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

SFC 證監會

HKEx 香港交易所

JOINT POLICY STATEMENT

7 March 2007

Joint Policy Statement Regarding the Listing of Overseas Companies

The Stock Exchange of Hong Kong Limited (the "SEHK"), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited ("HKEx"), and the Securities and Futures Commission (the "SFC") wish to:

- clarify the Listing Rules requirements governing the listing of overseas companies; and
- provide a clear roadmap to assist companies incorporated outside Hong Kong or the Recognised Jurisdictions (the People's Republic of China, Bermuda and the Cayman Islands) and their advisers when seeking a primary listing either on the Main Board or the Growth Enterprise Market (the "GEM").

Clarification of the Listing Rules

Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Listing Rules provide the general framework applicable to all overseas companies seeking a listing on the SEHK's markets. The Listing Rules are therefore not prohibitive with respect to listing companies that are incorporated outside Hong Kong or the Recognised Jurisdictions.

In particular, Main Board Listing Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b) and the explanatory notes thereto set out the shareholder protection standards that are expected of an overseas company when seeking a primary listing on the SEHK's markets.

Main Board Listing Rule 19.03 and GEM Listing Rule 24.03 specifically provide that overseas companies are encouraged to contact the SEHK to seek guidance on compliance matters which ordinarily include considerations for waivers and modifications based on the specific facts and circumstances of each applicant's case.

SEHK's Approach to Listing Overseas Companies

The SEHK has established a uniform approach for reviewing shareholder protection standards with respect to overseas companies to ensure a consistent interpretation of Main Board Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b).

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The SEHK has recently reviewed its practices in this area in consultation with the SFC to ensure that its practices are reasonably designed to:

- ensure that overseas companies listed in Hong Kong have appropriate standards of shareholder protection that are at least equivalent to those required under Hong Kong law; and

- are not unduly burdensome on any category of listing applicants.

A roadmap that comprises a schedule of shareholder protection matters is now presented in the Attachment to this Joint Policy Statement (the "**Attachment"**) to distil the key requirements for ensuring appropriate standards of shareholder protection from the SEHK's current approach.

As the approach set out in the Attachment is materially consistent with the current practices of the SEHK contemplated under the Listing Rules, the SEHK and SFC do not consider it necessary at this time to change the approach with respect to listing companies incorporated outside the Recognised Jurisdictions.

Laws, Regulations, Codes and Listing Rules Continue to Apply

For the avoidance of doubt, the current practices with respect to listing companies that are incorporated in Bermuda, the Cayman Islands, and the People's Republic of China memorialised in the Listing Rules continue to apply. The matters listed in the schedule do not exonerate an overseas company seeking a primary listing on the SEHK's markets from complying with the Listing Rules, SFO, Codes and other laws and regulations which are applicable to overseas companies. Furthermore, the matters that the SEHK may consider for the purpose of assessing a company's suitability for listing are not limited, and the Listing Rules may be expanded or modified where the particular facts and circumstances of an applicant's case warrant. See Main Board Listing Rule 2.04 and GEM Listing Rule 2.07.

Factors Affecting Eligibility for Listing Particular to Overseas Companies

It is important that Hong Kong regulators have reasonable access to information relating to the conduct of a listed overseas company in its home or governing jurisdiction to facilitate the taking of any regulatory action against a non-complying listed overseas company. Accordingly, a practical factor that the SEHK ordinarily views favourably when considering applications from overseas companies seeking a primary listing on the SEHK's markets is whether the applicant is incorporated in a jurisdiction of which the statutory securities regulator has adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong either by way of the IOSCO Multilateral Memorandum of Understanding ("IOSCO MMOU") or an adequately comprehensive bi-lateral agreement with the SFC.

As one of the policy objectives of the Listing Rules is to ensure that applicants may incorporate in jurisdictions that are reasonably related to their principal business operations absent other substantive concerns, jurisdictions of incorporation which demonstrate only a distant nexus between the applicant's place of incorporation and its business operations may be subject to greater scrutiny by the SEHK. In certain circumstances, a jurisdiction of incorporation which is totally unrelated to an applicant's place of principal business operations, including the location of its principal trading activities, its principal assets and its principal executive offices (other than one of the Recognised Jurisdictions), may lead listing applicants to be considered unsuitable for listing under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06.

Clarification of the Listing Rules

Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Listing Rules provide the general framework applicable to all overseas companies seeking a listing on the SEHK's markets. The Listing Rules are therefore not prohibitive with respect to listing companies that are incorporated outside Hong Kong or the Recognised Jurisdictions.

