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associated corporations) and their interests in any debentures of the listed corporation (or any of its associated corporations).

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

1.2.1 You can download the DI forms and the Notes, in Chinese and in English, from the Hong Kong Exchanges and Clearing Limited (“HKEx”) web site which is at <https://sdinotice.hkex.com.hk> or the SFC web site at <https://www.hksfc.org.hk> Forms are available in Adobe Portable Document format (“PDF”) for printing out and completion in manuscript or in Microsoft Excel format for completion offline using the Excel program. You may file a notice using either format. There is also a hyper-link from the HKEx web site Home Page (<http://www.hkex.com.hk>) to the site for downloading notices and filing. Go to the HKEx Home Page and click “Disclosure of Interests” which can be found immediately under the principal heading “Services – Investment Service Centre”. Then click “Download and Submit DI Forms”. For further details on the forms, and the places that they must be filed, please see paragraphs 4.2 and 4.6 below.

1.2.2 If you have difficulties with downloading the forms from the SFC web site please send an email describing the problem that you have experienced to enquiry@hksfc.org.hk If you have difficulties with downloading the forms from one of the HKEx web sites please send an email describing the problem that you have experienced to DI-Filings@hkex.com.hk If there are a large number of queries on commencement this will affect the response time.

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 using a new search facility on the HKEx web site (<https://sdinotice.hkex.com.hk>). Alternatively, go to the HKEx Home Page and click “Disclosure of Interests” which can be found immediately under the principal heading “Services – Investment Service Centre”. Information filed with the Stock Exchange under the repealed S(DI)O can be found by clicking “Disclosure of Interests”.

1.4 Defined terms

1.4.1 Unless otherwise stated all references to section numbers in this outline are references to sections of the Securities and Futures Ordinance (Cap. 571)(“SFO”). Terms that are defined in section 308 of the SFO and Schedule 1 to the SFO have the same meaning in this outline. 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).







particular derivative you hold you may have rights to acquire shares, rights to require another person to buy shares, or a right to a sum of money depending on the price of certain shares. The shares that may be delivered to you, or by you, or are used to determine the price or value of the derivatives are called the “underlying shares” of the equity derivatives.

2.3.3 For example, in the case of an issue of :

“European Style Cash Settled Call Warrants 2001-2002 relating to ordinary shares of HK\$10.00 each in XYZ Ltd. issued by ABC Investment Bank”,

the “underlying shares” are ordinary shares of HK\$10.00 each in XYZ Ltd.

2.3.4 If you hold, write or issue financial instruments such as derivatives you will be taken to be interested in the underlying shares and these interests must be added to your other interests to determine your disclosure obligations. However, if the transaction in derivatives was between members of a wholly owned group of companies no duty of disclosure would arise (see s.2.12.9).

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. The original shareholders will also have to disclose the short position which arises on creation of the option. Disclosures are 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 ID0.001.aeholu 0 TD0.BL.001.aeholu 0 ion”ns undon whire the original



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 Futures Exchange you should choose code 401 or 402 depending on whether the derivatives are physically settled (i.e. shares are delivered on exercise of the derivative) or cash settled (cash is paid on exercise). If the derivatives are not listed then code 403 or 404 should be used. 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 an interest in shares, including interests through holding, writing or issuing financial instruments under which, for example :

- (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 money if the price of the underlying shares increases; or
- (iv) you have a right to avoid or reduce a loss if the price of the underlying shares increases.

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 money if the price of the underlying shares declines; or
 - (d) you have a right to avoid a loss if the price of the underlying shares declines.

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 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 company does not have a short position then the controller of the listed corporation is not deemed to have a short position under s.316.



2.5 How many shares am I taken to be interested in if I hold equity derivatives ?

2.5.1 The number of shares in which you are taken to be interested, or have a short position, if you hold, write or issue financial instruments such as equity derivatives is for example :

- (i) the number of shares that may have to be delivered to you, or by you, on the exercise of rights under the derivatives;
- (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.

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 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 need not file a notice. However, you should file a notice when you first become aware of the number of shares that will be delivered to you/will be required to be delivered by you. 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 no minimum or maximum number that you are bound to get) then no duty of disclosure arises on entering into the derivative. Once the number of shares that you will receive is known a duty of disclosure arises. If the derivative specifies a



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.

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 –

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

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





2.7.3 Relevant event (iv) may not always give rise to a duty to give a notification. The change in the nature of your interest is not required to be reported if the percentage level of your interest that has not changed, and the percentage level of your interest at the last notification given by you are both the same. For example, if you have an interest in 5.6% of the shares of a listed corporation and lend 0.5% the percentage level of your interest that has not changed is 5.0% (i.e. 5.6% less 0.5% equals a percentage figure of 5.1% which is then rounded down to a percentage level of 5.0%) and no notification need be made. However, if you have an interest in 5.6% of the shares of a listed corporation and lend 1.0% the percentage level of your interest that has not changed is 4.0% (i.e. a percentage figure of 4.6% rounded down to a percentage level of 4.0%) and a notification must be made.

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

Duties of disclosure resulting from Share Repurchases or Placements

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

2.7.6 It is common in Hong Kong for there to be a “placement” and a related “top-up”. The major shareholder places a block of shares with a third party and then the listed corporation issues the same number of new shares to the major shareholder. This leads to a dilution of the interests of other shareholders in the listed corporation. If as a result of a placement and top up, the percentage level of your interest reduces you will come under a duty of disclosure. The disclosure obligation arises from the date that the shares are issued. This would normally be on the date of allotment. However, as will be seen below (paragraph 4.1) the time allowed for reporting the change will only run from the date that you became aware of the facts that lead to the change in the percentage level of your interest i.e. the date that you became aware that the number of shares in issue had increased.

2.7.7 As the disclosure obligation aris



capacity in which you held any shares, the number “bought/sold or involved” or the consideration.

Changes in the percentage level of a short position

2.7.8 In relation to paragraphs 2.7.1 (v) and (vi) you should note that you only have to make a disclosure as a result of your short position passing through the 1% percentage level or a higher percentage level if you also have a notifiable interest (i.e. a 5% long position). You are not required to make a disclosure if there is a change in the percentage level of your short position but do not have a “notifiable interest”. Hence if your short position rises from 5% to 6% but you still only have a 3% long position you will not be required to file a DI notice.

2.8 Do I have any disclosure obligations on commencement of the SFO ?

2.8.1 If you are a shareholder of a listed corporation you will have a separate duty of disclosure on commencement of the SFO, if you have an interest in 5% or more of the shares of a listed corporation, which has not previously been disclosed under the repealed S(DI)O. It does not matter whether you have a direct interest in the shares or whether you are deemed to be interested in the shares (see paragraphs 2.1 to 2.5), if the interest has not previously been disclosed, you must disclose that interest on commencement.

2.8.2 If you are a shareholder of a listed corporation you will have a duty of disclosure on commencement of the SFO, if you have an interest in 5% or more of the shares of a listed corporation and you have a short position of 1% or more.

2.8.3 The biggest group of persons affected are persons who have an interest between 5% and 10% of the voting shares of a listed corporation. However, persons with interests of 10% or more and either :

- (i) a short position of 1% or more; or
- (i)[((i)c0.3096 TwrTD0.001 Tc)-I



have previously been disclosed under the S(DI)O. Accordingly, that interest must be disclosed on commencement.

2.8.5 However commencement does not change the nature of your interest so there is no duty to notify a change in the nature of your interest that arose after the last notice was filed under the S(DI)O but before the commencement of the SFO.

2.8.6 If you have a duty to make a disclosure on commencement the notice should be filed on or before 14 April 2003. The date of the “relevant event” will be stated on the form as 1 - 4 - 2003. You will leave blank the next Box “Date when the substantial shareholder became aware of the relevant event/interest in the shares (if later).” You need only complete column 2 of the Box entitled “Details of the relevant event”.

2.8.7 If you are required to make a disclosure on commencement of the SFO (an “Initial Notification”) you are not required to state the number of shares bought/sold/or involved, or the price/consideration that you paid. This is because you did not acquire an interest in, cease to have an interest in, or change the nature of your interest in any shares at the time of the “relevant event” – the commencement of the SFO.

Interaction with wholly owned group exemption on commencement

2.8.8 A corporation that is wholly owned subsidiary does not qualify for the Wholly owned group exemption (see paragraph 2.12.9) on commencement (it 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 that are not wholly owned subsidiary shares.



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 will be :

- (i) When a person exercises rights under derivatives;
- (ii) When a person has rights under derivatives exercised against him;
- (iii) When a person lends shares under a securities borrowing and lending agreement (see paragraph 2.13.3 below); and
- (iv) When a person gives shares to another person as security.

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 creates a binding obligation to deliver the shares to you causing a change in the nature of Mr. X's interest in the shares.

2.9.4 Similarly, if you have a right to require Mr. X to buy 2,000,000 shares under a put option, Mr. X will have a contingent interest in the 2,000,000 shares. When you exercise your rights to require Mr. X to take 2,000,000 shares, Mr. X no longer has a contingent interest in the shares but is under an immediate obligation to take delivery of the shares. This is a change in the nature of his interest. The exercise of the rights creates a binding obligation to deliver the shares to Mr. X thus causing a change in the nature of your interest in the shares.

2.9.5 There are also five circumstances in which there is taken to be no change in the nature of a person's interest (see. s. 313(13)) and a further circumstance is set out in s.5 of the Securities and Futures (Disclosure of Interests – Exclusions) Regulation (L.N. 229 of 2002) ("the Exclusions Regulation"). There is taken to be no change in the nature of a person's interest in shares :

- (i) For a purchaser of shares on delivery of shares to him (if he has disclosed the acquisition of the equitable interest when he contracted to buy the shares).
- (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).
- (iii) For a substantial shareholder on exercise of rights to subscribe for shares granted to him as part of a rights issue, and delivery of the shares to him on completion of the rights issue.
- (iv) For a holding company, if the change in nature of the interest is due to the acquisition of an interest in those shares by its wholly owned subsidiary from another wholly owned subsidiary.



- (v) For a holder of derivatives, due to a change in the terms on which rights under equity derivatives may be exercised because of a change in the number of underlying shares in issue.
- (vi) For a substantial shareholder, where a “qualified lender” (see paragraph 2.12.16) comes to have an interest in the shares by way of security.







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)).

2.12.5 Issuers of structured products.

2.12.5.1 A corporation issuing structured products may apply to the SFC for exemption of that corporation, and others in relation to the corporation, from the provisions of Part XV if certain conditions are satisfied. The principal conditions are that the corporation's shares are not listed in Hong Kong, the corporation has not raised and does not propose to raise publicly traded equity capital in Hong Kong, and that only the structured products will be listed in Hong Kong (See s.309(1) and the Guidelines published under s.309(1)). It is the substantial shareholders and directors of the corporation issuing the structured product (the "issuer") that are exempt from disclosing their interests in shares and debentures of the issuer. The issuer and holders of the equity derivatives must still count the underlying shares of the equity derivatives in determining their disclosure obligations.

2.12.6 De minimis exemption (acquisitions and disposals) (See s.313(7)).

2.12.6.1 Where a person acquires an interest in shares, or ceases to be interested in shares, and as a result his interest crosses over a percentage level, the person will still not need to disclose the new interest if :

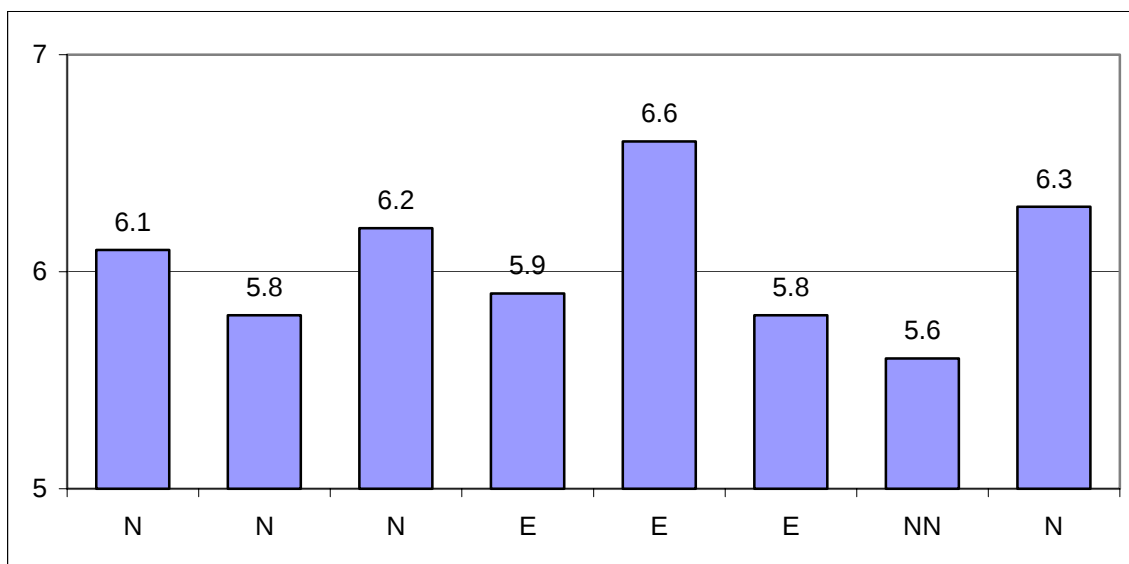
- (i) the percentage level of his interest is the same as, or less than, the percentage level of his interest in the "last notification" given by him; and
- (ii) the difference between the percentage figure of his interest disclosed in the "last notification" given by him and the percentage figure of his interest at all times thereafter, is less than 0.5% of the issued share capital (of the same class) of the listed corporation concerned.

2.12.6.2 The "last notification" must be a notification under s.313(1)(c) i.e. due to a change in the percentage level of your interest above 5%. An initial notification (crossing the 5% threshold) and a notification of a change in the nature of your interest do not qualify as a "last notification".

2.12.6.3 The de minimis exemption is best explained with the assistance of an example. In the following bar chart each bar represents the purchase or sale of an interest in shares of a listed corporation. The figures shown represent the percentage figure of your interest. The letters below each column represent whether the transaction is notifiable or exempt. N = Notifiable; E = Exempt ; NN = Not Notifiable. The reference to a percentage level refer to e.g. the level 6% or 7%. The term "percentage figure" refers to the actual percentage that you hold e.g. 6.1%, 5.7%.



“Last notification”



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

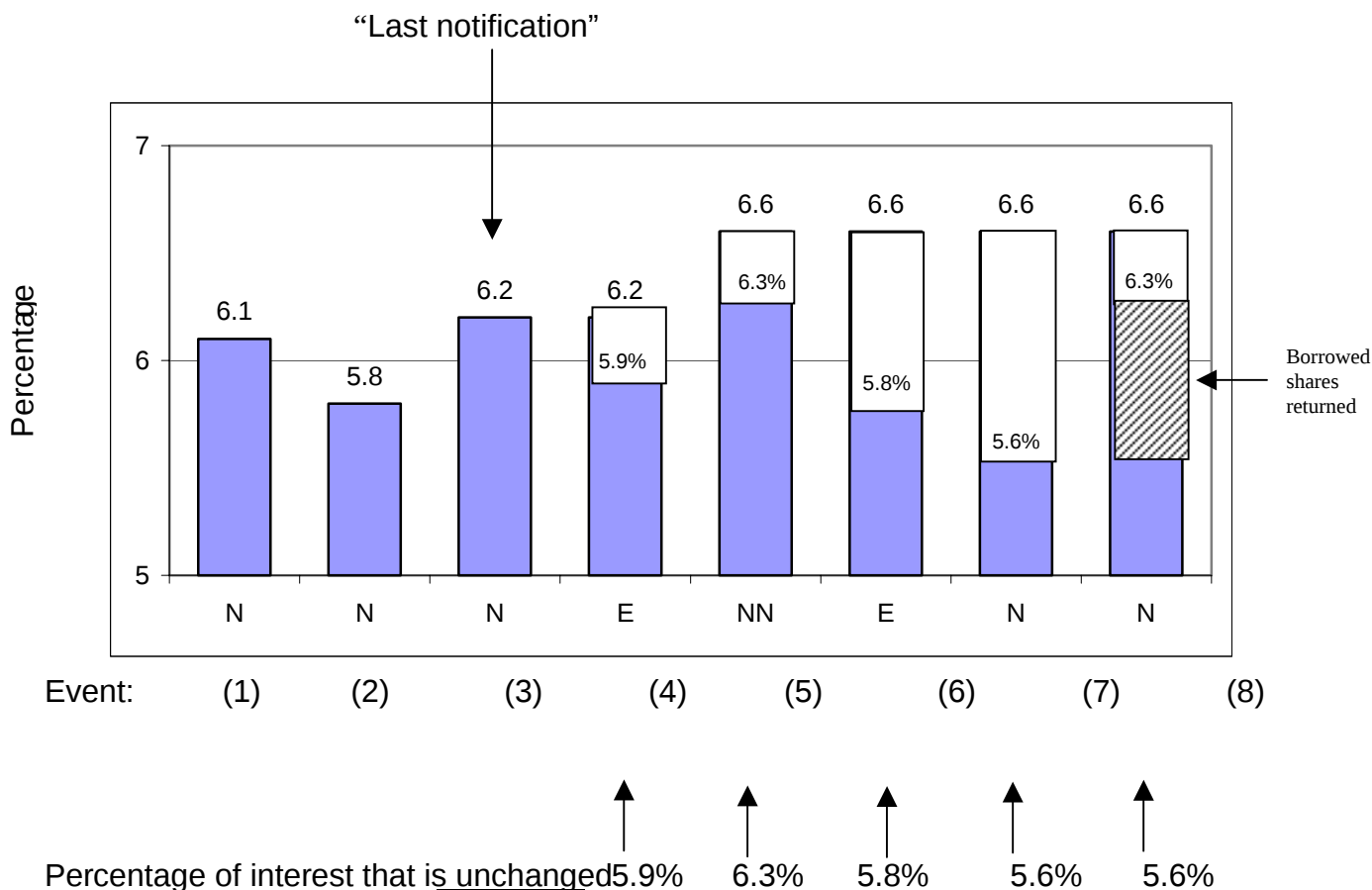
- (1) You buy 6.1% of a listed corporation. This is not a “last notification” as it was not made under s.313(1)(c).





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.



2.12.8.4 In this example, assume that –

- (1) You buy 6.1% of a listed corporation. This is an “initial notification” which is notifiable.
- (2) You sell 0.3% and the percentage figure of your interest passes though the 6% level. This is notifiable as the previous notice is an initial notification which is not counted as a “last notification”.
- (3) You buy 0.4% passing through the 6% level. This is notifiable. It does not qualify for the *de minimis* exception because the percentage level of your interest after the transaction is not “the same as or lower” than your previous

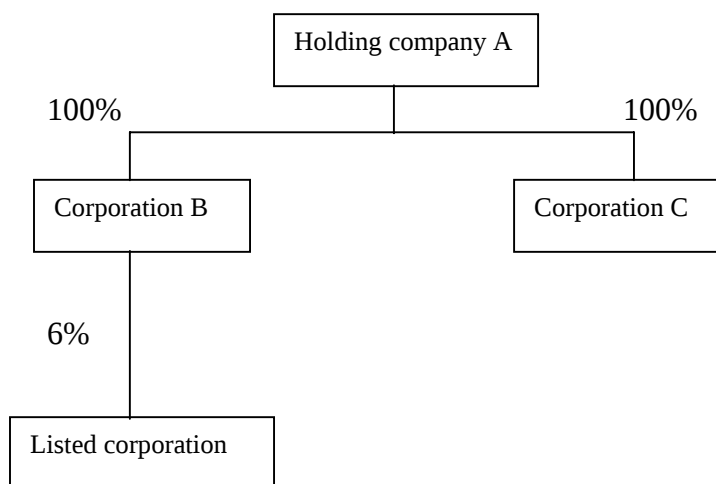


interest. This is a notification under s



2.12.9.4 A duty of disclosure arises where the subsidiary in question ceases to be a wholly owned subsidiary (see s.313(11)). In the most extreme case this would be when it left the group altogether but it would also cease to be a wholly owned subsidiary even if only 1% of its shares were sold to a third party.

