



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

## A Consultation Paper on the Securities and Futures (Disclosure of Interests - Exclusions) Regulation

### 《證券及期貨(披露權益 – 免除)規例》 諮詢文件

Hong Kong  
May 2002

香港  
2002年5月

## Consultation

This consultation document invites public comments on the draft **Securities and Futures (Disclosure of Interests - Exclusions) Regulation** (“the draft Regulation”) which the Chief Executive in Council proposes to make under section 376 of the Securities and Futures Ordinance (5 of 2002 ) (“the Ordinance”) when it commences.

### Introduction

1. Part XV of the Ordinance requires the disclosure of interests in securities by persons who are interested in 5% or more of the relevant share capital of a listed corporation (referred to in this paper as “substantial shareholders”) and by directors and chief executives of listed corporations (“directors”). Part XV builds upon the provisions of the existing Securities (Disclosure of Interests) Ordinance (Cap. 396) (the “S(DI)O”).
2. Under section 323 of the Ordinance certain interests in shares are to be disregarded for the purposes of Divisions 2 to 4 of Part XV (the principal provisions affecting substantial shareholders). Under section 346 of the Ordinance certain interests in shares are to be disregarded for the purposes of Divisions 7 to 9 of Part XV. Each of these sections provides that interests in shares, that are prescribed by regulations, are also to be disregarded.
3. Under section 376 of the Ordinance the Chief Executive in Council may make regulations covering a range of matters including prescribing interests to be disregarded. The draft Regulation (see Attachment 1) are the regulations that the Chief Executive in Council proposes to make under section 376.
4. There are controls built into the legislative system, whereby any regulations made by the Chief Executive in Council must be subject to negative vetting by the Legislative Council. The Chief Executive in Council first wishes to conduct a public consultation on the terms of the draft Regulation. The SFC therefore now releases the draft Regulation for public consultation.
5. The public may obtain copies of the consultation document and the attachments free of charge at the SFC’s office and on the SFC’s Internet website at <http://www.hksfc.org.hk>.
6. The SFC invites interested parties to submit written comments on the draft Regulation or to comment on related matters that might have a significant impact upon the draft Regulation **no later than 8<sup>th</sup> June 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Regulation.

## **The draft Regulation**

7. Like Part XV of the Ordinance the existing S(DI)O contains provisions permitting the Chief Executive in Council to prescribe interests to be disregarded by Regulations and the existing Securities (Disclosure of Interests)(Exclusions) Regulations (“the existing Regulations”) list a number of interests to be disregarded. The draft Regulation have been prepared having regard to the matters contained in the existing Regulations but reflect the conclusions set out in a Consultation Paper dated June 1998 and a Consultations Conclusions Paper dated April 1999.

8. The June 1998 Consultation Paper proposed that Regulation 3(1)(c), that disregards interests held by trust companies and their subsidiaries that are locally incorporated, should also be removed. The rationale was to promote market transparency, meet international standards and create a level playing field amongst trust companies. (see pages 34 to37 of the Consultation Paper and pages 31 to 37 of the Consultation Conclusions Paper dated April 1999).

9. The SFC also proposed that the existing Regulation 3(2), that disregards interests held by an investment manager in certain circumstances, be removed. In practice, the scope of Regulation 3(2) is very limited. Since an interest in shares seldom arises exclusively because of an investment manager’s power to dispose of shares, the exemption is very rarely used. Investment management agreements usually contain provisions which give managers discretion to vote at general meetings (if clients fail to give instructions), take up rights issues, elect for scrip dividends or take certain other actions. The SFC decided that the existing exemption did not serve any useful purpose as few investment managers could in practice take advantage of it. Its removal would also level the playing field among investment managers.

10. The removal of these exemptions should not be viewed in isolation. There have also been significant changes to the disclosure regime in Part XV itself which include an enlargement of the exemption given to trustees and custodians under section 323(1)(b) and (c), section 346(1)(c), and the creation of an exemption from aggregation of interests of investment managers, trustees and custodians under section 316(5) of the Ordinance.

11. Regulation 4(1)(f) of the existing Regulations has not been replicated in the draft Regulation it appears to serve no purpose. We cannot think of any situation where an interest arises solely on account of a limitation on disposal. The acquisition of those shares would not be exempt because the interest does not arise solely because of a limitation on disposal. If a director can't dispose of the shares we can't see why such an interest should give rise to any obligation to file a notification.

