



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

**Consultation Conclusions on the Proposed
Amendments to the Guidelines for the Exemption of
Listed Corporations from Part XV of the Securities
and Futures Ordinance (Disclosure of Interests)**

October 2008



Executive Summary

1. On 5 May 2008, the Securities and Futures Commission (the “Commission” or “SFC”) issued a consultation paper (the “Consultation Paper”) inviting comments on the proposed amendments to the Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interests) (the “Guidelines”).
2. The proposed amendments seek to extend the scope of exemption in the Guidelines to cover SFC-authorized open-ended collective investment schemes (“CIS”) which take the form of mutual fund companies or otherwise in corporate form and are listed on The Stock Exchange of Hong Kong Limited (the “Stock Exchange”) – Category 3 exemption.
3. The consultation period ended on 6 June 2008. The Commission received three written submissions from an industry participant, a law firm and an individual.
4. The respondents welcomed and were generally supportive of the proposed changes to the Guidelines.
5. The Commission has also consulted with the Financial Secretary on his views on the proposed revisions to the Guidelines pursuant to section 309 of the Securities and Futures Ordinance (the “SFO”) and the Financial Secretary has indicated that he has no comment thereon.
6. Having considered the comments received and after consultation with the Financial Secretary, the Commission now concludes that the proposed revisions to the Guidelines be adopted, with amendments as discussed in this paper. The revised Guidelines in marked-up format are set out in Appendix A. Amendments made to the proposed revisions to the Guidelines following the close of the consultation have been shaded for easy reference.
7. The revised Guidelines will be published in the Government Gazette and will come into effect on 31 October 2008 following gazettal.

Comments Received and the Commission’s Responses

Scope of Exemption

8. *Public Comments:* All respondents welcomed and supported the Commission’s proposal to extend the scope of exemption in the Guidelines. One respondent commented that the proposed new Category 3 exemption should cover all open-ended corporate form CIS which are listed or seeking listing on the Stock Exchange regardless of whether they are authorized by the SFC. Another respondent further commented that there should be a blanket exemption for all open-ended corporate form CIS which are listed or seeking listing on the Stock Exchange.
9. *Commission’s Response:* Under section 103 of the SFO, CIS that are offered to the public in Hong Kong are required to seek the prior authorization from the SFC unless otherwise exempted. In general, a CIS that is listed or seeking listing on the Stock Exchange has to be authorized before it could be offered and marketed to the public in Hong Kong. Currently, all open-ended CIS which are listed on the Stock Exchange are authorized by the SFC. As such, the SFC would generally expect a



CIS to be authorised by the SFC in considering whether to grant an exemption under the proposed revised Guidelines.

Pursuant to section 309(2) of the SFO, the SFC may exempt a corporation from all or any of the provisions of Part XV under the SFO only upon the application of the corporation. Hence, a blanket exemption for all open-ended corporate form CIS which are listed or seeking listing on the Stock Exchange are not allowed under section 309(2) of the SFO.

General Criteria for Exemption

10. *Public Comments:* One of the respondents commented that the only criteria that the Commission should take into account in considering an application for Category 3 exemption should be whether the relevant CIS is authorised by the Commission under section 104 of the SFO; and the proposed list of criteria under paragraph 4.3(i) of the Guidelines adds an unnecessary layer of uncertainty. Another respondent suggested that the general criteria for exemption as set out under paragraph 4.3(i) should be more specific, e.g. the frequency of dealing acceptable to the SFC should be specified.
11. *Commission's Response:* As discussed in the Consultation Paper, the Category 3 exemption is proposed for corporate form CIS that is open-ended in nature. For the reasons set out in the Consultation Paper, we maintain the view that the open-ended nature is an important factor that the Commission will take into account in determining whether an exemption should be granted under the revised Guidelines.

In general, the Commission will make reference to the Code on Unit Trusts and Mutual Funds ("Code"), which is in force from time to time, in considering the dealing frequency and period required for subscription or repurchase or redemption proceeds to be paid which are expected from an open-ended CIS. The Code currently provides that there must be at least one regular dealing day per month and the maximum interval between the lodgement of a properly documented redemption request for redemption of shares and the payment of redemption money to the holder may not normally exceed one calendar month. To enhance clarity on the factors that the Commission will take into account in determining whether the open-ended criterion is fulfilled, paragraph 4.3(i) of the revised Guidelines have been amended accordingly.

