

Corporate Finance

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ENSURING QUALITY DISCLOSURE:

Under the dual filing arrangement, listed company disclosure and listing application materials will now be filed with the SFC. The SFC can thereby exercise its statutory enforcement powers against persons issuing false or misleading corporate information.



Our mission is to enhance the disclosure based regulatory regime, improve corporate governance, and promote changes to law and regulation encouraging the development of efficient markets.

ACHIEVEMENTS

- Issued guidelines and introduced two class exemptions for prospectuses to facilitate offers of securities
- Issued a joint consultation paper with the Financial Services and the Treasury Bureau (FSTB) on proposed amendments to the Companies Ordinance
- Promulgated the Securities and Futures (Price Stabilising) Rules
- Participated in various initiatives to enhance corporate governance, including the promulgation of the Securities and Futures (Stock Market Listing) Rules and the signing of a new MOU with HKEx to implement the dual filing regime

THIS CHAPTER IS ABOUT

- **Takeovers matters**
- **Facilitating market development and compliance**
 - Offers of shares and debentures
 - Proposed amendments to the Companies Ordinance
 - Review of existing securities offering regime
 - Price Stabilising Rules
- **Enhancement of corporate governance**
 - Shareholders Group
 - Listing Rules amendments
- **Upholding standards**
 - Overseeing the Stock Exchange's listing functions
 - Enhanced regulation of corporate disclosure under the SFO
 - Penny Stocks Incident and Expert Group Report

What We Do

- **Administer the Takeovers and Mergers Code and Share Repurchases Code;**
- **Promote fair and equal treatment of public shareholders;**
- **Raise standards of investor protection and corporate governance;**
- **Oversee the Stock Exchange's listing-related functions and responsibilities;**
- **Review and recommend changes to the Listing Rules;**
- **Administer securities and company legislation relating to listed and unlisted companies;**
- **Facilitate the development of effective and efficient capital markets for issuers, including Mainland enterprises; and**
- **From 1 April 2003 onwards, review prospectuses and other documents sent by listed companies to their shareholders.**

What We Did

Takeovers Matters

The Takeovers Executive administers all takeovers transactions relating to public companies, comments on takeovers announcements and documents, gives rulings and interpretations under the Takeovers Code and the Share Repurchases Code, monitors share dealings and movements during an offer period, and is available for consultation on the application of the Codes so that issues can be addressed and problems can be resolved at an early stage.

Since completion of a major review of the Codes in February 2002, the Takeovers Executive has been focusing on providing guidance and ensuring compliance with the new requirements. We had a record year both in terms of the total number of applications made under the Codes and the number of major takeovers and share repurchase transactions. There was also an increase in the number of privatisations, off-market and general offer share repurchases and hostile bids.

The Takeovers and Mergers Panel met on four occasions, once to hear a disciplinary case and three times to rule on the application of Code provisions to current transactions.

Major Disciplinary Action by the Takeovers Panel and the Takeovers Executive and Takeovers Panel Rulings

Takeovers Panel Sanctioned Anthony Wong Man Shek and Asia Financial (Assets Management) Ltd

On 2 April 2002 the Panel announced that it had imposed a five-year "cold shoulder order" denying Anthony Wong direct or indirect access to the securities markets. The Panel also publicly censured Wong and Asia Financial. From June 2000 to March 2001 Asia Financial had acquired more than 35% of the shares in Tack Hsin Holdings Ltd on behalf of seven client investment companies. The Panel found that Asia Financial and these investment companies were acting in concert and that as a result Asia Financial had breached the Takeovers Code because it had failed to make a mandatory general offer to all Tack Hsin shareholders. The takeover trigger threshold before 19 October 2001 was 35%.

Major Disciplinary Action by the Takeovers Panel and the Takeovers Executive and Takeovers Panel Rulings (Cont'd)

Takeovers Executive Sanctioned Chan Kin Sun and the Chan Family

On 10 June 2002 the Executive announced that it had imposed a 15-month “cold shoulder order” on Chan Kin Sun and publicly censured Chan and his family for breaching the Code. Chan also surrendered his registrations with the SFC as a securities dealer and commodities dealer for 30 months. The breach came to light during an investigation into price and volume movements in the shares of Truly International Holdings Ltd. It was found that Chan and his family members had collectively increased their holdings to more than 35% of Truly's shares by 5 September 2000 without making a general offer as required by the Takeovers Code.

Disciplinary Action Against Raffles International Holdings Ltd and Jimmy Lai Kam Wing

On 29 January 2003 the Executive announced that it had imposed a six-month “cold shoulder order” on Jimmy Lai and publicly censured Lai and Raffles. Lai and Raffles had breached the Takeovers Code on 20 January 2003 when Raffles, a company of which Lai was the sole owner and director, increased its shareholding in FT Holdings International Ltd from 34.99% to 36.05% without making a general offer. The 35% trigger applied to Raffles under Rule 26.6 of the Code because it had held between a 30% and 35% interest in FT Holdings immediately before the reduction of the trigger to 30% on 19 October 2001.

