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Disclosure of Interests Regime in Hong Kong (Summary)

香港的權益披露制度（摘要）

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Disclosure of Interests Regime in Hong Kong

Currently, Part XV of the Securities and Futures Ordinance sets out the disclosure of interests requirements with respect to listed corporations in Hong Kong. To enhance transparency for investors, the disclosure of interests regime requires holders of a 5% or more long position in a Hong Kong listed corporation to disclose to the market upon (i) such person's long position reaching 5%, and each time the long position crosses a whole percentage level or drops below 5%, (ii) such person's short position reaching 1%, and each time the short position crosses a whole percentage level or drops below 1%, and (iii) a change in nature of interest of such person's position.

Hong Kong is known as an international financial centre with a highly competitive economic and business infrastructure and a well-developed regulatory framework. In line with the objective to facilitate the long-term development of Hong Kong's financial services industry and enhance Hong Kong's position as an international financial centre, the Financial Services Development Council ("FSDC") proposes a reform of the disclosure of interests regime in Hong Kong. There is a real opportunity to remodel the current disclosure of interests regime without adversely affecting, and in many ways improving, market transparency.

There is broad consensus amongst practitioners that the Hong Kong disclosure of interests regime contains some of the most detailed and overly complex rules in the world, and the risk of inadvertently breaching them and risking criminal prosecution is high. Given the complexity of the disclosure of interests regime in Hong Kong, market participants (including both local intermediaries that actively trade the Hong Kong market as well as global financial intermediaries) are required to implement extensive compliance policies and complex IT infrastructure in order to comply with their disclosure obligations. Many investors actually decide to limit their investment in the Hong Kong market below the Hong Kong disclosure threshold so as to avoid regime altogether in view of the complex rules and the potential for criminal sanctions.

Also, considering the complexity of the disclosure of interests regime, the interest levels actually disclosed by investors for market transparency purposes is not as meaningful for the investing public as had originally been intended. Amongst other things, the investing public would need to have a thorough understanding of the disclosure rules (and exemptions) to be able to decipher many filings.

The Securities and Futures Commission ("SFC") issued an "Outline of Part XV of the Securities and Futures Ordinance – Disclosure of Interests" in March 2003 to provide guidance. The outline was revised on May 22, 2014 to, among other purposes, address comments and queries relating to the disclosure of interests regime expressed by market participants relating to the complexity of the disclosure of interests regime. However, providing further guidance based on existing disclosure of interests provisions or amending just some of the provisions may not be able to completely deal with the market concerns.

Taking into account the above, the FSDC would like to highlight some (but by no means all) areas of potential improvement within the disclosure of interests regime:

(i) to provide an aggregation exemption in relation to the definitions of "relevant parties" and "relationships" of a corporate group as well as the approved jurisdiction requirement for "qualified investment managers";

(ii) to simplify the de minimis exemption for acquisition/disposal of an interest in shares;

(iii) to align the filing period for buy and sell transactions;

(iv) to simplify the approved lending agent regime within the stock borrowing and lending reporting regime;

(v) to exempt custodians with regard to securities held in custody for clients or authority to exercise voting rights of the securities;

(vi) to provide a qualified overseas schemes exemption for certain collective investment schemes, pension funds or provident fund schemes;

(vii) to align the timing of substantial shareholding notifications with the time of exercising the right of use over clients' shares by securities firms/banks/investment banks etc;

(viii) to exempt cash settled derivatives so that they need not be included in the reportable interest or short position;

(ix) to expand the security interests exemption to cover all types of lenders or to exempt the holder of a security interest until the security interest is realised and legal title has passed to the lender;

(x) to make a disclosure of interests filing by sellers and buyers of a rights issue in order to disclose their dealings on the date of agreement of the sale and purchase of such rights;

(xi) to disclose interests held through portfolios (funds and managed accounts) by the entity first granted the discretionary investment power within the same fund management group, and to take into account such interests for the purpose of calculating the deemed interest of the parent company of both entities;

(xii) to expand the wholly owned group exemption to cover all majority owned subsidiaries (not necessarily wholly owned subsidiaries) and to remove the distinction between initial filings and ongoing filings;

(xiii) to limit the scope of recognising conditional interests (i.e. right to the shares is conditional) to circumstances where the condition can be influenced by the person interested in the shares; and

(xiv) to decriminalise breaches of the DOI regime unless there is criminal intent.

The proposed reform in Hong Kong could also be a step towards greater harmonisation of disclosure rules in the world's key markets.

Given the breadth of proposed changes and areas for development within the current disclosure of interests regime, a rewrite of the disclosure of interests regime would be a welcome reform. This development would come at a perfect time as an increased investor base is being identified of late, especially with the recent launch of Shanghai-Hong Kong Stock Connect in November 2014 and other regional initiatives to promote listings in Hong Kong. In addition to the disclosure of interests regime, other substantial shareholding disclosure and limits regimes (for example the Securities and Futures (Contracts Limits and Reportable Positions) Rules) may also be reviewed to further streamline the overall regulatory framework in Hong Kong.

