

MEMORANDUM OF UNDERSTANDING
GOVERNING LISTING MATTERS

Securities and Futures Commission

and

The Stock Exchange of Hong Kong Limited

28 January 2003

MEMORANDUM OF UNDERSTANDING GOVERNING LISTING MATTERS

Between: Securities and Futures Commission (SFC) of
12th Floor, Edinburgh Tower, The Landmark, Central, Hong Kong;

And: The Stock Exchange of Hong Kong Limited (SEHK) of
1st Floor, One and Two Exchange Square, Central, Hong Kong.

Background

1. The Parties

1.1 The SFC is the statutory body established under the Securities and Futures Commission Ordinance (Cap. 24) (SFC Ordinance) and will be governed by the Securities and Futures Ordinance (Cap. 571) (SFO) when the SFO comes into effect on 1 April 2003.

1.2 SEHK is a company duly incorporated under the Companies Ordinance (Cap. 32) and is the only recognized exchange company under the Stock Exchanges Unification Ordinance (Cap. 361) (and will be the Stock Exchange Company under the SFO). It operates the Main Board stock market and the Growth Enterprise Market (GEM) in Hong Kong. SEHK is a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx).

1.3 HKEx is a company duly incorporated under the Companies Ordinance (Cap. 32) and is a recognized exchange controller under the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (and will be under the SFO). It is also a listed company on the Main Board of SEHK.

2. Reasons for This Memorandum of Understanding

2.1 SEHK is the frontline regulator of all listing-related matters and of issuers listed on its markets. It administers the Listing Rules (which term includes the Listing Agreement). Furthermore, SEHK has the legal functions under the Companies Ordinance, transferred from the SFC by statutory order as referred to in paragraph 2.6 below, of authorizing the prospectuses of companies that are or are to be listed on its market.

2.2 The SFC has a statutory duty to supervise and monitor SEHK in the latter's performance of its listing-related functions and responsibilities. This function of the SFC is set out generally in Section 4(1)(d) of the SFC Ordinance (to be Section 5(1)(b) of the SFO).

- 2.3 For the benefit of mutual cooperation, public understanding, and the interest of the investing public, and to reduce duplication to the extent reasonably practicable, the parties have agreed to enter into this Memorandum of Understanding (MOU) to set out clearly their respective roles and responsibilities in relation to listing matters.
- 2.4 The SFC and SEHK entered into their first Memorandum of Understanding Governing Listing Matters on 25 November 1991, under which SEHK became solely responsible for the day-to-day administration of listing-related matters with respect to the stock market in Hong Kong.
- 2.5 On 31 December 1991, certain provisions of the Securities (Stock Exchange Listing) Rules, pursuant to which the SFC had up to that time performed some listing functions, were repealed to enable SEHK to become solely responsible for the day-to-day administration of all listing-related matters.
- 2.6 On 1 February 1993, the then Governor in Council made the Securities and Futures Commission (Transfer of Functions) Order transferring to SEHK the SFC's functions, under the Companies Ordinance and the SFC Ordinance, of vetting prospectuses in relation to listings. The Order remains in effect as of the date of this MOU and has been in substance re-made by the Chief Executive of the Hong Kong Special Administrative Region in Council under the SFO as the Securities and Futures (Transfer of Functions - Stock Exchange Company) Order.
- 2.7 On 6 March 2000, SEHK became a wholly owned subsidiary of HKEx. The SFC and SEHK entered into an Amended and Restated Memorandum of Understanding Governing Listing Matters to enable SEHK to continue to be the frontline regulator responsible for the supervision and regulation of listed companies, their directors and controlling shareholders, and market users generally in respect of all listing-related matters.
- 2.8 The SFO was enacted on 13 March 2002 and will come into effect on 1 April 2003. The Securities and Futures (Stock Market Listing) Rules (the "Rules") under the SFO will enhance the effective regulation of corporate information disclosure by requiring statutory filing of certain documents. The SFC will be able to exercise statutory enforcement powers where it has reason to believe that disclosure documents as filed contain information that is false or misleading in a material particular.
- 2.9 The disclosure documents to be statutorily filed with the SFC under the Rules are the same as those filed with the SEHK under the Listing Rules and the Companies Ordinance. The Rules will not impose any additional substantive requirements on listing applicants, listed companies, or other market users.
- 2.10 Furthermore, in order to avoid any additional administrative burden and cost, on the market, the Rules will specifically allow a person to file the relevant disclosure documents only with SEHK, provided that the person authorizes SEHK to make a statutory filing with the SFC on its behalf. The Rules will not impose any additional fees on listing applicants, listed companies, or other

market users. The parties have entered into arrangements for SEHK to help defray the SFC's costs in administering the Rules, and a copy of the Deed of Agreement between the SFC and SEHK is set out in Appendix I to this MOU.

3. Status of This Memorandum of Understanding

3.1 The parties acknowledge and agree that:

- (a) they have entered into this MOU in good faith and for the purpose of facilitating a cooperative working relationship;
- (b) provisions of this MOU should receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the objects of this MOU according to its true intent, meaning, and spirit;
- (c) this MOU is not legally binding;
- (d) this MOU shall not give rise to any rights, direct or indirect, on the part of third parties; in particular, no third party shall have any legitimate expectation or be entitled to require the SFC or SEHK to comply with provisions in this MOU; and
- (e) nothing in this MOU shall affect the rights of the SFC to exercise any of its powers or perform any of its functions under the SFO or other relevant legislation.

3.2 The parties acknowledge and agree that they intend this MOU to apply to both Main Board and GEM matters and, accordingly, all provisions of this MOU referring to Main Board matters shall, unless the context otherwise requires, be deemed also to apply to the corresponding GEM matters, applicable with any appropriate modifications.

