

# Substantial Shareholding Disclosure

Singapore, Japan, Australia and Hong Kong

Baker & McKenzie  
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# A. Singapore



# General

- Relevant Legislation
  - Companies Act
  - Securities and Futures Act
  - Business Trust Act
- Regulator
  - Monetary Authority of Singapore



## What is “substantial holdings”?

- Holdings threshold
  - “Interest” in 5% or more of the voting shares or units
- Relevant entities
  - Singapore listed corporations
  - Singapore listed REITs
  - Singapore listed business trusts



## Events triggering reporting obligations

- Upon becoming a “substantial holder”
- Upon ceasing to be a “substantial holder”
- Upon a change in “percentage level” of “substantial holding” (***discrete level of 1%***)



## What is involved in the reporting and when?

- Reporting obligation lies with the substantial shareholders / unitholders.
- Provide notice in prescribed form (see Appendix) to the (a) relevant entity, and (b) Singapore Exchange.
- Information includes name and particulars of substantial holder, particulars regarding the voting shares/units held (e.g. whether deemed or direct) and circumstances resulting in the holding, cessation or change.
- Notice to be provided within 2 business days.



## What is “interest”?

- Direct (e.g. registered holders other than bare trustee)
- Deemed interest
  - *Control of board / controlling interest* - where a body corporate has, or is deemed to have, an interest in a share and the body corporate is, or its directors are, accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of a person; or a person has a controlling interest in the body corporate, that person shall be deemed to have an interest in that share;



## What is “interest”?

- Deemed interest (cont'd)
  - *Control / exercise of  $\geq 20\%$  or more through itself, its associates or together with associates* – where a body corporate has, or is deemed to have, an interest in a share and a person is, the associates of a person are, or a person and his associates are, entitled to exercise or control the exercise of not less than 20% of the votes attached to the voting shares in the body corporate, then that person shall be deemed to have an interest in that share;





## What is “interest”?

- Deemed interest (cont'd)
  - Interest arising from right to acquire shares/units, shares/units purchase agreement, options to acquire shares/units etc.
  - Where one is entitled (other than by being a proxy or representative to vote at a meeting) to exercise or control the exercise of a right attached to the share/units



## What is “interest”?

- What is not deemed interest?
  - Holding as bare trustee
  - Holding by way of security in connection with a lending entered into in the ordinary course of business
  - Holding by reason of a prescribed office



## Common issues for fund managers

- Discretionary vs non-discretionary
- Exercise or have some control over the exercise of the voting power?
- Aggregation and consolidation
- Fund Managers who have interest and the beneficial owners will be subject to reporting obligation



## Proposed changes to the regime

- More flexible reporting obligations for fund managers – changes of 5% instead of 1%
- Exemptions for securities lending transactions



# Overview on Enforcement Actions

- Penalties
  - Failure to notify Singapore Exchange, the REIT and/or the business trust - offence punishable with fine not exceeding S\$25,000 and further fine of S\$2,500 for each day of continuing offence upon conviction
  - Failure to notify corporation – offence punishable with fine not exceeding S\$5,000 and further fine of S\$500 for each day of continuing offence upon conviction



## Overview of Enforcement Actions – since 2009

- Trend – enforcement actions against substantial shareholders or unitholders of listed companies/REITs, for failure to timely notify SGX-ST of changes in direct or deemed substantial shareholdings/ unitholdings.
- Principle reiterated by MAS – Timely notification of such changes is necessary for a fair, efficient and transparent market.
- Enforcement actions taken indiscriminately against fund managers, investment intermediaries, banks, corporations, individuals and even against a charitable foundation.
- Trend for composition amounts rather than warnings or reprimand only. Composition amounts levied on non-individuals ranged from S\$500 to S\$7,500.



