



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

SCHEDULE V

**GUIDELINES FOR THE EXEMPTION OF LISTED
COMPANIES FROM THE SHARE REPURCHASE
REQUIREMENTS OF SECTION 49BA OF THE
COMPANIES ORDINANCE (CAP. 32)**

1.0 Definitions

1.1 Save for the terms hereinafter defined, and unless the context otherwise requires, terms used in these Guidelines shall have the meanings assigned to them by the Ordinance and any amendments thereto. In these guidelines:

"Associate" has the meaning assigned to such term by the Listing Rules;

"Chief Executive" has the meaning assigned to such term by the Listing Rules;

"Code" means the Code on Share Repurchases approved and published from time to time by the SFC;

"Executive" means the Executive Director of the Corporate Finance Division of the SFC and or any delegate of the Executive Director;

"Guidelines" means these guidelines for the exemption of listed companies from the share repurchase requirements of section 49BA of the Ordinance that can be granted pursuant to section 49BA(11);

"Listing Rules" means the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd.;

"On-market share repurchase" has the meaning assigned to such term by the Code;

"Off-market share repurchase" has the meaning assigned to such term by the Code;



"Ordinance" means the Companies Ordinance (Cap. 32);

"Panel" means the Takeovers and Mergers Panel;

"SFC" means the Securities and Futures Commission;

"SFC Ordinance" means the Securities and Futures Commission Ordinance (Cap. 24);

"Share repurchase" has the meaning assigned to such term by the Code; and

"Substantial shareholder" means a person who holds 10% or more of the voting rights of a company.

2.0 Nature and purpose of the Guidelines

2.1 Section 49B(1) of the Ordinance provides that a listed company may purchase its own shares in accordance with the sections of the Ordinance referred to in section 49B(1) provided the company is authorised to do so by its articles. Section 49BA is among the sections of the Ordinance referred to in section 49B(1). Section 49BA prescribes, among other things, the ways in which a listed company may purchase its own shares and related shareholder approval and disclosure requirements.

2.2 The Code imposes similar requirements upon all public companies in Hong Kong regardless of their places of incorporation. Rule 17 of the Code provides, among other things, that the Executive may, upon the application of any person with an interest in a share repurchase, waive compliance with one or more provisions of the Code.

2.3 Section 49BA(11) of the Ordinance provides that the SFC may exempt any listed company from any of the provisions of section 49BA, subject to such conditions as it thinks fit. Section 49BA(11) of the Ordinance is intended to provide listed companies which are subject to the Ordinance with the same flexibility to seek relief from the share repurchase requirements of section 49BA of the Ordinance as Rule 17 of the Code affords all public companies in Hong Kong in respect of the share repurchase requirements of the Code.

2.4 The SFC has delegated its power to grant exemptions pursuant to section 49BA(11) of the Ordinance to the Executive and the Panel pursuant to section 9(1) of the SFC Ordinance. The Executive is thereby authorised to exercise the SFC's discretion to grant exemptions from the share repurchase requirements of section 49BA in the first instance, and to refer novel, difficult or important exemption applications to the Panel



for its consideration. The Panel is authorised to exercise the SFC's discretion to grant the exemptions sought by any novel, important or difficult exemption applications that are referred to it by the Executive, and it is also authorised to review decisions made by the Executive in the first instance at the request of an aggrieved applicant. Applications for exemption from the share repurchase requirements of section 49BA of the Ordinance are therefore subject to the same procedural rules as applications for waivers from the share repurchase requirements of the Code. Reference is made in this regard to the Introduction to, and Rule 17 of, the Code.

2.5 Section 49BA(12) of the Ordinance provides that the SFC may suspend or withdraw an exemption granted under section 49BA(11) on the ground that the conditions subject to which the exemption was granted have not been complied with or such other ground as the SFC thinks fit. Section 49BA(12) further provides that the SFC may vary any condition attached to an exemption granted pursuant to section 49BA(11). The SFC has also delegated its powers under section 49BA(12) to the Executive and the Panel pursuant to section 9(1) of the SFC Ordinance. The Executive and the Panel are thereby authorised to exercise the SFC's discretion to suspend, withdraw or vary exemptions granted pursuant to section 49BA(11) in the manner contemplated by paragraph 2.4 hereof for exemptions from the share repurchase requirements of section 49BA.

2.6 The Guidelines are intended to provide listed companies with guidance as to the way in which the Executive and the Panel may exercise the discretion that has been delegated to them by the SFC to grant exemptions from the share repurchase requirements of section 49BA. The Guidelines are not exhaustive. They are simply intended to assist listed companies with an understanding of matters that the Executive and the Panel will take into consideration when deciding to exercise such discretion. They may be modified or varied as circumstances require.

3.0 Application for an exemption or variation

3.1 An application for an exemption from section 49BA of the Ordinance, or for a variation of an exemption previously granted, should be made in writing and directed to the Executive. Exemption applications which seek relief from share repurchase requirements of the Ordinance which are common to both the Ordinance and the Code should also seek relief from the comparable Code requirements.

3.2 An applicant, when deciding what matters to include in its written application, should have regard to the Guidelines and the General Principles of the Code. The



Executive or the Panel, as the case may be, may request additional information or make such enquiries as it considers appropriate when considering any application.

3.3 These Guidelines provide for general or "blanket" exemptions and specific exemptions. Exemptions, whether general or specific, may be made subject to such conditions as either the Executive or the Panel considers to be reasonably appropriate in the circumstances.

4.0 General or "blanket" exemptions

4.1 A general or "blanket" exemption is intended to relieve all listed companies, or an identifiable group of companies, from one or more of the share repurchase requirements of section 49BA of the Ordinance. Such an exemption would only be granted during a so-called "market emergency" and only if the exemption is considered to be in the best interests of the market.

4.2 An application for a general or "blanket" exemption would normally be referred by the Executive to the Panel for its consideration and any exemption granted by the Panel would normally be made conditional upon approval by the SFC. Both the Panel and the SFC would consider the matter promptly. Such an exemption would be strictly limited in terms of its duration and the number of shares that could be repurchased, and it would require all share repurchases effected in reliance upon the exemption to be made by way of an on-market share repurchase conducted in accordance with the Listing Rules.

5.0 Specific exemptions

5.1 A specific exemption is intended to relieve a particular listed company from one or more of the share repurchase requirements of section 49BA of the Ordinance. It is currently anticipated that two three types of specific exemptions would be granted.

5.2 The first type of specific exemption would relieve an applicant from the requirement to obtain the prior authorisation of its shareholders for a proposed share repurchase if a disorderly market for the shares of the company had developed, or was reasonably expected to develop, and time did not permit a shareholder's meeting to be held. Such an exemption would normally be conditional upon the share repurchase being made by way of an on-market share repurchase conducted in accordance with the Listing Rules.



5.3 The second type of specific exemption would also relieve an applicant from the requirement to obtain the prior authorisation of its shareholders for a proposed share repurchase if the proposed share repurchase constituted an off-market share repurchase for a small number of shares of the company from a shareholder who was not a director, chief executive or substantial shareholder of the company or an associate thereof. Such an exemption would normally be granted only if the costs of prior shareholder authorisation were outweighed by the benefits to the company of the proposed share repurchase.

5.4 The third type of specific exemption would relieve an applicant from the requirements of section 49BA(3)(a) and thereby allow companies to comply with the requirements of the Code to send to shareholders the offer document within 21 days of the announcement of the proposed repurchase under Rule 3 and to send the offer document with the notice of general meeting under Rule 4. Such an exemption would be granted in all cases and would attract no fee.