

Hong Kong Capital Markets

香港资本市场业务季刊 Quarterly News

Editor's Note

In this issue, we look at some of the highlights for the Hong Kong capital markets in the third quarter, including:

- the new Companies Ordinance was passed by the Legislative Council;
- South Korea is now an acceptable overseas jurisdiction for listing;
- guidance for listing applicants was issued in relation to (i) pawn loan businesses; (ii) the listing of business trusts; and (iii) disclosure requirements for post-track record period material changes;
- environmental, social and governance reporting will be a recommended practice for issuers with a financial year ending after December 31, 2012; and
- Hontex issued its repurchase offer.

Did you miss the past editions of our newsletters? You can now access the archives here: <http://www.mofo.com/hk-capital-markets/>.

As always, we hope you find the articles interesting and helpful.

编者按

在本期，我们探讨香港资本市场在第三季度的一些要点：

- 南韩现被接纳为寻求上市时香港联合交易所有限公司（联交所）可接受的司法权区；
- 立法会通过新《公司条例》；
- 针对上市申请人就 (i) 典当贷款业务；(ii) 商业信托的上市；及 (iii) 有关营业纪录期后重大转变的披露规定所发布的指引；
- 环境、社会及管治报告将成为建议常规，适用于发行人截至2012年12月31日之后日期的财政年度；及
- 洪良发出购回要约。

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一如以往，希望您喜欢本期文章，并能从中受益。

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Highlights of the New Hong Kong Companies Ordinance

On 12 July 2012, the new Companies Ordinance (CO) was passed by the Legislative Council, providing a modernized legal framework for the incorporation and operation of companies in Hong Kong. The

new legislation aims to achieve four main objectives, namely to: enhance corporate governance, ensure better regulations, facilitate business and modernize the law. To facilitate its implementation, over ten

regulations will have to be made in 2013-14. The new CO is expected to commence operation in 2014. We set out below the major highlights of the new CO:

Abolishing Par Value for Shares	The new CO adopts a mandatory system of no-par for all companies with a share capital and retires the par value of shares, in line with international trends and to provide companies with more flexibility in structuring their share capital.
Restricting Corporate Directorship in Private Companies	Every private company is required to have at least one director who is a natural person, to enhance transparency and accountability. A grace period of six months from the commencement date of the new CO will be given for companies to comply with the new requirement.
Replacing the Headcount Test	The "headcount test" for privatizations and specified schemes of arrangement is replaced by a "not more than 10% disinterested voting" requirement. The court is given a new discretion to dispense with the "headcount test" in cases where it is retained for members' schemes.
Clarifying Directors' Duty of Care, Skill and Diligence	With a view to providing clear guidance to directors, the standard for company directors' duty of care, skill and diligence is clarified in the new CO to incorporate a mixed objective and subjective test.
Strengthening the Enforcement Regime	The new CO strengthens the enforcement regime in relation to the liabilities of officers of companies for contravention of provisions in the Ordinance, including lowering the threshold for prosecuting a breach or contravention through a new definition of "responsible person".
Facilitating Simplified Reporting	The new CO allows companies that meet specified size criteria to prepare simplified financial statements and directors' reports. Larger private companies that do not meet the specified size criteria will also be entitled to prepare simplified financial statements and directors' reports if their sizes do not exceed a higher threshold, provided that members holding 75% of the voting rights so resolve and no member objects.
Enhanced Reporting for Larger Companies	Public companies, as well as larger private companies and guarantee companies that do not qualify for simplified reporting, are required to prepare a more comprehensive directors' report which includes an analytical and forward-looking "business review" and certain environmental and employee matters. However, private companies are allowed to opt out of this new requirement by special resolution.
Strengthening Auditors' Rights	An auditor is empowered to require a wider range of persons, including the officers of a company's Hong Kong subsidiary undertakings and any person holding or accountable for the accounting records of the company or its subsidiary undertakings, to provide information or explanations reasonably required for the performance of the auditor's duties. The offence of failure to provide the information or explanation is extended to cover officers of the company and the wider range of persons.
Facilitating Business Operations	The new CO makes the use of a common seal optional and relaxes the requirements for a company to have an official seal for use abroad. The new CO also permits a general meeting to be held at more than one location using electronic technology, as well as setting out the rules governing communications to and by companies in electronic form.

