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OUTLINE OF PART XV
OF THE SECURITIES AND FUTURES ORDINANCE (CAP. 571) (“SFO”) -
DISCLOSURE OF INTERESTS

(Published by the Securities and Futures Commission under section 5(4)(f) of the SFO)

This outline is intended to be a practical guide to the situations in which a notice will have to be filed, a code, a guideline, or an exhaustive examination of Part XV nor can it be relied upon as an authoritative legal opinion on the contents of Part XV¹. The disclosure obligations depend upon the facts in each case and you should seek detailed legal advice if you are in doubt.

This revision is prompted by the commencement of Part 4 of the Securities and Futures (Amendment) Ordinance on 3 July 2017 to implement mandatory electronic filing for DI notices and reports under Part XV.

The prescribed forms and other useful materials relating to the disclosure regime under Part XV are published on our website at the following address: <http://www.sfc.hk/web/EN/rule-book/sfo-part-xv-disclosure-of-interests/> (Under Rules and standards / Securities and Futures Ordinance Part XV - Disclosure of Interests).

1. INTRODUCTION

1.1 Overview

1.1.1.



Recent legislative amendments – SFO

1.1.8 Part 4 of the Amendment Ordinance 2014, enacted on 26 March 2014, amends the SFO to require notifications and reports under Part XV to be filed electronically. Part 4 of the Amendment Ordinance 2014 was brought into operation on 3 July 2017



you have difficulties with downloading the forms from the HKEX website please send an email describing the problem that you have experienced to DI-Filings@hkex.com.hk.

1.3 Where can I see the information filed with the Stock Exchange under Part XV ?

1.3.1



2.1.2 the purposes of Part XV if you have an interest of any kind whatsoever in the shares (s.322(2))⁷. For example :

- (i) If your name is listed in the register of members maintained by a corporation.
- (ii) If the shares are held for you by another person such as your stockbroker, a custodian, a trustee or a nominee (e.g. in the Central Clearing and Settlement depository).
- (iii) If you are deemed by Part XV to be interested in the shares (see paragraph 2.2 below).



- (i) provided, or undertaken to provide, shares or other property for the purpose of the trust;
- (ii) entered into a reciprocal arrangement or understanding with another person leading to the creation of the trust, or
- (iii) procured another person (e.g. a solicitor) to create the trust,

and -

- (a) whose consent is required as a condition of any trustee exercising his discretion in connection with the trust property; or
- (b) in accordance with whose wishes any trustee is :
 - (A) accustomed, or
 - (B) would be expected,to act.

2.2.6 A person is a founder even though the property is provided indirectly or the trust is created indirectly. Also it does not matter that the arrangements, understanding, requirement to obtain consent, or wishes referred to are not legally enforceable.

2.2.7 Accordingly, if the trustees of a discretionary trust are directly interested in shares of a listed corporation as trustees of the discretionary trust, or are taken to be interested in such shares by the application of the aggregation rules in s.316(2), then the founder of the discretionary trust is also taken to be interested in all such shares.

2.3 What are derivative interests and “underlying shares”?

2.3.1

order to ensure that all interests and short positions (see below) in shares of a listed corporation are disclosed. The term includes any contract or financial instrument -

- (i) giving a person rights, options or interests in, or in respect of, the underlying shares;
- (ii) giving a person rights, options or interests in, or in respect of the rights, options or interests arising under a contract or financial instrument referred to in paragraph (i); and
- (iii) whose price or value is calculated wholly or partly by reference to the price or value, or a change in the price or value, of the underlying shares or any rights, options or interests in the underlying shares.

2.3.2 Hence contracts or financial instruments such as those immediately below are

-

- (i) warrants, callable bull bear contracts and other structured products;
- (ii) convertible bonds, exchangeable bonds and other equity linked instruments (equity linked deposits, funds, notes, certificates or other securities);
- (iii) American Depositary Receipts ADRs and Hong Kong Depositary Receipts
- (iv) stock options and stock futures;



- (v) over-the-
- (vi) a derivative over another equity derivative; and
- (vii) credit derivatives that have reference obligations or deliverable obligations which are exchangeable or convertible bonds,

regardless of whether they are physically settled, by delivery of the underlying shares, or cash settled⁸. Depending on the particular derivative you hold you may have rights to acquire shares, rights to require another person to buy shares, or a right to a sum of money depending on the price of certain shares.

2.3.3

It refers



- (i) you have a right to take the underlying shares;
- (ii) you are under an obligation to take the underlying shares;
- (iii) you have a right to receive from another person an amount if the price of the underlying shares is above a certain level;
- (iv) you are under an obligation to pay another person an amount if the price of the underlying shares is below a certain level; or
- (v) you have any of the rights or obligations referred to in (i) to (iv) above embedded in a contract or instrument.

2.4.2



- (ii) the number of shares by reference to which the amount payable under the derivatives is derived or determined; or
- (iii) (in the case of stock futures contracts) the contract multiplier times the number of contracts you hold.

(See further section 322(9) and 322 (11) to (13))

2.5.2 If any party to a derivative can choose whether to settle in cash or by delivery then paragraph 2.5.1 (i) should be used to work out the number of shares in which you are interested. If it is not possible to determine precisely the number of shares in which you are taken to be interested (or have a short position) at the date when you first acquire an interest in the underlying shares through an equity derivative then you should still file a notice if the number of shares in which you are interested may exceed 5% or more of the issued shares of the listed corporation concerned. For example, if the number of shares that you will receive under an equity derivative is determined by the price of the shares on a given date in the future (and there is a minimum number that you are bound to get) then if that minimum number (together with any other shares in which you are interested) exceeds 5% or more of the issued shares of the listed corporation concerned a duty of disclosure arises on entering into the derivative. If the derivative specifies only a maximum then disclose the maximum figure. If the derivative specifies both a maximum and a minimum then disclose the figure which is most appropriate.

2.5.3 Continuing the example in paragraph 2.3.3 - assume that every 10 European Style Cash Settled Call Warrants 2001-2002 give the warrant holder the right to receive the cash equivalent of the average of the closing prices of one ordinary share in XYZ Ltd on the 5 business days on which quotations are available immediately preceding the exercise date minus the exercise price. If you hold 10,000,000 warrants, you will be taken to be interested in 1,000,000 shares.