3.3 The parties further acknowledge and agree that if the SFC determines that a material failure or refusal on the part of SEHK to comply fully with the provisions of, or to perform the obligations under, this MOU has occurred, the SFC may take any action it considers necessary or desirable. In particular it may:

- (a) requires that SEHK remedies or reverses its failure or refusal within such period and on such terms and conditions as the SFC thinks appropriate;
- (b) terminate this MOU;
- (c) exercise its powers under section 14 of the Securities Ordinance (Cap. 333) (or section 397 of the SFO) and make rules under which the SFC will play a role in the day-to-day regulation of listing-related matters;

- (d) exercise its powers under sections 50 and 51 of the SFC Ordinance (or sections 92 and 93 of the SFO) and issue a restriction notice or suspension order;
- (e) exercise its powers under section 47 of the SFC Ordinance (or section 25 of the SFO) and request the Chief Executive of the Hong Kong Special Administrative Region in Council order that the SFC resume all or any of the functions that have been transferred to SEHK;
- (f) resume any functions or responsibilities of SEHK as provided for by this MOU; and
- (g) recommend to the Financial Secretary the enactment of legislation in relation to any listing-related matters or any matters to be administered by the SFC.

The SFC agrees that its powers under this paragraph 3.3 are not delegable and shall be exercised only by a meeting of its members. However, an Executive Director of the SFC may in the first instance decide to refer the matter for a meeting. The Executive Director shall thereupon give SEHK sufficient written notice of his intention to do so and the reasons. SEHK may then make representations in writing to the SFC and may attend the meeting of the SFC to make any oral representations. SEHK shall submit any written representations it wishes to make within 7 days or, in case of urgent need, before any reasonable deadline the Executive Director may set.

- 3.4 The issue of a restriction notice or suspension order by the SFC, as referred to in paragraph 3.3(d) above, is subject to the SFC's prior consultation with the Financial Secretary as well as SEHK's right of appeal to the Chief Executive in Council under Sections 50 and 51 of the SFC Ordinance (and Sections 92 and 93 of the SFO).
- 3.5 For the purpose of the SEHK's statutory immunity provided for by Section 22 of the SFO and for the purpose of the HKEx's statutory immunity provided for by Section 64 of the SFO, the SFC acknowledges that everything done or omitted to be done in good faith pursuant to the provisions of this MOU by SEHK or any person acting on its behalf (including any member of the Board of Directors of SEHK or an member of any committee established by SEHK) shall constitute acts or omissions in the discharge or purported discharge of the duties of SEHK as referred to in Section 21 of the SFO and the duties of HKEx as referred to in Section 63 of the SFO.

Roles and Responsibilities of the SFC and SEHK

4. General

- 4.1 The SFC's regulatory functions are set out in the SFC Ordinance (and will be in the SFO) and relate to, among other things, the following matters:

- (a) market manipulation;
- (b) insider dealing;
- (c) licensing and supervision of intermediaries;
- (d) disclosure of interests in securities;
- (e) activities governed by the Codes on Takeovers and Mergers and Share Repurchases;
- (f) under the Rules, statutory filing of certain corporate disclosure documents; and
- (g) supervision and monitoring of SEHK pursuant to the relevant statutory provisions and this MOU.

4.2 The SFC discharges its function in supervising and monitoring SEHK, among other ways, through the following means:

- (a) approval (or rejection) of SEHK's proposed amendments to the Listing Rules, any waivers of general effect, and consideration of any novel, potentially controversial, or sensitive matter;
- (b) receipt and consideration of monthly reports from the Listing Division;
- (c) regular contact and meetings with the Listing Division;
- (d) periodic audits or reviews of SEHK's performance in the regulation of listing-related matters; and
- (e) providing policy advice on any potential amendments to the Listing Rules that SEHK might propose.

4.3 SEHK has, among other things, the following listing-related functions and responsibilities:

- (a) to establish a stock exchange and to provide, regulate, and maintain facilities for conducting the business thereof;
- (b) to provide and operate a stock market and to promote and protect the interests of all members of the public having dealings on the SEHK or with members thereof;
- (c) to provide and promote a fair, orderly, and efficient market for the trading of securities;

- (d) to establish and promulgate rules prescribing listing requirements for the quotation of securities on, and in respect of such other matters as are necessary or desirable for the proper and efficient operation and management of, the stock market;
- (e) to administer the Listing Rules fairly, in accordance with the general principles set out in the respective rules, and having regard to the best interest of each market and Hong Kong's stock market as a whole and in the public interest;
- (f) to ensure that persons administering the Listing Rules are independent, professional, and competent; and
- (g) to establish fair and appropriate procedural rules governing the manner in which it will discharge its listing-related functions and responsibilities.

4.4 The Listing Rules contain detailed requirements that relate to, among other things, the following matters:

- (a) criteria for initial and continuing listing;
- (b) disclosure in listing documents;
- (c) disclosure in periodic reports by listed issuers;
- (d) disclosure of price sensitive or material events and information;
- (e) duties of directors and advisers of listed issuers;
- (f) trading by directors of a listed issuer in its securities;
- (g) certain categories of transactions of listed issuers, including, as defined in the Listing Rules, "notifiable transactions", which, in turn, include connected transactions, discloseable transactions, major transactions, very substantial acquisitions and, pending amendments to the Listing Rules, very substantial disposals; and
- (h) certain corporate activities of listed issuers, including secondary issues and placings, rights issues, and granting of share options.

4.5 SEHK acknowledges and agrees that, in discharging its responsibilities as the frontline regulator of all listing-related matters, it shall:

- (a) ensure, so far as reasonably practicable, the due and proper observance by listed companies, their directors as well as controlling shareholders, sponsors, authorized representatives, and any other market users of the provisions of the Listing Rules and of any obligations imposed on such persons thereunder;