Partial exemption

12. *Public Comments:* One respondent commented that the Guidelines should state what arrangements could be streamlined as a result of granting partial exemption.
13. *Commission's Response:* As mentioned in paragraph 5.5 of the revised Guidelines, the Commission would normally consider granting a complete exemption to an application made under Category 3. However, the Commission reserves the power to grant a partial exemption subject to such conditions as the SFC reasonably considers appropriate.

Conclusion

14. The Commission has consulted with the Financial Secretary on his views on the proposed revisions to the Guidelines pursuant to section 309 of the SFO. The



Financial Secretary has indicated that he has no comment on the proposed revisions to the Guidelines.

15. The Commission will adopt the revisions to the Guidelines as proposed in the Consultation Paper, with amendments as discussed in paragraph 11 of this paper. The revised Guidelines will be published in the Government Gazette and will come into effect on 31 October 2008 following gazettal.
16. The Commission takes this opportunity to thank all parties who have assisted or made contributions during the consultation process. A list of respondents to the Consultation Paper is set out in Appendix B.

Appendices

Appendix A Revisions to the Guidelines (as marked up against the existing Guidelines)

Appendix B List of Respondents to the Consultation Paper

Proposed amendments to the Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interests)

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

Under Section 309 of the Securities and Futures Ordinance (Cap. 571), the Securities and Futures Commission, after consulting the Financial Secretary, publishes these guidelines for the exemption of listed corporations from all or any of the provisions of Part XV the Securities and Futures Ordinance

**Securities and Futures Commission
Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interests)**

1. Definitions

Terms that are defined in section 308 of the SFO and Schedule 1 to the SFO have the same meaning in these Guidelines. In addition:

“corporate insiders” means substantial shareholders, directors, shadow directors and chief executives of a listed corporation;

“CIS” means collective investment schemes;

“corporate form CIS” means a CIS which takes the form of a mutual fund company or otherwise in corporate form;

“Guidelines” means these guidelines made pursuant to Section 309(1) of the SFO;

“SFC” means the Securities and Futures Commission;

“SFO” means the Securities and Futures Ordinance (Cap. 571);

“Part XV” means Part XV of the SFO;

“Stock Exchange” means the Stock Exchange of Hong Kong Limited; and

“substantial shareholder” means a person or corporation who has an interest in shares comprising 5% or more of a listed corporation’s relevant share capital.

2. Nature and Purpose of these Guidelines for Exemption

- 2.1 Part XV requires the disclosure by corporate insiders of their interests in the securities of listed corporations. Disclosure of information to investors and the market is the cornerstone of a fair and orderly securities market. Disclosure of interests of corporate insiders is an important element of an informed market. Except in limited circumstances, the SFC would not propose to exempt a listed corporation and its corporate insiders from the obligation to provide disclosure of interests to the market. Circumstances where the SFC will consider granting an exemption fall into ~~two~~three categories.

Category 1 – Dual listing

- 2.2 For some corporations, either already listed or seeking a listing, the principal share trading market in their securities exists or will exist on a stock exchange other than Hong Kong. In some cases either no share trading or only nominal trading will take place on the Stock Exchange. In other cases the corporate insiders of such corporations will be subject to statutory disclosure of interest obligations in another jurisdiction that are comparable to those of Part XV. Requiring compliance by these corporate insiders with Part XV may result in additional costs without contributing to an informed market for the shares of the relevant corporation.

Category 2 – Issuers of securities other than shares

- 2.3 A corporation that has any of its securities listed on the Stock Exchange is regarded as being listed and its corporate insiders come under disclosure obligations under Part XV even if shares in the corporation are not listed on the Stock Exchange. Requiring compliance by the corporation and its corporate insiders with Part XV may result in additional costs without contributing to an informed market for the securities that are listed.

