

LEGISLATIVE COUNCIL BRIEF

COMPANIES ORDINANCE (CAP. 32)

COMPANIES ORDINANCE (EXEMPTION OF COMPANIES AND PROSPECTUSES FROM COMPLIANCE WITH PROVISIONS) (AMENDMENT) NOTICE 2011

INTRODUCTION

1. At its meeting on 17 October 2011, pursuant to sections 38A(2) and 342A(2) of the Companies Ordinance (Cap. 32) (“CO”), the Securities and Futures Commission (“Commission”) made the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2011 (“Amendment Notice”) at the Annex. The Commission proposes to exempt certain prospectuses issued by companies from the requirement to set out a valuation report containing the particulars specified in paragraph 34(2) of the Third Schedule to the CO, subject to certain conditions.

BACKGROUND

2. Every prospectus offering shares or debentures to the public must comply with various requirements under the CO. Section 38(1) of the CO provides that every prospectus issued by or on behalf of a company must set out the reports specified in Part II of the Third Schedule to the CO. Section 342(1) of the CO provides that it is not lawful to issue any prospectus for shares in or debentures of a company incorporated outside Hong Kong unless the prospectus sets out the reports specified in Part II of the Third Schedule to the CO. Paragraph 34(2) of the Third Schedule to the CO requires a valuation report to be set out in a prospectus to contain specified particulars with respect to all interests in land or buildings (“property interests”) of a company and its subsidiaries (“group”) 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 as disclosed in the group’s last accounts. In some cases, such requirement may be

unnecessarily costly and unduly burdensome and some of the particulars provided may not be useful to investors.

3. The Commission may, by notice published in the Gazette under sections 38A(2) and 342A(2) of the CO, exempt any class of prospectuses issued by companies from any or all of the requirements of sections 38(1) and 342(1) of the CO, respectively. The Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap. 32 sub. leg. L) (“Notice”) sets out the class exemptions that have been granted by the Commission pursuant to sections 38A(2) and 342A(2) of the CO.

SUMMARY OF THE PROPOSED CLASS EXEMPTIONS

4. The proposed class exemptions will allow different valuation and disclosure requirements to apply to different property interests depending on whether they are the subject matter of business activities that involve holding (whether directly or indirectly), purchasing or developing properties for sale, letting or retention as investments (“property activities interests”) or the subject matter of other business activities (“non-property activities interests”), subject to certain conditions.
5. A company will be required to obtain a valuation report as to the value of each property interest which is not:-
 - (a) a property activities interest which has a carrying amount of less than 1% of the group’s total assets provided that the carrying amounts of all such property activities interests when added together do not exceed 10% of the group’s total assets;
 - (b) a non-property activities interest which has a carrying amount of less than 15% of the group’s total assets; or
 - (c) a non-property activities interest which is ancillary to the exploration or extraction of minerals or petroleum products (“mining property interest”) with a carrying amount of 15% or more of the group’s total assets and the prospectus contains a report from an independent qualified valuer regarding the valuation, as a business or operating entity, of such mining property interest together with its associated minerals or petroleum resources or assets,

(each an “exempt property interest”).

6. Full text of the valuation report with respect to each property interest which is not an exempt property interest will be required to be disclosed in the prospectus except where summary disclosure is allowed.
7. Summary disclosure will be allowed for each property activities interest which is not an exempt property interest and has a value of less than 5% of the aggregate value (as determined by an independent qualified valuer) of all property activities interests which are not exempt property interests (“summary property activities interests”). The full text of the valuation report with respect to each summary property activities interest which is not covered by a valuation report set out in the prospectus will be required to be made available for public inspection.
8. An overview with respect to all exempt property interests which are not covered by a valuation report set out in the prospectus will be required to be included in the prospectus.