2.12.9.5 For example, assume corporation A has 2 wholly owned subsidiaries B and C. B then purchases 6% of the shares of a listed corporation. The group structure would look like this :



2.12.9.6 B need not file a notice of the purchase if A files a notice (assuming the notification is not an “Initial Notification” under s.313(2) or (3)). If B then grants a call option to C over the entire 6% interest this creates a short position for B and a long position of 6% for C. The grant and taking of the option need not be notified by B or C as the transaction is between 2 members of a wholly owned group. The transaction does not need to be disclosed by A as it is still only interested in 6% of the shares of the listed corporation.

2.12.9.7 If A then sells all its shares in B to a third party (i.e. B leaves the group) B is taken to have come to have a notifiable interests and a short position and must file a notice and A must file 2 notices as it is (1) taken to have ceased to have an interest in the shares held by B and (2) also taken to have acquired an interest in 6% of the shares through the option held by C (see. s.313(11)).

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

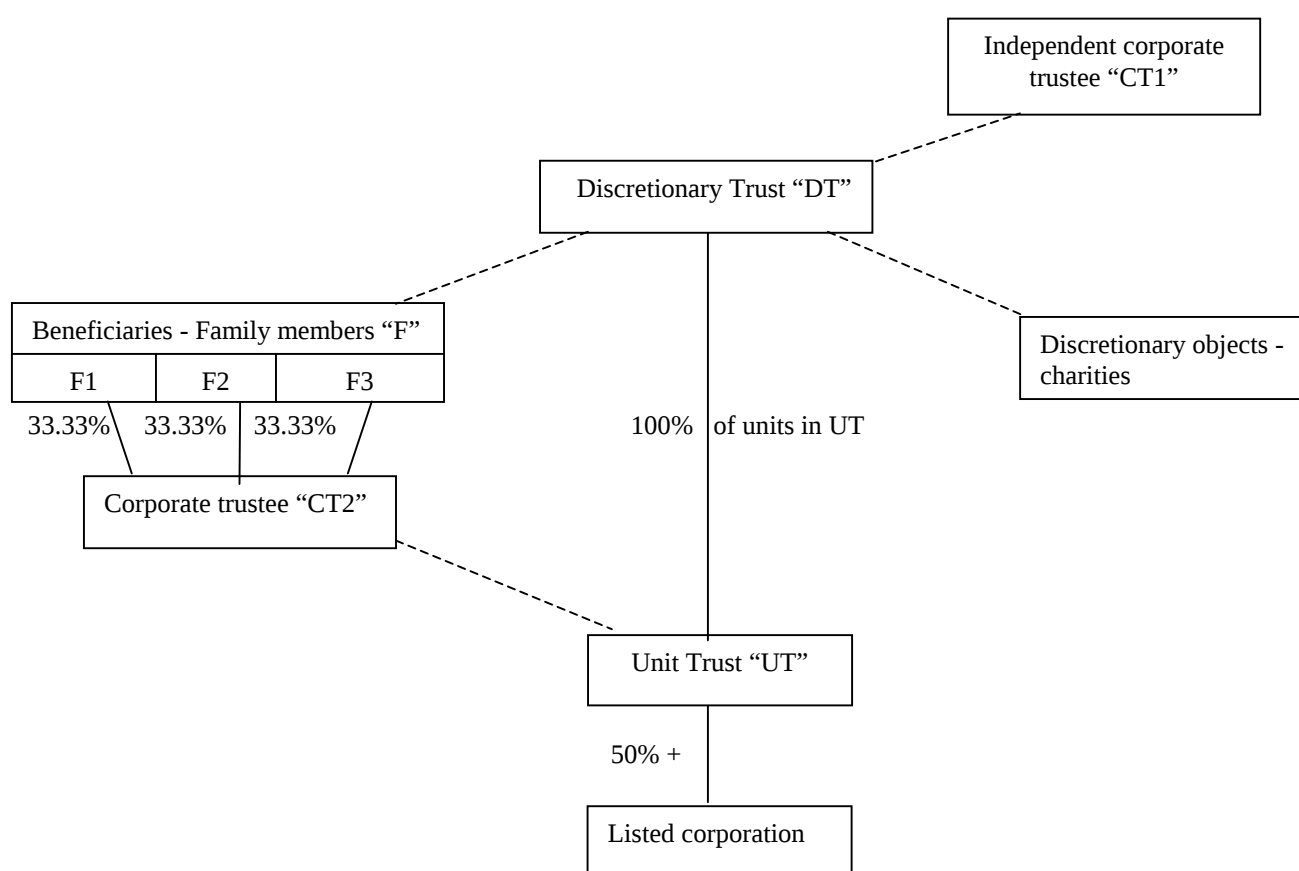
2.12.9.9 Both long and short positions resulting from transactions with third parties will give rise to a reporting obligation in the normal way if the result is that either crosses a percentage level. If one transaction between a third party and a member of the group results in



- (ii) a corporation which is licensed registered or exempt for asset management in a place recognized for the purposes of s.316(7) by the SFC¹ and is authorized to manage investments in securities for another person under a written agreement.

2.12.11.4 The term “trustee” is defined in s.316(7) to mean a corporation the principal business of which is to hold property belonging to another person under the provisions of a trust deed.

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



2.12.11.6 An independent corporate trustee “CT1” is appointed as trustee of a discretionary trust “DT”. A unit trust “UT” is established to hold the family’s shares in a listed corporation. The units in UT are all held by CT1 for DT. The family members (F 1, F2, and F3) are discretionary beneficiaries of DT. They also control a corporation “CT2” which is the trustee of unit trust UT. Accordingly they retain the day to day control over the affairs of the

¹ 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



listed corporation and can also control whether income should be accumulated and when and how much income should be distributed. There are many variants on this theme but they are generally to a similar effect.

2.12.11.7 It has been suggested that F1, F2 and F3 are not interested in shares of the listed corporation because s.316(5) entitles them to disaggregate the interests of CT2. This is not correct. A trustee of a trust does not have "customers" and, in the above example, does not carry on a "business". Accordingly F2, F2 and F3 will not be entitled to disaggregate the interests of CT2 under s.316(5). None of the provisions of s.323 (interests which are to be disregarded) apply in these circumstances. It may also be that the provisions of s.317 (agreements to acquire interests in shares) apply. Accordingly, F1 F2 and F3 should each disclose interests held by UT in the listed corporation.

2.12.11.8 Furthermore, if F (or persons with whom they had an arrangement) was previously interested in any of the shares held by UT then F will also be a "founder" of DT and will have an independent obligation to file disclosure notices (see the definition of "founder" in s.308).

2.12.12 Bare trustees.

2.12.12.1 The interest of a bare trustee is disregarded. However, to be a bare trustee the trustee must have no authority to exercise discretion in dealing in the interest in shares, or in exercising rights attached to the interest, and must deal with the interest solely in accordance with the instructions of the beneficiary. 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 trustees² 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 beneficiaries³. A custodian may be entitled to take advantage of the disregard for an exempt custodian interest. The vendor of unascertained shares still retains an interest in shares prior to completion of the sale – he is not a bare trustee for the purchaser. If the purchaser does not pay the purchase price and sale is not completed the vendor has the right to sell the shares to another person – the vendor is not required to deal with the interest solely in accordance with the instructions of the purchaser and therefore cannot be holding the shares as a bare trustee⁴.

2.12.13 An exempt custodian interest.

2.12.13.1 If an interest in shares is held by a corporation which carries on a business of holding securities in custody for another person, whether on trust or by contract, and the corporation has no authority to exercise discretion in dealing in the interest in shares, or in exercising rights attached to the interest then th



2.12.13.2 If a bank retains a discretionary right to set off any other obligations/liabilities of a client against any securities held in custody for that client the bank will not satisfy the requirement in s.323(3)(b) that the corporation "has no authority to exercise discretion in dealing in the interest, or in exercising rights attached to the interest". Similarly, the exemption is not available if a bank retains the discretionary right to take up or retain unclaimed or fractional dividends (cash and/or scrip). The custodian exemption is not establishing a new wide exemption for custodians. It is intended to parallel the regime for a "bare trustee" - simply extending the bare trustee exemption to custodians by contract (before the bare trustee exemption only applied to custodians who were trustees).

2.12.14 Discretionary trusts. 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.

2.12.15.1 This disregards the interests in shares of a holder of a unit or a share in the scheme, a trustee or custodian of 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 Gazette⁵. 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.

2.12.15.2 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. The same applies to the holder of shares in a mutual fund corporation (and the trustee and custodian).

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 margin financing. The term "qualified lender" does not include a person licensed just as a licensed money lender.

⁵ 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



2.12.16.2 The term "qualified lender" also includes a person that is a corporation authorized under the law of any place outside Hong Kong to carry on business as a bank, as an insurance company, or in an activity that is in the opinion of the Commission equivalent to dealing in securities or securities margin financing and that place is recognized for the purposes of section 313(13), 317(6), 323(6) or (7) or 341(5) by the SFC⁶.

2.12.16.3 The creation of a security interest in shares in favour of a qualified lender does not 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 101 or 103 (as the case may be) to describe the relevant event and a code (other than code 203) 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 S(DI)O. The distinction between a security interest and a transfer of title to shares is explained well by Phillip Wood in *Comparative Law of Security and Guarantees* (see p.65)

"Under traditional rules of universal application, if a party has a right to return equivalent securities and in the meantime to deal with the securities transferred to him as if they were his own, he must inevitably acquire the property in the securities and 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."

2.12.17 Transient interests of dealers in securities

⁶ 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



2.12.17.1. There is no general exemption for intermediaries (e.g. dealers and brokers). However, the interest in shares of an intermediary, licensed or registered for dealing in securities, is disregarded where the interest is acquired by the intermediary for not more than 3 business days, as an agent only for the purposes of transactions entered into for principals of the intermediary who are not related corporations of the intermediary.

2.12.18 Interests of dealers in securities or dealers in futures contracts in exchange contracts².

2.12.18.1 This exemption is similar in principle to the disregard in paragraph 2.12.17. The interest in shares of an intermediary, licensed or registered for dealing in securities or dealing in futures contracts, is disregarded where the interest arises under an exchange traded stock futures contract or an exchange traded stock options contract which is acquired by the intermediary in the ordinary course of its business, pursuant to the instructions of its client and the intermediary enters into a “back-to-back contract”⁷ with its client on the same day. Transactions for a related corporation of the intermediary do not qualify for the exemption. (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 o crefy s1.38shor-1.osihen ”0 -i.e.rmediain 29ct2002)).cTj/TT2







- (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 places⁹), 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 those shares again to another borrower. Provided this is done within 5 business days the regulated person’s interest in the shares will still be disregarded. However, if you are a regulated person, the provisions of s.7 of the SBL Rules must be read carefully to ensure that they apply to the transaction in question.

2.13.15 Regulated persons can choose their own method to match securities borrowing and lending transactions as long as :

- (i) they observe the general principle that any stocks borrowed which have not been on-lent within 5 business days after the date of the borrowing must be included for disclosure purposes;
- (ii) the methodology adopted to match SBL transactions is reduced to writing; and



person wishes to take advantage of the exemption, records must be kept as required by s.10 of the SBL Rules.

Regulated persons and related corporations

2.13.17 Regulated persons are still entitled to the benefit of the exemption if the shares are transferred to a related corporation and are used by that related corporation for lending within 5 business days after they were acquired by the regulated person. However, any holding company of the related corporation is required to aggregate the interest in the shares of the related corporation in the normal way. If the related corporation is also a regulated corporation then the interest of the relation corporation may also be disregarded (see paragraph 2.13.22 below).

ptiogulated4 Twdoupaph 2.13.22 below).





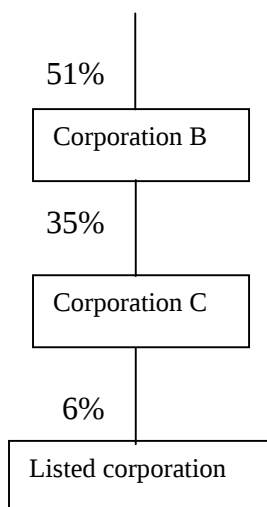
	nature of interest				deemed to have an interest.	
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In this case the shares are being held to settle a short sale. This is not a “prescribed purpose”. As Corporations B and C are taken to have acquired an interest in the shares, the holding company is now taken to have an interest in the 6% that each of B and C had under s.316. However, as has been mentioned in paragraph 2.12.9.2, if two corporations in a group are both interested in the same shares the ultimate holding company should not count both interests as this would be double counting. Holding Company A is therefore not required to file a further notice.

Day 6

2.13.27 Corporation D completes the sale and accordingly ceases to have a long position. Corporation A must file a notice (within 3 business days of day 4) disclosing that it has ceased to have a long position of 6% but that it still has a short position of 6%. Interests of wholly owned subsidiaries under transactions with other wholly owned subsidiaries do not increase or reduce the interests (or short positions) of the group as a whole and need not be



2.14.5 In this example, A and B are not wholly owned therefore each of A, B and C must file a notice. A's notice will state that the notice is being filed because a controlled corporation (C) purchased 6% of the shares of the listed corporation. It will also state that B is a controlled corporation and that it controls 51% of B, and that B controls 35% of C.

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.

Limited Liability Partnership

2.14.8 We regard a limited liability partnership as a corporation for the purposes of Part XV and interests in shares held by a limited liability partnership should be disclosed by the general partner as interests in shares of a controlled corporation (rather than joint interests discloseable by each partner). The general partner of a limited partnership equates to the "controlling shareholder" having de facto control even though its shareholding in the limited liability partnership may be less than one third. The general partner will usually be a corporation who should make disclosure stating the name and address of the limited liability





3. DUTIES OF DIRECTORS AND CHIEF EXECUTIVES

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

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

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

3.1.2. In addition there is no disclosure threshold – directors have to disclose all dealings even if they have an interest, or a short position, in a small number of shares or debentures.

3.1.3 The term “director” is defined widely and includes a shadow director and any person occupying the position of director by whatever name called. The term “shadow director” means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act.

3.2 What is an “associated corporation” ?

3.2.1 An “associated corporation” is :

- (i) a holding company of the listed corporation.
- (ii) a subsidiary of the listed corporation.
- (iii) a subsidiary of the listed corporation’s holding company (e.g. a fellow subsidiary).
- (iv) a corporation in which the listed corporation is interested in 20% or more of the issued shares of any class of its share capital.

3.2.2 The term “subsidiary” is defined in Schedule 1 to the SFO in the terms that make each corporation in a chain of corporations a subsidiary of the ultimate holding company:



“(1) For the purposes of this Ordinance, a corporation shall be regarded as a subsidiary of another corporation if-

- (a) the other corporation-
 - (i) controls the composition of its board of directors;
 - (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 20% of more 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 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 32% (51%) 20% 38% 51% of the listed corporation.



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

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

3.4 What is a “debenture” ?

3.4.1 A “debenture” is defined to include debenture stocks, bonds, and other securities of a corporation, whether constituting a charge on the assets of the corporation or not. The term “securities” is very widely defined in Schedule 1 to the SFO. The consequence is that directors are required to disclose any interests in any financial instruments issued by a listed corporation of which they are a director, and any associated corporation of that listed corporation.

3.5 What are deemed interests ?

3.5.1 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 certain other persons have such as your spouse, your child under 18, a corporation that you control and a trust. What has been said in respect of substantial shareholders in relation to deemed interests in shares (see paragraphs 2.2 and 2.14) also applies to directors except that directors also have to disclose an interest in any shares that they have under a discretionary trust.

3.5.2 In calculating the total number of shares in which you are interested you must normally include any interests, and derivative interests, in shares of the same listed 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.

3.6 What are derivative interests and “underlying shares” ?





Interests in debentures of the listed corporation

3.9.8 In the case of interests in debentures of the listed corporation of which you are a director or chief executive the relevant events include :

- (i) When you become interested in the debentures of the listed corporation.
- (ii) When you cease to be interested in such debentures.
- (iii) When you enter into a contract to sell any such debentures.
- (iv) When you assign any right granted to you by the listed corporation to subscribe for such debentures.
- (v) When the nature of your interest in such debentures changes.
- (vi) If you have an interest in debentures of a listed corporation at a time when it becomes a listed corporation.
- (vii) On commencement of the SFO, if you have an interest in debentures that has not previously been disclosed.
- (viii) If you have an interest in debentures of a listed corporation when you become a director or chief executive of that corporation.

3.9.9. A notification of relevant events (vi) to (viii) 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 unit of the debentures for interests in debentures 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). In the event that you are interested in convertible bonds you will have an interest in shares of the listed corporation (in addition to your interest in debentures) and must also file a notice on form 3A in addition to form 3C.

Interests in debentures of associated corporations -

3.9.10 In the case of interests in debentures of an associated corporation of the listed corporation of which you are a director or chief executive the relevant events include :

- (i) When you become interested in the debentures of the associated corporation.
- (ii) When you cease to be interested in such debentures.
- (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 you exercise or assign such rights.
- (v) When the nature of your interest in such debentures changes.
- (vi) If you have an interest in debentures of an associated corporation of a listed corporation at a time when it becomes a listed corporation.



- (vii) On commencement of the SFO if you have an interest in debentures of the associated corporation that has not previously been disclosed.
- (viii) If you have an interest in debentures of an associated corporation when you become a director or chief executive of that corporation.
- (ix) If you have an interest in debentures of an associated corporation when it becomes an associated corporation.

3.9.11 A notification of relevant events (vi) 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 unit of the debentures for interests in debentures 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). In the event that you are interested in convertible bonds you will have an interest in shares of the associated corporation (in addition to your interest in debentures) and must also file a notice on form 3B in addition to form 3D.

3.10 Do I have any disclosure obligations on commencement of the SFO ?

3.10.1 If you are a director you will have a duty of disclosure on commencement of the SFO if you have an interest, in shares or debentures of a listed corporation, or an associated corporation of the listed corporation which has not previously been disclosed under the repealed S(DI)O. You will also have a duty of disclosure if you have a short position in shares of a listed corporation, or an associated corporation of the listed corporation. It does not matter whether you have a direct interest in the shares or whether you are deemed to be interested in the shares (see paragraphs 3.1 to 3.8), if the interest has not previously been disclosed, you must disclose that interest on commencement.

3.10.2 The principal interests that will not previously have been disclosed are :

- (i) short positions in shares;
- (ii) interests in unissued shares such as options granted to them by the listed corporation concerned; and
- (iii) interests in shares as a result of holding or writing cash settled derivatives.

3.10.3 In addition, some concert party arrangements may result in a new disclosure obligation and, interests which should have been disclosed under the S(DI)O, but have not been disclosed, will also be caught (see paragraph 5.3). Another interest that would be discloseable is the interest of the "founder" of a discretionary trust. If you are the founder of a discretionary trust (e.g. you had the trust set up or put assets into it), and you can influence how the trustee exercises his discretion then on commencement of the SFO you are taken to have an interest that will not have previously been disclosed under the S(DI)O. Accordingly, that interest must be disclosed on commencement.



3.10.4 However commencement does not change the nature of your interest so there is no duty to notify a change in the nature of your interest that arose after the last notice was filed under the S(DI)O but before the commencement of the SFO.

3.10.5 If you have a duty to make a disclosure on commencement the notice should be filed on or before 14 April 2003. The date of the “relevant event” will be stated on the form as 1 - 4 - 2003. You will leave blank the next Box “Date when Director became aware of the relevant event/interest in the shares (if later).” You need only complete column 2 of the Box entitled “Details of the relevant event”.

3.10.6 If you are required to make a disclosure on commencement of the SFO (an “Initial Notification”) you are not required to state the number of shares bought/sold/or involved, or the price/consideration that you paid. This is because you did not acquire an interest in, cease to have an interest in, or change the nature of your interest in any shares at the time of the “relevant event” – the commencement of the SFO. If you have acquired any shares within 4 months prior to the date of the relevant event that have not been disclosed under the S(DI)O, you are required to specify the highest price and average price per share for interests in shares acquired on-exchange 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).

3.10.7 If you are a substantial shareholder holding, say, 7% of the shares of the listed corporation you should file a notice on commencement even though you had previously disclosed interests in your capacity as a director under the S(DI)O.

Interaction with repealed S(DI)O

3.10.8 The Commission is of the view that a person who has acquired an interest or ceased to be interested in shares of a listed company, in the period 26 to 31 March 2003 should file a notice in accordance with the provisions of the S(DI)O. Provided the notice is filed within the period of 5 days next following the day on which the duty arises under the S(DI)O (i.e. between 1 and 5 April 2003 depending upon the date that the interest was acquired/disposed of) the person will not have to file a separate notice under Part XV of the SFO. Notices filed outside the period of 5 days allowed for filing under the S(DI)O will not have been disclosed in accordance with the S(DI)O and must be notified under Part XV.

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

3.11.1 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. 341(5) of the Companies Act 1985).





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 endorsement to window dressing practices, buying and selling during the course of one day, with the intention of avoiding disclosure. This does not work for the reasons mentioned in the last paragraph.

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

3.13.1 In the DI forms you are asked for details of the relevant event. This is the event that triggers the Notice. The details that you must give relate to the shares bought/sold or involved at the time of the relevant event – not the shares which you already had. Where the relevant event is prompted by a transaction that forms part of a series of transactions effected on the same day, the details of the relevant event that you give should relate to all shares in which you acquired an interest, ceased to have an interest or the nature of your interest changed on that day (as the case may be) as a result of that series of transactions.

Sales and purchases of shares

3.13.2 If an on-exchange transaction prompts disclosure the highest price per share and the average price per shares must be disclosed. Similarly, in the case of an off-exchange transaction the average consideration per share and the nature of the consideration given or received must be stated. An acquisition or disposal is made “On-Exchange” when the transaction took place in the ordinary course of trading on a recognized exchange and “Off-Exchange” covers all other transactions.

3.13.3 If you have conducted a single transaction on the day of the relevant event the highest price and average price will be the same. However, if you have conducted a number of transactions on that day you will need to calculate the average price. The average price/the average consideration per share paid or received is determined by dividing the total amount paid/received for the shares bought or sold by the number of shares bought or sold. A table of 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 14 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 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 below.

14. Details of relevant event

	Relevant event code describing circumstances (see Table 1)	Code describing capacity in which shares was held (see Table 2)		Number of shares bought/ sold or involved Bef	Currency	On Exchange	Off Exchange
		Before relevant event	After relevant event				



4.1.6 If you authorize another person (e.g. an agent or a broker) to acquire or dispose of shares on your behalf, or to come to have or cease to have short positions on your behalf, you must ensure that the agent notifies you immediately of any acquisition or disposal or other dealing (see s. 321).

4.1.7 You should bear in mind that the legislation makes a failure to comply with the requirements of Part XV an offence and you should put in place adequate procedures to enable you to comply with the reporting requirements.

4.2 Forms to be used

4.2.1 You are required to make a disclosure using one of the 6 prescribed forms. You must complete each form in accordance with the directions and instructions in the Notes to the form and then file the notice with the Stock Exchange and the listed corporation concerned at the same time or one immediately after the other.

4.2.2 You can download the forms and the Notes, in Chinese and in English, from the HKEx web site which can be found at <https://sdinotice.hkex.com.hk> or the SFC web site at <https://www.hksfc.org.hk>. Forms are available in pdf format for printing out and completion in manuscript or in Microsoft Excel format for completion offline using the Excel program. You must click "Enable" when opening the Excel forms - otherwise the macros will not work. Once a form has been completed using the Excel program it can be saved and subsequent notices can be given with minimal changes to the document.

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.

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







4.7.1 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 ?

4.7.3 If you are a substantial shareholder



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 Forms 1 and 3A, Box 24 of Form 2, Box 28 of Form 3B, Box 21 of Form 3C and Box 27 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 name rather than the name of the trust. The same applies to persons completing Box 26 of Form 2.

Interests that may be derivative interests but would not normally be classified as such

4.7.7 If you hold a interest in shares under an instrument which could be viewed as an equity derivative (because of the wide definition of equity derivative) but would not normally be regarded as such, you need not also complete the "Further information in respect of derivative interests" box provided the interest is disclosed as part of your long or short position.

Boxes that do not apply to you

4.7.8 If there are some boxes in the Form that do not apply to you these should be either left blank or you should insert "NIL" for text boxes and "0" for numeric Boxes. If you complete the box in any other manner this will either be treated as part of your notification or it will generate an exception report.

Warning in the Excel Form not to complete the relevant event box with both long and short positions

4.7.9 The normal position is that only long or short position will give rise to a duty of disclosure and a warning is generated automatically by the Excel form if you try to complete both rows in the box entitled "Details of relevant event". However if you are sure that the transaction creates both a long and a short position simultaneously (such as borrowing shares which gives rise to both a long and a short position) then you can ignore the warning and complete both rows.

Signing the form



4.7.10 Forms filed by post, by hand or by fax need not be signed. If you are filing electronically you may sign the Form with a digital signature (as defined in section 2(1) of the Electronic Transactions Ordinance Cap. 553) but this is also not required.

Attachments

4.7.11 Do not send copies of share purchase agreements and other documents to the Stock Exchange or the listed corporation concerned when filing the forms (except in relation to concert party arrangements where the Notes to the forms tell you what to do). Attaching a document that explains the transaction in question does not discharge the duty to complete the prescribed form. The information required to be provided by Part XV and the notes to each form must be stated on the form (with the exception only of certain documents required to be provided by persons acting in concert).

4.7.12 Copies of any documents that are sent to the Stock Exchange or the listed corporation will be available for inspection by the public during normal office hours.

5. MISCELLANEOUS

5.1 Extraterritorial effect

5.1.1 You are required to file notices and comply with the other provisions of Part XV if you hold shares in listed corporations :

- (i) whether or not you are resident in Hong Kong;
- (ii) in the case of corporations, whether or not you were incorporated in Hong Kong, or have an office in Hong Kong; and
- (iii) whether or not the listed corporation was incorporated in Hong Kong.

5.2 Offences

5.2.1 It is a criminal offence (ss. 328 and 351) if a person :

- (i) without reasonable excuse, fails to make a disclosure in accordance with the provisions of Part XV that apply to that disclosure; or
- (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.

5.2.3 Members of a corporation and its officers can be personally liable for offences of a corporation (see ss.373, 390).

5.2.4 If you are convicted of an offence the Financial Secretary may impose restrictions on the transfer of your shares.

5.3 Concert party agreements

5.3.1 Part XV requires disclosure of interests acquired by persons pursuant to certain agreements (see s.317). For example, when two or more persons enter into an agreement to acquire interests in shares in a particular listed corporation, and :

- (i) the agreement also includes provisions imposing restrictions on either of the parties on the manner in which they can :
 - (a) exercise rights attaching to the shares they acquire (e.g. voting rights),
or
 - (b) dispose of those shares; and
- (ii) interests in shares are actually acquired pursuant to the agreement,

then the provisions of s.317 apply.

5.3.2 They also apply where a controlling person (defined in s.317(7)) or a director of a listed corporation makes a loan to a person on the understanding that the money would be used to acquire interests in shares in the listed corporation, and shares are actually acquired in pursuance of the agreement.

5.3.3 If you have any interests in shares as a result of being a party to a section 317 agreement you have to add any shares in which any other party to the agreement is interested to your own interests in working out whether (together) you hold 5% or more of the shares in a listed corporation and must file a notice. If (together) you are interested in more than 5% you will be a substantial shareholder with disclosure obligations arising accordingly. Details of the interests of any other party to the agreement must also be taken into account in completing the prescribed form. Directors and chief executives are treated no differently to any other party to such an agreement and must aggregate the interests of the other parties to the agreement if, together, their interests reach 5% or more.



secondly all shares in which the other parties to the agreement are interested “apart from the agreement” (defined in s.318(2)).

Example of how to complete Box 23 of Form 1

5.3.5 For example, assume that Mr. Wong Ging Teng and 2 other persons agree to buy shares in XYZ Ltd. (a listed corporation). They are 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 they each purchased a further 20,000,000 shares in XYZ Ltd. Their shareholdings are as follows :

Concert parties	Number of shares “apart from” the s.317 agreement	Number of shares purchased pursuant to the s.317 agreement	Total
Mr. Wong Ging Teng	50,000,000	20,000,000	70,000,000
Mr. A	4,000,000	20,000,000	24,000,000
Mr. B	2,000,000	20,000,000	22,000,000
Totals	56,000,000	60,000,000	116,000,000

Assume also that Mr. Wong is completing the notice. He will already have stated in Box 16 that he is interested in 116,000,000 shares. 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 is interested by the application of s.317 and 318 (the 60,000,000 shares bought pursuant to the agreement and the further shares that 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 (Please see Notes for further information required)

Names of other parties	Address	Number of shares
Mr. A	Unit 1, 25/F Wong Industrial Bldg, Chai Wan, HK	4,000,000
Mr. B	Unit 1, 24/F Wong Industrial Bldg, Chai Wan, HK	2,000,000
Total number of shares in which substantial shareholder is interested under section 317 and 318		66,000,000

5.3.6 You must also :

- attach a separate sheet to the notification stating that you are a party to an agreement to which s. 317 (1)(a) or (b) applies;
- include a copy of any written agreement, contract or other document which records any terms or details of the agreement; and
- if there are no such papers as are mentioned in paragraph (b), or if such papers do not record the material terms of the agreement, include a written memorandum setting out the material terms of the agreement.



5.3.7 The memorandum required under paragraph (iii) should include details of any cash or consideration involved and the identity of all persons between whom such cash or other consideration is passed or is intended to pass. If the parties are interested in any derivatives, the exercise or conversion price, expiration date and exercise period should be disclosed. The memorandum must be signed by the substantial shareholder or his duly authorized agent.

5.3.8 A notification that a person has ceased to be a party to an agreement to which s. 317 (1)(a) or (b) applies shall also state that he or the other party (as the case may be) has ceased to be a party to the agreement and, in the latter case, include the name and address of the other party.

5.3.9 Persons who are parties to a s.317 agreement are advised to consult their legal advisers concerning the making of notifications under Part XV.

5.4 Investigations of shareholders by corporations

5.4.1 Section 329 allows a listed corporation to make enquiries to establish who owns its shares. The powers are not limited to establishing the identities of the substantial shareholders (i.e. persons holding 5% or more of the shares) but extend to any



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

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

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

5.6 Registers of interests and short positions of directors and chief executives

5.6.1 A listed corporation is required to keep a register of the interests and short positions of directors and chief executives (s.352). 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.

5.6.2 Information received by the listed corporation must be recorded in the register in a similar manner, and within a similar timeframe, to the register of interests and short positions of substantial shareholders.

5.6.3 Under s.352(3) a listed corporation is under a duty, whenever it grants to a director or chief executive a right to subscribe for shares or debentures of the corporation, to enter against that person's name the date on which the right is granted, the period during which or the time at which it is exercisable, the consideration paid for the grant of the rights of subscription for the shares or debentures involved (or, if there is no consideration paid, that fact), the description of the shares or debentures involved, the number of those shares or the amount of those debentures, the price to be paid for them (or the consideration, if otherwise than in money).



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 the Registrar of Companies of the place where the register of directors' interests is kept if it is not kept at the registered office. A form of notice has been prescribed under s.352(12) of Part XV. A copy of this notice is available on the SFC web site. A listed corporation is not required to file a notice if they have already filed a notice of the location of the register under the provisions of the S(DI)O and the location of the register has not changed since the date of such notice.

5.7 Publication of Disclosures

5.7.1 The Stock Exchange will publish the disclosure information it receives by making the database containing the information filed with it accessible through the HKEx web site. The public can search the database and inspect all information filed with the exception of certain private data (such as HKID number, contact telephone number etc.) and attachments to notices that are filed by hand, by post or by fax. The address of the HKEx web site is (<http://www.hkex.com.hk>) and the database can be found under "Exchange Listings and Listed Companies". The Exchange may, from time to time, consult the corporation concerned after it has received a disclosure, either to verify the information contained therein or to discuss the effect that disclosure will have on the share price of the underlying securities to which it relates.

5.7.2 In cases where a listed corporation is an authorized financial institution disclosures received by the listed corporation must be forwarded by it to the Hong Kong Monetary Authority.

5.8 Investigations and orders imposing restrictions on shares etc.



Finally, if shareholders are unsure about their obligations or the meaning of any terms of Part XV they should consult with their professional advisers.

AJHW
6 August 2003



Table of Paragraphs added or revised in this Outline dated 6 August 2003

Opening paragraph	2.12.8.4 (8)	2.13.26
1.1.3(i)	2.12.8.5	2.13.27
1.2.1	2.12.9.1	2.14.8
1.3.1	2.12.9.2	3.5 (heading)
2.2.1(ii)	2.12.9.6	3.5.2
2.2.7	2.12.9.7	3.9.6
2.3.6	2.12.10.7	3.9.7
2.3.7	2.12.11.1	3.13.6
2.3.8	2.12.11.3	3.13.7
2.4.3	2.12.11.4	3.15.4
2.6.3.1	2.12.11.5	3.15.5
2.6.3.2	2.12.11.6	4.1.4
2.6.11	2.12.11.7	4.2.2
2.6.12	2.12.12	4.3.1
2.7.1	2.12.13.1	4.3.2
2.7.5 (heading)	2.12.15.1	4.4.2
2.7.6	2.12.15.2	4.4.3
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2.7.8	2.12.16.6	4.5.3
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2.9.5	2.13.18	4.7.5
2.9.6	2.13.19	4.7.6
2.9.7	2.13.20	4.7.7
2.11.3	2.13.21	5.2.1
2.12.2	2.13.22	5.4.3
2.12.3	2.13.23	5.4.4
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2.12.8.3	2.13.25	