies seeking to raise funds. Prospectuses that contain pages of valuation reports of numerous properties do not assist investors in their assessments. Indeed they make it difficult for investors to focus on the key information. This is particularly the case where the properties are used to produce goods for sale or to provide services to customers and their relevance to investors' understanding of the company depends not on their value as properties but as tools to be used in the business.
4. As well as benefiting investors the Exemption Notice will bring Hong Kong's requirements more in line with other international financial centres, albeit the Hong Kong requirements would still remain stricter than any of its peers.



5. This is important for Hong Kong's development as an international financial centre as our requirements are seen by potential applicants as a considerable burden to a Hong Kong listing adding unnecessary cost and effort to provide information that is not only not required by any other market but cannot be justified as providing any benefit to investors. We cannot say how many potential listing applicants have rejected a Hong Kong listing because of the property valuation requirements but we know from the Stock Exchange of Hong Kong's (Exchange) marketing efforts and our contacts with market practitioners that our requirement for valuations is one of the issues raised by overseas listing applicants.
6. In the last meeting a Subcommittee member noted that under the Companies Ordinance the SFC has powers to grant waivers. Members suggested that the way forward is for the SFC to continue to grant waivers to listing applicants and thus eliminate the need for the Exemption Notice. Whilst we stand ready to continue to grant waivers on a case-by-case basis, we believe that this will not adequately deal with the concern that companies will be put off listing on the Hong Kong market by the present requirements. Other markets will still be able to contrast their more relevant and simple rules with those in Hong Kong to the potential detriment of our market. Even when issuers are aware of the waiver powers of the SFC, this is not ideal as without the Exemption Notice listing applicants will be uncertain as to whether a waiver will in fact be given until after it is granted, particularly as the grounds for waiver do not mirror the new Listing Rules relating to property valuations. Coupled with the uncertainty potential listing applicants will face not inconsiderable costs in making a waiver application.
7. We are aware that there are concerns that the Exemption Notice may have unforeseen consequences in that in some cases material information may be omitted in a prospectus. We would point out that Section 40 of the Companies Ordinance (CO) allows persons to claim civil damages for losses sustained by untrue statements in prospectuses, and Section 40A of the CO imposes criminal liability on untrue statements. Section 41A of the CO clarifies that untrue statement includes a material omission from the prospectus. In addition to these sections paragraph 3 of the Third Schedule to the CO includes a general obligation for each prospectus to contain sufficient particulars and information for investors to form a valid and justifiable view of the company. We consider that these elements of the CO provide sufficient general obligations to require publication of additional information in cases where the Exemption Notice will result in a prospectus not providing all the information need by investors.
8. We note that Hong Kong investors have a detailed knowledge of the Hong Kong property market and the factors that influence valuations of properties in Hong Kong in both the short and long term. Thus information about Hong Kong properties may have more relevance to Hong Kong investors. However, we would point out that of the 70 listings on the Exchange's Main Board from January to November 2011 none involved companies engaged in Hong Kong property activities.
9. Separately, I think it is important to note that the Exemption Notice will cater for companies that carry out property activities as well as non-property activities. If a property is used as part of property activities the very low valuation threshold of 1% will apply – even if those activities represent only a very small part of the total business.



We believe that this should give some additional comfort to those who may be concerned about properties held by conglomerate businesses in Hong Kong.

10. In light of the above, we think that it would be very useful for the Subcommittee to meet again to hear why we and key market participants, especially the Exchange, believe that rejecting the Exemption Notice is not in the interest of investors nor of the Hong Kong market as a whole.

Yours sincerely,

Ashley Alder  
Chief Executive Officer