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Date: March 30, 2004

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Please reply to: *Mason Y.K. Ching*  
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**The Listing Unit,**

11<sup>th</sup> Floor, One International Finance Centre,  
1 Harbour View Street,  
Central,  
Hong Kong

Dear Sirs,

Re: Exposure of the Draft Code on Corporate Governance Practices  
and the Report on Corporate Governance Practices

We refer to the above draft Code. In response to your request for comments, we have pleasure in submitting our comments and some suggested amendments to certain provisions of the draft Code for your consideration.

Should you require any clarification, please do not hesitate to contact our partner, Mr. Mason Y.K. Ching on 2295-3393 (tel. no.) or 2295-3336 (fax no.).

Yours faithfully,

Mason Y.K. Ching

Jimmie K.S. Wong & Partners

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March 2004

JIMMIE K.S. WONG & PARTNERS

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## Corporate Governance Practices

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*Comments on  
the Draft Code on  
Corporate Governance Practices  
and Corporate Governance Report  
prepared by the Securities and Futures Commission,  
Hong Kong Exchanges and Clearing Limited  
and the Main Board and GEM Listing Committees  
of the Stock Exchange of Hong Kong Limited*

*presented by*

*Mason Y. K. Ching  
Partner and Head of Corporate Finance and Commercial Department  
Jimmie K.S. Wong & Partners*

**Exposure of Draft Code on Corporate Governance Practices ("Code") and the Report on Corporate Governance Practices ("Corporate Governance Report")**

We refer to the above draft Code.

We strongly support the initiative of the Securities and Futures Commission, Hong Kong Exchanges and Clearing Limited and the Main Board and GEM Listing Committees of the Stock Exchange of Hong Kong Limited to implement the Code and promote good corporate governance standards in Hong Kong. We believe that the quality of Hong Kong stock market will be upgraded as good corporate governance is gradually enshrined in our culture.

As practitioners in corporate finance, we take it as our responsibility to make contributions for the healthy development of the market in Hong Kong. We have carefully studied the draft Code and noticed some ambiguities requiring clarification one way or the other. We now have pleasure to set out below our comments and some suggested amendments to certain provisions of the draft Code.

**Q1. Do you support the proposed implementation timetable? If not, please specify those Code provisions that you consider it would not be possible to comply with within the expected timeframe for compliance. Please provide recommendations for alternative implementation provisions.**

We support the proposed implementation timetable.

**Q2. Do you support the presentation and format of the draft Code and Corporate Governance Report? If not, please provide details of your concerns and recommendations.**

We support the presentation and format of the draft Code and Corporate Governance Report.

**Q3. Are there any ambiguities in the wording of the provisions of the Code? If so, how could these ambiguities be clarified?**

Yes, some provisions of the Code need clarification and our suggested amendments are set out below.

### Suggested amendments

A.1.1 The Board should meet regularly and board meetings should be held at least four times a year at approximately quarterly intervals. It is expected that such regular board meetings will normally involve the active participation, either in person or through other electronic means of communications whereby all persons participating in the meeting can hear each other, of a majority of directors entitled to be present.

Reasons: The amendment may avoid any doubt as to whether certain electronic means of communications such as emails, MSN messenger or ICQ can be used for holding meetings.

### Suggested amendments

A.1.7 There should be a procedure agreed by the board to enable directors, upon reasonable request, to seek independent professional advice in appropriate circumstances to assist them to discharge their director duties, at the issuer's expense. ~~The board should resolve to provide separate independent professional advice to directors to assist the relevant director or directors, to discharge his/their duties to the issuer.~~

Reasons: The original wording seems to anticipate the seeking of independent professional advice by directors in circumstances other than for discharging their director duties at the issuer's expense. As this provision will burden issuers with additional expenditure, such kind of requests should rarely be entertained. It is suggested that the board should allow directors to seek independent professional advice at the issuer's expense ONLY for discharging their duties. Otherwise, this may be open to abuse by the directors who control the board for seeking independent professional advice to pursue their own interests.

The second part of the original wordings seems to make it compulsory for the board to resolve to provide separate independent professional advice to directors.

### Suggested Amendments

- A.1.8 If a substantial shareholder .....but a board meeting should be held. At least one independent non-executive directors who, and whose associates, have no material interest in the transaction should be present at such board meeting.

Reasons: It is not always practical to gather all independent non-executive directors, who tend to be busy executives and professionals with full time jobs from different industries, to attend a board meeting. We believe that at least one of them attends will do the trick.