## B. Japan



## Framework – legislation, regulator, etc.

- Substantial shareholding reporting requirements under Financial Instruments and Exchange Act
- Additional reporting requirements under Banking Act, Insurance Business Act
- Financial Services Agency
- Reports must be filed electronically using Electronic Disclosure for Investors' NETwork (EDINET)
- Enforcement - financial penalty introduced in 2009





## What is a “substantial shareholding”?

- Act focuses on “holding” rather than “ownership”
- Holding threshold
  - 5% or more of the outstanding shares of a listed company
- Relevant entities
  - Companies listed on any of Japan’s stock exchanges
    - Tokyo, including Mothers
    - Osaka, including JASDAQ
    - Nagoya, including Centrex
    - Fukuoka, including Ambitious
    - Sapporo, including Q-Board



## Applicable securities

- Options
- Stock acquisition rights (warrants)
- Convertible bonds
- Depository receipts
- Exchangeable bonds
- Other similar products provided the underlying rights are voting shares



## Events triggering reporting obligation

- Becoming or ceasing to be a substantial shareholder
- Any change in a substantial shareholder's holding ratio of 1% or more
  - Change may be triggered under aggregation rules based on:
    - Agreement to exercise shareholder rights
    - “Special relationship”, e.g. parent and subsidiary holders
- Any change in material matters involving substantial shareholder, including:
  - Change of holding purpose, e.g. from portfolio to activist
  - Change of filing party address, etc.



## Reporting process – Large shareholding report

- Initially, must file “large shareholding report” on becoming a substantial shareholder
- For any purchase or disposal of shares during the preceding 60-day period, must disclose:
  - Dates on which trades took place
  - Number of shares bought/sold
  - Price of shares if trade is done off-floor
- Must file within 5 business days after becoming a “substantial shareholder” unless an “Excepted Party”, e.g. securities dealer, investment manager (see later slide)

## Reporting process – Amendment reports

- Subsequently, must file “amendment report” if:
  - Any change in shareholding ratio of 1% or more
  - Any change in material matters reported in “large shareholding report”, e.g. change of holding purpose
- Must file within 5 days after change unless “Excepted Party”
- Shareholding ratio calculation – ratio =

$$\frac{\text{holder's and cooperative holders' shares (including potential shares)}}{\text{total number of outstanding shares + holder's and cooperative holders' shares (including potential shares)}}$$



## Excepted Party

- Qualification based on holding purpose: basically, portfolio investment OK
- Examples: securities dealers, investment managers, etc.
- Must file prior notification with Financial Services Agency
- Holding ratio not more than 10%
- Less onerous reporting requirement:
  - Not required to disclose:
    - Detail of 60-days buy and sell and
    - Detail of acquisition costs and source of funds
  - File within 5 days after 15th or last day of each month



## Common issues for fund managers

- Investment Manager is required to file?
  - Discretionary vs non-discretionary
- Qualify as “Excepted Party”?
- Calculation of holding ratio
  - Need to monitor the number of outstanding shares to grasp denominator used in calculating holding ratio
- Foreign exchange filings
  - Prior notification required if “sensitive” industry involved
  - Post-acquisition report if hold 10% or more



# Proposed changes

None





# C. Australia



# General

- Reporting requirements under the Corporations Act
- Aggregation rules
  - voting power
  - relevant interest
  - associate
- Foreign investment policy
- Enforcement



## Events triggering reporting obligations

- A person will be a “substantial holder” if it has voting power of at least 5% in the listed body
- Reporting required:
  - Initially, when a person **becomes** a substantial holder
  - Ongoing, when a substantial holder’s voting power changes by 1% or more
  - If the person **ceases** to be a substantial holder
  - If a person launches a takeover bid
- Relevant entities:
  - listed companies and bodies
  - listed managed investment schemes (e.g. listed unit trusts)



## What is involved in the reporting and when?

- Provide notice in the prescribed form to:
  - the relevant entity; and
  - the Australian Securities Exchange (ASX),
- within 2 business days after the relevant event occurs; or
- by 9.30am the next trading day if a takeover bid is made.



## Information to be disclosed

- Information required includes:
  - the name and address of the substantial holder and its associates
  - the securities in which the holder has a relevant interest in the entity
  - details of any relevant agreement through which the holder would have a relevant interest in the securities
  - **copies of any agreements** or documents that relate to the relevant acquisition or disposal of securities by the holder

## What is a “*substantial holder*”?

- A person will be a “*substantial holder*” if it has “*voting power*” of at least 5% in the listed body

- Voting power = 
$$\frac{\text{person's and associates' votes}}{\text{total votes in entity}} \times 100$$

- “*person's and associates' votes*” = total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a “*relevant interest*” in.



## What is a “relevant interest”?

- A person will have a direct “relevant interest” in a share or interest if the person:
  - holds the shares;
  - has power to control the exercise of a right to vote attached to the shares; or
  - can control the disposal of the shares.



