

立法會
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Panel on Financial Affairs

**Minutes of special meeting
held on Thursday, 23 November 2006 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Bernard CHAN, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members attending** : Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Albert Jinghan CHENG
- Members absent** : Dr Hon David LI Kwok-po, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Ting-kwong, BBS

Public officers attending : Mrs Dorothy MA
Principal Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Attendance by Invitation : Securities and Futures Commission

Mr Brian HO
Executive Director (Corporate Finance)

Ms Gail Kay HUMPHRYES
Director (Corporate Finance)

Hong Kong Exchanges and Clearing Limited

Ms Christine KAN
Vice President (Listing Division)

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)5

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Elyssa WONG
Deputy Head (Research and Library Services Division)

Ms Diana WONG
Research Officer 2

Ms Rosalind MA
Senior Council Secretary (1)8

Ms Annette LAM
Senior council Secretary (1)3

Ms Sharon CHAN
Legislative Assistant (1)8

Action

I. Issues relating to change in shareholding in PCCW Limited

Relevant written responses to questions prepared by the Secretariat

LC Paper No. CB(1)2040/05-06(01) —List of questions relating to change in shareholding in PCCW Limited prepared by the LegCo Secretariat

LC Paper No. CB(1)2076/05-06(02) —Paper provided by the Securities and Futures Commission, and The Stock Exchange of Hong Kong Limited

LC Paper No. CB(1)2089/05-06(01) —List of further questions relating to change in shareholding in PCCW Limited

LC Paper No. CB(1)153/06-07(01) —List of questions relating to issues under the purview of the Panel on Financial Affairs

LC Paper No. CB(1)308/06-07(01) —Paper provided by the Securities and Futures Commission, and The Stock Exchange of Hong Kong Limited

LC Paper No. CB(1)308/06-07(05) —Letter dated 15 November 2006 from Mr Richard LI, Chairman of PCCW Limited (English version only)

LC Paper No. CB(1)334/06-07(01) —Paper provided by the Securities and Futures Commission

LC Paper No. CB(1)355/06-07(01) —Statement of Mr Francis LEUNG issued on 21 November 2006 (#)

Announcements by PCCW Limited (#)

LC Paper No. CB(1)308/06-07(02) —PCCW's Announcement on "Proposed sale by PCRD of its shares in the Company" issued on 10 July 2006

LC Paper No. CB(1)308/06-07(03) —PCCW's Announcement on "Discontinuation of discussions with Macquarie and TPG/Newbridge" issued on 25 July 2006

LC Paper No. CB(1)308/06-07(04) —PCCW's Announcement on "Proposed Sale by PCRD of its shares in PCCW" issued on 12 November 2006

Question raised at Council meeting on 8 November 2006 (#)

LC Paper No. CB(1)335/06-07(01) —Draft Hansard on Oral Question No. 1 raised by Hon Emily LAU on "Acquisition of assets and shares in a listed telecommunications company" at Council meeting on 8 November 2006

Relevant information prepared by the Secretariat

LC Paper No. FS18/05-06 —Fact sheet on "Foreign press reports on the development of change in shareholding of PCCW Limited" from 20 June 2006 to 2 August 2006 prepared by Research and Library Services Division of the Secretariat (RLSD) (English version only) (#)

LC Paper No. FS19/05-06 —Fact sheet on "Local press reports on the development of change in shareholding of PCCW Limited" from 19 June 2006 to 2 August 2006 prepared by RLSD (Chinese version only) (#)

LC Paper No. FS07/06-07 —Fact sheet on "Local press reports on the development of change in shareholding of PCCW Limited" from 3 August 2006 to 20 November 2006 prepared by RLSD (Chinese version only) (#)

LC Paper No. FS08/06-07 —Fact sheet on "Foreign press

reports on the development of change in shareholding of PCCW Limited" from 3 August 2006 to 20 November 2006 prepared by RLSD (English version only) (#)

LC Paper No. CB(1)335/06-07(02) —Extract from "The Codes on Takeovers and Mergers and Share Repurchases" provided by the Legal Service Division

(#) *Papers also relevant to Panel on Information Technology and Broadcasting*

Letters from the parties concerned

LC Paper No. CB(1)2090/05-06(01) —Reply dated 2 August 2006 from Mr Richard LI, Chairman of PCCW Limited Δ

