



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

CONTENTS

| Section | Page |
|--|-------------|
| 1. Introduction | |
| 1.1 Overview | 3 |
| 1.2 Where can I get the Disclosure of Interests Forms and where must I file them ? | 5 |
| 1.3 Where can I see the information filed with the Stock Exchange under Part XV ? | 6 |
| 1.4 Defined terms | 6 |
| 2. Duties of substantial shareholders | |
| 2.1 What is meant by an “interest” in shares ? | 6 |
| 2.2 What are deemed interests ? | 8 |
| 2.3 What are derivative interests and “underlying shares” ? | 9 |
| 2.4 What are meant by the terms “long position” and “short position” ? | 11 |
| 2.5 How many shares am I taken to be interested in if I hold derivatives ? | 12 |
| 2.6 How and when do I calculate the percentage figure of my interest in shares ? | 14 |
| 2.7 When do I have to give a notice ? | 17 |
| 2.8 <i>[Deleted as spent]</i> | |
| 2.9 What is meant by “the nature of your interest in shares changes” ? | 20 |
| 2.10 What price/consideration must I disclose and how do I calculate this ? | 23 |
| 2.11 What is meant by the “capacity” in which I hold shares ? | 25 |
| 2.12 Exemptions and interests that are disregarded. | 26 |
| 2.13 Securities borrowing and lending | 43 |
| 2.14 Controlled corporations | 50 |
| 2.15 Special features for notices filed by corporations | 52 |
| 3. Duties of directors and chief executives | |
| 3.1 What interests are directors and chief executives required to disclose ? | 53 |
| 3.2 What is an “associated corporation” ? | 53 |
| 3.3 What is meant by an “interest” in shares ? | 55 |
| 3.4 What is a “debenture” ? | 55 |
| 3.5 What are deemed interests ? | 55 |
| 3.6 What are derivative interests and “underlying shares” ? | 56 |
| 3.7 What are meant by the terms “long position” and “short position” ? | 56 |
| 3.8 How many shares am I taken to be interested in if I hold derivatives ? | 56 |
| 3.9 When do I have to give a notice ? | 56 |
| 3.10 <i>[Deleted as spent]</i> | |
| 3.11 What is meant by “the nature of your interest in shares changes” ? | 60 |
| 3.12 How and when do I calculate the percentage figure of my interest in shares ? | 61 |



3.13 What price/consideration must I disclose and how do I calculate this ?

62





- (i) **Substantial shareholders**³ – that is individuals and corporations who are interested in 5% or more of any class of voting shares⁴ in a listed corporation – must disclose their interests, and short positions, in voting shares of the listed corporation; and
- (ii) **Directors and chief executives** of a listed corporation must disclose their interests, and short positions in any shares in a listed corporation (or any of its associated corporations) and their interests in any debentures of the listed corporation (or any of its associated corporations).

1.1.4 The disclosure requirements apply regardless of whether the substantial shareholder, director or chief executive is resident in Hong Kong or elsewhere⁵.

Recent legislative amendments – Companies Ordinance

1.1.5 The Companies Ordinance (Cap. 622) (“CO 2012”) came into effect on 3 March 2014. Section 135 of the CO 2012 stipulates that shares in a company have no nominal value. As the disclosure obligations of substantial shareholders under Part XV were linked to the nominal value of their shares, a consequential amendment to Part XV was required.

1.1.6 An alternative means of calculation of when a disclosure obligation arises has been specified that does not rely on the nominal value of the shares. With effect from 3 March 2014 the disclosure obligation is based upon the number of voting shares



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 (“Commencement”) by the Commencement Notice (L.N. 45 of 2017). HKEX also commenced the operation of the new electronic DI filing system, Disclosure of Interests Online System (“DION System”), on the same day to enable submission of DI forms, maintaining DI information and publishing DI information on the HKEX website.

1.1.9 Upon Commencement, the notifications and reports made under Part XV must be submitted electronically through the DION System to the Stock Exchange, and corporate insiders of listed corporations are no longer required to submit notices of their interests and short positions to the listed corporation concerned. The Stock Exchange would provide the notices it receives to the listed corporation concerned.

1.2 Where can I get the disclosure Forms and where must I file them ?

1.2.1 DI forms, which are available in Chinese (Traditional and Simplified) and English, are available in Adobe Portable Document format (“PDF”) or in Microsoft Excel format. If you are a Windows user, you 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. If you are using PDF, you must click “Trust this document always” and save the changes.

1.2.2 You must register with the DION System before you submit your first DI form under the DION System. Upon Commencement, other than in the circumstances set out in



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 The key objective of the disclosure regime is to give investors in listed corporations with more complete and better quality information on a timely basis to enable them to make informed investment decisions. Details of all notices filed with the Stock Exchange under Part XV can be found on the DI pages of HKEX website (<http://www.hkexnews.hk/di/di.htm>).

1.4 Defined terms

1.4.1 Unless otherwise stated all references to section numbers in this outline are references to sections of the SFO. Terms that are defined in section 308 of the SFO and Schedule 1 to the SFO have the same meaning in this outline other than references to “substantial shareholder”⁶. A listed corporation is any corporation whose securities are listed on the Stock Exchange. A corporation’s shares are “listed” from the point that the Stock Exchange grants listing of the shares and that grant has become unconditional (although trading may not have commenced).

1.4.2 The term “DI” is used in this outline and the HKEX and SFC websites to refer to Disclosure of Interests.

2. DUTIES OF SUBSTANTIAL SHAREHOLDERS

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

2.1.1 Substantial shareholders only have to disclose their interests in “voting shares” of a listed corporation – not all types of shares. Shares that are “voting shares” are shares of a class that carry a right to vote in all circumstances at general meetings of a listed corporation. They also include unissued shares which, if issued, would have such rights. Voting shares of a corporation listed in Hong Kong refers to all classes of shares and would normally include “A shares”, “B shares” and “H shares” as well as “Ordinary shares” as these all normally carry a right to vote in all circumstances at general meetings of a listed corporation. For ease of reference we will use the term “shares” instead of “voting shares” when describing the obligations of substantial shareholders in this outline – unless it is necessary to use the term “voting shares” for greater clarity. Directors have an obligation to disclose their interests in all shares – not just voting shares.

⁶ See footnote 3 above.



2.1.2 You will have an “interest” in shares for 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 System (“CCASS”) or with HKSCC Nominees Limited, the CCASS depository).
- (iii) If you are deemed by Part XV to be interested in the shares (see paragraph 2.2 below).
- (iv) If you enter into a contract (for example if you hold, write or issue financial instruments including equity derivatives) that gives you a right to shares, a right of first refusal of shares, or to a payment in the event of a change in the price of shares (see paragraph 2.3 below).
- (v) If you hold shares as security.
- (vi) If you are entitled to exercise rights attaching to the shares or control their exercise (e.g. voting rights) or the right to sell the shares themselves. Hence if you are a fund manager you would normally have an interest in the shares in the fund(s) that you manage (see also paragraph 2.12.15).

2.1.3 You have an interest in shares for the purposes of Part XV if you have any right whatsoever in relation to the shares, you have a right to receive a payment in the event of a change in the price of shares or may be required to take the shares, even if your right to the shares (or payment) or obligation to take the shares is conditional or is subject to any restraint or restriction. For example, if on 3 April 2003 you agreed to buy 5% of a listed corporation’s shares, subject to approval by the shareholders of the listed corporation at a meeting on 15 April 2003, you will be taken to have an interest in the shares on 3 April 2003. It is also irrelevant whether the condition has a reasonable chance of being met or whether you or the seller can influence the outcome of the condition.