- (b) maintain the public database of listed company information, currently open to access via the Internet, containing, so far as is practicable having used all reasonable endeavours, an up-to-date record of all information required to be filed and published under the Listing Rules since 1 April 1999 that SEHK receives regarding each listed company, its management, and substantial shareholders, and make modifications or enhancements to it from time to time as feasible and appropriate;
 - (c) maintain a suitable financial statements review program with a view to encouraging high standards of financial disclosure and to detect instances of improper disclosure, including through SEHK's participation in the Professional Standards Monitoring Committee of the Hong Kong Society of Accountants;
 - (d) maintain an adequate strength of staff in the Listing Division with an adequate level of professionalism and experience to discharge the responsibilities of the Listing Division;
 - (e) maintain proper files, records, and systems of all transactions and other matters proceeded by the Listing Division, the Listing Committee, and the Listing Appeals Committee so far as necessary for the proper regulation of listing-related matters; and
 - (f) develop and maintain adequate procedural guidelines, checklists, and reporting mechanisms for Listing Division staff to assist them in the administration of the Listing Rules and in discharging their respective responsibilities.
- 4.6 SEHK acknowledges and agrees that the Board of Directors of SEHK shall, notwithstanding that it has the legal authority to do so, not exercise any overriding rights, powers, or jurisdiction in relation to any matter covered by the Listing Rules and under delegation to others, unless in exceptional circumstances and only after having given the SFC 7 days (or such shorter period as is reasonable in the circumstances) prior written notice of its intention to do so.
- 4.7 The SFC acknowledges and agrees that it shall consult SEHK regarding any codes or guidelines it proposes to publish in so far as the codes or guidelines apply to:
- (a) SEHK in SEHK's performance of listing-related functions; or
 - (b) listed issuers by reason of their securities being listed on SEHK's markets.
- 4.8 The parties further acknowledge and agree that they shall make all reasonable efforts to cooperate on matters within their respective functions, including the regulation, under the rules, laws and other relevant provisions that the parties respectively administer, of intermediaries providing services in listing-related matters.

5. High-Level Liaison

- 5.1 The parties have established a “High-Level Group” that shall meet from time to time to review systemic and policy issues concerning listing-related matters. The membership of the Group is set out in Appendix II. All members are at liberty to propose topics for discussion.

6. Rules and Policy Formulation

- 6.1 *Rule Changes.* Section 35 of the Stock Exchanges Unification Ordinance (and Section 24 of the SFO) provides that no rules of SEHK and no amendments to the rules of SEHK (including matters referred to in paragraphs 6.3 and 6.5 below) shall have effect unless approved by the SFC.
- 6.2 The Listing Division, guided by the Listing Committee and the High-Level Group, will from time to time review, and where appropriate, propose amendments to, the Listing Rules. The Listing Division may at any time seek, and SFC staff will in response provide, policy advice and comments and an indication of SFC staff’s support on any proposals for potential amendments. It may also seek guidance on relevant government policy through the SFC. The Listing Division may alter its proposals in accordance with SFC staff’s advice or comments, proceed with its proposals unaltered, report on such advice or comments to the Listing Committee, or otherwise decide on how to deal with such advice and comments in its discretion.
- 6.3 The Listing Division will put all proposals for amendments to the Listing Rules, consultation papers, recommended consultation conclusions and recommended amendments to the Listing Committee for approval. The Board of SEHK will endorse any final proposals for amendments as decided by the Listing Committee and submit them to the SFC for approval. SFC staff will make their own recommendations to the SFC as regards the approval of such final proposals.
- 6.4 SEHK has adopted certain general principles with regard to consultation exercises designed to solicit input at appropriate stages of the process and to communicate SEHK’s view on the subject matter in an open and transparent manner.
- 6.5 *Waivers etc.* SEHK shall forward to the SFC any policy decision it intends to implement that will have mandatory effect or be of general application, including practice notes, guidance notes, and waivers from requirements. SEHK shall not publish, rely upon, or impose on any person any such note, waiver, or decision until the SFC has approved it in writing.
- 6.6 *Novel Issues, Public Policy Implications etc.* SEHK shall inform the SFC, as soon as is reasonably practicable, of any matter of a novel or potentially controversial or sensitive nature, or which appear to involve public policy implications, whether arising from a listing application, a transaction by a listed issuer, or otherwise.

- 6.7 The SFC shall respond as soon as is reasonably practicable on any matter where SEHK consults it or seeks its advice, comments, guidance, or approval.

Co-ordination Between the SFC and SEHK on Transactions and Cases

7. Listing Applications

7.1 The statutory filing requirements for listing applications (including supporting documents) under Rule 5 of the Rules are an important element in the effective regulation of corporate information disclosure in Hong Kong. As detailed in paragraph 2.10 above, the Rules provide for SEHK to accept statutory filings on behalf of the SFC. The paragraphs below set out the arrangements for the administration of the Rules so as to most effectively ensure that they do not give rise to additional burden or cost to those who comply with the relevant rules, laws, and regulations or to an unreasonable burden on SEHK.

7.2 SEHK acknowledges and agrees that it shall:

- (a) use all reasonable endeavours to obtain the necessary written authorization from listing applicants (including all cases where an application for listing has been made but approval for listing and listing have not occurred before the Rules come into effect on 1 April 2003) for its accepting all statutory filings on behalf of the SFC, and put in place the appropriate amendments to the Listing Rules as soon as possible to make this a requirement on applicants;
- (b) upon obtaining such authorization, accept statutory filings on behalf of the SFC as contemplated in Rule 5(2) of the Rules;
- (c) take reasonable steps to keep and maintain the statutory filings it accepts on behalf of the SFC, and to retain the relevant filings for a period of 6 years so far as necessary for the proper regulation of listing-related matters;
- (d) require applicants to submit, together with the initial advance booking form, an advanced proof of the prospectus; and
- (e) where the draft prospectus submitted with an advance booking form is not in a sufficiently completed state, not commence vetting and return the application and the initial listing fee to the applicant.