LC Paper No. CB(1)2090/05-06(02) —Reply dated 2 August 2006 from Mr Francis LEUNG of Fiorlatte Limited Δ

LC Paper No. CB(1)2181/05-06(01) —Reply dated 6 September 2006 from Mr Francis LEUNG of Fiorlatte Limited Δ

Δ *Replies provided by Mr Richard LI and Mr Francis LEUNG on a confidential basis*

Introductory remarks

The Chairman welcomed the attending representatives and said that the purpose of this special meeting was to discuss issues relating to the change in shareholding in PCCW Limited (PCCW) within the purview of the Panel on Financial Affairs (FA Panel). He informed members that while the Panel had extended invitation to Mr Richard LI and Mr Francis LEUNG, both of them had provided written information to the Panel but declined attendance. As agreed at the first meetings of the Panel on Information Technology and Broadcasting (ITB Panel) and the FA Panel on 12 October 2006, the two Panels had arranged special meetings at consecutive timeslots to discuss relevant issues within their respective policy purview. This special meeting would be followed by the special meeting of the ITB Panel at 4:05pm. The Chairman reminded members that the FA Panel would focus its discussion on whether the interests of minority shareholders were adequately safeguarded in the proposed transaction and whether the arrangements of the deal

were in compliance with statutory provisions and/or relevant codes applicable to listed companies. Issues relating to competition in the telecommunications market and cross-media ownership should be dealt with at the ensuing ITB Panel meeting.

Briefing by the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited

2. At the invitation of the Chairman, Mr Brian HO, Executive Director (Corporate Finance) of the Securities and Futures Commission (ED(CF)/SFC), briefed members on the response of SFC to members' questions on issues relating to the change of shareholding in PCCW. He stressed that SFC could not comment on specific cases due to strict confidentiality obligations. ED(CF)/SFC advised that SFC would attempt to address members' concerns with reference to the regulatory principles of the following provisions/requirements:

- (a) provisions under Part XV of the Securities and Futures Ordinance (SFO) (Cap. 571) stipulating the disclosure of interests requirements for the protection of minority shareholders and investors of listed companies;
- (b) regulation of changes of control of listed companies as provided in the Code on Takeovers and Mergers and Share Repurchases (the Takeovers Code) under which a mandatory general offer had to be made to shareholders if any person, either alone or together with persons acting in concert, acquired 30% or more of the shares in a public company; and
- (c) requirements under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the Listing Rules).

3. At the invitation of the Chairman, Ms Christine KAN, Vice President (Listing Division), The Hong Kong Exchanges and Clearing Limited (VP(LD)/HKEx), gave a brief account of the role of HKEx in listing regulation. She pointed out that HKEx was essentially responsible for ensuring a fair, orderly and efficient market for the trading of securities in Hong Kong. HKEx discharged its listing-related functions through the enforcement of the Listing Rules. VP(LD)/HKEx advised that the transfer of ownership of shares in a listed company was normally not within the ambit of the Listing Rules as this was distinct from the sale of assets of a listed company and was not a "transaction by the listed issuer" for the purpose of the Listing Rules.

Declaration of interests

4. The Chairman and Mr James TO declared that they held shares of PCCW. Mr Ronny TONG said that as some people had engaged financial consultants to

manage their personal finance, they might not know readily whether their investment portfolios included shares of PCCW. In this connection, Mr TONG declared that he might be holding some shares of PCCW. Mr James TIEN, Mr Albert HO and Mr Jeffrey LAM also declared that they might be holding some shares of PCCW.

Discussion

5. Mr James TO asked whether Mr Richard LI's letter had been provided to the Panel on a confidential basis. In response, the Chairman advised that as requested by Mr Richard LI, his letter dated 15 November 2006 to the Panel (LC Paper No. CB(1)308/06-07(05)) would not be uploaded to the website of the Legislative Council (LegCo). The Clerk supplemented that in line with the usual practice, when the Panel invited any outside party to provide written information, the parties concerned would be advised that unless they raised objection, the written information provided would be made available to the media and the public and placed in the library and the website of LegCo. Apart from his request not to display his written reply on LegCo's website, Mr LI had not further requested the Panel to withhold circulation of his written reply to the Government/regulators and members of the public and the media observing this open meeting.