2.2 What are deemed interests ?

2.2.1 In calculating the total number of shares in which you are interested you must include any interests, and derivative interests, in shares of the same listed corporation that any of the following persons and trusts have :

- (i) Your spouse and any child of yours under the age of 18. For example, if you hold 5% of the shares of a listed corporation and your husband holds 1% each of you is deemed to be interested in 6%. If your husband then buys a further 1% both you and your husband must file a notice as you each are now interested in 7% of the shares of the listed corporation as a result of the purchase.
- (ii) A corporation which you control (a corporation is a “controlled corporation” if you control, directly or indirectly, one-third or more of the voting power at general meetings of the corporation, or if the corporation or its directors are accustomed to act in accordance with your directions) including interests of a corporate fund manager that you control in the shares held by the various funds that it manages and interests of a corporate trustee or custodian that you control in the shares that it holds on trust or in custody (subject to certain exemptions which are covered in paragraph 2.12 below).
- (iii) A trust, if you are a trustee of the trust (other than a trust where you are a bare trustee i.e. where you have no powers or duties except to transfer the shares according to the directions of the beneficial owner).
- (iv) A discretionary trust, if you are the “founder” of the trust (e.g. you had the trust set up or put assets into it – see paragraph 2.2.4), and can influence how the trustee exercises his discretion.
- (v) A trust of which you are a beneficiary (discretionary interests may be ignored).
- (vi) All persons who have agreed to act in concert to acquire interests in shares in the listed corporation, if you are a party to the agreement (the rules are complicated and legal advice should be sought).

2.2.2 You must also count as your short position any short positions that such persons and trusts have. This may create a short position (if you do not have a short position already) or increase the size of your short position.

2.2.3 Where two or more persons are interested in the same shares they must each make separate disclosures of their interests. For example, if you control A Ltd. which holds 6% of the shares of a listed corporation and A Ltd. buys a further 1% then you, your spouse and A Ltd. should all file separate notices (disclosing that you are each interested in 7% of the shares of the listed corporation).

2.2.4 A trust company or corporation that is a trustee has the same duty of disclosure as a trustee who is an individual.

2.2.5 The term “founder” in relation to a discretionary trust is defined very broadly (see s.308). It includes a person who has:



- (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 The term “equity derivatives” is given an extended meaning in Part XV in 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 all covered by the term “equity derivatives” -

- (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 (“HDRs”);
- (iv) stock options and stock futures;



- (v) over-the-counter (“OTC”) forwards, options or swaps;
- (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



2.3.5 When filing a DI notice you are required to disclose your interest in shares of listed corporations - not interests in instruments creating those interests. Hence the details should relate to the underlying shares. For example, if 100 ADRs are worth 150 shares you should disclose an interest in 150 shares not 100 ADRs.

Public offers

2.3.6 The underwriter of a public offer of shares will have an interest in the shares which are to be offered even though they are unissued. Depending upon the terms of the underwriting agreement each member of the underwriting syndicate may be taken to be interested in all shares to be issued or a defined number of shares. However, on an initial public offer, the interest will not be notifiable until the corporation concerned has any of its securities listed on the Stock Exchange (see paragraph 1.4.1) as it will not be a “listed corporation” until that point. If the underwriter has an option to require the original shareholders to sell more shares than originally planned if the offering is over-subscribed (known as an “over allotment option” or a “greenshoe option”) this option will be an equity derivative and the underwriter(s) must disclose their long positions under this option on listing of the corporation. Disclosure is also required when the option is exercised or expires.

2.3.7 An “over allotment option” or a “greenshoe option” are usually coupled with a securities borrowing and lending agreement (“SBL agreement”) under which the original shareholders agree to lend shares to the underwriter(s). The duties of the borrower and the lender of shares if the corporation is already listed are examined in paragraph 2.13 but, if the SBL agreement is entered into before shares in the corporation are listed, a duty of disclosure arises at the point that the corporation becomes listed (see s.310(2)(a)). It should be noted that the exemption for wholly owned subsidiaries and their holding companies is not available when a duty of disclosure arises under s.310(2) or (3) (i.e. an initial notification - see paragraphs 2.7.2 and 2.12.9.1)

2.3.8 When completing a disclosure form you are asked to give further information in respect of derivative interests. In particular, you are asked to select a code describing the derivatives. The codes that apply to derivatives are set out in Table 4 of the directions and instructions for completing each form. If the derivatives are listed or traded on the Stock Exchange or the Hong Kong Futures Exchange Limited you should choose one of the codes from 4101 to 4104. If the derivatives are not listed then one of the codes from 4105 to 4108 should be used. In general, “physically settled” means shares are delivered on exercise of the derivative; and “cash settled” means cash is paid on exercise. All warrants currently listed on the Stock Exchange are cash settled.

2.4 What are meant by the terms “long position” and “short position”?

2.4.1 You have a “long position” if you have 4 Tsac984Iure8re to be 70cash settled” m5



- (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 The term “short position” is generally used in connection with a person who holds, writes or issues financial instruments such as equity derivatives. However, it is also used in the context of the position of the borrower under a securities borrowing and lending agreement who will have both a long and a short position when he borrows shares. You have a “short position” if you :

- (i) borrow shares under a securities borrowing and lending agreement (see further paragraph 2.13.2 below), or
- (ii) hold, write or issue financial instruments under which, for example:
 - (a) you have a right to require another person to take the underlying shares;
 - (b) you are under an obligation to deliver the underlying shares;
 - (c) you have a right to receive from another person an amount if the price of the underlying shares is below a certain level;
 - (d) you have an obligation to pay another person an amount if the price of the underlying shares is above a certain level; or
 - (e) you have any of the rights or obligations referred to in (a) to (d) embedded in a contract or instrument.¹⁰

2.4.3 We take the view that when a listed company allots shares or issues an instrument under which it agrees to allot shares, or grants an option over its own unissued shares, it is not taking a position in its own shares, short or long, it is simply issuing or agreeing to issue the shares. If the listed com3s



- (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 ge underlying sn(Tc-.00214b).7(er of)]yer of.00ice



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 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).

2.6.2 Hence a person who is interested in 6.1% of the shares of a listed corporation cannot avoid his disclosure obligations by buying 1% in the morning and selling 0.2% in the afternoon. He will end the day with an interest in 7.1% and his interest will only drop down to 6.9% when he completes the sale 2 days later (see also paragraph 4.1.4). If you have lent shares you should still include them in the total unless your right to require the return of the shares has been extinguished.

No netting-off between long and short positions

2.6.3.1 You cannot net off any short position that you have against your long position. The percentage figure of each must be calculated separately. This principle applies equally to multiple option strategies as to other transactions e.f.w5.5(io35ately.)5.5(This dw5(You cannot net ofw5erer.



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 click “For Investors”. Then click “Companies/Securities profile” 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 to file List2(18f)0 Tct5(-)i



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 different classes. Hence interests in “H” shares or “foreign shares” of a PRC company listed on the Stock Exchange (which have different rights to “A” or “domestic” shares) should be calculated as a proportion of the number of issued “H” shares separately from the number of issued “A” shares. For the avoidance of doubt we should add that interests in shares, and interests in the underlying shares of equity derivatives, should only be added together if the shares are of the same class.

Short positions

2.6.10 To work out whether you have a short position of 1% or more of the shares in a listed corporation you use a similar formula –

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

Groups of corporations

2.6.11 If two corporations in a wholly owned group are both interested in the same shares the ultimate holding company should not aggregate both interests to calculate the percentage level of its interest as this would be double counting – transactions between corporations which are both members of the same group of companies do not increase or reduce the number of shares that th



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” (see s. 308 of the SFO). *Relevant events* include :

- (i) When you first become interested in 5% or more of the shares of a listed corporation (i.e. when you first acquire a notifiable interest).
- (ii) When your interest drops below 5% (i.e. you cease to have a notifiable



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 th



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 was interested on the date of death and should file a notice within 3 business days giving his name and adding “as executor of the estate of [name of the deceased].” This is because an executor derives title and authority from the will, and not technically from the probate, so that the deceased’s estate vests in him immediately on death.