Takeovers Panel Upheld an Executive Ruling Concerning an Alleged Formation of a Concert Party in relation to Symphony Holdings Ltd

On 14 May 2002 the Panel announced that it had upheld an Executive ruling that certain persons were not acting in concert in connection with a general offer made for Symphony.

Takeovers Panel Ruling Concerning an Alleged Concert Party in relation to China Motor Bus Ltd (CMB)

On 11 July 2002 the Panel ruled that a concert party relationship did not exist between Chee Ying Cheung (then holding an approximate 9.8% shareholding in CMB) and Asia Time in respect of a general offer for CMB made by Asia Time. The Executive referred this matter to the Panel for a ruling because it considered there were particularly novel, important or difficult points at issue.

Takeovers Panel Upheld an Executive Ruling in relation to International Capital Network Holdings Ltd (ICN)

On 31 October 2002 the Panel upheld the Executive's ruling that a voluntary offer for ICN by Koffman Securities Ltd should be properly responded to as required by the Code including posting an offeree response document to shareholders of ICN. Shortly after Koffman announced its intention to make a voluntary offer for ICN in September 2002, ICN informed the Executive that it did not consider the offer to be in accordance with the Code and therefore it did not propose to take any action in response. The Panel agreed with the Executive that the offer had triggered obligations under the Code and that a refusal by ICN to respond to the offer would be in breach of the Code.

Facilitating Market Development and Compliance

■ Offers of Shares and Debentures

Following consultation with market participants and with the endorsement of the Government-appointed Financial Market Development Task Force, in February 2003, the SFC issued three sets of guidelines. They form part of the first phase of a three-phase initiative to reform the prospectus regime.

The guidelines constitute a facilitative interpretation of particular provisions of the current prospectus regime in the Companies Ordinance (CO) and address current market practices and procedures in order to facilitate the conduct of public offerings of shares or debentures. No legislative changes were required.

The three guidelines concern: the content and manner of publication of “awareness” and “summary disclosure” materials relating to an offer of shares or debentures made by a prospectus; the SFC's regulatory approach with respect to “repeat” offers using separately registered programme and issue prospectuses; and the adequacy for registration purposes of faxed copies of experts' consent letters and bulk print proof prospectuses.

In addition, pursuant to the SFC's exemption powers under the CO, two class exemptions were gazetted on 28 March 2003.

Matters Handled by Corporate Finance		(Table 1)	
	2002-2003	2001-2002	
Codes on Takeovers and Mergers and Share Repurchases			
General and partial offers under Takeovers Code	29	30	
Privatisations	9	3	
Whitewash waiver applications	31	26	
Other applications under Takeovers Code	255	195	
Off-market and general offer repurchases	8	3	
Other applications under Share Repurchases Code	9	11	
Total:	341	268	
Disciplinary cases dealt with by the Executive	2	0	
Takeovers and Mergers Panel			
Reviews of Executive rulings by Panel	2	2	
Referral by the Executive	1	0	
Disciplinary hearings	1 ¹	2	
<small>¹ The Asia Financial (Assets Management) Ltd hearing commenced in 2001 – 2002 and ended in 2002 – 2003</small>			
Special meetings for review of the Takeovers and Share Repurchases Code	0	3	
Total number of Panel meetings days:	4	7	
Others			
Applications for Exemption under Securities (Disclosure of Interests) Ordinance	290 ²	365	
<small>² With 474 warrants listed, 12 equity linked instruments and 3 debt instruments issued</small>			
Authorisation under section 4(2)(g) of the Protection of Investors Ordinance (PIO)	10	N/A ³	
<small>³ The Division was delegated the power to give authorisation under the PIO in February 2002</small>			
Unlisted companies' prospectuses authorised for registration by the Registrar of Companies	14	19	
Certificates of Exemption under Sections 38A and 342A of the Companies Ordinance	27 ⁴	53 ⁴	
<small>⁴ Each certificate issued can include more than one CO exemption.</small>			

The first exempts prospectuses which offer listed debentures (bonds and other debt securities) from content requirements of the CO that are the same as or similar to equivalent requirements under the Listing Rules and others that are considered irrelevant for investors or unduly burdensome for issuers.

The second exemption relieves prospectuses that offer non-listed debentures from content requirements of the CO that are considered either irrelevant for investors or unduly burdensome for issuers.

Subject to negative vetting by the Legislative Council, these class exemptions will become effective on 23 May 2003.

■ Proposed Amendments to the Companies Ordinance

The second phase of the market development project involves legislative change to the prospectus regime. This process was launched on 10 March 2003 by the publication of a joint SFC and FSTB consultation paper on proposed amendments to the CO.