## What is a “relevant interest”? (cont’d)

- A person will have an indirect interest in shares that are held by a vehicle:
  - which the person controls; or
  - in which the person’s voting power is above 20%.
- Exclusions include:
  - holding as a bare trustee
  - holding by way of security in connection with the provision of financial accommodation entered into in the ordinary course of business





## Aggregation rules - associate

- A person's associates in relation to a listed entity include:
  - its related bodies corporate (e.g. subsidiaries, parent, or companies under common control); and
  - directors / secretaries of the body or its related bodies corporate; and



## Aggregation rules - associate (cont'd)

- anyone with whom the person enters, or proposes to enter, into an agreement, arrangement or understanding (whether or not enforceable) to:
  - control or influence the composition of the entity's board (or responsible entity);
  - control or influence the conduct of the entity's affairs; or
  - otherwise act in concert in relation to the entity's affairs.



## Foreign investment policy

- Foreign Acquisitions and Takeovers Act
- Foreign Investment Review Board / Foreign Investment Policy
- Now also covers investment in convertibles as if converted
- All foreign governments and government-controlled entities have a more stringent test
- Entities in which foreign government controls 20% or more are treated as a foreign government controlled entity by FIRB
- Sensitive industries (e.g. media, telecommunications, banking, civil aviation, airports, mining etc) also have lower thresholds



## Enforcement

- A failure to notify a substantial holding is a strict liability offence and may lead to:
  - compensation
  - court proceedings
  - application to Takeovers Panel for a declaration of unacceptable circumstances



## D. Hong Kong



## Basic definitions and concepts

- “Substantial shareholder”
  - Person interested in **5% or more** of any class of voting shares in a listed corporation
- “Listed corporation”
  - A corporation whose securities are listed on the Hong Kong Stock Exchange



## ... Basic definitions and concepts

- “Interests in shares”
  - Extremely broadly defined
  - Includes shares (including, unissued shares) and debentures
  - Includes conditional rights to shares



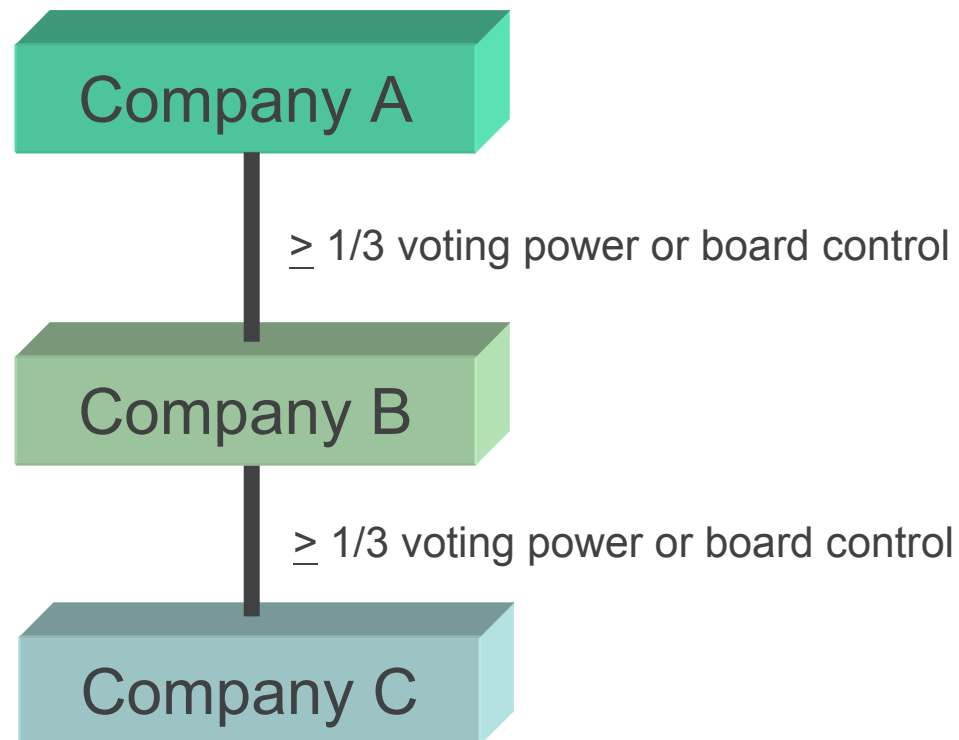
## ... Basic definitions and concepts

- Personal interests
  - Shares registered in your name or held by someone else as your stockbroker, custodian, trustee or nominee (e.g., CCASS or HKSCC)
  - Shares which you have a right to subscribe or call for delivery (whether conditional or not)
  - Shares which you have a right to acquire or an obligation to take delivery (whether conditional or not)
  - Hold shares as security (other than an “exempt security interest”)
  - Entitled to exercise (or to control the exercise of) rights attaching to shares