新香港《公司条例》要点

2012年7月12日，立法会通过新《公司条例》（公司条例），为香港公司的成立和经营制定了现代化的法律框架。新公司条例旨在达到四个主要目的，即：加强

企业管治、确保规管更为妥善、方便营商及使法例现代化。

为配合新公司条例的实施，当局须于2013至14年度制定10余项

规例。新公司条例预计在2014年开始实施。新公司条例的要点载列如下：

废除股份面值	新公司条例强制所有股本公司采用无面值制度，并废除股本面值制度，以符合国际趋势，使公司在股本结构方面有较大灵活性。
限制法人团体担任私人公司的董事	规定每间私人公司最少须有一名董事为自然人，以增加透明度及提高问责性。公司会被给予自新公司条例生效日期起计6个月的宽限期，以使其遵从该项新规定。
取代人数标准	就公司进行私有化计划及指定安排计划的「人数标准」，由「占不超过10%的无利害关系股份表决权」这项新规定所取代。法院获赋予一项新的酌情权，倘若就有关的成员计划「人数标准」的要求是保留的话，法院有酌情权不施行「人数标准」。
厘清董事须以谨慎、技巧及努力行事的责任	为了让董事有明确的指引，新公司条例纳入一套融合客观及主观标准的准则，以厘清董事须以谨慎、技巧及努力行事的责任标准。
加强执法制度	新公司条例加强关公司高级人员违反条例文而须承担法律责任的执法制度，包括订定「责任人」的新定义，把不履行或违反规定可遭检控的门坎降低。
便利拟备简明报告	新公司条例准许符合指定规模准则的公司拟备简明财务报告及简明董事报告。不符合指定规模准则的较大型私人公司，其规模如没有超出一个更高的门槛，只要获得持有最少75%表决权的成员通过决议，而且没有其他成员反对，亦可拟备简明财务报告及简明董事报告。
增强大型公司报告	公营公司，以及不符合制定简明报告的大型私营公司及担保公司需准备更加全面的董事报告，该报告中需包含分析以及前瞻性「业务概述」以及某些有关环境和雇员的事宜。但是，私营公司可通过特别决议的方式选择不以此方式准备报告。
加强核数师的权利	赋权核数师可要求更多人士，包括公司的香港附属企业的高级人员，以及任何持有该公司或其附属企业会计记录或须就该记录负责的人士，提供核数师为履行职责合理所需的资料或解释。违反提供资料或解释的罪责扩及公司的高级人员及更多的人士。
方便营商	新公司条例规定公司可自行选择是否使用法团印章，以及放宽对公司须备有供在外地使用的正式印章的规定。新公司条例准许公司使用电子科技在多于一个地点举行股东大会，列明以电子形式向公司作出或由公司进行通讯的规则。

<p>Streamlining Procedures</p>	<p>The new CO provides for various streamlining procedures, including:</p> <ul style="list-style-type: none"> allowing companies to dispense with Annual General Meetings by unanimous shareholders' consent; introducing an alternative court-free procedure for reducing capital based on a solvency test; allowing all types of companies (rather than just private companies, as in the current Companies Ordinance) to purchase their own shares out of capital, subject to a solvency test; allowing all types of companies (whether listed or unlisted) to provide financial assistance to another party for the purpose of acquiring the company's own shares or the shares of its holding company, subject to a solvency test (under the current Companies Ordinance, subject to certain specified exceptions, there is a broad prohibition on the giving of financial assistance to purchase the company's own shares); introducing a new court-free statutory amalgamation procedure for wholly-owned intra-group companies; streamlining the procedures for the restoration of dissolved companies by court order; and introducing a new administrative restoration procedure for a company dissolved by the Registrar in straightforward cases, without the need for recourse to the court.
<p>Improving the Registration of Charges</p>	<p>The new CO requires a certified copy of the charge instrument (in addition to the prescribed particulars of the charge) to be registered and available for public inspection. The new CO also requires written evidence of satisfaction/release of a charge to accompany a notification to the Registrar for registration of the satisfaction/release, thus making such documents available for public inspection.</p>

For a copy of the new Companies Ordinance, please follow the link: http://www.cr.gov.hk/en/companies_ordinance/docs/full-e.pdf.

New Listing Decisions

South Korea is an Acceptable Jurisdiction

In August 2012, South Korea became an acceptable overseas jurisdiction for listing on the Stock Exchange of Hong Kong (Exchange), on the basis that, in an actual application:

- the listing applicant must make certain revisions to its constitutive documents or adopt alternative shareholder protection measures to ensure compliance with the Joint Policy Statement;
- the listing applicant must demonstrate a reasonable nexus with South Korea;
- the listing applicant must submit to the non-exclusive jurisdiction of the courts of Hong Kong upon listing on the Exchange;
- the listing applicant must provide specific prospectus disclosures highlighting major differences between South Korea and Hong Kong laws and regulations;

- the listing applicant must duly inform the Exchange and announce to the public if there are any subsequent major changes in South Korean laws and regulations that significantly worsen shareholder protection standards in South Korea compared to those in Hong Kong; and
- there are no specific circumstances that render the acceptance of South Korea as an issuer's jurisdiction of incorporation inappropriate.