7.3 *Passing of Materials.* The parties agree that SEHK shall pass to the SFC:

- (a) a full copy set of all materials relating to each listing application once they have been accepted for vetting, including the advance booking form and an advance draft of the prospectus. Except as otherwise provided, SEHK shall not pass subsequent draft of such materials to the SFC;

- (b) a full copy set of the materials relating to the application that the SEHK staff put to the Listing Committee for consideration or decision (i.e., under current practice, the Listing Division's Listing Committee Report and an advance proof of the prospectus); and
 - (c) copies of any other materials relating to listing applications as the SFC may request in writing.
- 7.4 The parties agree to review from time to time the procedures in paragraph 7.3 and make amendments to improve efficiency as feasible and appropriate.
- 7.5 The parties further agree that SEHK shall pass to the SFC the materials as set out above:
- (a) in the case of materials under paragraph 7.3(a), as soon as reasonably practicable after SEHK accepts the materials;
 - (b) in the case of materials under paragraph 7.3(b), at the same time as the SEHK staff circulate the materials to Listing Committee members; and
 - (c) in the case of materials under paragraph 7.3(c), as soon as reasonably practicable upon the later of SEHK receiving the relevant materials or the SFC's request.
- 7.6 The parties may, subject to their respective statutory and other obligations, at any time discuss formally or informally any issue or exchange any material concerning any listing application.
- 7.7 The parties agree to study the feasibility and desirability of developing a document control and filing system providing for a shared electronic database that would allow the SFC access to copies of materials relating to any listing application in satisfaction of SEHK's obligations under paragraph 7.3 above.
- 7.8 SEHK to remain responsible for administration of listing process. The parties acknowledge and agree that:
- (a) to avoid administrative duplication and facilitate communications with the market, and in accord with SEHK's role as the frontline regulator of all listing-related matters, SEHK shall remain the primary point of contact for listing applicants and their advisers;
 - (b) SEHK shall continue to be responsible for conducting all vetting of the materials referred to in paragraph 7.3 above and for administering the listing process under the Listing Rules;
 - (c) the SFC does not intend to comment upon matters of, and shall not be responsible for ensuring, compliance of a listing application with the specific requirements of the Listing Rules;

- (d) save in exceptional circumstances, if the SFC decides to exercise any of its power and functions under the Rules, it shall do so within SEHK's timetable for processing the listing application so as to avoid any unreasonable delay;
- (e) in particular, if the SFC has any comments on a listing application, it shall, save in exceptional circumstances, pass them in writing to SEHK as soon as is reasonably practicable for SEHK to raise with the applicant and its advisers. SEHK and the SFC shall decide on how to raise the comments and address any responses thereto;
- (f) the SFC shall after receiving the materials referred to in paragraph 7.3(b) above provide SEHK with as clear an indication as is reasonably practicable of its position in relation to the exercise of its powers and functions prior to the Listing Committee meeting at which the materials will be considered;
- (g) the SFC shall take into account the Listing Committee's decision on approving or disapproving a listing application;
- (h) save in exceptional circumstances, the SFC shall confirm to SEHK whether or not the SFC will object to a listing application before or at the time SEHK makes its final decision on the application (i.e., when SEHK approves the applicant's prospectus or listing document in final form so that the applicant may begin bulk-printing the document);
- (i) unless the SFC has indicated its objection in accordance with this paragraph 7.8, SEHK will proceed to complete the listing process and list the securities for trading in accordance with its normal procedures.

7.9 The parties acknowledge that, as set out in the following paragraphs, the listing of company shares arising from certain corporate activities and the listing of certain securities and products should be afforded different treatment than that set out in paragraphs 7.3 to 7.8 above.

7.10 *Capitalization Issues, Scrip Dividends, Pre-emptive Offers, Substitutions, and Employee Share Options.* Rule 4 of the Rules provides that the statutory filing requirements for listing applications do not apply to the listing of securities arising from certain specified corporate activities. For ease of reference, these exemptions are set out in Appendix III to this MOU.

7.11 *Top-up Placements, Share Transactions, Schemes of Arrangement etc.* The parties acknowledge that the listing of securities arising from certain transactions is subject to detailed Listing Rules concerning conduct rather than disclosure. Materials for the related listing applications are, nevertheless, subject to the statutory filing requirements under the Rules. The parties acknowledge that the SFC shall follow the assessment and recommendation of SEHK in confirming its non-objection to the listing of securities in the categories as set out in Appendix IV, provided that the listing is not part of an initial public offering by the issuer. Save in exceptional circumstances, the

SFC shall confirm to SEHK that the SFC will not object to such a listing application before or at the time SEHK makes its final decision on the application. Unless the SFC has indicated its objection, SEHK will proceed to complete the listing process and list the securities for trading in accordance with its normal procedures.

7.12 *Debt and Derivative Products.* The parties acknowledge that, for the listing of certain categories of securities, standard disclosure conventions and practice apply. Materials for the related listing applications are, nevertheless, subject to the statutory filing requirements under the Rules. The parties acknowledge that the SFC shall follow the assessment and recommendation of SEHK in confirming its non-objection to the listing of securities in the categories as set out in Appendix V, provided that the listing is not part of any initial public offering by the issuer. Save in exceptional circumstances, the SFC shall confirm to SEHK that the SFC will not object to such a listing application before or at the time SEHK makes its final decision on the application. Unless the SFC has indicated its objection, SEHK will proceed to complete the listing process and list the securities for trading in accordance with its normal procedures.

7.13 *Collective Investment Schemes.* The parties agree that the listing of Collective Investment Schemes, as defined in the SFO, shall follow the arrangements set out in Appendix VI.

8. Disclosure by Listed Issuers

- 8.1 The statutory filing requirements under Rule 7 of the Rules relating to public announcements and circulars to shareholders by listed issuers are an important element in the effective regulation of corporate information disclosure in Hong Kong. As detailed in paragraph 2.10 above, the Rules provide for SEHK to accept the statutory filings on behalf of the SFC in order not to impose any additional administrative burden or cost on the market.
- 8.2 Furthermore, only documents made or issued to the public are required to be statutorily filed with the SFC under the Rules.
- 8.3 SEHK shall remain solely responsible for any vetting of all draft documents to be made or issued under the Listing Rules prior to publication.
- 8.4 SEHK acknowledges and agrees that it shall:
- (a) use all reasonable endeavours to obtain the necessary written authorization from listed issuers for its accepting all statutory filings on behalf of the SFC, and put in place the appropriate amendments to the Listing Rules as soon as possible to make this a requirement on issuers;
 - (b) upon obtaining such authorization, accept statutory filings on behalf of the SFC as contemplated in Rule 7(3) of the Rules; and

- (c) take reasonable steps to keep and maintain the statutory filings it accepts on behalf of the SFC, and to retain the relevant filings for a period of 6 years so far as necessary for the proper regulation of listing-related matters.

8.5 The parties agree to study the feasibility and desirability of developing a document control and filing system providing for a shared electronic database that would allow the SFC access to copies of materials relating to any listed issuer in satisfaction of SEHK's obligations under paragraph 8.4(c) above.