香港的權益披露制度

目前，《證券及期貨條例》第 XV 部訂明有關香港上市法團的權益披露規定。為了提高有投票權股份權益的透明度，使投資者得知相關資料，權益披露制度規定，任何人如持有某香港上市法團 5%或以上的好倉，在以下情況下便須向市場披露相關資料：(i)首次持有 5%的好倉，以及每逢增持好倉至某個跨越 5%水平的百分率整數或減持好倉至 5%以下；(ii)持有的淡倉達 1%，以及每逢增持淡倉至某個跨越 1%水平的百分率整數或減持淡倉至 1%以下；以及(iii)所持股份的權益性質有變。

香港是舉世聞名的國際金融中心，經濟及商業基礎設施出類拔萃，規管架構也妥善完備。金融發展局(金發局)建議改革香港的權益披露制度，以助促進香港金融服務業的長遠發展，鞏固香港國際金融中心的地位。也是針對這個目標。金發局認為，現在是重塑現行權益披露制度的良機，這樣做不但無損市場透明度，相反可以從多方面將之提高。

金融服務業的從業員普遍認為，與世界各地的權益披露制度比較，香港有些披露規則極其繁複，市場參與者稍一不慎，便會誤墮法網，遭受刑事檢控。香港的權益披露制度複雜，市場參與者(包括活躍於香港市場的本地中介機構及環球金融中介機構)要履行披露責任，必須實施全面的遵規政策，以及使用複雜的資訊科技基礎設施。事實上，由於規則複雜，容易令人誤墮法網，不少投資者都決定將本地市場的投資限於香港所訂的披露界線以下，藉此徹底規避有關權益披露制度。

再者，規定投資者根據訂明的持倉水平披露權益，原意是要提高市場透明度。但礙於權益披露制度複雜，對投資大眾來說，有關披露實際上未必能達到規定原意。其中，投資大眾必須透徹了解披露規則(及豁免項目)，才能細分明辨眾多的存檔通知。

二零零三年三月，證券及期貨事務監察委員會(證監會)發出《〈證券及期貨條例〉第 XV 部的概要——披露權益》，以提供指引。為回應市場參與者因權益披露制度複雜而提出的意見及查詢，以及處理其他事宜，證監會在二零一四年五月二十二日修訂該指引。不過，即使根據現行的權益披露條文提供更詳細的指引，或修訂某些權益披露條文，都未必能夠完全處理市場的疑慮。

基於以上所述，金發局提出探討權益披露制度內某些(但非所有)可更臻完善的地方：

(i) 因應公司集團“有關各方”及“關係”的涵義，以及對於“合資格投資經理”的核准司法管轄區規定，提供彙總豁免；

(ii) 針對股權權益的取得／處置，簡化就微不足道的改變而批給豁免的規定；

(iii) 把買入及賣出交易的存檔通知期劃一；

(iv) 簡化證券借貸申報制度中有關核准借出代理人制度的規定；

(v) 就代客戶保管和持有證券或有權行使該等證券之投票權的保管人給予豁免；

(vi) 為某些集體投資計劃、退休基金或公積金計劃提供合資格海外計劃可享有的豁免；

(vii) 把提交重大持股量通知的時間與證券行／銀行／投資銀行等行使權利以使用客戶股份的時間劃一；

(viii) 就以現金結算的衍生工具給予豁免，使市場參與者無須披露所持有的這類衍生工具的權益或淡倉；

(ix) 擴大獲豁免保證權益的適用範圍，使各類借出人都可獲得豁免；或豁免保證權益持有人的披露責任，直至持有人取得保證權益及相關的法定所有權轉移給借出人為止；

(x) 規定供股的買賣雙方須在雙方達成股權買賣協議當日披露權益並提交存檔通知；

(xi) 同一基金管理集團內首個獲賦予酌情投資權的實體，須披露所管理投資組合(基金及受管理帳戶)的權益；就首個及其他獲賦予酌情投資權的實體的母公司而言，在計算其當作持有的權益時，也須計及該等權益；

(xii) 把全資擁有公司所屬集團的豁免的適用範圍擴大至涵蓋所有擁有過半數股權的附屬機構(不一定要是全資附屬機構才可獲得豁免),並取消初次存檔通知與後續存檔通知的區別;

(xiii) 就有條件的權益(即股份權利受條件限制)而言,規定只有在該條件可受權益持有人影響的情況下,才須把有關權益視作該人的權益;以及

(xiv) 把違反權益披露制度的行為非刑事化,但證實有犯罪意圖者除外。

全球主要金融市場的披露規則日趨協調統一,在香港推行擬議的改革可作為開展相關工作的踏腳石。

本報告建議對現行的權益披露制度作出的改動,不但範圍廣泛,而且項目繁多,因此,重訂制度,全面改革,應是眾所樂見。滬港通已經在二零一四年十一月開通,加上當局又在區內推出了鼓勵企業來港上市等多項措施,本港市場的投資者基礎近期不斷擴大,故現正是開展有關工作的大好時機。除了權益披露制度之外,當局也可檢討其他重大持股量披露及限量制度(例如《證券及期貨(合約限量及須申報的持倉量)規則》),以進一步理順香港的整體規管架構。

About the Financial Services Development Council

The Hong Kong SAR Government announced in January 2013 the establishment of the Financial Services Development Council (FSDC) as a high-level and cross-sector platform to engage the industry and formulate proposals to promote the further development of Hong Kong's financial services industry and map out the strategic direction for development. The FSDC advises the Government on areas related to diversifying the financial services industry, enhancing Hong Kong's position and functions as an international financial centre of our country and in the region, and further consolidating our competitiveness through leveraging the Mainland to become more global.

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關於香港金融發展局

香港金融發展局於二零一三年一月由特區政府宣布成立，為高層和跨界別的平台，就如何推動香港金融業的更大發展及金融產業策略性發展路向，徵詢業界並向政府提出建議。金融發展局會集中研究如何進一步發展香港金融業，促進金融業多元化，提升香港國際金融中心在國家和地區中的地位和作用，並背靠國家優勢、把握環球機遇，以鞏固本港的競爭力。

聯絡我們

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