2.5.4. We understand that paragraph 2.5.2 of the August 2003 version of the outline has been read to mean that a person need not file a notice if he cannot determine the precise number of shares in which he is taken to be interested (or have a short position) through an equity derivative even though it is clear that this interest will bring the total number of shares in which he is interested to more than 5%, or cause his total interest to cross a whole percentage level above 5%. We have adjusted the text of paragraph 2.5.2 to explain the requirements of the SFO. We would also like to clarify that if an equity derivative gives a person an interest in 5% or more of the shares of a listed corporation, or causes his interest to cross a whole percentage level above 5%, he comes under a duty of disclosure under s.310 of the SFO. The question of the precise number of shares that he should state on the form, as required by s.326(1)(b) or (c), is a separate issue and does not detract from the duty of disclosure. If you are not sure of the precise number of shares to state on the form you should provide your best estimate of the number of shares in which you are interested. The same principle applies to disclosures in relation to short positions.

Variance derivatives

2.5.5 We take the view that an interest in shares is not created by the holding, writing or issuing of variance derivatives where the price or value of the derivative and any payment under the derivative i



Accordingly, the holder, writer or issuer of the variance derivatives should not disclose having acquired an interest in the underlying shares of variance derivatives, or there being a change in the nature of his interest in such shares on writing or issuing the variance derivatives, provided payment under the derivative is solely linked to the volatility of the underlying shares.

2.6 How and when do I calculate the percentage figure of my interest ?

How many shares am I interested in ?

2.6.1 Firstly, you should add up all the shares of the listed corporation concerned (of the same class) in which you are interested in or are deemed to be interested in (see paragraphs 2.1 to 2.5). If you have bought and sold several blocks of shares on the same day you cannot normally deduct the number of shares that you sold from the shares that you bought to determine the number of shares in which you are interested at the end of that day. The reason for



Time of calculation percentage figure

2.6.4 From a practical standpoint, the percentage figure of your interest in shares (and your short position) can normally be determined by reference to the shares in which you are interested at the close of trading on the Stock Exchange at the end of any trading day. However, this should not be viewed as an endorsement to window dressing practices with the intention of adjusting the end of day position to avoid disclosure.

Standard situation (long positions in shares)

2.6.5 You should use the following formula to determine the percentage figure of your interest in shares in a listed corporation

$$\frac{\text{the total number of shares (issued or unissued) in which you are interested}}{\text{number of shares of the listed corporation of the same class in issue}} \times 100$$

2.6.6 The number of shares of the listed corporation in issue can be found on the HKEX website <http://www.hkex.com.hk>.¹² Go to the HKEX Home Page which is <http://www.hkex.com.hk/eng/index.htm>

and enter the name or stock code of the listed corporation concerned. The number of issued shares at a specified date is shown together with other useful information relating to the listed corporation. To work out the *percentage level* of your interest you simply round down the percentage figure of your interest to the next whole number. The date for calculating this percentage is the date of the occurrence of the relevant event (see paragraph 2.7) and the total number of shares in which you are interested, and the number of shares of the listed corporation in issue, should be determined on that day.

2.6.7 Please note that the denominator (the number of shares below the line) is not increased simply because there are a number of financial instruments such as options, warrants, convertible bonds issued in respect of unissued shares of the same class in issue.

2.6.8 In the forms you are asked to round the percentage figure of your interest to 2 decimal places. This is because a higher level of accuracy is of little interest to investors. However, you do not need to round the percentage figure of your interest to 2 decimal places when working out whether you have to file a notice. Hence if you are interested in 4.99999% of a listed corporation you do not have to round this to 5.00% and thereby come under a disclosure obligation.

¹² Effective from January 2009, listed issuers are required by Listing Rules to publish a Monthly Return to provide an update on a fixed monthly basis the movement of its issued capital, and to publish a Next Day Disclosure Return in respect of changes in issued share capital, in some cases by 8:30 a.m. the next business day and in other cases subject to a 5% de minimis threshold and certain other criteria. All Monthly Returns and Next Day Disclosure Returns submitted according to Listing Rules will be published on the HKEXnews website. The public will have access to the latest number of issued shares disclosed by the listed issuers by retrieving the respective Monthly Returns and Next Day Disclosure Returns.



Different classes of shares and “H” shares

2.6.9 If there are more than one classes of shares issued by the listed corporation concerned, the percentage figure of the shares in which you are interested should be calculated as a proportion of the number of issued shares of the class in which you are interested taken separately from other classes. Whether shares are divided into different classes is a question of fact. However, differences in rights of shareholders will normally mean that shares are of

on the Stock Exch

interests in the underlying shares of equity derivatives, should only be added together if the shares are of the same class.



2.7 When do I have to give a notice ?

2.7.1 You only have to file a notice on the occurrence of certain events - called
Relevant events include :

- (i) When you first become interested in 5% or more of the shares of a listed corporation (i.e. wh



2.7.4 However a duty of disclosure may also arise in a range of other situations - principally where aggregation provisions, or exemptions, cease to apply e.g. where a person is taken to be interested in shares in which a controlled corporation is interested and the corporation ceases to be a controlled corporation (see s.316(6)); and where subsidiary covered by the group exemption ceases to be a wholly owned subsidiary (see s.313(11)). See also paragraph 2.12.9 below.

Duties of disclosure resulting from Share Repurchases or Placements

2.7.5 A duty of disclosure may also arise due to actions taken by others. For example, if the listed corporation concerned bought back shares and as a result the number of shares in issue reduced which leads to the percentage level of your interest increasing, you would come under a duty of disclosure. On the question of the timing of the disclosure, a notice should be filed within 3 business days of the date that the shares are cancelled. They will be cancelled immediately following completion of the share repurchase. However, as will be seen below (paragraph 4.1) the time allowed for reporting the change will only run from the date that you became aware of the facts that lead to the change in the percentage level of your interest.

