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Statutory Backing of Major Listing Requirements

Securities and Futures Commission

February 2007



Background

Existing Situation

- ◆ Lack of statutory sanctions in the Listing Rules
- ◆ Statutory investigative powers are not available to SEHK
- ◆ No positive disclosure obligation in the existing SFO



Background *(cont'd)*

Why statutory

- ◆ To bring Hong Kong in line with international standards
- ◆ To enhance investor confidence
- ◆ To increase Hong Kong's competitiveness as international financial centre



2005 Consultations

- ◆ FSTB Consultation Paper to amend SFO
- ◆ SFC Consultation Paper to amend the Securities & Futures (Stock Market Listing) Rules (“SMLR”)

Public response supports statutory backing on 3 areas:

- ◆ Disclosure of price-sensitive information
- ◆ Financial reporting
- ◆ Shareholders’ approval of connected and certain notifiable transactions



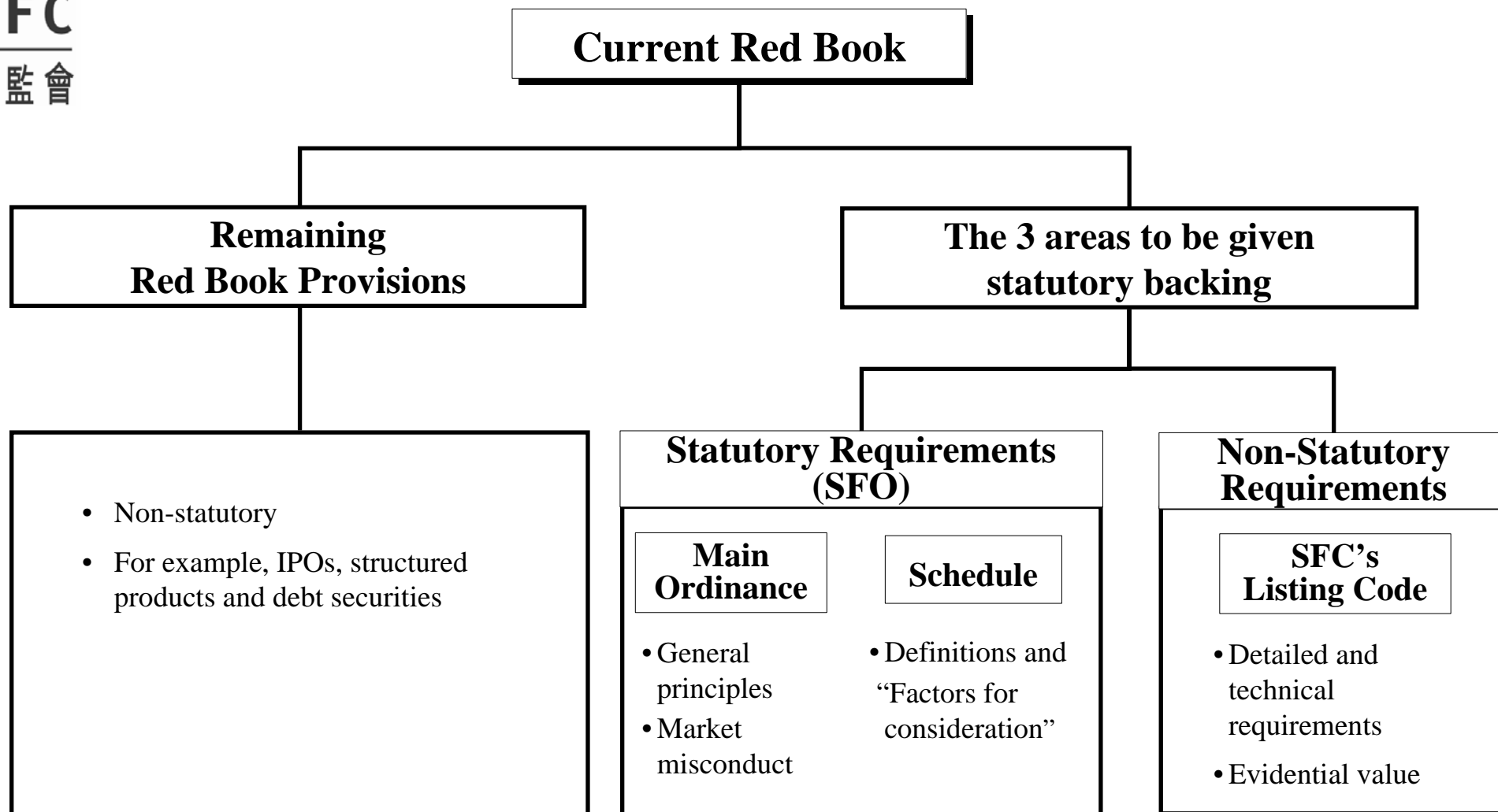
Developments

- ◆ Market concerns responding to 2005 consultation
- ◆ LegCo FA Panel meeting of April 2005
- ◆ November 2005 Focus Group consultation
- ◆ Government, SFC and SEHK undertook extensive discussions
- ◆ February 2007 Focus Group consultation

Revised Approach

- ◆ General Principles in SFO to cover all 3 areas
- ◆ Schedule to the SFO to include the more important listing discipline as “factors for consideration”
- ◆ Non-statutory SFC Code to set out the detailed and technical requirements – status similar to other SFC codes, carries evidential value

The Revised Approach – Structure *(cont'd)*



The Revised Approach – General principles

- ◆ Disclosures should be fairly presented and not false or misleading
- ◆ Full and prompt disclosure of price sensitive information
- ◆ Timely disclosure of periodic financial reports
- ◆ Annual financial statements should be true and fair
- ◆ Annual financial statements should be audited by independent and qualified auditors
- ◆ Listed companies should keep necessary accounting records to support financial statements
- ◆ Shareholders should be given all relevant information and have the opportunity to participate and vote in advance on material notifiable and connected transactions



The Revised Approach - Focus Group comments

- ◆ Supportive of the Revised Regime
- ◆ Prefer SFC to administer the new regime as soon as possible
- ◆ Suggest some key elements for implementation



Operations of the new regime - Administration and Policy

- ◆ On administration, SFC will take into account the comments of the Focus Group to ensure:
 - only one regulator on statutory rules – support SFC administration
 - certainty and sufficient guidance
 - consistency in the practice
 - speedy and smooth transition
- ◆ On policy review and development, SFC will consult the market on major changes



Operations of the new regime – Sanctioning regime

1. SFC disciplinary sanctions (civil)
 - appealable to SFAT
 2. MMT sanctions (civil)
 3. Criminal prosecution
- ◆ Guidelines on choice of the three enforcement prongs

Operations of the new regime – SFC Enforcement principles

- ◆ Sanctions will be proportionate and reasonable, taking into account:
 - the seriousness of the conduct;
 - whether intentional, reckless or negligent; and
 - whether interests of investors damaged

- ◆ Overall SFC focus is on compliance **not** enforcement
 - Formal enforcement action is not first option but last

- ◆ Aim to achieve rectification and remediation

Operations of the new regime – SFC Enforcement Decision Making

- ◆ Internal full time decision-makers
 - functionally separate from SFC operational divisions including Enforcement
 - experienced senior staff e.g. retired judges, lawyers, tribunal members etc
 - focus on fair, quick and efficient decisions
- ◆ Fining guidelines for the SFC
- ◆ Checks and balances on the SFC's decision making powers

Recap

- ◆ Principles based regulation – balance between certainty and flexibility
- ◆ Smooth and speedy transition
- ◆ Overall SFC focus is on compliance, not enforcement – enforcement action not first but last option