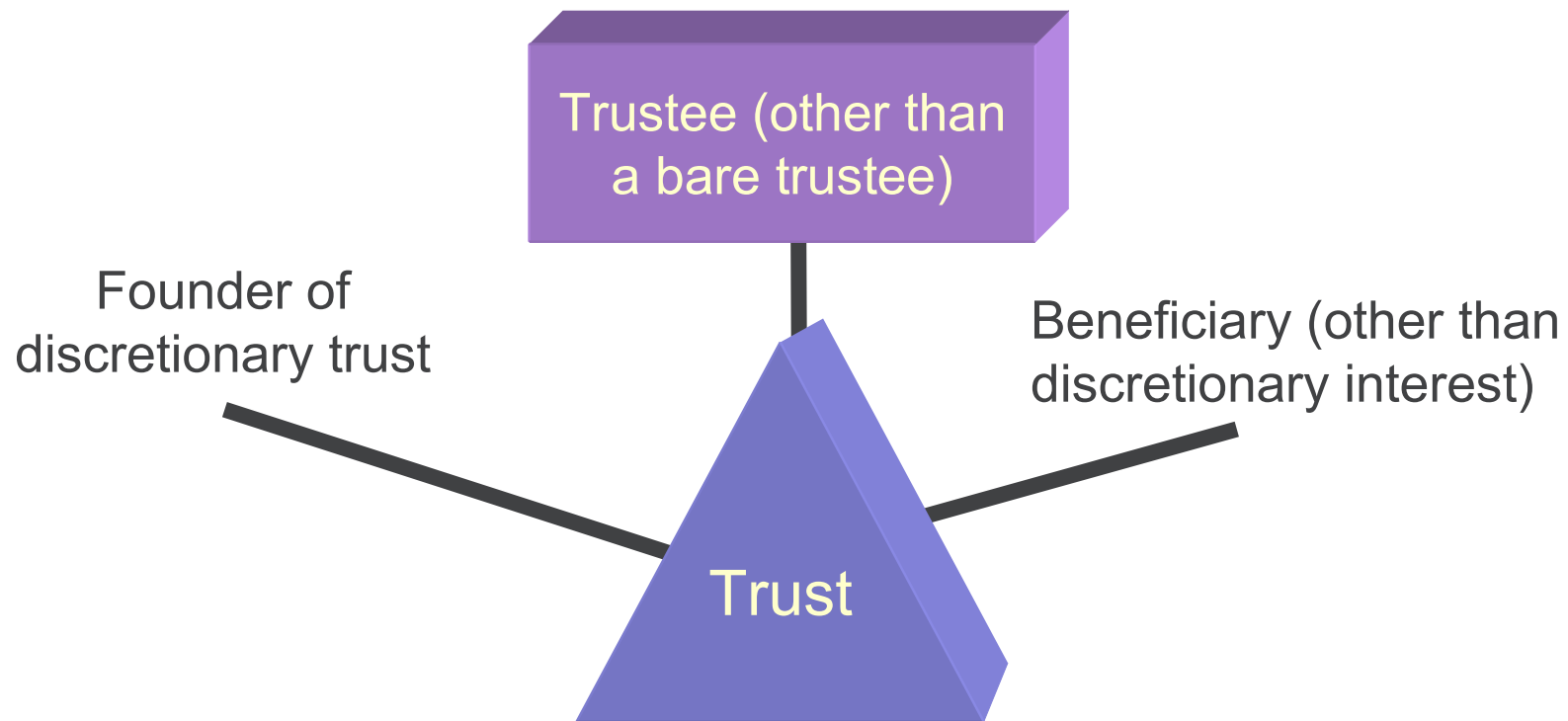
## ... Basic definitions and concepts

- Deemed interests/aggregation rules – e.g., “controlled corporation”