In particular, Main Board Listing Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b) and the explanatory notes thereto set out the shareholder protection standards that are expected of an overseas company when seeking a primary listing on the SEHK's markets. Under this requirement, an overseas applicant is expected to benchmark the shareholder protection standards of its home jurisdiction to those standards of Hong Kong, and in case of any shortfall in the standards of the applicant's home jurisdiction, an overseas applicant is expected to compensate for such shortfalls by making changes to its constitutional documents.

Noting that overseas companies may encounter issues that affect their ability to comply with the Listing Rules, SFO and Codes, Main Board Listing Rule 19.03 and GEM Listing Rule 24.03 specifically provide that overseas companies are encouraged to contact the SEHK to seek guidance on compliance matters which ordinarily include considerations for waivers and modifications based on the specific facts and circumstances of each applicant's case.

Whether a company is suitable to be admitted to listing on the SEHK is a question to be determined by the SEHK which takes the leading role in regulating companies seeking admission to the Hong Kong markets and supervising those companies once they are listed, subject to the overriding power of the SFC to object a listing on the grounds set out in Section 6(2) of Securities & Futures (Stock Market Listing) Rules.

SEHK's Approach to Listing Overseas Companies

The SEHK has established a uniform approach for reviewing shareholder protection standards with respect to overseas companies to ensure a consistent interpretation of Main Board Rule 19.05(1)(b) and GEM Listing Rule 24.05(1)(b).

Noting that there is limited guidance on how companies incorporated outside the Recognised Jurisdictions may be listed on the SEHK's markets, and in response to the call of the Focus Group on Financial Services formed in 2006 (see Press Release of HKEx dated 25 September 2006) to review the listing regime to facilitate further development of Hong Kong financial market, the SEHK has recently reviewed its practices in this area in consultation with the SFC to ensure that its practices are reasonably designed to:

- ensure that overseas companies listed in Hong Kong have appropriate standards of shareholder protection that are at least equivalent to those required under Hong Kong law; and

- are not unduly burdensome on any category of listing applicants.

A roadmap that comprises a schedule of shareholder protection matters is now presented in the **Attachment** to this Joint Policy Statement to distil the key requirements from the SEHK's current approach. The schedule is intended to assist companies incorporated outside Hong Kong or the Recognised Jurisdictions seeking a primary listing on the SEHK's markets by reducing the absolute amount of work needed to file with the SEHK and allowing companies to focus attention on fewer more relevant issues.

As the approach set out in the **Attachment** is materially consistent with the current practices of the SEHK contemplated under the Listing Rules, the SEHK and SFC do not consider it necessary at this time to change the approach with respect to listing companies incorporated outside the Recognised Jurisdictions.

The matters referred to in the schedule may, in most cases, be referenced to provisions in the CO which provides the statutory corporate framework for the formation, operation and dissolution of a Hong Kong incorporated company, and against which the standards of listed companies are measured for purposes of the Listing Rules.

Laws, Regulations, Codes and Listing Rules Continue to Apply

For the avoidance of doubt, the current practices with respect to listing companies that are incorporated in Bermuda, the Cayman Islands, and the People's Republic of China memorialised in the Listing Rules continue to apply. The matters listed in the schedule do not exonerate an overseas company seeking a primary listing on the SEHK's markets from complying with the Listing Rules, SFO, Codes and other laws and regulations which are applicable to overseas companies. Furthermore, the matters that the SEHK may consider for the purpose of assessing a company's suitability for listing are not limited, and Main Board Listing Rule 2.04 and GEM Listing Rule 2.07 specifically state that the Listing Rules may be expanded or modified where the particular facts and circumstances of an applicant's case warrant. Modifications may be necessary where the overseas applicant can demonstrate to the satisfaction of the SEHK that compliance with the Listing Rules is contrary to the law in the country of its incorporation.

Where the overseas companies or their advisers consider that there are significant provisions of the company law of the company's jurisdiction of incorporation or otherwise that may have a material and negative impact on the value and rights/privileges of the shares being offered, the directors of the overseas companies and the sponsors are required under the Listing Rules to draw those matters to the attention of the SEHK pursuant to the:

(a) general disclosure obligations under Main Board Rule 2.13 and GEM Rule 2.18; and

(b) specific disclosure obligations under:

- Appendix 1 Part A to the Main Board Listing Rules and the GEM Listing Rules respectively; and

- Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Listing Rules.

Factors Affecting Eligibility for Listing Particular to Overseas Companies

It is important that Hong Kong regulators have reasonable access to information relating to the conduct of a listed overseas company in its home or governing jurisdiction to facilitate the taking of any regulatory action against a non-complying overseas listed company. Accordingly, a practical factor that the SEHK ordinarily takes into account when considering applications from overseas companies is whether adequate co-operation and information gathering arrangements exist between the Hong Kong statutory securities regulator and corresponding regulator in the listing applicant's place of incorporation. Whilst this will not necessarily be a determinative factor, incorporation in a jurisdiction of which the statutory securities regulator is either a full signatory to the IOSCO MMOU or has entered into a bi-lateral agreement with the SFC which provides adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong will be viewed favourably.

Regulatory cooperation from the securities regulator in the jurisdiction where a company is incorporated becomes less meaningful where the company concerned does not have its business operations, assets or management presence in the jurisdiction. As one of the policy objectives of the Listing Rules is to ensure that applicants may incorporate in jurisdictions that are reasonably related to their principal business operations absent other substantive concerns, jurisdictions of incorporation which demonstrate only a distant nexus between the applicant's place of incorporation and its operations may be subject to greater scrutiny by the SEHK.

In certain circumstances, a jurisdiction of incorporation which is totally unrelated to an applicant's principal business operations, including the location of its principal trading activities, its principal assets and its principal executive offices (other than one of the Recognised Jurisdictions), may lead listing applicants to be considered unsuitable for listing under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06.

Definitions

In this Joint Policy Statement, the followings words and expressions shall have the following meanings ascribed to them:

"CO"	**:**	means the Companies Ordinance, Chapter 32 of the Laws of Hong Kong.
"Codes"	**:**	means the Hong Kong Codes on Takeovers and Mergers and Share Repurchases.
"IOSCO MMOU"	**:**	means International Organisation of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information ("MMOU"). Information on the full signatories to the IOSCO MMOU is available on the IOSCO website at: http://www.iosco.org.
"Listing Rules"	**:**	means the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Main Board Listing Rules") and the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited ("GEM Listing Rules").
"Recognised Jurisdictions"	**:**	means Bermuda, the Cayman Islands, and the People's Republic of China ("PRC") as an overseas jurisdiction of an issuer's incorporation.
"SFO"	**:**	means the Securities and Futures Ordinance, Chapter 571 of the Laws of Hong Kong.

ATTACHMENT

Schedule of Shareholder Protection Matters that the SEHK expects overseas companies to address when seeking a primary listing on the SEHK

Comparability in Key Areas as Identified in the Table

For the purpose of determining whether an overseas company demonstrates acceptable shareholder protection standards, the SEHK ordinarily expects an overseas applicant to provide submissions to demonstrate appropriate shareholder protection standards in the various key aspects under five headings as outlined in the Table below.

Guide to using the Table

The left column under headings 1 to 4 describes the main focuses of shareholder protection concerns as identified by the SEHK and the SFC. The CO provisions referred to in the right column under headings 1 to 4 indicate the source from which the identified shareholder protection concerns originate and therefore are for reference only.

While the SEHK expects substantial comparability between Hong Kong and overseas standards in identified areas, the SEHK and the SFC do not consider it practicable to require an overseas applicant to demonstrate verbatim comparison of the textual content of the CO provisions with those prescribed in the home jurisdiction of the overseas applicant.

In the case of jurisdictional or regulatory differences in any of the aspects set out in the Table, the SEHK expects an overseas applicant to give specific disclosure against each topic by reference to the overseas company's constitutional documents, the law of the jurisdiction of the company's incorporation or any regulation to which the overseas company is subject, highlighting the major differences with the Hong Kong requirements in those aspects. The penalties and consequences of contravention of the relevant laws, rules and regulations must be clearly stated. A legal opinion on relevant foreign laws is ordinarily expected.

For the avoidance of doubt, the SEHK may request further information to be provided in light of the particular circumstances of an individual jurisdiction at its discretion.

Shareholder Protection Matters	Relevant Companies Ordinance Provisions
1. An overseas company is expected to adopt a corporate structure that clearly protects principal shareholder rights.	
(a) For any change to an overseas company's constitutional document, however framed, there should be a general requirement for the company to obtain the approval of members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).	Sections 7, 8, 13, 25A

(b) Rights attached to any class of shares of an overseas company may only be varied with the approval of members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required, subject to rights of members holding not less than 10% of the nominal value of the issued shares of that class to make a petition to the court to have the variation cancelled).	Sections 63A, 64
(c) Notwithstanding anything in the constitutional document of an overseas company, any alteration in the constitutional document to increase an existing member's liability to the company is not binding unless such liability increase is agreed by such member in writing.	Section 25
(d) Voluntary winding up of an overseas company must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).	Section 228
(e) Appointment, removal and remuneration of auditors must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).	Sections 131, 132
(f) An overseas issuer must ensure that its branch register of members in Hong Kong shall be open to inspection by members. Closure of the register on terms comparable to the current provisions of Hong Kong law will be allowed.	Sections 98, 99
(g) The circumstances under which the minority shareholders of an overseas company may be bought out or may require an offeror to buyout their interests after a successful takeover or share repurchase must be clearly stated.	Sections 168 and 168B
2. An overseas company is expected to adopt fair proceedings for general meetings to enable shareholders to utilise their rights in full.	
(a) Overseas companies are required to hold a general meeting each year as its annual general meeting. Not more than 15 months shall elapse between the date of one annual general meeting of the company and the next.	Section 111
(b) Members holding not less than 5% of the paid up capital of the overseas company may require the company to convene an extraordinary general meeting and may request the company to circulate a resolution proposed by the requisitionists to members entitled to receive notice of that meeting.	Sections 113, 115A
(c) Overseas companies must ensure that any annual general meeting or any extraordinary general meeting at which a resolution that requires the approval of members by three-quarter majority vote will be proposed shall be convened on at least 21 days' written notice; and that any other general meeting shall be convened on at least 14 days' notice.	Section 114
(d) Overseas companies must adopt general provisions as to meetings and votes on terms that are comparable to those required of a Hong Kong incorporated public company.	Section 114A

(e) Proxies/corporate representatives may be appointed by any recognised clearing house within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) for attending general meetings and creditors meetings on terms comparable to those permitted under Hong Kong law; and such proxies/corporate representatives should enjoy statutory rights, including the right to speak in such meetings, comparable to those appointed with respect to a Hong Kong incorporated public company.	Sections 114C, 115
(f) The right of members of an overseas company to demand a poll must be comparable to that available to members of a Hong Kong incorporated public company.	Section 114D
3. An overseas company is expected to adopt corporate governance measures that ensure the powers of directors are reasonably contained and subject to reasonable scrutiny.	
(a) Appointment of a director is required to be voted on individually. Unanimous approval of members is required to pass a resolution permitting appointment of two or more directors by a single resolution.	Section 157A
(b) A director is required to declare any material interest in any contract with the overseas company at the earliest meeting of the board of directors of the company.	Section 162
(c) An overseas company is required to include in notices of its intention to move a resolution at a general meeting or class meeting particulars of the relevant interests of directors in the matter dealt with by the resolution.	Section 155B
(d) The circumstances under which an overseas company may make loans, including quasi loans and credit transactions, to a director must be confined to circumstances no less stringent than those permitted for a Hong Kong incorporated public company.	Sections 157H, 157HA
(e) Any payment to a director or past director of an overseas company as compensation for loss of office or retirement from office is required to be approved by members of the company on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).	Sections 163, 163A, 163B, 163C, 163D
4. An overseas company is expected to ensure that the notion of capital maintenance is enshrined in its corporate structure and with respect to all its corporate actions.	
(a) Any alteration of share capital in an overseas company must be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a majority vote in general meeting is required).	Section 53
(b) Any reduction of share capital in an overseas company must be subject to confirmation by the court and be approved by members on terms comparable to those required of a Hong Kong incorporated public company (e.g. currently a three-quarter majority vote in general meeting is required).	Section 58

(c) An overseas company may only redeem its shares out of distributable profits or fresh proceeds from a new issue of shares or under other circumstances comparable to those under which a Hong Kong incorporated public company may be allowed to make such redemption.	Section 49A
(d) An overseas company may only distribute its assets to its members in circumstances comparable to those under which a Hong Kong incorporated public company may be allowed to make such distribution, that is, out of realised profits and if out of assets, the remaining net assets must not be less than the share capital plus undistributable reserves.	Sections 79B, 79C
(e) The circumstances under which an overseas company may give financial assistance for the acquisition of its own shares must be clearly stated.	Sections 47A, 47B, 47C, 47D
5. An overseas company is expected to be incorporated in a jurisdiction where arrangements are in place to ensure reasonable regulatory cooperation between the statutory securities regulators of its home jurisdiction and the company's statutory securities regulators in Hong Kong.	
(a) An overseas company must state whether the statutory securities regulator of the overseas company's home jurisdiction (i) is a full signatory of the ISOCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information; or (ii) has entered into an appropriate bi-lateral agreement with the SFC which provides adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong.	
(b) If neither (i) or (ii) applies, the overseas company must explain what other regulatory cooperation exists between its home securities regulator and the Hong Kong securities regulator.	

Note

When assessing reasonableness of the regulatory co-operation arrangements, the SEHK ordinarily will consider whether the jurisdiction is reasonably related to the principal business operations of the overseas company, including the location of its principal trading activities, its principal assets and its principal executive offices.

Jurisdictions of incorporation which demonstrate only a distant nexus between the applicant's place of incorporation and its operations may be subject to greater scrutiny by the SEHK.

In certain circumstances, a jurisdiction of incorporation which is totally unrelated to an applicant's principal business operations, including the location of its principal trading activities, its principal assets and its principal executive offices (other than one of the Recognised Jurisdictions), may lead listing applicants to be considered unsuitable for listing under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06.