8.6 *Takeovers-Related Matters and Share Repurchases.* The parties acknowledge and agree that their respective roles in the administration of takeovers-related matters and share repurchases (other than on-market share repurchases) shall be governed by the procedures as outlined in Appendix VII. SEHK agrees that it shall put in place the appropriate clarification in the Listing Rules as soon as practicable to reflect these procedures.

9 Handling of Complaints and Cases

9.1 The parties agree to adopt the procedures set out in the paragraphs below with a view to minimize overlap in the handling of complaints and cases involving alleged or suspected misconduct, and to facilitate mutual cooperation in the interest of the investing public.

9.2 The parties acknowledge and agree that:

- (a) to avoid administrative duplication and facilitate communications with the public, SEHK, as the frontline regulator of listing-related matters and listed issuers and the administrator of the Listing Rules, shall have primary responsibility for handling any complaint or case of alleged or suspected misconduct that involve issues under or in respect of the Listing Rules;
- (b) SEHK shall deal with any complaint or case of alleged or suspected misconduct that involve issues under or in respect of the Listing Rules as it considers appropriate;
- (c) the SFC shall inform SEHK of any investigation it begins for suspected provision of false or misleading information as referred to in paragraph 2.8 above or for any other suspected misconduct by a listed issuer;
- (d) in the event that SFC informs SEHK of such an investigation and to the extent the matter involves issues under or in respect of the Listing Rules, SEHK may, as it considers appropriate, deal with the matter or suspend its work, wholly or partly, pending the outcome of the SFC investigation; and

- (e) the SFC and SEHK shall use their best endeavours to inform each other of, and to liaise in relation to, any complaint received or any alleged or suspected misconduct that relate to the other's regulatory functions.

SFC Oversight of SEHK's Listing Function

10. Reports, Liaison Meetings, Audits, and Referrals

10.1 *Reports.* The parties agree that SEHK shall supply the SFC with:

- (a) on or before the 15th of each month, an "Activity Report" (in a format as agreed to from time to time) and containing such information as would enable the SFC to understand the activities of SEHK in relation to its responsibilities in all listing-related matters for the preceding month;
- (b) annexed to the Activity Report, the following copy materials relating to the preceding month:
 - (i) agendas (without attachments) and minutes of meetings of the Listing Committee and the Listing Appeals Committee;
 - (ii) any written reasons for decisions made under the Listing Rules by the Listing Division, the Listing Committee, and the Listing Appeals Committee; and
- (c) also on or before the 15th of each month, a "Case Report" (in a format as agreed to from time to time) for the preceding month containing a summary of progress in SEHK's handling of any complaint or case of alleged or suspected misconduct, whether the complaint or case is in the inquiry stage or subject of potential disciplinary action;
- (d) as soon as possible and in any event within 14 days after the SFC gives written notice, any other information, documents, or reports in the SEHK's possession that the SFC may reasonably require for the performance of its functions.

10.2 The parties agree to study the feasibility and desirability of developing a document control and filing system providing for a shared electronic database in satisfaction of SEHK's obligations under paragraphs 10.1(a) and (b) above.

10.3 *Liaison Meetings.* The parties agree to hold monthly "Listing Matters Liaison Meetings" to discuss:

- (a) matters arising from the Activity Report;
- (b) matters arising from the Case Report;

- (c) any matters or issues relating to SEHK's regulation of listed companies or SFC's oversight of SEHK in listing-related matters; and
- (d) any policy or other matters, including potential changes to the Listing Rules, relating to any of the functions and responsibilities of SEHK or the SFC.

Proper minutes shall be kept of these meetings.

- 10.4 *Audits.* The parties agree that SFC shall from time to time conduct audits or reviews of the performance of SEHK in its regulation of listing-related matters. SEHK shall cooperate with the SFC to the fullest extent in all such audits or reviews. SEHK shall provide the SFC personnel involved reasonable access to its premises, personnel, files, papers, correspondences, minutes, and any other documentation in its possession or in its power to obtain, and to make copies of such materials available to the SFC personnel involved. The SFC shall provide SEHK 14 days' written notice of the commencement of an audit or review, and 24 hours notice of any interview with a member of the SEHK staff involved in listing-related matters. The SFC shall also take all reasonable steps in the course of the audit or review to avoid any disruption to SEHK's work of performing its listing-related functions.
- 10.5 The parties agree to apply their best endeavours to achieve a cycle under this MOU whereby audits or reviews will take place at 18 months intervals.
- 10.6 *Referrals.* The Listing Committee and the Listing Appeals Committee shall, if so requested by the SFC, consider or review any matter, including a decision by the respective committee itself. The SFC acknowledges that in considering or reviewing a matter, the committee shall have due regard to the rights and interests of all third parties who would be directly affected by the further consideration or review of the matter.
- 10.7 The parties further agree that the SFC, in making any such request, shall do so in writing, giving reasons for the request and signed by the Executive Director of the Corporate Finance Division after consultation and agreement with the SFC Chairman.
- 11. Miscellaneous
 - 11.1 For the benefit of listing applicants, listed issuers, and their advisers, the SFC and SEHK have developed and agreed upon certain standard forms as set out in Appendix VIII.
 - 11.2 The parties agree to keep the operation of this MOU under review and shall consult from time to time with a view to improving its effect, making any appropriate modifications, and resolving any matters.

- 11.3 The parties further agree that, subject to paragraph 3.3 above, this MOU shall remain in full force and effect unless and until the parties agree in writing to terminate the whole or any part of it. The parties further agree that the appendices to the MOU may be revised by an exchange of letters between the Chairman of the SFC and the Chairman of SEHK without amending, restating, or re-signing this MOU.
- 11.4 Relevant previous agreements between the parties, namely the Amended and Restated Memorandum of Understanding Governing Listing Matters dated 6 March 2000, its Amended and Restated Addendum also dated 6 March 2000, and the two First Supplements dated 21 August 2000, shall have no further effect.
- 11.5 In respect of any matters already being dealt with by the parties at the date of this MOU and not to be completed until after the date of this MOU, the parties shall have the discretion to agree on whether the matters should be completed in accordance with the relevant previous agreements or this MOU.