Listing applicants should give reasons for not changing their constitutive documents, which the Exchange will assess on a case by case basis.

For a copy of the listing decision LD36-2012, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/istdec/Documents/ld36-2012.pdf>.

Guiding Principles and Disclosures for Structured Contracts

In August 2012, the Exchange further updated its listing decision in relation to structured

contracts, setting out certain guiding principles and various prospectus disclosure requirements for issuers using a VIE structure.

Guiding Principles

- Listing applicants should avoid repeated disclosures in various sections and instead use appropriate cross references.
- Listing applicants should disclose all related risk factors under a heading such as "Risks relating to Corporate Structure."
- At a minimum, the risk factors in the prospectus should include the following:
 - the PRC government may determine that the Structured Contracts do not comply with applicable regulations;
 - the structured contracts may not provide control as effective as direct ownership;
 - the domestic shareholders may have potential conflicts of interest with the applicant; and
 - structured contracts may be subject to scrutiny of the PRC tax authorities and additional tax may be imposed.

简化程序	<p>新公司条例提供下列多项简化程序，包括：</p> <ul style="list-style-type: none"> • 公司可在取得股东一致同意的情况下无须举行周年股东大会； • 引入一项不须经法院而以偿付能力标准作为依据减少股本的程序； • 准许所有类型的公司(而非如现行《公司条例》只准许私人公司)从资本中拨款购买自身股份，但必须满足偿付能力标准； • 准许所有类型的公司(无论是上市还是非上市公司)提供财务资助予另一方，让其购入公司自身的股份或其控股公司的股份，但必须满足偿付能力标准。除了某些指明的例外情况，现行《公司条例》一般禁止公司提供财务资助购入公司自身股份； • 为同一集团内的全资附属公司的合并订立新的不经法院的法定合并程序； • 简化已经解散公司籍法院命令而恢复注册的程序；及 • 为简单个案引入一项登记处以行政方式把已解散公司恢复注册的新程序，而无须使用法院程序。
改善押计登记	<p>新公司条例要求登记一份经证明的押计文件（除了规定的关于押记的具体情况）而且公众可以获得该份文件以检查。新公司条例还要求在向登记处提交通知时随附一份对押记满意/解除的书面证明以对押记的满意/解除进行登记，从而使该等文件可供公众检查。</p>

欲获得新公司条例，请点击以下连结：

<http://www.cr.gov.hk/tc/publications/docs/ec5-2012-c.pdf>

新的上市决策

南韩被接纳为司法权区

2012年8月，如在实际申请中满足下述情况，南韩可被纳为在申请上市时联交所可接受的海外司法权区：

1. 上市申请人必须对其组织文件作出某些修订或通过替代股东保护方法以确保符合联合政策声明；
2. 上市申请人必须证明与南韩的合理联系；
3. 上市申请人在联交所上市时必须提交香港法院的非排他司法管辖；
4. 上市申请人必须提供具体的招股章程披露事项，指出南韩和香港法律和法规的主要不同之处；

5. 若南韩法律及规例其后有任何重大改变以致南韩的股东保障水平大幅逊色于香港，上市申请人须正式通知联交所并向公众发出公告；以及
6. 并无任何特定情况致令南韩不适合作为发行人注册成立的认可司法权区。

上市申请人须合理证明不予变更其组织文件的理由，联交所将根据个案予以评估。

欲获得上市决策 LD36-2012，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld36-2012_c.pdf

有关结构性合约披露的指导性原则

2012年8月，联交所更新其有关结构性合约的上市决策，列出一些指导性原则及申请人以可变利益实体的结构提交上市申请时有关招股章程的各种披露要求。

指导性原则

1. 申请人须避免不同章节中之重复披露，而应适当引述相关章节作参考。
2. 申请人须将所有相关风险因素的披露置于一个合适的标题下，例如「有关公司结构的风险」。
3. 招股章程应至少包括以下与结构性合约相关的风险因素：
 - 中国政府或裁定结构性合约不符合相关法规；
 - 结构性合约未必能提供与直接拥有权相同效力的控制权；
 - 国内股东或会与申请人有潜在利益冲突；及
 - 结构性合约或会被中国税务机关裁定须缴付额外税项。