2.7.11 In contrast, a person seeking appointment as administrator will not acquire an interest in the shares in which the deceased was interested at the date of death as an administrator has no title or authority to act in the estate before a grant of administration has been made. Accordingly, s.10 of the Probate and Administration Ordinance (Cap. 10) provides that the estate of a person who dies intestate shall vest temporarily in the Official Administrator. The interest of the Official Administrator is exempt by virtue of s.323(1)(d)(ii) and s.346(1)(d)(ii) of the SFO. However, once an administrator is appointed the deceased’s estate will be vested in the administrator and he should file a DI notice within 3 business days of his appointment giving his name and adding “as administrator of the estate of [name of the deceased].”

2.7.12 If you are a beneficiary under a will you should file a notice (if you will acquire an interest in 5% or more of the shares of a listed corporation) when you first become aware that you are a beneficiary and are told of the number of shares that you will inherit. You should also file a notice disclosing a change in the nature of your interest after the executor/administrator transfers the interest in the shares to you (and they represent a notifiable interest).

2.7.13 When the executor/administrator transfers the interest in the shares to the person entitled to the estate of the deceased person, the executor/administrator should also file a notice that he has ceased to be interested in the shares.

Liquidation of a corporation

2.7.14 Similarly, if a winding-up order is made in respect of a corporate substantial shareholder this does not give rise to a duty of disclosure by the corporation. However, the liquidator or provisional liquidator will acquire an interest in shares in which the corporation was interested at the date of the winding-up order and should file a notice giving his name and adding “as [provisional] liquidator of [name of the corporation].”



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 meant by “the nature of your interest in the shares changes” ?

2.9.1 If “the nature of a person’s interest is not the same” before and after the relevant time a person comes under a duty of disclosure (see s.313(1)(d)). The term “nature of a person’s interest is not the same” is generally paraphrased to “change in nature of an interest”. The situations in which there is a change in the nature of an interest are very broad. For example there will be a change in the *nature of a person’s interest* in shares when there is a change in the nature of his title to shares, when any of his interests, whether legal or equitable, change and when his interest in shares which are the underlying shares of equity derivatives change on the exercise by him, or against him, of rights under the equity derivatives (see s. 313(13)).

2.9.2 The most common situations in which there will be a change in the nature of a person’s interest in shares, including shares which are the underlying shares of equity derivatives, are :

- (i) When a person grants or exercises rights under equity derivatives (whether physically or cash settled);
- (ii) When a person has rights under equity derivatives (whether physically or cash settled) exercised against him;
- (iii) where a person lending shares under a securities borrowing and lending agreement, agrees to deliver or delivers the shares to the person borrowing the shares under the agreement;
- (iv) where a person lending shares under a securities borrowing and lending agreement, takes delivery of shares which are returned by the person who borrowed the shares under the agreement;
- (v) where a person enters into a contract for the sale of shares in which he is interested;
- (vi) where a person takes delivery of shares from another person;



- (vii) where a person provides an interest in shares as security or a person returns shares held as security (releases a security interest)¹³;
- (viii) where steps are taken to enforce a security interest against a person;
- (ix) where a person declares a trust over shares that he continues to hold;
- (x) where shares held in a (non-discretionary) trust are distributed to beneficiaries of the trust.

2.9.3 For example, if you have a right under a call option to require Mr. X to sell you 1,000,000 shares, you will have an interest in 1,000,000 shares. This interest is also a contingent interest. When you exercise your rights your contingent interest will become an immediate right to the delivery of the 1,000,000 shares – this is a change in the nature of your interest. The exercise of the rights also create



- (ii) For a vendor of shares on entering into a contract for sale if the sale is required to be completed within 4 days on which the Stock Exchange is open for business (see s.5 of the Exclusions Regulation)¹⁷.
- (iii)



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 “beneficial owner”. The descriptions of the various relevant events are being revised and the 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 “voting shares” (formerly “shares comprised in the relevant share capital of a listed corporation”). The definition of “voting shares” (formerly shares in the “relevant share capital”) includes “unissued shares” and therefore shares that are not in existence are interests to which section 322 applies. Furthermore, section 322 refers extensively to equity derivatives and underlying shares of equity derivatives. The definition of “underlying shares” in section 308 includes the shares by reference to which the price or value of the equity derivatives is calculated “whether in any case those shares ar

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 of 4.5% of the shares in issue. On 31 December 2003 you purchased (through the Stock Exchange) 400,000 shares for HK\$800,000 and 100,000 shares for HK\$210,000 (shares to be held beneficially) increasing your total shareholding to 5%. As the 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

| Brief description of relevant event | Capacity in which shares were/are held | Number of shares bought / sold or involved | Currency of transaction | On Exchange | Off Exchange |
|-------------------------------------|--|--|-------------------------|-------------|--------------|
|-------------------------------------|--|--|-------------------------|-------------|--------------|



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

2.11.2 Firstly, in the box entitled “Details of relevant event” you are asked to state 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 complete the column labeled “Before relevant event”. If you purchased shares 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 all or any of the provisions of Part XV but it can only do so after having regard to the guidelines published after consultation with the Financial Secretary (see s.309(1)). The Guidelines published under s.309(1) set out the circumstances where the SFC would consider granting an exemption. The two relevant circumstances are briefly outlined in paragraph 2.12.4 and 2.12.5 and the Guidelines themselves are posted on the Part XV page of our website. The SFC will not entertain applications for exemption in other cases.

2.12.3 *Basket of shares.*

2.12.3.1 Derivatives that derive their value from a basket of shares in several companies (whose shares are listed on the Stock Exchange or a specified exchange²¹) 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)).

2.12.3.2 It has been argued that units in unit trust fall within the definition of “equity derivatives” and that they are therefore eligible for the exemption for derivatives that derive their value from a basket of shares. We do not agree. The exemption in s.308(5) does not extend to unit trusts.

2.12.3.3 It has also been suggested that it may be possible to structure a derivative, using cross sales of index options, so that the effective position is over a single share. However, such an arrangement would not satisfy the conditions for the exemption. These require, inter alia, that no more than 30% of the price or value of the equity derivatives is derived from or determined by the prices or values of the shares in any one company. The price of a derivative, where the effective position is over a single share, will be determined by the price of that share and will therefore not satisfy this condition.

2.12.4 *Dual listings.*

2.12.4.1 A corporation may apply to the SFC for exemption of that corporation, and others in relation to the corporation, from the provisions of Part XV, if it is listed on an overseas exchange and certain criteria are satisfied. 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. (See s.309(1) and the Guidelines published under s.309(1)).

²¹ A list of specified exchanges is at Part 3 of Schedule 1 to the SFO.



“Last notification”

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

- (1) You buy 6.1% of a listed corporation. This is not a “last notification” as it was not made under s.313(1)(c).
- (2) You sell 0.3% and the percentage figure of your interest passes though the 6% level. This is notifiable as the previous notice was given when first crossing the 5% threshold and does not count as a “last notification”. (Note : If the percentage level of your inte



- (5) You buy 0.7%. This is exempt. All the conditions for the *de minimis* exemption are present. Even though you purchased more than 0.5% the percentage figure of your interest after the transaction is within 0.5% of the “Last Notification” i.e. 6.2%.
- (6) You sell 0.8%. This is exempt. All the conditions for the *de minimis* exemption are present. Even though you sold more than 0.5% the percentage figure of your interest after the transaction is within 0.5% of the “Last Notification” i.e. 6.2%.
- (7) You sell 0.2%. This is not notifiable because the percentage figure of your interest has not passed through a percentage level. None of the circumstances giving rise to a duty of disclosure listed in s.313(1) apply. The *de minimis* exemption does not create a reporting obligation if you stray outside the band of less than 0.5% from the “last notification”. However, the *de minimis* exemption is no longer available thereafter until there is a further notice filed under s.313(1)(c).
- (8) You buy 0.7%, passing through the 6% level. This is notifiable because the percentage figure of your interest passes through a whole percentage level. It does not qualify for the *de minimis* exception because the percentage figure of your interest after the previous transaction was not “at all times” within 0.5% of the percentage figure given in the “last notification”. The difference between the percentage figure of the previous transaction and the “last notification” (5.6% and 6.2%) is 0.6%.