Dated this 28th day of January 2003

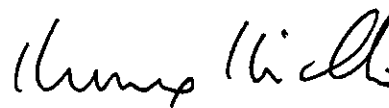
SIGNED for and on behalf of
the Securities and Futures Commission
BY Andrew Sheng

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SIGNED for and on behalf of
the Stock Exchange of Hong Kong Limited
BY Kwong Ki Chi

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DEED OF AGREEMENT

THIS DEED is made on the 28th day of January 2003

BETWEEN:

- (1) **The Securities and Futures Commission (“SFC”)** of 12th floor, Edinburgh Tower, The Landmark, 15 Queen’s Road Central, Hong Kong; and
- (2) **The Stock Exchange of Hong Kong Limited (“SEHK”)** of 1st floor, One and Two Exchange Square, Central, Hong Kong.

WHEREAS:

- (A) The SFC has made the Securities and Futures (Stock Market Listing) Rules, which will require (i) a prospective issuer of securities to be listed on the SEHK to file with the SFC a copy of its listing application and (ii) an issuer of securities listed on the SEHK, to file with the SFC 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 under the Listing Rules or any provision of applicable law, or pursuant to the terms of the Listing Agreement, or under any codes published by the SFC under Section 399(2)(a) and (b) of the Securities and Futures Ordinance.
- (B) The filing requirements described above will enable the SFC to perform more effectively its role in the regulation of corporate information disclosure, which the parties agree will enhance investor protection and also benefit the SEHK by strengthening listing regulation.
- (C) The SEHK collects initial and annual listing fees under the Listing Rules. The SFC has requested and the SEHK has agreed to remit a fixed amount of its fee revenue to the SFC to defray the SFC’s costs of administering the filing requirements described above in accordance with the terms of this Deed.

NOW IT IS AGREED as follows:

1. Interpretation

- 1.1. In this Deed, including the Recitals, save where the context otherwise requires –

“business day” means a day on which the SEHK is open for business in Hong Kong;

“Deed” means this Deed as amended from time to time;

“Listing Agreement” means the Listing Agreement required to be entered into between the SEHK and an issuer of securities under the relevant Listing Rules;

“Listing Rules” means the Rules Governing the Listing of Securities on the SEHK and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the SEHK;

“New Requirements” means the filing requirements under the Rules and described in Recital (A) above;

“Payment Days” means the date on which the Rules come into effect and the corresponding date in each successive month during the term of this Deed, and **“Payment Day”** shall be construed accordingly, provided that –

- (i) if there is no such date in any successive month, the last business day of that month shall be taken as the Payment Day for that month; and
- (ii) if such date in any successive month falls on a day which is not a business day, the immediately following business day in the same month shall be taken as the Payment Day for that month or, if there is none, the immediately preceding business day;

“Rules” means the Securities and Futures (Stock Market Listing) Rules referred to in Recital (A) above, which the SFC has made under section 36 of the SFO;

“SFO” means the Securities and Futures Ordinance (Cap 571) referred to in Recital (A) above, which has been enacted and is scheduled to commence on 1 April 2003;

“year” means any 12-month period.

2. Condition precedent

- 2.1. This Deed is conditional upon the Rules being enacted and taking effect in a form that incorporates the New Requirements.

3. Term and Termination

- 3.1. Subject to Clause 2 above and Clause 6.3 below, this Deed shall commence from the day the Rules come into effect and shall continue for a period of three (3) years thereafter or until terminated upon the occurrence of any of the events in Clause 3.2 below or until terminated by notice in accordance with Clause 3.3 below, whichever occurs first.

- 3.2. This Deed shall be terminated forthwith upon the occurrence of any of the following events –

- (1) the coming into effect of any legislative provision empowering the SFC to collect fees for administering the New Requirements;
- (2) the coming into effect of any amendment to the Listing Rules removing the SEHK's power to collect any initial *and/or* annual listing fees under the Listing Rules or substantially reducing the initial and annual listing fees chargeable by the SEHK under the Listing Rules;
- (3) the coming into effect of any legislative amendment removing the New Requirements; and
- (4) the SFC ceasing to have the right or obligation to administer the New Requirements or any material part thereof.

- 3.3 This Deed may also be terminated at any time by either party giving notice to the other in the event of any material change, not proposed or initiated by the SEHK or Hong Kong Exchanges and Clearing Limited, in the right or obligation of the SEHK to carry out its functions and responsibilities in relation to the day-to-day administration of listing matters as they are carried out as at the date of this Deed.

4. **Payment**

- 4.1. The SEHK shall pay the SFC HK\$20 million per year during the term of this Deed. SFC acknowledges and confirms to the SEHK that such payment is intended and shall be used by the SFC predominantly for the purpose of defraying the SFC's costs of administering the New Requirements.
- 4.2. Subject to Clause 4.3 below, the said HK\$20 million per year shall be paid in twelve equal monthly instalments and by direct credit to such bank account in Hong Kong of the SFC as it may from time to time give no less than 14 days notice of in writing to the SEHK. One such instalment shall be paid on each Payment Day.
- 4.3. If this Deed terminates on a day which does not fall on the eve of a Payment Day, the last instalment made to the SFC shall be apportioned on a pro rata basis and the excess collected by the SFC in advance in respect of that month shall be returned to the SEHK forthwith.

5. **Resolution of disputes**

- 5.1 In the event of any dispute arising between the SFC and the SEHK in respect of any matter pertaining to this Deed, the parties shall seek to resolve the dispute by negotiation in good faith before taking any legal action.

6. **General Provisions**

- 6.1 *Entire agreement:* The terms of this Deed embody the entire agreement of the parties concerning the subject matter hereof and supersede all prior written or oral promises, representations, undertakings or implications.
- 6.2 *Waiver:* Failure by a party at any time to enforce a provision of this Deed shall not be construed as a waiver by that party of that breach or in any way affect the validity of this Deed. Unless otherwise stated in the waiver, the waiver by any party of any right under this Deed shall be specific and shall be effective only in the instance and for the purpose for which it is given and shall not prevent the enforcement of that right in any other instance or for any other purpose under the Deed.