Disclosure requirements for listed companies

6. Mr James TO and Ms Emily LAU noted with concern the discrepancies in the information on the developments of the PCCW deal as provided in Mr Richard LI's letter dated 15 November 2006 and in Mr Francis LEUNG's statement dated 21 November 2006 (LC Paper No. CB(1)355/06-07(01)). In particular, Ms LAU considered that there was considerable confusion over whether Mr Richard LI had prior knowledge of Mr LI Ka-shing's involvement in the deal. In this connection, Mr TO and Ms LAU enquired whether investigation had been or would be conducted by SFC on the possible impact of such confusing information, in particular on minority shareholders and small investors. Ms LAU was further concerned that the dissemination of such confusing information would have an adverse impact on Hong Kong's reputation as an international financial centre.

7. While SFC would not comment on specific cases, ED(CF)/SFC advised that the release of conflicting or misleading information by listed companies was of regulatory concern to SFC. He further explained that under the current regulatory regime, the disclosure of information by listed companies was mainly governed by the Listing Rules, the Takeovers Code and SFO. For example, provision of false or misleading information might amount to a breach of section 384 of SFO. He assured members that where the disclosure of information by listed companies had failed to comply with the provisions/requirements administered by SFC/HKEx, the respective regulator would conduct the necessary investigation and take enforcement actions against the persons concerned. Nevertheless, ED(CF)/SFC pointed out that while the relevant legislation or regulatory code imposed certain disclosure obligations on listed companies, a listed company was at liberty to provide information beyond the

prescribed scope on a voluntary basis. Notwithstanding, SFC would take appropriate follow-up action where the information provided on a voluntary basis caused undue movements in share prices and/or resulted in the establishment of a false market in the company's securities; or where it rendered the information provided in accordance with statutory or other requirements to become false, misleading or incomplete due to the omission of material facts.

8. Noting from the paper provided by SFC and HKEx (LC Paper No. CB(1)308/06-07(01)) that "Whilst the Exchange Listing Rules do not specifically require disclosure of financing arrangements for acquisitions of substantial interests in listed companies, listed issuers are nevertheless subject to a general requirement to ensure announcements are accurate and complete in all material respects and not misleading or deceptive", Ms Emily LAU enquired about the application of the said requirement on the disclosure of information relating to the proposed sale of shares of PCCW and whether HKEx had conducted investigation into the compliance or otherwise with this requirement. Mr SIN Chung-kai expressed similar concern. He was particularly concerned about the release of certain information which would likely influence price movements of the shares and would therefore affect the interests of minority shareholders and small investors.

9. In reply, VP(LD)/HKEx said that HKEx was also bound by the confidentiality obligation under section 378 of SFO and therefore could not comment on a specific case. VP(LD)/HKEx advised that under rule 13.09 of the Listing Rules, a listed issuer had the general obligations to disclose any necessary information relating to the group (i) to enable shareholders and the public to appraise the position of the group; (ii) to avoid the establishment of a false market in its securities and (iii) which might be reasonably expected materially to affect market activity in and the price of its securities. VP(LD)/HKEx assured members that HKEx would monitor the disclosure of information by listed issuers having regard to the materiality of the information, and would make enquiries with the issuers concerned where appropriate and necessary, as well as take appropriate follow-up or enforcement actions where there were breaches of the requirements under the Listing Rules.

10. Noting the response of VP(LD)/HKEx, Mr SIN Chung-kai and Mr Albert HO sought clarification as to whether HKEx was also bound by the secrecy requirements under section 378 of SFO in the same way as SFC and if yes, the relevant provisions in the section applicable to HKEx. Mr HO requested SFC/HKEx to provide further advice on the application of section 378 of SFO in writing after the meeting.

11. To address members' concern about the discrepancy in the information provided in Mr Richard LI's letter to the Panel dated 15 November 2006 and Mr Francis LEUNG's statement dated 21 November 2006, SFC and HKEx were invited to advise the Panel of the following, where practicable:

- (a) whether investigation had been carried out on the compliance or otherwise with the general requirement in paragraph 8 above by parties concerned in making public announcements relating to the proposed sale of shares of PCCW;
- (b) if the answer to (a) above was in the affirmative, to provide the Panel with the findings of the investigation and to address members' concern about whether the interests of minority shareholders of PCCW had been adequately safeguarded; and
- (c) if SFC/HKEx decided against disclosing the information requested in (a) and (b), the statutory basis or policy consideration for such a decision.