2.7.6



Disclosure of short positions when a company is first listed

2.7.9 If you have a 5% long position in shares of a company when it is first listed then (1) you come under a duty of disclosure; and (2) when you fill in the form you will have to disclose details of your interest in the shares and also any short position that you have. However, if you do not have a notifiable interest, the existence of a short position will not of itself prompt a duty of disclosure on first listing of a company - even if your short position is 3% short, 4% short etc. This reflects the important distinction between (1) whether there is a notifiable event giving rise to a duty of disclosure and (2) what you have to disclose when there is a notifiable event.

Death of an individual

2.7.10 If an individual substantial shareholder dies this does not give rise to a duty of disclosure. However, an executor will acquire an interest in the shares in which the deceased



2.7.15 When the liquidator or provisional liquidator transfers the interest in the shares to the creditors, any creditor acquiring an interest of 5% or more in the shares, and the liquidator/provisional liquidator should file a notice.

2.7.16 We take the view that you do not come under a duty of disclosure when you cease to be interested in shares of a listed corporation by virtue only of the fact that the corporation ceases to be a listed corporation (i.e. if you remain interested in the shares of the corporation). However, if you cease to be interested in the shares of the listed corporation before it ceases to be a listed corporation, or at the point that it ceases to be a listed corporation, then you will still come under a duty of disclosure. The rationale for this is that the disclosure regime is to provide transparency concerning investors in listed companies and the need for this transparency drops away when the company ceases to be listed.

2.8 [Paragraph 2.8 concerned disclosure obligations on commencement of the SFO. It has been deleted from this revision of the outline as spent.]

2.9 What is **Y** **%** **□**



(ii)



interest has not changed is different from the percentage level of his interest in the last disclosure made by him, then a duty of disclosure arises unless an exemption applies (see further section 2.12.16).

2.9.8 If you create an equitable mortgage over shares¹⁹ or charge shares you must file a DI form using code 1305 to describe the relevant event. No details of the consideration need be given (as the shares are not being bought or sold). Your capacity would remain as

creation of a security interest will be more precisely described. The person taking a security interest should use code 1004 or 1104 to describe the relevant event and code 2106 to describe the capacity in which it acquired the interest.

Miscellaneous issues

2.9.9 It has been suggested that section 322 only applies to interests in shares that are in existence at the relevant time. We do not agree. Under section 322(1) a reference to an interest in shares is construed as including a reference to an interest of any kind whatsoever in
ed

to which section 322 applies. Furthermore, section 322 refers extensively to equity derivatives

308 includes the shares by reference to which the price or value of the equity derivatives is

definition). Finally, section 322(15) makes it clear that it is immaterial whether the shares in which a person has an interest or short position are unidentifiable.

2.9.10 It has also been suggested that where the particular shares to be sold under a
will be no cha
Section
322(15) makes it clear that it is immaterial whether the shares in which a person has an
interest or short position are unidentifiable. See also the definition of



or involved at the time of the relevant event not the shares which you already had. Where the relevant event is prompted by a transaction that forms part of a series of transactions effected on the same day, the details of the relevant event that you give should relate to all shares in which you acquired an interest, ceased to have an interest or the nature of your interest changed on that day as a result of that series of transactions.

Sales and purchases of shares

2.10.2 If an on-exchange transaction prompts disclosure the highest price per share and the average price per share must be disclosed. Similarly, in the case of an off-exchange transaction the average consideration per share and the nature of the consideration given or received must be stated.

2.10.3 If you have entered into a single transaction that takes you through a



Example

2.10.6 We have set out below an example of how to complete Box 14 of Form 1. Assume that you already own 4,500,000 shares in the listed corporation or 4.5% of the shares in issue. On 31st December 2003 you purchased (through the Stock Exchange) 400,000 shares for HK\$800,000 and 100,000 shares for HK\$210,000 (all shares to be held beneficially) increasing your total shareholding to 5%. As the two transactions are a series of transactions on the same date the details of the relevant event that you give in Box 14 should relate to the purchase of 500,000 shares (the order for 400,000 shares plus the order for 100,000 shares). You should complete Box 14 in the following manner. The codes to be used are described in the directions and instructions for completing each form.

Details of relevant event



The capacity in which you held the shares that gave rise to the relevant event

2.11.2

capacity in which you were acting when you bought or sold the shares which gave rise to the duty to file a notice (or there was a change in the nature of your interest). If you sold shares, the capacity relates to the capacity in which you held the shares that were sold i.e. you should

complete the column lab
your interest you should complete both.

2.11.3 Normally, a single transaction will take your interest from, say, 5.9% to 6.1% and it is the capacity in which you acted in relation to that single transaction that must be disclosed. However, if you are a financial institution conducting a range of transactions on any day you should isolate the transaction, or series of transactions, that gave rise to the duty of disclosure and enter the capacity in which you acted in that transaction or series of transactions. Hence, if you are acting in multiple capacities on any one day you should

**2.12.2**

Most exemptions do not apply to a short position that you hold because of the nature of a short position. Only the exemptions mentioned in paragraphs 2.12.3, 2.12.4, 2.12.5, 2.12.7, 2.12.8, 2.12.9 and 2.12.11 apply to short positions. The SFC has power to exempt persons from a.696.()-19(2f)-166(t4(nd)y19(pe))-246(t4)-23717(provis)-()-169(e) t4P()-(ra)7t18



Last notification”

Event : (1) (2) (3) (4) (5) (6) (7) (8)

(1) not made under s.313(1)(c).

(2) You1 0./F2 12 Tf1 0 0 1 144.02 366.29 Tm0 g0 G[(You1 0./F2 12 Tf1 0 0 1 144.02 366.29 Tr



s for the *de minimis* exemption.

(4) You lend 0.3%. There is therefore a change in the nature of your interest in 0.3% of the shares. The percentage figure of shares in which your interest which is unchanged drops through the 6% band to 5.9%. This would normally be discloseable. However, it is exempt as all the conditions for the *de minimis* exemption are present.

(5) You buy 0.4% taking your interest to 6.6%. This is not notifiable because the percentage figure of your interest has not passed through a percentage level.