2.12.7 *De minimis exemption (short positions)*. This exempts substantial shareholders from disclosing small changes in their short positions in shares (see s. 313(9)). The exemption operates in a similar manner to the *de minimis* exemption explained in paragraph 2.12.6 above.

2.12.8 *De minimis exemption (changes in the nature of an interest)*



- (ii) the difference between the percentage figure disclosed in the last notification and the percentage figure of the shares in which his interest has not changed (at all times subsequent to the last notification) is less than 0.5% of the issued share capital (of the same class) of the listed corporation concerned.

2.12.8.3 The example below is similar to that in paragraph 2.12.6. However, when there is a change in the nature of your interest, the total number of shares in which you are interested remains fixed whilst the shares in which your interest is unchanged is shown as the dark part of each column.

“Last notification”



interest after the transacti



because it was due to a change in the nature of your interest reportable under s.313(1)(d). The *de minimis* exemption is not available again until you notify the percentage figure of your interest crossing a percentage level – a notification under s.313(1)(c). Even if you remained in the 5% band instead of crossing back up to 6%, further changes in the nature of your interest which stay within the 5% band (i.e. 5% and above to just under 6%) would still have been reportable because the *same percentage level exemption* is not available (the percentage level of your interest at the time of the “last notification” was above 6% and not within the 5% band).

2.12.9 *Wholly owned group exemption.*

2.12.9.1.1 This exempts wholly owned subsidiaries from making any disclosures in certain circumstances if their ultimate holding company “complies with the duty of disclosure” (see ss. 313(10) and (11) and 316(2)). The circumstances are where the duty of disclosure arises under s.313(1) or (4) – the exemption is not available where the disclosure is an Initial Notification (i.e. a disclosure arising under s.310(2) or (3)). By “complies with the duty of disclosure” the SFO means that the holding company complies with the duty of disclosure - if there is a duty of disclosure. The section does not impose a duty of disclosure on the holding company where none would otherwise arise. For example if holding company A has a 0.2 % interest itself and its wholly owned subsidiary B has 5.9%, A will be taken to be interested in 6.1%. Assume that B acquires a further 0.2%, and its interest crosses the 6% percentage level to 6.1%. However A’s interest increases from 6.1% to 6.3% - his interest does not cross a percentage level. There is no duty of disclosure and hence A and B can both enjoy the group exemption with no disclosure needing to be made.

2.12.9.1.2 A corporation that is wholly owned subsidiary does not qualify for the *Wholly owned group exemption* at the time when a corporation first becomes a listed corporation or when shares of a particular class first become listed (the exemption only applies to duties arising in the circumstances set out in s.313(1) and (4) not 313(2)) and it must make a disclosure if it has an interest in shares when a corporation is first listed. Hence if you are a corporation in a group and you, or a corporation that you control, is interested in the shares of a corporation when it is first listed, or if you have a notifiable interest and a short position in such shares, you must (each) file a notice.

2.12.9.2 Similarly, transfers within the 100% owned group do not affect the number of shares in which the ultimate holding company is interested, or the nature of the interest of the ultimate holding company (see s.313(13(v))), and therefore do not give rise to a duty of disclosure. There is no “relevant event” to trigger a duty of disclosure as the percentage level of the holding company’s interest remains the same. If two corporations in a group are both interested in the same shares the ultimate holding company should not aggregate both interests for disclosure purposes as this would be double counting – transactions between corporations in a wholly owned group do not increase or reduce the number of shares that the ultimate holding company must report.

2.12.9.3 Hence, in a typical warrant issue, no disclosure is required when warrants are issued by one member of a wholly owned group to another member of the same group. Hedging activities within the same group also need not be disclosed. In each case these



transactions between corporations in a wholly owned group do not increase or reduce the number of shares that the ultimate holding company is interested in, or has a short position in. Simply holding unsold derivatives warrants (where a corporation in the same wholly owned group wrote or issued the warrants) therefore gives rise to no interest/short position. However, interests or short positions that arise on transactions in the derivative warrants with third parties must be disclosed. The term “third parties” would include dealings with corporations that are controlled corporations but are not members of the same wholly owned group.



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



calculate the percentage of shares in which you are interested using the following formula (see





2.12.11.5 A common structure for “*family controlled*”



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 disregards an "exempt security interest". An 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

²⁸ 11 countries are recognized for this purpose - Australia, France, Germany, Guernsey, Ireland, Isle of Man, Jersey, Luxembourg, Switzerland, United Kingdom and United States of America



purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the SFC²⁹. To summarize, an interest in shares held by a qualified lender is an exempt security interest if -

- (i) it is held by way of security **only** by the qualified lender;
- (ii) the qualified lender is authorized to carry on business as a bank, an insurance company etc. in Hong Kong or under the law of a recognized place; and
- (iii) the interest in shares is held for the purposes of a transaction carried out in the ordinary course of that business.

For example if the London branch of a bank which is established in a place which is not recognized, grants a loan and holds an interest in the shares of a Hong Kong listed company as security for the loan, the security interest would qualify as an "exempt security interest" as the branch would be a "qualified lender" (the United Kingdom is a "recognized place"). On the other hand if a branch of a UK bank, which carries on business in a place which is not recognized, grants a loan and holds an interest in the shares of a Hong Kong listed company as security for the loan, the security interest would not qualify as an "exempt security interest" as the branch would not be a "qualified lender".

2.12.16.3 The creation of a security interest in shares in favour of a qualified lender does not to give rise to a change in the nature of the holder's interest in those shares (see s. 313(13)).

2.12.16.4 A security interest will cease to be exempt, and the qualified lender will be taken to have acquired an interest in the shares held as security in certain circumstances (see s. 323(7)). For example, if the qualified lender :

- (i) becomes entitled to exercise voting rights as a result of default and has evidenced an intention to exercise voting rights; or
- (ii) the power of sale has become exercisable and it offers the shares for sale.

2.12.16.5 It should be noted that if the qualified lender acquires another interest in shares, other than a security interest, this interest is not disregarded. Hence if the qualified lender enforces its rights as mortgagee it will acquire an interest which is not exempt. A disclosure obligation arises. The qualified lender should use code 1007 or 1107 to describe the relevant event and a code (other than code 2106) to describe the capacity in which it acquired the interest.

2.12.16.6 There have been a number of queries concerning the meaning of the words "by way of security only". These words are same as those used in s.14(4)(b) of the repealed



the transferor loses his property : this is an absolute transfer, not a transfer by way of security. The mortgagor loses title.

This reasoning has been used in the development of title finance transactions as a replacement for collateral over investment securities in order to avoid the inconveniences of mortgage law. The most common examples are stock lending and repos. The essence of the difference is that in each case the secured creditor obtains title to the securities, not a limited security interest."



(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 borrowing and return of shares if the percentage figure of his interest passes through a percentage level of 5% or higher. This is because he acquires an interest in the shares when he borrows them and ceases to have an interest in the shares when he returns them to the lender. The borrower may take advantage of the *de minimis* exemption if the elements necessary for that exemption are satisfied. However, the initial borrowing of shares also creates a “short position” (i.e. the obligation to return the shares) for the borrower and this must be disclosed separately when he gives a notification (see the definition of “short position” in s. 308). In certain circumstances the interest of the borrower of shares may be disregarded if he is a “regulated person” (see below).