12. Noting that information on details of the proposed transaction, notably the source of funding for the purchase of PCCW's shares, had not been disclosed by Fiorlatte Limited during the initial announcement of the deal, Miss TAM Heung-man doubted whether and how the interest of small investors could be adequately safeguarded under the existing disclosure regime.

13. In response, ED(CF)/SFC explained that generally, the Takeovers Code did not apply to acquisitions of less than 30% of voting rights. Hence, the requirement on disclosure of detailed information such as the source of funding would only apply where the proposed acquisition would trigger a mandatory general offer or where the acquirer made a voluntary offer. He advised that a full disclosure regime was provided under Part XV of SFO, including the duty of disclosure on a person who acquired an interest in 5% or more of the shares in a listed company. ED(CF)/SFC assured members that the existing disclosure requirements under the Takeovers Code and SFO were on a par with international regulatory standards and comparable to those of leading international financial centres. As regards the requirement on disclosure of the source of funding in respect of any proposed acquisition of a listed company's shares, VP(LD)/HKEx said that she was not aware of any such requirement under the listing rules or listing regulations in other jurisdictions.

14. Mr James TO referred members to his letters dated 23 November 2006 tabled at the meeting (LC Paper Nos. CB(1)371/06-07(01) and (02) issued on 24 November 2006), which set out further questions for the response of Mr Richard LI and Mr Francis LEUNG. Mr TO suggested and members agreed that the Panel should forward the questions in the two letters to Mr LI and Mr LEUNG for their written responses.

(*Post-meeting note:* Mr James TO's letters were forwarded to Mr Richard LI and Mr Francis LEUNG respectively on 25 November 2006. Mr LEUNG's reply dated 1 December 2006 and Mr LI's reply dated 7 December 2006 were issued to members under restricted cover vide LC Paper Nos. CB(1)426/06-07(01) and CB(1)490/06-07(01) on 4 and 12 December 2006 respectively. The press statement of 30 November 2006 provided by Mr LEUNG was also issued to members vide LC Paper No. CB(1)424/06-07(01) on 4 December 2006.)

Changes of control of listed companies regulated by the Takeovers Code

15. Noting that Fiorlatte Limited had reached agreement with LI Ka Shing Foundation Limited and LI Ka Shing (Canada) Foundation for the two foundations to acquire 10% and 2% of PCCW's shares respectively, Miss TAM Heung-man was concerned about the possible influence that Mr LI Ka-shing might exert on the operation of PCCW through shareholdings by the two foundations.

16. In response, ED(CF)/SFC advised that according to the definition of "acting in concert" in the Takeovers Code, an individual and the foundations established under his name and controlled by him would fall within class (8) of persons presumed to be acting in concert with others in the same class unless the contrary was established. He however pointed out that the requirements under the Takeovers Code for a mandatory general offer would not apply unless the persons acting in concert collectively acquired 30% or more of the voting rights of the listed company.

17. Noting the definition of "control" in the Takeovers Code as 30% or more of the voting rights of the listed company, Miss TAM Heung-man was concerned whether the Administration and/or SFC would review the appropriateness or otherwise of the existing threshold with a view to achieving better protection for minority shareholders.

18. In reply, ED(CF)/SFC advised that the threshold of "control" in respect of the mandatory general offer obligations under the Takeovers Code had been reduced from 35% to 30% in 2001 following a comprehensive review by SFC. The existing 30% triggering level was in line with that adopted by other jurisdictions including the United Kingdom, the Mainland and Singapore. The level stipulated in the Takeovers Code was lower than the requirements in Malaysia (33%) and South Africa (35%). In the United States, there was no similar requirement to trigger a mandatory general offer.

19. The Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (PAS(FS)) echoed ED(CF)/SFC's view that the existing 30% triggering level was comparable to that adopted by major overseas regulators. Moreover, SFC had been keeping the regulatory requirements under regular review in tandem with international trends and market developments. On the latest review findings, PAS(FS) advised that amendments had been made to the Takeovers Code

after the last review by SFC having regard to comments collected during market consultations, and a report on the review had been published. ED(CF)/SFC added that in addition to the aforesaid review of the Takeovers Code conducted in 2004, SFC would review various issues covered by the Takeovers Code from time to time.

