

**Consolidated Comments from the Securities and Futures Commission (“SFC”) and The Stock Exchange of Hong Kong (“Exchange”)**

The response below consolidates comments from the Exchange, as the front line regulator for listed companies and the SFC, which is responsible for, amongst other things, the administration of the Code on Takeovers and Mergers and Share Repurchases (“Takeovers Code”). Please note that the SFC is subject to strict statutory confidentiality obligations. To assist the Panel we have made a number of comments of a general nature where appropriate.

*(a) Whether the sale mentioned above and the non-disclosure of the ultimate beneficial owner(s) involve any breach of statutory provisions or listing rules?*

In general, shareholders of listed companies are at liberty to sell their stocks whether on or off market. The price or terms of payment are matters of commercial negotiation and decision.

On issues of change of beneficial ownership in listed companies, the SFC’s role is primarily to ensure compliance with obligations under the Takeovers Code. One of the Exchange’s main functions is to provide a fair, orderly and efficient market for the trading of securities. The Exchange carries out this function by making and enforcing the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (“Listing Rules”).

*The Takeovers Code*

The Takeovers Code regulates changes of control of listed companies. Control is defined as 30% or more of voting rights of a company. Where a person acquires close to but under 30% of the voting rights of a company it is the prime responsibility of that person to ensure that it and parties acting in concert with it will not hold in aggregate 30% or more of the company as a result of the acquisition. It is the normal practice of the SFC to make enquiries in order to establish whether there are other persons acting in concert with the buyer resulting in the concert group in aggregate holding 30% or more.

The SFC’s role therefore is to enquire if there has been/will be a change of control. We do this in all cases. We are not however able to discuss specifics of a particular case.

*Part XV of the Securities and Futures Ordinance (Cap 571) (“SFO”)*

The SFC also monitors compliance with the disclosure of interests requirements in Part XV of the SFO. This requires, amongst other things, disclosure of agreements to acquire

5% or more of shares in a listed company. Under the SFO, failure to make timely disclosure constitutes an offence, the prosecution of which is under the SFC's remit. It is a well known fact that the SFC enforces these provisions rigorously.

We are not however able to discuss specifics of any particular case.

### *Listing Rules*

The Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market. In particular the Listing Rules are designed to promote investor confidence in standards of disclosure and the conduct of issuers' affairs. In certain circumstances the Listing Rules prescribe the procedures for certain corporate actions to ensure that the interests of shareholders are adequately protected. These requirements include certain provisions providing safeguards against current or recent directors or substantial shareholders taking advantage of their position and ensuring a fair process is followed by an issuer's board in its deliberations about matters involving conflicts of interest between these persons and the company as a whole.

The Exchange may make enquiries or investigate possible breaches of the Listing Rules and where appropriate takes regulatory or disciplinary action.

*(b) Whether the sale mentioned above and the special payment arrangement (the buyer will pay by instalment and could take up to 18 months to complete the transaction after the first payment) will adversely affect the interest of the minority shareholders of PCCW and Hong Kong's reputation as an international financial centre?*

The SFC cannot comment on specific cases. As a general principle regulators should not involve themselves with the financial or commercial merits or demerits of a transaction including the pricing terms.

At law a shareholder does not owe fiduciary duties to other shareholders. It is a basic right of shareholders to enter into agreements to sell their shares on terms and conditions which they agree including payment arrangements.

*(c) The evolution of the deal from the initial plan for divestment of PCCW assets to potential foreign buyers (Australian investment bank Macquarie Group and US-owned firm TPG-Newbridge) to the sale of shares to a local buyer (the Fiorlatte Limited wholly owned by Mr Francis LEUNG Pak-to) has given rise to public concern about possible political interference in a free market. How could such concern be addressed?*

Neither the SFC nor the Exchange is in a position to answer the question as it concerns specific case details. The powers and duties of the SFC are set out in the SFO. It is not within the remit of the SFC to opine on political issues, if any.

*(d) What are the service licences currently held by PCCW? Whether the Administration envisages that the change in the shareholding in PCCW would have any implications on fair competition in the telecommunications and broadcasting markets, protection of consumers' and shareholders' interests, etc?*

These are not matters within the remit of the SFC or the Exchange.

*(e) Whether and how the Administration and the regulators would follow-up on the issues mentioned in items (a) to (d) above and what are the factors that would be taken into consideration in undertaking the follow-up actions?*

The SFC and the Exchange do not comment on any action they may or may not take in individual cases.

*(f) The Administration and the regulators are invited to explain the legislative requirements and regulatory framework for monitoring shareholding changes in telecommunications/broadcasting companies in Hong Kong, in particular whether the sale of shareholding in PCCW in question would trigger the regulatory mechanism under section 7P of the Telecommunications Ordinance (Cap. 106)?*

These are not matters within the remit of the SFC or the Exchange.

*(g) Whether the Administration and the regulators see any inadequacies, as reflected in the sale of shareholding in PCCW in question, in the existing legislative and regulatory framework, and a need for reviewing the existing legislation and monitoring mechanism to improve effectiveness?*

We cannot comment on specific cases. However, the SFC and the Exchange are in constant dialogue with the market and have in place various channels whereby the investing public can voice their opinions about the efficacy of our regulation. Representatives of investors sit on the SFC's Advisory Committee, the Shareholders Group, the Takeovers Panel and the Exchange's Listing Committee. The SFC and the Exchange also welcome suggestions and opinions from the public.

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The Stock Exchange of Hong Kong Limited  
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