The lender

2.13.3 The position of a stock lender is more complex. The lending of stock gives rise to a duty of disclosure because there is a change in the nature of an interest in shares when they are lent and returned. A loan of 1% or more of the shares of a listed corporation by a substantial shareholder will always give rise to a disclosure obligation (unless the SBL Rules apply – see further below). A loan of up to 1% will not give rise to a disclosure obligation if after the transaction the percentage level of his interest in his other shares (i.e. those which have not been lent) remains at the same level as at the time of the last notification given by him. For this purpose the last notification could be a notification under s. 313(1)(a), (c) or (d) (see s. 313(8)(a)). Note that the *de minimis* exemption discussed at paragraph 2.12.8 may also be available.

The Securities and Futures (Disclosure of Interests - Securities Borrowing and Lending) Rules (L.N. 219 of 2002) (“SBL Rules”) and Guidelines on the criteria for approval of lending agents

2.13.4 If certain conditions are satisfied, the SBL Rules provide :

- (i) an exemption for substantial shareholders (other than substantial shareholders who are directors);
- (ii) a simplified disclosure regime for approved lending agents, and their holding companies; and
- (iii) a disregard of the interests of regulated persons in shares borrowed and lent,



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



2.13.8 The effect of these provisions is that loans from the lending pool operated by an ALA, and returns of shares to the lending pool, are not required to be disclosed. However if shares are added to the lending pool or removed from the lending pool a disclosure obligation arises under s.5(4) of the SBL Rules. The disclosure forms must be completed in accordance with the notes to the forms and these require that disclosures arising under s.5(4) of the SBL Rules are separately identified in the disclosure forms. The size of the lending pool must be disclosed and appropriate codes must be inserted when completing the form.

2.13.9 The SFC has published Guidelines on the criteria for approval of lending agents as ALAs and the conditions that ALAs must observe. These conditions prevent the ALA from lending shares, from the lending pool, to companies that are members of the same group of companies as the ALA or placing shares that it holds for those companies in the lending pool. The conditions apply regardless of whether the group member is an investment manager managing a fund for another or is borrowing shares for a third party. The term “members of the same group” includes any person that is a controlling entity of the ALA (defined in Schedule 1 of the SFO) and any subsidiary of a controlling entity of the ALA. Equally, shares in which the ALA is interested, otherwise than as lending agent, are not eligible for the exemption. A list of corporations that have been approved as “approved lending agents” is posted on the SFC’s website on the Part XV web page under “Rules & standards / Securities and Futures Ordinance Part XV – Disclosure of Interests”.

2.13.10 The term “lending pool” in this paragraph 2.13 comprises :

- (i) shares that the ALA holds as agent for a third party which he is authorized to lend under a lending agreement that meets the requirements of the SBL Rules; and
- (ii) shares that have been lent by the ALA only if the right of the ALA to require the return of the shares has not been extinguished.

2.13.11 Provided that there is a suitable agreement in place, a custodian may transfer shares from its custody pool to its lending pool (to be held as agent rather than as custodian) and those shares can become “qualified shares” within the meaning of the SBL Rules.

2.13.12 An ALA will have to keep records of the transactions in accordance with the requirements set out in section 9 of the SBL Rules.

2.13.13 The simplified disclosure regime for ALAs also extends to holding companies of ALAs that are taken to be interested in shares in which an ALA is interested under section 316(2) of the SFO. Hence the holding company of an ALA is not normally required to disclose shares lent from and returned to the lending pool. Disclosure must be made if the ALA ceases to have a subsisting right to require the return of the shares that have been lent.



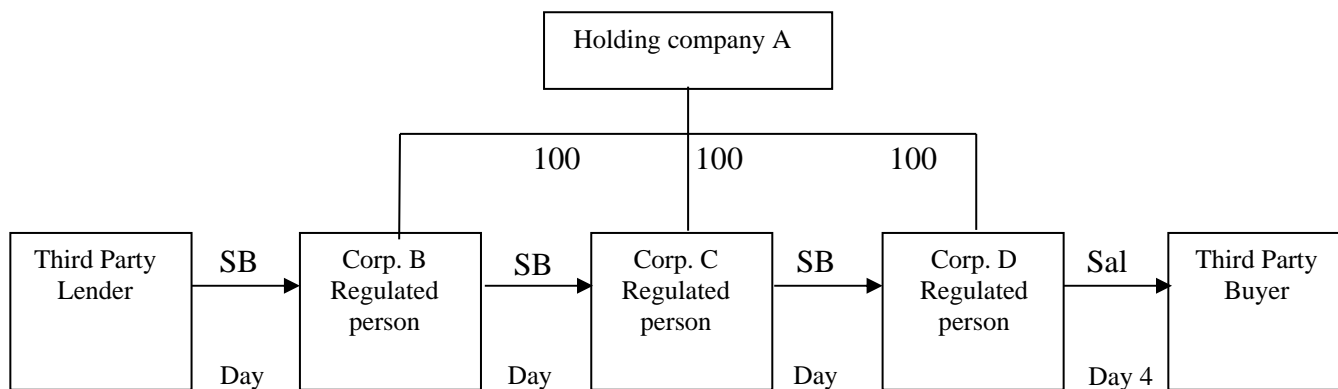
Regulated persons

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 on which the interest in the shares is acquired) are to be disregarded. When the shares are returned to the regulated person it may either return them to the ultimate lender or it can lend





2.13.22 However, if the shares are lent to another member of the group who uses them to settle a short sale the position is as follows :



| | <i>Third Party Lender</i> | <i>Corp. B</i> | <i>Corp. C</i> | <i>Corp. D</i> | <i>Holding company A</i> | <i>Third Party Buyer</i> |
|--------------|--|----------------|----------------|----------------|---|--------------------------|
| Day 0 | L ³⁶ | - | - | - | - | - |
| Day 1 | L Disclose change in nature of interest | - | - | - | Interest of Corp. B is disregarded and therefore holding company A is not deemed to have an interest. | - |
| Day 2 | L | - | - | - | Interest of Corp. C is disregarded. | - |
| Day 3 | L | - | - | L S | Corp. D is a regulated person but the shares are not intended to be used for a prescribed purpose. Corp A must disclose Long and Short (of Corp. D) | - |
| Day 4 | L | L S | L S | L S | Corp. D enters into a contract for sale. It is a regulated person but the shares are used for a purpose other than a prescribed purpose. B and C are taken to have acquired an interest and a short position. | L |
| Day 6 | L | L S | L S | S | Corp D completes the sale by transferring the shares to third party. Corp A must disclose disposal of 6% and retention of 6% Short position | L |

Day 1

2.13.23 In the example in paragraph 2.13.22, assume that Corporation B borrowed 6% of the shares of a listed corporation. The third party lender will have to make a disclosure because there is a change in the nature of his interest. Corporation B is not acting as an approved lending agent so s.3 of the SBL Rules does not apply to exempt the third party lender from filing a notice. Corporation B intends to on lend the shares within 5 business days and accordingly its interest is provisionally disregarded under s.7 of the SBL Rules. As

³⁶ The letter “L” stands for Long position and “S” for Short position.



Corporation B's interest is disregarded the holding company is not taken to have an interest in 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 Corporation C's interest is disregarded the holding company is again not taken 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 short. This was not a "prescribed purpose" so that Corporation D's interest was not disregarded under s.7(1)(a) of the SBL Rules. As Corporation D's interest is not disregarded 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. In this case the shares are being held to settle a short sale. This is not a "prescribed purpose".