(6) You lend another 0.5%. There is therefore a change in the nature of your interest in 0.5% of the shares. The percentage figure of shares in which your interest is unchanged since the last notification drops through the 6% band from 6.3% to 5.8% (we use 6.3% as the starting point rather than 6.6% because there is already a change in the nature of your interest in the 0.3% which have already been lent). This loan is therefore exempt. All the conditions for the *de minimis* exemption are present. The percentage figure of the shares in which

(7) You lend a further 0.2%. This transaction is notifiable as a change in the nature of your interest under s.313(1)(d). This is because (1) the percentage level of the shares in which your interest is unchanged is a lower percentage level than your interest at the time of the last notification (5.45% as opposed to 5.65%) so that the same percentage level exemption is not available s.313(8)(a)) and (2) (turning to the exemption s.313(8)(b)) the percentage figure of the shares in which your interest is unchanged is now more than 0.5% from the percentage figure of your interest at the last notification (i.e. 6.2%) and hence the *de minimis* exemption does not assist.

(8) The borrower returns 0.7% of the shares. However the percentage figure of the shares in which your interest is unchanged remains at 5.6%. This is because the

due to a change in the percentage level of the interest (notifiable under s.313(1)(d)) the exemption s.313(8)(b) does not apply.





transac



2.12.9.8 The topic of how the group exemption affects the obligation to disclose changes in the nature of an interest is covered in paragraph 2.13.18 below in the context of securities borrowing and lending where the issue principally arises. The principle is that transactions between corporations that are members of a group need not be disclosed whilst transactions between members of the group and third parties must be disclosed.

2.12.9.9 Both long and short positions resulting from transactions with third parties will give rise to a reporting obligation in the normal way if the result is that either crosses a percentage level. If one transaction between a third party and a member of the group results in



calculate the percentage of shares in which you are interested using the following formula (see s.314(2))

$$\frac{\text{the total number of shares (issued or unissued) in which you are interested}}{\text{number of shares of the listed corporation of the same class in issue + number of shares to be issued upon completion of the rights/bonus issue}} \times 100$$

2.12.10.6 The effect of this is that if you take up a rights issue in full the percentage level of your interest remains the same throughout the period of the rights issue and no disclosure obligation arises.

2.12.10.7 The underwriter of a rights issue will acquire an interest in all rights shares that he agrees to take in the event that the shareholders do not take up their rights. Following completion of the rights issue the underwriter should file a notice stating the number of shares that he has ceased to be interested in (the number of rights shares taken up by the shareholders).

2.12.11 *The aggregation exemption.*

2.12.11.1 Section 316(5) provides an exemption for the fund management industry - persons carrying on a business of managing investments or holding investments for customers whether as a custodian or a trustee from the requirements of s.316(2) and (3). It removes the obligation on a holding company to aggregate interests in shares of listed corporations held by controlled corporations that hold their interest in their capacity as an investment manager, custodian or trustee and manage their interests independently (see s. 316(2)(3) and (5)). The exemption does not exempt the investment manager, trustee or custodian from his duty to disclose his interests in the shares that he manages or holds. It also only applies to interests held by separate corporations. The exemption is not available to separate businesses carried on in one corporation even if there are Chinese walls between the various divisions. To qualify for the exemption the conditions to be satisfied are that :

- (i) the controlled corporation is interested in those shares by reason only of its obligation or power to invest in, manage, deal in or hold interests in those shares on behalf of its customers in the ordinary course of its business as an investment manager²², custodian or trustee;²³
- (ii) to the extent that the controlled corporation has any right or power to vote in respect of those shares, such right or power is exercisable by the controlled corporation independently without any reference to its holding company or any company in the same group; and

²² A defined term, see paragraph 2.12.11.3.

²³ A defined term, see paragraph 2.12.11.4.