The second proposed amendment is in line with the reminder set out in the notes that a director should not be counted in the quorum if he or any of their associates have a material interest in the transaction.

### Suggested Amendments

- A.1.9 An issuer should arrange appropriate insurance cover in respect of legal action against its directors for any claims arisen from their acting in the capacity of a director of the Company.

Reasons: This is to avoid any doubt as to what kind of insurance cover should be taken out.

### Suggested Amendments

- A.2.2 The chairman should ensure that appropriate steps are taken to provide effective communication with shareholders for collecting or for their expressing views on the affairs of the issuer and that such views of shareholders are communicated to the board as a whole.

Reasons: The amendments may clarify the purpose of providing effective communication with shareholders.

### Suggested Amendments

- A.5.2** ~~taking the lead~~—where potential conflicts of interests arise in relation to a resolution, taking the lead to decide whether such conflicts do exist and, if they do, to discuss and propose a resolution for such matter; and

Reasons: This makes clear exactly what the non-executive directors should take the lead in the event of conflicts of interests.

### Suggested Amendments

- B.1.3** The terms of reference of the remuneration committee should include, as a minimum, the following specific duties and authorities:

(a).....

- (b) to ensure that no director or any of his associates is involved in deciding his own remuneration and that, as regards.....

Reasons: The items set out in (a) to (f) include approval of compensation arrangements and these are authorities rather than duties given by the board.

Very often directors of an issuer are members of the same family or somehow related. To prevent a director from influencing the remuneration committee's decision on his/her remuneration, his/her associates should not be involved in making such decision.

### Suggested Addition

- B.1.8** In the event that the remuneration committee has resolved not to approve any remuneration or compensation arrangements but, nevertheless, the board has subsequently resolved to approve the same, the board shall disclose details of the reasons of their resolutions in their annual reports.

Reasons: Although the remuneration committee should be delegated with authority to approve remuneration and compensation arrangements according to the Code, the board, who delegated

such authority, may always override such decision and resolve to approve a particular remuneration package or compensation. Unless drastic changes are proposed, it may not be the intention of the Code to disenfranchise the board from deciding on directors' remuneration. The second best measure is to require a full disclosure of the reasons for the board to override the remuneration committee's decision in annual reports.

#### Suggested Amendments

C.3.2 the going concern assumptions and ~~any~~ qualifications (if any);

Reasons: There may be more than one going concern assumption.

If "qualifications" is intended to mean "the going-concern qualifications", it may not be appropriate to insert "any" before "qualifications".

#### Suggested Amendments

E.1.1 ~~An issuer-~~The chairman of a meeting should propose a separate resolution at a general meeting on each substantially separate issue.

Reasons: A resolution has to be proposed by some individual and the chairman is in the best position to do that.

#### Suggested Amendments

E.1.2 The chairman of the board should attend the annual general meeting..... appointed delegate, to be available to answer questions at the annual general meeting. The chairman of the independent board committee (if any) should also be available to answer questions at any general meeting to approve a connected transaction or any other transaction that is subject to independent shareholders' approval. At the request of the chairman of the independent board committee, the board shall, at the issuer's expense, procure a representative of the independent financial advisers to attend and assist such chairman in answering questions at general meetings.

Reasons: For a connected transaction or other transactions requiring independent shareholders' approval, it is independent financial advisers who will do most, if not all, of the due diligence and analysis. A representative of such advisers is in a better position to answer questions raised by independent shareholders. It may not be fair for the chairman of the independent board committee to address shareholders' questions on their own without assistance.

#### Suggested Amendments

**E.1.3** The board should ensure that ~~Issuers should arrange for the notice of general meetings and related papers will to be sent by the issuer to its shareholders at least 21 days .....~~

Reasons: The principle of effective communications is stated as being that the board should endeavour to maintain an on-going dialogue with shareholders and use general meetings to communicate with shareholders and encourage their participation. It follows that a duty should be imposed on the board to ensure service of adequate notice and information on shareholders as a matter of good corporate governance practice.

#### Suggested Amendments

**E.2.2** The issuer should count all proxy votes and, except where a poll is required, the chairman of a meeting should indicate to the meeting the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands. The issuer should ensure that votes cast are properly counted and recorded. The chairman of a meeting should ensure that the issuer complies with this requirement.

Reasons: This avoids any doubt as to who should see to the compliance of this requirement on the part of the issuer.



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We hope you find our comments useful. If you wish us to elaborate or explain any of our comments, please do not hesitate to contact Mr. Mason Ching on 2295-3393.