6.3 *Severance*: Should any provision of this Deed be held to be invalid for any reason, such invalidity shall not affect the validity of any other provisions, and this Deed shall be interpreted and construed as if it had been executed without the invalid portion, unless the invalid portion materially adversely affects the purpose or intent of this Deed, in which event this Deed shall be terminated and the parties may negotiate and enter into another valid agreement on the subject matter hereof.

6.4 *Assignment*: No party shall assign or transfer any of its rights or obligations under this Deed without the prior written approval of the other party.

6.5 *Good faith*: Each party shall at all times act in good faith and do everything reasonably necessary to give full effect to this Deed.

6.6 *Costs*: Each party shall be responsible for any costs (including legal costs) and expenses incurred by it in relation to the preparation and performance of its obligations under this Deed.

6.7. *Notices*: Notices or other communications required or permitted to be given under this Deed by any party to the other shall be in writing addressed to such person as may be designated by the parties from time to time and may be sent as follows –

(1) by hand or by post, to the addresses set out on page 1 of this Deed (or such other Hong Kong addresses as may be designated by the parties from time to time); or

(2) by fax to 2524 5078 (in the case of notices to the SFC) and 2295 4823 (in the case of notices to the SEHK);

and shall be deemed to have been given and served –

(a) where delivered by hand, at the time of delivery;

(b) where despatched by facsimile transmission, 24 hours after the time recorded on the transmitting machine; and

(c) where despatched by post, 3 days after posting.

6.8 *Amendment:* This Deed may not be amended except by agreement in writing and under seal of both parties.

6.9 *No agency:* Nothing in this Deed shall be construed as constituting either party an agent of the other.

6.10 *Law and jurisdiction:* This Deed shall be governed by and construed in accordance with the laws of Hong Kong and each party submits to the exclusive jurisdiction of the Hong Kong courts.

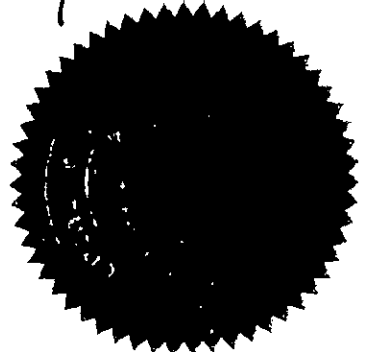
IN WITNESS whereof the parties hereto have caused this Deed to be duly executed.

SEALED with the **COMMON SEAL** of)
THE SECURITIES AND FUTURES)
COMMISSION and **SIGNED** on)
its behalf by Andrew Sheng)
in the presence of –)

Keith Lui

Witness' name: Keith Lui
Address: 12/F, Edinburgh Tower, The Landmark
Hong Kong
Occupation: Commission Secretary

Andrew Sheng

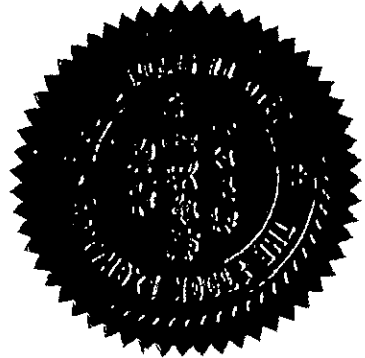


SEALED with the **COMMON SEAL** of)
THE STOCK EXCHANGE OF)
HONG KONG LIMITED and **SIGNED** on)
its behalf by Kwong Ki Chi)
in the presence of –)

Joseph Mau

Witness' name: Joseph Mau
Address: 12/F, One International Finance Centre
1 Harbour View Street, Central, Hong Kong
Occupation: Company Secretary

Kwong Ki Chi



MEMBERSHIP OF THE HIGH-LEVEL GROUP

Chairman of HKEx

Chairman of the Listing Committee

Chairman of the GEM Listing Committee

Chairman of the Takeovers Panel

Chairman of the SFC

Executive Director of the Corporate Finance Division, SFC

Chief Executive of HKEx

Head of Listing, Regulation, and Risk Management, HKEx

EXEMPTIONS FROM THE STATUTORY FILING
REQUIREMENTS ON LISTING APPLICATIONS

1. Capitalization issues

Listing of securities issued or allotted 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;

2. Scrip dividends

Listing of securities issued or allotted pursuant to a scrip dividend scheme which has been approved by the corporation in general meeting;

3. Pre-emptive offers

Listing of 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;

4. Substitutions

Listing of 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; and

5. Employee share option schemes

Listing of 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.

LISTING OF SECURITIES ARISING FROM CERTAIN TRANSACTIONS

1. Top-up placements

Listing of shares issued or allotted to an existing shareholder of a corporation immediately after a sale of shares by that shareholder to third party investors at the same price after taking account of expenses incurred and which complies with the requirements set out in Rule 14.24(6)(a) of the Main Board Listing Rules or Rule 20.23(3)(d) of the GEM Listing Rules;

2. Non-employee share option schemes

Listing of shares issued or allotted pursuant to the exercise of options granted to non-employees under a scheme which complies with the relevant requirements set out in Chapter 17 of the Main Board Listing Rules or Chapter 23 of the GEM Listing Rules;

3. Certain share transactions

Listing of shares issued or allotted in consideration of an acquisition of assets (including securities but excluding cash) unless the acquisition will result in the corporation being treated as if it were a new listing applicant by SEHK under the relevant requirements set out in Chapter 14 of the Main Board Listing Rules or Chapter 19 of the GEM Listing Rules;

4. Schemes of arrangement or capital reorganisations

Listing of shares issued or allotted under a scheme of arrangement or capital reorganisation under which the economic interests of all shareholders are not affected, such as a scheme to redomicile a company; and

5. Options, warrants and similar rights

Listing of any warrants or similar rights to subscribe or purchase equity securities issued by an existing listed issuer or the listing of shares issued or allotted on exercise of such warrants or rights if the issue of the warrants or rights complies with the relevant requirements of Chapter 15 of the Main Board Listing Rules or Chapter 21 of the GEM Listing Rules.