## ... Basic definitions and concepts

- Deemed interests/aggregation rules – e.g., trusts





## ... Basic definitions and concepts

- Long position
  - Write, hold or issue financial instruments
    - Examples:
      - Right or obligation to take delivery of underlying shares
      - Right to receive money or to avoid a loss if the price of underlying shares increases
- Lender under a securities borrowing and lending agreement



## ... Basic definitions and concepts

- Short position
  - Write, hold or issue financial instruments
    - Examples:
      - Right to require another person to take underlying shares
      - Obligation to deliver underlying shares
      - Right to receive money or to avoid a loss if the price of underlying shares declines
- Borrower under a securities borrowing and lending agreement

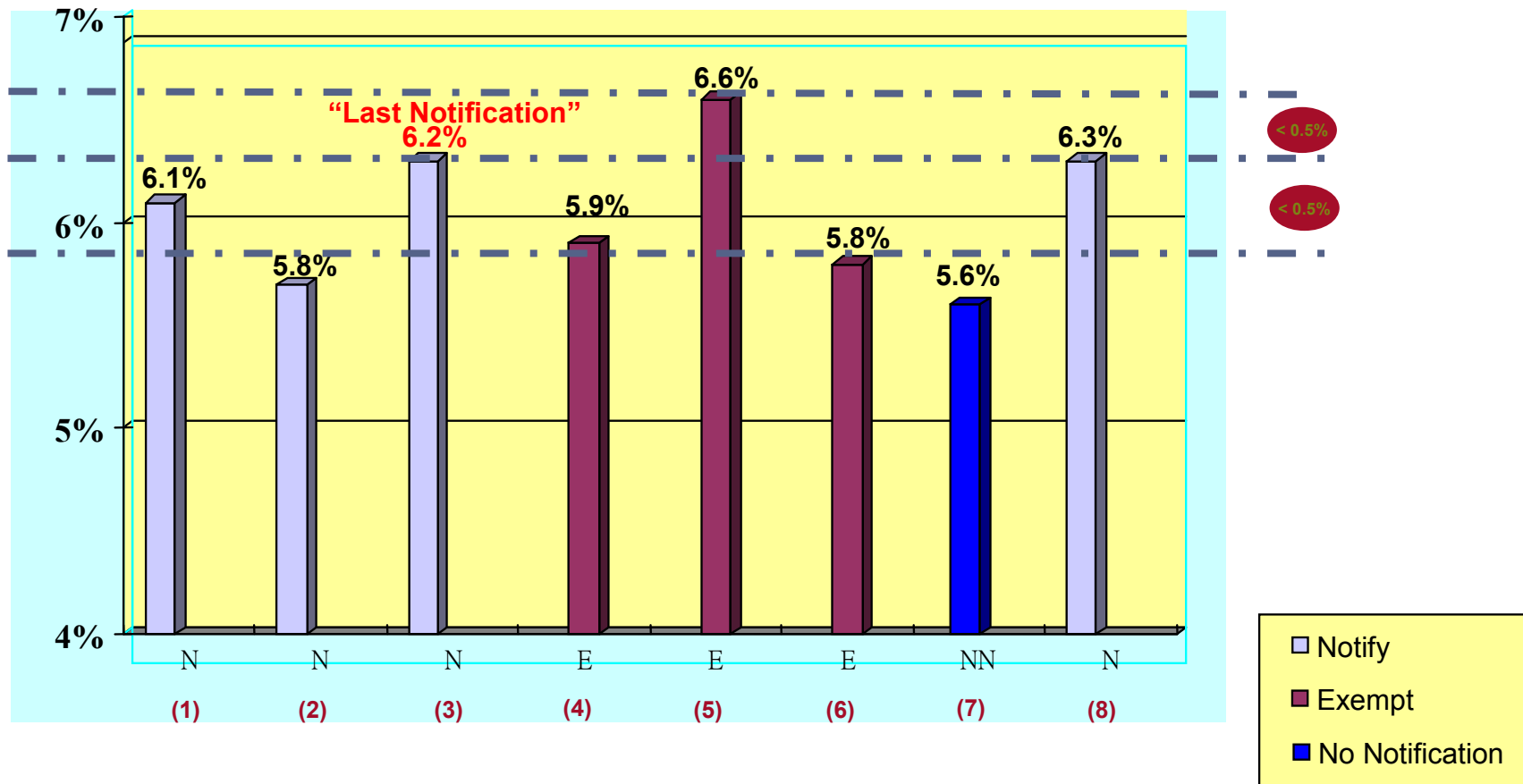


## Events triggering reporting obligations

- Becomes or ceases to be interested in 5% or more of any class of voting shares in a listed corporation
- Increase or decrease in percentage figure of holding such that it crosses over a whole percentage level (subject to “de minimis exemption”)