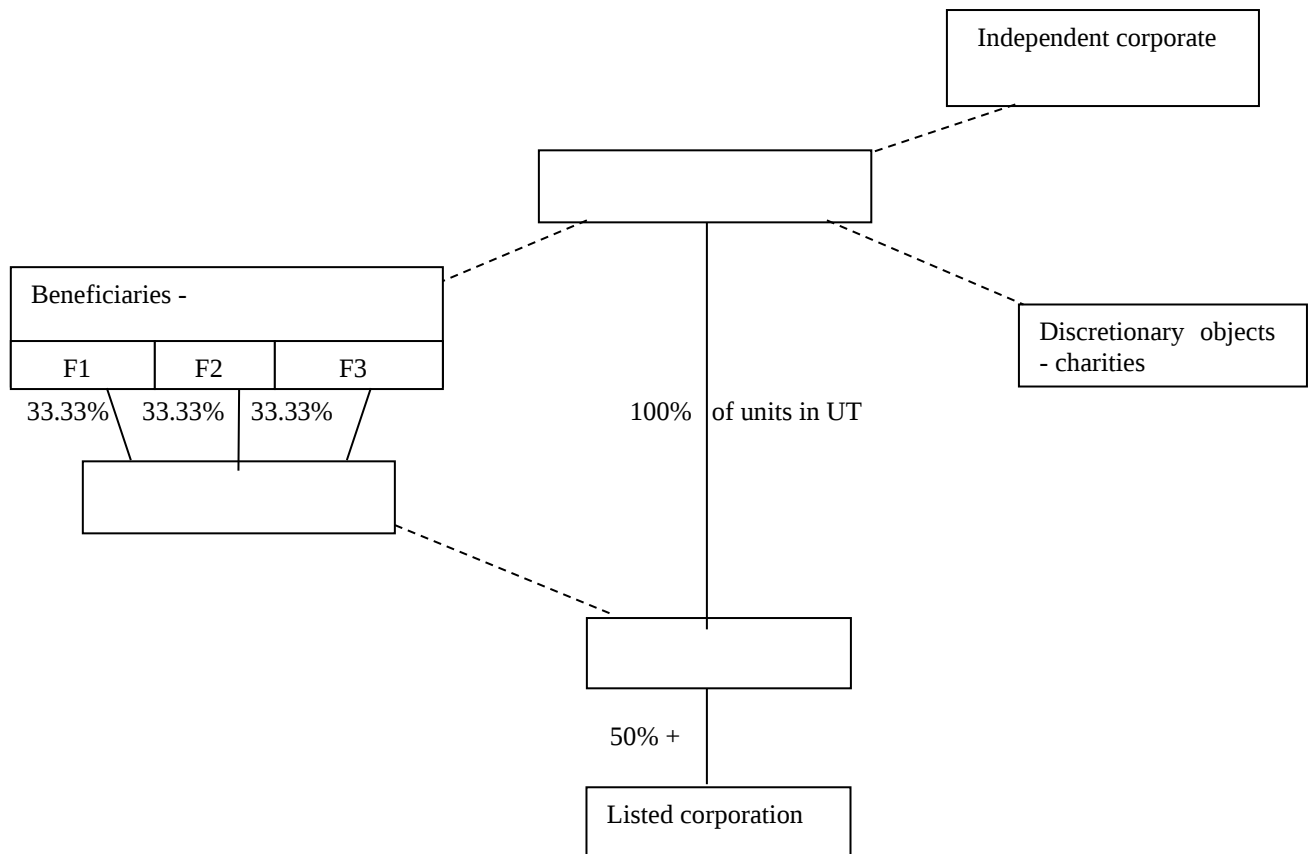


- (iii) when performing its functions as an investment manager, custodian or trustee, the power of the controlled corporation to invest in, manage, deal in or hold interests in those shares is exercised by the controlled corporation independently without any reference to its holding company or any corporation in the same group.

holding shares on behalf of customers in practice investment managers. It does not apply to



2.12.11.5 A common structure for “*family controlled*” listed companies in Hong Kong is as follows :



2.12.11.6 An

listed corporation. The units in UT are all held by CT1 for DT. The family members (F 1, F2, and F the trustee of unit trust UT. Accordingly they retain the day to day control over the affairs of the listed corporation and can also control whether income should be accumulated and when and how much income should be distributed. There are many variants on this theme but they are generally to a similar effect.

2.12.11.7 It has been suggested that F1, F2 and F3 are not interested in shares of the listed corporation because s.316(5) entitles them to disaggregate the interests of CT2. This is not correct. The trustee of the trust in the above example does not have "customers" and does

interests of CT2 under s.316(5). None of the provisions of s.323 (interests which are to be disregarded) apply in these circumstances. It may also be that the provisions of s.317 (agreements to acquire interests in shares) apply. Accordingly, F1, F2 and F3 should each disclose interests held by UT in the listed corporation.



2.12.14 *Discretionary trusts.*

2.12.14.1 The interest of a beneficiary of a discretionary trust in shares held by trustees of the discretionary trust is disregarded (see s. 323(1)(a)(iii)) unless he is also a director of the listed corporation concerned.

2.12.15 *Collective investment schemes, pension and provident fund schemes, qualified overseas schemes.*

2.12.15.1 This disregards the interests in shares of listed corporations, held by certain schemes, of a holder of a unit or a share in the scheme and a trustee or custodian of the scheme. The schemes that enable the holder, trustee or custodian to qualify for this exemption are an authorised collective investment scheme, certain pension or provident fund schemes, and a qualified overseas scheme (see s. 323(1)(c) and (5)). A qualified overseas scheme must be established in a place outside Hong Kong recognized for the purposes of s.323(5) by the SFC by notice published in the Gazette²⁸.

2.12.15.2 It should be noted that the interest of the manager of the scheme is not disregarded (even if he is also a holder, trustee or custodian, see s.323(4)) and his interest must still be disclosed.

2.12.15.3 If a person is the holder of units in a unit trust that does not satisfy s.323(1)(c) (or the trustee or custodian of such a unit trust) he will have to disclose an interest in all shares in which unit trust is interested. This is because the unit holder has an undivided share in the whole portfolio of the unit trust.

2.12.16 *Exempt security interests.*

2.12.16.1 This enlarges the previous exemption under the repealed S(DI)O that interest in shares is an exempt security interest if it is held by a qualified lender by way of security only for the purposes of a transaction entered into in the ordinary course of business as such a qualified lender (see s. 323(1) (f) and (6)). Under s. 308 the term "qualified lender" is defined to include an authorized financial institution, an authorized insurance company, an exchange participant of a recognized exchange company and an intermediary licensed to deal in securities or securities margin financing. The term "qualified lender" does not include a person licensed just as a licensed money lender.

2.12.16.2 The term "qualified lender" also includes a person that is a corporation authorized under the law of any place outside Hong Kong to carry on business as a bank, as an insurance company, or in an activity that is in the opinion of the Commission equivalent to dealing in securities or securities margin financing and that place is recognized for the



purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the SFC²⁹.



(See s.3(1)(d) of the Securities and Futures (Disclosure of Interests Exclusions) Regulation (L.N. 229 of 2002)).

2.13 Securities borrowing and lending (“SBL”)

2.13.1 The regime for SBL transactions is different to the general disclosure regime. Again, the following is merely a brief summary.

The borrower

2.13.2 The borrower of shares is normally required to disclose the borrow



in place of the disclosure obligations that may arise when there is a change in the nature of an interest in shares in a listed corporation under Part XV when they lend shares or the shares are returned to them.

Substantial shareholders

2.13.5 Substantial shareholders, who lend through an ALA, on condition that the shares are held by the ALA :

- (i) as agent for the substantial shareholder,
- (ii) for lending only and for no other purpose; and
- (iii) are lent using only a specified form of agreement (i.e. a relevant agreement³¹ as defined),

are exempt from making disclosures of changes in the nature of their interests that result from:

- (a) the transfer of the shares to the ALA³² and the return of the shares by the ALA³³; and
- (b) the lending of the shares by the ALA and the return of the shares to the ALA (section 3 of the SBL Rules).

Approved lending agents (“ALA”s)

2.13.6 A corporation approved by the Commission as an ALA will be exempted from



2.13.8 The effect of these provisions is that loans from the lending pool operated by



Regulated persons

2.13.14 Interests in shares borrowed by regulated persons (corporations licensed to deal in securities, and overseas brokers in recognized places³⁵), that merely act as a conduit (i.e. regulated persons who borrow and on-lend the shares within 5 business days after the shares



the 6% under s.316.

