



Hong Kong Competition Law

INVESTIGATION SERIES: PART 12

Exclusions and Exemptions - Application for a Block Exemption Order

Undertakings or associations of undertakings may apply for Block Exemption Orders in order to secure the benefit of an exemption to a category of agreements.

Where similar agreements are commonly used by undertakings throughout a market, it may indeed be more appropriate for undertakings or associations of undertakings to consider seeking a Block Exemption Order for such agreements rather than to apply separately for an individual Decision¹ regarding their specific agreement.



What is a Block Exemption Order and When Should you Consider Applying for One?

The Competition Commission (the “Commission”) may issue Block Exemption Orders where it is satisfied that a category of agreements enhances

overall economic efficiency (the “Efficiency Exclusion”). The category of agreements covered by a Block Exemption Order will then be excluded from the First Conduct Rule (which prohibits anti-competitive agreements). However, a Block Exemption Order does not provide any exemption from the Second Conduct Rule (which prohibits abuses of substantial market power).

The Commission may issue Block Exemption Orders on its own initiative or in response to an application and can subject Block Exemption Orders to any time limit, conditions or limitations it deems appropriate.

There is no requirement for the Commission to issue a Block Exemption Order in order to rely on the Efficiency Exclusion. Undertakings and associations of undertakings can self-assess whether they meet the terms of the exemption. In deciding whether to consider an application, the Commission will take into account whether the resources required for issuing a Block Exemption Order are likely to be proportionate to the expected public benefit brought by the Order.

In that respect, the information provided by the applicants should demonstrate that the category of agreements in question is in wider use in one or more industries. Alternatively, if the application is sector-specific, the Commission expects the information provided to show that there is a greater need for cooperation between undertakings in the relevant sector compared with other sectors.

If undertakings or associations of undertakings wish to make an application for a Block Exemption Order, the Commission generally expects the cooperation of all undertakings that are parties to the agreements.

¹ You can refer to Part 11 of our Investigation Series for additional information on individual Decisions.

How to Apply for a Block Exemption Order?

The Ordinance does not provide for any timeframe for the Commission's review of a Block Exemption Application. Since Block Exemption Orders may be relevant to substantial portions of Hong Kong's economy, the Commission will generally engage in extensive consultations with stakeholders. The timeframe will ultimately depend on the nature and complexity of the matter.

The Commission encourages applicants to engage in initial consultations prior to submitting a Block Exemption Application. This will give the applicants a chance to discuss the proposed Block Exemption Application with the Commission and consider whether a Block Exemption Order would be appropriate.

You should however be aware that the Commission may use the information received in the context of an initial consultation to consider whether an applicant is in violation of the Ordinance and decide to initiate enforcement action. It is therefore essential that you seek legal advice before approaching the Commission.

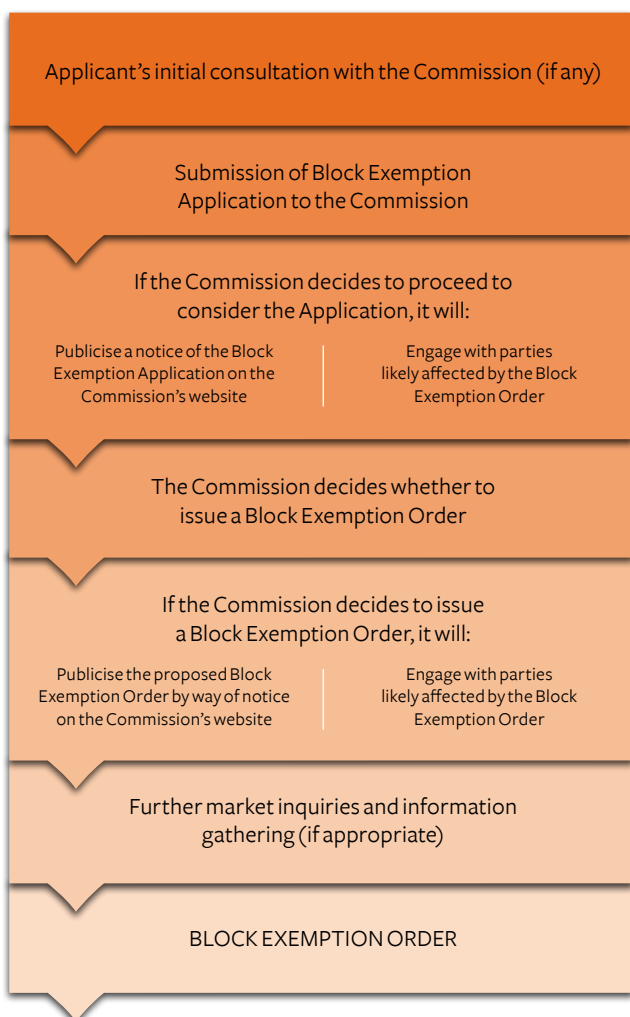
What Happens After a Block Exemption Order?

If the Commission decides to issue a Block Exemption Order, it will publish the Order on its website together with the reasons for issuing it.

The Commission will then monitor whether the undertakings have complied with the relevant conditions or limitations. A failure to comply would result in loss of immunity initially afforded by the Block Exemption Order.

The Commission will also review the Block Exemption Order on a date specified in the Order, which cannot be later than five years from the date of the Block Exemption Order. The Commission may also commence a review prior to the specified date if, for instance, developments have taken place in the economy of Hong Kong which affect the particular category of agreements or if new information relating to the particular category of agreement has come to the knowledge of the Commission. The Commission may vary or revoke the Block Exemption Order after the review if it deems appropriate.

BLOCK EXEMPTION ORDER APPLICATION PROCEDURE



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