Required Disclosures

An applicant using structured contracts for all or part of its business should disclose the following information concerning the structured contracts in its prospectus:

OPCO's registered shareholders	A detailed discussion about the operating company's registered shareholders and a confirmation that appropriate arrangements have been made to protect the applicant's interests in the event of death, bankruptcy or divorce of the operating company's registered shareholders to avoid any practical difficulties in enforcing the structured contracts.
Potential conflicts of interest	The extent to which the applicant has arrangements in place to address the potential conflicts of interest between the applicant and the operating company's registered shareholders, particularly in cases where these shareholders are officers and directors of the applicant.
Directors' belief	Bases for the directors' belief that each of the agreements passing significant control and economic benefits from the operating company to the applicant is enforceable under the PRC and local law.
Economic risks	The economic risks the applicant bears as the primary beneficiary of the operating company, in what way the applicant shares the losses of the operating company, the circumstances that could require the applicant to provide financial support to the operating company, or other events or circumstances that could expose the applicant to losses.
Any interference or encumbrance from PRC governing bodies	A discussion on whether the applicant has, to date, encountered any interference or encumbrance from any PRC governing bodies in operating their business through the operating company under the structured contracts.
Option to acquire OPCO ownership	The limitations in exercising the option to acquire ownership in the operating company, including a separate risk factor explaining these limitations, and a clarification that ownership transfer may still be subject to substantial costs.
Material contracts	The structured contracts to be disclosed as material contracts in the "Statutory and General Information" section and also made available on the applicant's website (or the applicant to justify and disclose the basis for not doing so).
Corporate structure table	A corporate structure table in the "Summary" section for the purpose of illustrating the structured contracts and facilitating investors' review and understanding of the arrangements.

For a copy of the listing decision LD43-3, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/LD43-3.pdf>.

Sufficiency of Operations and Assets

Facts

Company A proposed to dispose of most of its existing businesses and assets. The Exchange noted that the proposed transactions were in effect privatizations of the company's existing business but structured with the intention of allowing the company to maintain its listing status. Company A would be left with minimal operations, and this raised issues about market quality.

The Exchange's conclusion and analysis

The Exchange determined that Company A, upon completion of the proposed transactions, would not have a sufficient level of operations or assets of sufficient value to warrant its continued listing on the Exchange under Rule 13.24. Should Company A proceed with the proposed transactions, it would fail to comply with Rule 13.24 and would be suspended and might be delisted upon completion of the transactions. In reaching its conclusion, the Exchange took into account the following:

- The remaining business, representing 6% of Company A's total assets and revenue, was immaterial compared to

Company A's business operations and asset value.

- The absolute size of the remaining business was also small, with an asset value and annual turnover of HK\$20 million or less in recent financial years. It also recorded net losses and negative operating cash flow.
- Company A's business plan lacked concrete details to show any substantial growth or improvement in the remaining business' scale of operations or financial position in the near future. The financial forecasts indicated that the remaining business would continue to record a net loss and a negative operating cash flow in the next year.

招股章程的相关披露规定

在全部或部分业务中使用结构性合约的申请人应在其招股章程披露以下关于结构性合约的资料：

经营公司登记股东	有关经营公司登记股东的详情，及申请人就以下事项的确切：已采取适当安排保障其在经营公司登记股东身故、破产或离婚时的利益，以避免于执行结构性合约时可能遇上实际困难。
潜在利益冲突	申请人对于处理申请人与经营公司登记股东之间的潜在利益冲突的安排，尤其是在这些股东本身具申请人职员及董事身份的情形下。
董事信念	董事相信授予申请人于经营公司获得重大控制权及经济利益的每份结构性合约均可根据中国及当地法律有效执行的相关理据。
经济风险	申请人作为经营公司主要受益人所承担的经济风险；申请人分占经营亏损的方式；申请人必须向经营公司提供财务支持的条件及情况，及其他可令申请人面对亏损的事件或情况。
任何中国监管机关的干涉或阻碍	截至现时为止，申请人就有否在根据结构性合约通过经营公司经营业务的过程中遇到任何中国监管机关干涉或阻碍的讨论。
对经营公司之收购权	申请人在行使对经营公司之收购权时之限制，并以独立之风险因素解释这些限制，以及此等股权转让仍可能涉及巨额资金及费用的阐释。
重大合约	在「法定及一般资料」一节内将结构性合约列作重大合约，并把结构性合约登载于申请人网站，或由申请人解释及披露不公开的理由。
公司架构图表	在「概要」一节内的公司架构图表，以展示结构性合约的安排及运作模式及便利投资者检视及理解有关安排。