THE AMENDMENT NOTICE

9. The Amendment Notice is attached at the Annex. The main provisions of the Amendment Notice are:-
 - (a) Clause 3 repeals and substitutes section 6 of the Notice.
 - (b) Section 6(1) of the Notice provides an exemption from compliance with the requirements of section 38(1) of the CO, in relation to paragraph 34(2) of the Third Schedule to the CO, so that a prospectus issued generally in respect of an offer of any shares in or debentures of a company incorporated under the CO is not required to set out a valuation report with respect to certain property interests, subject to certain conditions.
 - (c) Section 6(2) of the Notice provides a similar exemption from compliance with the requirements of section 342(1)(b) of the CO in respect of an offer of any shares in or debentures of a company incorporated outside Hong Kong, subject to similar conditions.
 - (d) Section 6(3) of the Notice sets out the conditions referred to in subsections (1) and (2), which are:-
 - (i) The company must obtain a valuation report from an

independent qualified valuer as to the value of each property interest which is not an exempt property interest.

- (ii) The valuation report must contain specified particulars and comply with the requirements under paragraph 46(a) to (c) of the Third Schedule to the CO.
 - (iii) The prospectus must contain an overview setting out specified particulars with respect to all exempt property interests which are not covered by a valuation report set out in the prospectus.
 - (iv) The prospectus must contain a summary setting out specified particulars with respect to each summary property activities interest which is not covered by a valuation report set out in the prospectus with the full text of the valuation report with respect to such summary property activities interest being made available for public inspection.
 - (v) The prospectus must contain the full text of the valuation report with respect to each property interest which is not an exempt property interest or a summary property activities interest.
- (e) Section 6(4) of the Notice sets out the specified particulars that must be contained in the valuation report.
 - (f) Section 6(5) of the Notice sets out the specified particulars that must be set out in the overview.
 - (g) Section 6(6) of the Notice sets out the specified particulars that must be set out in the summary.
 - (h) Section 6(7) of the Notice sets out the interpretation of terms in the section.
 - (i) Section 6(8) of the Notice provides that the conditions in subsection (3) are also applicable to a guarantor corporation (as defined by sections 38(8) and 342(8) of the CO) in relation to an offer or invitation to the public to subscribe for or purchase debentures.

PUBLIC CONSULTATION

10. On 3 December 2010, the Commission and The Stock Exchange of Hong Kong Limited (“Exchange”) consulted the public and published the Joint Consultation Paper on Proposed Changes to Property Valuation Requirements. The Commission and the Exchange will publish the consultation conclusions on 20 October 2011. There were a total of 52 submissions from market practitioners, issuers, professional associations and individuals. Most respondents supported the proposals with suggestions on certain specific details of the proposals.

FINANCIAL AND STAFFING IMPLICATIONS

11. There are no financial or staffing implications for the Commission.

LEGISLATIVE TIMETABLE

12. The legislative timetable is as follows:

Publication in the Gazette	21 October 2011
Tabling in the Legislative Council	26 October 2011

COMMENCEMENT

13. The Amendment Rules will come into operation on 1 January 2012.

PUBLICITY

14. A press release will be issued upon publication of the consultation conclusions on 20 October 2011. A spokesman will be available to handle media enquiries.

ENQUIRIES

15. Any enquiries on this brief may be addressed to Mr Charles Grieve, Senior Director (tel. no.: 2840 9207), Ms Flora Ma, Senior Manager (tel. no.: 2840 9368) or Ms Grace Ma, Senior Manager (tel. no.: 2283 6147), all of the Corporate Finance Division of the Commission.

The Securities and Futures Commission
18 October 2011

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

(Made by the Securities and Futures Commission under sections 38A and
342A of the Companies Ordinance (Cap. 32))

1. Commencement

This Notice comes into operation on 1 January 2012.

**2. Companies Ordinance (Exemption of Companies and
Prospectuses from Compliance with Provisions) Notice
amended**

The Companies Ordinance (Exemption of Companies and
Prospectuses from Compliance with Provisions) Notice (Cap. 32
sub. leg. L) is amended as set out in section 3.