The proposals are intended to provide expressly in the law for the facilitative measures set out in the three guidelines mentioned above and make other improvements to the prospectus regime, including specifying particular types of offers and invitations that can be made without the need to produce and register a prospectus.

The proposed amendments are expected to be introduced to the Legislative Council before July 2003.



Proposed CO amendments will facilitate the offering of securities.



Dual Filing Requirement

▶ Listed company disclosure and listing application materials must be filed with the SFC and as a result the SFC is now able to exercise its statutory enforcement powers against persons issuing false or misleading corporate information.

Public Offering Price Stabilisation

▶ The provisions facilitate public offerings in Hong Kong by providing a “safe harbour” for managers who wish to undertake price stabilising actions following new issues of shares or debentures, in line with international practice.

■ Review of Existing Securities Offering Regime

The third phase of this project involves a wide-ranging review of existing laws and regulations designed to reform and update comprehensively Hong Kong's securities offering regime. This review includes a study of the securities offering regulations in leading markets with a view to applying best practice solutions to Hong Kong. We hope to make recommendations for specific reforms no later than the third quarter of 2004.

■ Price Stabilising Rules

Price stabilising actions are potentially manipulative and may contravene market misconduct provisions under the law. Following market consultation in February 2002, the SFC released its conclusions on the Securities and Futures (Price Stabilising) Rules in July 2002. As one of the 40 items of subsidiary legislation under the SFO, the Rules became effective on 1 April 2003.

Enhancement of Corporate Governance

■ Shareholders Group

Investors have an important role to play in raising corporate governance standards in Hong Kong. The Shareholders Group was set up in May 2001 to get investors' views on issues relating to shareholders' rights and interests. The Group was formalised as a Standing Committee under section 6 of the SFCO in June 2002.

The Group consists of 13 members including retail and institutional investors, professionals, academics, prominent advocates of investors' rights, and a Consumer Council representative. During the year, they met six times to discuss issues relating to shareholders' interests and investor protection. Members also provided feedback on regulatory proposals.

Discussion topics included:

- Regulation of corporate information disclosure
- Scripless securities market
- New investor compensation arrangements
- Continuing listing eligibility criteria
- Guidelines for electronic public offerings
- Code of best practice on corporate governance
- Cold calling

■ Listing Rules Amendments

To strengthen the corporate governance of issuers in Hong Kong, HKEx consulted the public on amendments to the Listing Rules in early 2002. Consultation conclusions were published in January 2003. The SFC is committed to assisting HKEx to introduce rule changes that enhance Hong Kong's governance standards.

In addition, it is intended that the SFC and the Stock Exchange will jointly consult the public on proposed regulations relating to listing sponsors and their responsibilities to the market in connection with IPOs.

Upholding Standards

■ Overseeing the Stock Exchange's Listing Functions

We regularly met and liaised with the Stock Exchange's Listing Division in order to discharge our duty to oversee and monitor the performance of the Stock Exchange's listing functions.



Hong Kong remains a leading fund-raising centre in Asia, with 985 companies listed on the Stock Exchange by the end of March.

■ Enhanced Regulation of Corporate Disclosure under the SFO

On 6 May 2002, we consulted the market on a dual filing requirement, which aims to strengthen the enforcement of corporate disclosure. The Securities and Futures (Stock Market Listing) Rules implementing the dual filing requirement were gazetted on 13 December 2002 and came into force with the SFO.

In January 2003, the SFC and HKEx signed a new MOU, which details the administrative arrangements for implementing the dual filing regime.

■ Penny Stocks Incident and Expert Group Report

HKEx released a consultation paper in July 2002 proposing to revise the criteria for admission to listing and to introduce more stringent criteria for delisting.

Subsequent market reaction reflected in the prices of penny stocks on 26 July 2002 led to the withdrawal of proposals for delisting criteria for reconsideration. The Financial Secretary appointed an independent Panel of Inquiry to look into the circumstances relating to the preparation and release of the consultation paper.

The independent panel issued its report in September 2002. The FSTB, the SFC and HKEx have been following up and implementing the report's recommendations.

An Expert Group was appointed by the Financial Secretary on 26 September 2002 to review the regulatory structure of the securities and futures markets in Hong Kong.

HKEx, after discussion with industry participants, refined its proposals for delisting criteria and released a supplemental paper for public consultation in November 2002. The paper discusses what might constitute appropriate indicators and thresholds for remedial action to be taken on by an issuer to maintain a listing. The consultation period ended in February 2003.

On 21 March 2003, the Expert Group released its report and recommended the transfer of listing functions from the Stock Exchange to a new division of the SFC to be known as the Hong Kong Listing Authority (HKLA). It also recommended that the Listing Rules, administered by the HKLA, should be statutorily backed.

The Financial Secretary has accepted that the general direction recommended by the Expert Group is appropriate and will enhance the quality of our market. The Government has announced that public consultation will be conducted on the report's recommendations. The SFC will work closely with the Government and HKEx.