欲获得上市决策 LD43-3，请点击以下链接：

<http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/LD43-3-c.pdf>

足够的业务运作和资产 实况

在此个案中，甲公司拟出售其大部分现有业务及资产。联交所注意到甲公司拟进行交易实际上将把公司现有业务私有化，只是刻意安排以维持该公司的上市地位。甲公司只余下少量业务运作，这衍生出有关市场质素方面的问题。

联交所的结论和分析

联交所裁定，甲公司在拟进行交易完成后并无足够的业务运作或相当价值的资产，以证明其符合《上市规则》第 13.24 条可继续在联交所上市。倘甲公司进行该项交易，在交易完成后其将未能符合《上市规则》第 13.24 条而须停牌或可能须除牌。联交所的结论考虑到以下各项：

- 余下业务只占甲公司的总资产及收入的百分之六，相比起甲公司在拟进行交易前的运作及资产价值微不足道。

- 余下业务的绝对规模很小，近几个财政年度的资产值及全年营业额亦仅有 2,000 万港元或以下，另外还录得净亏损及负营运现金流。
- 甲公司的业务计划缺乏具体细节，未能显示余下业务的营运规模或财务状况在短期内会有任何重大增长或改进。财政预测亦显示余下业务来年会持续录得净亏损及负营运现金流。

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http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld35-2012_c.pdf

For a copy of the listing decision LD35-2012, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istdec/Documents/ld35-2012.pdf>.

Conduct of Directors at Predecessor

Facts

The predecessor company was listed on an overseas stock exchange, and Mr. A and Mr. B were its only executive directors. Company A was incorporated and acquired the entire business of the group from the predecessor company for the purpose of the Hong Kong listing.

Company A's management was essentially the same as that of the predecessor company, and Mr. A and Mr. B were also Company A's only executive directors in the listing application.

The predecessor company incurred significant losses from certain transactions that were unrelated to its core business (the Transactions) because its internal stop-loss policy was not complied with by Mr. X. Mr. X was the predecessor company's senior management member responsible for the execution and control of the Transactions. He did not communicate the related losses to the predecessor company's board in a timely manner and subsequently resigned.

The Exchange's conclusion and analysis

The Exchange concluded that Mr. A's and Mr. B's conduct at the predecessor company had not demonstrated the standard of competence expected of directors of listed companies under Listing Rule 3.09, and thus Company A had not yet met the standard required by Listing Rule 8.15. The Exchange further concluded that a robust monitoring of transactions should be introduced before any further review of Company A's listing application would be considered. In reaching its conclusion, the Exchange considered that:

- as Mr. A and Mr. B had been the only executive directors at the predecessor company when it had incurred the losses, it was therefore important to assess

whether their role would affect their suitability as directors and hence whether Company A would be suitable for listing;

- as executive directors of the predecessor company, Mr. A and Mr. B bore responsibility for the significant losses arising from the Transactions; and
- losses could have been prevented had Mr. A and Mr. B exercised good judgment and adequate oversight of Mr. X and the Transactions.

For a copy of the listing decision LD34-2012, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istdec/Documents/ld34-2012.pdf>.

Conduct at the predecessor company must meet the standard of competence expected of directors of listed companies under Rule 3.09.

Pawn Loan Business

In July 2012, the Exchange published a listing decision setting out the disclosure requirements for applicants engaged in the pawn loan business in the PRC. They include, but are not limited to:

- compliance with laws applicable to the pawn loan industry, including disclosure of non-compliances;
- loan and customer profiles and major income streams;
- risk management and internal controls;
- collateral valuation;
- loan collection;
- source of funding; and
- advances to entities and notifiable transactions.

In addition, as the pawn loan industry is strictly regulated in the PRC, an applicant's interests in such business typically operate under various structured contracts. Hence, the applicant should also ensure that its business arrangements and listing document

disclosures properly follow the guidance set out in Listing Decision 43-3.

For a copy of the listing decision LD33-2012, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istdec/Documents/ld33-2012.pdf>.

New Guidance Letters

Listing of Business Trusts

In August 2012, the Exchange published guidance letter GL40-12 setting out the principles that apply and key issues that a listing applicant should address when considering listing a business trust. The guidance also suggests possible approaches listing applicants may consider in order to address a particular issue.

The overriding principle is to ensure that holders of units in business trusts are subject to comparable investor protection standards

to those required of Hong Kong corporate issuers and that key relevant Securities and Futures Ordinance (SFO) provisions must be able to apply. Early consultation is strongly recommended.