3. Section 6 substituted

Section 6—

Repeal the section

Substitute

“6. Exemptions from requirement to set out valuation report

- (1) If it is proposed to offer any shares in or debentures of a company incorporated under the Ordinance by a prospectus issued generally, then, subject to the conditions specified in subsection (3), the prospectus is exempted from compliance with the requirements of section 38(1) of the Ordinance, in relation to paragraph 34(2) of the Third Schedule to the Ordinance.
- (2) If it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong by a

prospectus issued generally, then, subject to the conditions specified in subsection (3), the prospectus is exempted from compliance with the requirements of section 342(1)(b) of the Ordinance, in relation to paragraph 34(2) of the Third Schedule to the Ordinance.

- (3) The conditions referred to in subsections (1) and (2) are—
 - (a) the company must obtain a valuation report from an independent qualified valuer as to the value of each Type A interest which is not an exempt Type A interest and each Type B interest which is not an exempt Type B interest as at a date not earlier than 3 months before the date of the prospectus;
 - (b) the valuation report must contain the particulars required under subsection (4) and comply with the requirements under paragraph 46(a) to (c) of the Third Schedule to the Ordinance;
 - (c) the prospectus must contain the following—
 - (i) an overview specified in subsection (5) with respect to all exempt Type A interests which are not covered by a valuation report set out in the prospectus and all exempt Type B interests which are not covered by a valuation report set out in the prospectus;
 - (ii) a summary specified in subsection (6) with respect to each summary Type B interest which is not covered by a valuation report set out in the prospectus;
 - (iii) the full text of the valuation report with respect to each Type A interest which is not an exempt Type A interest; and
 - (iv) the full text of the valuation report with respect to each Type B interest which is not

- an exempt Type B interest or a summary Type B interest; and
- (d) if the property interests of the company include any summary Type B interest which is not covered by a valuation report set out in the prospectus, then the company must make the full text of the valuation report with respect to the summary Type B interest available for inspection by the public.
- (4) A valuation report required under subsection (3)(a) must contain the particulars set out in paragraph 34(2)(a) to (h) and (3)(a) and (b) of the Third Schedule to the Ordinance as well as the following particulars—
- (a) the current planning or zoning use;
 - (b) details of title and ownership;
 - (c) details of encumbrances;
 - (d) any option or right of pre-emption;
 - (e) the approach to valuation;
 - (f) the date of the last inspection and the names and qualifications of the persons who carried out the inspection;
 - (g) a summary of the investigations carried out by the independent qualified valuer to arrive at the valuation;
 - (h) the nature and source of information relied on;
 - (i) if the valuation certificates are grouped together, an explanation of the groupings; and
 - (j) any other matters that may materially affect the value.
- (5) An overview required under subsection (3)(c)(i) must set out the following particulars—
- (a) the total number;

- (b) the nature;
 - (c) the approximate size range;
 - (d) the uses; and
 - (e) a general description of the locations.
- (6) A summary required under subsection (3)(c)(ii) must set out the following particulars—
- (a) the geographical region of the location;
 - (b) a brief description;
 - (c) the use;
 - (d) the nature of the tenure and the term (if any);
 - (e) the total or planned gross floor area, the leasable or saleable area and the number of units and car parking spaces;
 - (f) the average occupancy rate and the average effective rent;
 - (g) if completed, the year of completion or, if under development, the development commencement date, expected completion date and the development cost; and
 - (h) the percentage interest and the value attributable to the group.
- (7) In this section—
- carrying amount** (帳面值), in relation to a property interest, means—
- (a) the amount at which the property interest is recognized in the most recent audited consolidated balance sheet of the group as disclosed in the prospectus of the company after deducting any accumulated depreciation or amortization, as the case may be, and accumulated impairment losses on the property interest;