20. Mr Ronny TONG noted that according to the press release issued by Fiorlatte Limited on 12 November 2006, the Takeovers Executive of SFC (the Executive) had ruled that there was no sufficient evidence to conclude that Mr Francis LEUNG, Mr LI Ka-shing and Mr LI's two charity foundations were acting in concert in respect of the PCCW deal. In this connection, Mr TONG was concerned whether investigation had been conducted by SFC on whether the parties concerned had been holding shares of PCCW prior to the deal. Given that the proposed acquisition fell short of the 30% threshold, Mr TONG questioned the need for making the ruling, unless the regulator had reasons to believe that the parties concerned were already holding shares of PCCW before the deal and hence, any additional acquisition might trigger the mandatory general offer requirement.

21. While SFC was not in a position to comment on a specific case, ED(CF)/SFC gave a brief account on how the Executive dealt with an application for a ruling under the Takeovers Code. He advised that where there was any doubt as to whether a proposed course of action was in accordance with the Takeovers Code, the parties concerned might consult the Executive or seek the ruling of the Executive by submitting an application in accordance with the Code. The Executive would review the contents of the application and consider the relevant facts and circumstances. Where necessary, the Executive might request for additional information or seek information from other interested parties before making a ruling. The Executive would grant the ruling based on the representations made and information reserved. However, if any of the information provided or representations made was found to be misleading or there was any further material development, the ruling granted might be invalidated. The parties to the transaction might disclose the Executive's ruling to provide information to the market or to provide greater certainty to the status of the proposed transaction. ED(CF)/SFC nevertheless pointed out that notwithstanding the Executive's ruling, it would be the commercial decision of the applicant and parties concerned as to whether the proposed transaction should be proceeded with.

22. Referring to the definitions of "acting in concert" in the Takeovers Code, Mr Ronny TONG noted that an individual with his close relatives and a person providing finance or financial assistance to any person in connection with an acquisition of voting rights would be presumed to be acting in concert. In this connection, Mr TONG enquired whether persons in the following scenarios would be presumed to be acting in concert thereby triggering a mandatory general offer under the Takeovers Code:

- (a) a father already holding 10% of voting rights of a listed company acquired 20% from his son (who formerly held 30% of the company's shares before the acquisition); and

- (b) the father in (a) above, instead of acquiring 20% of voting rights directly from his son, provided a loan to or financed his friend for the acquisition with an agreement to on-sell 10 % of such rights to the father.

23. In response, ED(CF)/SFC advised that while the father, his son and his friend in (a) and (b) above would be presumed to be acting in concert unless the contrary was established, whether or not the acquisition described by Mr Ronny TONG above would trigger a mandatory general offer would depend on the circumstances of the case. ED(CF)/SFC referred members to Note 6 to Rule 26.1 of the Takeovers Code and pointed out that the concept of persons acting in concert recognized a group as being the equivalent of a single person. As such, if the father and son in (a) and (b) above were collectively holding 30% or more of voting rights before the acquisition, the proposed transfer of voting rights would not trigger a mandatory general offer unless there was a change in leadership of the group. In any case, the acquisition of voting rights by one member in a group from another member would not trigger a mandatory general offer unless the proposed acquisition resulted in the collective holding of 30% of voting rights by the group as a whole.

24. Mr Albert HO cited another example under which parties A and B were holding 10% and 20% of the voting rights in a listed company respectively and B reached an agreement with another party C, for the latter to acquire 10% voting rights from A and then on-sell 5% to B. In this connection, Mr HO enquired whether B and C would be presumed to be acting in concert so that their collective holding of 30% of voting rights after the acquisition would trigger a mandatory general offer under the Takeovers Code.