Day 2

2.13.24 Corporation B lends the shares to Corporation C, a related corporation that is also a regulated person. Corporation C intends to on lend the shares within 5 business days and accordingly its interest is also provisionally disregarded under s.7 of the SBL Rules. As n to have an interest in the 6% under s.316.

Day 3

2.13.25 On day 3, the shares were borrowed by Corporation D so that it could sell disregarded under s.7(1)(a) of the S the holding company is now taken to have an interest in the 6% under s.316. Accordingly Corporation A must file a notice (within 3 business days of day 3) disclosing that it has acquired a long position of 6% and a short position of 6%. Corporation D will be shown in Box 22 of Form 2 as having a long and a short position of 6%.

Day 4

2.13.26 Under s.7(3) when the shares are used for a purpose otherwise than a prescribed purpose Corporations B and C are taken to have acquired an interest in the shares.

As Corporations B and C are taken to have acquired an interest in the shares, the holding company is now taken to have an interest in the 6% that each of B and C had under s.316. However, as has been mentione/F5 12 Tf1 0 0 1 72.024 351.17 Tm0 g0 G[002C1300510003>390057004B0



3. DUTIES OF DIRECTORS AND CHIEF EXECUTIVES

3.1 What interests are directors and chief executives required to disclose ?

3.1.1 The duties of directors and chief executives (referred to hereafter simply as re extensive than those of substantial shareholders, reflecting their greater involvement in the management of the affairs of the listed corporation. Directors have to disclose interests in 4 main categories:

- (i) Interests and short positions in any shares of the listed corporation of which they are a director not simply voting shares;
- (ii) listed corporation;
- (iii) Interests in debentures of the listed corporation of which they are a director; and
- (iv) Interests in debentures of any associated corporations of the listed corporation of which they are a director.

3.1.2. In addition there is no 5% disclosure threshold similar to that set for substantial shareholders. Directors have to disclose all dealings even if they have a minor position, in a small number of shares or debentures.

3.1.3



ListCo has a

it is : 21%
x 51% = 10.71%). Corporation B is a subsidiary of the holding company of ListCo and
not a subsidiary of the holding company of ListCo and does not satisfy limb (a) of the

3.2.5 Please also see paragraphs 3.9.6 and 3.9.7 on the disclosure obligations where
a listed corporation is a controlled corporation.

3.3 What is meant by an “interest” in shares ?

3.3.1 What has been said in respect of substantial shareholders in relation to interests
in shares (see paragraph 2.1) also applies to directors except that directors have to disclose an
interest in any shares of the listed corporation or its associated corporation, issued or unissued,
and not simply voting shares³⁹.

3.4 What is a “debenture” ?

3.4.1



Interests in shares of associated corporations –

3.9.4 In the case of interests in shares of an associated corporation of the listed corporation of which you are a direct in paragraph 3.7 above) the relevant events include :

- (i) When you become interested in the shares of the any associated corporation of the listed corporation.
- (ii) When you cease to be interested in such shares.
- (iii) When you enter into a contract to sell any such shares.
- (iv) When an associated corporation grants you a right to subscribe for shares in the associated corporation, or such rights are exercised or assigned.
- (v) When the nature of your interest in such shares changes (e.g. on exercise of an option).
- (vi) When you come to have, or cease to have, a short position in the shares of an associated corporation.
- (vii) If you have an interest, or have a short position, in shares of an associated corporation of a listed corporation at a time when the listed corporation becomes a listed corporation.
- (viii) If you have an interest, or have a short position, in shares of an associated corporation when you become a director or chief executive of a listed corporation.
- (ix) If you have an interest, or have a short position, in shares of an associated corporation when it becomes an associated corporation.

3.9.5

the time allowed for filing a notice is 10 business days as opposed to 3 business days in the case of the other relevant events. However, in the case of an Initial Notification directors are required to specify the highest price and average price per share for interests in shares acquired on-exchange within 4 months prior to the date of the relevant event and, in the case of interests acquired off-exchange, the average consideration per share and the nature of the consideration (using codes from the table of common types of consideration in the notes to the form).

3.9.6 If you are a director of a listed corporation and the listed corporation or its directors are accustomed to act in accordance with your directions, then s.344(3) could be interpreted to mean th

you are interested in any shares that the listed corporation holds in its associated corporations. The same analysis would apply if you are entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of the listed corporation.

3.9.7.1 We take the view that this result was not intended and consider that a director of a listed corporation is not taken to be interested in shares of an associated corporation solely because the listed corporation falls within the definition of a controlled corporation (unless the associated corporation is also a listed corporation⁴¹ when the interest in that



- (iii) When you enter into a contract to sell any such debentures.
- (iv) When an associated corporation grants you a right to subscribe for debentures of the associated corporation, or such rights are exercised or assigned.
- (v) When the nature of your interest in such debentures changes.



- (iv) where a director lending shares under a securities borrowing and lending agreement, takes delivery of shares which are returned by the person who



the end of that day. The reason for this is that you acquire an interest in shares when you contract to buy them but you only cease to have an interest in shares when you complete the sale (by transferring the shares to the purchaser).



various types of c



The capacity in which you held the shares that gave rise to the relevant event

3.14.2 Firstly, in the capacity in which you were acting when you bought or sold the shares which gave rise to the duty to file a notice (or there was a change in the nature of your interest). If you sold shares, the capacity relates to the capacity in which you held the shares that were sold i.e. you should
change in the nature of
your interest you should complete both.

The capacity in which you held all of the shares in which you were interested.

3.14.3 re asked, on an Initial Notification, to state the capacity in which you held all of the shares in which you had an interest immediately after the relevant event. You may, for example, hold 80% of the shares beneficially and the rest on trust. In this case you
row and then give the number of shares held in each capacity in the next column.

3.15 Exemptions and interests that are disregarded

3.15.1 A number of exemptions have been created where it was felt that disclosure would be of little value to investors. As the exemptions are sometimes very detailed they will not be examined at length in this outline and the following is merely a brief summary of the principal exemptions and disregards (listed in the order in which the statutory provision appears in the SFO). You should seek legal advice if you are unsure whether one of these exemptions may apply to you. The exemptions and interests of directors that are disregarded are more limited than for substantial shareholders partly because many of the exemptions available to substantial shareholders turn on the percentage level of their interest in shares. Voluntary disclosures may be made under Part XV and you will not incur any penalty if you do not claim an exemption.

