

PART XV of the SECURITIES AND FUTURES ORDINANCE
(CAP. 571) (Disclosure of Interests)

Under Section 309 of the Securities and Futures Ordinance (Cap. 571), securities and Futures Ordinance
 U2der Se“Part XV” means Part XV securities and Futures Ordinance;

4. Applications for Category 1, 2 and 3 exemptions

- (vi) if a related corporation of the issuer is listed on the Stock Exchange, whether the chief executive or any director of the issuer is also the chief executive or a director of such listed corporation.

5.3 The SFC will take account of the following matters in deciding whether to grant an exemption for a corporate form CIS that is listed or seeking a listing on the Stock Exchange (i.e. a Category 3 application):

- (i) the extent to which shares of such CIS can be issued/created without reference or consent from existing holders and, repurchased/redeemed, directly or indirectly, at the request of the holder of such shares (which may be subject to conditions or limitations as customarily or commonly found in open-ended CIS or otherwise acceptable to the SFC), taking into account factors including the dealing frequency, the period required for subscription or repurchase or redemption proceeds to be paid and whether shareholders' approval is required for such issue/creation and/or repurchase/redemption. The SFC will make reference to the Code on Unit Trusts and Mutual Funds, which is in force from time to time, in considering whether the above factors are fulfilled; and
- (ii) whether such CIS is authorised by the SFC under section 104 of the SFO.

6. Complete Exemption under section 309(2)

6.1 When a complete exemption is granted under section 309(2) Part XV, in its entirety, will not apply to the corporation concerned and its corporate insiders in relation to that corporation. Disclosures of interests made by an applicant and its corporate insiders in any other jurisdiction in relation to that corporation will not be required to be filed with Hong Kong regulatory authorities.

6.2 The SFC will take into account all relevant facts and circumstances, including those matters set out in paragraph 5 above, in considering an application for a complete exemption.

6.3 An applicant for a complete exemption under Category 1 must satisfy the SFC that only a nominal percentage of the average daily volume of its worldwide share turnover does, or is reasonably anticipated to, take place on the Stock Exchange. A nominal percentage will normally be 1% or less of the average daily volume of an applicant's worldwide share turnover. Average daily volume of worldwide share turnover shall be calculated on the basis of share turnover during the twelve month period immediately preceding the date of any application for exemption.

6.4 The SFC would not normally grant a complete exemption if the applicant corporation or its predecessor has raised capital, or if the applicant intends to raise capital, in Hong Kong. However, the fact that a corporation raises a pro-rata proportion of its capital in Hong Kong, for example through a rights offering or by way of a professional offering in Hong Kong that was part of a worldwide offering, would not automatically result in revocation of its exemption.

6.5 The SFC would normally consider granting a complete exemption to an application made under Category 3, subject to its powers and other matters described in paragraph 2 above, which include the power to grant a partial exemption (as described in paragraph 7

below).

- 6.6 The SFC does not propose to revoke a complete exemption or modify or vary any conditions attached thereto unless there is a material change in circumstances. The SFC will give reasonable notice of its intention to revoke or vary a complete exemption. If, after an application for complete exemption is granted, a corporation's daily volume of share turnover on the Stock Exchange exceeds 1% of worldwide turnover calculated over a 12 month period then the exemption may be varied to a partial exemption, so that the corporation will be required to file any disclosures of interest made in another jurisdiction with the Stock Exchange.

7. Partial Exemption under section 309(2)

- 7.1 When a partial exemption is granted the corporation concerned and its corporate insiders will not be required to prepare registers, maintain records or file with Hong Kong regulatory authorities disclosure of interest reports pursuant to Part XV. An applicant corporation will be required to file with the Stock Exchange any disclosures of interests made in another jurisdiction as soon as is practicable. The Stock Exchange will publish these disclosures in the same way as those it receives from other listed corporations pursuant to Part XV.
- 7.2 Divisions 5, 11 and 12 of Part XV will continue to apply to the applicant corporation and its corporate insiders in the case of a partial exemption. Divisions 5 and 11 of Part XV set out the powers of the listed corporation and the Financial Secretary to investigate listed corporation ownership and related matters and Division 12 sets out the orders that can be made imposing restrictions on shares and equity derivatives.
- 7.3 The SFC will take account of all relevant facts and circumstances, including those set out at paragraph 5 above, in considering an application for a partial exemption but will take particular account of:
- (i) The location of the principal trading market in an applicant corporation's securities. An application for a partial exemption is unlikely to be granted if 20% or more of the applicant corporation's average daily worldwide share turnover during a twelve month period immediately preceding the date of the application for exemption takes place on the Stock Exchange.
 - (ii) The nature and scope of any statutory disclosure of interest obligations that apply to an applicant corporation and its corporate insiders other than those imposed by Part XV. A partial exemption from Part XV will not normally be granted to an applicant corporation if no statutory disclosure of interest obligations comparable to those imposed by Part XV apply to its corporate insiders in any other jurisdiction.
- 7.4 The fact that a corporation has or proposes to raise capital in Hong Kong will not prevent it from obtaining a partial exemption from Part XV.
- 7.5 The SFC does not propose to revoke a partial exemption or modify or vary any of the conditions attached thereto unless there has been a material change in circumstances. Except in exceptional circumstances, the SFC will give six months notice to the listed corporation concerned of its intention to revoke a partial exemption.

Part 2

8. Exemptions for other persons

8.1 In this Part:

- (i) The term “clearing house” does not have the same meaning as that defined in Schedule 1 to the SFO. In this Part, the term “clearing house” means a financial market infrastructure that provides clearing and settlement services for transactions in securities, futures contracts or other financial instruments. It may also provide custody and nominee services.

Category 4 – Exchange participants of the Stock Exchange

- 8.2 Orders placed by exchange participants that are executed on the Stock Exchange are transactions entered into under the name of the exchange participant. Consequently the exchange participant acquires an interest in the securities. Currently, intermediaries who are licensed by or registered with the SFC to conduct Type 1 regulated activity are exempt from the Part XV disclosure obligations for SEHK listed securities if the interests are acquired as agent on behalf of principals who are not related corporations in the ordinary course of business and the interest is transient (he has been interested in the shares for not more than three business days)¹. An exchange participant's interest arising from transactions conducted for an unrelated client on the Stock Exchange is no different and should be treated equally even if the exchange participant is not licensed or registered to conduct Type 1 regulated activity.

Category 5 – Clearing houses that are clearing participants

- 8.3 A clearing house performs clearing and settlement of transactions and may also provide custody and nominee services to beneficial investors. It therefore comes under the disclosure obligations under Part XV. Under current law, recognized clearing houses are not subject to the disclosure obligations in Part XV². Where a clearing house becomes a participant of a recognized clearing house to provide clearing and settlement of transactions as well as depository and nominee services in securities of Hong Kong-listed corporations for investors in its home market, the position of the overseas clearing house is similar to that of a recognized clearing house. Accordingly, the overseas clearing house should be treated equally with respect to its disclosure of interest obligations.

9. Applications for Category 4 and 5 exemptions

- 9.1 An application in respect of Category 4 or 5 should be directed to the SFC's Corporate Finance Division.

10. General Criteria for Category 4 and 5 exemptions

- 10.1 The SFC will take account of the following matters in deciding whether to grant an exemption to an exchange participant of the Stock Exchange (i.e. a Category 4 application):

¹ Section 323(1)(i) of the SFO.

² Section 323(1)(g) of the SFO.

