1. The Financial Services and the Treasury Bureau (FSTB) publishes this paper to consult the public on proposed legislative amendments to the Securities and Futures Ordinance (SFO). The proposed legislative amendments seek to give statutory backing to major listing requirements as recommended in the Consultation Conclusions on Proposals to Enhance the Regulation of Listing published by the FSTB in March 2004.

2. Details of the proposed amendments to the SFO are at **Appendix A**.

3. Respondents may submit their comments on or before **7 March 2005**, by any of the following methods -

By mail to:	Financial Services and the Treasury Bureau (Attn. : Consultation Paper on Proposed Amendments to the SFO to Give Statutory Backing to Major Listing Requirements) 18/F, Admiralty Centre Tower I, 18 Harcourt Road, Admiralty, Hong Kong
By fax to:	(852) 2861 1494
By email to:	**consult@fstb.gov.hk**

4. Please note that the names of respondents and their comments may be posted on the website of the FSTB or referred to in other documents we publish. If you do not wish your name to be disclosed, please state so when making your submission.

CONTENTS

EXECUTIVE SUMMARY

1. The Administration conducted a public consultation on proposals to Enhance the Regulation of Listing in October 2003. A majority of the submissions agreed to promote compliance/enhance market quality by including major listing requirements in the statute, i.e. introducing statutory listing requirements.

2. Building on public support for introducing statutory listing requirements, we have proposed certain amendments to the SFO which aim to –

   - provide that the Securities and Futures Commission (SFC) may make rules to prescribe listing requirements and ongoing obligations of listed corporations under s.36 of the SFO;

   - extend the market misconduct regime in Parts XIII and XIV of the SFO to cover breaches of the statutory listing rules made by the SFC;

   - empower the Market Misconduct Tribunal (MMT) to impose, in addition to existing sanctions such as disqualification orders and disgorgement orders, new civil sanctions, namely public reprimands and civil fines[1], on the primary targets, i.e. issuers, directors and officers, for breaches of the statutory listing rules made by the SFC; and

   - empower the SFC to impose civil sanctions, namely public reprimands, disqualification orders, disgorgement orders and civil fines, on the primary targets for breaches of the statutory listing rules made by the SFC under the amended Part IX of the SFO.

3. We would like to invite public views on the proposals which are reflected in the proposed amendments to the SFO prepared by the Administration at **Appendix A**.

---

[1] Officers will not be subject to civil fines to be imposed by the SFC or the MMT due to human rights concern. See paragraph 3.7 of this consultation paper for details.

4. As undertaken in the Consultation Conclusions on Proposals to Enhance the Regulation of Listing published in March 2004, we have explored whether the MMT could be empowered to impose financial penalties, as a new type of sanction, on well-defined groups of persons/entities for breaching certain statutory listing rules made by the SFC. Our findings indicate that –

- both the MMT and the SFC may be empowered to impose civil fines on issuers and directors for breaches of statutory listing rules for regulatory purposes; and

- the maximum level of civil fines that may be imposed by the MMT should be higher than that may be imposed by the SFC.

5. Under our proposal, the maximum level of civil fines that may be imposed by the MMT and the SFC on issuers and directors are HK$8 million and HK$5 million respectively. We would like to invite public comments on whether the proposed level of fines is sufficient to achieve the regulatory, as opposed to punitive, purposes of the fines.

6. Empowering both the SFC and the MMT to impose civil fines on issuers and directors would result in the following features in respect of the sanctioning regime to deal with breaches of statutory listing rules, namely –

- Concurrent civil regimes: While both the SFC and the MMT may impose civil sanctions including civil fines on issuers and directors, the SFC's disciplinary regime would give the regulator an effective and flexible tool to deal with breaches in a timely manner. More severe breaches can be referred to the Department of Justice who will decide whether to bring criminal prosecution under Part XIV of the SFO, or to advise the Financial Secretary to institute the MMT proceedings. There is a provision preventing double jeopardy under the concurrent civil regimes, i.e. a person who has been disciplined by the SFC could not be subject to the MMT proceedings. But we also note that there may be questions about the necessity of empowering both the SFC and the MMT to impose the same types of civil sanctions on the primary targets, albeit of differing severity.

- Two-tiered sanctioning regime for the MMT: The proposed civil sanctions, civil fines on issuers and directors in particular, will empower the MMT to impose sanctions that are only restricted to specified groups of persons (i.e. issuers and directors) who have breached the statutory listing rules. These sanctions would not be applicable to other persons involved in the breach, or persons (including issuers and directors) who have committed other types of market misconduct such as insider dealing and market manipulation. Therefore, different groups of people committing different kinds of market misconduct would be treated differently under the same MMT regime.

7. In view of the concerns about concurrent civil regimes and the two-tiered sanctioning regime for the MMT, we would like to invite public views on whether the proposal for introducing civil sanctions, civil fines in particular, on the primary targets for breaches of the statutory listing rules should be pursued. Should the public support the proposal for introducing civil fines, we would like to invite public views on whether the SFC and the MMT should be empowered to impose civil fines concurrently (i.e. adopting the concurrent fining regimes), or whether the fining power should be confined to the MMT only.

8. We would also like to seek public comments on whether additional checks and balances on the SFC, which may include the establishment of a committee to deal with the SFC's regulatory decisions relating to listing, are necessary.

9. We shall consider the public comments carefully before we finalise our legislative proposals. We aim to introduce an amendment bill into the Legislative Council within the 2004/05 legislative year to amend the SFO.

CHAPTER 1 INTRODUCTION

1.1 As highlighted by the Financial Secretary in his Budget Speech in 2004, the Government has completed the consultation on enhancing the regulation of listing, and that there was general support for giving statutory backing to major requirements for listing. The relevant legislative amendments were expected to be introduced in early 2005.

1.2 This consultation paper takes forward the recommendation to give statutory backing to major listing requirements. The proposed legislative amendments set out at **Appendix A** are largely based on the recommendations outlined in the Consultation Conclusions on Proposals to Enhance the Regulation of Listing (Consultation Conclusions) published in March 2004[2]. In the course of translating the recommendation into the form of proposed legislative provisions, we have identified a few specific issues which have not been discussed in detail in the broad framework laid down in the Consultation Conclusions. These issues will be discussed in Chapter III of this consultation paper.

[2] The full text of the Consultation Conclusions is available at the website of the Financial Services and the Treasury Bureau: http://www.fstb.gov.hk/fsb

CHAPTER 2 PROPOSED LEGISLATIVE AMENDMENTS

2.1 The securities and futures industry is one of the four pillars of our economy. Our policy objective is to maintain and enhance our competitiveness as a leading international financial centre and the premier capital formation centre for China. The Government attaches great importance to the listing functions to provide the important gatekeeping and ongoing supervisory services for the equity market, with a view to preserving and improving market quality.

2.2 In the light of the Report of the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure released in March 2003[3] and public comments thereon, we have identified a number of issues that were critical for the better regulation of listing, and published in October 2003 the consultation paper on Proposals to Enhance the Regulation of Listing[4]. The submissions received during the consultation indicated an overwhelming support for introducing improvements, and a majority of the submissions agreed to promote compliance and enhance market quality by introducing statutory listing requirements.

NEED FOR STATUTORY BACKING

2.3 The lack of regulatory teeth in the Listing Rules administered by the Stock Exchange of Hong Kong Limited (SEHK) has been an issue of concern to the market as well as the general public. The dual filing system[5] has rendered false or misleading disclosure by listing applicants in listing documents, or by listed issuers in complying with ongoing disclosure requirements, made knowingly or recklessly, an offence under the Securities and Futures Ordinances (SFO). It however does not

---

[3] The full text of the Report is available at the Government's website: http://www.info.gov.hk/info/expert/expertreport-e.htm

[4] The full text of the Consultation Paper is available at the website of the Financial Services and the Treasury Bureau: http://www.fstb.gov.hk/fsb

[5] The dual filing system was introduced on 1 April 2003 under the Securities and Futures (Stock Market Listing) Rules made by the SFC under s.36 of the SFO. Copies of listing applications and public disclosure materials by listed companies are required to be filed with the SFC, in addition to the SEHK. The SFC has the powers to make comments and to object to a listing application. It can also exercise its statutory powers under s.384 of the SFO to take action against knowingly or recklessly false or misleading disclosure.

create any statutory liabilities for listing applicants or listed companies which breach other important listing requirements. With strong public support[6], we recommend giving major listing requirements statutory backing by codifying these requirements in the statute in order to strengthen the enforcement regime and promote compliance.

2.4 The advantages of giving statutory backing to the more important listing requirements are as follows –

- to create a positive statutory obligation for compliance with these requirements;
- to allow more effective investigation of a suspected breach of these statutory requirements;
- to enable the imposition of a wide range of statutory sanctions in respect of any proven breach of these statutory requirements, sanctions which would be commensurate with the seriousness of the breach and therefore more effective; and
- to bring our regulatory regime into line with international standards and practices.

Details of our recommendations can be found in the Consultation Conclusions published in March 2004.

PROPOSED LEGISLATIVE AMENDMENTS

2.5 The main purposes of the proposal as reflected in the proposed legislative amendments at **Appendix A** of this paper are as follows -

(A) To provide that the SFC may make rules to prescribe listing requirements and ongoing obligations of listed corporations under s.36 of the SFO

2.6 S.36 of the current SFO already empowers the SFC to make statutory rules to govern listing after consultation with the SEHK and the Financial Secretary. Before making these rules, the SFC is also required to

---

[6] See paragraph 5 of the Executive Summary of the Consultation Conclusions.

consult the public by virtue of s.398 of the SFO. The statutory rules made by the SFC may prescribe the requirements to be met before securities may be listed, and the procedures for dealing with applications for the listing of securities. The rules may also provide for cancellation of the listing of any specified securities. The rules made by the SFC are subsidiary legislation subject to negative vetting by the Legislative Council.

2.7 However, s.36 of the SFO does not specifically provide for power for the SFC to make rules on the requirements to be met by listed companies following the listing of their securities. Instead, s.36(1)(h) empowers the SFC to make rules regarding matters which may be prescribed by rules made by SEHK under s.23. In order to remove any possible doubt and to make the SFC's rule-making power more explicit, we propose to amend s.36 to provide legal certainty for the SFC's power to make rules to prescribe the statutory ongoing obligations for listed companies. The proposed amendments to s.36 of the SFO set out in paragraph A.1 at **Appendix A** aim to reflect the above proposal.

2.8 Under the current s.36 of the SFO, SFC may make rules to prescribe statutory listing requirements after consulting SEHK and the Financial Secretary. Before making such rules, SFC has the statutory duty under s.398 of the SFO to publish draft rules for public consultation. Under our proposal, these requirements concerning prior consultation would continue to apply to the rules made by the SFC under the amended s.36 of the SFO.

2.9 Apart from giving legal certainty to the SFC's power to make rules on the requirements for listed companies, the proposed amendments to s.36 of the SFO also seek to clarify the obligations of listed companies incorporated outside Hong Kong to comply with the statutory listing rules. The term "companies" is currently used in s.36(1)(e). According to Schedule 1 to the SFO, a "company" means a company as defined under the Companies Ordinance (Cap. 32) which means a company formed and registered under the Companies Ordinance, which in turn refers to a company incorporated in Hong Kong. The coverage of the term "company" is inadequate as far as the regulation of listing is concerned as some 80% of the issuers listed on the SEHK are incorporated overseas. In this context, the term "corporation" which is defined in Schedule 1 to the SFO as a company or other body corporate incorporated either in Hong Kong or elsewhere would be more appropriate. To ensure that the

statutory listing requirements laid down in the rules made by the SFC under s.36 of the SFO would be applicable to all companies listed on the SEHK regardless of the place of incorporation, we propose to adopt the term "corporation" instead of "company" in the new s.36 of the SFO.

2.10 As we can see from the current Securities and Futures (Stock Market Listing) Rules (SFSMLR) made under s.36 of the SFO, there are rules of a more procedural nature (such as those relating to the filing of documents), and a breach of which should not attract civil or criminal sanctions. In such cases, the SFC should specify in the rules that breaches of certain rules would not attract any sanctions.

(B) To extend the market misconduct regime in Parts XIII and XIV of the SFO to cover breaches of the statutory listing rules made by the SFC as mentioned in (A) above

2.11 The SFSMLR made under the SFO and came into effect on 1 April 2003 provide for the dual filing system. This dual filing system relies on criminal sanctions available under s.384 of the SFO for intentional or reckless provision of false or misleading information to the SFC or the Hong Kong Exchanges and Clearing Limited (HKEx). But the SFO does not provide for any statutory sanctions for breaches of rules made under s.36, nor does it empower the SFC to impose sanctions for breaches of these rules, including the SFSMLR.

2.12 We recognise that any breach of the important listing requirements would not only result in harm to shareholders and potential investors, but also tarnish the reputation of our equity market as a whole. Hence, we propose extending the market misconduct regime to cover breaches of statutory listing rules so that these breaches would also attract civil sanctions that may be imposed by the Market Misconduct Tribunal (MMT) under Part XIII of the SFO or criminal sanctions under Part XIV of the SFO. The proposed amendments to the SFO to reflect this proposal can be found in paragraphs A.13 and A.16 at **Appendix A**.

2.13 The MMT may impose a range of civil sanctions under Part XIII (s. 257) of the SFO, including –

- disgorgement of profits made or loss avoided, subject to compound interest thereon;

- disqualification of a person from being a director or otherwise involved in the management of a listed corporation for up to five years;

- a "cold shoulder" order on a person (i.e. the person is deprived of access to market facilities) for up to five years;

- a "cease and desist" order (i.e. an order not to breach any of the market misconduct provisions in Part XIII of the SFO again);

- a recommendation order that the person be disciplined by any body of which that person is a member; and

- payment of costs of the MMT inquiry and/or the SFC investigation.

Under our proposal, these civil sanctions will also be applicable to **any person** who has breached the statutory listing requirements.

2.14 Part XIV of the SFO provides for a range of sanctions that may be imposed under the criminal regime. These criminal sanctions include –

- on conviction on indictment to a fine of $10 million and to imprisonment for 10 years; or
  on summary conviction to a fine of $1 million and to imprisonment for 3 years;
- disqualification of a person from being a director or otherwise involved in the management of a listed corporation for up to five years;
- a "cold shoulder" order on a person (i.e. the person is deprived of access to market facilities) for up to five years;
- a recommendation order that the person be disciplined by any body of which that person is a member; and
- payment of costs to the prosecutor under the Costs in Criminal Cases Ordinance (Cap. 492).

2.15 The current market misconduct regime as set out in Parts XIII and XIV of the SFO provides for a dual regime, i.e. parallel civil and criminal regimes, to deter market misconduct. Our policy intent is not to subject any person to the MMT inquiry under Part XIII and criminal prosecution under Part XIV of the SFO for the same market misconduct committed by

him. Therefore, the existing s.283 and s.307 of the SFO would also apply to breaches of statutory listing rules. Like the existing arrangement under the market misconduct regime, a person who has been acquitted or convicted of a breach of a statutory listing rule under Part XIV of the SFO cannot be made the subject of an MMT hearing in respect of the same conduct. Similarly, someone who is the subject of an MMT order or who has been exonerated at the end of an MMT inquiry into a suspected breach of a statutory listing rule under Part XIII cannot be prosecuted under Part XIV of the SFO in respect of the same conduct.

(C) To empower the MMT to impose, in addition to existing sanctions such as disqualification orders and disgorgement orders, new civil sanctions, namely public reprimands and civil fines, on issuers, directors and officers as appropriate (i.e. primary targets) for breaches of the statutory listing rules made by the SFC

2.16 As mentioned in paragraph 2.22 of the Consultation Conclusions, we are advised by the SFC and the HKEx that for the regulatory regime to be effective, proportionate sanctions should be imposed directly on the primary targets, i.e. issuers, directors and officers, against any breaches of the statutory listing requirements. Apart from issuers (i.e. the corporations themselves), directors and officers are company insiders with a sufficient degree of participation in corporate decision-making and can reasonably be held responsible for disclosure made by the company. We therefore propose to empower the MMT to impose the following civil sanctions on these "primary targets" for breaches of the statutory listing requirements, in addition to the civil sanctions provided for in the current Part XIII of the SFO, namely –

(1) public reprimands on issuers, directors and officers; and

(2) civil fines of up to HK$8 million on issuers and directors.

It should be noted that the SFO has already empowered the MMT to impose, among others, disqualification orders and disgorgement orders on persons who have commited market misconduct.

Proposed amendments to reflect the above proposal can be found in paragraph A.14 at **Appendix A**.

2.17 According to Leading Counsel[7]'s advice, the maximum amount of civil fines the MMT (and the SFC) may impose has to be set at a level that is regulatory but not punitive so that the proposed regime will remain civil for human rights purposes. We propose that the maximum level should be set at HK$8 million, which is lower than the maximum amount of fines that may be imposed by the court under Part XIV of the SFO (i.e. HK$10 million), but higher than that may be imposed by the SFC under our proposal (i.e. HK$5 million). Details about the justifications for the MMT to impose civil fines, and the considerations that have to be taken into account in determining the maximum level of civil fines that may be imposed by the MMT are set out in paragraphs 3.4 – 3.8 in this consultation paper.

(D) To empower the SFC to impose civil sanctions, namely public reprimands, disqualification orders, disgorgement orders and civil fines, on the primary targets for breaches of the statutory listing rules made by the SFC under the amended Part IX of the SFO

2.18 In response to market calls for a wider range of regulatory tools which would enable the SFC to take swift actions against breaches of statutory listing rules, we propose the SFC to be empowered to impose direct civil sanctions against breaches of the statutory listing rules by the primary targets without having to go through civil hearings by an MMT under Part XIII of the SFO, or criminal prosecution instituted by the SFC under s.388 of the SFO or by the Department of Justice under Part XIV of the SFO.

2.19 We propose that the SFC be empowered to impose the following civil sanctions directly on the primary targets –

(1) <u>Public reprimands</u>

The SFC may be empowered to issue public reprimands to the primary targets i.e. issuers, directors and officers.

(2) <u>Disqualification orders</u>

The SFC may be empowered to impose disqualification orders on directors and officers for breaches of statutory listing requirements.

---

[7] See paragraph 3.4 in this consultation paper for background.

A disqualification order would debar a person from being a director or manager of a listed corporation for a period not exceeding a specified number of years. The proposed maximum duration of a disqualification order to be imposed by the SFC is three years, which is shorter than that may be imposed by the MMT.

(3) Civil Fines

The SFC may be empowered to impose civil fines on issuers and directors.[8] The maximum amount of fines is proposed to be $5 million which is lower than that may be imposed by the MMT. This is based on the premise that under the concurrent civil regimes, the SFC would be responsible for dealing with less serious cases, while more serious ones would be subject to the MMT proceedings. Further discussion on this issue can be found in paragraphs 3.4 – 3.8 of this consultation paper.

(4) Disgorgement orders

The SFC may be empowered to require "primary targets" to repay the amount of profit gained or loss avoided as a result of a breach of the statutory listing requirements.

Proposed amendments to reflect the above proposal can be found in paragraphs A.4 and A.7 at **Appendix A**.

2.20 The recommendations set out in the Consultation Conclusions issued in March 2004 did not provide for a "no double jeopardy" provision. According to paragraph 3.33 of the Consultation Conclusions, the SFC might take disciplinary actions such as reprimand and disqualification orders, **in addition** to civil sanctions imposed by the MMT or criminal prosecution. However, with the introduction of the power for the SFC to impose civil fines, it would be necessary to include a "no double jeopardy" provision.

---

[8] While we may empower the SFC and the MMT to impose civil sanctions such as reprimands, disqualification orders or disgorgement orders on officers, legal advice indicates that imposing financial penalty on those people is more likely than not to lead a court to say that the group is so wide that it is not a regulated class, and so the fine is criminal in nature. Therefore, civil fines on officers cannot be pursued due to human rights concern. A more detailed discussion of this issue can be found in paragraph 3.7 of this consultation paper.

2.21 Having advised that both the MMT and the SFC may impose civil fines on issuers and directors, Leading Counsel indicated that the provision of concurrent civil regimes (i.e. the SFC disciplinary regime and the MMT regime) in respect of breaches of the statutory listing requirements would not breach human rights principles only if –

(1) there is a provision preventing "double jeopardy" (i.e. powers to impose civil sanctions should not be exercise simultaneously by the SFC and the MMT); and

(2) there are sanctions of differing severity in the two regimes.

2.22 In view of Leading Counsel's advice, we have included in paragraph A.12 at **Appendix A** a no "double jeopardy" provision. A person who has been considered for the SFC's sanctions will not be subject to the MMT proceedings under Part XIII for the same misconduct. Equally, a person who has been referred to the MMT shall not be subject to the SFC's sanctions for the same misconduct. We also propose that fines and disqualification orders that may be imposed by the SFC should be less severe that those imposed by the MMT, as reflected in paragraphs A.7 and A.14 at **Appendix A**.

2.23 The SFC's sanctioning power is not new. The existing Part IX of the SFO already provides for a framework for the SFC to impose disciplinary sanctions on its regulated persons. We propose that the SFC's imposition of civil sanctions on primary targets could be built on the existing Part IX of the SFO which provides for the procedural safeguards for fair hearing in respect of the discipline of licensed intermediaries and those involved in their management by the SFC. Proposed amendments to reflect the above proposal can be found in paragraph A.8 at **Appendix A**. Disciplinary sanctions imposed by the SFC would be appealable to the Securities and Futures Appeals Tribunal (SFAT)[9]. Proposed amendments to reflect the above proposal can be found in paragraph A.18 at **Appendix A**. This could provide effective checks and balances to ensure proper use of powers by the SFC.

PRIMARY TARGETS

2.24 As set out in paragraphs 2.16 and 2.19 of this consultation paper,

---

[9] SFAT is a statutory tribunal with a jurisdiction to review specified decisions as set out in Schedule 8 to the SFO.

"issuers", "directors" and "officers" will be made the "primary targets", which will be subject to direct civil sanctions by the SFC, or reprimands issued and civil fines imposed by the MMT for breaching the statutory listing rules. We will elaborate further in the paragraphs below the definition of these terms, and the legal liabilities of these specified groups of persons.

Securities Issuers

2.25 Under our proposal, the term "issuer" covers both listing applicants and listed corporations. See paragraph A.17 at **Appendix A**. In other words, apart from those corporations already listed on the SEHK, the statutory listing rules to be made by the SFC will be applicable to listing applicants whose applications have yet to be granted by the SEHK, as well as applicants whose applications fail to secure the SEHK's approval or are objected by the SFC. Bringing listing applicants into the regulatory net is consistent with the current s.36 of the SFO which empowers the SFC to make statutory listing rules to prescribe the requirements to be met before securities may be listed. Under the SFSMLR made under s.36, together with s.384 of the SFO, listing applicants, regardless of whether their listing applications are approved or not, may be prosecuted if they knowingly or recklessly provide false or misleading information in a statutory filing with the SFC.

2.26 As for corporations that have already been listed, the proposed definition of "securities issuer", together with the proposed amendments to s.36 of the SFO which aim to give legal certainty to the SFC's powers to prescribe the statutory ongoing obligations for listed corporations, will ensure that these corporations would be subject to the statutory listing rules.

2.27 Under the present proposal, the imposition of civil sanctions on securities issuers would not require the establishment of a mental element. This is based on the premise that failure to comply with the statutory listing rules (such as timely disclosure of price sensitive information) is a misconduct that speaks for itself and should be strictly outlawed. Drawing from the regulatory experience of the SFC, it is sometimes appropriate to infer a wrongful intention from acts, when such intention is suggested by circumstances, i.e. where the facts speak for themselves. Given that the issuers which are listed on the SEHK are primarily responsible for complying with the statutory listing rules, we believe it would be

appropriate to introduce the concept of "strict liability" in considering civil sanctions on issuers for breaching the statutory listing rules in the civil regimes. It should be noted that under the current proposal, the concept of strict liability would not apply in the criminal regime. In other words, offences of the issuers in criminal proceedings under Part XIV of the SFO requires that a mental element be established.

Directors and Officers

2.28 The existing Schedule 1 to the SFO defines an "officer" (in relation to a corporation) as a director, manager, or secretary of, or any other person involved in the management of, the corporation. This essentially covers both directors and officers. In addition, Schedule 1 to the SFO provides that a "director" includes a shadow director and any person occupying the position of director by whatever name called. We believe that the terms "director" and "officer" in the existing SFO embrace the concept of "directors" and "corporate officers" described in the Consultation Conclusions. We therefore propose to adopt these definitions for the purpose of introducing sanctions by the SFC and the MMT on these two groups of persons under the civil regimes.

2.29 We recognise that in most cases, it would be difficult to conclude that all directors or officers are involved in the breach of the statutory listing rules committed by the issuers. It would be unfair if the law should indiscriminately hold all directors and officers of an issuer liable for the breach committed by that issuer. We therefore propose to introduce the mens rea test for directors and officers in the civil regimes in addition to the criminal regime. These two groups of persons would only be subject to the SFC or the MMT sanctions if they are knowingly, intentionally or negligently concerned in the breach. Proposed legislative amendments to reflect our proposal can be found in A.4 and A.13 at **Appendix A**.

SFC'S INVESTIGATIVE POWERS

2.30 The existing s.179 empowers the SFC to require production of records and documents concerning listed corporations in specified circumstances. These include the circumstance where it appears to the Commission that there are circumstances suggesting that persons concerned in the process by which the corporation became listed (including that for making the securities of the corporation available to the public in the course of such process) have engaged, in relation to such process, in defalcation, fraud,

misfeasance or other misconduct.

2.31 To ensure that the SFC would have sufficient investigative powers to start an inquiry under s.179 of the SFO when it appears to the Commission that there is a breach of the statutory listing rules, including requirements for listings and ongoing obligations of listed corporations, we propose expanding the remit of s.179 by including a suspected breach of a statutory listing rule as one of the conditions for starting an inquiry under that section. The proposed legislative amendments to reflect the proposal can be found in A.2 at **Appendix A**.

SETTLEMENTS WITH PERSONS PROPOSED TO BE DISCIPLINED BY THE SFC

2.32 S.201 of the SFO has already empowered the SFC to settle disciplinary actions (such as disciplinary actions in respect of licensed persons) by agreement where it is appropriate to do so in the interest of the investing public or in the public interest. Paragraph A.10 at **Appendix A** seeks to extend the present arrangement to disciplinary actions relating to breaches of statutory listing rules. Settlement might be useful in cases where resources are limited but demands on the SFC to take enforcement actions are great. Where appropriate, settlement allows the SFC and the persons proposed to be disciplined to arrive at a satisfactory outcome quickly.

OVERALL LEGISLATIVE FRAMEWORK

2.33 To sum up, we recommend giving statutory backing to major listing requirements through a mix of primary and subsidiary legislation, supplemented with codes and guidelines -

(1) **Primary legislation:** the market misconduct regime in Parts XIII and XIV of the SFO will be extended to cover breaches of statutory listing rules to be made by the SFC under the amended s.36 of the SFO. To enhance the effectiveness of the MMT regime in deterring this new type of market misconduct, the MMT will be empowered, in addition to the civil sanctions provided for in the current Part XIII of the SFO, to impose civil sanctions, namely public reprimands and civil fines on the specified group of primary targets for breaches of statutory listing rules. In addition, to address calls for swift action, the SFC will be empowered to

impose a range of civil sanctions following disciplinary procedures, namely public reprimands, disqualification orders, disgorgement orders and civil fines on the specified groups of primary targets as appropriate.

(2) **Subsidiary legislation:** The SFC will make statutory rules under the amended s.36 of the SFO to codify the major listing requirements in the statute.

(3) **Non-statutory codes and guidelines:** The SFC will introduce codes and guidelines under s.399 of the SFO to provide guidance in relation to the operation of the statutory listing rules to assist compliance. They are not part of the legislation but could provide users with helpful guidance.

2.34 The draft legislative provisions at **Appendix A** represent Government's proposals on how the primary legislation may be amended to introduce sanctions for breaches of major listing requirements. As for subsidiary legislation, the SFC would separately consult the public on their proposals concerning the statutory listing rules to be made by the Commission. For non-statutory codes and guidelines, subject to the passage of the relevant legislative amendments to the SFO and the subsidiary legislation to be made by the SFC, the SFC will introduce the necessary codes and guidelines in consultation with the market.

CHAPTER 3 FINING REGIME AND CHECKS AND BALANCES ON THE SFC

3.1 As discussed in Chapter 1, while the proposed legislative amendments set out in this paper are largely based on the recommendations laid down in the Consultation Conclusions, there are other proposals which represent further elaboration of the sanctioning regime recommended in the Consultation Conclusions. These new proposals are mainly associated with –

(1) the design of a regime for the imposition of civil fines on the issuers and directors for breaches of the statutory listing rules; and

(2) checks and balances on the SFC's powers to impose civil sanctions on the primary targets.

These issues will be discussed in this Chapter.

CIVIL FINES

Previous Legal Advice

3.2 As pointed out in paragraphs 3.36 and 3.37 of the Consultation Conclusions, some submissions suggest that the SFC should be empowered to impose financial penalties on any person who is found to have breached the statutory listing requirements. This would give the regulator an effective and flexible tool to deter breaches of the statutory listing requirements. However, previous legal advice indicated that substantial financial penalties that went beyond their compensatory function and appeared to be punitive in nature may in certain cases turn the regime into a criminal one for human rights purposes, and hence required the incorporation of all safeguards necessary for a fair hearing in a criminal regime.

3.3 As an alternative, we have explored the possibility of empowering the SFC to impose financial penalties on the specific, well-defined primary targets, i.e. issuers, directors and officers. Previous legal advice indicated that, in the absence of full disciplinary relationship between the SFC and the "primary targets" similar to one that existed between the SFC and the licensed brokers, under which the SFC might suspend or

revoke their licence, the imposition of financial penalties by the SFC on the primary targets was likely to change the proposed regulatory regime into a criminal one for human rights purposes, thus necessitating the presence of procedural safeguards for criminal proceedings and defeating the purpose of swift penalties imposed by the regulator. That being the case, we undertook in the Consultation Conclusions to explore whether the MMT could be empowered to impose financial penalties, as a new type of sanctions on well-defined groups of persons/entities for breaching the statutory listing rules made by the SFC.

Latest Legal Advice

3.4 Subsequent to the issue of the Consultation Conclusions, we studied in detail the legal issues involving the proposal for empowering the MMT or the SFC to impose civil fines on the primary targets, and its intricate relationship with human rights concern. To keep ourselves abreast of developments in the jurisprudence elsewhere, we have sought advice from Leading Counsel in the United Kingdom before we prepare the proposed legislative amendments concerning the fining regime. In gist, advice from Leading Counsel indicates that the fines to be imposed by the SFC for breaches of the statutory listing rules would be civil in nature, if the following three safeguards are to be adopted –

(1) Those subject to such sanctions are restricted to issuers and directors, and the sanctions are not to be imposed on other corporate officers.

(2) The fines are only imposed for a regulatory purpose. The level of fines should be set proportionately to the breach, and to the gain made or loss avoided where this is identifiable; the purpose should be stated to be protective rather than penal. Guidelines should impose these principles.

(3) There is a full right of appeal to a judicial body (i.e. SFAT) on the merits.

The above advice is also applicable to the MMT's powers to impose civil fines, except point (3) above as the MMT itself is a judicial body.

3.5 The above advice has been made having regard to jurisprudence of the European Court of Human Rights (ECtHR) and of the courts of the

United Kingdom. There were cases which suggest the following principle: Where the proceedings are regulatory, preventive or compensatory, the proceedings are unlikely to be "criminal", even though a substantial fine is imposed. Specifically, the ECtHR has found that the imposition of a financial penalty did not involve a "criminal charge" where the proceedings were of a regulatory or disciplinary nature involving rules applicable to a limited class.

3.6 On the notion that in the absence of a full disciplinary relationship between the SFC and the primary targets, the imposition of financial penalties by the SFC on the "primary targets" may run the risk of changing the proposed regulatory regime into a criminal one for human rights purposes, the advice stated that some of the cases where the ECtHR and the English courts have held financial sanctions to be civil, rather than criminal, lacked any such relationship.

3.7 As for the proposal for empowering the SFC or the MMT to impose fines on officers, the same piece of advice pointed out that this may turn the regime into a criminal one because of the width of the term "officers" and the risk that it may be said that the power is therefore one which applies to people generally rather than being a specific measure for regulating those who operate in the market. According to the advice, the inclusion of all persons involved with management is to run a very substantial risk since it broadens very substantially the class of those affected.

3.8 In conclusion, fines to be imposed by the **SFC** and the **MMT** on **issuers** and **directors** (but not officers) for breach of the statutory listing rules would be regarded as civil rather than criminal for human rights purposes based on the following principles –

(1) The proceedings will only apply to a limited class of persons and not to the population as a whole. Although issuers and directors are not members of a distinct profession, they are nevertheless clearly distinguishable from the general public in that they are subject to regulation because of the position they hold in the market and the need to regulate their conduct to protect consumers and to protect the reputation of the market.

(2) The purpose of the proceedings is regulatory – that is to maintain high standards in the market so as to protect consumers, and promote the reputation of the Hong Kong financial market – and

not to punish.

(3) There is no power to imprison (other than if the subject ignores a fine which is made enforceable by a court order) and an adverse decision is not placed on the individual's criminal record.

3.9 In the light of the latest legal advice, we have incorporated the powers for the SFC and the MMT to impose civil fines on issuers and directors for breaches of the statutory listing rules in the proposed legislative amendments at **Appendix A**.

Fining Guidelines

3.10 According to the advice, the level of the fine must be set proportionately to the breach, and to the gain made or the loss avoided where this is identifiable. There may legitimately be an element of deterrence, so as to protect consumers and the market by preventing wrongdoing, so long as any deterrent element of the fines is kept at a moderate level. There should be guidelines setting out the preventive and regulatory purpose of punishment, recognising proportionality to gains made and losses avoided, recognising an element of deterrence, but prohibiting pure punishment.

3.11 In the light of the legal advice concerning the making of fining guidelines, we have proposed in paragraphs A.9 and A.14 at **Appendix A** the factors that need to be considered before the SFC and the MMT may impose civil fines on issuers and directors. The purpose of these provisions is to ensure regulatory (as opposed to punitive) and hence civil nature of the fines to be imposed by the SFC and the MMT.