3.15.2 Most exemptions do not apply to a short position that you hold because the

3.15.3 *Basket of shares.* Derivatives that derive their value from a basket of shares in several listed companies may be exempt. Shares of at least 5 listed corporations must be in the basket and no one share should account for over 30% of the value of the entire basket (see s. 308(5)).

3.15.4 *Bare trustees.* The interest of a bare trustee is disregarded. However, to be a bare trustee the trustee must have no duties to perform in respect of the interest in the shares except to convey or transfer that interest to the persons entitled to hold it. A bare trustee into whose name an absolute owner transfers shares is sometimes called a nominee. This must be distinguished from the situation where trustees vest shares in a nominee in order to facilitate share dealings. Such a person is in effect an agent of the trustees and must disclose his interest



may download and file a notice using either format. If you are a Mac user, you may only download and file a notice in PDF. You may download a soft copy of the DI forms (and the notes to such forms) for completion from the HKEX website which is at <https://sdinotice.hkex.com.hk> or the SFC website at <http://www.sfc.hk/web/EN/rule-book/sfo-part-xv-disclosure-of-interests/di-notices.html>. If you download a DI form from the HKEX website, you can either download (i) a complete blank form without logging in the DION System; or (ii) a blank form prefilled with certain profile information after logging in the DION System. You can only download a complete blank form from the SFC website. If you are using Excel format, you must click "Enable Content" when opening the Excel forms - otherwise the macros will not work. this

4.2.3 You must use :

Substantial shareholders

- Form 1 if you are an individual with an interest of 5% or more of the voting shares of a Hong Kong listed corporation (and are not a director or chief executive of the listed corporation).
- Form 2 if you are a corporation with an interest of 5% or more of the voting shares of a Hong Kong listed corporation making a disclosure.

Directors and chief executives

- Form 3A if you are notifying interests in shares of the listed corporation of which you are a director or chief executive.
- Form 3B if you are notifying interests in shares of any associated corporation of the listed corporation of which you are a director or chief executive.
- Form 3C if you are notifying interests in debentures of the listed corporation of which you are a director or chief executive.
- Form 3D if you are notifying interests in debentures of any associated corporation of the listed corporation of which you are a director or chief executive.

Listed corporations

- Form 4 if you are a listed corporation that is required by s. 330(1) or 333(1) of the SFO to notify the Stock Exchange of information received in pursuance of a requirement imposed by the listed corporation under s. 329 of the SFO, or to deliver a report prepared under s. 332 of the SFO to the Stock Exchange.

4.2.4 Please use separate forms if you are interested in different classes of shares or debentures of the listed corporation, or different associated corporations of the listed corporation of which you are a director or chief executive.



4.7 Common queries on completion of prescribed forms

Can I ask a representative to complete the form for me ?

4.7.1 You can ask a representative to complete the form for you. However, it is your responsibility to file the form within the time allowed and to ensure the information on the form is correct. It is not a reasonable excuse for you to say that you are not responsible for any failures or mistakes. Please also see paragraph 5.2.

Can I correct a mistake in a form after it has been filed?



1,000,000 shares are attributed to him as the father of a minor child, he should notify an interest in 1,000,000 shares and not an interest in 2,000,000 shares.

When multiple notifiable sales and purchases are executed within the same day, how should I calculate the highest price and the average price per share?

4.7.4.3 When multiple notifiable sales and purchases are executed within the same day, the purchases will have to be reported within 3 business days of the date of the **contracts** but the sale will have to be reported within 3 business days of the date of **completion** of the contracts. Hence the prices of shares sold and shares purchased are always distinct and can be calculated separately.

The highest price will be the highest price paid by you for a board lot during the day. That is a question of fact. The average price per share is the total price paid by you for shares during the day divided by the total number of shares purchased during the day.

How should the percentage of my interest in shares before and after the relevant event be calculated where the change in percentage figure of the interests was triggered by an increase in the total issued shares of the listed corporation?

4.7.4.4 Please see paragraph 2.12.10 *Qualifying issues*. Often, the change in the percentage figure of your interest will have been triggered by an increase in the total issued shares of the listed corporation as a result of a rights issue or a bonus issue. Paragraph 2.12.10 explains that an exemption may apply if the percentage level of your interest returns to the same level after the rights issue/bonus issue is completed. If it does not then you will have to file a notice. Paragraph 2.12.10.5 explains how the calculation should be done.

Does a supervisor of a PRC-incorporated listed corporation have duty of disclosure under Part XV?

4.7.4.5 If you are a supervisor and are also a substantial shareholder or a director you will have a duty of disclosure in the usual way. If you are a supervisor but do not hold the office as a direct shadow director is:

This will be a question of fact.



What details do I have to give in relation to a trust ?

4.7.6 The forms ask you to specify the name and address of a trust that you have an interest in, either as trustee or beneficiary of the trust or as a founder in relation to a discretionary trust (see Box 22 of Form 1, Box 24 of Form 2, Box 32 of Form 3A, Box 38 of Form 3B, Box 31 of Form 3C and Box 37 of Form 3D). If you consider that this information is private you need not state the name and address of a trust in these Boxes, however, you must still complete certain information in respect of each such trust. You must state the code which best describes your status in relation to the trust (whether you are a trustee, beneficiary or founder) and the number of shares in which the trust is interested (has a short position). Please note that the directions and instructions to other Boxes contain no similar instruction.

controlling shareholder of a controlled corporation in column 3 of Box 20 of Form 1 (Box 22 of Form 2). You are required to insert the name of the controlling shareholder. If the controlling shareholder is a person (individual or corporation) who is a trustee of a trust or a discretionary trust then you should state his or its name rather than the name of the trust. The same applies to persons completing Box 26 of Form 2.



4.7.10 [Paragraph 4.7.10 concerned signing of DI forms. It has been deleted from this revision of the outline as spent.]