- (b) if the property interest is acquired after the date up to which the most recent audited consolidated balance sheet of the group was made, the acquisition cost of the property interest;

exempt Type A interest (獲豁免 A 類權益) means—

- (a) any Type A interest (whether or not a mining property interest) which has a carrying amount of less than 15% of the group's total assets;
- (b) if the prospectus contains a report from an independent qualified valuer regarding the valuation, as a business or operating entity, of any mining property interest which has a carrying amount of 15% or more of the group's total assets together with its associated minerals or petroleum resources or assets, the mining property interest;

exempt Type B interest (獲豁免 B 類權益) means—

- (a) if the aggregate carrying amount of all Type B interests with a carrying amount of less than 1% of the group's total assets does not exceed 10% of the group's total assets, any Type B interest which has a carrying amount of less than 1% of the group's total assets;
- (b) if the aggregate carrying amount of all Type B interests with a carrying amount of less than 1% of the group's total assets exceeds 10% of the group's total assets, those Type B interests whose carrying amounts when added together do not exceed 10% of the group's total assets;

group (集團), in relation to a company incorporated under the Ordinance (or a company incorporated outside Hong Kong), the shares in which, or the debentures of which, are proposed to be offered by a prospectus issued generally, means the company and its subsidiaries;

mining property interest (開採物業權益) means a Type A interest which is ancillary to the exploration or extraction of minerals or petroleum products;

property (物業) means land and buildings, whether completed or in the process of development, and includes any fixtures and fittings;

property activities (物業業務) means holding (whether directly or indirectly), purchasing or developing properties for sale, letting or retention as investments;

property interest (物業權益) means any interest in property;

summary Type B interest (以摘要方式披露的 B 類權益) means any Type B interest which—

- (a) is not an exempt Type B interest; and
- (b) has a value of less than 5% of the aggregate value, as determined by an independent qualified valuer, of all Type B interests which are not exempt Type B interests;

total assets (資產總值), in relation to a group, means the total assets of the group as shown in the most recent audited consolidated balance sheet of the group as disclosed in the prospectus of the company;

Type A interest (A 類權益), in relation to a member of a group, means the member's interest in any property that is not the subject matter of any property activities engaged in by the member as at the date of the prospectus;

Type B interest (B 類權益), in relation to a member of a group, means the member's interest in any property that is the subject matter of any property activities engaged in by the member as at the date of the prospectus.

- (8) The conditions in subsection (3) are also applicable to a guarantor corporation (as defined by sections 38(8) and

342(8) of the Ordinance) in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated under the Ordinance or a company incorporated outside Hong Kong.”.

Chief Executive Officer,
Securities and Futures Commission

2011

Explanatory Note

The Securities and Futures Commission may, by notice published in the Gazette under sections 38A(2) and 342A(2) of the Companies Ordinance (Cap. 32) (*the Ordinance*), exempt any class of prospectuses issued by companies from any or all of the requirements of sections 38(1) and 342(1) of the Ordinance, respectively. Section 38(1) of the Ordinance provides that every prospectus issued by or on behalf of a company must set out the reports specified in Part II of the Third Schedule to the Ordinance. Section 342(1) of the Ordinance provides that it is not lawful to issue any prospectus for shares in or debentures of a company incorporated outside Hong Kong unless the prospectus sets out the reports specified in Part II of the Third Schedule to the Ordinance.

2. This Notice exempts certain prospectuses issued by companies from the requirement to set out a valuation report containing the particulars specified in paragraph 34(2) of the Third Schedule to the Ordinance, subject to certain conditions. The prospectuses may contain an overview setting out specified particulars with respect to all property interests which are exempted. Specified particulars with respect to certain property interests can be disclosed in the prospectuses by way of a summary with the full text of the valuation report with respect to each of the property interests being made available for inspection by the public. The prospectuses must contain the full text of the valuation report with respect to each property interest which is not exempted or for which disclosure by way of a summary is not permitted.