

**Consolidated Comments from the Securities and Futures Commission (“SFC”) and The Stock Exchange of Hong Kong (“Exchange”) in response to the list of questions relating to issues under the purview of the Panel on Financial Affairs**

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.

*(1) Whether and how the interests of minority shareholders and small investors are protected under the current regulatory regime in Hong Kong in the event of change in shareholdings of listed companies, as revealed in the proposed sale of the 22.66% shares in PCCW Limited (PCCW) held by Pacific Century Regional Development Limited (PCRD), a Singapore-listed company, to Fiorlatte Limited wholly owned by Mr Francis Leung Pak-to?*

In general, shareholders of listed companies are at liberty to sell their stocks whether on or off market. Under the 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.

The Takeovers Code regulates changes of control of listed companies. Control is defined as 30% or more of voting rights of a company. Normally the Takeovers Code requires a general offer to be made to shareholders if any person, either alone or together with his concert parties, acquires 30% or more of the shares in a public company. This level reflects market sentiment that 30% represents a realistic level at which effective control passes. It is also in line with a number of other jurisdictions including the UK, the Mainland and Singapore. The 30% level provides clarity and certainty in the takeovers process.

Generally the Takeovers Code does not apply to acquisitions and disposals of less than 30% of voting rights. 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.

In the event that the SFC concludes, as a result of its enquiries, that a person together with parties acting in concert with him had acquired 30% or more of the voting rights of a company without making a general offer, it would not hesitate to take appropriate action. The SFC regards a failure to make a mandatory general offer as a very serious breach of the Takeovers Code and would not hesitate to take disciplinary action under the Code in appropriate circumstances.

Other safeguards for minority shareholders are provided by the disclosure of interests provisions in Part XV of the SFO. Under Part XV a person who acquires an interest in 5% or more of shares in a listed company comes under a duty of disclosure. 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.

*(2) As stated in the announcement issued by PCCW on 10 July 2006, the proposed special payment to be made by Pacific Century Diversified Limited to holders of public shares of PCCW is conditional, inter alia, on the formal agreement by China Network Communications Group Corporation (China Netcom) that the shares held by it will not qualify for the special payment. Is the proposed arrangement of excluding a certain shareholder (in this case China Netcom) from receiving a special payment upon a sale and purchase of shares consistent with fair practice in the financial market?*

The SFC and the Exchange do not comment on specific cases.

In principle a shareholder may make a no strings gift to other selected shareholders. The question of whether a particular shareholder agrees to be excluded from receiving such a gift is a private decision for the relevant shareholder. In the absence of a breach of the relevant rules and regulations (such as the insider dealing provisions) the regulator would not normally involve itself in the commercial merits or demerits of such action.

*(3) As there are no statutory restrictions on the sale of shares of telecommunications companies to foreign buyers, the evolution of the deal mentioned above from the initial plan for divestment of PCCW assets to potential foreign buyers to the sale of shares to a local buyer has given rise to the concern on whether there is a level playing field in Hong Kong for foreign investors.*

The SFC cannot comment on individual cases. In general where there are competing offers to purchase the assets of a company, the board of directors will reach a decision of whether or not to pursue a particular offer and, if relevant, to put the offer to shareholders for approval, in light of all the prevailing circumstances at the time. The SFC does not share the concerns that there may not be a level playing field in Hong Kong for foreign investors.

*(4) It is understood that the current Telecommunications Ordinance (Cap. 106) provides for an ex post regulatory regime under which the parties concerned are not obliged to seek the Telecommunications Authority (TA)'s prior consent before proceeding with a proposed merger or acquisition. However, the parties concerned may seek TA's prior consent on a voluntary basis. Have the parties concerned consulted the Securities and Futures Commission on the proposed sale in question?*

When there is any doubt as to whether a proposed course of conduct is in accordance with the Takeovers Code parties and their advisers are encouraged to consult the SFC's Takeovers Executive in advance. In this way, the parties can clarify the basis on which they can proceed and thus minimise the risk of taking action which might be a breach of the Codes. As a matter of practice the Executive is regularly consulted in advance. We are not in a position to discuss specific cases.

*(5) As the Fiorlatte Limited is required by the regulatory authorities in Singapore to disclose details of the deal, such as source of funding, it has given rise to the concern on whether the regulatory authorities in Hong Kong should apply the same disclosure requirements to similar cases involving Hong Kong-listed companies. In this connection, what are the disclosure requirements applicable in Singapore and Hong Kong respectively?*

The transfer of ownership of existing shares in a listed company is distinct from the sale of assets of a listed company, and hence the corresponding regulatory requirements governing these two types of activities are different. The transfer of ownership of existing shares is an action by the shareholder of a listed company to sell his shares. Since this activity does not involve the transfer of the assets of a listed company, it is a shareholder action and is not a “transaction by the listed issuer” for the purpose of the Listing Rules of Exchange.

The SFC and the Exchange are not aware of any provision in the Singapore Listing Rules which requires disclosure of the source of funding for acquisitions of substantial interests in a listed company.

The regulatory requirements in the Hong Kong’s securities market are on a par with international standards. The SFC and the Exchange have been keeping the regulatory requirements under regular review in tandem with international trends and market developments, with a view to preserving and strengthening the competitiveness of Hong Kong in the international financial markets.

The Exchange Listing Rules contain comprehensive provisions to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when the listed issuer enters into transactions generally. The Exchange Listing Rules also specify that where a transaction or arrangement of a listed issuer is subject to shareholders’ approval under the provisions of the Exchange Listing Rules, any shareholder that has a material interest in the transaction or arrangement shall abstain from voting on the resolution approving the transaction or arrangement. The Listing Division of the Hong Kong Exchanges and Clearing Limited would, in its normal vetting process, require listed issuers to provide appropriate disclosure of the fact that certain shareholders will abstain from voting and the reasons thereof.

With respect to transactions which fall into the category of “Connected Transactions” of the Exchange Listing Rules and which require independent shareholders approval, the Exchange Listing Rules are more specific and would require disclosure of the fact that the interested shareholders would be abstaining from voting and their respective shareholdings in the listed issuer. The Exchange Listing Rules also specify that an independent financial adviser should be appointed to give a professional opinion on the fairness and reasonableness of the transaction.

Whilst the Exchange Listing Rules do not specifically require disclosure of financing arrangements for acquisitions of substantial interests in listed companies, listed issuers are nevertheless subject to a general requirement to ensure announcements are accurate and complete in all material respects and not misleading or deceptive.