# ... Events triggering reporting obligations

“De minimis exemption” example





## ... Events triggering reporting obligations

- Notifiable interest + have or cease to have short position of 1% or more
- Notifiable interest + increase or decrease in percentage figure of short position such that it crosses over a whole percentage level
- Notifiable interest + nature of interest changes (except where there is no change in the percentage level of interest)



## What is involved in the reporting and when?

- Send notice using prescribed forms to (a) Hong Kong Stock Exchange (electronic option available) and (b) relevant listed corporation at the same time or one immediately after the other
- Within **3 business days** (except initial notification)





## Common issues for fund managers

- Does client or fund manager have reporting obligation?  
*Check terms of Investment Management Agreement*



## ... Common issues for fund managers

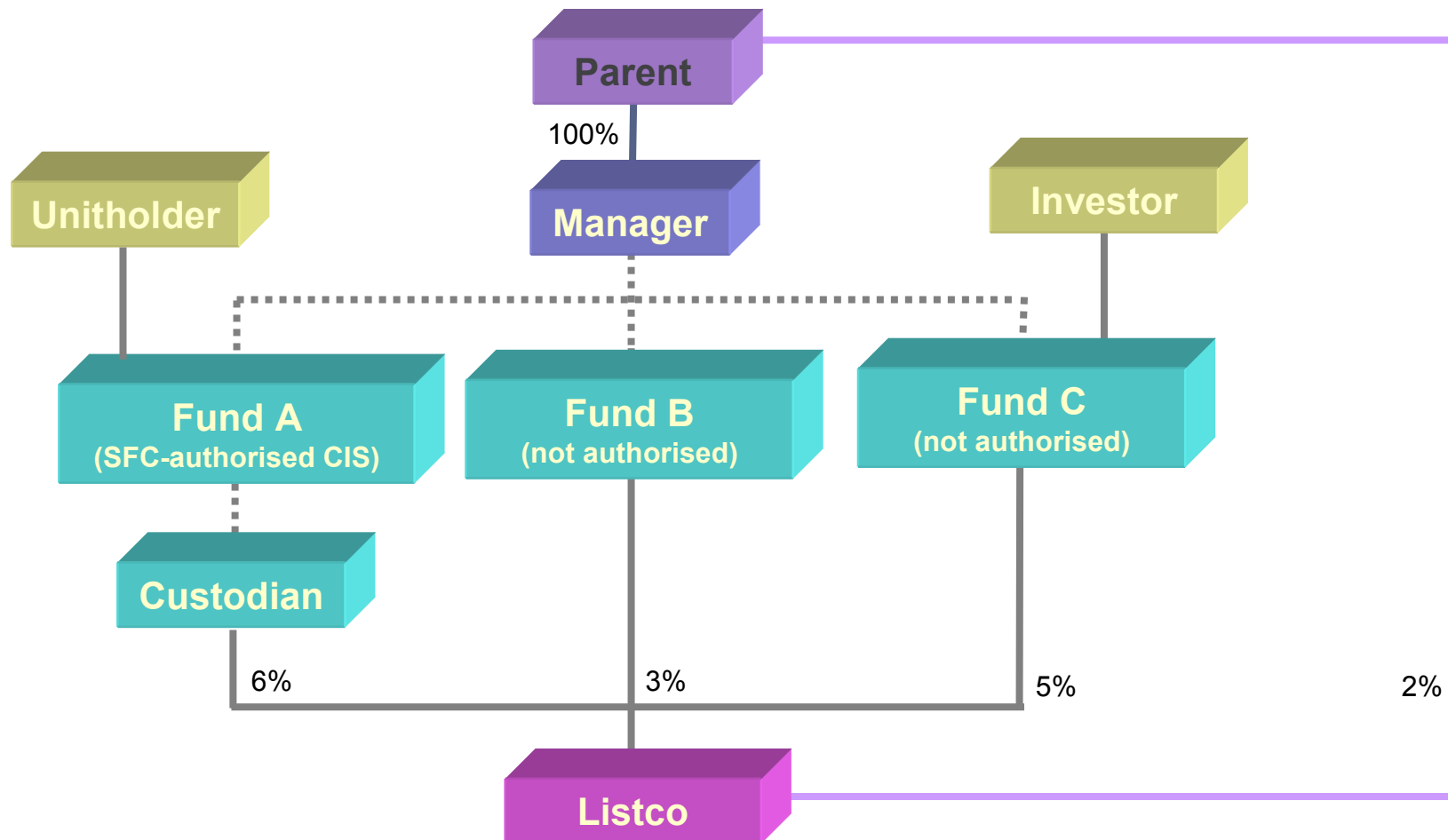
- Aggregation and possible exemptions
  - Interests held by “controlled corporation” in its capacity as investment manager, custodian or trustee do not need to be aggregated if:
    - interests only arise from its obligation or power to invest in, manage, deal in or hold interests in relevant shares on behalf of its customers in its ordinary course of business
    - right or power to vote exercisable independently
    - when performing its functions, power to invest in, manage, deal in or hold interests in relevant shares exercised independently



