

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

This paper provides further information on the importance of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011 (“Exemption Notice”) to Hong Kong’s position as an international financial centre, and why reliance on the granting of waivers by the Securities and Futures Commission (SFC) on a case-by-case basis is undesirable.

2. No other international financial centre has a requirement for property valuations for each property regardless of its value, its materiality to the business or relevance of a valuation report to investors’ assessment of the business. Where valuation requirements exist they only apply to companies whose principal activity is property investment or development and only to material properties. The Exemption Notice is designed to bring Hong Kong’s requirements more in line with international practice but still provide stricter requirements.

3. The Exemption Notice is the result of wide market consultation. 52 responses were received to a consultation paper. Most respondents supported the proposals and careful consideration was given to the suggestions for changes most of which have been adopted.

4. The Exemption Notice will:

- (a) benefit investors by enabling prospectuses to provide more focused information;
- (b) still require valuations and disclosure for properties that form part of property activities except for immaterial properties; and
- (c) benefit Hong Kong as an international listing platform by removing valuation requirements for immaterial properties and properties whose valuation is not needed in order for investors to form a valid view of the company.

5. Notwithstanding the Exemption Notice information material to investors' assessment must be provided in a prospectus, failure to provide material information can result in civil and criminal liabilities.

6. The letters from the SFC and the Stock Exchange of Hong Kong at Annexes A and B respectively explain why reliance on the SFC granting waivers on a case-by-case basis is undesirable. Firstly companies considering a listing in Hong Kong will need to incur considerable costs and time to make a waiver application and there is no certainty that a waiver will be granted. Secondly other markets will be able to contrast their more relevant and simple rules with those in Hong Kong to the potential detriment of our market.

7. In conclusion, we appeal for Members' support to the Exemption Notice. The Exemption Notice is important for Hong Kong's development as an international financial centre and does not represent any reduction in investor protection.

The Securities and Futures Commission
December 2011


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

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



The Stock Exchange of Hong Kong Limited
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Our Ref: 20111202-046

2 December 2011

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 Mr. Chairman

Re: Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011 relating to proposed changes to property valuation requirements (the "Exemption Notice")

We are writing to convey the Exchange's view on the Subcommittee's consideration of the Exemption Notice discussed at the recent Subcommittee meetings.

We consider the proposed Exemption Notice vital to enhance Hong Kong's competitiveness as a preferred listing venue for international companies. The approach of granting case-by-case waivers is undesirable as a listing applicant will need to incur considerable amount of costs and time to put together a well substantiated waiver application and there is no certainty that a waiver will be granted. We urge the Subcommittee to view the Exemption Notice favourably.

The current property valuation requirements are overly burdensome to listing applicants while the information disclosed is irrelevant and not meaningful to investors in certain situations. The current requirements are also much stricter than in other major developed markets.

The Exemption Notice will remove unnecessary burdens on listing applicants by removing valuation requirements for immaterial property interests or property interests that are not relevant to a listing applicant's core business. At the same time, the Exemption Notice will not prejudice investors' interest as (i) valuations and disclosure will still be required for properties relating to property activities (except for immaterial ones); (ii) relevant information on material properties will be required to be disclosed under the general disclosure obligation of the Companies Ordinance; and (iii) more focused information will be disclosed as opposed to a compilation of reports without highlighting the properties' importance or issues involved. The Exemption Notice will thus enhance the quality of information provided to investors and there is no lowering of standards of investor protection.

香港交易及結算所有限公司
 Hong Kong Exchanges and Clearing Limited

香港中環海峽街一號國際金融中心一期12樓
 12/F, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong
 電話 Tel: +852 2522 1122 傳真 Fax: +852 2295 3106 網址 Website: www.hkex.com.hk 電郵 E-mail: info@hkex.com.hk

1

The Stock Exchange of Hong Kong Limited
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

The Exchange and the SFC worked closely with industry representatives in formulating the proposals under the Exemption Notice. The proposals were subject to a 10-week public consultation. A total of 52 responses were received from market practitioners, issuers, professional associations and individuals. The Exchange and the SFC carefully considered and analysed the comments of each respondent. Most respondents supported the proposals. We understand that a number of leading law firms (as set out in the Appendix) and investment banks strongly support the proposals and are considering making a submission to the Subcommittee as well.

The Exemption Notice will bring Hong Kong's property valuation requirements closer to the requirements in other major developed markets while ensuring that material information is disclosed to investors. We are concerned that potential listing applicants may be deterred from seeking a listing in Hong Kong without the clear avenue to relief provided by the Exemption Notice. This would prevent the Exchange from attracting listings such as those of Prada and Samsonite, both of which would not have listed in Hong Kong had they had to do property valuations of all their stores.

Yours faithfully
For and on behalf of

The Stock Exchange of Hong Kong Limited



Mark Dickens JP
Head of Listing
Secretary to the Listing Committee

Encl.

cc: Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon Alan LEONG Kah-kit, SC

The Stock Exchange of Hong Kong Limited
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Appendix

Law firms

(in alphabetical order)

1. Cleary Gottlieb Steen & Hamilton
2. Davis Polk & Wardwell
3. Deacons
4. Freshfields Bruckhaus Deringer
5. Herbert Smith
6. Jones Day
7. Kirkland & Ellis
8. Morrison & Foerster
9. Norton Rose
10. Simpson Thacher & Bartlett
11. Skadden, Arps, Slate, Meagher & Flom