OVERALL SANCTIONING REGIME

3.12 The sanctions, together with the appeal mechanisms, embodied in the draft legislative provisions at **Appendix A** are summarised below –

	Civil Regime		**Criminal Regime**
	SFC	MMT	
Sanctions	Issuers • reprimand • civil fine up to $5 million • disgorgement	Any person found to have breached or assisted in breaching the	Any person found to have breached the statutory listing rules or aided/abetted in the breach

	of profit or loss avoided Directors • reprimand • disqualification orders • civil fine up to $5 million • disgorgement of profit or loss avoided Officers • reprimand • disqualification orders • disgorgement of profit or loss avoided	statutory listing rules • disgorgement of profit or loss avoided • disqualification order • "cold shoulder" order • "cease and desist" order • recommendation order for discipline by professional bodies • payment for the MMT's enquiry costs and/or the SFC's investigation costs In addition to the above: Issuers • reprimand • civil fine up to $8 million Directors • reprimand • civil fine up to $8 million Officers • reprimand	• disqualification order • "cold shoulder" order • recommendations order for discipline by professional bodies • payment of costs to the prosecutor under the Costs in Criminal Cases Ordinance (Cap.492) • fine up to $10 million • imprisonment up to 10 years
Appeals to	SFAT	Court of Appeal	Court of Appeal

3.13 The proposed sanctions and appeal mechanism set out in the table above follows the three-pronged approach as recommended in the Consultation Conclusions issued in March 2004, and incorporates the following new features –

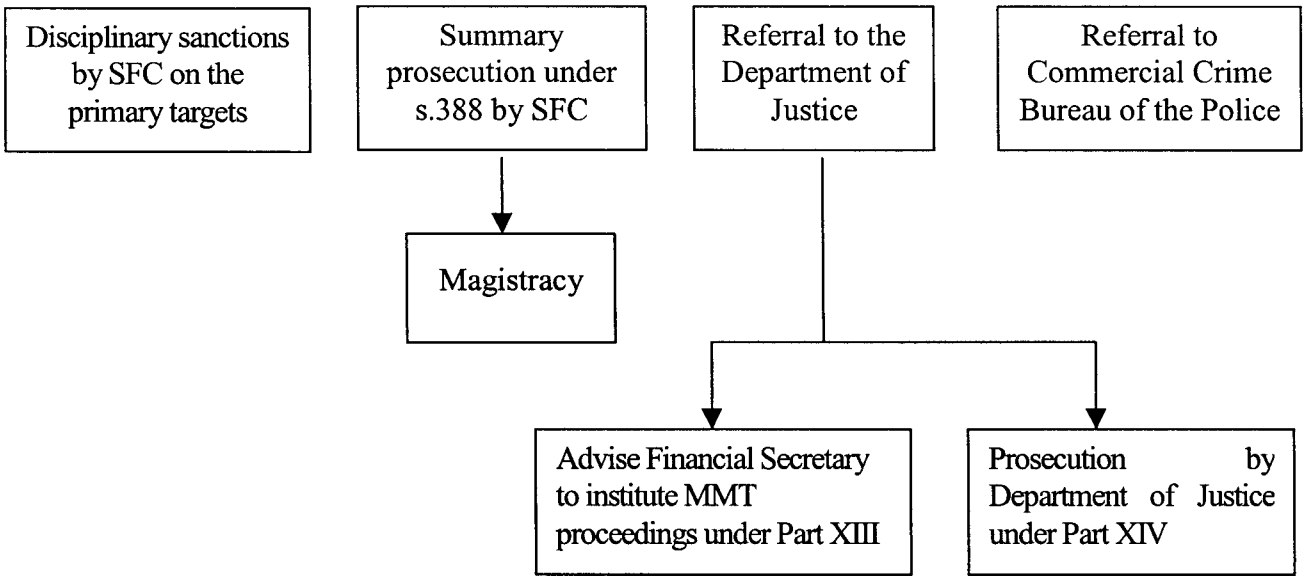
(a) powers for the SFC to impose civil fines on issuers and directors;

(b) powers for the MMT to issue reprimands to issuers, directors and officers and to impose civil fines on issuers and directors; and

(c) quantum of sanctions[10] – while both the SFC and the MMT may impose disqualification orders and/or civil fines, the maximum level of fines that may be imposed by the MMT is higher than that by the SFC. By the same token, the maximum duration of a disqualification order that may be imposed by the MMT is longer than that may be imposed by the SFC.

These new features would give rise to issues concerning concurrent civil regimes and two-tier sanctioning regime for the MMT. These issues will be discussed in paragraphs 3.15-3.21 in this consultation paper.

3.14 Under the proposal, possible enforcement actions that may be taken by the SFC following its investigation into suspected breach of the statutory listing rules are summarised below –



[10] The justifications for providing quantum of sanctions can be found in paragraph 3.15(2) of this consultation paper.

CONCURRENT CIVIL REGIMES

3.15 The three-pronged approach set out in the table on pages 21 and 22 embodies concurrent civil regimes (i.e. the SFC disciplinary regime and the MMT proceedings) to deal with breaches of the statutory listing rules. According to legal advice, maintaining the two civil regimes, including the powers for the SFC and the MMT to impose civil fines, to apply concurrently to breaches of the statutory listing rules would not breach human rights principles if -

(1) there is a provision preventing double jeopardy, i.e. a person who has been disciplined by the SFC could not be subject to the MMT proceedings; and

(2) there is a justification for distinguishing between the cases which are dealt with by the SFC and the cases which are heard by the MMT so that a person cannot complain that his case has been arbitrarily assigned to one or the other. On the basis that the perceived gravity of the alleged breaches could be the justification for the distinction, sanctions of differing severity in the two regimes should be provided for.

3.16 The concurrent civil regimes provide an appropriate range of sanctions to deal with breaches. The SFC's disciplinary regime gives the regulator an effective and flexible tool to deal with breaches of statutory listing rules in a timely manner. It allows the SFC to impose direct civil sanctions swiftly on the specific targets who can reasonably be held responsible for disclosure made by the company without having to go through civil hearing by an MMT under Part XIII of the SFO, or criminal prosecution under Part XIV of the SFO. For breaches of more severe nature and/or involving other relevant parties such as substantial shareholders and professional advisers, the SFC may refer such cases to the Department of Justice who will decide whether to bring criminal prosecution under Part XIV of the SFO. If the Department of Justice takes the view that prosecution is not justified, he/she may advise the Financial Secretary to consider a third option, i.e. instituting civil proceedings before the MMT under Part XIII of the SFO.

3.17 Given that breaches of statutory listing rules may range from relatively minor technical breaches to more severe market misconduct that seriously undermine investor interest and the reputation of the market, the

flexibility provided by the concurrent civil regimes (i.e. the SFC regime or the MMT regime) and the criminal route under Part XIV of the SFO would be particularly important. This proposed three-pronged approach which embraces concurrent civil regimes provides a swift and direct avenue available in the SFC's disciplinary regime to deal with relatively minor breaches, without loosing the more effective enforcement teeth against breaches of more serious nature provided by the MMT proceedings and the criminal route.

3.18 However, there may be questions about the necessity of empowering both the SFC and the MMT to impose the same types of civil sanctions (i.e. reprimands, disqualification orders, disgorgement orders and civil fines) on the primary targets, albeit of differing severity. Under our proposal, the SFC's decisions to impose these civil sanctions on the primary targets may be challenged before the SFAT which has the power to review the merits of any case before it. The composition of the SFAT is on par with that of the MMT – both tribunals are chaired by a judge at the Court of First Instance level. In this context, there may not be a strong justification for introducing concurrent civil regimes in respect of the imposition of reprimand, disqualification orders, disgorgement orders and civil fines on the primary targets.

3.19 In fact, one may argue that the proposal for concurrent fining regimes may compromise the effectiveness of the original proposal for a three-pronged approach as recommended in the Consultation Conclusions. According to paragraph 3.33 of the Consultation Conclusions, a primary target found in breach of a statutory listing rules might be subject to a direct reprimand or disqualification order by the SFC **and** civil sanctions imposed by the MMT. In other words, a primary target sanctioned by the SFC might also be subject to the MMT proceedings. However, with the introduction of the concurrent fining regimes, it would be, according to Leading Counsel's advice, necessary to introduce a provision preventing double jeopardy, i.e. a person who has been disciplined by the SFC could not be subject to the MMT proceedings (see paragraph 3.15 of this consultation paper). Therefore, the proposal for empowering the SFC to impose civil fines would mean that the SFC's civil sanctions would pre-empt an MMT inquiry. That being the case, the possibility of subjecting a primary target to both the SFC's civil sanctions and an MMT inquiry for the same misconduct would be lost should the SFC be empowered to impose civil fines.

TWO-TIERED SANCTIONING REGIME FOR THE MMT

3.20 Empowering the MMT to impose civil sanctions, the most notable one being a civil fine on issuers and directors, on the primary targets (as discussed in paragraph 2.16 above) would create a two-tiered regime for the MMT sanctions in respect of breaches of the statutory listing rules –

	Sanctions	**Applicable to**
1st Tier	• Reprimand	• Issuers • Directors • officers
	• Civil fines of up to HK$8 million	• Issuers • Directors
2nd Tier	• Existing sanctions under s.257 of the SFO – (a) disqualification order (b) disgorgement order (c) "cold shoulder" order (d) "cease and desist" order (e) referral order (f) cost order	• All persons, including issuers, directors and officers

3.21 Such a two-tiered sanctioning regime has the advantage of differentiating the primary targets who are directly responsible for compliance with statutory listing rules and those who are not. The introduction of heavier sanctions against the primary targets represents a more targetted approach in dealing with breaches of statutory listing rules. This can enhance the effectiveness and flexibility of the MMT regime and hence protection for the investing public.

3.22 However, such a two-tiered sanctioning regime may give rise to the following concerns –

(1) This regime may raise the question of why different groups of persons should be punished in different ways for the same conduct by the same tribunal and under the same civil proceedings. Although the primary responsibility of complying with the listing rules should fall on the primary targets, it would be difficult to conclude that the primary targets would be more culpable than others in all cases of breaches of the statutory listing rules. Given the

variety of listing rules that may be enshrined in the statute, the roles of the primary targets and other persons, and hence their relative responsibilities, may vary from one case to another. The two-tiered sanctioning regime may compromise the flexibility of the MMT in determining the sanctions on the primary targets and other persons on the basis of the seriousness of the misconduct of each person, regardless of the fact that whether he/she is a primary target or not.

(2) One may also raise doubt about the fairness or consistency of treatment under the MMT regime. The design of the two-tiered sanctioning regime may be perceived as treating different groups of persons in different ways for the same misconduct.

(3) The fact that the two-tiered sanctioning regime will only be applicable to cases involving breaches of the statutory listing rules but not the other six types of market misconduct (such as insider dealing) may have the disadvantage of complicating the whole MMT regime, though the complication may well be justified. One must recognise that the nature of misconduct under the listing regime is different from that of the other six types of market misconduct. Under the listing regime, there are specific and well-defined groups of persons (i.e. primary targets) who have the positive obligation for complying with the statutory listing rules prescribed in the law. This is different from the other six types of market misconduct where the elements of "primary targets" and "position obligation" cannot be readily identified.

FINING POWER

3.23 As demonstrated in the discussion in paragraphs 3.16 and 3.17 above, empowering the SFC and the MMT to impose civil sanctions, civil fines in particular, provides a spectrum of enforcement response which will facilitate a more calibrated approach towards enforcement. But this approach is not free from doubt. The powers for the SFC and the MMT to impose civil sanctions, civil fines in particular, will bring about complications arising from concurrent civil regimes (as discussed in paragraphs 3.18 and 3.19 above) and a two-tiered MMT regime (as discussed in paragraph 3.22 above). A wide spectrum of enforcement response may also introduce uncertainty. It may give rise to questions about the criteria adopted by the regulator in determining whether a case should attract civil sanctions by the SFC or prosecution by the SFC at

magistracy, or referral to the Department of Justice for prosecution under Part XIV of the SFO or recommendation to the Financial Secretary to institute the MMT proceedings.

3.24 On the basis of the concerns arising from the current civil regimes and the two-tiered sanctioning regime for the MMT mentioned in paragraph 3.22, *we would like to invite public views on whether the proposal for introducing civil fines on issuers and directors for breaches of the statutory listing rules should be pursued. Should the public support the proposal for introducing civil fines, we would like to invite public views on whether the SFC and the MMT should be empowered to impose civil fines concurrently (i.e. adopting the concurrent fining regimes), or whether the fining power should be confined to the MMT only.* Possible options include –

(1) The present proposal, i.e. both the SFC and the MMT should be empowered to impose civil fines, but of differing severity.

(2) The power to impose civil fines would be conferred on the MMT only, while the SFC would be empowered to issue reprimands and impose disqualifiction orders and disgorgement orders on the primary targets. Under this proposal, the MMT would still adopt a two-tiered sanctioning regime, while the complications arising from concurrent **fining** regimes can be avoided.

Public views on the relative tenability of each of the above option are welcome.

LEVEL OF FINES

3.25 The proposed legislative provisions at **Appendix A** has been prepared on the basis of concurrent civil regimes and a two-tier sanctioning regime for the MMT. We set out below the level of fines that may be imposed for breaches of statutory listing rules under our proposal.

Civil Fines Imposed by the SFC

3.26 Paragraph A.7 at **Appendix A** proposes a new power for the SFC to impose civil fines on issuers and directors of up to HK$ 5 million for breaches of the statutory listing requirements. The fines may be imposed alone or in addition to other sanctions including reprimands,

disqualification orders and disgorgement orders. According to the proposed legislative amendments in paragraph A.12 at **Appendix A**, a person who has been subject to the SFC's disciplinary procedure will not be subject to the MMT proceedings for the same misconduct. This proposed arrangement is consistent with Leading Counsel's advice that there should be, among others, a provision preventing "double jeopardy" under the SFC's disciplinary regime and the MMT proceedings. More details about the advice can be found in paragraph 3.15(1) in this consultation paper.

3.27 In line with advice from Leading Counsel, we have set out in paragraph A.9 factors to be considered by the SFC when considering the level of the fine to be imposed on an issuer or a director. The SFC may issue guidelines under s.399 of the SFO to set out in detail the manner in which it proposes to exercise the power to impose fines.

Civil Fines Imposed by the MMT

3.28 As discussed in paragraph 3.9 above, the MMT may also impose civil fines on issuers and directors. Paragraph A.14 at **Appendix A** proposes that the maximum level of civil fines that may be imposed by the MMT would be HK$8 million. Empowering the MMT to impose heavier civil fines than that may be imposed by the SFC is consistent with our proposal for distinguishing between the cases handled by the SFC and the cases heard by the MMT on the basis of the perceived gravity of the alleged breaches. A more detailed discussion about this distinction can be found in paragraph 3.15(2) of this consultation paper.

3.29 We have also set out in paragraph A.14 at **Appendix A** the proposed factors to be considered by the MMT when considering the level of a fine to be imposed on an issuer or a director.

Criminal Fines

3.30 As for the criminal regime, the level of fines to be imposed is proposed to be in line with the maximum level of fines as provided for in Part XIV of the SFO, i.e. HK$10 million. The fine provided for in the criminal regime for all persons who are found to have breached the statutory listing rules (including the primary targets), together with other sanctions including imprisonment of up to 10 years, appears to be adequately severe to deter breaches. Therefore, we do not propose any amendments

to the sanctions under the criminal regime.

Overall Fining Regime

3.31 *We would like to invite public comments on whether the proposed level of fines to be imposed by the SFC (i.e. HK$5 million) and the MMT (i.e. HK$8 million) are sufficient to achieve the regulatory, as opposed to punitive, purposes of the fines*. (See paragraph 3.4(2) of this consultation paper for details about the regulatory purposes of civil fines). In considering the appropriate level of the fines, we should have regard to the fact that under our proposal, the SFC may impose a disgorgement order in addition to a civil fine on an issuer or a director for breaching the statutory listing rules. The disgorgement order would in effect enable the SFC to impose fines proportionate to the profit made or loss avoided where this is identifiable.

CHECKS AND BALANCES ON THE SFC

3.32 The proposed legislative amendments would confer onto the SFC new responsibilities and powers to enforce major listing requirements, and to impose civil sanctions on issuers, directors and officers for breaches of these requirements. Accordingly, care has been taken to ensure that there are adequate checks and balances on the SFC's powers in this regard. Apart from the general checks and balances set out at **Appendix B**, we would like to highlight three notable examples of safeguards that are particularly relevant to the SFC's regulation of listing –

(1) Disciplinary decision-making process

The proposed legislative amendments provide for a fair and transparent decision-making process, based on the process laid down in the current Part IX of the SFO. In particular, the SFC may impose a disciplinary sanction only after giving the person on whom the sanction is proposed to be imposed an opportunity of being heard. The SFC must also issue to the person who is the subject of disciplinary decisions, the decisions in writing together with a written statement of the reasons for the decisions. These procedural requirements are embodied in the proposed legislative amendments in paragraph A.8 at **Appendix A**.

(2) Right to Appeal to the SFAT

Paragraph A.18 at **Appendix A** proposes the right to appeal against all types of the SFC's disciplinary decisions against issuers, directors and officers. These appeals will be heard by the SFAT chaired by a judge, and are full merits reviews where the SFAT may affirm, vary or substitute the SFC's decisions.

(3) Practitioners' input

The Dual Filing Advisory Group is a standing committee established by the SFC under section 8 of the Securities and Futures Ordinance. The Group's members include investors as well as market practitioners, such as fund managers, corporate finance advisers, legal advisers and accountants. Since its establishment in May 2003, the Group has provided valuable advice to the SFC on treatment of cases under the Dual Filing regime and the relevant regulatory provisions, as well as on related policy issues.

The SFC will consider how the terms of reference of this committee should be adjusted to provide practitioners' input to the SFC's process of administering and enforcing the statutory listing rules.

3.33 Apart from the checks and balances at **Appendix B** and those highlighted in paragraph 3.32 above, other options to strengthen the existing checks and balances may also be pursued to ensure proper exercise of the SFC's powers. It has been suggested that the SFC's disciplinary decisions relating to the regulation of listing be delegated to a committee set up under s.8 of the SFO which provides that the SFC may establish committees. The committee may comprise members of the Commission, including executive and non-executive directors, or even market practitioners and investor representatives. The Regulatory Decisions Committee (RDC) set up by the board of the UK Financial Services Authority can provide useful reference. The board appointed the RDC chairman and members, who represent the public interest and are drawn from practitioners and non-practitioners. The RDC takes those enforcement, authorisation and supervisory decisions that are of material significance for the firms and individuals concerned.

3.34 Given that the proposed legislative amendments set out in **Appendix A** would confer on the SFC a range of new functions and powers in the regulation of listing, *we would like to invite public views on whether additional checks and balances, which may include the establishment of a committee to deal with the SFC's regulatory decisions relating to listing, are necessary.*

CHAPTER 4 SUMMARY OF ISSUES FOR CONSULTATION

4.1 The Government is committed to upgrading the quality and hence the competitiveness of our equity market. With this in mind, we recommended in the Consultation Conclusions specific proposals on how major listing requirements would be statutorily backed, i.e. to extend the market misconduct regime to cover breaches of statutory listing rules, and to empower the SFC to impose civil sanctions on the primary targets. The legislative proposals set out in the paper have been developed on the basis of the recommendations in the Consultation Conclusions issued in March 2004. We have also highlighted in Chapter III the more important issues on the legislative front that have not been elaborated in the Consultation Conclusions, and discussed the issue of checks and balances on the exercise of the SFC's powers to impose sanctions on the primary targets.

4.2 We summarise here the matters on which this consultation exercise seeks to collect public views –

- the proposals as reflected in the proposed amendments to the SFO prepared by the Administration (**Appendix A**);

- whether the proposal for introducing civil fines on issuers and directors for breaches of the statutory listing rules should be pursued. Should the public support the proposal for introducing civil fines, we would like to invite public views on whether the SFC and the MMT should be empowered to impose civil fines concurrently (i.e. adopting the concurrent fining regimes), or whether the fining power should be confined to the MMT only (paragraph 3.24);

- whether the proposed level of fines to be imposed by the SFC (i.e. HK$ 5 million) and the MMT (i.e. HK$ 8 million) is sufficient to achieve the regulatory, as opposed to punitive, purposes of the fines. (paragraph 3.31); and

- whether additional checks and balances, which may include the establishment of a committee to deal with the SFC's regulatory decisions relating to listing, are necessary (paragraph 3.33).

APPENDICES

PROPOSED AMENDMENTS TO THE SECURITIES AND FUTURES ORDINANCE (Proposals to Give Major Listing Requirements Statutory Backing)

A.1 Securities and Futures Commission (SFC)'s Powers to Make Rules

Section 36(1) of the Securities and Futures Ordinance (Cap. 571) is amended -

(a) in paragraph (a), by adding -
"(ia) prescribing the requirements to be complied with by persons concerned in the listing of securities;";

(b) by adding -
"(aa) prescribing the requirements to be complied with by any specified persons or class of persons in relation to securities which are listed or accepted for listing;";

(c) in paragraph (e), by repealing "companies" and substituting "corporations";

(d) by adding -
"(i) prescribing any requirement prescribed by rules made under any other paragraph of this subsection as relevant listing requirement for the purposes of the definition of "relevant listing requirement" in section 1 of Part 1 of Schedule 1.".

A.2 SFC's Powers to Require the Production of Records and Documents Concerning Listed Corporations, etc.

Section 179 is amended -

(a) in subsection (1) -
(i) by adding -
"(ca) it appears to the Commission that there are circumstances suggesting that at any relevant time there has been a contravention of any relevant listing requirement;"; and

(ii) in paragraph (f), by adding "(ca)," after "(c),".

A.3 SFC's Powers of Investigations

Section 182(1)(e) is amended -

(a) in subparagraph (i), by repealing "or" at the end;

(b) by adding after subparagraph (i) -

"(ia) for the purpose of considering whether to exercise any power under section 197A, has reason to inquire whether any person is or was at any time guilty of misconduct as a securities issuer or a director or other officer of a securities issuer as described in section 197A(1) or (2); or".

A.4 SFC's Disciplinary Powers to Impose Civil Sanctions on the Primary Targets

Section 193 is amended -

(a) in subsection (1), by repealing "this Part" and substituting "Division 2";

(b) in subsection (2) -

(i) by repealing "this Part" and substituting "Division 2";

(ii) by repealing "an intermediary" and substituting "a person";

(iii) by adding "as an intermediary" after "subsection (1)";

(iv) in paragraph (a), by repealing "in the case of" and substituting "where the person is or was (as the case may be)";

(v) in paragraph (b), by repealing "in the case of" and substituting "where the person is or was (as the case may be)";

(c) by adding -

"(2A) In Division 2A, unless the context otherwise requires -

"misconduct" (失當行爲) means a contravention of any relevant listing requirement, and "guilty of misconduct" (犯失當行爲) shall be construed accordingly.

(2B) In Division 2A, where a person is, or was at any time, guilty of misconduct as a securities issuer as a result of its contravention of any relevant listing requirement, the contravention shall also be regarded as misconduct on the part of any other person who is or was (as the case may be) knowingly, recklessly or negligently concerned in the contravention as an officer of the first-mentioned person, and "guilty of misconduct" shall also be construed accordingly.".

A.5 Amendment of heading in Part IX

The heading of Division 2 is amended by repealing "Discipline" and substituting "Disciplinary action in respect of licensed persons and registered institutions, etc.".

A.6 Division added to Part IX

The following is added -

"Division 2A - Disciplinary action in respect of securities issuers, etc.

A.7 SFC's Powers to Impose Civil Sanctions

The following sanction is added -

197A. Disciplinary action in respect of securities issuers, etc.

(1) Subject to section 198, where a person is, or was at any time, guilty of misconduct as a securities issuer or an officer of a securities issuer, the Commission may exercise such of the following powers as it considers appropriate in the circumstances of the case -

(a) publicly reprimand the person;

(b) in the case of the person being guilty of misconduct as an officer of a securities issuer, order that the person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or any other specified corporation for such period (not exceeding 3 years) as the Commission may specify;

(c) order that the person pay an amount not exceeding the amount of any profit gained or loss

avoided by the person as a result of the misconduct.

(2) Subject to sections 198 and 199, where a person is, or was at any time, guilty of misconduct as a securities issuer or a director of a securities issuer, the Commission may, separately or in addition to any power exercisable under subsection (1), order the person to pay a pecuniary penalty not exceeding $5,000,000.

(3) Where the Commission makes an order under subsection (1)(b), the Commission may specify a corporation by name or by reference to a relationship with any other corporation.

(4) Where the Commission makes an order under subsection (1)(b), the order shall be filed by the Commission with the Registrar of Companies as soon as reasonably practicable after it is made.

(5) A person ordered to make any payment under subsection (1)(c) or (2) shall make the payment to the Commission within 30 days, or such further period as the Commission may specify by notice under section 198(3), after the order has taken effect as a specified decision under section 232.

(6) The Court of First Instance may, on an application of the Commission made in the manner prescribed by rules made under section 397 for the purposes of this subsection, register an order made under subsection (1)(c) or (2) in the Court of First Instance and the order shall, on registration, be regarded for all purposes as an order of the Court of First Instance made within the civil jurisdiction of the Court of First Instance for the payment of money.

(7) Any money paid to or recovered by the Commission pursuant to an order made under subsection (1)(c) or (2) shall be paid by the Commission into the general revenue.".

A.8 Procedural requirements in respect of SFC's exercise of disciplinary powers

Section 198 is amended -

(a) in subsection (1), by repealing "or 197(1)(a) or (b) or (2)" and substituting ", 197(1)(a) or (b) or (2) or 197A(1) or (2)";

(b) in subsection (3) -

(i) by repealing "or 197(1) or (2)" and substituting ", 197(1) or (2) or 197A(1) or (2)";

(ii) in paragraph (c), by adding ", or of any other order," after "prohibition";

(iii) in paragraph (e), by adding ", or of any payment to be required to be made," after "imposed".

A.9 Guidelines for performance of SFC's functions to take Disciplinary Actions

Section 199 is amended -

(a) in subsection (1), by repealing "or 196(2)" and substituting ", 196(2) or 197A(2)";

(b) in subsection (2), by repealing "under subsection (1) shall include the following as factors that the Commission shall take into account in performing any of its functions under section 194(2) or 196(2)" and substituting "by it under subsection (1) to indicate the manner in which it proposes to perform any of its functions under section 194(2) or 196(2) shall include the following as factors that it shall take into account in performing such functions";

(c) by adding -

"(2A) Guidelines published by the Commission under subsection (1) to indicate the manner in which it proposes to perform any of its functions under section 197A(2) shall contain provisions to the effect that, in performing such functions, the Commission -

(a) shall only order the payment of a pecuniary penalty which is, in the circumstances of the case, proportionate and reasonable in relation to the conduct of the person; and

(b) in determining whether any pecuniary penalty is proportionate and reasonable within the meaning of paragraph (a), may, in addition to any other matter that it may consider relevant, take into account -

(i) the seriousness of the conduct of the person as

determined with reference to the nature of the relevant listing requirement in question;

(ii) whether the conduct was intentional, reckless or negligent;

(iii) whether the conduct may have damaged the integrity of the securities and futures market;

(iv) whether the conduct may have damaged the interest of the investing public; and

(v) whether the conduct resulted in a benefit to the person or any other person.".

A.10 SFC's Power to Enter into Settlement with Persons Proposed to be Disciplined

Section 201 is amended -

(a) in subsection (1), by repealing "or 197(1) or (2)" and substituting ", 197(1) or (2) or 197A(1) or (2)";

(b) in subsection (3), by repealing "or 197(1)(a) or (b) or (2)" and substituting ", 197(1)(a) or (b) or (2) or 197A(1) or (2)";

(c) in subsection (4) -

(i) by repealing "section 198(2) and (3) as if section 198(2) and (3)" and substituting "the provisions of section 198(3) and, where the power the exercise of which has been contemplated is that under the sections specified in section 198(2), of section 198(2), as if those provisions";

(ii) by repealing "also applies" and substituting "also apply".

A.11 Publication of SFC's Decisions to Take Disciplinary Actions against the Primary Targets

The following is added -

"203A. Commission to maintain register showing exercise of powers under section 197A

(1) The Commission shall maintain a register in such form as it considers appropriate to show, in relation to any exercise of power under section 197A(1) or (2), the particulars specified in subsection (2).

(2) The particulars specified for the purposes of subsection (1) are -

(a) where the exercise of power is in respect of the misconduct on the part of any person as a securities issuer -

(i) the name and business address of the person;

(ii) the particulars of the misconduct;

(iii) the particulars of the exercise of power; and

(iv) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection; or

(b) where the exercise of power is in respect of the misconduct on the part of any person as a director or other officer of a securities issuer -

(i) the name and business address of the person;

(ii) the name and business address of the securities issuer;

(iii) the particulars of the misconduct;

(iv) the particulars of the exercise of power; and

(v) such other particulars as are prescribed by rules made under section 397 for the purposes of this subsection.

(3) The register may be maintained -

(a) in a documentary form; or

(b) by recording the information required under subsection (2) otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.

(4) For the purpose of enabling any member of the public to ascertain the identity of any person in respect of whose misconduct any power has been exercised under section 197A(1) or (2) and the particulars of the misconduct and the exercise of power, the register shall be made available for public inspection at all reasonable times.

(5) At all reasonable times, a member of the public may -

(a) inspect the register or, where the register is maintained otherwise than in a documentary form, a reproduction of the information or the relevant part of it in a legible form; and

(b) obtain a copy of an entry in or extract of the register on payment of the prescribed fee.

(6) A document purporting to be -

(a) a copy of an entry in or extract of the register; and

(b) certified by an authorized officer of the Commission as a true copy of the entry or extract referred to in paragraph (a),

shall be admissible as evidence of its contents in any legal proceedings.

(7) Without derogating from the other provisions of this section, the Commission shall, in addition, cause the register to be available to the public in the form of an on-line record.

A.12 No Double Jeopardy in respect of SFC's Disciplinary Actions

The following is added -

203B. No further disciplinary action under section 197A after proceedings in respect of same conduct

Notwithstanding anything in this Part, no power may be exercised under or pursuant to this Part to determine whether to exercise any power in respect of any person under section 197A in respect of any conduct -

(a) if -

(i) proceedings have previously been instituted against the

person under section 252 in respect of the same conduct; and

(ii) (A) those proceedings remain pending; or

(B) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct; or

(b) if -

(i) criminal proceedings have previously been instituted against the person under Part XIV in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under Part XIV in respect of the same conduct.".

A.13 Extending the Market Misconduct Tribunal (MMT) Regime to Cover Beaches of Statutory Listing Rules

Section 245(1) is amended -

(a) in the definition of "market misconduct" -

by adding -

"(g) breach of listing requirement."

(b) by adding -

"breach of listing requirement" means breach of listing requirement within the meaning of section 278A;".

The following is added -

"278A. Breach of listing requirement

Breach of listing requirement takes place when -

(a) a person as a securities issuer contravenes any relevant listing requirement; or

(b) a person as an officer of a securities issuer is knowingly, recklessly or negligently concerned in the contravention by the securities issuer of any relevant listing requirement.".

A.14 MMT's Powers to Impose Civil Sanctions on Primary Targets

Section 257 is amended -

(a) by adding -

"(1A) Subject to subsection (3), at the conclusion of any proceedings instituted under section 252, where the Tribunal determines pursuant to section 252(3)(a) that market misconduct has taken place by reason of a breach of listing requirement, the Tribunal may, separately or in addition to any power exercisable under subsection (1), make one or more of the following orders in respect of a person who has by virtue of section 252(4)(a) been identified as having engaged in the market misconduct pursuant to section 252(3)(b) -

(a) an order for public reprimand of the person;

(b) where the person has perpetrated the conduct which constitutes the market misconduct as a securities issuer or a director of a securities issuer, an order that the person pay to the Government a pecuniary penalty not exceeding $8,000,000.";

(b) in subsection (2), by adding "or (1A)(a)" after "subsection (1)";

(c) by adding -

"(2A) When making any order in respect of a person under subsection (1A)(b), the Tribunal shall only order the payment of a pecuniary penalty which is, in the circumstances of the case, proportionate and reasonable in relation to the conduct of the person.

(2B) For the purposes of subsection (2A), the Tribunal may, in addition to any other matter that it may consider relevant, take into account -

(a) the seriousness of the conduct of the person as determined with reference to the nature of the relevant listing requirement in question;

(b) whether the conduct was intentional, reckless or negligent;

(c) whether the conduct may have damaged the integrity of the securities and futures market;

(d) whether the conduct may have damaged the interest of the investing public;
(e) whether the conduct resulted in a benefit to the person or any other person; and
(f) any conduct by the person which -
(i) previously resulted in the person being convicted of an offence in Hong Kong;
(ii) previously resulted in the person being identified by the Tribunal as having engaged in any market misconduct pursuant to section 252(3)(b); or
(iii) previously resulted in the person being identified as an insider dealer in a determination under section 16(3), or in a written report prepared and issued under section 22(1), of the repealed Securities (Insider Dealing) Ordinance.";

(d) in subsections (3), (7) and (8), by adding "or (1A)" after "subsection (1)".

A.15 No further MMT proceedings after exercise of power under Part IX or criminal proceedings under Part XIV

Section 283 is amended by repealing everything after "any conduct" and substituting -

"-

(a) if -
(i) any power has previously been exercised under or pursuant to Part IX to determine whether to exercise any power in respect of the person under section 197A in respect of the same conduct; and
(ii) (A) the exercise of power under section 197A remains pending; or
(B) by reason of the previous exercise of power under or pursuant to Part IX, no power may again be lawfully exercised under or pursuant to that Part to determine whether to exercise any power in respect of the person under section 197A in

respect of the same conduct; or

(b) if -

(i) criminal proceedings have previously been instituted against the person under Part XIV in respect of the same conduct; and

(ii) (A) those criminal proceedings remain pending; or

(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under Part XIV in respect of the same conduct.".

A.16 Extending the Criminal Regime Under Part XIV to Cover Breaches of Statutory Listing Rules

The following is added -

"299A. Offence of breach of listing requirement

(1) A person shall not -

(a) as a securities issuer contravene any relevant listing requirement; or

(b) as an officer of a securities issuer be knowingly or recklessly concerned in the contravention by the securities issuer of any relevant listing requirement.

(2) A person who contravenes subsection (1) commits an offence.".

A.17 Definitions

Section 1 of Part 1 of Schedule 1 is amended -

(a) in the definition of "shadow director", by adding "or a majority of the directors" after "directors" where it twice appears;

(b) by adding -

""securities issuer" means a listed corporation or a listing applicant;

"listing applicant" means a corporation by or on behalf of which an application for the listing of any securities issued or to be issued by the corporation has been made to a

recognized exchange company, whether or not [, as a result of the application,] the recognized exchange company has agreed to allow, subject to the requirements of this Ordinance, dealings in those securities to take place on a recognized stock market operated by the recognized exchange company;

"relevant listing requirement" means any requirement prescribed by rules made under section 36(1)(i) of this Ordinance as relevant listing requirement for the purposes of this definition;".

A.18 SFC's Decisions to Sanction the Primary Targets Appealable to the Securities and Futures Appeals Tribunal

Division 1 of Part 2 of Schedule 8 is amended by adding -

"59A.	Section 197A(1)(a), (b) or (c) of this Ordinance	Exercise of power to publicly reprimand a person, or to make an order in respect of a person.
59B.	Section 197A(2) of this Ordinance	Order to pay a pecuniary penalty.".

Checks and Balances on the Exercise of the Securities and Futures Commission's Powers

Since the establishment of the Securities and Futures Commission (SFC) in 1989, care has been taken to ensure that the SFC has the necessary powers to carry out its regulatory objectives effectively, and that such powers are checked by sufficient safeguards.

The Securities and Futures Ordinance (SFO), which commenced operation on 1 April 2003, sets out clearly the regulatory objectives of the SFC. Various checks and balances on SFC's powers have been incorporated in the SFO, together with some enhanced features –

(i) the Chief Executive appoints all directors of the SFC, the majority of whom must be non-executive. Certain key functions[1] of the SFC could only be exercised pursuant to decisions taken at meetings of the full SFC;

(ii) the SFC must consult the public in exercising its rule-making power;

(iii) an independent non-statutory panel, the Process Review Panel (PRP), was established by the Chief Executive to review the SFC's internal operating procedures, including those for ensuring consistency and fairness;

(iv) an independent Securities and Futures Appeals Tribunal (SFAT), chaired by a full-time judge, was established under the SFO, replacing the part-time Securities and Futures Appeals Panel. A wider range of SFC's decisions are subject to review by the SFAT on the full merits of a case;

(v) members of the public who are aggrieved by the SFC's decisions in the performance of its functions may apply for judicial review;

(vi) complaints against the actions of the SFC or any of its staff may be lodged with the Office of the Ombudsman;

(vii) as a public body, under the Prevention of Bribery Ordinance SFC's practices and procedures are subject to review by the Independent Commission Against Corruption (ICAC);

---

[1] Functions as specified in Part 2 of Schedule 2 of the SFO.

(viii) the Chief Executive approves estimates of the SFC's income and expenditure, and the Financial Secretary shall cause the approved estimates to be laid before the Legislative Council. Indeed in the past, it has been a practice for the SFC Chairman and senior management to attend the Financial Affairs Panel meetings in relation to its budget and other major initiatives;

(ix) the SFC is required to submit its annual report and financial statements to the Financial Secretary who shall cause a copy to be laid before the Legislative Council;

(x) the Director of Audit may examine the records of the SFC;

(xi) the Chief Executive may give the SFC directions regarding the performance of its duties and functions; and

(xii) the SFC must furnish such information to the Financial Secretary as he may specify.

SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

A Consultation Paper on

Proposed Amendments to the Securities and Futures (Stock Market Listing) Rules

Hong Kong
January 2005

Consultation Document

i. This consultation document invites public comments on the draft amendments to the **Securities and Futures (Stock Market Listing) Rules** (SMLR), which the Securities and Futures Commission (SFC) proposes to make under section 36(1) of the Securities and Futures Ordinance (5 of 2002) (SFO).

ii. Subsidiary legislative provisions are subject to negative vetting by the Legislative Council. In addition, for rules that the SFC proposes to make, section 398 of the SFO stipulates a mandatory consultation requirement. The SFC now releases the draft amendments to the SMLR for public consultation.

iii. The public may obtain copies of this as well as other consultation documents and attachments free of charge at the SFC office or via the Internet at http://www.sfc.hk.

iv. The SFC invites interested parties to submit comments on the draft amendments, and any other matters that might have a significant impact on the SMLR before 31 March 2005. Persons wishing to comment should provide details of any organizations whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit their proposed texts for the SMLR.

v. Written comments may be sent

By mail to:	SFC (Stock Market Listing Rules) Attn: Corporate Finance Division 8/F Chater House 8 Connaught Road Central Hong Kong
By fax to:	(852) 2810 5385
By on-line submission at:	http://www.sfc.hk
By e-mail to:	smlr@sfc.hk

vi. Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and in other documents. In this connection, please read the Personal Information Collection Statement on the SFC website at http://www.sfc.hk.

vii. You might not wish your name to be published by the SFC in connection with your submission. If this is the case, please state that you wish your name to be withheld from publication when you make your submission.

Background

1. Hong Kong's regulatory framework for listings and listed companies has been largely based on non-statutory Listing Rules made by The Stock Exchange of Hong Kong (SEHK), itself a wholly-owned subsidiary of the listed Hong Kong Exchanges and Clearing Limited (HKEx). The Listing Rules, contained in the so-called "Red Book", are contractual obligations that listed companies undertake to SEHK to fulfill. They do not have the force of statue and cannot provide SEHK with statutory regulatory powers.

2. This non-statutory approach was broadly in line with the regulatory regimes in place for the United Kingdom, Australia, Singapore, and other well-developed securities markets at the time our regime was established. The most notable exception was the United States, which since 1933 has had a statutory securities regulatory framework.

3. In recent years, however, many jurisdictions have moved to the statutory approach. Australia and Singapore gave their listing rules "statutory backing" and empowered statutory agencies and courts to take statutory action against those breaching the rules. The UK transferred its listing regulatory role from the London Stock Exchange to the Financial Services Authority (FSA), which re-promulgated the listing requirements as statutory rules with statutory enforcement.

4. In Hong Kong, market participants and the public have expressed increasing concerns about the lack of regulatory teeth in the Listing Rules. Many believe it would hinder our continued development as an international financial centre and the premier listing centre for Mainland China. The success of Hong Kong depends on the quality of our market, the maintenance of which, in turn, requires credible rules that are capable of proper enforcement.

5. The Government and the SFC have taken a number of initiatives aimed at continually strengthening our listing regulatory structure. A "Dual Filing" regime was established pursuant to the Securities and Futures (Stock Market Listing) Rules (SMLR) under the Securities and Futures Ordinance (SFO) and became effective on 1 April 2003. This provides for criminal liability where listing applicants and listed issuers intentionally or recklessly disclose to the public materially false or misleading information.

6. In addition, the Government appointed an Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure. Their report in March 2003 was followed by the Financial Services and the Treasury Bureau's Consultation Paper on Proposals to Enhance the Regulation of Listing in October 2003. This, in turn, resulted in the Consultation Conclusions on Proposals to Enhance the Regulation of Listing in March 2004.

7. The Government's policy conclusions in March 2004 were, broadly speaking, to build on the Dual Filing regime, codify the important requirements in the Listing Rules into subsidiary legislation, and make the SFC responsible for enforcing those provisions, while continuing to have SEHK receive applications at the frontline and administer the listing process. The Government and the SFC have been working on the necessary legislative amendments. We now publish the proposed rule amendments for public consultation.

Principles in Drafting the Proposed Rules

8. The Government's proposals would make certain amendments to primary legislation, mainly the SFO, while the SFC's proposals would promulgate subsidiary legislation pursuant to its rule-making power under the proposed revised section 36 of the SFO, to implement the Government's policy directions. The SFC's proposals are related to the Government's proposals and this consultation paper should be read together with the *Consultation Paper on Proposed Amendments to the Securities and Futures Ordinance to Give Statutory Backing to Major Listing Requirements* published by the Financial Services and the Treasury Bureau on the same day. The Government's proposals, broadly speaking, would set out the liability for breaches of the new rules, provide for sanctions, and subject the regime to checks and balances.

9. The SFC's proposals would implement the Government's decision to codify the more important requirements in the Listing Rules into subsidiary legislation. The proposed provisions would be incorporated into the present SMLR as new sections 7A, 16A, 19A, and new Schedules 1 to 8. The full SMLR, containing both the existing and proposed provisions, is set out at Appendix 1.

10. The SFC proposes to make these rules pursuant to section 36 of the SFO. We seek the public's views and comments.

11. In codifying the more important requirements of the Listing Rules into provisions in the SMLR, we have followed four general principles.

    (a) The requirements relate only to disclosure. They do not include Listing Rules dealing with issues of corporate governance.

    (b) There are no substantive changes from the present Listing Rules, except in a few instances where there are compelling reasons and where the changes are expected to receive market consensus.

    (c) There are no pre-vetting or approval requirements. Listed issuers who follow the rules would not have any additional compliance or administrative burden.

    (d) SEHK will remain the frontline regulator and continue to receive applications as well as other disclosure materials and administer the processing.

12. *Only disclosure requirements*. The proposed requirements relate only to disclosure. Corporate governance requirements are not included.

13. Statutory requirements and the statutory regulator should focus on ensuring that listed issuers make accurate, full, and fair disclosure to their investors and the public. It is generally not appropriate for securities laws and a securities regulator to set rules on the business conduct and internal workings of a business enterprise.

14. This approach of covering only disclosure requirements follows the policy direction the Government has set out in its Consultation Conclusions of March 2004.

15. The proposed rules would be minimum requirements applicable to all issuers listed on the Main Board or the Growth Enterprise Market (GEM). SEHK may require more. For example, the proposed provisions would require issuers to publish half-yearly accounts. SEHK may wish to require issuers on GEM to publish quarterly accounts as currently provided under the GEM Listing Rules.

16. *No substantive changes*. To avoid any disturbance to market practices and activities, the proposed rules would follow the present requirements in substance. Listed issuers and market practitioners would not need to be concerned about new obligations or new requirements. Each proposed section in the SMLR in Appendix 1 is marked with a cross-reference to the present Listing Rule from which the requirement is derived. In addition, a derivation table setting out the present Listing Rule requirements and the equivalent provisions in the proposed SMLR can be found on the SFC website at http://eapp01.sfc.hk/apps/cf/smlr.nsf/eng/page.

17. The existing Listing Rules have been subject to public consultation and seek to strike a balance among different interests and considerations. It would not be appropriate for this exercise to alter their substance. As with other regulatory requirements under the SFC's charge, we will keep the provisions in the SMLR under ongoing review and consult the market and the public when potential changes are identified.

18. The new provisions in the SMLR, taken from the existing Listing Rules, are drafted in plain language and a logical format following modern legislative drafting conventions. We have taken the opportunity to clarify some present requirements, especially where market practitioners have given us feedback on interpretive difficulties. In addition, the present rules contain a degree of internal duplication that has inevitably resulted from the overlaying of revisions over the years. In drafting the new provisions in the SMLR, we have reduced such duplication wherever possible.

19. Certain existing Listing Rules repeat requirements on accounting information that are already applicable because listed companies have to follow the Hong Kong Financial Reporting Standards or the International Accounting Standards. In drafting the new statutory provisions, we have again reduced such duplication wherever possible.

20. In a few instances we have proposed minor changes from the present requirements. They are expected to meet market consensus. The proposed changes are explained in Appendix 2 with detail analysis and reasoning.

21. *No pre-vetting or other regulatory approvals*. To reduce the administrative burden on listed issuers and market practitioners, the proposed provisions would not require any pre-vetting or other regulatory approval of disclosure materials. Issuers and advisers who follow the rules in making timely, accurate, and full disclosure to the public can interact directly with the market. The SFC's administrative touch will be light. There will be no additional compliance costs to the market or the public.

22. By not requiring pre-vetting, the proposed provisions would also place responsibility for the disclosure where it should lie – with listed issuers, their directors, and advisers. The objective in codifying the Listing Rules and the SFC's work focus are simple: If someone breaks the statutory rules, the SFC will be able to investigate and hold him/ her liable as appropriate.

23. The move away from pre-vetting is in line with the direction of SEHK's practice.

24. *SEHK will remain the frontline regulator*. The proposed new provisions would not alter SEHK's work. It will continue to receive listing applications and administer the listing process. Its Listing Committee will continue to be vested with the authority to decide whether to accept an applicant onto the trading platform.

25. Under the proposed new provisions, as under the current requirements, listed issuers would not need to file disclosure materials with the SFC directly. SEHK will remain the point of contact at the frontline. Listing applicants, listed issuers, and market practitioners will continue to file materials with SEHK.

Key Aspects of the Proposed Rules

26. The proposed new amendments to the SMLR would codify existing important Listing Rules covering three areas. They follow the Government's policy directions as stated in its Consultation Conclusions of March 2004.

    (a) Disclosure of price-sensitive information and specific events are covered in proposed Schedule 2.

    (b) Disclosure/publication of annual and periodic reports are covered in proposed Schedules 4 and 5.

    (c) Disclosure and shareholders' approval requirements for notifiable transactions and connected transactions are covered in proposed Schedules 6 and 7.

27. There are certain necessary supporting provisions.

    (a) Definitions are in proposed Schedule 1.

    (b) Accountant's reports and financial information (in annual and periodic reports or disclosure for notifiable transactions or connected transactions) are covered in proposed Schedule 3.

    (c) Mode of disclosure and miscellaneous items are in proposed Schedule 8.

28. In particular, the proposed provisions on disclosure of price-sensitive information and specific events would cover, amongst others:

    - general obligation of disclosure of price-sensitive information;
    - disclosure of substantial advances to a person or group of persons;
    - disclosure of substantial amounts due from affiliates;
    - disclosure of change in directors;

- disclosure of change of auditors;
- disclosure of issue of shares under general mandate (not including the rules on limits and shareholders' approval).

29. The proposed provisions on disclosure/publication of annual and period reports would cover, amongst others:

- timing on publication of annual reports (with audited annual accounts), interim reports (with unaudited interim accounts), and preliminary announcements of financial results;
- content of the disclosure in annual reports, interim reports, and preliminary announcement of financial results.

30. The proposed provisions on disclosure and shareholders' approval requirements for notifiable transactions and connected transactions would cover, amongst others:

- classification of transactions;
- disclosure of transactions by announcements and circulars;
- content of the disclosure in announcements and circulars;
- independent financial advice requirements for certain transactions;
- shareholders' approval requirements for certain transactions.

31. The Government's Consultation Conclusions did not include disclosure requirements applicable to "discloseable transactions" (a defined category of transactions under the Listing Rules) for statutory codification. We have considered the matter more fully. Discloseable transactions are significant events, disclosure of which would have been required under the general obligation on disclosure of price-sensitive information.

32. Not expressly covering discloseable transactions in the statutory rules would result in an internally inconsistent regime. Specific disclosure would be required, in the case of notifiable transactions other than discloseable transactions, by statutory provisions. But for discloseable transactions, specific disclosure would only be required by the non-statutory Listing Rules. This would be confusing and there is no benefit to such an arrangement.

33. We therefore propose also to codify those requirements on discloseable transactions. Proposed provisions that reflect this are denoted as "Option A" in the relevant places in the draft SMLR. An alternative version, which would exclude those requirements, is shown as "Option B" alongside for ease of comparison.

34. There is a second question of whether the SMLR should cover other transactions, in addition to notifiable transactions and connected transactions, that are subject to shareholders' approval, for example, authorization of general mandate and approval of share option schemes. We have carefully examined the question and concluded that such matters, relating more to corporate governance than disclosure, should remain to be regulated by SEHK's non-statutory Listing Rules.

35. Public discussion on the subject of codifying the Listing Rules and giving disclosure requirements "teeth" has focused on listed companies, meaning issuers with listed common shares. There has been little attention on issuers of listed debt, structured

products, or other securities or debentures. We have examined this matter carefully. It would be consistent to extend the new SMLR to provide disclosure requirements for issuers of listed debt and structured products. But these issuers are presently subject to special chapters of the Listing Rules with very different disclosure requirements. They are also relatively less likely to give rise to disclosure problems. Accordingly, we believe that, at this stage, the detail disclosure requirements in the proposed SMLR should only cover issuers of listed common shares.

Codes and Guidelines

36. Some sections of and notes to the present Listing Rules serve to clarify the rules or cover common compliance issues. They provide useful guidance to listed issuers and market practitioners. We intend to promulgate the relevant provisions as guidelines to the SMLR. In due course, in accordance with our stated policy, we will formally publish the guidelines for public consultation.

37. The publication of non-statutory codes and guidelines is also one of the Government's policy directions as set out in its Consultation Conclusions of March 2004.

38. For practitioners' ease of reference, we intend to compile an SFC Listing Regulatory Handbook containing both the proposed SMLR and the draft guidelines. Most of the guidelines will be printed below the particular SMLR provisions to which they relate. To highlight the difference between the statutory and non-statutory provisions, the guidelines will be in smaller and different fonts. An indicative draft of the handbook can be found on the SFC website at http://eapp01.sfc.hk/apps/cf/smlr.nsf/eng/page.

Flexibility in the Proposed Rules

39. No rules can cover all possible situations; a degree of flexibility in the administration is always necessary. This is especially the case in securities regulation, as the market is fast changing and the business activities of listed issuers are diverse.

40. The publication of codes and guidelines, as explained above, will provide for a degree of flexibility. The SFC will keep them under ongoing review and ensure appropriate updating to stay in line with market development.

41. SEHK can waive specific requirements in the Listing Rules for individual cases. The SFC has an equivalent authority pursuant to section 17 of the existing SMLR to waive specific sections of the rules. This would also extend to the proposed new provisions. It would enable the SFC to modify or waive a requirement if the compliance would be unreasonable or unduly burdensome to a listed issuer, irrelevant to its circumstances, or detrimental to its commercial interests. This allows flexibility for the SFC to take into account the specific facts and circumstances of each case as listed issuers find themselves in different situations in the fast changing marketplace.

42. Transparency is vital to market operations. Market participants need to know how the rules will be administered, and be assured that the rules will be applied fairly to all, in order to focus on their own business activities and planning of transactions. The SFC is committed to transparent administration of the amended SMLR.

43. The intended guidelines already set out certain places where we anticipate some listed issuers might encounter compliance difficulties at times and would need appropriate waivers. The SFC will keep the waiver guidelines under ongoing review so that listed issuers and market practitioners can readily ascertain how to obtain the appropriate flexibility.

44. To increase regulatory transparency, on a prior occasion the SFC has committed to the Legislative Council that it shall publicize any waiver it grants in any particular case. The SFC will continue with this practice and would post on its Internet website any waiver from the proposed SMLR that it gives to any listed issuer.

45. Furthermore, where the SFC expects a waiver to have equal application to a number of listed issuers, we would seek to provide a "class exemption". Such an exemption would be subsidiary legislation subject to negative vetting by the Legislative Council. Thereafter it would automatically entitle listed issuers to relief without any need for application to the SFC.

This Consultation Exercise

46. The policy direction for enhancing listing regulation and the approach in codifying the more important parts of the Listing Rules were subject of two public consultations (by the Expert Group in 2002/03 and the Financial Services and the Treasury Bureau in late 2003/04). The present proposals aim to implement the conclusions drawn from the previous exercises.

47. The proposed provisions represent no substantive changes from the existing Listing Rules, except in a few beneficial and uncontroversial respects, which are specifically noted and explained. We nonetheless believe it helpful for the market and the public to be assured of this with sight of the proposed texts. We also believe comments from market practitioners on the wording of the proposed provisions could facilitate better understanding and clarification of any issues for all involved.

48. We would be grateful for your input.

Securities and Futures Commission
January 2005

APPENDIX 1

Consultation Draft

Securities and Futures (Stock Market Listing) Rules

CONSULTATION DRAFT

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

CONTENTS

PLEASE NOTE

- **PROPOSED ADDITIONS TO SECTIONS ARE SHOWN UNDERLINED**
- **PROPOSED DELETIONS FROM SECTIONS ARE SHOWN STRUCK THROUGH**
- **AS THE SCHEDULES ARE ALL NEW THE TEXT IS NOT UNDERLINED**
- **DERIVATION OF NEW PROVISIONS IS GIVEN UNDER EACH PROVISION**

Legend for derivation : "LR 13.11(2)" = SEHK Main Board Listing Rules (also called "Red Book") Chapter 13 Rule 13.11(2); "LR PN" = Main Board Listing Rules Practice Note; "LR App" = Main Board Listing Rules Appendix; "SMLR" = Existing Securities and Futures (Stock Market Listing) Rules (Cap. 571V); "CO" = Companies Ordinance (Cap. 32).

CONSULTATION DRAFT

Cap. 571V

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

Empowering section: Cap 571, section 36(1)

Version Date: 01/04/2003

PART 1

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of the Securities and Futures (Amendment) Ordinance ([ ] of 2005)

2. Interpretation

~~In these Rules, unless the context otherwise requires-~~

~~"applicant" (申請人) means a corporation or other body which has submitted an application under section 3;~~

~~"application" (申請) means an application submitted under section 3 and all documents in support of or in connection with the application including any replacement of and amendment and supplement to the application;~~

~~"approved share registrar" (認可股份登記員) means a share registrar who is a member of an association of persons approved by the Commission under section 12;~~

~~"issuer" (發行人) means a corporation or other body the securities of which are listed, or proposed to be listed, on a recognized stock market;~~

~~"share registrar" (股份登記員) means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market;~~

(1) Schedule 1 contains interpretation provisions which apply to these Rules in accordance with their terms.

(2) Individual provisions of these Rules contain interpretation provisions which have application in accordance with their terms.

PART 2

STOCK MARKET LISTING

3. Requirements for listing applications

An applicant shall ensure that an application for the listing of any securities issued or to be issued by the applicant shall-

~~(a) comply with the rules and requirements of the recognized exchange company to which the application is submitted (except to the extent that compliance is waived or not required by the recognized exchange company);~~

~~(b) comply with any provision of law applicable; and~~

~~(c)~~ contain such particulars and information which, having regard to the particular nature of the applicant and the securities, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities and financial position, of the applicant at the time of the application and its profits and losses and of the rights attaching to the securities.

4. Exemptions from sections 3 and 5

Sections 3 and 5 do not apply to the listing of any-

(a) securities issued or allotted-

(i) by a capitalization issue pro rata (apart from fractional entitlements) to existing shareholders, whether or not they are shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom the securities are not actually issued or allotted because of restrictions imposed by legislation of that place; or

(ii) pursuant to a scrip dividend scheme which has been approved by the corporation in general meeting;

(b) securities offered on a pre-emptive basis, pro rata (apart from fractional entitlements) to existing holdings, to holders of the relevant class of shares in the corporation, whether or not they are shareholders whose addresses registered in the books of the

corporation are in a place outside Hong Kong and to whom the securities are not actually offered because of restrictions imposed by legislation of that place;

(c) shares issued in substitution for shares listed on a recognized stock market, if the issue of the shares does not involve any increase in the issued share capital of the corporation;

(d) shares issued or allotted pursuant to the exercise of options granted to existing employees as part of their remuneration under a scheme approved by the shareholders of the corporation in a general meeting.

5. Copy of application to be filed with the Commission

(1) An applicant shall file a copy of its application with the Commission within one business day after the day on which the application is submitted to a recognized exchange company.

(2) An applicant is regarded as having complied with subsection (1) on the day it submits the application to a recognized exchange company if, prior to or at the time of submitting the application to the recognized exchange company, the applicant has authorized the recognized exchange company in writing to file the application with the Commission on its behalf.

6. Powers of the Commission to require further information and to object to listing

(1) Subject to subsection (8), the Commission may, by notice to an applicant and a recognized exchange company given within 10 business days from the date the applicant files a copy of its application with the Commission (or if there is more than one such date, the latest date), require the applicant to supply to the Commission such further information as the Commission may reasonably require for the performance of its functions under these Rules.

(2) The Commission may, within the period specified in subsection (6), by notice to an applicant and a recognized exchange company, object to a listing of any securities to which an application relates if it appears to the Commission that-

(a) the application does not comply with a requirement under section 3;

(b) the application is false or misleading as to a material fact or is false or misleading through the omission of a material fact;

(c) the applicant has failed to comply with a requirement under subsection (1) or, in purported compliance with the requirement

has furnished the Commission with information which is false or misleading in any material particular; or

(d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.

(3) The Commission may, within the period specified in subsection (6), notify an applicant and a recognized exchange company that-

(a) it does not object to the listing of any securities to which an application relates; or

(b) it does not object to the listing of any securities to which an application relates subject to such conditions as the Commission may think fit to impose.

(4) A recognized exchange company may list the securities to which an application relates only if-

(a) the Commission has not, within the period specified in subsection (6), given a notice in relation to the application under subsection (2) or (3)(b);

(b) the Commission has given a notice in relation to the application under subsection (3)(a); or

(c) the conditions referred to in subsection (3)(b) in relation to the application have been complied with.

(5) Where the Commission objects to a listing under subsection (2) or imposes any condition under subsection (3)(b), the objection or imposition shall take effect immediately.

(6) The period specified for the purposes of subsections (2), (3) and (4) is 10 business days -

(a) where the Commission has not given a notice under subsection (1) in relation to the application, from the date the applicant files a copy of the application with the Commission (or if there is more than one such date, the latest date); or

(b) where the Commission has given a notice under subsection (1) in relation to the application, from the date when the further information is supplied.

(7) A notice given under subsection (2) shall be accompanied by a statement specifying the reasons for the objection.

(8) The Commission shall not give any notice to an applicant under subsection (1) after-

(a) it has given a notice in relation to the application under subsection (3)(a); or

(b) the conditions referred to in subsection (3)(b) in relation to the application have been complied with.

7. Copy of ongoing disclosure materials to be filed with the Commission

(1) A~~n issuer~~ listed corporation shall file with the Commission a copy of any announcement, statement, circular, or other document made or issued by it or on its behalf to the public or to a group of persons comprising members of the public (including its shareholders)-

(a) under these rules;

~~(a)~~(b) under the rules and requirements of a recognized exchange company or any provision of law applicable; or

~~(b)~~(c) pursuant to the terms of any listing agreement between the ~~issuer~~ listed corporation and a recognized exchange company under the rules of the recognized exchange company,

within one business day following the day on which such announcement, statement, circular or other document is made or issued.

(2) A person shall file with the Commission a copy of any announcement, statement, circular or other document made or issued by the person or on his behalf to the public or to a group of persons comprising members of the public (including holders of the securities of a~~n issuer~~ listed corporation) under any codes or guidelines published by the Commission under section 399(2)(a) and (b) of the Ordinance within one business day following the day on which such announcement, statement, circular or other document is made or issued.

(3) A~~n issuer~~ listed corporation or a person is regarded as having complied with subsection (1) or (2) if the ~~issuer~~ listed corporation or the person has-

(a) filed with the recognized exchange company concerned; and

(b) authorized the recognized exchange company in writing to file with the Commission on behalf of the ~~issuer~~ listed corporation or the person, as the case may be,

a copy of the relevant announcement, statement, circular or other document.

PART 3

DISCLOSURE OBLIGATIONS

7A. Disclosure obligations of listed corporations

(1) A listed corporation the shares of which are listed on a recognized stock market shall comply with the provisions of Schedules 2 to 8.

(2) Notwithstanding subsection (1), a collective investment scheme which has been authorized under section 104 of the Ordinance shall not be required to comply with the provisions of Schedules 2 to 8.
[c.f. SF (Price Stabilizing) Rules s2, SF (Transfer of functions - Stock Exchange Company) Order s2]

PART ~~3~~ 4

SUSPENSION OF DEALINGS

8. Suspension of dealings in securities

(1) Where it appears to the Commission that-

(a) any materially false, incomplete or misleading information has been included in any-

(i) document (including but not limited to any prospectus, circular, introduction document and document containing proposals for an arrangement or reconstruction of a corporation) issued in connection with a listing of securities on a recognized stock market; or

(ii) announcement, statement, circular or other document made or issued by or on behalf of a~~n issuer~~ listed corporation in connection with its affairs;

(b) it is necessary or expedient in the interest of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on the recognized stock market it operates;

(c) it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in any securities listed on a recognized stock market; or

(d) there has been a failure to comply with any condition imposed by the Commission under section 9(3)(c),

the Commission may, by notice to the recognized exchange company, direct the recognized exchange company to suspend all dealings in any securities specified in the notice.

(2) The recognized exchange company shall comply with any notice given under subsection (1) without delay.

9. Powers of the Commission upon the suspension under this Part of dealings in any securities

(1) A~~n issuer~~ listed corporation which is aggrieved by a direction given by the Commission under section 8 may make representations in writing to the Commission and where a~~n issuer~~ listed corporation makes such representations, the Commission shall notify the recognized exchange company.

(2) In respect of a direction given by the Commission under section 8, the recognized exchange company may make representations in writing to the Commission irrespective of whether representations in respect of that direction have been made by a~~n issuer~~ listed corporation under subsection (1) and where the recognized exchange company makes such representations, the Commission shall notify the ~~issuer~~ listed corporation.

(3) Where the Commission has-

(a) directed a recognized exchange company to suspend dealings in any securities under section 8(1); and

(b) considered any-

(i) representations made by the ~~issuer~~ listed corporation under subsection (1);

(ii) representations made by the recognized exchange company under subsection (2); and

(iii) further representations made by the ~~issuer~~ listed corporation or the recognized exchange company,

the Commission may, by notice to the recognized exchange company-

(c) permit dealings in the securities to recommence subject to such conditions as the Commission may think fit to impose, being conditions of the nature specified in subsection (4); or

(d) direct the recognized exchange company to cancel the listing of the securities on a recognized stock market operated by it if the Commission-

(i) is satisfied that there has been a failure to comply with any relevant ~~requirement in respect of~~ listing requirement ~~set out in these Rules~~ or ~~in~~ any other rules made under section 36 of the Ordinance; or

(ii) considers that the cancellation of the listing is necessary to maintain an orderly market in Hong Kong,

and the recognized exchange company shall comply with the direction without delay.

(4) The conditions which may be imposed under subsection (3)(c) are-

(a) where the Commission has given a direction under section 8(1)(a) or (d), conditions imposed with the object of ensuring, so far as is reasonably practicable, that the ~~issuer~~ listed corporation remedies the default by reason of which the suspension of dealings was directed;

(b) where the Commission has given a direction under section 8(1)(b), such conditions as the Commission may consider necessary or expedient in the interest of maintaining an orderly and fair market in securities traded through the facilities of the recognized exchange company mentioned in that section;

(c) where the Commission has given a direction under section 8(1)(c), such conditions as the Commission may consider to be in the interest of the investing public or in the public interest, or to be appropriate for the protection of investors generally or for the protection of the investors mentioned in that section.

(5) In subsection (3), "further representations" (进一步申述) means representations either in writing or orally or both in writing and orally as the ~~issuer~~ listed corporation or the recognized exchange company may determine which are submitted within such reasonable time as the Commission may determine.

(6) The powers of the Commission under this section may only be exercised by a meeting of the Commission and are not delegable.

(7) A member of the Commission who made the decision in the exercise of the Commission's powers under section 8 shall not participate in the deliberations or voting of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers.

(8) Notwithstanding subsection (7), the member of the Commission referred to in that subsection may attend any meeting or proceeding of the Commission in the performance of its functions under this section as regards the exercise of the Commission's powers under section 8 and may make such explanations of his decision as he thinks necessary.

10. Provisions supplementary to sections 8 and 9

(1) At any hearing held by the Commission to receive oral representations made to it under section 9(3)(b)(iii), the ~~issuer~~ listed corporation and the recognized exchange company each have the right to be represented by its counsel or solicitor.

(2) If representations are made under section 9(1) or (2) against a direction made under section 8(1) then, pending the decision of the Commission under section 9(3), all dealings in the securities concerned shall remain suspended.

11. Restriction on re-listing

No security the listing of which has been cancelled under section 9(3)(d) shall be listed again on a recognized stock market except in accordance with Part 2.

PART ~~4~~ 5

APPROVED SHARE REGISTRARS

12. Approval of share registrars

(1) The Commission may approve an association of persons as an association each of whose members shall be an approved share registrar for the purposes of these Rules.

(2) The Commission may cancel the approval of any association of persons approved under subsection (1).

(3) The Commission shall maintain a list of associations of persons approved under subsection (1).

13. Securities not to be listed where approved share registrar not employed

No application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant shall be approved by the recognized exchange company unless the applicant is an approved share registrar or employs an approved share registrar as its share registrar.

14. Suspension of dealings on cessation of employment, etc. of approved share registrar

(1) Where-

(a) the securities of a corporation are listed on a recognized stock market; and

(b) the corporation ceases either to be an approved share registrar or to employ an approved share registrar as its share registrar,

the recognized exchange company shall give the corporation a notice of its intention to suspend dealings in the securities of the corporation unless, before the date specified in the notice, being 3 months after the date on which the recognized exchange company first learned of such cessation or 21 days from the date of the notice, whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(2) Where the corporation fails to comply with the requirement stated in the notice given under subsection (1), the recognized exchange company shall suspend dealings in the securities of the corporation.

(3) The Commission may require a recognized exchange company to give notice under subsection (1) to a corporation which has ceased either to be an approved share registrar or to employ an approved share registrar as its share registrar if, in the opinion of the Commission, the recognized exchange company has failed or neglected to do so within a reasonable time, and the recognized exchange company shall comply with the requirement without delay.

(4) A recognized exchange company which has suspended dealings in the securities of any corporation under subsection (2) shall permit the recommencement of dealings in those securities when it is satisfied that the corporation has become an approved share registrar or has employed an approved share registrar as its share registrar.

15. Power to exempt

(1) The Commission may exempt all or any particular class of securities issued by a corporation specified in a notice under subsection (2) from all or any of the provisions of this Part.

(2) An exemption granted under subsection (1) shall be notified by the Commission to the corporation specified in the notice and to the recognized exchange company which operates the recognized stock market on which the exempted class of securities is, or is proposed to be, listed.

(3) The Commission may withdraw any exemption granted under subsection (1), and the withdrawal shall be notified in the same manner as an exemption is required to be notified under subsection (2).

(4) Where an exemption in respect of any securities of a corporation has been withdrawn under subsection (3), the recognized exchange company shall suspend dealings in those securities unless-

(a) at the date of notification of the withdrawal, the corporation is an approved share registrar or employs an approved share registrar as its share registrar; or

(b) within 3 months after the date of notification of the withdrawal, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

16. Appeal against suspension

(1) Where a recognized exchange company suspends dealings in the securities of a corporation under section 14 or 15(4) the corporation may, within 21 days of the suspension, appeal in writing to the Commission against the suspension.

(2) An appeal under subsection (1) shall be accompanied by such submissions in writing as the corporation wishes to make.

(3) On any appeal under subsection (1), the Commission may-

(a) dismiss the appeal;

(b) direct the recognized exchange company to permit the recommencement of dealings in the securities; or

(c) direct the recognized exchange company to permit the recommencement of dealings in the securities subject to such conditions as the Commission thinks fit.

PART ~~5~~ 6

~~MISCELLANEOUS~~GENERAL

16A. Disclosure of false and misleading information

When complying with these Rules an applicant or a listed corporation shall only disclose to a recognized exchange company, the Commission or the public information that is not -

(a) false or misleading as to a material particular; or

(b) false or misleading through the omission of a material particular. [c.f. SFO s277]

17. Waiver of requirements of Parts 2, ~~and~~ 3 and 4

The Commission may, by notice to an applicant or a~~n~~ ~~issuer~~ listed corporation and a recognized exchange company, modify or waive, subject to such reasonable conditions as the Commission may think fit to impose, any requirement of Parts 2, ~~and~~ 3 and 4 where the Commission is of the opinion that -

(a) the applicant or ~~issuer~~ listed corporation, as the case may be, cannot comply with the requirement or it would be unreasonable or unduly burdensome for the applicant or ~~issuer~~ listed corporation to do so;

(b) the requirement has no relevance to the circumstances of the applicant or ~~issuer~~ listed corporation, as the case may be; or

(c) compliance with the requirement would be detrimental to the commercial interests of the applicant or ~~issuer~~ listed corporation, as the case may be, or to the interests of the holders of its securities.

18. Suspensions, etc. by a recognized exchange company to be notified to the Commission

(1) If a recognized exchange company intends to suspend dealings in any securities it shall, where reasonably practicable, inform the Commission of its intention prior to such suspension or, if not so practicable, inform the Commission of the suspension as soon as possible after the suspension.

(2) If a recognized exchange company, after having suspended dealings in any securities, intends to permit dealings in the securities to recommence, it shall, where reasonably practicable, inform the Commission of its intention to permit dealings to recommence or, if not so practicable, inform the Commission as soon as possible after permitting dealings to recommence.

(3) A recognized exchange company shall not cancel the listing of any securities unless it gives the Commission at least 48 hours' notice of its intention to do so.

(4) This section applies only to the suspension of dealings in any securities or the cancellation of dealings in any securities by a recognized exchange company other than in accordance with a direction of the Commission under section 8 or 9.

19. Notices, etc. to be in writing

Any notice or direction under these Rules shall be in writing.

19A. Relevant listing requirements

Sections 3, 5, 7, 7A and 16A of these Rules are relevant listing requirements for the purposes of the definition of "relevant listing requirements" in section 1 of Part 1 of Schedule 1 to the Ordinance.