12. Regulation 4(2) and (3) of the existing Regulations have not been replicated in the draft Regulation as they also appear to serve no purpose - there being no obligation in Part XV on directors to give notification of interests in shares and debentures to a corporation other than a listed corporation (and the Exchange Company).

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<sup>2</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)

## **New Policy Initiatives**

13. No new policy changes have been incorporated into the draft Regulation beyond those proposed in the Consultation Paper of June 1998 and the Conclusions Paper of April 1999 and mentioned above.

## **Other matters**

14. Please note that the names of the commentators and the contents of their submissions may be published on the SFC web site and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

15. You may not wish your name to be published by the SFC. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

16. Written comments may be sent -

By mail to: SFC (Disclosure of Interests)  
12/F, Edinburgh Tower  
The Landmark  
15 Queen's Road Central  
Hong Kong

By fax to: (852) 2868 0252

By on-line submission at: <http://www.hksfc.org.hk>

By e-mail to: [Disclosure\\_of\\_Interests@hksfc.org.hk](mailto:Disclosure_of_Interests@hksfc.org.hk)

17. The draft Regulation should be read in conjunction with the Securities and Futures Ordinance itself.

## **Personal Information Collection Statement**

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>2</sup> will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

### **Purpose of Collection**

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
  - to administer the relevant Ordinances, Notice, regulations, codes and guidelines
  - made or promulgated pursuant to the powers vested in the SFC
  - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
  - for research and statistical purposes
  - other purposes permitted by law

### **Transfer of Personal Data**

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Paper. The names of persons who submit comments on the Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

### **Access to Data**

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### **Enquiries**

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer  
The Securities and Futures Commission  
12/F, Edinburgh Tower, The Landmark  
15 Queen’s Road Central, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

# SECURITIES AND FUTURES (DISCLOSURE OF INTERESTS - EXCLUSIONS) REGULATION

(Made by the Chief Executive in Council under section 376(1) of the Securities and Futures Ordinance (5 of 2002))

## 1. Commencement

This Regulation shall come into operation on the day on which Part XV of the Securities and Futures Ordinance (5 of 2002) comes into operation.

## 2. Interpretation

In this Regulation, unless the context otherwise requires -

"conditional offer"(有條件要約) means an offer for shares of a corporation made to the holders of all the shares or all the shares of a particular class other than (in either case) shares held by or on behalf of -

- (a) the offeror;
- (b) the offeror's holding company, the offeror's subsidiary or a subsidiary of the offeror's holding company; or
- (c) any person who has agreed that the offer should not be made in respect of shares he holds,

and subject to the condition that acceptances are received in respect of such proportion of the shares for which the offer is made as specified in, or ascertained by reference to, the terms of the offer;

"recognized occupational retirement scheme" (認可退休計劃) has the meaning assigned to it by section 2(1) of the Inland Revenue Ordinance (Cap. 112).

## 3. Prescribed interests and short positions

(1) The following interests and classes of interest are prescribed for the purposes of section 323(1)(j) of the Ordinance -

- (a) interests of a person in his capacity as beneficiary under a trust constituted exclusively for the purposes of a recognized occupational retirement scheme;
- (b) interests of the Official Trustee;
- (c) interests acquired as a result of the acceptance of a conditional offer being interests subsisting while the condition of the offer remains unfulfilled.

(2) The following interests and classes of interest, or short positions and classes of short position, are prescribed for the purposes of section 346(1)(e) of the Ordinance -

- (a) interests or short positions, in shares or debentures, of any person in his capacity as trustee or personal representative of any trust or estate of which the Official Trustee is also a trustee (otherwise than as custodian trustee) or, as the case may be, a personal representative;
- (b) interests or short positions, in shares or debentures, of a person in his capacity as trustee of, or as beneficiary under, a trust constituted exclusively for the purposes of a recognized occupational retirement scheme;
- (c) interests in shares or debentures, or short positions in shares, which a person is taken to have under section 344(3) of the Ordinance where the corporation referred to in that section is interested in those shares or debentures, or has those short positions, in its capacity as trustee of any such trust as is mentioned in paragraph (b).

Clerk to the Executive Council

COUNCIL CHAMBER

2002

**Explanatory Note**

Part XV of the Securities and Futures Ordinance (5 of 2002)(principal Ordinance) empowers the Chief Executive in Council to prescribe by regulations any exclusions from the requirement to give notification under that Part. This Regulation prescribes exclusions in relation to certain interests and short positions for the purposes of sections 323(1)(j) and 346(1)(e) in Part XV of the principal Ordinance.