For a copy of the guidance letter GL40-12, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istguid/Documents/gl40-12.pdf>.

Waiver for Rule 9.09(b) – No Dealing in Shares Prior to Listing

In September 2012, the Exchange published a guidance letter describing the circumstances under which a Rule 9.09(b) waiver may be considered in the case of a new applicant.

Rule 9.09(b)

Rule 9.09(b) prohibits dealing in shares by any connected person (such as directors and substantial shareholders and their associates) of the issuer from four clear business days before the Listing Committee hearing until listing is granted.

董事于前身公司的操守 实况

前身公司于一家海外证券交易所上市，而前身公司只有甲先生及乙先生两位执行董事。甲公司注册成立后向前身公司收购该集团全部业务，以筹备在香港上市。

甲公司管理层实质上与前身公司相同，在申请上市时甲公司亦只有甲先生及乙先生两位执行董事。

前身公司因若干与其核心业务无关的交易（「该等交易」）中招致重大亏损，原因是X先生没有遵守公司内部的止蚀政策。X先生为前身公司的高级管理层成员，负责执行及控制该等交易。他并无及时就相关亏损与前身公司董事会沟通，更于其后辞任。

联交所的结论和分析

联交所认为甲先生及乙先生在前身公司的操守未能证明其具有《上市规则》第3.09条所指上市公司董事应有的能力才干，因而甲公司亦未能符合《上市规则》第8.15条的规定。另外，甲公司须先制定健全的交易监察措施，联交所方会考虑再行审理其上市申请。联交所作出结论时，考虑到下述情况：

- 由于前身公司产生亏损期间一直只有甲先生及乙先生两位执行董事，因此，评估两人在当中的角色会否影响其是否胜任董事职务以至甲公司是否适合上市十分重要；
- 作为前身公司的执行董事，甲先生及乙先生须承担该等交易招致重大亏损的责任；及
- 假如甲先生及乙先生对X先生及X先生进行该等交易时有行使良好判断和施以足够监督，前身公司则可避免亏损。

欲获得上市决策LD34-2012，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld34-2012_c.pdf

典当贷款业务

2012年7月，联交所出具新的上市决策，以列出对在中国从事典当贷款业务的申请人的披露要求，包括但不限于下列各项：

- 遵守适用于典当贷款业的法例，包括在上市文件中披露任何违规情况；
- 贷款及客户组合以及主要收益来源；
- 风险管理及内部监控；
- 抵押品估值；
- 收回贷款；
- 资金来源；及
- 向实体垫款及须予公布交易。

**董事于前身公司的操守
必须具有《上市规则》
第 3.09 条所指
上市公司董事应有的
能力才干。**

另外，由于典当贷款业在中国受严格规管，申请人的业务权益通常采用多项结构性合约以营运。因此，申请人亦应确保其业务安排及上市文件的披露遵守上市决策LD43-3中的指引。

欲获得上市决策LD33-2012，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ld33-2012_c.pdf

新的指引信

商业信托的上市

2012年8月，联交所发布了指引信GL40-12以列出其有关商业信托上市申请的审批原则，及上市申请人考虑申请商业信托上市时应处理的重要事项。该指引书亦列出上市申请人针对不同事项可采用的方针取向。

指引中的首要原则是要确保商业信托的单位持有人所得的投资者保障水平与香港公司发行人所须达到的水平相应，以及《证券及期货条例》中重要的相关条文必须适用。

申请人宜及早咨询上市科。

欲查阅指引信GL40-12的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listdec/Documents/ql40-12_c.pdf

第 9.09(b)条就上市前不得 买卖股份规定的豁免

2012年9月，联交所发布了指引信GL42-12以说明可考虑豁免新申请人符合《上市规则》第9.09(b)条规定的各种情况。

第 9.09(b)条

第9.09(b)条订明，由上市委员会聆讯日期足四个营业日之前起直至获批准上市止，发行人的任

何关连人士（如董事及大股东及其联系人）均不得买卖发行人的股份。

Non-exhaustive Circumstances

Each application will be considered on a case-by-case basis, and the Exchange may modify or add conditions for granting the waiver. The circumstances which support a Rule 9.09(b) waiver include but are not limited to the following:

<p>Listed overseas (excluding trading-only status or over-the-counter-trading status)</p>	<p>The applicant's existing shareholders include independent and public investors over whose investment decisions the applicant has no control. A public investor may become a substantial shareholder of the applicant before it lists on the Exchange.</p> <p>A Rule 9.09(b) waiver may be granted so as not to restrict share dealings by these public investors on the basis that:</p> <ul style="list-style-type: none"> (i) the applicant has no control over the investment decisions of the public investors who may become its substantial shareholders before listing on the Exchange; (ii) the applicant will promptly release any price sensitive information to the public in its home jurisdiction; (iii) the applicant's existing connected persons (including substantial and controlling shareholders, directors and chief executive and their respective associates) will not deal in the applicant's shares during the prohibited period under Rule 9.09(b); and (iv) the applicant will notify the Exchange of any breach of the dealing restriction by any of its connected persons during the restricted period.
<p>No change in the ultimate beneficial owners</p>	<p>An example would be a distribution in specie by the legal holder of the shares to the ultimate controlling shareholders on a pro-rata basis.</p>
<p>Corporate reorganization</p>	<p>The share dealing is due to a corporate reorganization.</p>
<p>Pre-existing shareholder agreement</p>	<p>There was a pre-existing shareholder agreement for distribution of the applicant's shares in a particular way so as not to dilute the shareholdings of the original shareholders.</p>
<p>Compliance with Listing Rules</p>	<p>The share dealing is due to a need to comply with the Listing Rules, for example:</p> <ul style="list-style-type: none"> (i) to unwind a pre-IPO investment that does not comply with the Guidance on Pre-IPO Investments; or (ii) to revise the applicant's corporate structure, which involves issuing more shares to the controlling shareholder as consideration for injecting its business into the applicant to address the Exchange's concern on conflicts of interest posed by the controlling shareholder's business.

Pre-IPO Interim Guidance

Applicants should note that dealing in the applicant's shares by connected persons during the prohibited period under Rule 9.09(b) may fall under the Interim Guidance on Pre-IPO Investments. Applicants must ensure that any share dealing complies with the Interim Guidance on Pre-IPO Investments.

Applying for a Rule 9.09(b) Waiver

For a Rule 9.09(b) waiver to be granted, applicants must: (i) demonstrate that compliance with Rule 9.09(b) would be irrelevant or unduly burdensome based on the facts and circumstances of their case; and (ii) disclose in the listing document the reasons for applying for a Rule 9.09(b) waiver and the waiver conditions attached.

Lapse of Prohibition

The share dealing prohibition under Rule 9.09(b) ceases to apply after an application has lapsed (i.e., six months after the filing of a Form A1 listing application).

For a copy of the guidance letter GL42-12, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/istquid/Documents/gl42-12.pdf>.

Early Filing Extended to GEM Cases

In August 2012, the Exchange further revised guidance letter GL6-09 to extend the early filing administrative practices to GEM cases too.

For a copy of the guidance letter GL06-09, please follow the link: <http://www.hkex.com.hk/eng/rulesreg/listrules/istquid/documents/gl6-09.pdf>.

Disclosure of Post-TRP Material Changes

In August 2012, the Exchange published a new guidance letter GL41-12 in relation to prospectus disclosure of material changes in financial, operational and/or trading position after the trading record period.

The Exchange considers that as a minimum, sponsors and listing applicants should consider whether there is any adverse change which has taken place or is expected to take place in the near future, in the technological, market, economic, legal or operating environment in which the applicant operates.

可获豁免的部分情况

每宗申请将获个别考虑，而联交所亦可调整或增加所需的条件。支持豁免第 9.09(b) 条的情况包括但不限于下述各项：

<p>股份已于海外上市（不包括非上市的纯交易资格又或场外交易资格）</p>	<p>申请人现有股东包括申请人不能控制其投资决定的独立及公众投资者。申请人在联交所上市前，任何公众投资者都可能成为其大股东。</p> <p>在下列情况下，联交所会考虑给予第9.09(b)条的豁免，以免限制了这些公众投资者的股份交易：</p> <ul style="list-style-type: none"> (i) 申请人对于其于联交所上市前可能已成为其大股东的公众投资者的投资决定没有控制权； (ii) 申请人会迅速在其本土司法权区向公众发布股价敏感资料； (iii) 申请人现有关连人士（包括大股东及控股股东、董事及行政总裁以及各自的联系人）不会在第9.09(b)条所载的限制期内买卖申请人的股份；及 (iv) 如任何关连人士在限制期内违反任何买卖限制，申请人会通知联交所。
<p>最终实益股东不变</p>	<p>其中一个例子为股份的合法持有人按比例以实物分派股份予最终控股股东。</p>
<p>公司重组</p>	<p>有关的股份交易源自公司重组。</p>
<p>上市前的股东协议</p>	<p>上市前已有股东协议订明分派申请人股份的方法，以免摊薄原股东的持股量。</p>
<p>遵守《上市规则》</p>	<p>有关的股份交易是为遵守《上市规则》而进行，例如：</p> <ul style="list-style-type: none"> (i) 公开招股前的投资不符合《有关首次公开招股前投资的指引》而要减持；或 (ii) 为释除联交所对控股股东的业务可能构成利益冲突的疑虑，申请人修订公司架构以向控股股东发行额外股份作为其将业务注入申请人的对价。