Category 3 – Open-ended CIS in corporate form

- 2.4 An open-ended CIS, which is in corporate form and listed on the Stock Exchange, is technically a listed corporation under Part XV and its corporate insiders therefore come under the disclosure obligations under Part XV. On the basis that the total number of outstanding shares of an open-ended corporate form CIS is constantly changing, due to the frequent subscription and redemption of shares by investors, requiring compliance by an open-ended corporate form CIS and its corporate insiders with Part XV may result in additional costs without contributing to an informed market for its shares.

Enabling provisions and general qualification

- 2.4-5 Section 309(2) of the SFO gives the SFC the power to exempt any listed corporation from all or any of the provisions of Part XV, subject to such conditions as it thinks fit, having regard to the Guidelines. Section 309(2) is the enabling provision for exemptions granted in circumstances falling within Categories 1, 2 and ~~2-3~~.
- 2.5-6 The Guidelines set out the criteria that the SFC will take into account when deciding whether to grant an exemption. The Guidelines are not exhaustive. They are simply intended to assist applicants in understanding the matters that the SFC will take into consideration when deciding whether to exercise its discretion to grant an exemption. They may be modified or varied as circumstances require. Similarly an exemption, once granted, can be revoked or any conditions attached modified or varied by the SFC as circumstances change.
3. Application for an Exemption under section 309(2)
- 3.1 Only a listed corporation or corporation applying for listing may apply, in writing, to the SFC for an exemption from Part XV under section 309(2).
- 3.2 An application in respect of Category 1 or Category 2 must be directed to the Corporate Finance Division of the SFC. An application in respect of Category 3 must be directed to the Investment Products Department of the SFC.
- 3.3 The applicant, when deciding what matters to include in its written application, should have regard to the Guidelines. The SFC may request additional information or make such enquiries as it considers appropriate when considering any application.
- 3.4 These Guidelines provide for complete or partial exemptions. Exemptions, whether complete or partial, may be made subject to such conditions as the SFC reasonably considers appropriate.
4. General Criteria for Exemption under section 309(2)
- 4.1 The SFC will take account of the following matters in deciding whether to grant an exemption for corporations with a dual listing (i.e. a Category 1 application):
- (i) the volume of the applicant corporation's worldwide share turnover (or in the case of a new applicant for listing, the anticipated turnover) that takes place on the Stock Exchange and on any other stock exchange or securities market;
 - (ii) the extent to which an applicant corporation's corporate insiders are subject to statutory disclosure requirements in any other jurisdiction that are comparable to those existing in Hong Kong; and
 - (iii) the reasons for the applicant corporation listing in Hong Kong including whether it intends raising capital or not.

- 4.2 The SFC will take account of the following matters in deciding whether to grant an exemption for a corporation and its corporate insiders seeking to issue securities other than shares that are to be listed on the Stock Exchange (i.e. a Category 2 application):
- (i) whether the issuer has raised, or proposes to raise, publicly traded equity capital in Hong Kong;
 - (ii) whether shares of the issuer are traded, or are proposed to be traded on the Stock Exchange;
 - (iii) whether an exemption has previously been given under section 309 for securities that the issuer has issued or proposes to issue and to list on the Stock Exchange;
 - (iv) whether the underlying shares of the securities that it proposes to issue are shares of the issuer or a member of the issuer's group;
 - (v) whether the securities that it proposes to issue are convertible into shares of the issuer or a member of the issuer's group; and
 - (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.

4.3 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.

5. Complete Exemption under section 309(2)

- 5.1 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.
- 5.2 The SFC will take into account all relevant facts and circumstances, including those matters set out in section 4 above, in considering an application for a complete exemption.
- 5.3 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.
- 5.4 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.
- 5.5 [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 section 2 above, which include the power to grant a partial exemption \(as described in section 6 below\).](#)
- 5.6 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.
6. Partial Exemption under section 309(2)
- 6.1 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.

- 6.2 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 sets 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.
- 6.3 The SFC will take account of all relevant facts and circumstances, including those set out at section 4 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.
- 6.4 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.
- 6.5 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.

Appendix B

List of Respondents to the Consultation Paper

Charles Cheng

Clifford Chance

Deutsche Bank

The respondents above have no objection to publication of their respective names and content of their submissions (in alphabetical order).