## ... Common issues for fund managers

- Exempt custodian interest if:
  - carries on business of holding securities for another person (on trust or by contract)
  - no authority to exercise discretion in dealing in interests in shares or rights attached to that interest

## ... Common issues for fund managers




# Overview of enforcement actions

	No action	Resubmit form	Issue warning letter	Refer for investigation with a view to prosecution
Late disclosure	No price sensitive information concealed <u>AND</u> Insignificant delay <u>AND</u> Aggregate value of interests < HK\$100,000	N/A	No price sensitive information concealed <u>AND</u> Prior delay but no warning issued <u>OR</u> Insignificant delay but aggregate value of interests < HK\$1 million	Prior warnings given <u>OR</u> Significant delay + aggregate value of interests > HK\$1 million <u>OR</u> Concealed materially price sensitive information
Fail to complete form in accordance with directions/instructions	N/A	Return form and ask to resubmit	Fail to resubmit form after initial request	Fail to resubmit form after warning letter is issued
Form contains false/misleading information	N/A	N/A	Aggregate value < HK\$100,000 + no prior warnings	×
Fail to disclose notifiable event	N/A	N/A	Aggregate value < HK\$100,000 + no prior warnings	×



# Appendix



## Appendix 7.3 Notice of Substantial Shareholders' and Directors' Interests and Changes in Interests

*Cross-referenced from Rule 704(3)*

**NOTE:** This form is for the purpose of **Listing Rule 704(3)**. Completion of this form does not necessarily mean that Section 83 of the Companies Act has been complied with.

### Part I

[Please complete this Part]

1. Date of notice to issuer:
2. Name of Director or Substantial Shareholder:
3. Please tick one or more appropriate box(es):
  - Notice of a Director's (including a director who is a substantial shareholder) interest and change in interest. [Please complete Parts II and IV]
  - Notice of a New Substantial Shareholder's interest. [Please complete Parts II and IV]
  - Notice of a change in the percentage level of a Substantial Shareholder's interest or Cessation of Interest. [Please complete Parts III and IV]



## Part II

1. Date of change of interest:
2. Name of Registered Holder:
3. Circumstances giving rise to the interest or the change in interest:
4. Information relating to shares held in the name of the Registered Holder: —

Number of shares held before the change:  
As a percentage of issued share capital:

Number of shares which are the subject of this notice:  
As a percentage of the issued share capital:

Amount of consideration (excluding brokerage and stamp duties)  
per share paid or received:

Number of shares held after the change:  
As a percentage of issued share capital:





### Part III

1. Date of change of interest:
2. The change in the percentage level: From \_\_\_% to \_\_\_%.
3. Circumstances giving rise to the interest or change in interest:
4. A statement of whether the change in the percentage level is the result of a transaction or a series of transactions:

### Part IV

1. Holdings of Substantial Shareholder or Director, including direct and deemed interest:—

	Direct	Deemed
Number of shares held before change:		
As a percentage of issued share capital:		
Number of shares held after change:		
As a percentage of issued share capital:		



# Thank you

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