~~**20. Transitional**~~

~~(1) Where~~

~~(a) before the commencement of these Rules, any power could have been, but was not, exercised under rule 9 or 10 of the Securities (Stock Exchange Listing) Rules (Cap 333 sub. leg. C) which has been repealed under section 406 of the Ordinance ("the repealed Rules"); or~~

~~(b) before such commencement any power has been exercised under any provision referred to in paragraph (a), and the exercise of the power would, but for the commencement, continue to have force and effect on or after such commencement,~~

~~then~~

~~(c) (i) where paragraph (a) applies, the power may be exercised; or~~

~~(ii) where paragraph (b) applies, the exercise of the power shall continue to have force and effect,~~

~~as if the repealed Rules had not been repealed; and~~

~~(d) the provisions of the repealed Rules shall continue to apply to the exercise of the power and to any matters relating thereto (including any right to make representations in respect of the exercise of the power under rule 9) as if the repealed Rules had not been repealed.~~

~~(2) Subject to subsection (3), where before the commencement of these Rules, an application is made under rule 3 of the repealed Rules and immediately before such commencement the application has not been approved, refused or withdrawn, the application shall upon such commencement be treated as an application under section 3 and the provisions of these Rules (except section 3) shall apply accordingly.~~

~~(3) Section 5 shall apply only to any part of an application submitted on or after the commencement of these Rules.~~

PLEASE NOTE THAT THE PROVISIONS OF SCHEDULES 1 TO 8 ARE ALL NEW – WITH THE EXCEPTION OF 4 DEFINITIONS IN SCHEDULE 1 WHICH HAVE BEEN MOVED FROM SECTION 2

SCHEDULE 1

[s.2]

INTERPRETATION

Interpretation of these Rules

1. In these Rules, unless otherwise defined or excluded or the context otherwise requires-

"accounts" (帳目) in relation to a corporation, means the financial statements of the corporation and, where the corporation has subsidiaries, includes the consolidated financial statements of the corporation and its subsidiaries;
[New for clarity]

"affiliate" (聯屬公司) in relation to a corporation, means another corporation which is recorded or required to be recorded in the first mentioned corporation's accounts as being an associate or a jointly controlled entity pursuant to the applicable reporting standards;

[c.f. LR 13.11(2)]

"applicable reporting standards" (適用的申報準則) -

(a) in relation to an issuer, means the HKFRS or IFRS in conformity with which the issuer is required to prepare its financial statements under section 1 of Schedule 3; and

(b) in relation to any other corporation, means the accounting standards in conformity with which its financial statements are, or are required to be, prepared;

[New for clarity]

"applicant" (申請人) means a listing applicant within the meaning of Part 1 of Schedule 1 to the Ordinance;
[c.f. SMLR s.2]

"application" (申請／申請書) means an application submitted under section 3 and all documents in support of or in connection with the application including any replacement of and amendment and supplement to the application;
[c.f. SMLR s.2]

"approved share registrar" (認可股份登記員) means a share registrar who is a member of an association of persons approved by the Commission under section 12;
[c.f. SMLR s.2]

"associate" (聯繫人) means

(a) in relation to an individual -

(i) his close family members;

(ii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his close family members is -

(A) in the case of a trust other than a discretionary trust, a beneficiary; or

(B) in the case of a discretionary trust, (to his knowledge) a discretionary object;

(iii) a trustee-controlled company the equity share capital of which the trustees referred to in paragraph (a)(ii) are directly or indirectly interested;

(iv) a holding company of a trustee-controlled company referred to in paragraph (a)(iii) or a subsidiary of any such holding company;

(v) any corporation in the equity capital of which -

(A) he;

(B) any of his close family members;

(C) any of the trustees referred to in paragraph (a)(ii) above, acting in their capacity as such trustees;

(D) any trustee-controlled company referred to in paragraph (a)(iii),

taken together are directly or indirectly interested so as -

(E) to exercise or control the exercise of 30% or more of the voting power at general meetings; or

(F) to control the composition of a majority of the board of directors,

and any other corporation which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and

(vi) in respect of a Mainland issuer, also means any corporation with which or any individual with whom -

(A) he;

(B) any of his close family members;

(C) any of the trustees referred to in paragraph (a)(ii) above, acting in their capacity as such trustees;

(D) any trustee-controlled company referred to in paragraph (a)(iii),

taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under the law of the Mainland and where -

(E) he;

(F) any of his close family members;

(G) any of the trustees referred to in paragraph (a)(ii) above, acting in their capacity as such trustees;

(H) any trustee-controlled company referred to in paragraph (a)(iii),

taken together directly or indirectly have 30% or more interest either in the capital or asset contributions to such joint venture or in the contractual share of profits or other income from such joint venture; and
[c.f. LR 19A.04]

(b) in relation to a corporation -

(i) any other corporation which is its subsidiary or holding company or is a fellow subsidiary of any such holding company or one in the equity capital of which it and such other corporation, taken together, are directly or indirectly interested so as to exercise or control the exercise of 30% or more of the voting power at general meetings, or to control the composition of a majority of the board of directors;

(ii) the trustees, acting in their capacity as such trustees, of any trust of which the corporation is -

(A) in the case of a trust other than a discretionary trust, a beneficiary; or

(B) in the case of a discretionary trust, (to the corporation's knowledge) a discretionary object;

(iii) a trustee-controlled company the equity share capital of which the trustees referred to in paragraph (b)(ii) are directly or indirectly interested;

(iv) a holding company of a trustee-controlled company referred to in paragraph (b)(iii) or a subsidiary of any such holding company;

(v) any other corporation in the equity capital of which -

(A) the corporation;

(B) such other corporation referred to in paragraph (b)(i);

(C) any of the trustees referred to in paragraph (b)(ii), acting in their capacity as such trustees;

(D) any trustee-controlled company referred to in paragraph (b)(iii),

taken together are directly or indirectly interested so as -

(E) to exercise or control the exercise of 30% or more of the voting power at general meetings; or

(F) to control the composition of a majority of the board of directors,

and any other corporation which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and

(vi) in respect of a Mainland issuer, also means any corporation with which or any individual with whom -

(A) the corporation;

(B) such other corporation referred to in paragraph (b)(i);

(C) any of the trustees referred to in paragraph (b)(ii), acting in their capacity as such trustees;

(D) any trustee-controlled company referred to in paragraph (b)(iii),

taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under the law of the Mainland and where -

(E) the corporation;

(F) such other corporation referred to in paragraph (b)(i);

(G) any of the trustees referred to in paragraph (b)(ii), acting in their capacity as such trustees;

(H) any trustee-controlled company referred to in paragraph (b)(iii),

taken together directly or indirectly have 30% or more interest either in the capital or asset contributions to such joint venture or in the contractual share of profits or other income from such joint venture,
[c.f. LR 19A.04]

and for the purposes of this definition -

(a) "close family members" (近親家庭成員) in relation to an individual, means his spouse and any child or step-child, natural or adopted, under the age of 18 years of such individual or of his spouse; and

(b) "trustee-controlled company" (受託人所控制的公司) means a corporation in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as -

(i) to exercise or control the exercise of 30% or more of the voting power at general meetings; or

(ii) to control the composition of a majority of the board of directors,

and includes any other corporation which is its subsidiary;

[c.f. LR 1.01]

"associated corporation" (相聯法團) has the meaning assigned to it by section 308 of the Ordinance;
[New for clarity]

"audit committee" (審計委員會) means a committee of the board of directors of an issuer which oversees and reviews the effectiveness of the financial reporting process, internal control systems and the audit of the issuer's financial statements;
[c.f. HKSA - A Guide for the Formation of an Audit Committee]

"banking company" (銀行公司) means -

(a) a bank as defined in Schedule 1 of the Ordinance;

(b) a restricted license bank within the meaning of section 2 of the Banking Ordinance (Cap. 155);

(c) a deposit taking company within the meaning of section 2 of the Banking Ordinance (Cap. 155); and

(d) a holding company of a corporation referred to in paragraphs (a), (b) or (c);
[c.f. LR 14A.10(1) (modified)]

"Code on Corporate Governance Practices" (企業管治常規守則) means any code on corporate governance practices for issuers published by a recognized exchange company;
[c.f. LR 1.01]

"connected person" (關連人士) -

(a) in relation to an issuer other than a Mainland issuer, means a director, chief executive or substantial shareholder of the issuer or any of its subsidiaries or an associate of any of them; and

(b) in relation to a Mainland issuer, means a promoter, director, supervisor, chief executive or substantial shareholder of the issuer or any of its subsidiaries or an associate of any of them, but does not include a Mainland governmental body.
[c.f. LR 1.01 and 19A.19]

"controller" (控制人) means a director, chief executive or controlling shareholder of the issuer or any of its subsidiaries;
[c.f. LR 14A.10(3)]

"controlling shareholder" (控權股東) in relation to a corporation, means any person who is, or group of persons who are together -

(a) entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of the corporation; or

(b) in a position to control the composition of a majority of the board of directors of the corporation,

but where the corporation is a Mainland issuer, a Mainland governmental body shall not be regarded as a controlling shareholder of the issuer;
[c.f. LR 1.01 and 19A.14]

"corporation" (法團) means a corporation within the meaning of section 1 of Part 1 of Schedule 1 to the Ordinance but also includes any body established by law;
[c.f. LR 1.01 (modified)]

"entitled person" (有權利的人) in relation to an issuer, means a member of the issuer or a holder of listed securities of the issuer, not being bearer securities, but shall not include -

(a) a person if the issuer is unaware of his address; or

(b) more than one of the joint holders of any of the listed securities of the issuer.

[c.f. LR App. 16 para 1 and CO s.2]

"equity securities" (股本證券) means shares (including preference shares), convertible securities and options, warrants or similar rights to subscribe or purchase shares or other convertible securities, but does not include interests in a collective investment scheme;
[c.f. LR 1.01]

"expert" (專家) includes an engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him;
[c.f. LR 1.01]

"financial assistance" (財務援助) includes the provision of a facility or loan, and the granting of a guarantee, security or indemnity for a person;
[c.f. LR 14A.10(4) (modified)]

"financial business" (財務業務) includes, but is not limited to, the business of -

(a) securities trading;

(b) giving advice in connection with securities;

(c) commodities trading;

(d) leveraged foreign exchange trading;

(e) insurance activities; and

(f) money lending;

[c.f. LR App. 16 para 36]

"financial conglomerate" (財務企業集團) means a corporation, or group of corporations, where -

(a) the total assets, revenue or profits of its financial business exceeds 5% of its total assets, revenue or profits as stated in its accounts; and

(b) its financial business, as stated in its accounts, has -

(i) total assets of over $1 billion; or

(ii) customer deposits, and financial instruments held by the public, of over $300 million;

[c.f. LR App. 16 para 36]

"financial year" (財政年度) in relation to a corporation, means the period in respect of which any profit and loss account of the corporation which is laid or to be laid before the corporation in general meeting is made up, whether that period is a year or not;

[c.f. LR 1.01, CO s.2]

"group" (集團) in relation to an issuer, means the issuer and its subsidiaries, if any;

[c.f. LR 1.01]

"HKFRS" (《香港財務匯報準則》) means the Hong Kong Financial Reporting Standards, being professional standards issued or specified by the HKICPA under section 18A of the Professional Accountants Ordinance;

[c.f. LR 1.01]

"HKICPA" (香港會計師公會) means the Hong Kong Institute of Certified Public Accountants;

"IFRS" (《國際財務匯報準則》) means the International Financial Reporting Standards published by the International Auditing and Assurance Standards Board of the International Federation of Accountants;

[c.f. LR 1.01]

"issuer" (發行人) means a listed corporation the shares of which are listed on a recognized stock market but shall not include a collective investment scheme which is authorized under section 104 of the Ordinance;

[c.f. LR 1.01 (modified)]

"listed corporation" (上市法團) means listed corporation within the meaning of Part 1 of Schedule 1 to the Ordinance;
[New for clarity]

"Mainland" (內地) means any part of China other than Hong Kong, Macau and Taiwan;
[c.f. LR 19A.04]

"Mainland governmental body" (內地政府機關) means -

(a) the Central People's Government, including -

(i) the State Council of the People's Republic of China;

(ii) the offices and institutions of the State Council;

(iii) bureaus and administrations directly under the State Council;

(iv) State ministries and commissions; and

(v) bureaus supervised by State ministries and commissions;

(b) provincial level governments of the People's Republic of China, including -

(i) municipalities directly under the Central People's Government;

(ii) autonomous regions,

together with their respective administrative arms, agencies and institutions, and

(c) local governments directly under the provincial level governments of the People's Republic of China, including -

(i) prefectures;

(ii) municipalities; and

(iii) counties,

together with their respective administrative arms, agencies and institutions,

but does not include -

(d) the Government of the Hong Kong Special Administrative Region;

(e) the Government of the Macau Special Administrative Region;

(f) the authorities in Taiwan; and

(g) any bodies that are engaging in commercial business or operating another commercial body;

[c.f. LR 19A.04]

"Mainland issuer" (內地發行人) means an issuer which is incorporated in the Mainland as a joint stock limited company (股份有限公司);

[c.f. LR 19A.04]

"Model Code for directors" (董事的《標準守則》) means any model code for securities transactions by directors of listed corporations published by a recognized exchange company;

[New for clarity]

"profit forecast" (利潤預測) means any forecast of profits or losses, however worded, and includes -

(a) any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference;

(b) any profit estimate, being any estimate of profits or losses for a financial period which has expired, but for which the results have not yet been disclosed to the public in accordance with sections 14, 15, 19 or 20 of Schedule 4; and

(c) any valuation of assets (other than land and buildings), or businesses acquired by an issuer, based on discounted cash flows or projections of profits, earnings or cash flows;

[c.f. LR 14.61]

"relevant advance" (有關墊款) in relation to an issuer and any person, means the aggregate of amounts due to the issuer or any of its subsidiaries from, or guaranteed or indemnified by the issuer or any of its subsidiaries or secured on the assets of the group on behalf of -

(a) the person; and

(b) if the person is a corporation, its controlling shareholder, subsidiaries and affiliates,

but does not include intra-group amounts;
[c.f. LR 13.11(2)(c)]

"relevant percentage ratios" (有關百分率比率), in relation to a transaction undertaken, or to be undertaken, by, or an event relating to, an issuer, means the figures, expressed as percentages, resulting from the following calculations -

(a) asset ratio - the total assets to which the transaction or event relates divided by the total assets of the group;

(b) profits ratio - the profits attributable to the transaction or event divided by the profits of the group;

(c) revenue ratio - the revenue attributable to the transaction or event divided by the revenue of the group;

(d) consideration ratio - the consideration attributable to the transaction or event divided by the total market capitalization of the issuer;

(e) equity ratio - the nominal value of the issuer's equity capital issued as consideration in the transaction, divided by the nominal value of the issuer's issued equity capital immediately before the transaction,

and for the purposes of this definition -

(i) "profits" (利潤) means net profits after deducting all charges except taxation and before minority interests and extraordinary items;

(ii) "revenue" (收入) means revenue arising from the principal activities of the group and does not include those items of revenue and gains that arise incidentally;

(iii) "total market capitalization" (市場資本總值) means the market value of an issuer determined by multiplying the average closing price of the shares of the issuer as stated in the recognized stock market's daily quotation sheets for the five business days immediately preceding the date of the relevant transaction or event with the total number of shares issued in all classes of shares of the issuer, whether listed or unlisted;

[c.f. LR 1.01, 14.07, 14.13 and 14.14]

"share option scheme" (股份期權計劃) in relation to an issuer, means any scheme or arrangement involving the grant, offer or issue by the issuer or any of its subsidiaries of options over new securities of the issuer or any of its subsidiaries to, or for the benefit of, specified participants of such scheme or arrangement;
[c.f. LR 17.01(1) and (3)]

"share registrar" (股份登記員) means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market;

"subsidiary" (附屬公司) means a corporation which is regarded as a subsidiary under section 2 of the Companies Ordinance (Cap. 32) but a corporation shall also be regarded as a subsidiary of another corporation if -

(a) the first mentioned corporation is accounted for and consolidated in the audited accounts of the other corporation as a subsidiary pursuant to the applicable reporting standards; or

(b) as a result of the acquisition of an interest in its shares, or other ownership rights, by the other corporation or any subsidiary of that corporation, the first mentioned corporation will be accounted for and consolidated in the next audited accounts of the other corporation as a subsidiary pursuant to the applicable reporting standards;[1]

[c.f. LR 1.01]

"substantial shareholder" (大股東) in relation to a corporation, means a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at general meetings of the corporation;
[c.f. LR 1.01]

"supervisor" (監事) in relation to a Mainland issuer, means a member of the supervisory committee (監事會) of the issuer which under the law of the Mainland performs a supervisory function in relation to such issuer's board of directors, the manager, and other officers.
[c.f. LR 1.01 and 19A.04]

[1] Note: The Commission is aware that, for corporations incorporated in Hong Kong, only companies falling within the definition of subsidiary in section 2(4) of the Companies Ordinance (Cap. 32) may be consolidated, which might not necessarily be the same for corporations incorporated outside of Hong Kong under applicable reporting standards. This issue is being reviewed as part of an exercise separate from listing-related matters.

The Commission may propose to revise this definition of "subsidiary" upon the outcome of that review.

SCHEDULE 2

[s.7A]

DISCLOSURE OF PRICE SENSITIVE INFORMATION

PART 1

GENERAL OBLIGATION OF DISCLOSURE

1. An issuer shall promptly disclose to the public any material information relating to the group which -

(a) is necessary to enable the public to make an informed assessment of the -

(i) activities;

(ii) assets and liabilities and financial position;

(iii) profits and losses;

(iv) management and prospects; or

(v) rights attaching to the securities,

of the group;

(b) is necessary for the maintenance of an orderly market in its securities; or

(c) might reasonably be expected to affect market activity in and the price of its securities.

[c.f. LR 13.05 and 13.09(1)]

2. The information referred to in section 1 shall include information on any major new development in the group's sphere of activity which is not public knowledge.
[c.f. LR 13.09(1)]

3. The requirements of section 1 are in addition to any specific requirements regarding disclosure under these Rules.
[c.f. LR 13.06 Note]

4. If securities of the issuer or a subsidiary of the issuer are also listed or traded on an overseas stock market, the issuer shall ensure that any information disclosed to

the other market is disclosed to the public in Hong Kong at the same time as it is disclosed to the other market.
[c.f. LR 13.09(2)]

5. In the event that there are unusual movements in the price or trading volume of its listed securities, an issuer shall promptly disclose to the public -

(a) details of any matter or development of which it is aware that is, or may be, relevant to the unusual movements; or

(b) if it is not aware of any such matter or development, a statement of that fact.

[c.f. LR 13.10]

PART 2

DISCLOSURE FOR CERTAIN ACTIVITIES

Relevant advance to a person or group of persons

6. Where any of the relevant percentage ratios when applied to any relevant advance exceeds 8%, an issuer shall promptly disclose to the public the information referred to in section 8.[2]
[c.f. LR 13.12 and 13.13]

7. Where -

(a) the relevant advance increases from that previously disclosed under section 6 or under this section 7; and

(b) any of the relevant percentage ratios, when applied to the aggregate amount of the increase in the relevant advance since the previous disclosure, is 3% or more,

an issuer shall promptly disclose to the public the information referred to in section 8.
[c.f. LR 13.12 and 13.14]

8. The information required to be disclosed in the circumstances set out in sections 6 and 7 includes details of the relevant advance and, in relation to each of the persons concerned, details of -

(a) the identity of the person;

[2] Note: The Commission is aware that the Stock Exchange is in discussion with banks and other financial intermediaries on how the requirements in proposed sections 6 to 8, which are currently in the Stock Exchange's listing rules 13.13 to 13.15, might be appropriately applied to them. The Commission anticipates revising these proposed sections if the Stock Exchange amends the relevant listing rules as a result of the discussion.

(b) the amounts provided or proposed to be provided;

(c) the nature of the events or transactions giving rise to the amounts;

(d) the interest rate;

(e) the repayment terms;

(f) any guarantee given; and

(g) any collateral given or taken.

[c.f. LR 13.12 and 13.15]

Amounts due from and commitments to affiliates

9. Where any of the relevant percentage ratios when applied to the aggregate of all amounts -

(a) due to an issuer or any of its subsidiaries, from;

(b) guaranteed, or indemnified, by an issuer or any of its subsidiaries on behalf of;

(c) secured on the assets of an issuer or any of its subsidiaries on behalf of; or

(d) committed by an issuer or any of its subsidiaries to be provided to,

affiliates of the issuer exceeds 8%, the issuer shall promptly disclose to the public details of such amounts including -

(i) an analysis of the amounts by each such affiliate;

(ii) details of the terms on which the amounts were provided, or proposed to be provided, including the interest rate, repayment terms, and collateral given or taken, if any;

(iii) the source of funding for any amount committed to be provided; and

(iv) any facilities utilised by each such affiliate which are guaranteed by, or secured on the assets of, the issuer or any of its subsidiaries.

[c.f. LR 13.12 and 13.16]

Pledging of shares by the controlling shareholder

10. Where the controlling shareholder of an issuer has pledged its interest in shares of the issuer to secure debts, or guarantees or otherwise supports obligations of the issuer or any of its subsidiaries, the issuer shall promptly disclose to the public the following information -

(a) the number and class of shares pledged;

(b) the amounts of debts, guarantees or other support for which the pledge is made; and

(c) any other details necessary for an understanding of the arrangements.

[c.f. LR 13.12 and 13.17]

Loan agreements with covenants relating to specific performance of the controlling shareholder

11. Where an issuer or any of its subsidiaries -

(a) enters into a loan agreement that includes a condition imposing a specific performance obligation on any controlling shareholder of the issuer (including a requirement to maintain a specified minimum holding in the share capital of the issuer); and

(b) a breach of such obligation will cause a default in respect of loans that are significant to the operations of the group,

the issuer shall promptly disclose to the public the following information -

(i) the aggregate level of the facilities that may be affected by such breach;

(ii) the term of each such facility; and

(iii) the specific performance obligation imposed on any controlling shareholder.

[c.f. LR 13.12 and 13.18]

Breach of loan agreement by an issuer

12. Where -

(a) there is a breach of the terms of a loan agreement by an issuer or any of its subsidiaries, for loans that are significant to the

operations of the group, such that the lenders may demand immediate repayment of the loans; and

(b) the lenders have not issued a waiver in writing in respect of the breach,

the issuer shall promptly disclose to the public the information referred to in section 1.
[c.f. LR 13.12 and 13.19]

Continuing disclosure requirements

13. (1) Where circumstances giving rise to an obligation to disclose under section 6, 7, 10, 11 or 12 continue to exist at the end of the first 6 months of the financial year of an issuer, the issuer shall include the information specified under section 8, 10, 11 or 12 (as the case may be) in the interim report.

(2) Where circumstances giving rise to an obligation to disclose under section 6, 7, 10, 11 or 12 continue to exist at the end of the financial year of an issuer, the issuer shall include the information specified under section 8, 10, 11 or 12 (as the case may be) in the annual report.
[c.f. LR 13.20 and 13.21]

14. (1) Where circumstances giving rise to an obligation to disclose under section 9 continue to exist at the end of the first 6 months of the financial year of an issuer, the issuer shall include in the interim report a combined balance sheet of such affiliates as at the latest practicable date which shall include -

(a) significant amounts included in the balance sheet; and

(b) a statement of the attributable interest of the issuer in each such affiliate.

(2) Where circumstances giving rise to an obligation to disclose under section 9 continue to exist at the end of the financial year of an issuer, the issuer shall include in the annual report a combined balance sheet of such affiliates as at the latest practicable date which shall include -

(a) significant amounts included in the balance sheet; and

(b) a statement of the attributable interest of the issuer in each such affiliate.

[c.f. LR 13.22]

15. Sections 6 to 12 do not require an issuer to disclose information to the public where the amount in question has arisen from a transaction which was previously approved by the shareholders of the issuer, provided that information equivalent to that specified in section 8, 9, 10, 11 or 12, as applicable, was included in the circular sent to shareholders of the issuer when seeking their approval of the transaction.
[c.f. LR 13.11(4)]

PART 3

DISCLOSURE FOR CERTAIN EVENTS

Changes in Memorandum or Articles of Association

16. Where there is any decision by an issuer to propose -

(a) an alteration to the issuer's memorandum or articles of association or equivalent documents; or

(b) a request or proposed request by a Mainland issuer to a competent authority to waive or otherwise modify any provisions of the Special Regulations on the Overseas Offering and Listing of Shares by Joint Stock Limited Companies (國務院關於股份有限公司境外募集股份及上市的特別規定) as amended, supplemented or otherwise modified from time to time,

the issuer shall promptly disclose to the public details of such proposal.
[c.f. LR 13.51(1)]

Changes in Directors

17. Where there is any change in relation to any director or supervisor of an issuer, the issuer shall promptly disclose to the public the information referred to in sections 18 and 19.
[c.f. LR 13.51(2)]

18. In the case of any appointment of a director or supervisor of an issuer, any change in the status of a director or supervisor or the appointment of a director or supervisor to membership of a committee reporting directly to the board of directors or the supervisory committee of the issuer, the information required to be disclosed in relation to the director or supervisor is -

(a) his full name and age;

(b) the position(s) held with the group;

(c) his previous experience, including other directorships held in corporations listed or traded on any stock market in the three preceding years and other major appointments and qualifications;

(d) the length or proposed length of service with the group;

(e) his relationships with any directors, supervisors or substantial or controlling shareholders of the issuer or any senior manager of the group, or an appropriate negative statement;

(f) his interests in shares or debentures of the issuer within the meaning of Part XV of the Ordinance, or an appropriate negative statement;

(g) the amount of the director's or supervisors' payments and benefits in kind agreed (whether in writing or not) with the issuer or any of its subsidiaries in connection with such appointment or change in status and the basis of determination; and

(h) any other matter that needs to be brought to the attention of the holders of securities of the issuer.

[c.f. LR 13.51(2) Notes]

19. In the case of any resignation of a director or supervisor of an issuer, the information required to be disclosed is -

(a) his full name and age;

(b) the position he held with the issuer and any of its subsidiaries;

(c) the reason given by the director or supervisor for his resignation (including, but not limited to, any information relating to any disagreement between the director or supervisor and the board of directors or the supervisory committee); and

(d) a statement as to whether or not there is any other matter that needs to be brought to the attention of the holders of securities of the issuer.

[c.f. LR 13.51(2) Notes]

Change of Auditors

20. Where there is any change in the person or firm that is appointed as an issuer's auditors, the issuer shall promptly disclose to the public the following information -

(a) the name of the auditors;

(b) the reason(s) for the change; and

(c) any matter that needs to be brought to the attention of holders of securities of the issuer (including, but not limited to, a statement as to whether or not the outgoing auditors have

provided a confirmation that there are no matters that need to be brought to the attention of the holders of securities of the issuer, and if no confirmation has been provided by the outgoing auditors, the reasons for such non-provision).

[c.f. LR 13.51(4)]

Change of Financial Year End

21. Where there is any change in an issuer's financial year-end, the issuer shall promptly disclose to the public the following information -

(a) details of such change (including, but not limited to, the reason for such change); and

(b) a statement as to whether or not there is any other matter relating to the change of the financial year end that needs to be brought to the attention of the holders of securities of the issuer.

[c.f. LR13.51(4)]

Change of Company Secretary

22. Where there is any change in the person who is appointed as an issuer's company secretary, the issuer shall promptly disclose to the public details of such change.

[c.f. LR 13.51(5)]

Change of Registered Office, etc.

23. Where there is any change in an issuer's registered office, agent for service of process in Hong Kong (if any) or registered place of business in Hong Kong, the issuer shall promptly disclose to the public details of such change.

[c.f. LR 13.51(5)]

Change of Business

24. Where approval has been given by or on behalf of an issuer's board of directors in relation to any decision to change the general character or nature of the business of the issuer or its group, the issuer shall promptly disclose to the public details of such decision.

[c.f. LR 13.45(5)]

Change of Capital Structure

25. Where approval has been given by or on behalf of an issuer's board of directors in relation to any proposed change in the issuer's capital structure, the issuer shall promptly disclose to the public details of such decision.

[c.f. LR 13.45(4)]

Change of Rights attached to Listed Securities

26. Where a decision is made by an issuer's board of directors to change the rights attaching to any class of listed securities or to any shares into which any listed debt securities are convertible or exchangeable, the issuer shall promptly disclose to the public details of such decision.
[c.f. LR13.51(3)]

Winding-up and liquidation

27. Where any of the following events occurs -

(a) the making of any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, or the appointment of a receiver or manager either by any court having jurisdiction or under the terms of a debenture, in respect of the business or any part of the business of the issuer or the property of the issuer, its holding company or any major subsidiary;

(b) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer, its holding company or any major subsidiary;

(c) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment;

(d) the entry into possession of or the sale by any mortgagee of a portion of the group's assets where the aggregate value of the assets being possessed or the aggregate amount of profits or revenue attributable to such assets under any of the relevant percentage ratios exceeds 5% of the group's assets, profits or revenue; or

(e) the making of any final judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance which is not subject to any or further appeal, which may adversely affect the group's enjoyment of any portion of its assets where the aggregate value of the assets or the aggregate amount of profits or revenue attributable to such

assets under any of the relevant percentage ratios exceeds 5% of the group's assets, profits or revenue,

the issuer shall, promptly disclose to the public the occurrence of the relevant event referred to in paragraph (a), (b), (c), (d) or (e) giving details of the event.

28. (1) For the purposes of section 27 (a), (b) and (c), a "major subsidiary" means a subsidiary whose assets, profits or revenue, expressed as a percentage of the equivalent figures for the group, represents 5% or more of the group's assets, profits or revenue.

(2) For the purposes of subsection (1) -

(a) 100% of the subsidiary's assets, profits or revenue (as the case may be); or

(b) where the subsidiary itself has subsidiaries, 100% of the consolidated assets, profits or revenue (as the case may be) of the subsidiary,

is to be compared to the assets, profits or revenue (as the case may be) shown in the issuer's most recent published audited accounts, irrespective of the percentage of interest in the subsidiary the issuer actually held.
[c.f. LR 13.25]

29. Where a controlling shareholder has provided an undertaking to the issuer restricting his disposal of any securities of the issuer, and the issuer becomes aware of -

(a) the controlling shareholder pledging or charging any securities of the issuer beneficially owned by him in favour of any person; or

(b) the controlling shareholder having received indications, whether verbal or written, from the pledgee or chargee that any pledged or charged securities will be or have been disposed of,

the issuer shall promptly disclose to the public the following information -

(i) the number and class of shares pledged or charged;

(ii) the amounts of loan, guarantees or other support for which the pledge is made or charge is created; and

(iii) any other details necessary for an understanding of the arrangements or the indications that the

pledged or charges securities will be or have been disposed of.

[c.f. LR 10.07(2) Note 3]

Disposal of shares by a director during blackout period

30. (1) Where -

(a) a director or supervisor of an issuer;

(b) the spouse of a director or supervisor of an issuer;

(c) a minor child (natural or adopted) of a director or supervisor of an issuer, or any person acting on behalf of such child; or

(d) any trust or fund under professional management, discretionary or otherwise, of which a director or supervisor of an issuer is a sole trustee or a beneficiary, (other than as a bare trustee where neither he nor any of his associates is a beneficiary of the trust),

sells or otherwise disposes of securities of the issuer in the period commencing one month immediately preceding the earlier of -

(i) the date of the board meeting for the approval of the issuer's results for the relevant period; and

(ii) the deadline for the issuer to disclose to the public its results for any year or half year pursuant to Schedule 4,

and ending on the day on which the results are disclosed pursuant to Schedule 4, the issuer shall promptly disclose to the public after any such sale or disposal the following information -

(A) details of such sale or disposal by its director or supervisor; and

(B) a statement as to whether the chairman or his delegate (other than the director or supervisor selling or otherwise disposing of the securities) is satisfied that there were exceptional circumstances for such sale or disposal of securities by the director or supervisor (including the reason why he considers the circumstances to be exceptional).

[c.f. LR App. 10 Part A para 3, 4 and 7 and Part C para 14]

(2) Subsection (1) applies to any sale or disposal of securities of an issuer in which, for the purposes of Part XV of the Ordinance, the director or supervisor is or is to be regarded as interested.
[c.f. LR App. 10 Part A para 6]

(3) Subsection (1) does not apply to a sale or disposal of securities of an issuer by a director or supervisor of the issuer where -

(a) the sale or disposal is made in his capacity as a co-trustee and he has not participated in or influenced the decision to sell or dispose of the securities; and

(b) neither he nor any of his associates is a beneficiary of the trust.

[LR App. 10 Part A para 5]

Separate listing

31. Where an issuer proposes to effect a separate listing on a recognized stock market or any other stock markets of any part of its securities, or of assets or businesses wholly or partly within the group, the issuer shall disclose to the public the details of such listing, including the name of the relevant stock market at or before the time when the listing application is lodged with the relevant stock market.
[c.f. LR 13.32(1)(b) (timing modified), PN 15 para 3(g)]

Approval of share option schemes

32. Where an issuer convenes a general meeting for shareholders' approval of any share option scheme, the issuer shall promptly disclose to the public the outcome of any such meeting.
[c.f. LR 17.02(1)]

Issue of securities under general mandate

33. (1) Where an issuer agrees to issue securities for cash under the authority of any general mandate granted to its directors by the shareholders, the issuer shall promptly disclose to the public the following information -

(a) its name;

(b) the number, class and aggregate nominal value of the securities to be issued;

(c) the total funds to be raised and the proposed use of the proceeds;

(d) the issue price of each security;

(e) the net price to the issuer of each security;

(f) the reasons for making the issue;

(g) the names of the allottees, if less than six in number and, in the case of six or more allottees, a brief generic description of them;

(h) the market price of the securities on a named date, being the date on which the terms of the issue were fixed; and

(i) in relation to each issue of equity securities in the 12 months immediately preceding the agreement to issue the securities -

(i) the date of the issue of such equity securities;

(ii) the total funds raised and a detailed breakdown and description of the funds raised by the issue of equity securities;

(iii) the use of proceeds from each issue of equity securities; and

(iv) the intended use of any amount from each issue of equity securities not yet utilised and how the issuer has dealt with such amount.

(2) Where the securities referred to in subsection (1) are issued at a discount of 20% or more to the higher of -

(a) the closing price on the date of the agreement; and

(b) the average closing price of securities of the issuer of the same class as stated in the recognized stock market's daily quotation sheets for the five business days immediately preceding the earlier of -

(i) the date of disclosure of the transaction or arrangement involving the issue of the securities;

(ii) the date of the agreement to issue the securities; and

(iii) the date on which the price for the issue of the securities is fixed,

the issuer shall promptly disclose to the public the following information -

(A) where there are less than 10 allottees, the name of each allottee and its beneficial owners and a statement on whether it is independent of the issuer; and

(B) where there are 10 or more allottees, the name of each allottee and its beneficial owners subscribing 5% or more of the securities issued, a generic description of all other allottees, and a confirmation on whether the allottees are independent of the issuer.

(3) For the purpose of calculating the percentage figure referred to in subsection (2)(B), the number of securities subscribed by each allottee, its holding company and any of their subsidiaries shall be aggregated.
[c.f. LR 13.28, 13.29 and 13.36(5)]

34. Where the issue of any new securities by an issuer or the purchase by an issuer of its listed securities will result in a change -

(a) in the terms of conversion of any of its convertible securities; or

(b) in the terms of exercise of any of its options, warrants or similar rights,

the issuer shall promptly (and wherever practicable, prior to the issue of such new securities or purchase of such listed securities) disclose to the public the effect of any such change.
[c.f. LR 13.27]

35. An issuer shall promptly disclose to the public if it becomes aware that the percentage of listed securities of the issuer, which are held by the public has fallen below the percentage required by the relevant recognized exchange company to be held by the public.
[c.f. LR 13.32(1)]

PART 4

DELAY IN DISCLOSING INFORMATION UNDER SECTIONS 1 TO 35

36. Where an issuer is required to disclose information in accordance with sections 1 to 35 (as the case may be) but fails to do so at the time, or within the period, prescribed, it shall disclose the required information without further delay.
[New for clarity]

37. Where an issuer discloses information in accordance with section 36, it shall, in addition to disclosing the information required under sections 1 to 35 (as the case may be) -

(a) give a full explanation for its failure to disclose the required information at the time, or within the period, prescribed; and

(b) state whether any of the issuer's directors or supervisors has engaged in any dealing in any of the securities of the issuer between the time when the disclosure is required to be made in accordance with sections 1 to 35 (as the case may be) and the time when disclosure is made pursuant to this section, giving full particulars of any such dealing by any director or supervisor.

[c.f. LR 13.07 and App. 10 Part A para 1 (modified)]

SCHEDULE 3

[s.7A]

ACCOUNTANTS' REPORTS AND FINANCIAL INFORMATION

Accounts to Conform to Applicable Accounting Standards

1. Where accounts are required to be prepared, audited, or reported upon under these Rules, they shall conform with either HKFRS or IFRS.
[c.f. LR 4.11, 19.13, 19.39, 19A.10 and App 16 para 2]

2. The issuer or any other corporation to which the accounts referred to in section 1 relate shall apply one of the bodies of standards referred to section 1 consistently.
[c.f. LR 4.11 Note and App 16 para 2]

3. In relation to an issuer, the accounts referred to in section 1 shall contain such information, statement, details or matters as are required to be specified by Schedules 4 and 5.
[c.f. LR 13.47]

Qualification of Auditors and Reporting Accountants

4. Where accounts are required to be audited or reported upon under these Rules, they shall be audited or reported upon by a person, firm, or corporation which is a practising accountant of good standing, independent of the issuer or any other corporation to which the accounts relate and -

(a) qualified under the Professional Accountants Ordinance (Cap. 50) for appointment as an auditor of a corporation; or

(b) is a firm of accountants acceptable to the Commission which has an international name and reputation and is a member of a recognized body of accountants.

[c.f. LR 4.03, 19.11, 19.20, 19.37, 19.47, 19A.08 and 19A.31]

5. Where the accounts are required to be audited or reported upon under these Rules, they shall be audited or reported upon in accordance with the standards and guidelines of -

(a) the HKICPA; or

(b) the International Auditing and Assurance Standards Board of the International Federation of Accountants.

[c.f. LR 4.08(3), 19.12, 19.21, 19.38, 19.48, 19A.09 and 19A.32]

Statements by Auditors and Reporting Accountants in Their Reports

6. Where accounts are required to be audited or reported upon under these Rules, the accounts shall not be regarded as duly audited or reported upon unless the auditors or reporting accountants state in their report whether in their opinion the accounts give a true and fair view of the state of affairs at the end of each period audited or reported upon and of the profit or loss and cash flows for each such period.
[c.f. LR 4.08(2), 19.22, 19.49, 19A.33 and App. 16 para 2]

7. Where accounts are required to be reported upon under these Rules, the accounts shall not be regarded as duly reported upon unless the reporting accountants state in their report -

(a) whether or not the accounts for the period reported on have been audited by any other accountants and, if so, by whom; and

(b) whether or not any audited accounts have been prepared since the end of the period reported on.

[c.f. LR 4.08(1)]

Pro Forma Financial Information

8. Where an issuer discloses pro forma financial information in any document as required under these Rules, it shall ensure that the information complies with sections 9 to 16 and the document includes a report complying with section 17.

9. The pro forma financial information disclosed in respect of any transaction, or proposed transaction, shall illustrate how that transaction would have affected the financial information presented in the document -

(a) subject to paragraph (b), had the transaction been undertaken at the commencement of the period being reported on; or

(b) in the case of a pro forma balance sheet or net asset statement, had the transaction been undertaken at the date reported,

to assist investors in understanding the impact of the transaction and analysing the future prospects of the issuer.

10. The information referred to in sections 8 and 9 shall state -

(a) the purpose for which it has been prepared;

(b) that it is prepared for illustrative purposes only; and

(c) that because of its nature, it may not give a true picture of the issuer's financial position or results.

11. The information referred to in sections 8 and 9 shall show, separately, the unadjusted financial information, the pro forma adjustments, and the pro forma financial information.

12. Pro forma information shall be prepared in a manner consistent with the format and accounting policies adopted by the issuer in its accounts and shall identify -

(a) the basis upon which it is prepared; and

(b) the source of each item of information and adjustment.

13. Pro forma figures shall be given no greater prominence in the document than audited figures or figures reported upon.

14. Pro forma information may only be disclosed in respect of -

(a) the current financial period; or

(b) (i) the most recently completed financial period; or

(ii) the most recent interim period for which relevant unadjusted information has been or will be disclosed or is being disclosed in the document;

and, in the case of a pro forma balance sheet or net asset statement, as at the date on which such periods end or ended.

15. The unadjusted information referred to in section 11 shall be derived from the most recent -

(a) audited accounts, interim reports or annual or interim results which have been published in accordance with these Rules;

(b) accountants' report being published in accordance with these Rules;

(c) pro forma information reported on in accordance with section 17 and which has been published in accordance with these Rules; or

(d) profit forecast which has been disclosed to the public in accordance with these Rules.

16. Any adjustments which are made to the information referred to in section 15 in relation to any pro forma statement shall be -

(a) shown and explained;

(b) supported by facts attributable to the transaction and not relating to future events or decisions; and

(c) in respect of a pro forma profit or cash flow statement, identified as to those adjustments which are expected to have a continuing effect on the issuer and those which are not.

17. Pro forma information shall be reported on by the auditors or reporting accountants of the issuer, and the auditors or reporting accountants shall state in their report that, in their opinion -

(a) the information has been properly compiled on the stated basis;

(b) such basis is consistent with the accounting policies of the issuer; and

(c) the adjustments are appropriate for the purposes of the pro forma information as referred to in section 9.

18. Where pro forma earnings per share information is given for a transaction which includes the issue of securities, the calculation shall be based on the weighted average number of shares outstanding during the period, adjusted as if such issue had taken place at the beginning of the period.
[c.f. LR 4.29]

SCHEDULE 4

[s.7A]

PERIODIC REPORTS AND ANNOUNCEMENTS

Annual Reports

1. An issuer shall prepare an annual report, which shall include its annual accounts, which complies with the provisions of Schedule 5 relating to annual reports.
[c.f. LR 13.47]

2. An issuer shall make up its annual accounts to a date falling not more than six months before the date of its annual general meeting.
[c.f. LR 13.46(2)(b)]

3. The auditors' report shall be annexed to all copies of the annual accounts.
[c.f. LR 19.22, 19.49 and 19A.33]

4. The auditors' report shall state the legislation in accordance with which the annual accounts have been drawn up and the authority or body whose auditing standards have been applied.
[c.f. LR 19.23, 19.50 and 19A.34]

5. An issuer shall disclose to the public its annual report, including the auditors' report on its annual accounts, not less than 21 days before the date of the issuer's annual general meeting and in any event not more than four months after the end of the financial year to which the report and accounts relate.
[c.f. LR 13.46]

6. An issuer shall send to every entitled person a copy of either -

(a) its annual report, including the auditors' report on its annual accounts; or

(b) its summary annual report,

not less than 21 days before the date of the issuer's annual general meeting and in any event not more than four months after the end of the financial year to which the report and accounts relate.
[c.f. LR 13.46]

7. The summary annual report referred to in section 6 shall -

(a) be derived from the annual report;

(b) comply with the provisions in Schedule 5 relating to summary annual reports; and

(c) be approved by the board of directors of the issuer,

and may include other information which is not inconsistent with the annual report from which it is derived.
[c.f. LR 13.47 and CO s.141CF(1) and (2)]

Interim Reports

8. Unless its financial year is of 6 months or less, an issuer shall prepare an interim report, which -

(a) shall include its accounts in respect of the first 6 months of its financial year; and

(b) complies with the provisions of Schedule 5 relating to interim reports.

[c.f. LR 13.48]

9. Unless its financial year is of 6 months or less, an issuer shall disclose to the public its interim report, not later than three months after the end of the period to which the interim report relates.
[c.f. LR 13.48]

10. An issuer shall send to every entitled person a copy of either its -

(a) interim report; or

(b) summary interim report,

not later than three months after the end of the period to which the interim report relates.
[c.f. LR 13.48]

11. The summary interim report referred to in section 10 shall -

(a) be derived from the interim report;

(b) comply with the provisions in Schedule 5 relating to summary interim reports; and

(c) be approved by the board of directors of the issuer,

and may include other information which is not inconsistent with the interim report from which it is derived.

[c.f. LR 13.48(1) and (2), CO s.141CF(1) and (2)]

12. The requirement of sections 8, 9 and 10 shall be regarded as having been complied with if accounts covering the six-month period referred to in those subsections have been included in a prospectus of the issuer registered under section 38D or 342C of the Companies Ordinance (Cap. 32).
[c.f. LR PN10 para 3]

Preliminary Announcements of Full-Year Results

13. An issuer shall prepare an announcement which complies with the provisions of Schedule 5 relating to preliminary announcements of full-year results, and agree the announcement with the auditors who audit its annual accounts.

14. Subject to section 15 an issuer shall disclose to the public the preliminary announcement of full-year results prepared and agreed in accordance with section 13, no later than in the next business day following the day on which the annual accounts are approved by or on behalf of the board and in any event not more than four months after the end of the financial year.

15. When an issuer is unable to make an announcement in accordance with section 14, it shall make an announcement not more than four months after the end of the financial year, containing at least the following information -

(a) a full explanation for its inability to make an announcement in accordance with section 14;

(b) where there are uncertainties about the accounts arising from the lack of supporting evidence or relating to the valuation of assets or liabilities, sufficient information to enable investors to determine the significance of those assets or liabilities;

(c) the expected date of its making an announcement in accordance with section 16(a);

(d) so far as the information is available, results for the financial year based on accounts which have been reviewed by the issuer's audit committee but have yet to be agreed with the auditors; and

(e) in the event that the issuer's audit committee disagrees with the accounting treatment adopted or any particular disclosed in accordance with paragraphs (a) and (b), full details of such disagreement.

16. Where an issuer makes an announcement in accordance with section 15 -

(a) it shall disclose to the public the preliminary announcement of full-year results prepared and agreed in accordance with section 13 as soon as possible after the accounts are agreed with the auditors; and

(b) where the accounts which are agreed with the auditors differ materially from the information disclosed in the announcement made in accordance with section 15(d), full particulars of, and reasons for, the difference shall be set out in the announcement made in accordance with paragraph (a).

[c.f. LR 13.49 and App. 16 para 45]

17. Where it becomes necessary to revise the information contained in the issuer's preliminary announcement of results in the light of developments arising between the date of publication of the announcement and the completion of the audit, the issuer shall promptly disclose to the public -

(a) details of the changes made to the published preliminary announcement of results;

(b) details of any impact on the published financial information of the issuer; and

(c) the reasons for such changes.

[c.f. LR App. 16 para 45A]

Preliminary Announcements of Interim Results

18. An issuer shall prepare an announcement, which complies with the provisions of Schedule 5 relating to preliminary announcements of interim results.
[c.f. LR 13.49(7)]

19. Unless the financial year is of 6 months or less and subject to section 20 an issuer shall disclose to the public the preliminary announcement of interim results, prepared in accordance with section 18, no later than in the next business day following the day on which the interim results are approved by or on behalf of the board and in any event not more than three months after the end of the period to which the interim report relates.
[c.f. LR 13.49(6)]

20. When an issuer is unable to make an announcement in accordance with section 19, it shall make an announcement, not more than three months after the end of the period to which the interim report relates, containing at least the following information -

(a) a full explanation for its inability to make an announcement in accordance with section 19; and

(b) the expected date of its making an announcement in accordance with section 21.

[c.f. LR 13.49(6)]

21. Where an issuer makes an announcement in accordance with section 20 it shall disclose to the public the preliminary announcement of interim results prepared in accordance with section 18 as soon as possible.
[c.f. LR 13.49(7)]

22. The requirements of sections 19, 20 and 21 shall be regarded as having been complied with if accounts in respect of the first 6 months of an issuer's financial year have been included in a prospectus of the issuer registered under section 38D or 342C of the Companies Ordinance (Cap. 32).
[c.f. LR PN10 para 3]

SCHEDULE 5

[s.7A]

CONTENTS OF PERIODIC REPORTS AND ANNOUNCEMENTS

PART 1

INFORMATION IN ANNUAL REPORTS

1. (1) An issuer shall provide the information as set out in sections 2 to 34 in its annual report.

(2) Unless the information specified in sections 2 to 34 is required to be included in the financial statements, it needs not form part of the financial statements. [c.f. LR App. 16 para 6]

2. An issuer shall include in its financial statements a statement showing, in respect of every subsidiary that materially contributes to the net income of the group or holds a material portion of the assets or liabilities of the group -

(a) the name of the subsidiary, its principal country of operation and its country of incorporation or other establishment;

(b) particulars of the issued share capital and debt securities of the subsidiary; and

(c) in the case of a subsidiary established in a place outside Hong Kong, the form of legal entity it is registered as under the law of that place.

[c.f. LR App. 16 para 9]

3. (1) In relation to transactions by the issuer or any of its subsidiaries in securities of the issuer, or securities of its subsidiaries during the financial year, an issuer shall provide -

(a) details of the classes, numbers and terms of any convertible securities, options, warrants or similar rights issued or granted by the issuer or any of its subsidiaries, together with the consideration received by the issuer or any of its subsidiaries therefor;

(b) particulars of any exercise of any conversion or subscription rights under any convertible securities, options, warrants or similar rights issued or granted at any time by the issuer or any of its subsidiaries;

(c) particulars of any redemption or purchase or cancellation by the issuer or any of its subsidiaries of its redeemable securities and the amount of such securities outstanding at the balance sheet date; and

(d) particulars of any purchase, sale or redemption by the issuer, or any of its subsidiaries, of its listed securities during the financial year, or if there have been none purchased, sold or redeemed, a statement of that fact.

(2) The particulars referred to in subsection (1)(d) shall include the aggregate price paid or received by the issuer or any of its subsidiaries for such purchases, sales or redemptions and shall distinguish between those securities purchased or sold -

(a) on a recognized stock market;

(b) on another stock market;

(c) by private arrangement; and

(d) by way of a general offer.

(3) The particulars referred to in subsection (1) shall distinguish between those listed securities which are purchased by the issuer and those which are purchased by its subsidiaries.
[c.f. LR App. 16 para 10]

4. In the case of any issue for cash of equity securities made otherwise than to shareholders in proportion to their shareholdings and which has not been specifically authorized by the shareholders, an issuer shall provide -

(a) the reasons for making the issue;

(b) the classes of equity securities issued;

(c) as respect each class of equity securities, the number issued, and their aggregate nominal value;

(d) the issue price of each security;

(e) the net price to the issuer of each security;

(f) the names of the allottees, if less than six in number, and, in the case of six or more allottees, a brief generic description of them;

(g) the market price of the securities concerned on a named date, being the date on which the terms of the issue were fixed; and

(h) the purpose for which the proceeds will be used.
[c.f. LR App. 16 para 11]

5. (1) An issuer shall provide brief biographical details of each of its directors, supervisors and members of its senior management including -

(a) his name;

(b) his age;

(c) positions held with the issuer and any of its subsidiaries;

(d) length of service with the issuer and any of its subsidiaries;

(e) where he is related to any other director or supervisor of the issuer or senior manager of the group, the name of the director, supervisor or senior manager and how they are related; and

(f) such other information (which may include business experience) of which shareholders ought to be aware, pertaining to the ability or integrity of such persons.

(2) Where any director or supervisor of the issuer is a director, supervisor or employee of a corporation which has an interest in the shares of the issuer which would fall to be disclosed to the issuer under the provisions of Divisions 2, 3 and 4 of Part XV of the Ordinance, that fact shall be stated.

(3) Where an independent non-executive director has been appointed by an issuer during the financial year, and such a person does not meet the requirements for independent non-executive directors as prescribed by the relevant recognized exchange company, the issuer shall disclose the reasons why such an independent non-executive director was and is considered to be independent.

(4) An issuer shall state whether it has received from each of its independent non-executive directors an annual confirmation of his independence and whether it still considers the independent non-executive directors to be independent.
[c.f. LR App. 16 paras 12, 12A and 12B]

6. (1) Subject to subsection (2), an issuer shall provide a statement as at the balance sheet date showing the interests and short positions of each director, supervisor and chief executive of the issuer in the shares in or debentures of the issuer or any associated corporation of the issuer -

(a) as recorded in the register required to be kept by the issuer under section 352 of the Ordinance;

(b) as otherwise notified to the issuer pursuant to the Model Code for directors; or

(c) if there is no such interest or right in such shares or debentures, a statement of that fact.

(2) The statement required by subsection (1) shall specify the corporation in which the interests or short positions are held, the class to which those securities belong and the number of such securities held but need only disclose the existence of the following interests by way of a general statement to indicate that the directors or supervisors hold such interests -

(a) in relation to the interests of a director or supervisor in the shares of the issuer or any of its subsidiaries, if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares; and

(b) in relation to the non-beneficial interests of directors or supervisors in the shares of any subsidiary of the issuer, in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the holding company of that subsidiary or the issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member.

(3) An issuer shall provide a statement as at the balance sheet date, showing the interests or short positions of every person, other than a director, supervisor or chief executive of the issuer, in the shares of the issuer as recorded in the register required to be kept under section 336 of the Ordinance and the amount of such interests and short positions, or if there are no such interests or short positions recorded in the register, a statement of that fact.

(4) If two or more persons are interested in the same shares or debentures referred to in subsections (2) and (3), particulars shall be provided of the extent of any duplication which occurs.
[c.f. LR App. 16 para 13]

7. (1) An issuer shall state the period unexpired of any service contract, which is not determinable by the employer within one year without payment of compensation (other than statutory compensation), of any director or supervisor proposed for re-election at the forthcoming annual general meeting or, if there are no such service contracts, a statement of that fact.

(2) An issuer shall provide particulars of any service contract granted by itself or any of its subsidiaries to any director, proposed director, supervisor or proposed supervisor of the issuer or of any of its subsidiaries which -

(a) is for a duration that may exceed three years; or

(b) in order to entitle the issuer to terminate the contract, requires the issuer to provide a period of notice of more than one year or to pay compensation or make other payments equivalent to more than one year's emoluments,

where such service contract -

(i) was entered into on or before 31 January, 2004; and

(ii) was not subject of prior approval of shareholders of the issuer in a general meeting.

[c.f. LR 13.69 and App. 16 paras 14 and 14A]

8. (1) An issuer shall provide particulars of any contract of significance subsisting during or at the end of the financial year in which a director or supervisor of the issuer is or was materially interested, either directly or indirectly, or, if there has been no such contract, a statement of that fact.

(2) In this section, and section 9, a "contract of significance" means -

(a) a contract where any of the relevant percentage ratios of the transaction is 1% or more; and

(b) a contract if the omission of information relating to that contract could have changed or influenced the judgement or decision of an investor in securities of the issuer.

[c.f. LR App. 16 para 15]

9. An issuer shall provide -

(a) particulars of any contract of significance between the issuer, or any of its subsidiaries, and a controlling shareholder or any of its subsidiaries;

(b) particulars of any contract of significance for the provision of services to the issuer or any of its subsidiaries by a controlling shareholder or any of its subsidiaries.

[c.f. LR App. 16 para 16]

10. (1) Where any of the directors of an issuer is interested in any business apart from the group's business, which competes or is likely to compete, either directly or indirectly, with the group's business, the issuer shall provide -

(a) a description of such business and its management, to enable investors to assess the nature, scope and size of such business, with an explanation as to how such business may compete with the group's business;

(b) a statement as to, and facts demonstrating, whether the group is capable of carrying on its business independently of, and at arms length from the business referred to in paragraph (a); and

(c) details of any change in the matters referred to in paragraphs (a) and (b) previously disclosed in any document published under these Rules or any other legal or regulatory requirements.

(2) Subsection (1) does not apply to interests of independent non-executive directors of the issuer.
[c.f. LR 8.10(1) and (2)]

11. (1) Subject to subsection (3) an issuer shall provide particulars of any arrangement under which a shareholder has waived or agreed to waive any dividends.

(2) Where a shareholder has agreed to waive future dividends, particulars of such waiver(s) shall be provided together with those relating to dividends which were payable during the past financial year.

(3) Waivers of dividends of a minor amount may be disregarded provided that some payment has been made on each share during the relevant financial year.
[c.f. LR App. 16 para 17]

12. If net income shown in the financial statements differs materially from any profit forecast disclosed to the public by the issuer, the issuer shall provide an explanation of the difference.
[c.f. LR App. 16 para 18]

13. (1) An issuer shall provide a summary, in the form of a comparative table, of the published results and of the assets and liabilities of the group for the previous five financial years.

(2) Where the published results and statement of assets and liabilities have not been prepared on a consistent basis this fact and the reasons for the discrepancy shall be explained in the summary.
[c.f. LR App. 16 para 19]

14. An issuer incorporated or otherwise established in a jurisdiction outside of Hong Kong shall include a statement as to whether pre-emptive rights exist in the jurisdiction in which the issuer is incorporated or otherwise established and provide particulars of the pre-emptive rights if applicable.
[c.f. LR App. 16 para 20]

15. An issuer incorporated or otherwise established in a jurisdiction outside of Hong Kong shall provide the information necessary to enable holders of its listed securities to obtain any relief from taxation to which they are entitled by reason of their holding of such securities.
[c.f. LR App. 16 para 21]

16. In relation to loans and borrowings an issuer shall provide in its financial statements -

(a) except where the issuer is a banking company, an analysis as at the balance sheet date, of -

(i) bank loans and overdrafts; and

(ii) other borrowings,

showing the aggregate amounts repayable -

(A) on demand or within a period not exceeding one year;

(B) within a period of more than one year but not exceeding two years;

(C) within a period of more than two years but not exceeding five years; and

(D) within a period of more than five years; and

(b) a statement of the amount of interest capitalised during the financial year.

[c.f. LR App. 16 para 22]

17. (1) Subject to subsection (2), where any of the relevant percentage ratios of an issuer's properties held for development or sale or for investment purposes exceeds 5%, the issuer shall provide the following information -

(a) in the case of property held for development or sale -

(i) an address sufficient to identify the property;

(ii) if the property is in the course of construction, the stage of completion as at the date of the annual report and the expected completion date;

(iii) the existing use of the property;

(iv) the site and gross floor area of the property; and

(v) the issuer's attributable percentage interest in the property.

(b) in the case of property held for investment -

(i) an address sufficient to identify the property;

(ii) the existing use of the property; and

(iii) whether the property is held on short lease, medium term lease or long lease or, if situated outside Hong Kong, is freehold.

(2) If the number of properties is such that compliance with subsection (1) would result in a statement of excessive length, the issuer may provide -

(a) a general description, by categories and groupings if appropriate, of the properties including their locations and uses; and

(b) details for each of the properties which is material to the group.

[c.f. LR App. 16 para 23, CO Tenth Schedule, s9(4)]

18. An issuer shall provide in its financial statements details of emoluments (whether paid by or receivable from the issuer, any of its subsidiaries, or any other person) of each of its directors, past directors, supervisors and past supervisors, by name, as follows -

(a) any director's or supervisor's fees paid or receivable for the financial year;

(b) the aggregate of basic salary, housing allowance, and any other allowances and benefits in kind, including any contractual bonus payments which are fixed in amount, paid or receivable for the financial year;

(c) any contributions to any pension scheme for the financial year;

(d) any pensions paid or receivable, other than pensions paid or receivable under a pension scheme if the scheme is such that the contributions thereunder are substantially adequate for the maintenance of the scheme;

(e) the aggregate of any bonuses paid or receivable which are -

(i) contractually entitled but not fixed in amount;

(ii) discretionary; or

(iii) based on the performance of the issuer, any of its subsidiaries or the group,

together with the basis upon which they are determined, for the financial year (excluding amounts disclosed in paragraphs (f) and (g));

(f) the aggregate of any amounts paid during the financial year or receivable as an inducement to join or upon joining the group; and

(g) any compensation paid during the financial year or receivable for the loss of office as a director or supervisor of the issuer or any of its subsidiaries or of any other office in connection with the management of the affairs of the issuer or any of its subsidiaries, distinguishing between contractual and other payments (excluding amounts disclosed in paragraphs (b) to (f)).

[c.f. LR App. 16 para 24 and CO s.161(3)(a) and (5)(a)]

19. (1) An issuer shall provide particulars of any arrangement under which a director or supervisor has waived or agreed to waive any emoluments.
[c.f. LR App. 16 para 24A]

(2) Where a director or supervisor has agreed to waive future emoluments from the issuer or any of its subsidiaries or other person, particulars of such waiver shall be provided together with particulars of waivers relating to emoluments from the issuer or any of its subsidiaries or other person which accrued during the past financial year.
[c.f. LR App. 16 para 24A Note 24A.1]

20. An issuer shall provide the following information in respect of the group's emolument policy -

(a) a general description of the emolument policy and any long-term incentive schemes of the group; and

(b) the basis of determining the emolument payable to its directors and supervisors.

[c.f. LR App. 16 para 24B]

21. (1) Subject to subsection (2), an issuer shall provide in its financial statements the information specified in subsection (3) in respect of the five highest paid individuals in the group during the financial year, excluding amounts paid or payable by way of commissions on sales generated by any individual.

(2) Where any of the individuals referred to in subsection (1) are directors or supervisors of the issuer and the information required to be disclosed by this section has been disclosed in the emoluments of directors and supervisors as required by section 18, a statement of this fact shall be made and no additional disclosure is required in respect of those directors or supervisors.

(3) Where the details of one or more of the individuals whose emoluments were the highest have not been included in the emoluments of directors, the following information shall be disclosed in respect of those individuals -

(a) the aggregate of basic salaries, housing allowances, other allowances and benefits in kind for the financial year, including any contractual bonus payments which are fixed in amount;

(b) the aggregate of contributions to pension schemes for the financial year;

(c) the aggregate of bonuses paid or receivable which are -

(i) contractually entitled but not fixed in amount;

(ii) discretionary; or

(iii) based on the performance of the issuer, any of its subsidiaries or the group,

together with the basis upon which they are determined, for the financial year (excluding amounts disclosed in paragraphs (d) and (e));

(d) the aggregate of amounts paid during the financial year or receivable as an inducement to join or upon joining the group;

(e) the aggregate of compensation paid during the financial year or receivable for the loss of any office in connection with the management of the affairs of the issuer or any of its subsidiaries, distinguishing between contractual payments and other payments (excluding amounts disclosed in paragraphs (a) to (c)); and

(f) an analysis showing the number of individuals whose remuneration (being amounts paid under paragraphs (a) to (e)) fell within bands from HK$ nil up to HK$1,000,000 or into higher bands (where the higher limit of the band is an exact multiple of HK$500,000 and the range of the band is HK$499,999).

(4) It is not necessary to disclose the identity of the highest paid individuals referred to in subsection (3), unless any of them are directors or supervisors of the issuer.
[c.f. LR App. 16 para 25]

22. An issuer shall provide, in respect of pension schemes which are defined contribution schemes, details of whether forfeited contributions (by employers on behalf of employees who leave the scheme prior to vesting fully in such contributions) may be used by the employer to reduce the existing level of contributions and if so, the amounts so utilised in the course of the year and available at the balance sheet date for such use.

[c.f. LR App. 16 para 26]

23. (1) An issuer shall provide a summary of each share option scheme approved by its shareholders setting out -

(a) the purpose of the scheme;

(b) the participants of the scheme;

(c) the total number of securities available for issue under the scheme together with the percentage of the issued share capital that it represents as at the date of the annual report;

(d) the maximum entitlement of each participant under the scheme;

(e) the period within which the securities must be taken up under an option;

(f) the minimum period, if any, for which an option must be held before it can be exercised;

(g) the amount, if any, payable on application or acceptance of the option and the period within which payments or calls must or may be made or loans for such purposes must be repaid;

(h) the basis of determining the exercise price; and

(i) the remaining period of the scheme.

(2) An issuer shall provide the following information in relation to any share option scheme -

(a) particulars of any outstanding options at the beginning and at the end of the financial year, including the number of such options, date of grant, vesting period, exercise period and exercise price;

(b) particulars of options granted during the financial year, including the number of such options, date of grant, vesting period, exercise period, exercise price and (for options over listed securities) the closing price of the securities immediately before the date on which the options were granted;

(c) the number of options exercised during the financial year with the exercise price and (for options over listed securities) the weighted average closing price of the securities immediately before the dates on which the options were exercised;

(d) the number of options cancelled during the financial year together with the exercise price of the cancelled options; and

(e) the number of options which lapsed in accordance with the terms of the scheme during the financial year.

(3) The information required in subsection (2) shall be provided in relation to -

(a) each of the directors, supervisors, chief executive or substantial shareholders of the issuer, or their respective associates;

(b) each participant in the share option scheme who holds options granted in excess of any individual limit under the share option scheme;

(c) employees working under employment contracts that are regarded as continuous contracts for the purposes of the Employment Ordinance (Cap. 57), providing such information as an aggregate figure for the scheme;

(d) suppliers of goods or services, providing such information as an aggregate figure for the scheme; and

(e) all other participants, providing such information as an aggregate figure for the scheme.

(4) In respect of options granted during the financial year over listed securities, the issuer shall provide -

(a) the value of options granted to participants set out in paragraphs (a) to (e) of subsection (3) during the financial year; and

(b) the expense recognized in the income statement for the financial year relating to options granted to the participants set out in paragraphs (a) to (e) of subsection (3).

[c.f. LR 17.09, 17.07 and 17.08]

24. If -

(a) an issuer has caused any valuation to be made of any properties or other tangible assets;

(b) the issuer has included such a valuation in any document made or issued by it or on its behalf to the public or to a group of persons comprising members of the public (including its shareholders) under these Rules or any other legal or regulatory requirements (a "public document"); and

(c) any of those properties or other tangible assets are not stated at such valuation in the first annual accounts published after the issue of such public document,

the issuer shall disclose the following information in the annual report in which such first annual accounts are to be included -

(i) the amount of such valuation of those properties or other tangible assets as included in the public document; and

(ii) the additional depreciation, if any, that would be charged against the income statement had those assets been stated at such valuation.

[c.f. LR App. 16 para 27]

25. An issuer shall provide the information required to be provided under sections 129A, 129D, 161B, 162 and 162A of the Companies Ordinance (Cap. 32) and Parts I, II and IV of the Tenth Schedule to the Companies Ordinance (Cap. 32), whether or not it is incorporated in Hong Kong.
[c.f. LR App. 16 paras 28 and 33 (modified)]

26. An issuer shall provide a statement of the reserves available for distribution to shareholders by the issuer as at the balance sheet date as calculated in accordance with -

(a) in the case of an issuer incorporated in Hong Kong, the laws of Hong Kong and applicable reporting standards; and

(b) in the case of an issuer incorporated outside Hong Kong, the issuer's national law and applicable reporting standards.

[c.f. LR App. 16 para 29]

27. An issuer shall provide details of any change in its auditors in any of the preceding three years.
[c.f. LR App. 16 para 30]

28. An issuer shall provide information in respect of the major customers and major suppliers of the group as follows -

(a) subject to paragraph (f), a statement of the percentage of purchases attributable to the largest supplier;

(b) subject to paragraph (f), a statement of the percentage of purchases attributable to the 5 largest suppliers combined;

(c) subject to paragraph (g), a statement of the percentage of turnover or sales attributable to the largest customer;

(d) subject to paragraph (g), a statement of the percentage of turnover or sales attributable to the 5 largest customers combined;

(e) subject to paragraphs (f) and (g), a statement of the interests of -

(i) any director or supervisor of the issuer;

(ii) any associate of a director or supervisor referred to in subparagraph (i); or

(iii) any shareholder (who, to the knowledge of the directors, own more than 5% of the issuer's share capital),

in the suppliers or customers disclosed under paragraphs (a) to (d) above or if there are no such interests a statement of that fact;

(f) in the event that the percentage which would fall to be disclosed under paragraph (b) is less than 30, a statement of that fact shall be provided and the information required in paragraphs (a), (b) and (e) (in respect of suppliers) may be omitted; and

(g) in the event that the percentage which would fall to be disclosed under paragraph (d) above is less than 30, a statement of that fact shall be provided and the information required in paragraphs (c), (d) and (e) (in respect of customers) may be omitted.

[c.f. LR App. 16 para 31]

29. An issuer shall provide in its accounts -

(a) its credit policy and ageing analysis of accounts receivable; and

(b) an ageing analysis of accounts payable.

[c.f. LR App. 16 paras 4(2)(b)(ii) and (c)(ii)]

30. An issuer shall provide -

(a) a separate statement -

(i) containing a review and analysis of the group's performance during the financial year, and the material factors underlying its results and financial position; and

(ii) identifying trends and significant events or transactions during the financial year;

(b) a comparison with the preceding financial year; and

(c) any supplementary information which is necessary for a reasonable appreciation of the annual results.

[c.f. LR App. 16 para 32]

31. (1) An issuer shall provide in its annual report a report prepared by the board of directors on its corporate governance practices.

(2) The report referred to in subsection (1) shall include the following information for the period covered by the annual report and any related significant events for any subsequent period up to the date of publication of the annual report, to the extent that is practicable, in relation to -

(a) corporate governance practices -

(i) a statement as to how the issuer has applied the principles of the Code on Corporate Governance Practices, with an explanation which enables its shareholders to evaluate how the principles have been applied;

(ii) a statement as to whether the issuer meets the provisions that it is expected to comply with in the Code on Corporate Governance Practices and any code on corporate governance practices it has devised and adopted; and

(iii) in the event of any deviation from the provisions that it is expected to comply with in the Code on Corporate Governance Practices, details of such deviation during the financial year and the reasons for such deviation;

(b) directors' and supervisors' securities transactions -

(i) a statement as to whether the issuer has adopted a code of conduct regarding securities transactions by directors and supervisors on terms no less exacting than the required standard set out in the Model Code for directors;

(ii) having made specific enquiry of all directors and supervisors, a statement as to whether its directors and supervisors have complied with, or whether there has been any non-compliance with, the required standard set out in the Model Code for directors and its code of

conduct regarding securities transactions by directors and supervisors; and

(iii) in the event of any non-compliance with the required standard set out in the Model Code for directors, details of such non-compliance and an explanation of the remedial steps taken by the issuer to address such non-compliance;

(c) the board of directors of the issuer -

(i) its composition, by category of directors, including the full name of each of the chairman, executive directors, non-executive directors and independent non-executive directors;

(ii) the number of board meetings held during the financial year;

(iii) individual attendance of each director, by name, at the board meetings;

(iv) how the board of directors operates, including a statement as to which types of decisions are to be taken by the board and which are to be delegated to management;

(v) a statement as to whether or not it has complied with any relevant requirements in the rules of the recognized exchange company relating to the appointment of -

(A) a sufficient number of independent non-executive directors; and

(B) an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise,

and, in the event of any non-compliance, an explanation of the remedial steps taken by the issuer to address such non-compliance;

(vi) the reasons why the issuer considers an independent non-executive director to be independent if such a person does not meet the requirements for independent non-executive directors as prescribed by the in the rules of the recognized exchange company; and

(vii) relationship (including financial, business, family or other relationships), if any, among members of the board and in particular, between the chairman and the chief executive officer;

(d) the chairman and the chief executive officer -

(i) their identity; and

(ii) whether their roles are segregated and are not exercised by the same individual;

(e) the non-executive directors of the issuer, their term of appointment;

(f) the remuneration of directors -

(i) the role and function of the remuneration committee (if any) or if there is no remuneration committee, the reasons why there is no remuneration committee;

(ii) the composition of the remuneration committee (if any) (including the names of the members and the chairman of the committee);

(iii) the number of meetings held by the remuneration committee or the board of directors (if there is no remuneration committee) during the year to discuss remuneration related matters and the record of individual attendance of members, by name, at meetings held during the year; and

(iv) a summary of the work, including determining the policy for the remuneration of executive directors, assessing performance of executive directors and approving the terms of executive directors' service contracts, performed by the remuneration committee or board of directors (if there is no remuneration committee) during the year;

(g) the nomination of directors -

(i) the role and function of the nomination committee (if any);

(ii) the composition of the nomination committee (if any) (including names of the members and the chairman of the committee);

(iii) the nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year;

(iv) a summary of the work, including determining the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year; and

(v) the number of meetings held by the nomination committee or the board of directors (if there is no nomination committee) during the year and the record of individual attendance of members, by name, at meetings held during the year;

(h) auditors' remuneration -

(i) an analysis of remuneration in respect of audit and non-audit services provided by -

(A) the auditors to the issuer;

(B) any body that is under common control, ownership or management with the auditors to the issuer; and

(C) any body that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as part of the auditors to the issuer, nationally or internationally;

(ii) the analysis referred to in subparagraph (i) shall include, in respect of each significant non-audit service assignment, details of the nature of the services and the fees paid;

(i) the audit committee -

(i) the role, function and composition of the committee (including names of members of the committee and the chairman of the committee);

(ii) the number of audit committee meetings held during the year and record of individual attendance of members, by name, at meetings held during the year;

(iii) a report on the work performed by the audit committee during the year in discharging its responsibilities in its review of the quarterly (if any), half-yearly and annual results and system of internal control, and its other duties as set out in the Code of Corporate Governance Practices; and

(iv) details of any non-compliance with any relevant requirements relating to the establishment of an audit committee and an explanation of the remedial steps taken by the issuer to address such non-compliance.

[c.f. LR App. 10 Part D para 15 and App. 16 para 34]

32. An issuer shall provide a statement concerning the sufficiency of the percentage of listed securities of the issuer which are held by the public to comply with the relevant requirements of the recognized exchange company, based on information that is publicly available to the issuer and within the knowledge of its directors as at the latest practicable date prior to the issue of the annual report.
[c.f. LR 13.35 and App. 16 para 34A]

PART 2

BANKING COMPANIES

33. (1) Where an issuer is a banking company, the issuer shall, in addition to the requirements as set out in sections 2 to 32, provide in its annual report the information concerning its financial affairs during the period set out in subsections (2) to (4) -

(2) In relation to the income statement -

(a) interest income;

(b) interest expense;

(c) other operating income;

(d) operating expenses;

(e) charge for bad and doubtful debts;

(f) gains less losses on trading securities or other investments in securities;

(g) gains less losses from disposal of investment securities or non-trading securities;

(h) provisions on held-to-maturity securities and investment securities or provisions on held-to-maturity securities and non-trading securities;

(i) exceptional items;

(j) taxation on profits, in Hong Kong and overseas, in each case indicating the basis of computation with separate disclosure of the taxation on share of profits of affiliates;

(k) as appropriations -

(i) transfers to or from inner reserves; and

(ii) transfers to or from other reserves; and

(l) rates of dividend paid or proposed on each class of shares, with particulars of each such class, and amounts absorbed thereby, or an appropriate negative statement.

(3) In relation to the balance sheet -

(a) cash and short-term funds;

(b) trading securities or other investments in securities;

(c) advances and other accounts;

(d) held-to-maturity securities and investment securities or held-to-maturity securities and non-trading securities;

(e) issued debt securities; and

(f) other accounts and provisions.

(4) In relation to off-balance sheet exposure -

(a) contingent liabilities and commitments; and

(b) derivatives.

[c.f. LR App. 15 para 1]

PART 3

FINANCIAL CONGLOMERATES

34. (1) Where an issuer is regarded as a financial conglomerate, the issuer shall, in addition to the requirements as set out in sections 2 to 32, provide the

information set out in subsections (2) to (4) concerning its financial affairs during the period, in its annual accounts and the information set out in subsection (5) in its annual report.

(2) In relation to the income statement -

(a) interest income;

(b) interest expense;

(c) gains less losses arising from dealing in foreign currencies;

(d) gains less losses on trading securities or other investments in securities;

(e) gains less losses from other dealing activities;

(f) gains less losses arising from derivative products;

(g) charge for bad and doubtful debts;

(h) gains less losses from disposal of investment securities or non-trading securities;

(i) provisions on held-to-maturity securities and investment securities or provisions on held-to-maturity securities and non-trading securities; and

(j) operating profit by products and divisions.

(3) In relation to the balance sheet -

(a) cash and short-term funds;

(b) trading securities or other investments in securities -

(c) advances and other accounts with an analysis between -

(i) advances to customers;

(ii) advances to banks and other financial institutions;

(iii) accrued interest and other accounts; and

(iv) provisions for bad and doubtful debts and the related collateral security;

(d) held-to-maturity securities and investment securities, or held-to-maturity securities and non-trading securities;

(e) issued debt securities;

(f) other accounts and provisions such as obligations on leases, sale and repurchase agreements, and forward contracts with an analysis where material; and

(g) a maturity profile of the following assets and liabilities, unless immaterial -

(i) assets -

(A) advances to customers;

(B) placements with banks and other financial institutions;

(C) certificates of deposit held;

(D) debt securities with an analysis into those included in -

(I) held-to-maturity securities;

(II) trading securities or other investments in securities; and

(III) investment securities or non-trading securities;

(ii) liabilities -

(A) deposits and balances of banks and other financial institutions;

(B) current, fixed, savings and other deposits of customers;

(C) certificates of deposit issued; and

(D) issued debt securities;

(h) The information required to be provided in paragraphs (b) and (d) shall include, for each of the following 5 categories of securities namely held-to-maturity securities, investment securities, other investments in securities, trading securities and non-trading securities, the following analyses -

(i) those which are issued by -

(A) central governments and central banks;

(B) public sector bodies;

(C) banks and other financial institutions;

(D) corporate bodies; and

(E) others;

(ii) those which are -

(A) equity securities; and

(B) debt securities; and

(iii) those which are -

(A) listed, stating the market value of listed securities as at the balance sheet date; and

(B) unlisted.

(4) In relation to off-balance sheet exposure -

(a) contingent liabilities and commitments;

(b) derivatives with an analysis of -

(i) those related to -

(A) exchange rate contracts; and

(B) interest rate contracts;

(ii) the aggregate notional amounts of each significant class of derivative instruments entered into -

(A) for trading; and

(B) for hedging purposes;

(c) where applicable, the aggregate credit risk weighted amounts of its contingent liabilities and commitments, exchange rate contracts, interest rate contracts and other derivatives; and

(d) the aggregate replacement costs of its exchange rate contracts, interest rate contracts, and other derivative contracts.

(5) A description of -

(a) the main types of risk arising out of the issuer's business, including, where appropriate, credit, liquidity, interest rate, foreign exchange and market risks arising out of the issuer's trading positions; and

(b) the policies, procedures (including hedging policies) and controls used for measuring, monitoring and controlling those risks and for managing the capital required to support them.

(6) Where a geographical segment of the financial business represents 10% or more of the issuer's whole business, then that segment shall be further analysed by industry sector.
[c.f. LR App 16 para 35]

PART 4

INFORMATION IN INTERIM REPORTS

35. An issuer shall provide the information set out in sections 36 to 44 in its interim report.
[c.f. LR App. 16 para 37]

36. An issuer shall provide in its interim report -

(a) details of any accounting policies which have not been consistently applied and which were not disclosed in the issuer's most recent published annual accounts or prospectus registered under section 38D or 342C of the Companies Ordinance (Cap. 32);

(b) any significant changes in accounting policies, including those required by the applicable reporting standards together with -

(i) the reason for changing the accounting policy; and

(ii) a description of the nature and effects of the change; or

(A) where it is not possible to quantify the effects of the change in the accounting policies, or

(B) the effects are not significant,

this shall be stated.
[c.f. LR App. 16 para 37]

37. (1) Except where a change in accounting policy is required by an accounting standard issued during the interim period, an issuer shall prepare its interim report in accordance with the same accounting standards that it adopted in the preparation of its most recent published annual accounts or, for a newly listed corporation, in its prospectus.

(2) Where there has been any significant departure from the accounting standards the issuer adopted in preparing its most recently published annual accounts, the issuer shall provide a statement setting out particulars of, and reasons for, the departure.
[c.f. LR App. 16 para 38]

38. An issuer's audit committee shall review the interim report and, in the event that the audit committee disagrees with an accounting treatment which has been adopted, or the statement made in accordance with section 37(2) above, full details of such disagreement shall be disclosed in the interim report.
[c.f. LR App. 16 para 39]

39. An issuer shall provide in its interim report -

(a) a review and analysis by the directors of the group's performance in the interim period covering all those matters set out in section 30 and shall -

(i) focus on the significant changes in the group's performance since the most recent published annual report; and

(ii) give an indication of the group's prospects for the current financial year;

(b) Where the current information in relation to those matters set out in section 30 has not changed materially from the information disclosed in the most recent published annual report, a statement to that effect may be made and no additional disclosure is required.

[c.f. LR App. 16 para 40]

40. An issuer shall provide in its interim report the information concerning any share option scheme during the period covered by the interim report set out in sections 23(2), (3) and (4).
[c.f. LR 17.09, 17.07 and 17.08]

41. An interim report shall provide -

(a) particulars of any purchase, sale or redemption by the issuer or any of its subsidiaries of its securities during the interim period and cover the matters set out in section 3(1)(d); and

(b) details of interests in the equity or debt securities of the issuer or any associated corporation at the end of the interim period for each of the persons and cover the matters set out in section 6.

[c.f. LR App. 16 para 41]

42. (1) Where the accounting information given in an interim report has not been audited that fact shall be stated.

(2) If the accounting information contained in an interim report has been audited by the issuer's auditors, their report thereon including any qualifications shall be reproduced in full in the interim report.

[cf. LR App. 16 para.43]

43. An issuer shall provide in its interim report the following information in respect of the group -

(a) a statement as to whether it meets the provisions that it is expected to comply with in the Code on Corporate Governance Practices throughout the period covered by the interim report;

(b) in the event that the issuer does not comply with all the provisions of the Code on Corporate Governance Practices with which it is expected to comply, details of such non-compliance during the period and the reasons;

(c) in respect of the Model Code for directors, a statement in relation to the period covered by the interim report on -

(i) whether the issuer has adopted a code of conduct regarding directors' and supervisors' securities transactions on terms no less exacting than the required standard set out in the Model Code for directors;

(ii) having made specific enquiry of all directors and supervisors, whether its directors and supervisors have complied with, or whether there has been any non-compliance with, the required standard set out in the Model Code for directors and its code of conduct regarding securities transactions by directors and supervisors; and

(iii) in the event of any non-compliance with the required standard set out in the Model Code for directors, details of such non-compliance and an explanation of the remedial steps taken by the issuer to address such non-compliance;

(d) a statement as to whether or not it has complied with any relevant requirements in the rules of the recognized exchange company relating to the appointment of -

(i) a sufficient number of independent non-executive directors; and

(ii) an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise,

and, in the event of any non-compliance, an explanation of the remedial steps taken by the issuer to address such non-compliance; and

(e) a statement as to whether or not it has complied with any relevant requirement relating to the establishment of an audit committee and in the event of any non-compliance an explanation of the remedial steps taken by the issuer to address such non-compliance.

[c.f. LR App. 10 Part D para 15 and App. 16 paras 34 and 44]

44. Where an issuer is a banking company, the issuer shall, in addition to the requirements as set out in sections 36 to 43, provide in its interim report the information concerning its financial affairs during the period covered by the interim report set out in section 33.

[c.f. LR App. 15 para 1 and App. 16 para 49]

45. (1) Where an issuer is a financial conglomerate, it shall, in addition to the requirements as set out in sections 36 to 43, provide in its interim report the information set out in section 34 during the period covered by the interim report.

(2) If the market risk arising from the group's trading positions is not material, that fact shall be stated and the information required by section 34(5) may be omitted.

[c.f. LR App. 16 para 40(3)]

PART 5

INFORMATION IN PRELIMINARY ANNOUNCEMENTS OF FULL-YEAR RESULTS

46. The preliminary announcement of the results for an issuer's financial year shall be consistent with the issuer's accounts for the financial year that have been agreed with the auditors and shall contain -

(a) an income statement for the financial year, with comparative figures for the immediately preceding financial year;

(b) a balance sheet as at the end of the year, with comparative figures as at the end of the immediately preceding financial year;

(c) the notes to the issuer's accounts relating to turnover, taxation, earnings per share, dividends and any other notes necessary for a reasonable appreciation of the results for the year;

(d) particulars of any purchase, sale or redemption by the issuer or any of its subsidiaries of its listed securities during the year or if none have been purchased, sold or redeemed, a statement of that fact;

(e) a business review covering the following -

(i) a review of the development of the business of the group during the financial year and of its financial position at the end of the year;

(ii) details of important events affecting the group which have occurred since the end of the financial year; and

(iii) an indication of likely future developments in the business of the group;

(f) any supplementary information which is necessary for a reasonable appreciation of the results for the relevant year;

(g) a statement as to whether the issuer meets the provisions that it is expected to comply with in the Code on Corporate Governance Practices, details of any non-compliance with the provisions and the reasons;

(h) a statement as to whether or not the annual results have been reviewed by the audit committee of the issuer;

(i) where the auditors' report on the issuer's annual accounts is likely to be qualified or modified (whether or not it is also likely to be qualified), details of the qualification or modification; and

(j) where there are any significant changes in accounting policies, a statement describing those changes.

[c.f. LR App. 16 para 45]

47. Where an issuer is a banking company, the issuer shall, in addition to the requirements as set out in section 46, provide in its preliminary announcement of the

results for its financial year the information concerning its financial affairs, during the period, set out in section 33.
[c.f. LR App. 15 para 1 and App. 16 paras 45(1) and 49]

PART 6

INFORMATION IN PRELIMINARY ANNOUNCEMENTS OF INTERIM RESULTS

48. The preliminary announcement of an issuer's interim results shall be consistent with the issuer's interim financial statements for the first six months of each financial year and shall contain -

(a) an income statement for the current interim period in the form that it appears in the issuer's full interim report, with comparative figures for the comparable period of the immediately preceding financial year;

(b) a balance sheet as at the end of the interim period in the form that it appears in the issuer's full interim report, with comparative figures as at the end of the immediately preceding financial year;

(c) the notes to the issuer's accounts relating to turnover, taxation, earnings per share, dividends and any other notes necessary for a reasonable appreciation of the results for the period;

(d) particulars of any purchase, sale or redemption by the issuer or any of its subsidiaries of its listed securities during the relevant period, or if none have been purchased, sold or redeemed, that fact;

(e) subject to paragraph (f) a business review covering the following -

(i) a review of the development of the business of the group during the financial period and of its financial position at the end of the period;

(ii) details of important events affecting the group which have occurred since the end of the financial period; and

(iii) an indication of likely future developments in the business of the group, including its prospects for the current financial year; or

(f) where there have been no material changes in respect of the matters referred to in paragraph (e) since the most recent published annual report, an appropriate negative statement;

(g) a statement as to whether the issuer meets the provisions that it is expected to comply with in the Code on Corporate Governance Practices, details of any non-compliance with the provisions and the reasons;

(h) any supplementary information which is necessary for a reasonable appreciation of the results for the six-month period;

(i) a statement as to whether or not the interim results have been reviewed by the issuer's auditors or audit committee;

(j) full details of any disagreement by the auditors or the audit committee with the accounting treatment adopted;

(k) where the accounting information contained in a preliminary interim results announcement has been audited by the issuer's auditors and the auditors' report on the issuer's interim accounts is qualified or modified (whether or not it is also qualified), details of the qualification or modification; and

(l) where there are any significant changes in accounting policies, a statement describing those changes.

[c.f. LR App. 16 para 46]

49. Where an issuer is a banking company, the issuer shall, in addition to the requirements as set out in section 48, provide in the preliminary announcement of its interim results the information concerning its financial affairs, during the period covered by its interim financial statements, set out in section 33.
[c.f. LR App. 15 para 1, App. 16 paras 46(1) and 49]

PART 7

SUMMARY ANNUAL REPORTS

50. (1) A summary financial report of an issuer shall contain all the information and particulars included in the issuer's balance sheet and profit and loss account as they appear in the relevant annual report.

(2) In addition, a summary annual report of an issuer shall -

(a) contain the same information and particulars as are in the directors' report of the issuer which forms part of the annual report;

(b) if the auditors' report of the issuer contains any of the following statements -

(i) a statement that proper books of account have not been kept by the issuer or any of its subsidiaries;

(ii) a statement that proper returns adequate for the auditors' audit have not been received from branches of the issuer or any of its subsidiaries not visited by the auditors;

(iii) a statement that the issuer's balance sheet and (unless it is framed as a consolidated profit and loss account) profit and loss account referred to in subsection (1) are not in agreement with the books of account and returns;

(iv) a statement that the auditors failed to obtain all the information and explanations which, to the best of their knowledge and belief, are necessary for the purpose of their audit,

set out that statement;

(c) contain a statement from the issuer's auditors as to whether the auditors' report is qualified or otherwise modified, and (if the auditors' report is qualified or otherwise modified) set out the full auditors' report and any further information necessary for the understanding of the qualification or other modification;

(d) contain an opinion from the issuer's auditors as to whether the summary annual report is consistent with the annual report from which it is derived and whether it complies with the requirements of this section;

(e) provide a review of the development of the business of the group during the financial year and of the position at the end of that year;

(f) provide particulars of all important events which have occurred since the end of the financial year and affected the group;

(g) indicate the likely future developments of the business of the group;

(h) provide particulars specified under sections 161, 161A and 161B of the Companies Ordinance (Cap. 32);

(i) contain in a prominent position -

(i) on the front cover of the report;

(ii) (if there is more than one cover purporting to be the front cover) on every such cover;

(iii) (if the report has no cover or no front cover) on the first page of the report; or

(iv) (if the report has no cover and there is more than one page purporting to be the front page) on every such page,

a statement to the effect that the summary annual report only provides a summary of the information and particulars contained in the issuer's annual report from which it is derived and an entitled person may obtain, free of charge, a copy of the annual report;

(j) contain in a prominent position in the report a statement as to how an entitled person of the issuer may obtain, free of charge, a copy of the issuer's annual report;

(k) contain in a prominent position in the report a statement as to the manner in which an entitled person may in future notify the issuer of his wishes in relation to the sending to the person a copy of a summary annual report in place of a copy of the relevant annual report;

(l) state the names of the directors who have signed the report on behalf of the board of directors of the issuer;

(m) provide particulars of any purchase, sale or redemption by the issuer or any of its subsidiaries of its listed securities during the financial year or an appropriate negative statement; and

(n) provide the information in respect of the group -

(i) as is required to be provided under section 31; or

(ii) a summary of the information required under subparagraph (i), which shall include a statement indicating the overall compliance with, and highlighting any non-compliance with, the provisions that the issuer is expected to comply with in the Code on Corporate Governance Practices.

[c.f. LR App. 16 para 50]

PART 8

SUMMARY INTERIM REPORTS

51. A summary interim report of an issuer shall provide the following information in respect of the issuer -

(a) the information required under section 48;

(b) the information required under sections 43 (d) and (e);

(c) where the accounting information contained in a summary interim report has been audited by the issuer's auditors, an opinion from the auditors as to whether the summary interim report is consistent with the full interim report from which it is derived;

(d) the names of the directors who have signed the full interim report on behalf of the board of directors of the issuer;

(e) a statement to the effect that the summary interim report only provides a summary of the information and particulars contained in the issuer's full interim report;

(f) a statement as to how an entitled person may obtain, free of charge, a copy of the issuer's full interim report; and

(g) a statement as to the manner in which an entitled person may in future notify the issuer of his wishes to receive a copy of a summary interim report in place of a copy of the full interim report.

[c.f. LR App. 16 para 51]

SCHEDULE 6

[s.7A]

NOTIFIABLE TRANSACTIONS

PART 1

PRELIMINARY

Interpretation of Schedule 6

1. (1) In this Schedule, unless the context otherwise requires -

"enlarged group" (經擴大後集團) in relation to a transaction undertaken, or to be undertaken, by an issuer or any of its subsidiaries means -

(a) the issuer and its subsidiaries; and

(b) any business or subsidiary or, where applicable, assets acquired or proposed to be acquired since the date to which the most recent published audited accounts of the issuer have been made up, including the business or corporation or corporations or, where applicable, assets being acquired to which the transaction relates;

[c.f. LR 4.25 and 4.26]

"expanded group" (經擴充後集團) in relation to an issuer, means -

(a) the issuer and its subsidiaries; and

(b) any corporation which will become a subsidiary of the issuer by reason of an acquisition which has been agreed or proposed since the date to which the most recent published audited accounts of the issuer have been made up;

[c.f. LR App.1 Part B Note 2]

"qualified accountant" (合資格會計師) in relation to an issuer, means a person who is employed by the issuer on a full time basis to oversee the issuer's financial reporting procedures, internal controls and compliance with the relevant regulatory requirements;

[c.f. LR 3.24 (modified)]

"remaining group" (集團剩餘部分) in relation to a transaction undertaken, or to be undertaken, by an issuer or any of its subsidiaries means -

(a) the issuer and its subsidiaries; and

(b) any business or subsidiary or, where applicable, assets acquired or proposed to be acquired since the date to which the most recent published audited accounts of the issuer have been made up,

but does not include the business or corporation or corporations or, where applicable, assets being disposed of to which the transaction relates.
[c.f. LR 4.27]

(2) For the purposes of this Schedule, any reference to a "transaction" (交易) in relation to an issuer includes -

(a) the acquisition or disposal of assets, including deemed disposals referred to in section 6 of this Schedule, but does not include acquisitions and disposals of a revenue nature in the ordinary and usual course of business;
[c.f. LR 14.04 (1)(b), 14.04(1)(g) and 14.04(1)(g) Note 1]

(b) any transaction involving an issuer or any of its subsidiaries granting, receiving, transferring, exercising or terminating an option to acquire or dispose of assets or to subscribe for securities but does not include the termination of an option -

(i) under the terms of the original agreement entered into by the issuer or the subsidiary; and

(ii) which does not involve payment of any amount by way of penalty, damages or other compensation;
[c.f. LR 14.04 (1)(b) and 14.73]

(c) entering into or terminating a finance lease;
[c.f. LR 14.04(1)(c)]

(d) entering into or terminating an operating lease or sub-lease, including an operating lease or sub-lease of property, which, by virtue of their size, nature or number, have a significant impact on the operations of the group;
[c.f. LR 14.04(1)(d)]

(e) providing financial assistance, but does not include the provision of financial assistance in the ordinary and usual course of business by an issuer or any of its subsidiaries which is a banking company; or

[c.f. LR 14.04(1)(e)]

(f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, be it a partnership, a corporation, or any other form of joint arrangement.

[c.f. LR 14.04(1)(f)]

Classification of Transactions[3]

(Option A)

2. Subject to sections 3 to 8, in this Schedule transactions shall be classified as follows -

"share transaction" (股份交易), means a transaction involving an acquisition of assets (excluding cash) by an issuer or any of its subsidiaries where the consideration includes securities for which listing will be sought and where all relevant percentage ratios are less than 5 percent;

"discloseable transaction" (須披露交易), means a transaction or a series of transactions by an issuer or any of its subsidiaries where any relevant percentage ratio is 5 percent or more, but less than 25 percent;

"major transaction" (主要交易), means a transaction or a series of transactions by an issuer or any of its subsidiaries where any relevant percentage ratio is 25 percent or more, but less than 100 percent for an acquisition or 75 percent for a disposal;

"very substantial acquisition" (非常重大的收購), means an acquisition or a series of acquisitions of assets by an issuer or any of its subsidiaries where any relevant percentage ratio is 100 percent or more; and

"very substantial disposal" (非常重大的出售), means a disposal or a series of disposals of assets (including deemed disposals) by an issuer or any of its subsidiaries where any relevant percentage ratio is 75 percent or more.

[c.f. LR 14.06(1),(2),(3),(4),(5)]

[3] As paragraphs 31 to 33 of the Consultation Paper explain in more detail, we have considered 2 options for discloseable transactions. The boxes headed Option A illustrate how the requirements in relation to discloseable transactions could be codified. The boxes headed Option B illustrate how the provisions would appear without reference to discloseable transactions - which would then be regulated under Schedule 2.

(Option B)

2. Subject to sections 3 to 8, in this Schedule transactions shall be classified as follows -

"major transaction" (主要交易), means a transaction or a series of transactions by an issuer or any of its subsidiaries where any relevant percentage ratio is 25 percent or more, but less than 100 percent for an acquisition or 75 percent for a disposal;

"very substantial acquisition" (非常重大的收購), means an acquisition or a series of acquisitions of assets by an issuer or any of its subsidiaries where any relevant percentage ratio is 100 percent or more; and

"very substantial disposal" (非常重大的出售), means a disposal or a series of disposals of assets (including deemed disposals) by an issuer or any of its subsidiaries where any relevant percentage ratio is 75 percent or more.
[c.f. LR 14.06(3),(4),(5)]

Aggregation of Transactions

3. Transactions completed within any 12-month period and which are related are deemed a series of transactions and shall be aggregated as one transaction for the purpose of calculating the relevant percentage ratios.
[c.f. LR 14.22 (modified)]

4. Transactions are deemed to be related for the purposes of section 3 if they -

(a) are with the same party or parties connected or associated with one another;

(b) involve the acquisition or disposal of securities or interests in one corporation or group of corporations; or

(c) involve the acquisition or disposal of parts of one asset or group of assets.

[c.f. LR 14.23 (modified)]

5. Where a transaction involves both an acquisition and a disposal the relevant percentage ratios shall be applied to the acquisition and disposal separately.
[c.f. LR 14.24]

6. Where a subsidiary of an issuer allots shares, and the allotment will cause a reduction in the percentage equity interest of the issuer in such subsidiary, the allotment and reduction are deemed to be a disposal by the issuer of part of its interest in the subsidiary whether or not the subsidiary is consolidated in the accounts of the issuer, wholly owned by the issuer, or held directly or indirectly by the issuer.

[c.f. LR 14.29]

7. Where an issuer or any of its subsidiaries enters into a transaction by granting or receiving an option, and the monetary value of each of -

(a) the option premium;

(b) the exercise price;

(c) the value of the underlying assets; and

(d) the profits and revenue attributable to such assets,

has not been determined, the transaction shall be classified as a major transaction unless the issuer demonstrates the highest possible monetary value and uses such value for the purpose of classification of the transaction.
[c.f. LR 14.76(1)]

8. (1) Notwithstanding section 7, when the monetary value of each of -

(a) the option premium;

(b) the exercise price;

(c) the value of the underlying assets; and

(d) the profits and revenue attributable to such assets,

has been determined, the issuer shall reclassify the transaction.

(2) Where a higher relevant percentage ratio causes a different classification, the issuer shall comply with the relevant provisions of this Schedule for the reclassified transaction.
[c.f. LR 14.76(1)]

PART 2

ANNOUNCEMENTS

(Option A)

9. (1) Where an issuer or any of its subsidiaries enters into a share transaction, the issuer shall promptly disclose to the public the information referred to in sections 15 and 16.

(2) Where an issuer or any of its subsidiaries enters into a discloseable transaction, a major transaction, a very substantial acquisition or a very substantial disposal, the issuer shall promptly disclose to the public the information referred to in section 17 and, where the transaction involves an issue of securities for which listing will be sought, section 16.
[c.f. LR 14.34(2)]

(Option B)

9. Where an issuer or any of its subsidiaries enters into a major transaction, a very substantial acquisition or a very substantial disposal, the issuer shall promptly disclose to the public the information referred to in sections 15 and 17 and, where the transaction involves an issue of securities for which listing will be sought, section 16. [c.f. LR 14.34(2)]

10. Where a transaction has previously been disclosed to the public under this Schedule and -

(a) the transaction is terminated;

(b) there is any material variation of its terms; or

(c) there is any material delay in the completion of the transaction,

the issuer shall promptly disclose this event and the relevant facts to the public. [c.f. LR 14.36]

11. Where an issuer has disclosed to the public a transaction involving the granting or receiving of an option, it shall promptly disclose the relevant facts to the public -

(a) when the option expires;

(b) when the option holder notifies the grantor that the option will not be exercised; or

(c) where the issuer or any of its subsidiaries granted the option -

(i) when the option is exercised; or

(ii) when the issuer or the subsidiary becomes aware that the option holder has agreed to transfer, or has transferred, the option to a third party.

[c.f. LR 14.77]

PART 3

CIRCULARS AND SHAREHOLDERS' APPROVAL

(Option A)

12. (1) Where an issuer or any of its subsidiaries enters into a discloseable transaction the issuer shall prepare a circular containing the information referred to in -

(a) sections 17 to 20;

(b) section 21; and

(c) where the transaction involves an issue of securities for which listing will be sought, sections 16 and 22,

relating to the transaction.

(2) Where an issuer or any of its subsidiaries enters into a major transaction the issuer shall prepare a circular containing the information referred to in -

(a) subsection (1);

(b) section 23; and

(c) where the transaction is an acquisition, section 24,

relating to the transaction.

(3) Where an issuer or any of its subsidiaries enters into a very substantial disposal the issuer shall prepare a circular containing the information referred to in -

(a) subsections (1)(a) and (b) and (2)(b); and

(b) section 25,

relating to the transaction.

(4) Where an issuer or any of its subsidiaries enters into a very substantial acquisition the issuer shall prepare a circular containing the information referred to in -

(a) subsection (2), subject to the modification set out in section 26; and

(b) section 26,

relating to the transaction.
[New for cross-referencing]

(Option B)

12. (1) Where an issuer or any of its subsidiaries enters into a major transaction the issuer shall prepare a circular containing the information referred to in -

(a) sections 15, 17 to 21 and 23;

(b) where the transaction involves an issue of securities for which listing will be sought, sections 16 and 22; and

(c) where the transaction is an acquisition, section 24,

relating to the transaction.

(2) Where an issuer or any of its subsidiaries enters into a very substantial disposal the issuer shall prepare a circular containing the information referred to in -

(a) subsection (1)(a); and

(b) section 25,

relating to the transaction.

(3) Where an issuer or any of its subsidiaries enters into a very substantial acquisition the issuer shall prepare a circular containing the information referred to in -

(a) subsection (1), subject to the modification set out in section 26; and

(b) section 26,

relating to the transaction.
[New for cross-referencing]

13. An issuer shall disclose to the public and send to its shareholders the circular referred to in section 12 as soon as reasonably practicable and in any event no later than 21 days after it discloses the information relating to the transaction in accordance with section 9.
[c.f. LR 14.38]

14. Where an issuer or any of its subsidiaries enters into a major transaction, a very substantial acquisition or a very substantial disposal, shareholders' approval is required for the transaction and the issuer shall ensure that the transaction is conditional on approval by its shareholders in accordance with sections 27 to 32 of this Schedule.
[c.f. LR 14.40 and 14.49]

PART 4

CONTENTS OF ANNOUNCEMENTS

15. The information required to be disclosed under sections 9 and 12 includes -

(a) a description of the general nature of the transaction;
[c.f. LR 14.60(1)]

(b) details of the assets being acquired or disposed of, including the name of any corporation or business and the actual assets and properties where relevant and, if the assets include securities, the name and general description of the activities of the corporation in which the securities are or were held;
[c.f. LR 14.59(2) and 14.60(2)]

(c) a description of the principal business activities of the group and a general description of the principal business activities of the counterparty, if the counterparty is a corporation or legal person;
[c.f. LR 14.58(2)]

(d) the name of the counterparty;
[New]

(e) if the counterparty is a corporation or legal person and is not well-known to the public, having made all reasonable enquiries, to the best of the directors' knowledge, information, and belief, the names of the ultimate beneficial owners of such corporation or legal person;
[New]

(f) a statement confirming that, having made all reasonable enquiries, to the best of the directors' knowledge, information, and belief, the counterparty and its ultimate beneficial owners are third parties independent of the group and connected persons of the group;
[c.f. LR 14.58(3)]

(g) the date of the transaction;
[c.f. LR 14.58(3)]

(h) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms and conditions, including those of any arrangements for payment on a deferred basis;
[c.f. LR 14.58(4)]

(i) the basis upon which the consideration was determined;
[c.f. LR 14.58(5)]

(j) the value (book value and valuation, if any) of the assets which are the subject of the transaction;
[c.f. LR 14.58(6)]

(k) the net profits or losses (both before and after taxation and extraordinary items) attributable to the assets which are the subject of the transaction for the two financial years immediately preceding the transaction;
[c.f. LR 14.58(7)]

(l) the reasons for entering into the transaction, the benefits expected to accrue to the group, and a statement that the directors believe the terms are fair and reasonable and in the interests of the shareholders as a whole;
[c.f. LR 14.58(8)]

(m) details of any guarantee and any other security given or required as part of or in connection with the transaction; and
[c.f. LR 14.58(9)]

(n) the percentage figures resulting from the calculations described in the relevant percentage ratios to the transaction.
[New]

16. Where the transaction involves an issue of securities for which listing will be sought, the information required to be disclosed includes -

(a) the amount and details of the securities being issued including details of any restriction which applies to the subsequent sale of such securities;
[c.f. LR 14.59(1)]

(b) the value of the securities being issued with reference to the market price of the securities as at the date of the transaction;
[New for clarity]

(c) where there is a significant difference between the value referred to in paragraph (b) and the consideration as agreed between the parties, a statement to explain such difference;
[New for clarity]

(d) where the transaction involves an issue of securities of a subsidiary of the issuer, a statement as to whether the subsidiary will continue to be a subsidiary of the issuer following the transaction;
[c.f. LR 14.59(3)]

(e) a statement as to whether the announcement or the circular (as the case may be) constitute an invitation or offer to acquire, purchase or subscribe for the securities; and

[c.f. LR 14.59(4)]

(f) a statement as to whether an application has been or will be made to the relevant recognized exchange company for the listing of and permission to deal in the securities.

[c.f. LR 14.59(5)]

(Option A)

17. For a discloseable transaction, a major transaction, a very substantial acquisition and a very substantial disposal the information required to be disclosed includes -

(a) the information referred to in section 15 and, where the transaction involves an issue of securities for which listing will be sought, section 16;

[New for cross-referencing]

(b) in the case of a disposal -

(i) details of the gain or loss that the issuer expects to accrue in accordance with the applicable reporting standards; and

[c.f. LR 14.60(3)(a)]

(ii) the intended application of the sale proceeds (including whether such proceeds will be used to invest in any assets) and if the sales proceeds include any securities, whether they are to be listed or not;

[c.f. LR 14.60(3)(b) and 14.70(1)]

(c) where the transaction is a major transaction approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to section 28, details of the shareholder or closely allied group of shareholders, including their names, the number of securities of the issuer held by each such shareholder, the relationship between the shareholders, and sufficient information to demonstrate that these shareholders are a closely allied group of shareholders; and

[c.f. LR 14.60(5)]

(d) where the transaction involves a disposal of an interest in a subsidiary by the issuer, a statement as to whether the subsidiary will continue to be a subsidiary of the issuer following the transaction.

[c.f. LR 14.60(6)]

(Option B)

17. The information required to be disclosed under sections 9 and 12 also includes -

(a) in the case of a disposal -

(i) details of the gain or loss that the issuer expects to accrue in accordance with the applicable reporting standards; and
[c.f. LR 14.60(3)(a)]

(ii) the intended application of the sale proceeds (including whether such proceeds will be used to invest in any assets) and if the sales proceeds include any securities, whether they are to be listed or not;
[c.f. LR 14.60(3)(b) and 14.70(1)]

(b) where the transaction is a major transaction approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to section 28, details of the shareholder or closely allied group of shareholders, including their names, the number of securities of the issuer held by each such shareholder, the relationship between the shareholders, and sufficient information to demonstrate that these shareholders are a closely allied group of shareholders; and
[c.f. LR 14.60(5)]

(c) where the transaction involves a disposal of an interest in a subsidiary by the issuer, a statement as to whether the subsidiary will continue to be a subsidiary of the issuer following the transaction.
[c.f. LR 14.60(6)]

18. Where the issuer includes a profit forecast in the information it discloses in accordance with section 9, it shall include materially the same profit forecast in the required circular.
[c.f. LR 14.62 (modified)]

PART 5

CONTENTS OF CIRCULARS

General

19. A circular required under the provisions of this Schedule shall, where voting by shareholders of an issuer is required, contain -

(a) all material information to enable the shareholders to make an informed decision on whether or not to vote in favour of the transaction; and

(b) a recommendation from the directors of the issuer as to the voting action that the shareholders ought to take, indicating whether or not the proposed transaction described in the circular is, in the opinion of the directors, fair and reasonable and in the interests of the shareholders as a whole.

[c.f. LR 14.63(2)(a) and (c)]

20. (1) Where any shareholder is required to abstain from voting under these Rules, the issuer shall, having made all reasonable enquiries and to the extent that it is aware, include the following information in the required circular-

(a) a statement, as at the date by reference to which disclosure of shareholdings is made in the circular, as to whether and to what extent any precluded shareholder controls or is entitled to exercise control over the voting right in respect of his shares in the issuer;

[c.f. LR 2.17(1)]

(b) a statement that the precluded shareholders and their associates will abstain from voting on the relevant resolution;

[c.f. LR 14.63(2)(d)]

(c) particulars of -

(i) any voting trust or other agreement or arrangement or understanding (other than a sale) entered into by or binding upon any precluded shareholder; and

(ii) any obligation or entitlement of any precluded shareholder as at the date by reference to which disclosure of the shareholding of any precluded shareholder is made in the circular,

whereby he has, or may have, temporarily or permanently passed control over the exercise of the voting right in respect of his shares in the issuer to a third party, generally or for specific matters;

[c.f. LR 2.17(2)]

(d) a detailed explanation of any discrepancy between the beneficial shareholding interest of any precluded shareholder in the issuer as disclosed in the circular and the number of shares

in the issuer in respect of which he will control or will be entitled to exercise control over the voting right at the required general meeting; and

[c.f. LR 2.17(3)]

(e) a description of the steps undertaken by any precluded shareholder to ensure that shares being the subject of the discrepancy referred to in paragraph (d) are not voted.

[c.f. LR 2.17(4)]

(2) In subsection (1) "precluded shareholder" (不能投票的股東) means a shareholder who is required to abstain from voting under these Rules.

(Option A)

Discloseable Transaction Circulars

21. (1) In addition to the information referred to in section 12(1)(a) and (c) the information required to be disclosed for a discloseable transaction includes -

(Option B)

21. (1) In addition to the information referred to in section 12(1)(b) and (c) the information required to be disclosed includes -

(a) information concerning the effect of the transaction on the earnings and assets and liabilities of the group;

[c.f. LR 14.64(5)]

(b) where the transaction involves a disposal of assets, the excess or deficit of the consideration over or below the net book value of the assets; and

[c.f. LR 14.70(2)]

(c) where a corporation either becomes a subsidiary or ceases to be a subsidiary of the issuer as a result of the transaction -

(i) the percentage interest held by the issuer in that corporation after the acquisition or disposal; and

(ii) in the case of a disposal, a statement on whether the remaining shares are to be sold or retained;

[c.f. LR 14.64(6)]

(d) where a profit forecast appears in any circular -

(i) the forecast shall be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, shall be stated;

(ii) the accounting policies and calculations for the forecast shall be examined and reported on by the reporting accountants or auditors, as appropriate, and their report shall be set out;

(iii) the financial adviser shall report, in addition, that they have satisfied themselves that the forecast has been stated by the directors after due and careful enquiry, and such report shall be set out; and

[c.f. LR 14.64(2) and App. 1 Part B para 29]

(e) the calculations in arriving at the relevant percentage ratios for the transaction.

[New]

(Option A)

(2) In addition to the information referred to in subsection (1) and section 12(1)(a) and (c), the general information required to be disclosed for a discloseable transaction also includes -

(Option B)

(2) In addition to the information referred to in subsection (1) and section 12(1)(b) and (c), the general information required to be disclosed also includes -

(a) the full name of the issuer;

[c.f. LR 14.64(2) and App. 1 Part B para 1]

(b) a statement to the effect that -

"This document includes particulars given in compliance with the Securities and Futures (Stock Market Listing) Rules. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the

omission of which would make any statement herein misleading.";

[c.f. LR 14.64(2) and App. 1 Part B para 2]

(c) where the circular includes a statement purporting to be made by an expert, a statement -

(i) specifying the qualifications of such expert and whether such expert has any shareholding in any member of the group or the right (whether legally enforceable or not) to subscribe for or to nominate persons to subscribe for securities in any member of the group and, if so, a full description thereof;

(ii) that the expert has given and has not withdrawn his written consent to the issue of the circular with the expert's statement included in the form and context in which it is included;

(iii) of the date on which the expert's statement was made; and

(iv) whether or not the statement was made by the expert for incorporation in the circular;

[c.f. LR 14.64(2) and App. 1 Part B para 5]

(d) particulars of any litigation or claims of material importance pending or threatened against any member of the expanded group, or an appropriate negative statement;

[c.f. LR 14.64 and App. 1 Part B para 33]

(e) the full name and professional qualification, if any, of the secretary of the issuer and the qualified accountant of the issuer;

[c.f. LR 14.64(2) and App. 1 Part B para 35]

(f) the situation of the registered office and, if different, the head office and transfer office;

[c.f. LR 14.64(2) and App. 1 Part B para 36]

(g) where any director or supervisor is a director or employee of a corporation which has an interest or short position in the shares of the issuer which would fall to be disclosed to the issuer under the provisions of Divisions 2 and 3 of Part XV of the Ordinance, a statement of that fact;

[c.f. LR 14.64(3) and App. 1 Part B para 34]

(h) details of existing or proposed service contracts of the issuer's directors, proposed directors, supervisors and proposed supervisors with any member of the group, except for those

contracts which will expire or may be terminated by the employer within a year without payment of any compensation (other than statutory compensation), or an appropriate negative statement;

[c.f. LR 14.64(7)]

(i) particulars of the nature and extent of the interests, if any, of each of the directors and proposed directors (other than independent non-executive directors) of the issuer and their respective associates in any business apart from the group's business, which competes or is likely to compete, either directly or indirectly, with the group's business;

[c.f. LR 8.10(2) and 14.64(8) (modified)]

(j) (i) a statement showing the interests and short positions of each director, supervisor and chief executive of the issuer in the shares in, or debentures of, the issuer or any associated corporation -

(A) as recorded in the register required by the issuer to be kept under section 352 of the Ordinance;

(B) as otherwise notified to the issuer pursuant to the Model Code for directors; or

(C) if there is no such interest or right in such shares or debentures, a statement of that fact;

(ii) a statement required by subparagraph (i) shall specify the corporation in which the interests or short positions are held, the class to which those securities belong and the number of such securities held, but need only disclose the existence of the following interests by way of a general statement to indicate that the directors or supervisors hold such interests -

(A) in relation to the interests of a director or supervisor in the shares of the issuer or any of its subsidiaries, if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares;

(B) in relation to the non-beneficial interests of directors and supervisors in the shares of any subsidiary of the issuer, in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the holding company of that subsidiary or the issuer and

such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member;

(iii) a statement showing the interests or short positions, so far as is known to any director or chief executive of the issuer, of every person, other than a director or chief executive of the issuer, in the shares of the issuer as recorded in the register required to be kept under section 336 of the Ordinance and the amount of such interests and short positions, or if there are no such interests or short positions recorded in the register, a statement of that fact;

(iv) if two or more persons are interested in the same shares or debentures referred to in subparagraphs (ii) and (iii), particulars shall be provided of the extent of any duplication which occurs;

[c.f. LR 14.64(3) and App. 1 Part B para 38]

(Option A)

22. In addition to the information referred to in section 12(1)(a) and (b), where the transaction is an acquisition which involves the issue of securities for which listing will be sought, the information required to be disclosed includes -

(Option B)

22. In addition to the information referred to in section 12(1)(a) and (c), where the transaction is an acquisition which involves the issue of securities for which listing will be sought, the information required to be disclosed includes -

(a) in case of a new class of securities to be listed, a statement that all necessary arrangements have been made enabling the securities to be admitted into the clearing and settlement system operated by a recognized clearing house or an appropriate negative statement;

[c.f. LR 14.65(1) and App. 1 Part B para 9]

(b) the nature and amount of the issue including the number of securities which have been or will be created or issued, if predetermined;

[c.f. LR 14.65(1) and App. 1 Part B para 10]

(c) the authorized share capital of the issuer, the amount issued or agreed to be issued, the amount paid up, the nominal value and a description of the shares; and

[c.f. LR 14.65(2) and App. 1 Part B para 22(1)]

(d) where the consideration for the transaction includes the issuer's shares or securities that are convertible into the issuer's shares, a statement as to whether the transaction will result in a change in control of the issuer.

[c.f. LR 14.65(3)]

Major Transaction Circulars

(Option A)

23. (1) In addition to the information referred to in section 12(2)(a) and (c) the information required to be disclosed for a major transaction includes -

(Option B)

23. (1) In addition to the information referred to in section 12(1)(b) and (c) the information required to be disclosed for a major transaction includes -

(a) where the transaction involves an acquisition or disposal of any property, or the equity capital of a corporation whose assets consist solely or mainly of property, a valuer's report -

(i) on the property being acquired or disposed of, unless the property is being acquired from the Hong Kong Government at a public auction or by sealed tender; and

(ii) which complies with paragraphs 34(2), 34(3) and 46 of the Third Schedule of the Companies Ordinance (Cap. 32);

[c.f. LR 14.66(3)]

(b) a statement by the directors that in their opinion the working capital available to the expanded group is sufficient or, if not, how it is proposed to provide the additional working capital necessary;

[c.f. LR 14.66 and App. 1 Part B para 30]

(c) a statement by the issuer's financial adviser or auditors confirming that -

(i) the statement referred to in paragraph (b) has been made by the directors after due and careful enquiry; and

(ii) any persons or institutions providing finance have confirmed in writing that such facilities exist;

[c.f. LR 14.66(4)]

(d) the issuer's most recent published audited accounts;

[c.f. LR 14.66(5) and App. 16 para 48(1)]

(e) where the transaction involves an acquisition or disposal of an interest in an infrastructure project or a corporation whose principal business activities are to undertake infrastructure projects, a valuation report on the business or corporation and any traffic study report in respect of the infrastructure project, provided that -

(i) the report sets out all principal assumptions including discount rate or growth rate used;

(ii) the report sets out a sensitivity analysis based on various discount rates and growth rates; and

(iii) where any valuation is based on or constitutes a profit forecast, such profit forecast complies with section 21(1)(d); and

[c.f. LR 14.71]

(f) where the group is regarded as a financial conglomerate, all information required by section 34 of Schedule 5 provided that, if the market risk arising from the group's trading positions is not material, that fact shall be stated and the information required by section 34(5) of Schedule 5 may be omitted.

[c.f. LR App. 16 para 48(3)]

(Option A)

(2) In addition to the information referred to in subsection (1) and section 12(2)(a) and (c) the general information required to be disclosed for a major transaction also includes -

(Option B)

(2) In addition to the information referred to in subsection (1) and section 12(1)(b) and (c) the general information required to be disclosed for a major transaction also includes -

(a) the procedure by which the shareholders may demand a poll pursuant to the issuer's constitutional documents;

[c.f. LR 14.66 and App. 1 Part B para 8A]

(b) a statement as at the latest practicable date (which shall be stated) of the following, on a consolidated basis, if material -

(i) the total amount of any debt securities of the expanded group issued and outstanding, and authorized or otherwise created but unissued, and term loans, distinguishing between guaranteed, unguaranteed, secured (whether the security is provided by any member of the expanded group or by third parties) and unsecured, or an appropriate negative statement;

(ii) the total amount of all other borrowings or indebtedness in the nature of borrowing of the expanded group including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debt, or an appropriate negative statement;

(iii) all mortgages and charges of the expanded group, or an appropriate negative statement; and

(iv) the total amount of any contingent liabilities or guarantees of the expanded group, or an appropriate negative statement,

but intra-group liabilities shall be disregarded, with a statement to that effect being made;

[c.f. LR 14.66(2) and App. 1 Part B para 28]

(c) a statement as to the financial and trading prospects of the expanded group for at least the current financial year, together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the circular and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits of the expanded group;

[c.f. LR 14.66(2) and App. 1 Part B para 29(1)(b)]

(d) full particulars of the nature and extent of the interest, direct or indirect, if any, of every director, proposed director, supervisor, proposed supervisor or expert (as named in the circular) in any assets which have been, since the date to which the most recent

published audited accounts of the issuer were made up, acquired or disposed of by or leased to any member of the expanded group, or are proposed to be acquired or disposed of by or leased to any member of the expanded group, including -

(i) the consideration passing to or from any member of the expanded group; and

(ii) short particulars of all transactions relating to any such assets which have taken place within such period, or an appropriate negative statement;

[c.f. LR 14.66 and App. 1 Part B para 40]

(e) full particulars of any contract or arrangement subsisting at the date of the circular in which a director or supervisor of the issuer is materially interested and which is significant in relation to the business of the expanded group, or an appropriate negative statement;

[c.f. LR 14.66 and App. 1 Part B para 40]

(f) the dates of and parties to all material contracts (not being contracts entered into in the ordinary and usual course of business) entered into by any member of the expanded group within the two years immediately preceding the issue of the circular, together with a summary of the principal contents of such contracts and particulars of any consideration passing to or from any member of the expanded group;

[c.f. LR 14.66 and App. 1 Part B para 42]

(g) details of a reasonable period of time (being not less than 14 days) during which and a place in Hong Kong at which the following documents (or copies thereof) where applicable may be inspected -

(i) the memorandum and articles of association or equivalent documents of the issuer;

(ii) each of the following contracts -

(A) any service contracts disclosed pursuant to section 21(2)(h); and

(B) any material contracts disclosed pursuant to paragraph (f);

or where any of the above contracts have not been reduced into writing, a memorandum giving full particulars thereof;

(iii) all reports, letters or other documents, balance sheets, valuations and statements by any expert any part of which is extracted or referred to in the circular;

(iv) a written statement signed by the reporting accountants setting out the adjustments made by them in arriving at the figures shown in their report and giving the reasons therefor;

(v) the audited accounts of the issuer for each of the two financial years immediately preceding the issue of the circular together with (in the case of an issuer incorporated in Hong Kong) all notes, certificates or information required by the Companies Ordinance (Cap. 32); and

(vi) a copy of each circular issued pursuant to Schedule 6 or Schedule 7 which has been issued since the date of the most recent published audited accounts,

and where any of the documents referred to in this paragraph are not in the English language, translations thereof in the English language shall be available for inspection.
[c.f. LR 14.66, 19A.57 and App. 1 Part B para 43]

(Option A)

24. (1) In addition to the information referred to in section 12(2)(a) and (b), where the transaction is an acquisition, the information required to be disclosed includes -

(Option B)

24. (1) In addition to the information referred to in section 12(1)(a) and (b), where the transaction is an acquisition, the information required to be disclosed includes -

(a) in the case of an acquisition of any business, corporation or corporations, an accountants' report which shall contain -

(i) the financial statements for each of the three financial years (applicable to such business or corporation) immediately preceding the issue of the circular (or, if less, the period since commencement of such business or the incorporation or establishment of such corporation, as the case may be) in respect of the

business, corporation or corporations being acquired, provided that

[c.f. LR 4.06(1)-(4) and (6) and 14.67(4)(a)(i)]

(A) the accounts on which the report is based shall relate to a financial period ended six months or less before the circular is issued;

[c.f. LR 14.67(4)(a)(i)]

(B) the financial information on the business, corporation or corporations being acquired, as set out in the accountants' report shall be prepared using accounting policies materially consistent with those of the issuer;

[c.f. LR 14.67(4)(a)(i)]

(C) notwithstanding subparagraph (A), if the corporation being acquired is itself a listed corporation on a recognized stock market, the accountants' report as required under subparagraph (A) shall be replaced by any published annual accounts of that corporation being acquired for the three financial years immediately preceding the issue of the circular;

[c.f. LR 4.01(3)]

(D) where the issuer acquires more than one business or corporation or group of corporations, the report shall cover the individual accounts of each of the businesses, corporations or groups of corporations being acquired;

[c.f. LR 4.09(2)]

(E) where the business or corporation being acquired is regarded as a financial conglomerate in any of the three financial years (or, if less, the period since commencement of such business or the incorporation or establishment of such corporation, as the case may be) to which the report has been made up, the report shall include all the information required by section 34 of Schedule 5 in respect of the financial year or years in which such business or corporation is regarded as a financial conglomerate; and

[c.f. LR 4.06(5)]

(ii) a pro forma statement of the assets and liabilities of the enlarged group, prepared using accounting policies materially consistent with those of the issuer;

[c.f. LR 14.67(4)(a)(ii)]

(b) in the case of an acquisition of any assets (other than a business or corporation) with an identifiable income stream or assets valuation -

(i) a profit and loss statement and valuation (where available) for the three preceding financial years (or, where the asset has been held by the vendor for a shorter period, such period) on the identifiable net income stream and valuation in relation to such assets provided that -

(A) the profit and loss statement and valuation shall be reviewed by the auditors or reporting accountants of the issuer to ensure that such information has been properly compiled and derived from the underlying books and records;

(B) the financial information on which the profit and loss statement is based shall relate to a financial period ended six months or less before the circular is issued;

(C) the financial information on the assets being acquired as set out in the circular shall be prepared using accounting policies materially consistent with those of the issuer; and

[c.f. LR 14.67(4)(b)(i)]

(ii) a pro forma statement of the assets and liabilities of the enlarged group, prepared using accounting policies materially consistent with those of the issuer;

[c.f. LR 4.25 and 14.67(4)(b)(ii)]

(c) a discussion and analysis of the business or corporation acquired during the period covered by the accountants' report as referred to in paragraph (a) covering all those matters set out in section 30 of Schedule 5.

[c.f. LR 14.66(5) and App. 16 para 48(2)]

(Option A)

(2) In addition to the information referred to in subsection (1) and section (12)(2)(a) and (b), where the transaction is an acquisition, the general information required to be disclosed also includes -

(Option B)

(2) In addition to the information referred to in subsection (1) and section (12)(1)(a) and (b), where the transaction is an acquisition, the general information required to be disclosed also includes -

(a) if after the date to which the most recent published audited accounts of the issuer have been made up, any member of the group has acquired or agreed to acquire or is proposing to acquire a business or an interest in the share capital of a corporation whose profits or assets make or will make a material contribution to the figures in the audited accounts or next published accounts of the issuer -

(i) a statement of the general nature of the business or of the business of the corporation in which an interest has been or is being acquired, together with particulars of the situation of the principal establishments and of the principal products;

(ii) a statement of the aggregate value of the consideration for the acquisition and how it was or is to be satisfied; and

(iii) if the aggregate of the remuneration payable to and benefits in kind receivable by the directors and supervisors of the acquiring corporation will be varied in consequence of the acquisition, full particulars of such variation, or an appropriate negative statement;

[c.f. LR 14.67(2) and App. 1 Part B para 31(2)]

(b) (i) information for the three preceding financial years with respect to the profits and losses, financial record and position, set out as a comparative table and the most recent published audited balance sheet together with the notes on the accounts for the last financial year -

(A) for the group; and

(B) for any corporation acquired since the date of the most recent published audited accounts of the group in respect of which an accountants' report has already been submitted to shareholders or which was itself during the preceding 12 months a listed corporation on a recognized stock market; and

(ii) a pro forma statement combining the assets and liabilities and profits or losses for the most recent financial year given in accordance with subparagraph (i);

[c.f. LR 14.67(2) and App. 1 Part B para 31(3)]

(c) a statement by the directors of any material adverse change in the financial or trading position of the group since the date to which the most recent published audited accounts of the issuer have been made up, or an appropriate negative statement;

[c.f. LR 14.67(2) and App. 1 Part B para 32]

(d) in relation to each proposed director and supervisor joining the issuer and each member of senior management joining the group in connection with the transaction, brief biographical details of the proposed director, supervisor or member of the senior management including -

(i) his name;

(ii) his age;

(iii) positions held with the group;

(iv) length of service with the group;

(v) where he is related to any other director or supervisor of the issuer or senior manager of the group, the name of the director, supervisor or senior manager and how they are related; and

(vi) such other information (which may include business experience) of which shareholders ought to be aware, pertaining to the ability or integrity of such persons.

[c.f. LR 14.67(3) and App. 1 Part B para 34]

Very Substantial Disposal Circulars

(Option A)

25. In addition to the information referred to in section 12(3)(a) the information required to be disclosed for a very substantial disposal includes -

(Option B)

25. In addition to the information referred to in section 12(2)(a) the information required to be disclosed for a very substantial disposal includes -

(a) in the case of a disposal of any business, corporation or corporations -

(i) a report made by the reporting accountants which shall set out the financial statements for each of the three financial years immediately preceding the issue of the circular in respect of -

(A) the issuer and its subsidiaries with the business or corporation or corporations being disposed of shown separately as discontinuing operations; and

(B) any business or subsidiary acquired or proposed to be acquired since the date to which the most recent published audited accounts of the issuer have been made up; and

[c.f. LR 4.06A and 14.68(2)(a)(i)]

(ii) a pro forma income statement, balance sheet and cash flow statement of the remaining group, prepared using accounting policies materially consistent with those of the issuer;

[c.f. LR 14.68(2)(a)(ii)]

(b) in the case of a disposal of any assets (other than a business or corporation) with an identifiable income stream or assets valuation -

(i) a profit and loss statement and valuation (where available) for the three preceding financial years (or, where the asset has been held by the vendor for a shorter period, such period) on the identifiable net income stream and valuation in relation to such assets provided that -

(A) such profit and loss statement and valuation shall be reviewed by the auditors or reporting accountants of the issuer to ensure that such information has been properly compiled and derived from the underlying books and records; and

(B) the financial information on which the profit and loss statement is based shall relate to a financial period ended six months or less before the circular is issued;

[c.f. LR 14.68(2)(b)(i)]

(ii) a pro forma profit and loss statement and net assets statement on the remaining group, prepared using accounting policies materially consistent with those of the issuer;

[c.f. LR 14.68(2)(b)(ii)]

(c) a discussion and analysis of the performance of the remaining group covering all those matters set out in section 30 of Schedule 5.

[c.f. LR 14.68(3) and App. 16 para 32]

Very Substantial Acquisition Circulars

(Option A)

26. In addition to the information referred to in section 12(4)(a) the information required to be disclosed for a very substantial acquisition includes -

(Option B)

26. In addition to the information referred to in section 12(3)(a) the information required to be disclosed for a very substantial acquisition includes -

(a) the valuer's report as required under section 23(1)(a) shall be modified to cover the enlarged group's interests in property;

[c.f. LR 14.69(3)]

(b) in the case of an acquisition of any business, corporation or corporations, the information required under section 24(1)(a)(ii) shall be replaced by a pro forma income statement, balance sheet and cash flow statement of the enlarged group;

[c.f. LR 4.26 and 14.69(4)(a)(ii)]

(c) in the case of an acquisition of any assets (other than a business or corporation) with an identifiable income stream or assets valuation, the information required under section 24(1)(b)(ii) shall be replaced by a pro forma profit and loss statement and net assets statement on the enlarged group;

[c.f. LR 4.26 and 14.69(4)(b)(ii)]

(d) general information on the trend of the business of the group since the date to which the accounts of the issuer were made up and a statement as to the financial and trading prospects of the group for at least the current financial year; and

[c.f. LR 14.69(6)]

(e) a discussion and analysis of the performance of the enlarged group for the three preceding financial years, covering all those matters set out in section 30 of Schedule 5.

[c.f. LR 14.69(7) and App. 16 para 32]

(f) in the accountants' report, if required under section 24(1)(a)(i), a statement of indebtedness as at the end of the period reported on showing, as regards bank loans and overdrafts and separately as regards other borrowings of the business or corporation or corporations covered by the report, the aggregate amounts repayable -

(i) on demand or within a period not exceeding one year;

(ii) within a period of more than one year but not exceeding two years;

(iii) within a period of more than two years but not exceeding five years; and

(iv) within a period of more than five years.

[c.f. LR 4.06(7) and 14.69(4)(a)(i)]

PART 6

SHAREHOLDERS' APPROVAL AND VOTING

27. Where shareholders' approval is required under the provisions of this Schedule, the issuer shall obtain such approval at a general meeting of its shareholders. [c.f. LR 14.44 and 14.49]

28. Notwithstanding section 27, for a major transaction, an issuer may obtain the required shareholders' approval -

(a) by obtaining written shareholders' approval from a shareholder or a closely allied group of shareholders who together hold more than 50 percent in nominal value of the securities giving the right to attend and vote at the general meeting had the issuer convened such a meeting;

(b) if no shareholder is required to abstain from voting under these Rules had the issuer convened a general meeting to approve the transaction; and

(c) if, where an accountants' report is required under the provisions of this Schedule, the reporting accountants provide an unqualified opinion for inclusion in the relevant circular.

[c.f. LR 14.44, 14.67(4)(a) Note and 14.86]

29. (1) Where a shareholder has a material interest in a major transaction, very substantial acquisition or very substantial disposal, the issuer shall ensure that such shareholder and his associates abstain from voting at the general meeting on the resolution to approve the transaction.

(2) Where a shareholder has a material interest in a major transaction, very substantial acquisition or very substantial disposal, but he or any of his associates fails to abstain from voting at the general meeting on the resolution to approve the transaction, the shareholders' approval referred to in section 14 shall not be regarded as having been obtained.

[c.f. LR 14.46 and 14.49]

30. Where any shareholder is required to abstain from voting at a general meeting on a resolution, the vote on the resolution shall be taken on a poll.

[c.f. LR 14.46 and 14.49]

31. Where a vote on a resolution taken at a general meeting is taken on a poll, the issuer shall -

(a) promptly disclose to the public the results of the poll including -

(i) the total number of shares entitling their holders to attend and vote for or against on the resolution at the meeting;

(ii) the total number of shares the holders of which can attend the meeting but may only vote against the resolution; and

(iii) the number of shares represented by votes for and against the resolution;

(b) appoint its auditors, share registrar or another firm of accountants which is qualified to serve as the auditors for an issuer under Schedule 3 to act as scrutineer for the vote-taking, and state the identity of the scrutineer when it discloses the information in accordance with this section; and

(c) confirm, when it discloses the information in accordance with this section, whether or not any parties stated in the relevant circular as having an intention to vote against or to abstain from voting on the resolution have done so at the general meeting.

[c.f. LR 13.39(5), 14.47 and 14.50]

32. An issuer shall have appropriate procedures in place to record that any parties who are required to abstain or have stated their intention to vote against the relevant resolution for a transaction have done so at the general meeting.
[c.f. LR 13.42]

PART 7

NOTICE

33. An issuer shall send any required circular to its shareholders at the same time as or before it gives notice of the required general meeting.
[c.f. LR 14.41 and 14.51]

34. Where any material information comes to the attention of an issuer or any of its directors after the issue of the required circular, the issuer shall disclose to the public the information not less than 14 days before the date of the required general meeting.
[c.f. LR 14.42 and 14.52]

35. Where the material information comes to the attention of the issuer or any of its directors when there are less than 14 days before the date of the required general meeting, the issuer and its directors shall postpone or adjourn and reconvene the meeting so as to comply with section 34.
[c.f. LR 14.43 and 14.53]

36. (1) Where the constitutional documents of the issuer prohibit it and its directors from postponing or adjourning the general meeting referred to in section 35, the issuer and its directors shall cause a resolution to be proposed to postpone or adjourn and reconvene the meeting so as to comply with section 34.

(2) Where the general meeting referred to in subsection (1) is not postponed or adjourned and reconvened so as to comply with section 34, the shareholders' approval required under these Rules for the transaction shall not be regarded as having been obtained.
[c.f. LR 13.40 and 13.41(modified)]

SCHEDULE 7

[s.7A]

CONNECTED TRANSACTIONS

PART 1

PRELIMINARY

Interpretation of Schedule 7

1. (1) In this Schedule, unless the context otherwise requires -

"associate" (聯繫人) has the meaning assigned to it in Schedule 1, but also includes -

(a) any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of, a person referred to in paragraphs (a), (b) or (c) of the definition of "connected person";

(b) a father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew, and niece of a person referred to in paragraphs (a), (b) or (c) of the definition of "connected person"; and

(c) any person whom the Commission deems to be a connected person because the person has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, for the sole or dominant purpose of avoiding any of the provisions of this Schedule;

[c.f. LR 14A.11 (modified)]

"cap" (上限) in relation to a transaction, means the maximum aggregate annual value set for the transaction in accordance with section 15(b);

"connected person" (關連人士) in relation to an issuer, includes -

(a) a director, chief executive or substantial shareholder of the issuer or any of its subsidiaries;

(b) any person who was a director of the issuer or any of its subsidiaries within the 12 months prior to the date of the transaction;

(c) a promoter or supervisor of a Mainland issuer;

(d) any associate of a person referred to in paragraphs (a), (b) or (c), but does not include a corporation which is an associate of such a person only because such person has an indirect interest in that corporation through its shareholding in the issuer;

(e) any non wholly owned subsidiary of the issuer where any connected persons (other than at the level of the issuer's subsidiaries) referred to in paragraphs (a), (b), (c) or (d) are, individually or together, entitled to exercise, or control the exercise of, 10 percent or more of the voting power (other than through the issuer) at any general meeting of such non wholly owned subsidiary; and

(f) any subsidiary of a non wholly owned subsidiary referred to in paragraph (e),

but -

(g) does not include a wholly owned subsidiary of the issuer; and
[c.f. LR 14A.11 and 14A.12]

(h) in the case of a Mainland issuer does not include a Mainland governmental body,
[c.f. LR 19A.19]

and for the purposes of this definition "connected persons (other than at the level of the issuer's subsidiaries) referred to in paragraphs (a), (b), (c) or (d)" mean the following persons -

(i) a director, chief executive or substantial shareholder of the issuer;

(ii) any person who was a director of the issuer within the 12 months prior to the date of the transaction;

(iii) a promoter or supervisor of a Mainland issuer;

(iv) any associate of a person referred to in paragraphs (i), (ii) or (iii), but does not include a corporation which is an associate of such a person only because such person has an indirect interest in that corporation through its shareholding in the issuer,

and in determining whether any of such connected persons are, individually or together, entitled to exercise, or control the exercise of, 10 percent or more of the voting power at any general meeting of an issuer's non wholly owned subsidiary, any indirect interest held by such person in that subsidiary through its shareholding in the issuer shall not be counted;
[New for clarity]

"continuing connected transaction" (持續關連交易) means a connected transaction involving the provision of goods or services, which is carried out in the ordinary and usual course of the group's business on a continuing or recurring basis and is expected to extend over a period of time.
[c.f. LR 14A.14]

"expanded group" (經擴充後集團) in relation to an issuer, means -

(a) the issuer and its subsidiaries; and

(b) any corporation which will become a subsidiary of the issuer by reason of an acquisition which has been agreed or proposed since the date to which the most recent published audited accounts of the issuer have been made up;
[c.f. LR App. 1 Part B Note 2]

(2) For the purposes of this Schedule, a "transaction" in relation to an issuer includes the following, whether or not it is of a revenue nature in the ordinary and usual course of business -

(a) the acquisition or disposal of assets including deemed disposals referred to in section 6 of Schedule 6;

(b) any transaction involving an issuer or any of its subsidiaries granting, receiving, transferring, exercising or terminating an option to acquire or dispose of assets or to subscribe for securities but does not include the termination of an option -

(i) under the terms of the original agreement entered into by the issuer or the subsidiary; and

(ii) which does not involve payment of any amounts by way of penalty, damages or other compensation,

provided that where an issuer or any of its subsidiaries receives an option from a connected person, any non-exercise of the option or transfer of the option to a third party shall be treated as if the option was exercised;
[c.f. LR 14A.10(13)(b), 14A.68 and 14A.70(3)]

(c) entering into or terminating a finance lease;

(d) entering into or terminating an operating lease or sub-lease, including an operating lease or sub-lease of property;

(e) providing or receiving financial assistance;

(f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, be it a partnership, a corporation, or any other form of joint arrangement;

(g) issuing new securities;

(h) the provision of or receipt of services;

(i) sharing of services; and

(j) providing or acquiring raw materials, intermediate products and finished goods.

[c.f. LR 14A.10]

References to Connected Transactions

2. (1) For the purposes of this Schedule "connected transactions" (關連交易) are the transactions described in subsections (2) to (5).

(2) Any transaction between an issuer or any of its subsidiaries and a connected person.

(3) Any transaction between an issuer or any of its subsidiaries and a person who is not a connected person and the transaction involves -

(a) the issuer or the subsidiary acquiring or disposing of an interest in a corporation where a substantial shareholder of that corporation is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller, provided that -

(i) interests of any person and his associates shall be aggregated in determining whether together they are a substantial shareholder of any corporation;

(ii) where the acquisition or disposal is of assets held by such corporation and the assets account for 90 percent or more of the corporation's net assets or total assets, the acquisition or disposal shall be treated as a transaction as if it were an acquisition or disposal of an interest in that corporation;

(iii) an issuer, or any of its subsidiaries, itself will not be considered an associate of a controller where the issuer or the subsidiary is acquiring or disposing of an interest in a corporation of which it is already a substantial shareholder;

(iv) a controller whose only interest in a corporation is through the issuer will not be considered a substantial shareholder of that corporation; and

(v) this subsection (3) does not apply where the issuer or any of its subsidiaries acquires an interest in a corporation and -

(A) the substantial shareholder of the corporation being acquired is, and is proposed to remain, a director, chief executive or controlling shareholder of that corporation (or an associate of such director, chief executive or controlling shareholder of that corporation) immediately prior to and following the acquisition;

(B) following the acquisition, the only reason why the person is a controller is that he remains a director, chief executive or controlling shareholder of that corporation (or an associate of such director, chief executive or controlling shareholder of that corporation); and

(C) where the person remains a controlling shareholder, there is no increase in his interest in that corporation as a result of the acquisition;

(b) the issuer or any of its subsidiaries acquiring an interest in a corporation (or an option to acquire such an interest) of which a controller or an associate of a controller is, or will become, a shareholder where the interest being acquired is -

(i) of a fixed income nature;

(ii) shares to be acquired on less favourable terms than those granted to the controller or its associates; or

(iii) shares which are of a different class from those held by, or to be granted to, the controller or its associates;

(c) a controller or an associate of a controller subscribing shares in a corporation in which the issuer or any of its subsidiaries is a

shareholder on terms more favourable than to the issuer or the subsidiary; or

(d) a controller or an associate of a controller subscribing shares in a corporation in which the issuer or any of its subsidiaries is a shareholder but which are of a different class from those held by the issuer or the subsidiary,

provided that paragraphs (b), (c) and (d) do not apply where the terms of subscription of shares in the corporation by the issuer or the subsidiary and the controller or its associates have been approved by the shareholders of the issuer in accordance with the provisions of this Schedule.

(4) The provision of financial assistance -

(a) by an issuer or any of its subsidiaries to or for the benefit of -

(i) a connected person; or

(ii) a corporation in which both the issuer or the subsidiary and a connected person are shareholders and where any connected persons (other than at the level of the issuer's subsidiaries) referred to in paragraphs (a), (b), (c) or (d) of the definition of "connected person" are, individually or together, entitled to exercise, or control the exercise of, 10 percent or more of the voting power (other than through the issuer) at any general meeting of such corporation;

(b) to an issuer or any of its subsidiaries by -

(i) a connected person; or

(ii) a corporation in which both the issuer or the subsidiary and a connected person are shareholders and where any connected persons (other than at the level of the issuer's subsidiaries) referred to in paragraphs (a), (b), (c) or (d) of the definition of "connected person" are, individually or together, entitled to exercise, or control the exercise of, 10 percent or more of the voting power (other than through the issuer) at any general meeting of such corporation.

(5) The granting of security over the assets of an issuer or any of its subsidiaries in respect of any financial assistance made to or for the benefit of the issuer or any of its subsidiaries by a connected person or any corporation falling within subsection (4)(a)(ii).
[c.f. LR 14A.13(1), (2) and (4)]

Aggregation of Transactions

3. Connected transactions completed within any 12-month period and which are related are deemed a series of transactions and shall be aggregated as one transaction for the purposes of this Schedule.
[c.f. LR 14A.25 (modified)]

4. Connected transactions are deemed to be related for the purposes of section 3 if they -

(a) are with the same party or parties connected or associated with one another;

(b) involve the acquisition or disposal of securities or interests in one corporation or group of corporations; or

(c) involve the acquisition or disposal of parts of one asset or group of assets.

[c.f. LR 14A.26 (modified)]

5. (1) Subject to subsection (2), continuing connected transactions with the same party or parties connected or associated with one another shall be aggregated as one transaction for the purposes of this Schedule.

(2) A continuing connected transaction need not be aggregated under subsection (1) with other continuing connected transactions with the same party or parties connected or associated with one another, if the issuer has already complied with sections 9 to 13 in relation to such other connected transactions.
[c.f. LR 14A.27 (modified)]

PART 2

GENERAL

Announcements

6. Where an issuer or any of its subsidiaries enters into a connected transaction the issuer shall promptly disclose to the public the information referred to in section 23 of this Schedule.
[c.f. LR 14A.02 and 14A.47]

7. Where a transaction has previously been disclosed to the public under this Schedule and -

(a) the transaction is terminated;

(b) there is any material variation of its terms; or

(c) there is any material delay in the completion of the transaction,

the issuer shall promptly disclose this event and the relevant facts to the public.
[c.f. LR 14.36]

8. Where an issuer has disclosed to the public a connected transaction involving the granting or receiving of an option, it shall promptly disclose the relevant facts to the pubic -

(a) when the option expires;

(b) where the issuer or any of its subsidiaries granted the option -

(i) when the option is exercised;

(ii) when the option holder notifies the issuer or the subsidiary that the option will not be exercised; or

(iii) when the issuer or the subsidiary becomes aware that the option holder has agreed to transfer, or has transferred, the option to a third party.