25. ED(CF)/SFC referred members to Note 7 to Rule 26.1 of the Takeovers Code and advised that where the transaction involved the acquisition of a part only of the holding, the Executive would have to make a judgment on whether the arrangement would allow the purchaser to exercise a significant degree of control over the retained voting rights of the vendor, subject to the circumstances of each individual case and having regard to the four points set out in Note 7 (a) to (d), including whether the vendor was an "insider"; whether there was a payment of very high price for the voting rights and whether the purchaser of a substantial holding would press for representation on the company's board etc. As to the example cited by Mr Albert HO above, ED(CF)/SFC advised that as B would be holding 25% of voting rights after the acquisition, a mandatory general offer would not be triggered unless there was sufficient evidence that arrangement had been made between B and C which effectively allow B to exercise a significant degree of control over the 5% voting rights retained by C. In making a judgment, the Executive would also take into account other factors such as the public undertaking, if any, made by B that the acquisition would not result in change in control of or in B having control over the listed company.

Transparency of regulatory and enforcement actions

26. Noting that SFC was bound by the secrecy requirements under section 378 of SFO, Mr Albert HO doubted whether the provision would still apply in respect of specific information on a case which had already been made available to the public. In this connection, Mr HO sought SFC's comments on whether there was any false or misleading information in the announcement issued by Fiorlatte Limited on 12 November 2006 on the Executive's ruling, i.e. there was no sufficient evidence to conclude that Mr Francis LEUNG, Mr LI Ka-shing and his charity foundations were parties acting in concert. Mr James TO expressed similar concern and sought clarification on details of the ruling, in particular whether the parties had been found to be acting in concert but a waiver had been granted by the Executive.

27. In this connection, ED(CF)/SFC explained that according to the legal advice given to SFC, the secrecy requirements under section 378 of SFO applied generally to any matter that had come to the knowledge of SFC in relation to its work. SFC therefore could not comment on details of a specific case. As to the accuracy or otherwise of the Executive's ruling as stated in Fiorlatte Limited's announcement of 12 November 2006, he advised that in general, the applicant or parties concerned should disclose the ruling by the Executive in its original terms, including information on the waiver, if such was granted. Where the public announcements made by the parties concerned contained false or misleading information, the Executive would take appropriate actions to follow up. ED(CF)/SFC reiterated that the ruling granted by the Executive might be invalidated if any of the information provided or representations made was found to be misleading or there was any further material development.

28. Referring to PCCW's Announcement on the proposed sale of shares dated 10 July 2006, Mr Ronny TONG noted that Mr Francis LEUNG had confirmed, inter alia, that he was acting in his own capacity and was not acting in concert with any other shareholders to obtain or consolidate control of PCCW and that Fiorlatte Limited was wholly owned by him. In the light of the subsequent development of the proposed sale, notably the binding agreements reached between Fiorlatte Limited, Telefonica and the two charity foundations established under the name of Mr LI Ka-shing, Mr TONG was gravely concerned that the announcement of 10 July 2006 might contain some false or misleading information. In this connection, Mr TONG enquired whether SFC had conducted any investigation or taken follow up actions. Ms Emily LAU also referred to the binding agreements for the on-sale of PCCW's shares between Fiorlatte Limited and relevant parties and enquired about the Executive's view on such an arrangement in reaching the ruling.

29. While SFC could not provide details of individual cases, including the action taken on specific cases, ED(CF)/SFC assured members that the Enforcement Division of SFC would spare no effort in taking enforcement actions, where appropriate, in accordance with the statutory power conferred under section 384 of SFO to protect the interest of investors in the event of provision of false or misleading information by any persons. As to how the Executive reached his ruling, ED(CF)/SFC advised that

the Executive would act in accordance with the Takeovers Code and take all relevant factors into consideration in making a judgment.

30. Recapping the evolution of the deal from the initial plan for divestment of PCCW's telecommunication and media-related assets to potential foreign buyers (Australian investment bank Macquarie Group and US-owned firm TPG-Newbridge) to the sale of shares to a local buyer (Fiorlatte Limited wholly owned by Mr Francis LEUNG), Mr Albert HO highlighted that the unusual development of the case (including the subsequent announcement by Mr Francis LEUNG about the on-sale arrangements of PCCW's shares) had raised public concern about the impartiality of SFC in conducting investigation and taking enforcement actions. Hence, Mr HO considered that the timely disclosure of information by SFC on its investigation was crucial to inspiring public confidence in the credibility and impartiality of SFC as the market regulator. Ms Emily LAU shared a similar view.