6. Conversion of convertible equity securities or convertible debt securities

Listing of any shares issued or allotted on the conversion of any convertible equity or debt securities if the issue of the convertible securities has complied with the relevant requirements of Chapter 16 or Chapter 28 of the Main Board Listing Rules or Chapter 22 or Chapter 34 of the GEM Listing Rules.

LISTING OF STRUCTURED PRODUCTS AND DEBT SECURITIES

1. Structured products

Listing of any structured products which provide the holder of that product with an economic, legal or other interest in one or more other assets under Chapter 15A of the Main Board Listing Rules;

2. Convertible equity securities

Listing of any convertible equity securities which are convertible into new securities or outstanding securities of the issuer or a corporation in the same group as the issuer under Chapter 16 of the Main Board Listing Rules or Chapter 22 of the GEM Listing Rules; and

3. Debt securities

Listing of any debt securities, warrants or similar rights to subscribe or purchase debt securities, or convertible debt securities under Chapters 22-37 of the Main Board Listing Rules or Chapters 26-35 of the GEM Listing Rules, as the case may be.

PROCEDURES FOR LISTING OF COLLECTIVE INVESTMENT SCHEMES

1. Where a listing application relates to the listing of interests in a collective investment scheme (CIS) on the SEHK in conjunction with an application to the SFC for authorization pursuant to Section 15 of the Securities Ordinance (to be Section 104 of the SFO) then:
 - (a) Subject to sub paragraph (d) below, the SEHK will pass all its comments on any document submitted to the SEHK for approval which relates to the CIS to the SFC and not directly to the applicant (or its advisers). Save in exceptional circumstances, the SEHK shall do so within the SFC's timetable for processing the application for authorization. The SFC agrees to pass on any such comments to the applicant (or its advisers) and, where requested, shall notify the relevant person that those comments have been made by the SEHK.
 - (b) The SFC agrees to discuss the SEHK's proposed comments on such draft documents with the SEHK. This may result in the SEHK affirming, retracting, or modifying a proposed comment.
 - (c) The SFC agrees not to alter or agree on a compromise in respect of any comments raised by the SEHK without the SEHK's prior approval and also agrees to ensure that the SEHK's comments are taken into account by the applicant unless otherwise agreed by the SEHK.
 - (d) The SEHK will make comments directly to an applicant (or its advisers) in the following circumstances:
 - (i) when requested to do so by the SFC;
 - (ii) when the SFC does not agree with the SEHK's comment (in which case it must indicate accordingly to the SEHK) or cannot agree on a compromise with the SEHK and therefore refuses to make the comment to the applicant (or its advisers); and
 - (iii) in exceptional circumstances when the SEHK deems it necessary, in which circumstances the SEHK agrees to give notice to the SFC of its intention to comment directly to the applicant (or its advisers).

2. Where a CIS which has already been authorised by the SFC pursuant to Section 15 of the Securities Ordinance or Section 104 of the SFO, subsequently applies for a listing of the interests in it on the SEHK, the SEHK agrees to consult with the SFC, prior to granting or refusing to grant such a listing, to confirm that the CIS is still authorised and to discuss any concerns that the SEHK may have regarding the CIS. The SFC agrees that it will issue a letter to the CIS confirming that it has been and still is duly so authorised in order to enable it to comply with Rule 20.15(5) of the Listing Rules.

3. Where the SEHK receives an application for listing of interests in a CIS which has not been authorized by the SFC pursuant to Section 15 of the Securities Ordinance or Section 104 of the SFO and which does not intend to obtain such authorization prior to listing, the SEHK agrees that it will consult with the SFC to ensure that the SFC is not of the opinion that the CIS should be so authorized.

PROCEDURES FOR TAKEOVERS AND SHARE REPURCHASES

1. SEHK will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Hong Kong Codes on Takeovers and Mergers and Share Repurchases directly to the party that submits the draft document (or its advisers). SEHK will at the same time provide a copy of such comments to the SFC.
2. The SFC will discuss any of its or SEHK's comments on such draft document with SEHK at the request of either SEHK or the party that submits the document (or its advisers) or if the SFC otherwise thinks fit. This may result in the comment being affirmed, retracted, or modified.
3. The SFC agrees not to alter or agree a compromise in respect of any comment raised by SEHK without first discussing the matter with SEHK.

STANDARD FORMS

1. For listing applicants.

[Listing Applicant's Letterhead]

The Head of the Listing Division
The Listing Division
The Stock Exchange of Hong Kong Limited

[date of application]

Dear Sirs/Madams,

Application for the Listing of Securities of [name of listing applicant]

We, [name of listing applicant], are required to file copies of our application with the Securities and Futures Commission ("SFC") under Section 5(1) of the Securities and Futures (Stock Market Listing) Rules ("Rules"). Pursuant to Section 5(2) of the Rules, we hereby authorize The Stock Exchange of Hong Kong Limited ("SEHK") to file all such materials with the SFC on our behalf as and when we file them with the SEHK.

If our securities become listed on the SEHK, we will be required to file copies of certain announcements, statements, circulars, or other documents made or issued by us or on our behalf to the public or to holders of our securities with the SFC under Sections 7(1) and (2) of the Rules. Pursuant to Section 7(3) of the Rules, we hereby authorize the SEHK to file all such documents with the SFC on our behalf as and when we file them with the SEHK.

In this letter "application" has the meaning ascribed to it under Rule 2 of the Rules.

For and on behalf of
[name of listing applicant]

Name:

2. For listed issuers that have not signed the standard form above.

[Listed Issuer's Letterhead]

The Head of the Listing Division
The Listing Division
The Stock Exchange of Hong Kong Limited

[date of application]

Dear Sirs/Madams,

We, [name of listed issuer], are required to file copies of certain announcements, statements, circulars, or other documents made or issued by us or on our behalf to the public or to holders of our securities with the Securities and Futures Commission ("SFC") under Sections 7(1) and (2) of the Securities and Futures (Stock Market Listing) Rules ("Rules"). Pursuant to Section 7(3) of the Rules, we hereby authorize the Stock Exchange of Hong Kong Limited ("SEHK") to file all such documents with the SFC on our behalf as and when we file them with the SEHK.

For and on behalf of
[name of listed issuer]

Name: