

Hong Kong Capital Markets

香港资本市场业务季刊 Quarterly News

Editor's Note

The progressive opening of the Hong Kong Stock Exchange to overseas companies continued with the long-awaited addition of the U.S. states of Delaware and Maryland to the list of acceptable overseas jurisdictions in 2012 1Q. In this newsletter, we discuss various listing decisions and guidance materials, which clarify certain IPO disclosure requirements and the review processes, as well as the implementation of the new professional debt regime.

The second quarter should prove to be an interesting one as the SFC releases its two-part consultation paper, proposing to tighten the code of conduct for IPO sponsors and imposing liability on sponsors for prospectus disclosures. We will be following this issue closely.

Check out our Sponsors' Milestones guide on the next page. It is also available for download [here](#).

编者按

配合香港联交所逐渐开放予海外公司的扩展计划, 期待已久的美国特拉华州和玛丽兰州于二零一二年第一季成为获接纳的海外司法权区。在本期中, 我们讨论一些上市决定和指引资料, 当中澄清了若干首次公开募股的披露要求和审议程序, 以及新的专业投资者债务机制的实施。

第二季度应是令人关注的季度, 证监会将发放其两部分的咨询文件, 建议加紧首次公开募股保荐人的行为守则, 并就招股章程内进行的披露对保荐人加诸责任。我们将密切关注此事宜。

请在下一页参阅本所起草的有关保荐人重要事件的指引(英文稿), 也可以在此[下载](#)。

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Hong Kong IPO Sponsors' Milestones

KICK-OFF

Circulate memo on publicity restrictions to all parties¹
(Listing Rule 9.08)

Review SFC's information flow requirements for research analysts and discuss with syndicate members and counsel if any additional control measures are required²

PN21 DUE DILIGENCE

Review PN21 work plan with counsel³
(Practice Note 21 of the Listing Rules)

Document PN21 plan and progress, including any significant deviations

Review compliance with pre-IPO investment guidelines⁴ (if applicable)
(Guidance Letter 29-12)

VERIFICATION

Review draft legal opinions

Receive "back-to-back" confirmations signed by the controlling shareholders, directors, senior management and the issuer

A1 SUBMISSION

Sponsor's undertaking
(Listing Rule 3A.03)

Sponsor's statement of independence⁵
(Listing Rule 3A.08)

VETTING PROCESS

Dual filing regime⁶

- Responses to regulators' comments
- Prospectus drafts

Continuing due diligence

15-DAY SUBMISSION

Review working capital and profit forecast prior to submission

4-DAY SUBMISSION

Sponsor's letter regarding sufficiency of working capital
(Listing Rule 9.11(19))

Submission of executed waiver applications on sponsor's letterhead

PRE-DEAL RESEARCH

Review draft research reports and document review process

BEFORE BULKPRINT

Sponsor's confirmation with regard to the posting of WPIP
(Checklist VI.E)

Sponsor's final letter regarding sufficiency of working capital
(Listing Rule 9.11(19))

Bring down due diligence

AFTER LISTING HEARING

Sponsor's declaration on Listing Rules compliance⁷
(Listing Rule 3A.13, Appendix 19 of the Listing Rules)

Sponsor's confirmation with regard to publication of the prospectus on the Exchange website
(Checklist VII.C)

PROSPECTUS REGISTRATION

Sign HKUA

Sponsor's certificate relating to competency of translator
(Listing Rule 9.11(33)(c))

PRICING

Sign IUA, pricing agreement, etc.

Bring down due diligence

BEFORE DEALINGS COMMENCE

Marketing statement⁸
(Form D, Appendix 5 of the Listing Rules)

Sponsor's declaration on placings and Listing Rules compliance
(Form E, Appendix 5 of the Listing Rules)

POST-LISTING

Exercise over-allotment option

Bring down due diligence

Stabilizing manager to note Disclosure of Interests obligations
(Part XV of the Securities and Futures Ordinance)

¹ In addition to Listing Rule 9.08, please also refer to Guidance Letter 18-10, Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures under the Companies Ordinance issued by the SFC in March 2003, Guidelines for Electronic Public Offerings issued by the SFC in April 2003, sections 38B(1), (2), Nineteenth Schedule of Companies Ordinance (cap. 32) and sections 103(1), (2) and (3) and 105 of Securities and Futures Ordinance (cap. 571).

² Please refer to the SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and the SFC's Corporate Finance Adviser Code of Conduct. For a discussion of the pre-deal research rules, please refer to the Consultation Conclusions on the Regulatory Framework for Pre-deal Research published by the SFC in June 2011.

³ Practice Note 21 requires that sponsors conduct reasonable inquiries ("due diligence") to enable the sponsor to make a declaration under Listing Rule 3A.13 and sets out the Exchange's expectations of due diligence sponsors will typically perform.

⁴ Under the interim guidance, the Exchange will generally require, except in very exceptional circumstances, that pre-IPO investments be completed either (a) at least 28 clear days before the date of the first submission of the first listing application form or (b) 180 clear days before the first day of trading of the applicant's securities. Pre-IPO investments are considered completed when the funds are irrevocably settled and received by the applicant. For clarity, clear days exclude the day of the pre-IPO investment completion, the day of the submission of the listing application form and the first day of trading of securities.

⁵ Sponsor independence is continuously assessed from the date of A1 submission up to the date of listing.

⁶ Section 384 Securities and Futures Ordinance: criminal offence to provide false or misleading information knowingly or recklessly to the SFC or the Exchange.

⁷ Sponsor's declaration must include the terms of Listing Rules 3A.14 to 3A.16, comprising: (i) confirmation that all requisite documents have been submitted to the Exchange; (ii) due diligence declaration; and (iii) expert sections declaration.

⁸ Please refer to Chapter 7 and Appendix 6 of the Listing Rules.

Latest: SFC Revokes Mega Capital's Sponsor License

The Securities and Futures Commission (SFC) has revoked Mega Capital (Asia) Company Limited's ("Mega Capital") license to advise on corporate finance and fined it HK\$42 million for failing to discharge its sponsor's duties in relation to the listing application of Hontex International Holdings Company Limited ("Hontex") in 2009. For a summary of other key enforcement actions to date, please see the chart on page 5. The SFC's main findings are as follows:

1. Inadequate and substandard due diligence work (e.g., material information, such as transaction figures with the Group, was missing from customer/supplier due diligence questionnaires; no verification of franchisee information provided by Hontex and franchisee transaction records were not obtained; supplier and customer interviews were conducted over the phone on the day of the A1 application);
2. Failure to act independently and impartially (e.g., all interviews with suppliers, customers and franchisees were arranged by Hontex and conducted in the presence of Hontex's representatives; franchisees' written confirmations of independence were obtained through Hontex);
3. Inadequate audit trail of due diligence planning and work (e.g., no records of background or other due diligence searches conducted on suppliers, customers and franchisees);
4. Inadequate supervision of its staff (e.g., most of the due diligence work was handled by junior and inexperienced staff); and

5. Breach of the sponsor's undertaking and filing of an untrue declaration with the Exchange.

Statutory PSI Disclosure Regime Approved

On April 25, 2012, the Legislative Council passed the Securities and Futures (Amendment) Bill 2011. The Bill obliges listed corporations to disclose price sensitive information ("PSI"). The Bill is intended to commence operation on January 1, 2013.

Under the Bill, a listed corporation must disclose any PSI (defined as "inside information" in the Bill) to the public as soon as reasonably practicable, if (a) the information has, or ought reasonably to have, come to the knowledge of an officer of the listed corporation in the course of performing his functions as an officer of the corporation; and (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.

In defining PSI, the Bill proposes borrowing the concept of "relevant information" currently used in the "insider dealing" regime in the SFO. In other words, PSI will be the same set of information currently prohibited from being used for dealing in the securities of the listed corporation concerned.

However, please note that the scope of the proposed definition of "inside information" in the Bill is narrower than the current definition of PSI adopted under Listing Rule 13.09. The major difference is that the latter also covers information on any major new developments in the group's sphere of activity (i.e., Rule 13.09(1)) and any information necessary to avoid the establishment of a false market (i.e., Rule 13.09(1)(b)).

The SFC and the Exchange will work to revise Listing Rule 13.09 after the passage of the Bill. The tentative thinking is to incorporate those elements which are in the existing Rule 13.09 but would fall outside the scope of the statutory regime into other provisions of the Listing Rules which would not give rise to legal consequences.

For a quick overview, please refer to our article: <http://www.mofo.com/files/Uploads/Images/110218-Statutory-Obligation-for-Listed-Companies.pdf>

The New Professional Debt Regime Under Chapter 37

In March 2012, the Exchange published an update on the new professional debt regime under Chapter 37 of the Listing Rules, which clarifies the following:

Eligibility requirements for professional debt listing

The issuer and its debt securities are qualified for listing if the following three conditions are fulfilled:

1. The issuer has net assets of HK\$100 million;
2. The issuer has audited accounts for the two years before the listing application; and
3. The debt securities have a minimum denomination of HK\$500,000 or equivalent amount in foreign currency.

Note: 1 and 2 are not required for Hong Kong-listed issuers.

Streamlined approval procedures and shorter turnaround time

In practice, for applications that do not involve novel features, the Exchange will, under normal circumstances, issue the listing approval letter or eligibility letter:

最新： 证监会撤销兆 丰资本融资保 荐人牌照

兆丰资本(亚洲)有限公司(“兆丰资本”)未有就洪良国际控股有限公司(“洪良”)於2009年的上市申请事宜履行其保荐人职责,被证券及期货事务监察委员会(“证监会”)撤销其就机构融资提供咨询的牌照及罚款4,200万港元。关于迄今的其它主要强制执行行动,请参看第5页的图表。

证监会的调查结果如下:

1. 尽职审查不足及未达标(例如:供应商和顾客填写的问卷中遗漏了与洪良集团交易数据等重要资料;兆丰资本并未能就洪良提供的特许经营商资料作出适当的核实,亦未有取得特许经营商的交易纪录;供应商和顾客的访谈只透过电话在递交A1表当日进行);
2. 未能独立及不偏不倚地办事(例如:所有跟供应商、顾客和特许经营商的访谈均由洪良安排,并於洪良代表在场的情况下进行;由特许经营商证实他们为独立於洪良的书面确认均透过洪良取得);
3. 尽职审查工作的审核线索不足(例如:未有记录其针对洪良集团的供应商、顾客和特许经营

商所进行的背景或其他尽职审查的搜寻工作);

4. 未有充分监督员工(例如:大部分尽职审查工作由兆丰资本内初级和经验不足的员工处理);
5. 违反保荐人承诺及向香港联交所申报不实声明。

法定股价敏感 资料披露制度 被批准

2012年4月25日,立法会通过《2011年证券及期货(修订)条例草案》。条例草案赋予上市法团披露股价敏感资料的义务。当局有意于2013年1月1日开始实施条例草案。

根据条例草案,如有下列情况,一家上市法团须在合理可行的情况下尽快向公众披露任何股价敏感资料(在条例草案中定义为“内幕消息”):(a)该上市法团的高级人员在以该法团的高级人员的身份执行职能时,知道或理应知道该消息;及(b)一名合理的人,如以该法团的高级人员的身份行事,会认为该消息属关乎该法团的内幕消息。

关于股价敏感资料的定义,条例草案建议借用《证券及期货条》中“内幕交易”机制现时所用的“有关消息”的概。换句话说,股价敏感资料就是目前被禁止用于买卖有关上市法团的证券的同一套资料。

不过,条例草案中“内幕消息”的

拟议定义所涵盖的范围,较《上市规则》第13.09条现时采用的股价敏感资料的定义范围狭窄。主要分别在于后者涵盖与集团业务范围内任何主要新发展有关的资讯(即《上市规则》第13.09(1)条),以及任何避免出现虚假市场情况所必需的信息(即《上市规则》第13.09(1)(b)条)。

在条例草案获得通过后,证监会及联交所将会修订《上市规则》第13.09条。初步的构思是把已加载于《上市规则》现有第13.09条但没有列入法定制度的要素纳入《上市规则》其他条文,而这些条文不会产生法律上的后果。

如需进行概览,请参考本所的文章:<http://www.mofo.com/files/Uploads/Images/110218-Statutory-Obligation-for-Listed-Companies-CHINESE.pdf>

根据第37章的 新的专业投资 者债务机制

在2012年3月,联交所公布根据《上市规则》第37章的新的专业投资者债务机制的最新进展,澄清下列各项:

符合专业债务上市资格的要求

发行人及其债券如符合以下三项条件,即符合上市资格:

1. 资产净值达1亿港元;

Other Key SFO Enforcement Actions to Date

Date	Disciplinary Target	Penalty	Summary of Misconduct
October 2011	Principal supervisor, Core Pacific-Yamaichi Assistant	Banned from re-entering the industry for six years Banned from re-entering the industry for four years	Principal supervisor responsible for sponsor's failure to conduct proper inquiries especially in the face of allegations that there had been falsification of sales.
July 2009	VC Capital	HK\$1.5 million fine and public reprimand	Failed to keep a proper record of its due diligence work as sponsor.
January 2009	Responsible officer, China Everbright	Banned from re-entering the industry for two years and six months	Failed to exercise due skill, care and diligence in supervising another responsible officer in the handling of a GEM to Main Board transfer application. Draft prospectus contained major inaccuracies.
April 2008	Core Pacific-Yamaichi	HK\$2.8 million fine, and committed to independent review of sponsorship operation, with "suspended sentence"	Failed to (i) conduct adequate due diligence on client's customers and sales; (ii) ensure responses to the Exchange's enquiries were complete and not misleading; (iii) report irregularities to the Exchange it had detected about the sales; and (iv) diligently supervise the team.
June 2006	Deloitte & Touche Corporate Finance Responsible officer	Voluntarily refrained from acting as sponsor for 9 months Voluntarily refrained from acting as principal supervisor for 6 months	Failed to, <i>inter alia</i> , (i) conduct reasonable due diligence; and (ii) ensure adequate support for representations in prospectus.
March 2006	CSC Asia Limited Responsible officers	Voluntarily refrained from acting as sponsor for 13 months Voluntarily refrained from acting as principal supervisors for 8 months	Failed to act with due skill, care and diligence when performing due diligence into two listing applications and failed to ensure that the prospectuses and the submissions made to the Exchange were prepared to the required standard.
January 2005	ICEA Capital Limited	HK\$30 million settlement	Failed to exercise due skill, care and diligence in the course of performing its sponsor duties for the listing of Euro Asia Agricultural (Holdings) Company Limited.

(Continued on Page 7)

迄今的其它主要强制执行行动

日期	纪律处分目标	惩罚	行为失当概要
2011年10月	主要主管, 京华山一 助理	被禁止重投业界六年 被禁止重投业界四年	主要主管须为保荐人没有进行适当查核工作一事负上负责, 尤其是当时涉及捏改销售账目的指控。
2009年7月	汇盈融资	150万港元罚款及公开谴责	没有就其尽职审查工作作为保荐人备存适当的纪录。
2009年1月	负责人员, 中国光达	被禁止重投业界两年零六个月	监督另一名负责人员处理创业板转往主板上市申请时, 未有以适当的技能、小心审慎和勤勉尽责的态度行事。招股章程草案载有多项严重不确的资料。
2008年4月	京华山一	280万港元罚款及承诺聘请独立第三方检讨保荐人业务, 如再犯将便“暂停保荐人业务”	未有: (i) 对顾客的客户及销售额进行充分的尽职审查; (ii) 确保其在回应香港交易所查询时作出完整及不具误导成分的回; (iii) 向香港交易所汇报其就销售额所察觉的不当情况; 及 (iv) 勤勉地监督其工作团队。
2006年6月	德勤企业财务顾问 负责人员	自愿不担任保荐人, 为期九个月 自愿不出任保荐工作的主要主管, 为期六个月	未有(包括): (i) 作出合理的尽职审查; 及 (ii) 确保在招股章程内作出的多项陈述是有充分根据的。
2006年3月	群益亚洲 负责人员	自愿不担任保荐人, 为期十三个月 自愿不出任保荐工作的主要主管, 为期八个月	没有以适当的技能、小心审慎和勤勉尽责的态度就两宗上市申请进行尽职审查, 以及没有确保招股章程及向香港交易所提交的有关文件在编制上达到规定的水准。
2005年1月	工商东亚融资	3,000万港元和解	没有以适当的技能、小心审慎和勤勉尽责地去履行其作为欧亚农业(控股)有限公司的上市保荐人的职责。

- within one business day for issues involving a Hong Kong-listed company, and
- within two business days for other issuers.

Simplified disclosure requirement of listing document

Listing Rule 37.29 now requires a listing document to contain information that professional investors would customarily expect it to contain, with simple disclosure requirements.

Waivers to allow placing to high-net-worth investors

The Exchange will grant waivers to allow professional debt issues to be marketed to investors prescribed under Section 397 of the Securities and Futures Ordinance (SFO), which includes high-net-worth investors (not just to professional investors under Part 1 of Schedule 1 of SFO).

For a copy of the update, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listletter/Documents/20120330.pdf>

For a copy of our briefing note "Where to list bonds issued in the international markets by Asian corporates", please follow the link: <http://www.mofo.com/files/Uploads/Images/120507-Briefing-note.pdf>

Listing Committee Report 2011

In March 2012, the Listing Committee published the Listing Committee Report 2011, which highlighted the issues the Listing Committee has dealt with during 2011 and outlined the position or action the Listing Committee, the Listing Division and the Exchange have taken.

Below is a list of matters that the Listing Committee currently plans to consider during 2012 and beyond:

Prospectuses and listing process

- Prospectus simplification
- Streamline listing application procedures and review of associated publication requirements
- Review of operation of mixed media offerings and consideration of electronic applications
- Review of settlement process and timing
- Review of content of accountants' reports

**HKEX APPROVED
AND LISTED 32
DEBT SECURITIES
WITH AGGREGATE
PRINCIPAL AMOUNTS OF
APPROXIMATELY HK\$77.6
BILLION IN THE PERIOD
FROM 11 NOVEMBER 2011
TO 30 MARCH 2012.**

Listing matters

- Review of listings by overseas companies and secondary listings
- Review of listed structured products regime
- Review of Hong Kong depository receipts
- Review of operation of Chapter 18 (mineral companies)
- Review of listing of investment vehicles

Ongoing obligations and other related matters

- Consultation conclusions on Environmental, Social and Governance Reporting Guide
- Consequential amendments to the Listing Rules from the proposed

statutory backing on continuing disclosure obligations

- Review of Connected Transaction Rules
- Development of XBRL taxonomy (facilitating exchange of information through an "eXtensible Business Reporting Language")
- Update on quarterly reporting
- Update on global corporate governance trends, including board diversity
- Review of delisting procedure
- Review of trading halts

For a copy of the Listing Committee Report 2011, please follow the link: http://www.hkex.com.hk/eng/listing/listcomrpt/Documents/AnnualRpt_2011dec.pdf

Financial Statements Review Program Report 2011

In January 2012, the Listing Division published the results of its review of listed issuers' published financial reports for compliance with the disclosure requirements of the Listing Rules and accounting standards.

Key findings:

- Additional information should be presented in financial reports to provide a better understanding of the nature and impact of significant events or material balances and transactions.
- Analysis of remuneration paid to auditors, in respect of audit and non-audit services, should be improved (paragraph 2(h) Appendix 23 of the Listing Rules).
- Discussions in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" (MD&A) should be consistent with

2. 备有上市申请前两年的经审核帐目；及
3. 债券最低面值为50万港元或外币等值。

注：1和2的规定不适用于在香港上市的发行人。

简化批核程序及缩短审批时间

事实上，对于一般债券的申请，联交所通常在下述时间内已可以发出上市审批函件或资格函件：

- 发行人为香港上市公司，一个营业日内
- 其他发行人，两个营业日内。

简化上市文件披露规定

上市规则第37.29条现简化披露规定，要求上市文件载列专业投资者惯常预期应载有的资料。

容许配售给拥有高资产净值的投资者

联交所将容许专业债券能售予《证券及期货条例》第397条所指的投资者，包括拥有高资产净值的投资者（不仅是《证券及期货条例》附表1第1部的专业投资者）。

查阅最新进展，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listletter/Documents/20120330_tc.pdf

如欲查看我们的注释“亚洲企业在国际市场发行的债券应在哪里上市”（英文稿），请点击下列连结：<http://www.mofo.com/files/Uploads/Images/120507-Briefing-note.pdf>

2011年上市委员会报告

在2012年3月，上市委员会公布了2011年上市委员会报告，摘录上市委员会年内处理过的事宜，并阐述上市委员会、上市科和联交所的立场和所采取的行动。

下列为上市委员会目前计划拟于2012年或以以后审议的事宜摘录：

2011年11月11日至2012年3月30日期间，联交所先後審批了32隻債券上市，本金總額約為776億港元。

招股章程及上市程序

- 简化招股章程
- 简化上市申请程序及检讨相关的刊发规定
- 检讨混合媒介要约的操作情况及考虑电子申请
- 检讨交收程序和时间
- 检讨会计师报告的内容

上市事宜

- 检讨海外公司来港上市及第二上市
- 检讨上市结构性产品机制

- 检讨香港预托证券
- 检讨《主板上市规则》第十八章（矿业公司）的操作情况
- 检讨投资工具的上市事宜

持续责任和其它相关事宜

- 有关《环境、社会及管治报告指引》的咨询总结
- 因建议将持续披露责任纳入法例而产生的《上市规则》修订
- 检讨关联交易规则
- XBRL分类法（通过可扩展商业报告语言以促进信息交流）
- 更新季度汇报的进展
- 更新有关企业管治（包括董事会组成的多元化）的环球趋势
- 检讨除牌程序
- 检讨短暂停牌

查阅2011年上市委员会报告，请点击下列连结：http://www.hkex.com.hk/chi/listing/listcomrpt/Documents/AnnualRpt_2011dec_c.pdf

务报表审阅计划 – 2011年完成的报告

于2012年1月，上市科公布时上市发行人所刊发的财务报告是否符合《上市规则》及会计准则披露规定的审阅程序。

主要问题：

- 应在财务报告内列报更多资料，

the financial statements and should provide an additional useful narrative to explain the company's performance and financial position (minimum disclosure requirements are set out in paragraph 32(1)-(12) Appendix 16 of the Listing Rules).

- Improvements in connected and related-party disclosure were noted, but there is room for further improvement.
- Disclosures provided on financial instruments, and in particular convertible bonds, require improvement (e.g., disclose the accounting policy adopted and the risks and exposures arising from the bonds).
- There appear to be different interpretations of the relevant accounting standards on acquisitions and whether they should be treated as an acquisition of a "business" or an acquisition of "assets and liabilities".
- Clearer explanations should be provided where there is some evidence that there is "control" in an investee, but where the investee is accounted for as if control does not exist.
- Disclosure of assumptions and methods to arrive at fair values of investment properties, including the qualification and experience of valuers, should be improved (e.g., adopting table presentation format).
- Segment information should be balanced and consistent with information disclosed elsewhere in the financial reports (e.g., MD&A being consistent with segment information in the financial statements).
- Benchmarks together with other procedures should be in place for determining when disclosures should be provided.

Please follow the link to the report: <http://www.hkex.com.hk/eng/rulesreg/listrules/listquid/Documents/frm-11.pdf>

New Listing Decisions

Delaware and Maryland are Now Acceptable Jurisdictions

In February and March 2012, Delaware and Maryland, respectively, became acceptable overseas jurisdictions.

For a copy of the Delaware Listing Decision, including a comparison table of shareholder protection standards between Hong Kong and Delaware, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld24-2012.pdf>

For a copy of the Maryland Listing Decision, including a comparison table of shareholder protection standards between Hong Kong and Maryland, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld27-2012.pdf>

An example of a Maryland-incorporated issuer is Coach, Inc., which was listed on the New York Stock Exchange and now has a secondary listing in Hong Kong. There are no Delaware-incorporated issuers listed on the Exchange yet.

The acceptable jurisdictions list has now reached 20, in addition to Hong Kong, Mainland China, Bermuda and the Cayman Islands.

Alberta, Canada Clarified

In February 2012, the Exchange clarified that Alberta is considered an acceptable jurisdiction irrespective of whether the applicant is (i) listed on the Toronto Stock Exchange and a reporting issuer; or (ii) a non-reporting issuer and not listed on any exchange (e.g., Sunshine Oilsands Ltd.).

For a copy of the updated Alberta Listing Decision, including a comparison table of shareholder protection standards between Hong Kong and Alberta, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld11-2011.pdf>

Rights Issues and Mandates

In March 2012, the Exchange published two new listing decisions in relation to:

1. Whether Company A's proposal to issue rights shares under a general mandate would comply with the 20% discount limit on issue price under the Listing Rules

A mandate was granted to Company A by a special resolution of its shareholders passed at the annual general meeting to allow Company A to issue new shares of not more than 20% of each of the issued H shares and domestic shares within 12 months. The general mandate did not set any price restriction.

The proposed rights issue represented a discount of about 40% to the average closing price.

The Exchange ruled that the 20% discount limit on the issue price under Listing Rule 13.36(5) did not apply to the proposed rights issue as the mandate did not contain any price restriction.

For a copy of the Listing Decision, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld25-2012.pdf>

2. Whether Company A could seek a mandate for rights issue from its independent shareholders at the same general meeting to consider the acquisition

Company A entered into a very substantial and connected acquisition (subject to independent shareholders' approval) with its Parent Company to acquire a target. Company A would conduct a rights issue to finance the acquisition. As the rights issue would increase its share capital by more than 50%, independent shareholders' approval under Listing Rule 7.19(6) is required.

When considering whether to accept a prior mandate in lieu of a later shareholders' approval on the terms of the rights issue, the Exchange noted that the rights issue

- 让读者更易理解重大事件或重大结余及交易的性质及影响;
- 就核数及非核数服务向核数师支付的酬金的分析应加以改进(《上市规则》附录23第2(h)段);
- 「管理层讨论及分析」内的讨论应与财务报表一致, 并提供更多有用的陈述以解释公司的表现及财务状况(最低披露要求载列于《上市规则》附录16第32(1)-(12)段);
- 关连人士及关联方的披露已有改善, 但仍有进一步改善的空间;
- 有关财务工具的披露须作改善, 特别是可换股债券的改善(例如: 披露所采纳的会计政策及债券所引起的风险);
- 对于收购以及收购应视作「业务」收购还是「资产及负债」收购的相关会计准则似乎有不同诠释;
- 就以下情况应作出清楚的解释: 若有证据显示已「控制」投资对象, 但该投资对象并没有以视为受到「控制」的方式作会计处理;
- 应改进披露有关厘定投资物业公允价值的假设及方法(包括估值师的资格及经验)(例如: 采用列表格式);
- 分部数据应保持平衡, 并与财务报告其它地方披露的数据一致(例如: 管理层讨论与分析与

财务报表的分部信息一致); 及

- 应设有基准及其它程序以确定何时应作披露。

请点击下列连结以阅读该报:

http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/frm-11_c.pdf

新上市决订

美国特拉华州和马里兰州为获接纳的司法权区

2012年2月和3月, 美国特拉华州和马里兰州分别获接纳为海外司法权区。

查阅特拉华州上市决策, 包括香港和特拉华州对股东保护标准的对照表, 请点击下列连结: http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld24-2012_c.pdf

查阅马里兰州上市决策, 包括香港和马里兰州对股东保护标准的对照表, 请点击下列连结: http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld27-2012_c.pdf

示例: Coach, Inc. 是一家在马里兰州注册成立的发行人, 其已于纽约证券交易所上市, 并现在在香港二次上市。目前尚没有在联交所上市的, 在特拉华州成立的发行人。

除香港、中国、百慕大和开曼群岛外, 目前已有20个地区获接纳为司法权区。

确认加拿大阿尔伯达省

在2012年2月, 联交所阐明阿尔伯达

省被视为是认可的司法权区, 无论申请人是否是(i)在多伦多证券交易所上市并是汇报发行人; 或者(ii)非汇报发行人并且并无在任何交易所上市(例如: 阳光油砂有限公司)。

查阅阿尔伯达省上市决策最新情况, 包括香港和阿尔伯达省对股东保护标准的对照表, 请点击下列连结: http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld11-2011_c.pdf

供股和授权

在2012年3月, 联交所就下述事宜公布了两项新上市决定:

1. 甲公司建议根据一般性授权发行供股股份是否符合《上市规则》中发行价的20%折让上限

甲公司股东于股东周年大会上以特别决议案的方式授予甲公司一项授权, 容许甲公司可在12个月内发行新股, 可发行H股及内资股的数量各自不得超过该类已发行股份的20%。一般性授权中并没设定任何发行价限制。

建议增股代表了平均收市价约40%的折让。

联交所规定《上市规则》第13.36(5)条规定的发行价20%折让上限并不适用于此案中的供股建议因授权并无订立任何价格限制。

查阅上市决策, 请点击下列连结: http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld25-2012_c.pdf

was made with a specific purpose, i.e., to finance the acquisition and the target's business. In addition, Company A had taken reasonable steps to provide sufficient information about the rights issue to the independent shareholders to decide how to vote, including the purpose of the rights issue, its maximum dilution effect on shareholding, the amount to be raised, and details of the intended use of proceeds. The circular would also contain an independent financial adviser's opinion on the proposed rights issue.

The Exchange thus allowed Company A to proceed with the proposal after revising the mandate period from 12 months to four months.

The Exchange is of the view that if the rights issue did not materialize within a reasonable period, independent shareholders should be given the opportunity to reconsider the proposal taking into account the company's circumstances and the market conditions at that time.

For a copy of the Listing Decision, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld26-2012.pdf>

New Guidance Letters

Business Models with Significant Forfeited Income from Prepayments

In January 2012, the Exchange published a Guidance Letter (GL26-12) providing guidance on its review of business models that rely significantly on forfeited income from prepaid services and products (e.g., beauty and slimming salons).

Guidance

1. Forfeited income may be regarded as revenue generated in the usual and ordinary course of business for the purpose of Listing Rule 8.05 if it is an industry norm to include it.
2. A heightened standard of review will be adopted if (a) the applicant has a short history of operating; (b) reliance on forfeited income is significantly above the industry norm; and/or (c) the operation is associated with a high level of complaints or legal claims.
3. The Exchange may also consider the applicant unsuitable for listing if, after considering the totality of the facts, continued reliance on forfeited income would potentially render the business not sustainable, its business model relies on unethical selling methods, or there is concern about the applicant's capacity to provide contracted services/products.
- c. the sponsor's confirmation that:
 - i. the applicant has adequate capacity to provide the contracted services/products; and
 - ii. the internal control measures are adequate.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl26-12.pdf>

Disclosure in the "Summary and Highlights" Section

In January 2012, as part of the Exchange's initiative to simplify prospectuses, the Exchange published a guidance letter on disclosure in the "Summary and Highlights" section in prospectuses.

The letter aims to ensure that the "Summary and Highlights" section:

- is comprehensible and readable,
- is concise, easy to read and in plain language, and
- enables investors to decide whether they might be interested in the offer, and therefore wish to read the rest of the listing document.

Attachment 1 of the letter provides guidance on how to draft the "Summary and Highlights" section in a way that is concise, easy to read, and in plain language, and on what information the Exchange would typically expect to see included in the section and what should be omitted.

Please note that the Exchange is of the view that it will not generally be appropriate for the "Summary and Highlights" section to include paragraphs that have been copied and pasted from elsewhere in the listing document.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl27-12.pdf>

**FORFEITED INCOME
MAY BE REGARDED AS
REVENUE GENERATED
IN THE USUAL AND
ORDINARY COURSE
OF BUSINESS FOR THE
PURPOSE OF LISTING
RULE 8.05 IF IT IS AN
INDUSTRY NORM TO
INCLUDE IT.**

Required disclosure in the prospectus and to the Exchange

The prospectus should disclose details of the prepaid packages giving rise to forfeited income and the quality and complaints handling process.

In addition, the Exchange normally requires the following submission:

- a. an analysis on the outlook for revenue and profit if forfeited income and related expenses were deducted from the track record period profits;
- b. a comparative analysis with industry peers on certain material aspects of operation; and

2. 甲公司可否在考虑收购事项的同一股东大会上同时就供股向独立股东寻求授权

甲公司向母公司收购目标公司，是一项非常重大的关连收购交易（须经独立股东批准）。甲公司会以进行供股支付收购事项。但供股会将其股本增加50%以上，因此根据《上市规则》第7.19(6)条规定，须经独立股东批准。

在考虑是否接纳事先授权以取代之后股东批准供股的条款时，联交所注意到有关供股是有特定目的，即支付收购事项及目标公司的业务营运。此外，甲公司已采取合理步骤提供有关供股的足够资料，以供独立股东决定如何投票，包括供股目的、供股对股权最大的摊薄影响、集资金额，以及所得款项的用途详情。通函亦会载有独立财务顾问就供股建议提出的意见。

在将授权期从12个月改为4个月后，联交所准许甲公司进行供股建议。

联交所认为若供股不能于合理期间内落实，独立股东应给予机会，可基于公司的情况以及当时的市况重新考虑供股建议。

查阅上市决策，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld26-2012_c.pdf

新指引信

高度倚赖从预付款中获取没收收益的业务模式

在2012年1月，联交所公布了指引信(GL26-12)，为其审查高度依赖预付服务和产品带来没收收益的业务模式（如：美容和瘦身沙龙）提供了指引。

指引

1. 就《上市规则》第8.05条而言，若将没收收益计入业务运营内属行业常规，则没收收益可视为日常业务中产生的收入。

就《上市规则》第8.05条而言，若将没收收益计入业务运营内属行业常规，则没收收益可视为日常业务中产生的收入。

2. 若(a)申请人经营出现没收收益的业务为时尚短；(b)其倚赖没收收益的比重大大高于行业常规；及/或(c)其运营涉及大量投诉及法律索偿，联交所审查申请时将采取更严紧的标准。
3. 若联交所在全盘考虑有关实况后认为申请人持续倚赖没收收益，可能会导致业务不能持续发展，或申请人的业务模式倚赖不道德的销售策略，又或申请人提供合约服务/产品的能力令人关注，则联交所会认为申请人不适合上市。

招股章程中及向联交所须作出的披露

招股章程应披露产生没收收益的预付安排详情，以及品质管理和投诉处理程序。

此外，联交所一般要求提供以下资料：

- a. 若从营业纪录期的溢利中扣除没收收益及相关开支，对收入及溢利作出的前景分析；
- b. 针对某些重要经营范畴，与同行业的对照分析；以及
- c. 保荐人确认：
 - i. 申请人有足够能力提供合约服务/产品；以及
 - ii. 内部监控措施充足。

查阅指引信，请点击下列连结：http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl26-12_c.pdf

“概要及摘要”一节中的披露

在2012年1月，作为联交所简化招股章程计划的一部分，联交所就招股章程“概要及摘要”一节中的披露提供了指引。

指引的目的旨在确保该节：

- 内容具体清晰，易于理解；
- 用词精确，易于阅读及采用浅白语言；及
- 足以让投资者决定会否有意接受要约，从而希望阅读招股章程其它内容。

指引信附件一就如何以浅白语言拟定精确及易于阅读的“概要及摘要”一节中的披露提供了指引。

Disclosures for Applicants Engaged in the Restaurant Business

In January 2012, the Exchange set out in a Guidance Letter a list of issues which should be discussed and disclosed in detail in prospectuses (to the extent that they are material) for applicants engaged in the restaurant business. The issues range from raw materials suppliers/prices, same store sales and table turnover rate, to cash management, expansion, pricing policy and food safety.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/lstrules/listguid/Documents/gl28-12.pdf>

Interim Guidance on Pre-IPO Investments

The Interim Guidance on Pre-IPO Investments given by the Listing Committee on October 13, 2010, is now reproduced in a Guidance Letter format.

Generally, the Exchange will require, except in very exceptional circumstances, that pre-IPO investments must be completed either (a) at least 28 clear days before the date of the first submission of the first listing application form or (b) 180 clear days before the first day of trading of the applicant's securities. Pre-IPO investments are considered completed when the funds are irrevocably settled and received by the applicant. For clarity, clear days exclude the day of the pre-IPO investment completion, the day of the submission of the listing application form and the first day of trading of securities.

The Listing Committee recognizes that there may be circumstances where pre-IPO investments on terms more favorable than those offered to investors at the IPO may be justifiable, e.g., where the applicant is in severe financial distress. Each case will need to be considered based on its own facts and circumstances.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/lstrules/listguid/Documents/gl29-12.pdf>

Disclosure of Intellectual Property Rights in Prospectuses

In February 2012, the Exchange published a Guidance Letter to encourage issuers to discuss material intellectual property rights and focus on making more meaningful disclosure on such rights to the investors, hence reducing the practice of disclosing intellectual property rights in tabular form in prospectuses.

This would involve more consideration and judgment as to what IP rights are considered material by the issuers, especially when there are numerous IP rights involved.

Applicants should consider the following factors in deciding what IP rights are material in the context of disclosure:

- i. Materiality should be analyzed from the perspective of investors—what would be relevant to their decision on whether to invest.
- ii. Materiality should be judged in the context of the issuer's business, profitability and prospects as a whole.
- iii. Materiality should also be judged in the context of the extent to which the issuer's business activities and operations, financial position and prospects are dependent on the IP rights.

A material IP right is one the absence or defect of which, from a reasonable investor's perspective, would materially impact the business, profitability or prospects of the issuer and its subsidiaries, taken as a whole.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/lstrules/listguid/Documents/gl30-12.pdf>

Typhoon and Rainstorm Warning Arrangements

In March 2012, the Exchange published arrangements in relation to dealings with the Exchange in the event that a typhoon signal no. 8 or above is hoisted and/or

black rainstorm warning is issued on the day of the:

- a. issue of an authorization letter for the registration of a prospectus;
- b. opening or closing of application lists of the public offer;
- c. pre-vetting of an announcement regarding final offer price, indication of the levels of interest in the placing, the basis of allocation and the results of applications of the public offer shares;
- d. issue of a listing approval letter; or
- e. commencement of dealings in shares.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/lstrules/listguid/Documents/gl31-12.pdf>

Acquisitions during or after TRP

In March 2012, the Exchange clarified the acquisitions of subsidiaries/businesses during or after the Track Record Period ("TRP"). As explained below, the Guidance Letter largely reflects existing practice:

1. Definition of TRP

TRP means the applicable three-year track record, including any stub period. Hence, any acquisition during the stub period is an acquisition during TRP.

2. Size test threshold

For acquisitions during TRP, the size test threshold is 25%. Waivers are only granted in exceptional cases. For an example, please refer to Listing Decision [LD85-1](#) where a waiver was granted to a secondary listing applicant subject to alternative disclosure requirements.

For acquisitions after TRP, there is no materiality threshold, but waiver applications can be made on the basis of immateriality, practical difficulty and/or alternative disclosure arrangements. Please refer to Listing Decision [LD78-1](#).

3. Includes acquisition of minority interest

要”提供了指引，亦就联交所一般预期该节应载列的信息以及应忽略的信息提供指引。

请注意联交所认为：“概要及摘要”一节内一般不宜加入从招股章程其它部分剪贴而来的段落。

查阅指引信，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl27-12_c.pdf

从事餐饮业务的申请人需作出的披露

在2012年1月，联交所在指引信中规定了，从事餐饮业务的申请人应在招股章程中对事项进行详尽的讨论及披露（如属重大者）的事项清单。事项涵盖食材供应商/价格、同店销售额及桌/座流转率、现金管理、扩充、定价政策以及食品安全。

查阅指引信，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl28-12_c.pdf

关于首次公开招股前投资的临时指引

上市委员会于2010年10月13日作出的首次公开招股前投资的临时指引现以指引信的方式发出。

除在非常特殊情况外，联交所一般会要求首次公开招股前的投资必须在下列时间完成：**(a)**首次呈交首次上市申请表格日期前至少足**28**天；或**(b)**申请人证券交易首日前足**180**天。若申请人已经不可撤销的结算并收到有关资金，首次公开招股前投资即被视为已完成。为清晰起见，上述日数不包括首次公开招股

前投资完成之日、上市申请表呈交之日及证券交易首日。

上市委员会认可，在某些情况下首次公开招股前投资的条款比首次公开招股时提供给投资者的条款更优惠是合理的，例如当申请人出现重大财政紧绌的情况。上市委员会会考虑每宗个案本身的事实及情况。

查阅指引信，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl29-12_c.pdf

招股章程的知识产权披露

在2012年2月，联交所公布指引信，鼓励发行人讨论重要的知识产权并向投资者就有关知识产权作出更有意义的披露，从而减少在招股章程中以列表形式披露知识产权的做法。

这将涉及发行人更多的考虑及判断哪些知识产权属重要，特别在牵涉众多知识产权时。

在决定哪些知识产权对于披露内容而言属重要时，发行人应考虑下列各项：

- i. 从投资者角度分析重要性——投资者决定投资与否的相关资料。
- ii. 按发行人整体业务、盈利能力及前景判断重要性。
- iii. 亦应从发行人的业务活动及运营、财务状况及前景依赖有关知识产权的程度判断重要性。

重要的知识产权指从合理的投资者角度而言，欠缺有关知识产权或有关产权不完整会严重影响发行人及其附属公司的整体业务、盈利能力或前景。

查阅指引信，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl30-12_c.pdf

关于台风讯号及暴雨警告的安排

在2012年3月，联交所公布了针对公司进行下述若干事项当天若悬挂**8**号或以上台风讯号及/或发出黑色暴雨警告时，公司与联交所之间所涉程序的各项安排。该等事项包括：

- a. 就招股章程的注册发出批准信；
- b. 公开发售开始或截止办理认购申请；
- c. 预先审查关于最后发售价、显示市场对配售的兴趣水平、分配基准以及公开发售股份的申请结果的公告；
- d. 发出上市批准信；或
- e. 股份开始买卖。

查阅指引信，请点击下列连结：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl31-12_c.pdf

营业纪录期内或的收购

在2012年3月，联交所厘清了在营业纪录期（“营业纪录期”）内或之后进行收购的规定。如下所述，指引信很大程度上反映了现有做法：

1. 营业纪录期定义

营业纪录期指适用的3年记录期，包括任何汇报期末段。因此，在汇报期末段进行的任何收购是属营业纪录期的收购。

An acquisition includes an acquisition of any percentage of equity interest (e.g., acquisition of only a minority stake), but not an acquisition of assets.

4. How to calculate size test

For acquisitions during TRP, the numerator should be the financial results of the acquired business/subsidiary in the last financial year of the TRP, and the numerator should be the financial results of the IPO applicant in the same year. This is so even if the acquisition happened in the first two years of TRP.

5. “Agreed to be acquired or proposed to be acquired”

This means the signing of a legally binding agreement, or the intention to make such an acquisition.

6. Disclosure of financial information

For acquisitions during TRP, the financial information to be disclosed in respect of the acquired business/subsidiary should include full financial statements from commencement of the TRP to acquisition date.

For acquisitions after TRP, the financial information to be disclosed in respect of the acquired business/subsidiary should include at least the balance sheet and income statement.

For a copy of the Guidance Letter, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl32-12.pdf>

Updated Requirements, Checklists and Guides

Revised Requirements and Checklists Relating to IPOs

The Exchange has revised various documentation and disclosure requirements as follows:

1. A new disclosure requirement in relation to the sufficiency of working capital, as set out in paragraph 2.18 of Checklist I.N (Standard Comments: To be addressed when replying to the first comment letter). The Exchange also advised that where any of the information is material, a summary of it should also be in the “Summary” section.
2. Chapter 21 investment companies are now required to submit a profit forecast as a 15-day document.

**THIS IS THE FIRST TIME
A COMPENSATION
ORDER HAS BEEN
MADE DIRECTLY IN
PROCEEDINGS BROUGHT
BY THE SFC UNDER
SECTION 214 OF THE SFO.**

3. Copies of tax documentation from PRC tax bureaus are no longer required. Instead, a sponsor’s confirmation will suffice.
4. The sponsor’s confirmation is now only in relation to *material* licenses, permits or certificates necessary to conduct the applicant’s operations and that there are no *material* offenses, violations or breaches of laws or regulations.
5. Submission of the sponsor’s confirmation letter on adoption of standard transfer form is no longer required.

For the updated checklists, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/guidelines.htm>

Revised Checklists Relating to Circulars

Checklist for connected transaction: <http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/documents/cf016m.doc>

Checklist for Major Acquisition/Very Substantial Acquisition / Reverse Takeover: <http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/documents/cf014m.doc>

Checklist for Very Substantial Disposal: <http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/documents/cf015m.doc>

Revised Guide on Pre-vetting Requirements

Link: http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/listpp/eppguid/Documents/2012_prevet_guide.xls

Guide on Connected Transaction Rules

The Exchange has published a very useful Guide on Connected Transaction Rules, which aims to assist issuers to understand and comply with the Listing Rules on connected transactions.

It is written in plain language and covers the Listing Rule requirements on connected transactions and the related interpretations published in listing decisions and FAQs.

It is categorized into 6 sections:

1. Who are connected persons?
2. What are connected transactions?
3. Requirements for connected transactions
4. Content requirements for announcements, circulars and annual reports
5. Exemptions
6. Waivers

2. 规模测试标准

对于营业纪录期内的收购，规模测试标准是25%。只有在特殊个案才会给予豁免。查阅示例，请参见上市决策LD85-1，该决策规定，在遵守替代披露规定的情况下，二次上市申请人可被豁免遵守该规定。

对于营业纪录期之后的收购，并无界定重要性的标准，但是可以基于重要性不大、实际困难和/或替代披露安排提出豁免申请。请参见上市决策LD78-1。

3. 包括少数权益收购

收购包括对任何百分比股权的收购（如仅收购少数股权），但不包括资产收购。

4. 如何计算规模测试

对于营业纪录期内的收购，分子应是被收购企业/公司在营业纪录期的最近一个会计年度的财务结果，分母应是申请人在同一年度首次公开招股申请人的财务结果。如果收购是在营业纪录期的前2年进行的，上述公式也适用。

5. “同意被收购或者建议被收购”

指签署具有法律约束力的协议，或有意图收购。

6. 财务信息披露

对于营业纪录期内的收购，针对被收购企业/附属公司需披露的财务信息应包括从营业纪录期开始直至收购日的所有财务报表。

对于营业纪录期之后的收购，针对被收购企业/附属公司需披露的财务信息

应至少包括资产负债表和损益表。

查阅指引信，请点击下列连结：http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl32-12_c.pdf

这是法院首次在证券及期货事务监察委员会（证监会）根据《证券及期货条例》第214条提起的法律程序中，直接作出赔偿令。

最新要求、 核对表和指引

最新首次公开发行要求和核对表

联交所已对各种文件和披露要求做出如下修订：

1. 核对表checklist I. N第2.18条（标准意见：拟在回复联交所第一封意见函时做出答复）载明的与营运资本充分性有关的新的披露要求。此外，联交所建议将任何重要信息的概述内容纳入“概要”部分。
2. 第21章投资公司现须提交的盈利预测为15天文件。

3. 不再要求提交由中国税务局出具的税务单据，由保荐人对此做出确认即可。
4. 保荐人现只需就确认申请人业务所必需的重要执照、许可证或证书及未违反、违犯或违背重大法律法规做出确认。
5. 不再要求就采用标准转让书提交保荐人确认函。

请点击以下连结查阅最新核对表：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listipo/guidelines.htm>

最新通知核对表

关联交易通知核对表（英文稿）：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/documents/cf016m.doc>

重要收购/非常重大的收购事项/

反向收购通知核对表（英文稿）：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/documents/cf014m.doc>

非常重大的出售事项通知核对表：

<http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/documents/cf015m.doc>

最新审查前要求指引

连结：<http://sc.hkex.com.hk/TuniS/>

www.hkex.com.hk/chi/rulesreg/listrules/listguid/listpp/eppguid/Documents/2012_prevet_guide_c.xls

有关关联交易 规则的指引

联交所编制了一份关于关联交易的很有用的指引，旨在协助发行人了解并遵守关联交易规则。

For a copy of the Guide, please follow the link: http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/ctguide_e.pdf

Enforcement News

Chairman and Executive Director Ordered to Pay HK\$85 Million Compensation to Company

In March 2012, the Court of First Instance ordered the founder and former chairman of Styland Holdings Ltd (“Styland”) and his wife, a former executive director, to pay compensation totaling over HK\$85 million to the company for their misconduct and disqualified them from acting as a company director for 12 years each.

This is the first time a compensation order has been made directly in proceedings brought by the SFC under section 214 of the SFO, and both directors received the longest disqualification orders ever to be imposed in such proceedings.

It was alleged Styland entered into a number of transactions which were not properly disclosed or approved by Styland and its shareholders as required, causing loss and damage to the company and its shareholders, but directly or indirectly benefitting the founder and his wife. The pair is alleged to have received financial benefits totaling HK\$79 million and HK\$6.95 million, respectively.

For a copy of the judgment, please follow the link: http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=80701&QS=%28%7Bstyl and%7D+%25parties%29&TP=JU

Failure to Disclose Securities Dealings as Required by the Takeovers Code

In March 2012, the SFC publicly criticized Penta Investment Advisers Limited for breaches of the Takeovers Code as a result of its failure to disclose its dealings in certain Hong Kong-listed securities during their relevant offer periods.

This is a reminder that practitioners and parties should conduct themselves in matters relating to takeovers and mergers in accordance with the Takeovers Code, and particularly, associates must report their dealings in the offeree company (or offeror company in the case of a securities exchange offer) during an offer period in accordance with the Takeovers Code.

For a copy of the Executive Statement, please follow the link: http://www.sfc.hk/sfc/doc/EN/cfd/mergers/panel/Penta_Executive%20Statement%20-%20120313%20Final.pdf

INED Convicted of Insider Dealing

In February 2012, a former independent non-executive director of Hong Kong Aircraft Engineering Company Limited (HAECO) was found guilty of insider dealing and sentenced to five months’ imprisonment, suspended for two years, and fined HK\$50,000.

The director bought 4,000 HAECO shares after being told by the chief executive officer of HAECO about a proposal in which Cathay Pacific Airways Limited, a substantial shareholder of HAECO, would sell all its HAECO shares to Swire Pacific Limited (“Swire”), which would trigger a general offer obligation by Swire.

The deal, when announced, valued HAECO shares approximately 25% higher than the then-market price. The director made a profit of approximately HK\$80,000.

Regulatory Watch

Waiver of SFC Licensing Fees for Two Years

Starting April 1, 2012, the payment of annual licensing fees will be waived for a two-year period. The fee waiver will apply to all licensed corporations, registered institutions, responsible officers and representatives. The fees payable in connection with new license applications and transfers will not be affected.

Trust Law Reform

In March 2012, the government launched a public consultation on the draft legislation on trust law reform to facilitate trust administration and attract more trust businesses. As you remember, we had Hong Kong’s first listed business trust, HKT Trust, in November 2011.

The consultation document sets out draft provisions to amend the Trustee Ordinance (Cap. 29) and the Perpetuities and Accumulations Ordinance (Cap. 257), where were enacted in 1934 and 1970, respectively, and have not been substantially reviewed and amended.

The reform will cover clarification of trustees’ duties and powers, better protection of beneficiaries’ interests, and modernization of trust law. The major proposals include:

(a) Clarification of trustees’ duties and powers

- i. imposing a statutory duty of care on trustees;
- ii. improving and clarifying the law relating to short-term delegation by a single trustee;
- iii. providing trustees with a general power of appointing agents, nominees and custodians;
- iv. giving trustees wider powers to insure

该指引以简单的文字写成并涵盖上市规则关于关连交易的规定，以及对上市决定和常见问题的相关解释。

该指引分为六节：

1. 谁是关连人士？
2. 什么是关连交易？
3. 关连交易的规定
4. 公告、通函和年报的内容规定
5. 豁免
6. 个别豁免

如需要指引的副本，请点击下列

连结：http://www.hkex.com.hk/chirulesreg/listrules/listguid/Documents/ctguide_c.pdf

执法新闻

法院命令大凌前主席及执行董事向公司赔偿8,500万港元

在2012年3月，原讼法庭判处大凌集团有限公司（“大凌”）创始人兼前主席及其妻子（前执行董事）就其失当行为向公司总计赔偿8,500万港元，并取消2人董事资格12年。

这是法院首次在证监会根据《证券及期货条例》第214条提起的诉讼程序中直接作出赔偿令，及两名董事被取消董事资格的时间创同类诉讼程序中判处取消资格最长记录。

证监会指大凌进行了一些与公司利益不符，但直接或间接令张及杨获利的交易，而此交易并没有按规定适当地加以披露，亦未经大凌及股东批准。这对夫妇分别涉嫌收取总

计7,900万港元和695万港元的财务利益。

欲获悉有关判决的信息，请点击以下连结：http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=80701&QS=%28%7Bstyl and%7D+%25parties%29&TP=JU

未根据《收购守则》披露证券交易

在2012年3月，证监会公开批评Penta Investment Advisers

Limited未在相关要约期间披露就其若干香港上市证券进行的交易，违反了《收购守则》有关规定。

证监会在此提醒从业人员及有关方应在处理收购和并购事务时严格遵守《收购守则》，特别是联系人必须根据《收购守则》汇报其于要约期内在受要约公司（如属证券交换要约则为要约公司）进行的交易。

欲获悉执行人员声明，请点击以下连结：[http://www.sfc.hk/sfc/doc/TC/cfd/mergers/panel/Penta_Executive%20Statement%20-%20120313%20Chi%20\(2\).pdf](http://www.sfc.hk/sfc/doc/TC/cfd/mergers/panel/Penta_Executive%20Statement%20-%20120313%20Chi%20(2).pdf)

港机工程前独立非执行董事被判内幕交易罪

在2012年2月，香港飞机工程有限公司（“港机工程”）前独立非执行董事被裁定内幕交易罪成立，因而被判处监禁五个月，缓刑两年，并处以50,000港元的罚款。

该董事购买了4,000股港机工程股份，此前他从港机工程首席执行官获悉与港机工程大股东国泰航空有限公司将把其所持港机工程股份出售

给太古股份有限公司（“太古”）有关的提议，这项交易将促使太古就港机工程股份做出全面收购要约。

该项交易公布时，港机工程股份估值较当时的市价高出25%。该董事获利近80,000港元。

监管观察

证监会宽免牌照年费两年

证监会将宽免牌照年费两年，从2012年4月1日起生效。该牌照费宽免规定适用于所有持牌法团、注册机构、负责人和代表。但新牌照申请及牌照转移应支付的费用将维持不变。

信托法改革

在2012年3月，为促进信托管理和吸引更多信托业务，香港特别行政区政府就信托法改革立法草案发布公开咨询文件。众所周知，2011年11月，香港电讯信托成为香港首家以商业信托方式上市的公司。

该咨询文件载明了《受托人条例》（第29章）及《财产恒继和收益累积条例》（第257章）的条例修订草案。《受托人条例》（1934年）和《财产恒继和收益累积条例》（1970年）自其制定以来未曾经历重大修订和变更。

改革内容包括明确受托人责任和权力、加强对受益人利益的保障和对信托法进行现代化。提议主要包括如下内容：

(a) 明确受托人责任和权力

- i. 对受托人施加谨慎行事的法定责任；

(第20页继续)

any trust property against risks of loss by any event;

- v. allowing professional trustees to receive remuneration for rendering services to charitable and non-charitable trusts;

(b) Better protection of beneficiaries' interests

- i. regulating the exemption clauses of professional trustees who receive remuneration for their services;
- ii. providing a mechanism for beneficiaries to remove a trustee on fulfilling certain conditions;

(c) Modernization of trust law

- i. clarifying that a trust is not invalid by reason only of a limited reservation of the settlor's power;
- ii. abolishing the rule against perpetuities with respect to new trusts; and
- iii. abolishing the rule against excessive accumulations of income with respect to new non-charitable trusts.

Please follow the link to the consultation paper: http://www.fstb.gov.hk/fsb/ppr/consult/doc/consult_tlr_e.pdf

Revised Publication Windows for Issuers' Announcements through the Exchange's Website

Since March 5, 2012, the trading sessions of the Exchange's securities market run from 9:30 a.m. to 12:00 noon and then from 1:00 p.m. (instead of 1:30 p.m.) until 4:00 p.m.

As a result of the extension of trading hours, the publication windows for listed

issuers to make Listing Rules-related announcements through the Exchange's website were revised accordingly.

(See chart below)

Proposed Abolition of Capital Duty

In March 2012, the government gazetted the Companies Ordinance (Amendment of Eighth Schedule) Order 2012 to abolish capital duty currently levied on Hong Kong companies that have a share capital under the Companies Ordinance.

The amendments will be applicable to companies which lodge the relevant documents about incorporation, increases in nominal share capital or the issuing of shares at a premium with the Companies Registry on or after June 1, 2012, and are subject to negative vetting.

Takeovers Code Amendments

In March 2012, the SFC announced the following amendments to the Takeovers Codes with immediate effect:

- Property valuation requirements now only apply to offers when the offeror is an interested party.

- It is the responsibility of the financial adviser, placing agent and acquirer of the voting rights to confirm the independence of placees in placing and top-up transactions.
- The prescribed period for payment on acceptance of an offer is seven business days (no longer 10 days).

For a copy of the consultation conclusions, please follow the link: [http://www.sfc.hk/sfc/doc/EN/speeches/public/consult/CP_March_2012\(EN\).pdf](http://www.sfc.hk/sfc/doc/EN/speeches/public/consult/CP_March_2012(EN).pdf)

Repeal of Listing Rule 8.21B

Listing Rule 8.21B has been repealed with effect from February 1, 2012. Inclusion of a profit forecast/estimate in an IPO prospectus will no longer be a prerequisite for the inclusion of profit forecasts in pre-deal research reports

However, please note that the existing practice by the Exchange of requiring a profit forecast memorandum to be filed continues regardless of whether a profit forecast is contained in the prospectus (Listing Rule 9.11(10)(b)).

Revised Publication Windows for Issuers' Announcements through the Exchange's Website	
Morning publication window	6:00 a.m. and 8:30 a.m. on normal business days
Lunch break publication window	12:00 noon and 12:30 p.m. (instead of 1 p.m.)
Evening publication window	4:15 p.m. and 11:00 p.m.
For a non-business day preceding a business day	6:00 p.m. and 8:00 p.m.

Because of the generality of this newsletter, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. The views expressed herein shall not be attributed to Morrison & Foerster, its attorneys or its clients. If you wish to obtain a free subscription to our Hong Kong Capital Markets Quarterly News, please send an email to info@mofo.com.

- ii. 完善和厘清有关单一受托人短期转委信托的法律;
- iii. 赋予受托人可委任代理人、代名人及保管人的一般权力;
- iv. 扩宽受托人权力,使其可针对由任何事件引起的损失风险为任何信托财产投保;
- v. 专业受托人为慈善和非慈善信托提供服务可收取酬金;

(b) 加强对受益人利益的保障

- i. 规管收取酬金的专业受托人的免责条款;
- ii. 提供受益人在符合若干条件的情况下将受托人免任的机制;

(c) 信托法现代化

- i. 阐明信托不会仅因为财产授予人有限保留权力无效;
- ii. 新成立的信托不受反财产恒继规则限制; 以及
- iii. 新成立的慈善信托不受反收益累积规则限制。

请点击以下连结获取咨询文件:

http://www.fstb.gov.hk/fsb/simpchi/ppr/consult/doc/consult_tlr_c.pdf

联交所网站发行人公告最新公布时段

自2012年3月5日起, 联交所证券市

场交易时段改为上午9:30至12:00, 下午1:00 (以前为下午1:30) 至4:00。

由于交易时间延长, 上市发行人通过联交所网站公布上市规则规定的公告时段随之发生变更。(请见以下图表)

建议取消股本注册费

2012年3月, 香港特别行政区政府在宪报上刊登了《2012年公司条例(修订附表8) 令》, 取消当前根据《公司条例》向有股本的香港公司征收的股本注册费。

有关修订适用于在2012年6月1日或之后就成立公司、增加名义股本, 或以溢价发行股份而向公司注册处递交相关文件的公司。该等修订须完成先订立后审议程序。

《收购守则》修订

2012年3月, 证监会宣布对《收购守则》做出的以下修订即时生效:

- 物业估值规定从今开始只适用于由有利害关系的人士作出的要约。

- 在配售及增补交易中, 财务顾问、配售代理人及取得投票权的人有责任确认获配售人的独立性。
- 接纳要约偿付代价的规定时限改为7个营业日(以前为10日)。

请点击以下连结获取咨询总结:

[http://www.sfc.hk/sfc/doc/TC/speeches/public/consult/CP_March_2012\(TC\).pdf](http://www.sfc.hk/sfc/doc/TC/speeches/public/consult/CP_March_2012(TC).pdf)

废除《上市规则》第8.21B条

第8.21B条《上市规则》已于2012年2月1日废除。将盈利预测/估计纳入首次公开招股招股章程不再是在交易前研究报告中纳入盈利预测的必要条件。

不过须引起注意的是, 无论招股章程中是否包含盈利预测, 联交所现时要求提交盈利预测备忘录的规定将继续有效(第9.11(10)(b)条上市规则)。

联交所网站发行人公告最新公布时段

上午公布时段	正常营业日上午6:00和8:30
午间公布时段	上午12:00和下午12:30 (以前为下午1:00)
傍晚公布时段	下午4:15和11:00
营业日前一个非营业日的公布时段	下午6:00和8:00

本信息更新提供的是一般性的信息, 不适用于所有的情况, 在没有对特定情况提供特定的法律意见的情况下, 不应根据该等信息行事。如果您希望收到本所以电邮传送的法律快讯, 敬请通过电子邮件 (info@mof.com) 与我们联系。

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