2.14 Controlled corporations

2.14.1 In paragraph 2.2 we explained that in calculating the total number of shares in which you are interested you must include any interests, and derivative interests, in shares of the same listed corporation that a controlled corporation has. If you have an interest in the shares because you control a chain of corporations and the corporation at the bottom of the chain has 6% of the shares of a



2.14.6 A, B and C are all only interested in 6% of the shares in the listed corporation and this is the percentage that they must disclose in the form. A is not required to disclose an interest of 12% (i.e. $2 \times 6\%$) because each of B and C are interested in 6% - the number and proportion of shares in which the ultimate holding company has an interest does not enlarge as the number of companies in the chain increases. Equally A's interest is not reduced to 1.04% (i.e. $6\% \times 35\% \times 51\%$) because it controls only 51% of the shares in B and B only controls 35% of the shares in C - the number and proportion of shares in which the ultimate holding company has an interest does not reduce as the number of companies in the chain increases.

2.14.7 If B and C were wholly owned corporations, the fact that they were controlled corporations with interests in shares of the listed corporation concerned should still be stated in the forms. The fact that they need not themselves file a notice does not exempt the holding company from disclosing their interests.

2.14.7.1 If the interest of a controlled corporation in shares of a listed corporation is exempt or disregarded under paragraph 2.12.3 or paragraphs 2.12.10 to 2.12.18, its holding company is not required to aggregate that interest with its own interests in shares of the listed corporation concerned. In addition, if the interest of the controlled corporation is disregarded because it is a bare trustee, an exempt custodian interest, or the holder, trustee or custodian of a scheme (see paragraphs 2.12.12 to 2.12.15), the interest of its holding company will not be



liability partnership is interested. Similarly, a controlling shareholder (i.e. a person exercising



3. DUTIES OF DIRECTORS AND CHIEF EXECUTIVES

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



- (ii) controls more than half of its voting power at general meetings; or
- (iii) holds more than half of its issued share capital (which issued share capital, for the purposes of this subparagraph, excludes any part thereof which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or

(b) it is a subsidiary of a corporation which is the other corporation's subsidiary."

Subsection (2) further enlarges the definition.

3.2.3 The term "holding company" is defined in Schedule 1 to the SFO in the following terms relying heavily on the extended meaning of subsidiary:

"holding company", in relation to a corporation, means any other corporation of which it is a subsidiary;

3.2.4 An interest in more than 20% of the issued shares of any class of the share capital of a corporation is normally a direct interest in the shares of the associated corporation. However, as a listed corporation is taken to be interested in any shares that a controlled corporation has in any associated corporation (see s. 344(3) & (4)), if a listed corporation has a controlled corporation that has a direct interest in more than 20% of the shares of another corporation, that other corporation will be an associated corporation of the listed corporation. Hence in the following structure each of A to F are all associated corporations of the listed corporation. Only G and H do not qualify as an associated corporation (provided that each is not in fact controlled by the listed corporation)³⁸



ListCo has a direct interest of 21% in Corporation D which is therefore an “associated corporation” but ListCo does not have an interest exceeding 20% in Corporation G to satisfy limb (b) of the definition of “associated corporation” (as the calculation of its interest is : $21\% \times 51\% = 10.71\%$). Corporation B is a subsidiary of the holding company of ListCo and therefore satisfies limb (a) of the definition of “associated corporation” but Corporation H is not a subsidiary of the holding company of ListCo and does not satisfy limb (a) of the definition of “associated corporation”.

3.2.5 Please also see paragraphs 3.9.6 and 3.9.7 on the disclosure



corporation that your spouse and any child of yours under the age of 18 has. However if your spouse is herself or himself a director or chief executive of the listed corporation concerned a director need not aggregate her or his interest (see s.344). It is important to note that s.344(1) does not relieve a substantial shareholder of the duty to aggregate the interest of his spouse and any child under the age of 18 when making a disclosure under Divisions 2, 3 and 4. Section 344(1) only applies to disclosure obligations of directors arising under Divisions 7, 8 and 9 of Part XV. If a notice is filed when acting in both capacities you should include in the notice any interest (and short position) that your spouse and any child of yours under the age of 18 has.



Interests in shares of listed corporation

3.9.2 In the case of interests in shares of the listed corporation of which you are a director or chief executive and any “short position” (explained in paragraph 3.7 above) the



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 director or chief executive and any “short position” (explained 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 A notification of relevant events (vii) to (ix) is an “Initial Notification” so that 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 you in accordance with the provisions of the Act (as amended) in relation to the listed corporation or its directors.





- (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.
- (vi)



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



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).

3.12.3 Hence a person who is interested in 6.1% of the shares of a listed corporation cannot reduce the percentage level of his interest by buying 1% in the morning and selling 0.2% in the afternoon. He will end the day with an interest in 7.1% and his interest will only drop down to 6.9% when he completes the sale 2 days later. If you have lent shares you should still include them in the total unless your right to require the return of the shares has been extinguished. If you buy shares and complete the sale of shares on the same day, you cannot deduct the number of shares sold from the number of shares bought and report the net amount as a purchase (cessation of an interest). You must file 2 notices reporting the acquisition and cessation of an interest separately.

Time of calculation percentage figure

3.12.4 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



various types of consideration and appropriate codes appears in the notes to each form. If no price or consideration has been paid or received the price or consideration should be stated as “0”.

Transactions where no consideration need be stated

3.13.4 If the transaction that prompts disclosure is :

- (i) a change in the nature of your interest in shares (e.g. a securities borrowing and lending transaction);
- (ii) a transaction in derivatives; or
- (iii) a change in a short position,

the highest price per share and the average price per share (highest amount and nature of the consideration for off-exchange trades) need not be disclosed in the box on the form asking for “Details of the relevant event”. However in certain circumstances the price for derivatives must be stated elsewhere on the form (see below).

Example

3.13.5 We have set out below an example of how to complete Box 24 of Form 3A. Assume that you already own 4,500,000 shares in the listed corporation. 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). The details of the relevant event that you give in Box 24 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 24 in the following manner. The codes to be used are described below.

24. Details of relevant event

| | Brief description of relevant event | | Capacity in which shares were/are held | | | | Number of shares bought / sold or involved | Currency of transaction | On Exchange | | Off Exchange | |
|----------------|--|---|--|----------------------|--|---------------------------|--|-------------------------|---------------------------|-----------------------------------|-------------------------|----------------------------------|
| | | | Before relevant event | After relevant event | | Highest price (per share) | | | Average price (per share) | Average consideration (per share) | Nature of consideration | |
| Long position | Enter code or double click below 1101 | * | Enter code or double click below | | Enter code or double click below 2101 | * | 500,000 | HKD | 2.10 | 2.02 | | Enter code or double click below |
| Short position | Enter code or double click below | | Enter code or double click below | | Enter code or double click below | | | | | | | |

* Due to limited space in this outline, the description of relevant event and capacity in which shares were/are held are not shown but will be displayed in the form.



Derivatives and debentures

3.13.6 If the disclosure is made because of the grant by the listed corporation, or any associated corporation of the listed corporation, of :

- (i) equity derivatives;
- (ii) rights under those equity derivatives;
- (iii) debentures;
- (iv) rights to subscribe for debentures; or
- (v) on the exercise or assignment of those rights so granted,

then the director must also disclose -

- (a) the price (or consideration) paid or received for the grant of those equity derivatives/debentures or those rights; or
- (b) (if the rights are being exercised or assigned) the price (or consideration) paid or received on the exercise or assignment of those right,

and, if there is no price paid or received, the figure “0” should be stated.

3.13.7 This consideration need not be disclosed in the box entitled “Details of relevant event”. In each of the forms for directors there is a separate box (e.g. Box 28 of Form 3A) for disclosure of consideration if the derivatives/debentures are granted by the listed corporation of which he is a director or an associated corporation of that listed corporation.

3.13.8 The notes to Form 3A Box 28 direct that in the column “Price for grant”, you should state the price per share paid or received for the grant of an option. If the price paid or received is only a nominal amount, for example, HK\$10.00 for an option to purchase 1,000,000 shares, the price should be stated as being “0” i.e. zero. If the price per share is not a nominal amount but is less than \$0.001 per share, for example \$0.00075 per share, it should be rounded up and stated as \$0.001. The same applies to Box 34 of Form 3B, Box 27 of Form 3C and Box 33 of Form 3D.

3.14 What is meant by the “capacity” in which I hold shares ?

3.14.1 You will see in the last example that you are asked to state the “capacity” in which you held the interest in shares before or after the relevant event. The term “capacity” describes the type of interest that you have in shares – whether your interest is beneficial (i.e. the shares are held for your own benefit) or whether you have an interest as because you hold the shares as a trustee for someone else. In the notes to the prescribed forms there is a table which sets out all of the common types of capacities and you are asked to choose the capacity in which you are interested in shares, and enter an appropriate code on the form.



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

3.14.2 Firstly, in the box entitled “Details of relevant event” you are asked to state 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 complete the column labeled “before relevant event”. If you purchased shares you should complete the column labeled “after relevant event”. If there was a 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 In a separate box on the form labeled “Capacity in which interests disclosed in Box [] are held” you are 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 would enter the code for beneficial owner on one line and the code for “trustee” on the next 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 exemptions are given in respect of “interests in shares” – and short positions are not “interests in shares”.

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



in the shares. A custodian trustee is not a bare trustee, as he is not a mere name or “dummy” for the trustees or for the beneficiaries. Please also see paragraph 2.12.13.

3.15.5 *Collective investment schemes.* 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. 346(1)(c) and (4)). A qualified overseas scheme must be established in a place outside Hong Kong recognized for the purposes of s.346(4) by the SFC by notice published in the Gazette⁴³. 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.346(3)) and his interest must still be disclosed.

3.15.6 It will be noted that the provisions that effectively exempt substantial shareholders from disclosure when they are granted interests in shares in connection with a rights issue do not apply to directors.

3.16 Securities borrowing and lending

3.16.1 The exemption from disclosure available under the SBL Rules to substantial shareholders who lend shares does not extend to directors of listed corporations. What has been said in respect of substantial shareholders in relation to the SBL Rules does not apply to persons who are directors as well as substantial shareholders.

4. THE TIME ALLOWED FOR FILING NOTICES AND THE FORMS THAT MUST BE USED

4.1 Timing of notification

4.1.1 In the case of most relevant events you must give the notification within 3 business days of the day you know of the relevant event. In the case of events that are referred to an Initial Notification, you must give the notification within 10 business days after you became aware of the relevant event.

4.1.2 The period allowed for filing a notice runs from the time you know of the facts that constitute the event (e.g. the purchase of the shares, the delivery of the shares, the buy back of shares by the listed corporation), not the day that you realize that the event gave rise to a duty of disclosure under Part XV.

4.1.3 The term “business day” means a day other than a Saturday, a public holiday and a day on which a black rainstorm warning, or a gale warning, is in force i.e. it would exclude Saturdays and Sundays. The period (of 3 or 10 business days) allowed for filing a disclosure notice is calculated excluding the day that the relevant event occurred.

⁴³ 11 countries are recognized for this purpose - Australia, France, Germany, Guernsey, Ireland, Isle of Man, Jersey, Luxembourg, Switzerland, United Kingdom and United States of America



4.1.4 When you buy shares you will normally have to file a notice within 3 business days after you contracted to buy the shares. When you sell shares you will normally have to file a notice within 3 business days after settlement day i.e. the day when you deliver the shares to the buyer. If in fact



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. If you are using PDF, you must click "Trust this document always" and save the changes.

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.



4.3 Modification or adaptation of the forms – footnotes and use of different forms

4.3.1 The forms are prescribed forms – this means that they must be used for filing a notice under Part XV. The forms must not be modified or adapted. The whole point of disclosure on interests is that certain information regarding your shareholding can be made available to the public. If you modify or adapt the forms, use annotations or footnotes outside the boxes or do not use the forms, the DI system cannot process the information and it will not be available to investors. Accordingly the legislation provides that a notice otherwise than in the prescribed form is not treated as a notification i.e. you will have committed an offence and will be liable for prosecution if you do not use the prescribed forms - unmodified. Please read the directions and instructions for completing the forms as these must be complied with.

4.3.2 Names of individuals and corporations should not be abbreviated when completing the forms. The full name should be given each time.

4.4 Codes used in the forms

4.4.1 A key objective of the Part XV disclosure regime is to provide investors in listed corporations with more complete and better quality information to enable them to make informed investment decisions. Part XV therefore requires more information to be disclosed in the forms than was required under the S(DI)O. A system of codes has been developed so that you can describe the nature of the event that gave rise to the reporting obligation, the capacity in which you acted, the type of consideration paid etc. by simply inserting a code number in the relevant box on the form. These codes enable the information to be entered concisely and in a standard format so that the information can be processed by computer and made available to investors.

Codes to be used when completing the box entitled “Details of relevant event”

4.4.2 It is important to note that you should only use one code to describe the relevant event. You must choose from Table 1 – Codes of Relevant Events in the directions and instructions for completing the form the code which you think best describes the relevant event. You should not use 2 or 3 codes even if more than one code may apply to the circumstances.

4.4.3 You should also only use one code to describe the capacity in which you held the shares that gave rise to the relevant event. You must choose from Table 2 – Codes of Capacity in the directions and instructions for completing the form the code which you think best describes the capacity in which you held the shares that gave rise to the relevant event. You should not use 2 or 3 codes even if more than one code may apply.

4.4.4 You should also only use one code to describe the nature of the consideration (you only need to complete a code if you bought or sold the shares off-exchange). You must choose from Table 3 – Codes of Nature of Consideration in the directions and instructions for completing the form the code you think best describes the nature of consideration in respect of an off-exchange sale or purchase of shares.



4.5 Substantial shareholders who are directors must use Form 3A

4.5.1 If you are a person who is both a substantial shareholder and a director of the listed corporation concerned, you may have separate duties to file notices (one in each capacity) as a result of a single event. For example, a person who is interested in 5.9% of the shares of a listed corporation and buys a further 0.2% will have to file a notice because he is a director (and therefore has to disclose all transactions) and will also have to file a notice as a substantial shareholder because his interest has crossed the 6% level.

4.5.2 If you are substantial shareholder and also a director then you must use Form 3A (Director/Chief executive Notice) to discharge your duty to disclose your interests, or short position, in your capacity as both a substantial shareholder and as a director. This avoids the need to file both Form 1 and Form 3A.

4.5.3 If you are both a director and a substantial shareholder please always complete Boxes 27 to 32 giving details requested in respect of all the shares in which you are interested, or have a short position, whether you are completing the form in a dual capacity or in your capacity simply as a director.

4.6 Means of filing notices

4.6.1 Before the date of Commencement (i.e. 3 July 2017), filings of DI notices and reports under Part XV may be made by fax, by post, by email or by hand. Part 4 of the Amendment Ordinance 2014 amends the SFO so that these notices and reports must be submitted electronically to the Stock Exchange. Upon Commencement, other than in the circumstances set out in paragraph 4.6.3 below, all completed DI forms must be uploaded to the DION System and submitted through the system.

4.6.2 You must register with the DION System before you submit your first DI form under the DION System.

4.6.3 If your duty to file a DI form arose before the date of Commencement, you may either (i) submit the form to the Stock Exchange by using the DION System; or (ii) submit the prescribed DI form available for use immediate2 Tc0 Tw()T0001 Tw Commencement to the Stock Exchange by fax, by post, by email or by hand. In any event, all filings made after the period of 3 months from the date of the Commencement should be made by using the DION System.

4.6.4 If you submit a DI form through the DION System, you are not required to file a separate copy of the form with the listed corporation concerned. The Stock Exchange will provide the forms it receives to the listed corporation concerned.



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 ?

4.7.2 If you make a mistake in completing the form you cannot rectify the mistake by amending the form after it has been filed. Instead, you should file another notice with the information set out correctly. The date of the relevant event will remain the same enabling persons inspecting the DI database to see that the later filing has corrected the earlier filing.