31. On the transparency of the Executive's decisions, ED(CF)/SFC referred to the provision under 16.3 of the Introduction of the Takeovers Code which allowed the Executive to publish its important rulings and interpretations of the Takeovers Code and the reasons for them, subject to confidentiality considerations, so that its activities might be understood by the public. In this regard, members urged SFC to seriously consider publishing the ruling of the Executive in respect of the PCCW deal and the underlying reasons to allay public concerns about the case. ED(CF)/SFC took note of members' view for consideration.

32. Mr SIN Chung-kai considered that the proposed transaction had aroused much public concern. Notwithstanding that SFC was bound by the secrecy requirements under section 378 of SFO, Mr SIN enquired whether SFC could disclose information on a specific case under exceptional circumstances, such as when public interest was at stake.

33. ED(CF)/SFC said that while follow-up action, such as when the investigation resulted in prosecution in specific cases, would be known to the public in due course, SFC was generally bound by the secrecy obligation under section 378 of SFO in the course of its work, including the conduct of investigation. Nevertheless, he advised that there were provisions under section 378 of SFO allowing the disclosure of information in the possession of SFC under certain circumstances and having satisfied certain conditions including public interest. SFC would also give due regard to other relevant factors such as the impact of such disclosure on share prices and the appointment of liquidator in some cases.

34. In this connection, PAS(FS) drew members' attention to section 378(3)(a) of SFO which provided that SFC might disclose information in the form of a summary so compiled as to prevent particulars relating to the business or identity, or the trading particulars, of any person from being ascertained from the summary. She added that this arrangement was similar to that for the disclosure of information by the Process

Review Panel of SFC. At members' request, ED(CF)/SFC undertook to provide written information to the Panel on the policy intent and interpretation of section 378 of SFO, including the application of the said section on cases where public interests were at stake. Mr HO and Mr SIN also requested the Administration/regulators to provide information on why HKEx was within the meaning of "specified person" as defined in section 378 of SFO. The Chairman also invited ALA6 to provide input, if necessary.

(Post-meeting note: The paper prepared by the Legal Service Division of the Secretariat (LC Paper No. LS25/06-07) in response to the Chairman's request in paragraph 34 above was circulated to members vide LC Paper No. CB(1)635/06-07 on 4 January 2007.)

35. Ms Emily LAU enquired about the circumstances under which the investigation results of SFC and HKEx would be made available to the public and whether there was any information which SFC and HKEx could share with the public and LegCo regarding the action they had taken or were taking in relation to the PCCW deal.

36. In response, ED(CF)/SFC confirmed that SFC would act in accordance with section 378 (3) of SFO when considering whether or not information in its possession should be disclosed. VP(LD)/HKEx explained that in general, if investigation revealed that there was an identified breach of the Listing Rules, HKEx might impose sanctions on the listed issuer ranging from private reprimands to public censure by way of public announcements in newspapers. While the matters relating to the proposed sale of PCCW's shares was outside the ambit of the Listing Rules, VP(LD)/HKEx stressed that in relation to price sensitive information, HKEx would continue to monitor material information announced by listed issuers.

(Post-meeting note: The information required in paragraphs 10, 11, 31 and 34 above provided by SFC and the Stock Exchange of Hong Kong was issued to members vide LC Paper No. CB(1)531/06-07(01) on 15 December 2006.)

Offer of special payment to PCCW shareholders

37. Referring to the proposed special payment of HK\$0.33 to 0.38 per public share to be made by Pacific Century Diversified Limited to holders of public shares of PCCW, Mr Albert HO was concerned whether the offer was legally binding; and whether and how the interests of minority shareholders would be adequately safeguarded if ultimately, the offer was not honoured.

38. In reply, ED(CF)/SFC said that in principle, a shareholder might make a no-strings gift to other selected shareholders. In the absence of a breach of the relevant rules and regulations (such as the insider dealing provisions), the regulator would not normally have a role in such action. However, a shareholder making the offer and announcing information on the offer should be mindful of the provisions on

disclosure of false or misleading information inducing transactions under section 277 and section 298 of SFO. Where there was prima facie evidence that the information announced was likely to induce the sale or purchase of securities by another person or to affect the price of securities, SFC would take necessary follow-up actions to ascertain whether there had been any breaches of relevant provisions under SFO.

II. Any other business

39. There being no other business, the meeting ended at 4:00 pm.

Council Business Division 1
Legislative Council Secretariat
24 January 2007