[c.f. LR 14A.69(2) and (3)]

Circulars and Shareholders' Approval

9. Where an issuer or any of its subsidiaries enters into a connected transaction the issuer shall disclose to the public and send to its shareholders a circular containing the information referred to in section 25 as soon as reasonably practicable and in any event no later than 21 days after it discloses the information in accordance with section 6.
[c.f. LR 14A.49]

10. Where an issuer or any of its subsidiaries enters into a connected transaction, approval by independent shareholders is required and the issuer shall ensure that the transaction and, for a continuing connected transaction, the caps referred to in section 15(b), are conditional on approval by independent shareholders in accordance with the provisions of this Schedule.
[c.f. LR 14A.52]

Independent Financial Advice

11. Where approval by independent shareholders is required under the provisions of this Schedule, the issuer shall -

(a) establish an independent board committee to advise shareholders, taking into account the recommendations of the independent financial adviser referred to in paragraph (b), as to whether the terms of the transaction are fair and reasonable and whether the transaction is in the interest of the issuer and the shareholders as a whole, and as to the voting action that they advise the shareholders to take; and

(b) the issuer shall appoint an independent financial adviser to make recommendations to the independent board committee and to the shareholders as to whether the terms of the transaction are fair and reasonable and whether the transaction is in the interest of the issuer and the shareholders as a whole, and as to the voting action that they advise the shareholders to take;

(c) the issuer shall procure from the independent financial adviser referred to in paragraph (b) a letter to the independent board committee and the shareholders, setting out -

(i) the reasons for the advice;

(ii) the assumptions made;

(iii) the factors taken into consideration;

(iv) a statement as to whether the transaction is on normal commercial terms, in the ordinary and usual course of the issuer's business, fair and reasonable, and in the interest of the issuer and the shareholders as a whole; and

(v) the recommendations of the independent financial adviser as to the voting action that they advise the shareholders to take.

[c.f. LR 14A.22, 13.39(6)(a), (b) and 13.39(7)]

12. The independent board committee referred to in section 11 shall -

(a) consist only of independent non-executive directors;

(b) not consist of any independent non-executive directors who have a material interest in the transaction; and

(c) consist of more than one independent non-executive director unless all but one independent non-executive directors have material interests in the transaction.

[c.f. LR 13.39(6)(c)]

13. Where no independent board committee referred to in section 12 could be formed because there is no independent non-executive director who does not have a material interest in the transaction, the independent financial adviser referred to in section 11 shall make its recommendations only to the shareholders.
[c.f. LR 13.39(6)(c)]

Written Agreement

14. Where an issuer or any of its subsidiaries enters into a connected transaction the issuer shall enter into, or it shall ensure that its subsidiary enters into, a written agreement relating to the transaction.
[c.f. LR 14A.04]

Additional Requirements for Continuing Connected Transactions

15. In addition to the requirements set out in sections 6 to 14, where an issuer or any of its subsidiaries enters into a continuing connected transaction the issuer shall ensure that -

(a) in relation to the written agreement for the transaction -

(i) the agreement sets out the basis of the calculation of any payments to be made;

(ii) the period of the agreement is fixed; and

(iii) the period of the agreement does not exceed three years unless the independent financial adviser confirms, and explains in its letter as required by section 11(c), that it is normal business practice for contracts of such type to be of such period;

(b) there is a maximum aggregate annual value for the transaction;

(c) the basis of arriving at the annual cap is disclosed, and -

(i) the annual cap is expressed as an absolute (rather than percentage) monetary value;

(ii) the annual cap is determined by reference to previous transactions and figures which are readily ascertainable from information the issuer has disclosed to the public; and

(iii) if there are no previous transactions, the annual cap is based on reasonable assumptions, details of which are disclosed with the information referred to in section 6 and in the circular referred to in section 9;

(d) each year the independent non-executive directors of the issuer review the transaction and confirm in the annual report that the transaction has been entered into -

(i) in the ordinary and usual course of the group's business;

(ii) on normal commercial terms or, if there are not sufficient comparable transactions to judge whether they are on normal commercial terms, on terms no less favourable to the issuer or the subsidiary than terms available to or from independent third parties; and

(iii) in accordance with the agreement referred to in paragraph (a) and on terms that are fair and reasonable and in the interest of the issuer and the shareholders as a whole;

(e) each year the issuer's auditors provide a letter, and the board of directors confirm in the annual report that such a letter has been provided, confirming that the transaction -

(i) has received the approval of the board of directors;

(ii) is in accordance with the pricing policies of the group if the transaction involves provision of goods or services by the group;

(iii) has been entered into in accordance with the agreement referred to in paragraph (a);

(iv) has not exceeded the annual cap referred to in paragraph (b).

[c.f. LR 14A.35, 14A.37 and 14A.38]

16. Where -

(a) the annual cap referred to in section 15(b) has been exceeded; or

(b) the agreement referred to in section 15(a) is renewed or there is a material change to the terms of the agreement,

the issuer shall again follow, or repeat, the requirements of sections 6 to 15 in relation to the transaction.

[c.f. LR 14A.36]

17. An issuer shall allow, and shall ensure that its subsidiaries and the counterparty to a continuing connected transaction allow, the issuer's auditors

sufficient access to the records of the issuer and its subsidiaries and the counterparty's records for the purpose of the auditors reporting on the matters set out in section 15(e).
[c.f. LR 14A.39]

18. An issuer shall promptly disclose to the public the facts where it knows or has reason to believe that the independent non-executive directors or the auditors will not be able to confirm the matters set out in sections 15(d) or 15(e) and the issuer shall again follow, or repeat, the requirements of sections 6 to 15 in relation to the transaction.
[c.f. LR 14A.40]

19. (1) Where an issuer or any of its subsidiaries has entered into a continuing transaction which subsequently becomes a continuing connected transaction, the issuer shall -

(a) promptly disclose the relevant information to the public in accordance with sections 6 and 7;

(b) include in its next annual report the information required by sections 21 and 22.

(2) In the event that any variation or renewal of the continuing transaction is proposed the issuer shall comply with sections 6 to 15 upon any variation or renewal of the transaction.
[c.f. LR 14A.41]

Guaranteed Profits or Net Tangible Assets

20. Where an issuer or any of its subsidiaries acquires a corporation or business from a connected person, and the connected person guarantees the profits or net tangible assets or other matters regarding the financial performance of that corporation or business, if the profits or net tangible assets or other matters are less than the amount guaranteed, the issuer shall promptly disclose to the public -

(a) the shortfall and any adjustment of the consideration of the transaction;

(b) whether the connected person has fulfilled its obligations under the guarantee;

(c) whether the issuer or the subsidiary has exercised any option to sell the corporation or business back to the connected person or any other rights it held under the terms of the guarantee, and the reasons for its decision; and

(d) the opinion of the independent non-executive directors as to whether -

(i) the connected person has fulfilled its obligations; and

(ii) the decision to exercise or not to exercise any option or other rights referred to in paragraph (c) is fair and reasonable and in the interest of the issuer and the shareholders as a whole,

and include the same information in its next annual report.
[c.f. LR 14A.57 and 14A.59(10)]

Reporting Requirements

21. Where an issuer or any of its subsidiaries enters into a connected transaction, the issuer shall include in its next annual report information on the transaction, including -

(a) the date of the transaction;

(b) the aggregate value of the consideration and details of the terms and conditions;

(c) the parties to the transaction and the information set out in section 23(b);

(d) a description of the transaction and its purpose; and

(e) for continuing connected transactions, the information required under sections 15(d) and 15(e).

[c.f. LR 14A.45]

22. Where an issuer or any of its subsidiaries enters into a continuing connected transaction, the issuer shall include the information referred to in section 21 in its annual report for the financial year during which the issuer or the subsidiary undertakes such continuing connected transaction.
[c.f. LR 14A.46]

PART 3

CONTENTS OF ANNOUNCEMENTS

23. The information required to be disclosed under section 6 shall include -

(a) the information set out in sections 15 to 17 (except for sections 15(f) and 15(n)) of Schedule 6;

(b) in respect of the transaction -

(i) the name of any connected person;

(ii) a description of the relationships between the parties, including any connected person and any controller and the name and office held by that controller; and

(iii) the nature and extent of any connected person's interest in the transaction;

(c) a statement that the transaction is subject to independent shareholders' approval if such is required;

(d) the views of the independent non-executive directors on the transaction if independent shareholders' approval is not required;

(e) for continuing connected transactions, details of the caps and the basis of arriving at such caps as referred to in section 15(b);

(f) where the transaction involves the purchase of assets by the issuer or any of its subsidiaries, the original purchase cost of the assets to the connected person;

(g) where the transaction involves the disposal of assets by the issuer or any of its subsidiaries and the group has held the assets for 12 months or less, the original acquisition cost of the assets to the group; and

(h) where the transaction is approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to section 28, details of the shareholder or closely allied group of shareholders, including their names, the number of securities of the issuer held by each such shareholder, the relationship between the shareholders, and sufficient information to demonstrate that these shareholders are a closely allied group of shareholders.

[c.f. LR 14A.56(1)-(7)]

24. Where the issuer includes a profit forecast in the information it discloses in accordance with section 6, it shall include materially the same profit forecast in the required circular.

[c.f. LR 14A.56(8) (modified)]

PART 4

CONTENTS OF CIRCULARS

25. (1) A circular required under the provisions of this Schedule shall contain -

(a) where approval by independent shareholders is required -

(i) all material information to enable the shareholders to make an informed decision on whether or not to vote in favour of the transaction;

(ii) a letter from the independent board committee to the shareholders setting out the committee's advice as referred to in section 11(a);

(iii) the letter from the independent financial adviser referred to in section 11(c); and
[c.f. LR 14A.58(3)]

(iv) the information required under section 20 of Schedule 6;
[c.f. LR 14A.59(5) and 2.17]

(b) the information set out in section 23;
[c.f. LR 14A.59(2)(b)-(f), (7)-(9), (12)-(16)]

(c) where the transaction involves acquisition or disposal of any assets -

(i) the identity and activities of the ultimate beneficial owners of the counterparty acquiring or disposal of the assets; and
[c.f. LR 14A.59(2)(a)]

(ii) if the primary significance of the assets is their capital value, a valuer's report with respect to the assets which complies with paragraphs 34(2), 34(3), and 46 of the Third Schedule of the Companies Ordinance (Cap. 32);
[c.f. LR 14A.59(6)]

(d) where the issuer or any of its subsidiaries acquires a corporation or business from a connected person and the connected person guarantees the profits or net tangible assets or other matters regarding the financial performance of that corporation or business, a statement that the issuer shall promptly disclose the information to the public as required under section 20;
[c.f. LR 14A.59(10)]

(e) where a profit forecast appears in any circular -

(i) the forecast shall be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, shall be stated;

(ii) the accounting policies and calculations for the forecast shall be examined and reported on by the reporting accountants or auditors, as appropriate, and their report shall be set out; and

(iii) the financial adviser shall report, in addition, that they have satisfied themselves that the forecast has been stated by the directors after due and careful enquiry, and such report shall be set out.

[c.f. LR 14A.59(3) and App. 1 Part B para 29(2)]

(f) where the transaction involves an acquisition or disposal of an interest in an infrastructure project or a corporation whose principal business activities are to undertake infrastructure projects, a valuation report on the business or corporation and any traffic study report in respect of the infrastructure project, provided that -

(i) the report sets out all principal assumptions including discount rate or growth rate used;

(ii) the report sets out a sensitivity analysis based on various discount rates and growth rates; and

(iii) where any valuation is based on or constitutes a profit forecast, such profit forecast complies with paragraph (e).

[c.f. LR 14A.59(17)]

(2) A circular required under the provisions of this Schedule shall also contain the following general information -

(a) the full name of the issuer;

[c.f. LR 14A.59(3) and App. 1 Part B para 1]

(b) a statement to the effect that -

"This document includes particulars given in compliance with the Securities and Futures (Stock Market Listing) Rules. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the

omission of which would make any statement herein misleading.";

[c.f. LR 14A.59(3) and App. 1 Part B para 2]

(c) where the circular includes a statement purporting to be made by an expert, a statement -

(i) specifying the qualifications of such expert and whether such expert has any shareholding in any member of the group or the right (whether legally enforceable or not) to subscribe for or to nominate persons to subscribe for securities in any member of the group and, if so, a full description thereof;

(ii) that the expert has given and has not withdrawn his written consent to the issue of the circular with the expert's statement included in the form and context in which it is included; and

(iii) of the date on which the expert's statement was made; and

(iv) whether or not the statement was made by the expert for incorporation in the circular;

[c.f. LR 14A.59(3) and App. 1 Part B para 5]

(d) the procedure by which the shareholders may demand a poll pursuant to its constitutional documents;

[c.f. LR 14A.59(3) and App. 1 Part B para 8A]

(e) the nature and amount of the issue including the number of securities which have been or will be created or issued, if predetermined;

[c.f. LR 14A.59(3) and App. 1 Part B para 10]

(f) a statement by the directors of any material adverse change in the financial or trading position of the group since the date to which the most recent published audited accounts of the issuer have been made up, or an appropriate negative statement;

[c.f. LR 14A.59(3) and App. 1 Part B para 32]

(g) where any director or supervisor is a director or employee of a corporation which has an interest or short position in the shares of the issuer which would fall to be disclosed to the issuer under the provisions of Divisions 2 and 3 of Part XV of the Ordinance, a statement of that fact;

[c.f. LR 14A.59(4) and App. 1 Part B para 34]

(h) details of existing or proposed service contracts of the issuer's directors and supervisors with any member of the expanded group, except for those contracts which will expire or may be terminated by the employer within a year without payment of any compensation (other than statutory compensation), or an appropriate negative statement;

[c.f. LR 14A.59(3) and App. 1 Part B para 39 (modified)]

(i) particulars of the nature and extent of the interests, if any, of each of the directors and proposed directors (other than independent non-executive directors) of the issuer and their respective associates in any business apart from the group's business, which competes or is likely to compete, either directly or indirectly, with the group's business;

[c.f. LR 8.10(2) and 14A.59(11) (modified)]

(j) (i) a statement showing the interests and short positions of each director, supervisor and chief executive of the issuer in the shares in, or debentures of, the issuer or any associated corporation -

(A) as recorded in the register required by the issuer to be kept under section 352 of the Ordinance;

(B) as otherwise notified to the issuer pursuant to the Model Code for directors; or

(C) if there is no such interest or right in such shares or debentures, a statement of that fact;

(ii) a statement required by subsection (i) shall specify the corporation in which the interests or short positions are held, the class to which those securities belong and the number of such securities held but need only disclose the existence of the following interests by way of a general statement to indicate that the directors or supervisors hold such interests -

(A) in relation to the interests of a director or supervisor in the shares of the issuer or any of its subsidiaries, if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares;

(B) in relation to the non-beneficial interests of directors and supervisors in the shares of any subsidiary of the issuer, in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable

declaration of trust in favour of the holding company of that subsidiary or the issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member;

(iii) a statement showing the interests or short positions, so far as is known to any director or chief executive of the issuer, of every person, other than a director or chief executive of the issuer, in the shares of the issuer as recorded in the register required to be kept under section 336 of the Ordinance and the amount of such interests and short positions, or if there are no such interests or short positions recorded in the register, a statement of that fact;

(iv) if two or more persons are interested in the same shares or debentures referred to in subsections (ii) and (iii), particulars shall be provided of the extent of any duplication which occurs;

[c.f. LR 14A.59(4) and App. 1 Part B para 38]

(k) full particulars of the nature and extent of the interest, direct or indirect, if any, of every director, proposed director, supervisor, proposed supervisor or expert (as named in the circular) in any assets which have been, since the date to which the most recent published audited accounts of the issuer were made up, acquired or disposed of by or leased to any member of the expanded group, or are proposed to be acquired or disposed of by or leased to any member of the expanded group, including -

(i) the consideration passing to or from any member of the expanded group; and

(ii) short particulars of all transactions relating to any such assets which have taken place within such period, or an appropriate negative statement;

(l) full particulars of any contract or arrangement subsisting at the date of the circular in which a director or supervisor of the issuer is materially interested and which is significant in relation to the business of the expanded group, or an appropriate negative statement;

[c.f. LR 14A.59(3) and App. 1 Part B para 40]

(m) details of a reasonable period of time (being not less than 14 days) during which and a place in Hong Kong at which the following documents (or copies thereof) where applicable may be inspected -

(i) any service contracts disclosed pursuant to paragraph (i); and

(ii) any contracts referred to in the circular,

or where any of the above contracts have not been reduced into writing, a memorandum giving full particulars thereof, and where any of the documents referred to in this paragraph are not in the English language, translations thereof in the English language shall be available for inspection.

[c.f. LR 14A.59(3) and App. 1 Part B para 43 and 19A.57]

26. Where a connected transaction is a share transaction, discloseable transaction, major transaction, very substantial acquisition or very substantial disposal, the provisions of Schedule 6 (except for section 15(f)) shall also apply according to the classification of the transaction in Schedule 6.
[c.f. LR 14A.08]

PART 5

SHAREHOLDERS' APPROVAL AND VOTING

27. Where approval by independent shareholders is required under the provisions of this Schedule, the issuer shall obtain such approval at a general meeting of its shareholders.
[c.f. LR 14A.18]

28. Notwithstanding section 27, an issuer may obtain the required independent shareholders' approval -

(a) by obtaining written independent shareholders' approval from a shareholder or a closely allied group of shareholders who together hold more than 50 percent in nominal value of the securities giving the right to attend and vote at the general meeting had the issuer convened such a meeting; and

(b) if no shareholder is required to abstain from voting under these Rules had the issuer convened a general meeting to approve the transaction.

[c.f. LR 14A.43]

29. (1) Where a connected person or shareholder has a material interest in a connected transaction, the issuer shall ensure that such connected person or shareholder and their associates abstain from voting at the general meeting on the resolution to approve the transaction.

(2) Where a connected person or shareholder has a material interest in the connected transaction, but he or any of his associates fails to abstain from voting at the general meeting on the resolution to approve the transaction, the approval by independent shareholders referred to in section 10 shall not be regarded as having been obtained.
[c.f. LR 14A.18]

30. Where a general meeting is required under the provisions of this Schedule, sections 30 to 32, relating to voting on a poll, and sections 33 to 36 relating to giving notice, of Schedule 6 shall apply.
[c.f. LR 14A.18, 14A.20, 14A.49, 14A.52, 14A.61, 14A.62, 13.39(5) and 13.42]

PART 6

EXEMPTIONS

De Minimus Transactions

31. A connected transaction, other than an issue of new securities by the issuer or any of its subsidiaries to a connected person, which is -

(a) on normal commercial terms; and

(b) where each of the relevant percentage ratios (other than the profits ratio) is -

(i) less than 0.1 percent; or

(ii) equal to or more than 0.1 percent but less than 2.5 percent and the total consideration is less than $1 million,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(2)]

32. For a continuing connected transaction, the relevant percentage ratios for the purposes of section 31 shall be determined for each financial year.
[c.f. LR 14A.33(3)]

Intra-group transactions

33. A transaction between an issuer and a non wholly owned subsidiary or between an issuer's non wholly owned subsidiaries, where no connected persons (other than at the level of the issuer's subsidiaries) referred to in paragraphs (a), (b), (c) or (d) of the definition of "connected person" are, individually or together, entitled to exercise, or control the exercise of, 10 percent or more of the voting power (other than

through the issuer) at any general meeting of any of such non wholly owned subsidiaries, shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(1)]

Issue of New Securities

34. The issue of new securities by an issuer or any of its subsidiaries to a connected person where -

(a) the connected person is receiving a pro rata entitlement to securities in its capacity as shareholder; or

(b) the securities are issued under a share option scheme which -

(i) complies with the rules of the relevant recognized exchange company; or

(ii) was in existence before the securities of the issuer first commenced dealing on the relevant recognized stock market and for which approval for listing was granted at the time such dealing first commenced; or

(c) the connected person is acting as an underwriter or sub-underwriter of an issue of securities by the issuer in a rights issue or an open offer, and arrangements are in effect to dispose of securities not subscribed by -

(i) persons pursuant to provisional letters of allotment or assured allotments, such that the securities not subscribed are available for subscription by all shareholders and allocated on a fair basis; or

(ii) in the case of a rights issue, shareholders pursuant to provisional letters of allotment, such that the securities not subscribed are sold in the market for the benefit of the shareholders to whom they were offered by way of rights; or

(d) the securities are issued to the connected person within 14 days after such connected person has executed an agreement to reduce its holdings in that class of securities by placing securities to third persons who are not its associates, and where -

(i) the securities are issued at a price not less than the placing price, after adjustments for the expenses of the placing; and

(ii) the number of securities issued does not exceed the number of securities placed,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(3), 7.21(1) and 7.26A(1)]

Dealings in Securities in the Ordinary and Usual Course of Business

35. The dealing by an issuer or any of its subsidiaries in securities listed on a recognized stock market or any other open and regulated stock markets in the group's ordinary and usual course of business, provided that the purpose of the transaction is not to confer a direct or indirect benefit upon a controller or its associates, and where -

(a) the transaction is carried out on a recognized stock market or any other open and regulated stock markets; or

(b) no consideration passes to or from a connected person,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(4)]

Purchase of Own Securities

36. The purchase by an issuer or any of its subsidiaries of the issuer's own securities from a connected person -

(a) on a recognized stock market or any other open and regulated stock markets, provided that the connected person does not knowingly sell its securities to the issuer or the subsidiary; or

(b) where the purchase is made in pursuance of a general offer made in accordance with the Code on Share Repurchases,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(5)]

Directors' Service Contracts

37. The entering into of a service contract by an issuer or any of its subsidiaries with a director of the issuer or the subsidiary, where the contract -

(a) is not for a duration that exceeds three years; and

(b) does not expressly require the issuer or the subsidiary -

(i) to give a period of notice of more than one year;

(ii) to pay compensation or make other payments equivalent to more than one year's emoluments in order for the issuer or the subsidiary to terminate the contract,

shall be exempt from sections 6 to 22.
[c.f. LR 13.68 and 14A.31(6)]

Consumer Goods and Services

38. The acquisition as consumer, or realisation in the ordinary and usual course of business, of consumer goods or consumer services by an issuer or any of its subsidiaries from or to a connected person on normal commercial terms where -

(a) the goods or services are of a type ordinarily supplied for private use or consumption;

(b) the goods or services are for the acquirer's own use or consumption, and are not to be processed into products of the acquirer or for resale or otherwise for the purpose of or in connection with any business or contemplated business of the acquirer, whether for consideration or not;

(c) the goods or services are used or consumed by the acquirer in the same state as when they were acquired;

(d) the goods or services are of a total consideration or value that is or represents less than 1 percent of the total revenue (in the case of realization) or total purchases (in the case of acquisition) of the issuer as shown in its most recent published audited accounts; and

(e) the transaction is on terms no more favourable to the connected person than those available to independent third parties or no less favourable to the issuer or the subsidiary than those available from independent third parties,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(7) and 14A.33(1)]

Sharing of Administrative Services

39. The sharing of administrative services between an issuer or any of its subsidiaries and a connected person on a cost basis, where the cost of the services is identifiable and allocated to the parties fairly and equitably, shall be exempt from sections 6 to 22.
[c.f. LR 14A.31(8) and 14A.33(2)]

Connected Transactions Less Than 2.5 Percent or $10 Million

40. A connected transaction, other than an issue of new securities by the issuer or any of its subsidiaries to a connected person, where -

(a) the transaction is on normal commercial terms;

(b) each of the relevant percentage ratios (other than the profits ratio) is -

(i) less than 2.5 percent; or

(ii) equal to or more than 2.5 percent but less than 25 percent and the total consideration is less than $10 million,

shall be exempt from sections 9 to 13 relating to approval by independent shareholders.
[c.f. LR 14A.32]

41. For a continuing connected transaction, the relevant percentage ratios for the purposes of section 40 shall be determined for each financial year.
[c.f. LR 14A.34]

Financial Assistance

42. Financial assistance provided by an issuer or any of its subsidiaries in the ordinary and usual course of its business for the benefit of a connected person, or any corporation falling within section 2(4)(a)(ii), provided on normal commercial terms, or on better terms for the group, shall be exempt from sections 6 to 22.
[c.f. LR 14A.65(1)]

43. Financial assistance provided by an issuer or any of its subsidiaries for the benefit of any corporation falling within section 2(4)(a)(ii), which is not provided in the ordinary and usual course of its business but is provided on normal commercial terms, or on better terms for the group, where -

(a) the assistance being provided is in proportion to the equity interest of the issuer or the subsidiary in the corporation; and

(b) any guarantee given by the issuer or the subsidiary is on a several (and not a joint and several) basis,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.65(3)(b)(i)]

44. Financial assistance provided by an issuer or any of its subsidiaries for the benefit of a connected person or any corporation falling within section 2(4)(a)(ii) -

(a) either -

(i) in its ordinary and usual course of business but not on normal commercial terms, or

(ii) not in its ordinary and usual of business but on normal commercial terms or terms better for the group;

(b) where each of the relevant percentage ratios (other than the profits ratio) is -

(i) less than 0.1 percent; or

(ii) equal to or more than 0.1 percent but less than 2.5 percent; and

(c) the total value of the assistance and any preferential benefit is less than $1 million,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.65(2) and 14A.65(3)(a)]

45. Financial assistance provided by an issuer or any of its subsidiaries for the benefit of a connected person or any corporation falling within section 2(4)(a)(ii) -

(a) either -

(i) in its ordinary and usual course of business but not on normal commercial terms, or

(ii) not in its ordinary and usual course of business but on normal commercial terms or better terms for the group;

(b) where each of the relevant percentage ratios (other than the profits ratio) is -

(i) less than 2.5 percent; or

(ii) equal to or more than 2.5 percent but less than 25 percent; and

(c) the total value of the assistance and any preferential benefit is less than $10 million,

shall be exempt from sections 9 to 13 relating to approval by independent shareholders.
[c.f. LR 14A.66]

46. Financial assistance provided by a connected person or any corporation falling within section 2(4)(a)(ii), for the benefit of the issuer or any of its subsidiaries -

(a) on normal commercial terms or better terms for the group; and

(b) where no security over the assets of the issuer or any of its subsidiaries is granted,

shall be exempt from sections 6 to 22.
[c.f. LR 14A.65(4)]

Options

47. Where an issuer or any of its subsidiaries enters into a connected transaction by granting or receiving an option and the monetary value of each of -

(a) the option premium;

(b) the exercise price;

(c) the value of the underlying assets; and

(d) the profits and revenue attributable to such assets,

has not been determined, unless the issuer demonstrates the highest possible monetary value of the transaction and uses such value for the purposes of sections 31 and 40, the transaction shall not qualify for any of the exemptions set out in those sections.
[c.f. LR 14A.71]

48. Notwithstanding section 47, when the monetary value of each of -

(a) the option premium;

(b) the exercise price;

(c) the value of the underlying assets; and

(d) the profits and revenue attributable to such assets,

has been determined, the issuer shall again determine whether sections 31 and 40 operate to exempt the transaction and where the transaction fails to qualify, or no longer qualifies, for an exemption as set out in those sections, the issuer shall comply with the relevant provisions of this Schedule without an exemption.
[c.f. LR 14A.71]

SCHEDULE 8

[s.7A]

MODE OF DISCLOSURE OF INFORMATION

Mode of disclosure and confidentiality pending disclosure

1. An issuer which is required to disclose information to the public under Schedules 2 to 7 shall promptly supply to the recognized exchange company which operates the stock market on which the securities of the issuer are listed an announcement, report or circular incorporating the information required to be disclosed for publication by the recognized exchange company.
[c.f. LR 13.09(1) Note 5 and 13.11(3)]

2. Until the information required to be disclosed under Schedules 2 to 7 is supplied in accordance with section 1 the issuer and its directors shall ensure that the information is kept confidential so that -

(a) when it is disclosed, all members of the public have access to the information at the same time; and

(b) no persons are placed in a privileged dealing position in relation to the issuer's securities.

[c.f. LR 13.05 and 13.09(1) Note 2]

Language

3. Information required to be disclosed under these Rules shall either be in the English language with a Chinese translation or be in the Chinese language with an English translation.
[c.f. LR 1.01, 13.46, 13.55(2), CO s.38(1) and s.342(1)(b)]

4. In respect of an entitled person resident overseas, it shall be sufficient for the issuer to send by airmail or an equivalent service that is no slower an English language version of the relevant document if such document contains a prominent statement in both English and Chinese to the effect that a Chinese translation is available from the issuer on request.
[c.f. LR 13.46(1)(b) Note 1, 13.46(2)(c) Note 1 and 13.76]

APPENDIX 2

Explanation and Analysis of Substantive Changes from the Current Stock Exchange Listing Rules

Explanation and Analysis of Substantive Changes
from the Current Stock Exchange Listing Rules

An important principle in drafting the proposed new provisions of the SMLR is to follow the present requirements in the Stock Exchange Listing Rules in substance, so as to avoid any disturbance to market practices and activities. The relevant Listing Rule requirements have been the subjects of prior public consultations where the resulting rules seek to strike a balance among different interests and considerations.

In a few instances, however, we are proposing minor substantive changes from the present requirements. The changes are expected to meet market consensus. They are explained with detail analysis and reasoning below.

Schedule 2

1. *Disclosure of directors' dealings during delay in disclosure of price-sensitive information*. (Sch. 2, s37)

1.1 The Stock Exchange Listing Rules prohibit directors of an issuer from dealing in the securities of the issuer when in possession of undisclosed price-sensitive information. (App. 10 Part A ¶1) The provisions in the SFO prohibiting insider dealing have the same general effect. We therefore propose a new disclosure requirement that when an issuer is late in disclosing price-sensitive information on time, it has to state whether any of its directors or supervisors have dealt in the securities of the issuer during the period in which the issuer has been late.

1.2 In practice, an issuer is unlikely willing to admit it has been late in disclosing price-sensitive information or that the information was indeed price-sensitive. But the proposed new requirement will be useful where the issuer cannot reasonably dispute the materiality of the information it has failed to disclose.

Schedule 3

2. *No need to explain differences between HKFRS and IFRS*. (Sch. 3, s1)

2.1 The Stock Exchange Listing Rules require an issuer adopting IFRS to disclose and explain the differences between IFRS and HKFRS that have significant effect on its financial statements and to compile a statement of the financial effect. (LR 4.11(b), App. 16 ¶2(6) Note 2.1(b)) But the rules also exempt Mainland issuers from this requirement. (LR 19A.10, App. 16 ¶2(6) Note 2.3) To ensure consistent treatment for all issuers, and since HKFRS will soon be completely in line with IFRS, we propose not to adopt the requirement.

Schedule 5

3. *Disclosure of properties by general description*. (Sch. 5 s17)

3.1 The Stock Exchange Listing Rules require an issuer, where properties held for development or sale or for investment purposes exceeds 5% in assets, revenue, or profit, to disclose details of the properties in its annual report. (App. 16 ¶23) But where an issuer has an excessive number of properties, it needs only disclose details for properties that are material. To ensure completeness of disclosure, we propose to require such an issuer to include a general description of the properties for which it is not disclosing details.

4. *References to supervisors for Mainland issuers*. (Sch. 5 ss19, 20, 21, 23, 28)

4.1 The Stock Exchange Listing Rules in Chapter 19A and Appendix 16 modify many references to directors of an issuer to include supervisors of the issuer for Mainland-incorporated issuers. This is necessary because such supervisors have certain authority and responsibilities under Mainland law.

4.2 We have noted some other references that appear to be similar to those that are modified in their context, circumstances, and purposes. (App. 16 ¶¶24A, 24B, 25, 31, LR 17.07) For consistency, we propose to apply the same modification to those other references.

Schedules 6 and 7

5. *Aggregation of related transactions*. (Sch. 6 s3, Sch. 7 s3)

5.1 The Stock Exchange Listing Rules provide that the Exchange may aggregate a series of related transactions within 12 months, taking into account certain factors, namely (1) the transactions are with the same party; (2) acquisition or disposal of interest in the same company; (3) acquisition or disposal of the same asset; and (4) the transactions together lead to the issuer's substantial involvement in a new principal business activity. (LR 14.22, 14.23, 14A.25, 14A.26)

5.2 To provide more certainty to issuers and the market, we propose not to adopt the approach of authorizing the SFC to aggregate transactions, but to set out clearly that in the first three situations, the transactions are deemed "related" and should be aggregated. The guidelines would provide that an issuer could obtain a waiver if it demonstrates circumstances showing the transactions to be unrelated, and that whether the transactions would lead to involvement in a different business is a factor to be considered.

6. *Disclosure of the counterparty and its beneficial owners*. (Sch. 6 s15(d), (e))

6.1 The Stock Exchange Listing Rules require an issuer having entered into a notifiable transaction to disclose certain information about the transaction and the subject assets. The rules, however, are silent on requiring disclosure of the counterparty to the transaction and its beneficial owners. The absence of this information has made it difficult for investors to analyze and evaluate the transaction, which is the very purpose of requiring the disclosure. We now propose to include such a requirement.

6.2 There might be occasions when the counterparty or, more likely, its beneficial owners, are unwilling to enter into transactions with an issuer if they would be named in a public announcement. This concern has to be weighed against the importance of the information to the public.

6.3 We believe that the appropriate approach is to require the disclosure and for the SFC to grant waivers in cases where the information is of little additional value to the public. This is likely where the nature of the transaction, the overall information in the announcement, or the description that the issuer is able to give of the counterparty and its beneficial owners, are such that the public could easily understand the transaction and the business relationships between the parties.

7. *Disclosure of the relevant percentage ratios and the underlying calculations*. (Sch. 6 s15(n), 21(1)(e))

7.1 The Stock Exchange Listing Rules require an issuer entering into a transaction to calculate the relevant percentage ratios and provide the Exchange the details of the calculations. The rules, however, are silent on requiring the issuer to disclose this information to the public.

7.2 This is not transparent and to a certain extent puts the burden on the Exchange to review the calculations. We propose to require disclosure of the relevant percentage ratios and the underlying calculations. It would be easy for issuers and would serve as an effective discipline to ensure accuracy.

8. *Disclosure of profit forecast*. (Sch. 6 s18, Sch. 7 s24)

8.1 The Stock Exchange Listing Rules require an issuer who intends to include a profit forecast in an announcement for a notifiable transaction or connected transaction, to submit the details and supporting documents for the forecast to the Exchange. The purpose is to ensure that the issuer is ready to include the same forecast in the subsequent circular for the transaction and would not be revising it materially. (LR 14.62, 14A.56(8))

8.2 This, however, might lead to the impression that the regulator is responsible for reviewing the profit forecast. We propose to achieve the same result by requiring that, where an issuer includes a profit forecast in an announcement, it would have to include substantially the same forecast in the circular. An issuer would be free not to include a forecast in its announcement, perhaps because such is not sufficiently ready, but state the forecast in the circular.

9. *Disclosure of competing business of proposed directors*. (Sch. 6 s21(2)(i), Sch. 7 s25(2)(i))

9.1 The Stock Exchange Listing Rules require an issuer having entered into a notifiable transaction or connected transaction to disclose in the circular for the transaction certain information about its directors and proposed directors. (LR 14.64(8), 14A.59(11)) The rules require disclosure of competing business of directors but miss the proposed directors. We propose to make it consistent and to require disclosure of competing business of proposed directors.

10. *In-laws, grandparent, grandchild, uncle, aunt, cousin, nephew and niece as associates*. (Sch. 7 s1(1)(b))

10.1 The Stock Exchange Listing Rules provide that the Exchange may treat an individual's grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew, or niece as his associate and hence a connected person to the relevant issuer. (LR 14A.11(4)(c)) There is much merit in this rule, particularly in the context of close family relations common in our society.

10.2 This authority, however, is very difficult to operate in practice. We propose to reverse the presumption. These persons would be associates to the individual, hence connected persons to the relevant issuer. But where the issuer can show circumstances under which these relationships should not cause a connected transaction to be subject to all or parts of Schedule 7, the Commission may consider granting a waiver. We envisage such situations to be rare.

11. *Aggregation of continuing connected transactions*. (Sch. 7 s5)

11.1 The Stock Exchange Listing Rules provide that the Exchange may aggregate all continuing connected transactions with a single connected person. This is important since the potential for abuse is significant. (LR 14A.27) The authority, however, is very difficult to operate in practice because only the parties have sufficient information about the arrangements.

11.2 To provide more certainty to issuers and protection to investors, we propose not to adopt the approach of authorizing the SFC to aggregate transactions, but instead to set out clearly that continuing connected transactions with a single connected person should be aggregated. However, transactions for which the issuer has obtained independent shareholders' approval would not need to be aggregated.