Do I have to fill in a separate form for each listed corporation ?



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. For example, it is not permissible to put "a trust" or "a discretionary trust" as the name of the 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





- (ii) when making a disclosure, makes a statement that he knows is false or misleading in a material particular.

5.2.2 If a person commits an offence, he is liable-

- (i) on conviction on indictment to a fine of \$100,000 and to imprisonment for 2 years;
or
- (ii) on summary conviction to a fine of \$10,000 and to imprisonment for 6 months,

for each offence of which he is convicted.



5.3.4 You must state the name of each of the other parties to the agreement, his/her address and the number of shares in which he/she is interested “apart from the agreement” in 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 secondly all shares in which the other parties to the agreement are interested “apart from the agreement” (defined in s.318(2)).

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 concert party agreement “apart from the agreement” -

“whether or not the interest of the other party in question was acquired, or includes any interest which was acquired, in pursuance of the agreement”.

5.3.4.3 There has been some confusion as to the meaning of the words “apart from the agreement” in section 318. These words mean that the interests that each concert party is taken to be interested in are the interests of each of the other members of the concert party group namely their interests in shares of the relevant listed corporation concerned that the concert party member -

- (i) is interested in quite separately from the concert party (e.g. existing interests in shares, interests by attribution etc);
- (ii) interests he acquired pursuant to the concert party agreement; and
- (iii) interests he acquired pursuant to other concert party agreements,

but not including interests of other concert parties that the concert party member is taken to have by virtue of the section 317 agreement. The interests in sub-paragraphs (i), (ii) and (iii) are the interests referred to as interests “apart from the agreement”. The interests of other concert parties that the concert party member is taken to have by virtue of the section 317 agreement could be viewed as “interests under the agreement”.

5.3.4.4 Interests which arise “apart from the agreement” must be excluded to avoid

Example of how to complete Box 23 of Form 1

5.3.5 For example, assume that Mr. Wong Teng and 2 other persons agree to buy shares in XYZ Ltd. (a listed corporation). They have each already interested in a number of shares of XYZ Ltd. which they purchased before they entered into the s.317 agreement. Under the s.317 agreement Mr Wong Teng purchased 25,000,000 shares, Mr. A purchased 20,000,000 shares and Mr. B purchased 15,000,000 shares in XYZ Ltd. Their shareholdings are as follows :

| Concert parties | Shares not connected to the s.317 agreement | Shares purchased pursuant to the s.317 agreement | Total |
|-----------------|---|--|-------------|
| Mr. Wong Teng | 50,000,000 | 25,000,000 | 75,000,000 |
| Mr. A | 4,000,000 | 20,000,000 | 24,000,000 |
| Mr. B | 2,000,000 | 15,000,000 | 17,000,000 |
| Totals | 56,000,000 | 60,000,000 | 116,000,000 |

Assume also that Mr. Wong is completing the form. He will already have stated in Box 16 that he is interested in 16,000,000 shares⁴⁵. He has to state the number of shares in which the other parties are interested "apart from the agreement" and the total shares in which he (Mr. Wong) is interested by the application of s.317 and 318 (the 60,000,000 shares bought pursuant to the agreement and the further shares⁴⁶ in which the other parties are interested in "apart from the agreement"). Accordingly, Mr. Wong will then complete Box 23 as follows :

23. Further information from a party to an agreement under section 317

| Names of other parties | Address | Number of shares |
|------------------------|---|--------------------------|
| Mr. A | Unit 1, 25/F Wong Industrial Bldg, Chai Wan, HK | 24,000,000 ⁴⁶ |





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 be filed with the Stock Exchange within 1 business day of the day the listed corporation receives the information or has prepared the relevant report. Although listed corporations are also required by s.330(1) or s.333(1) to notify the SFC of information that it receives under s.329 or to deliver a report prepared under s.332 to the SFC, the Stock Exchange would notify the SFC on behalf of the listed corporation concerned.

5.4.3A You must register with the DION System before you submit your first DI form under the DION System. Please refer to paragraph 4.6 for details of the means of filing.

5.4.4 It is an offence for a person, without reasonable excuse, to fail to comply with a notice given by a listed corporation investigating the ownership of its shares under s.329 or to make a false or misleading statement in response to such a notice. It is also an offence for the listed corporation and every officer who is in default, to fail to prepare a report and deliver it to the Stock Exchange and the SFC within the periods specified. The requirements of ss. 332 and 333 should be read with care.

What information must be given in response to an investigation

5.4.5 If you are a licensed person a common query is “what information am I required to provide to a listed corporation in respect of my clients in an investigation under s.329 of the SFO”? Section 329 of the SFO requires you to give "particulars of the identity of the person" having an interest in shares of the listed corporation conducting the investigation or equity derivatives or short positions in respect of those shares. In investigations you are commonly required to give the listed corporation concerned the "full name, ID number, address and contact details of the beneficial owners (ie. your clients) of the listed shares."

5.4.6 The first question is whether the provisions of the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") operate to restrict the information that you are required to provide to the listed corporation. We consider that there are no data privacy concerns as the disclosure obligations in Part XV are founded on the basis that the listed corporation, its shareholders and the public are entitled to know the identity of persons who are interested in shares of a listed corporation. The SFO post-dates the PDPO and its provisions were drafted having regard to the data protection principles and after consultation with the Office of the Privacy Commissioner.

5.4.7 When filing a notice under Part XV substantial shareholders must state their full name and address, ID number/passport number and contact details. These notices are filed



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 attachments) in a register against the name of the person giving the notice. Similarly, when it receives a reply to a requisition raised by the listed corporation carrying out an investigation under s.329, it must enter on the register :

- (i) the fact that the requirement to provide certain information was imposed;
- (ii) the date that it was imposed; and
- (iii) any information received in pursuance of the requirement.

5.5.4 The register must be completed so that the entries against the names appear in chronological order. In addition details of any party that holds shares as a result of entering into a section 317 agreement have to be disclosed in the register. An index has to be compiled by the corporation of the names contained in the register. Entries must be made in the *register* within 3 business days next following the day upon which the corporation receives the information. The *index* to the register has to be updated within 10 business days of a name being entered in the register.

5.5.5 Form 3A has been specified by the Commission under section 324(3) of the SFO for use by a person who is a director and also a substantial shareholder to disclose his interests in shares of the listed corporation of which he are a director. This is to avoid persons who are both substantial shareholders and directors or chief executives having to complete





5.6.4 Whenever a right referred to in s.352(3) is exercised by a director, the listed corporation is under a duty to record that fact and details of the shares or debentures concerned.

5.6.5 The duty on a listed corporation to record details of rights granted to and exercised by directors arises independently of the duty on directors to file notices of the grant and exercise of rights.

5.6.6. Notices of interests and short positions in listed corporations filed by substantial shareholders who are also directors will be filed using Form 3A. The information on these notices 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.

5.6.7 Listed corporations have to inform



5.8 Investigations and orders imposing restrictions on shares etc.

5.8.1 Division 11 of Part XV gr





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|------------|-------------|-------------|
| 2.5.3 | 2.13.21- 22 | 4.7.4.7 |
| 2.6.6 | 2.13.24 | 4.7.5 – 6 |
| 2.7.1 | 2.13.26 | 4.7.10 |
| 2.9.1 | 2.14.3 | 4.7.11 – 13 |
| 2.9.6 | 3.9.3.1 – 3 | 5.3.5 |
| 2.9.8 | 3.9.5 | 5.4.1 |
| 2.10.1 | 3.9.9 | 5.4.3 – 3A |
| 2.10.3 - 4 | 3.9.11 | 5.5.7 |
| 2.10.6 | 3.13.1 | 5.6.7 |
| 2.11.1 - 4 | 3.13.3 | 5.7.1 |