Attachments

4.7.11 Do not send copies of share purchase agreements and other documents to the



5.3.4 You must state the name of each of the other parties to the agreement, his/her the Box specified for the purpose in the form⁴⁴. You must state the number of shares in which you are interested under sections 317 and 318. This will be the total of firstly all shares which have been purchased pursuant to the agreement by any of the parties to the agreement and

Meaning of the phrase “apart from the agreement” in section 318

5.3.4.1 The words in brackets at the end of section 318(1) deem the parties to the agreement to be interested in the other interests in shares of each of the members of the

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e other party in question was acquired, or includes



Example of how to complete Box 23 of Form 1



enquiry must also be recorded in the registers of interests and short positions. In addition the listed corporation must prepare a report of the information received in pursuance of the investigation and make the report available at its registered office within 10 business days of the conclusion of the investigation. A copy of the report must be delivered to the Stock Exchange and the SFC.

5.4.3 A listed corporation that is required by s.330(1) or s.333(1) to notify the Stock Exchange of information that it receives under s.329, or to deliver a report prepared under s.332 to the Stock Exchange, should do so by filing a duly completed Form 4. All information which the listed corporation receives pursuant to s.329 must also be submitted to the Stock Exchange as attachments to the Form 4 filed by the listed corporation. Form 4 must



with the listed company concerned which is required under s.336 of the SFO to record the information in a register. The public are entitled to inspect the register with this information at the offices of the listed corporation and can view the full details. The purpose for which information in the registers is published is spelt out in s.336(10)(b) for consistency with the provisions of the PDPO. In an investigation under s.329, the position is no different. The same information may be required to be given by listed corporation itself in respect of persons who have interests in its own shares and that information is required to be published in the register maintained under s.336.

5.4.8 Accordingly we are of the view that a requirement phrased in the manner set out in paragraph 5.4.5, is within the powers of the listed corporation and does not offend the provisions of the PDPO. All of the information requested should be provided.

5.5 Registers of substantial shareholders' interests and short positions

5.5.1 Every listed corporation is required to keep a register of the interests and short positions disclosed to them (s.336). This register will be the same register as is required to be maintained under that maintained under the S(DI)O adapted to accommodate the additional information required to be provided under Part XV.

5.5.2 Whenever a listed corporation receives information from a person given in performance of a duty imposed on him by any provisions of Divisions 2 to 5 the listed corporation is under a duty to record, against the name of the person interested in the shares, or having a short position the information received and the date of the entry.

5.5.3 Hence when a listed corporation receives a notice in the prescribed form by a substantial shareholder, it must enter the information on the prescribed form (and any



both Form 1 and Form 3A when disclosing many transactions. Accordingly, the information that appears on notices on Form 3A by persons who are both substantial shareholders and directors should must be recorded on both the register of interests and short positions of substantial shareholders and the register of the interests and short positions of directors and chief executives.

5.5.6 There is no standard form of register prescribed by Part XV and, under s.375, the register may be in any form so long as it is capable of being reproduced in legible form. Hence a register could be maintained by filing the notifications received, in chronological order, under the name of the substantial shareholder concerned. The index would have to be updated as each notice was filed. Alternatively the data on each form could be entered into a computer database provided it was suitably indexed.

5.5.7 Listed corporations have to inform the Registrar of Companies of the place where the register of interests and short positions of substantial shareholders is kept if it is not kept at the registered office. A form of notice has been prescribed under s.336(12) of Part XV. A copy of this notice is available on the SFC website. A listed corporation is not required to file a notice if they have already filed a notice of the location of the register under the provisions of the S(DI)O and the location of the register has not changed since the date of such notice.

5.5.8 If a listed corporation does not have a registered office in Hong Kong, the register of interests and short positions of substantial shareholders (as well as the register of the interests and short positions n 62 m369(of7-3(a)4((int)-3(e)4(-sts)-3(m6-6(a)ef)5(e)4(x)-9(e)4(r)-6()-79



5.6.4 Whenever a right referred to in s.352(3) is exercised by a director, the listed



5.8 Investigations and orders imposing restrictions on shares etc.

5.8.1 Division 11 of Part XV grants powers to the Financial Secretary to investigate ownership of shares in or debentures of publicly listed companies. These powers provide for the appointment of an inspector to make these inquiries.

5.8.2 Division 12 of Part XV allows orders to be made by the courts and the Financial Secretary imposing restrictions on the transfer of shares and equity derivatives.

5.9 Treasury Shares

5.9.1 Under Rule 10.06(5) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and Rule 13.14 of the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited, listed corporations may, following any repurchase of its own shares, elect to hold the shares in treasury rather than cancel those shares, subject to the laws of their places of incorporation and their constitutional documents.

5.9.2 For the purposes of Part XV, treasury shares remain part of a listed issued voting shares⁴⁹ on the basis that voting rights attached to treasury shares are temporarily suspended and should not affect the application of Part XV⁵⁰. Accordingly, shares held by the listed corporation in treasury must be included in the number of shares of the listed corporation of the same class in issue for the purposes of calculating the percentage figure of your interest in shares (see paragraph 2.6.5 above) under s.314 of the SFO. The percentage figures of interests of substantial shareholders would not be affected by the number of treasury shares held by the listed corporation.

5.9.3 There are two further consequences to holding shares in treasury. Firstly, the listed corporation would become a substantial shareholder if it acquired an interest in 5% or more of its own shares by purchasing and holding those shares in treasury and would have to file a notification under Part XV of the SFO on first acquiring that interest and on any subsequent changes in the percentage level of its interest. For example, a change may occur upon further purchase of its own shares or a resale or transfer of treasury shares. Secondly, any shareholder that controls one-third or more of the voting power at general meetings of the listed corporation concerned would also be taken to have an interest in those treasury shares which must be added to his other interests in shares of the listed corporation to determine his reporting obligations under Part XV. When completing a DI form, you may supplement relevant information regarding share repurchases and/or the resale or transfer of treasury shares

⁴⁹ is defined in section 308(1) of the SFO.

⁵⁰ Section 308(2) of the SFO provides that the temporary suspension of voting rights in respect of shares comprised i



Table of Paragraphs added or revised in the edition of the outline dated 22.05.2014

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Table of Paragraphs revised in the edition of the outline dated 24.05.2024

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