

HKE_x GUIDANCE LETTER
HKE_x-GL14-09 (October 2009)

Summary	
Subject	Guidance on application for exemptions from the Companies Ordinance
Listing Rule	N/A
Related Publications	N/A
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Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.*

1. Purpose

This letter provides guidance on obtaining certificates of exemptions from the prospectus requirements of the Companies Ordinance (cap.32) (“CO”).

2. Prospectus exemptions from the CO

2.1 The Securities and Futures Commission (“SFC”) has power to issue certificates of exemption from compliance with any or all of the relevant provisions of the CO if it considers:

- the exemption will not prejudice the interest of the investing public; and
- compliance with any or all of those requirements would be irrelevant or unduly burdensome; or is otherwise unnecessary or inappropriate.

2.2 The relevant provisions of the CO that may be exempted are:

- For Hong Kong Incorporated Companies (Section 38A)
 - Sections 38(1), (1A), (3) or (7), 38D(3) or (4), 42(1) or (4), 44A(1), (2) or (6) or 44B(1) or (2); or
 - Part 1 of the Twentieth Schedule or Part 1 of the Twenty-first

Schedule.

For Overseas Incorporated Companies (Section 342A)

- Sections 44A(1), (2) or (6), 44B(1) or (2), 342(1), (2A), (3) or (7), or 342C(3), or (4); or
- Part 2 of the Twentieth Schedule or Part 2 of the Twenty-first Schedule.

2.3 While the SFC remains the ultimate authority to decide whether a CO exemption will be granted, applications for CO exemption are routed through the Listing Division. The IPO Transactions Department gives recommendations for the grant of CO exemptions to the SFC relating to an IPO prospectus.

2.4 The CO requires particulars of the CO exemptions to be published online¹.

3. Exchange Administrative Practices

3.1 IPO applicants should submit to us a written application for CO exemptions as early as possible.

3.2 The application must set out the grounds for CO exemption referred to in paragraph 2.1.

3.3 IPO applicants will receive from the SFC a certificate of exemption when or before the prospectus (including a replacement prospectus and an addendum to the original prospectus) goes to print.

3.4 To facilitate a consistent disclosure of CO exemptions in the IPO prospectus, IPO applicants should: -

- (a) ensure that the most comprehensive version of the CO exemptions appears in the *Waivers* chapter of the prospectus for both Main Board and GEM applicants.
- (b) submit to us for our onward forwarding to the SFC on the day the prospectus is submitted to us for authorisation the following: -
 - (i) a printed copy of the prospectus with wordings marked on a cover page:-

To be forwarded to the Securities and Futures Commission for use

¹ Section 38A(6) or 342A(6) of CO

for the sole purpose of sections 38A(6) and 342A(6) of the Companies Ordinance (Cap. 32) and embargoed for other purposes; and

- (ii) two separate PDF files, each in English and Chinese, containing all information on the CO exemption(s):-
- PDF file under the file name “Cover”- the inside cover page or first page of the prospectus; and
 - PDF file under the file name “Exemptions”- extracted pages of CO exemption(s) applied for.

4. **Subsequent Amendments to Prospectuses**

4.1 Both Main Board Rule 11.13 and GEM Rule 14.24 require an issuer to give the Exchange a supplemental listing document if, during the offer period, the issuer becomes aware that:

- (a) there has been a significant change affecting any matter contained in the listing document (e.g. reduction in offer price, major development of a litigation case); or
- (b) a significant new matter has arisen, the inclusion of information in respect of which would have been required to be in the listing document if it had arisen before the listing document was issued².

4.2 To meet this requirement, an IPO applicant may supplement or amend information in a prospectus registered under the CO by (a) replacing the original prospectus with a new prospectus or (b) by an addendum to the original prospectus. For the purposes of the Twentieth Schedule of the CO, an addendum to a prospectus should be read with the prospectus.

4.3 As the replacement prospectus or the addendum constitutes a prospectus under the Twentieth Schedule to the CO, IPO applicants must ensure that the replacement prospectus or the addendum to the original prospectus:

- (a) is duly authorised for issue by us and registered with the Registrar of Companies;
- (b) contains appropriate warning statements³; and
- (c) where an addendum to the original prospectus is proposed to be issued, the

² Where there is a substantial change of circumstances after the issue of prospectuses, the issuer will also need to give applicants who have applied for its shares the right to withdraw their applications as discussed in Listing Decision HKEx-LD61-1 published in July 2008.

³ Part 4 and Part 5 of the Eighteenth Schedule to the CO.

need to apply for various exemptions from the relevant provisions of the CO and more specifically from relevant content requirements in the Third Schedule to the CO.

- 4.4 The practices for obtaining CO exemptions in paragraph 3 apply to a replacement prospectus and an addendum to the original prospectus, except that in the case of an addendum paragraph 3.4(a) will be satisfied if the CO exemption appears in the addendum.

End