有关首次公开招股前投资的指引

申请人须注意，关连人士在第 9.09(b) 条规定的限制期内买卖申请人的股份可能属于《有关首次公开招股前投资的指引》所载的情况。申请人须确保任何股份交易均符合《有关首次公开招股前投资的指引》。

申请豁免第 9.09(b) 条

要获发给第 9.09(b) 条的豁免，申请人须：(i) 证明就其个案的资料及情况而言，其是否符合第 9.09(b) 条的作用不大，或遵守该规定只会带来不必要的繁重工作；及 (ii) 在上市文件中披露申请第 9.09(b) 条豁免的原因，并附上豁免的条件。

不得买卖股份规定的期限

上市申请过期失效（即呈交 A1 表格上市申请六个月后），第 9.09(b) 条下不得买卖股份的规定就不再适用。

欲查阅指引信 GL42-12 的中文本，请点击以下链接：
http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl42-12_c.pdf

提前存档的行政常规延伸至创业板上市申请

2012 年 8 月，联交所进一步修订其指引信 GL6-09 以延伸提前存档的行政常规至创业板的上市申请。

欲查阅指引信 GL06-09 的中文本，请点击以下链接：
http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl6-09_c.pdf

有关营业纪录期后的重大财务、营运及 / 或经营状况转变披露

2012 年 8 月，联交所针对在上市文件中有关营业纪录期后的重大财务、营运及 / 或经营状况转变的披露规定，发布了新指引信 GL41-12。

联交所认为，保荐人及上市申请人应至少考虑在短期内申请人经营所涉及的技术、市场、经济、法律或营运等环境曾否出现或预期会出现任何不利转变。

指引信列出以下不利转变的若干例子（并非涵盖所有情况），如程度重大即须披露：

The guidance letter sets forth various non-exhaustive examples of adverse changes, which will require disclosure if material, including:

Financial

- adverse changes in the trend of financial performance (e.g., revenue, gross profit and/or net profit) compared with the historical financial results disclosed in the prospectus;
- adverse changes in market interest rates, prices of key products sold/ services provided and/or key raw materials;

Trading

- loss of major customers/suppliers or evidence of their deteriorating financial condition/performance;
- evidence or rumors affecting customers' acceptance of applicant's products/services or material product returns/recall requests from customers;
- litigation/potential litigation from suppliers, customers or other stakeholders;
- international sanctions on countries/companies with which the applicant has conducted business;

Operational

- loss of permits/licenses/patents or other intellectual property or evidence of changes in laws and regulations which are key to the applicant's operation;
- changes in government policies in subsidizing specific industries by way of government grants or preferential tax arrangement or other means;
- changes in regulations (e.g., prohibiting adoption of structured contracts or other regulatory matters);
- evidence of obsolescence of or physical damage to the applicant's key production units/assets/inventories;
- discovery of news or any adverse developments in existing material litigation/threatened claims;
- loss of key personnel;
- significant labor disputes/strikes; or
- any other material facts which adversely affect or are likely to adversely affect the applicant's operating environment.

In addition, listing applicants should note that:

- qualitative and quantitative disclosures are normally expected to be made in a separate section in the "Summary" and other relevant sections of the prospectus to give significant highlights to investors;
- where financial performance deteriorates, disclosure of selected figures of updated key operating data (e.g., sales volume, average selling price, production volume, etc.) is expected to be made in the prospectus; and
- mitigating factors which reduce the potential impact of financial or operational loss does not avoid the need to disclose the adverse changes.

For a copy of the guidance letter GL41-12, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istquid/Documents/gl41-12.pdf>.

As a minimum, sponsors and listing applicants should consider whether there is any adverse change which has taken place or is expected to take place in the near future.

Bad Weather Arrangements on Day of Prospectus Publication

In August 2012, the Exchange updated guidance letter GL31-12 to include bad weather arrangements on the day of prospectus publication.

If a typhoon signal no. 8 or above and/or a black rainstorm warning is in force in Hong Kong at 9:00 a.m. on the prospectus publication day, the listing applicant must take action necessary to comply with Section 44A(1) of the Companies Ordinance (delay before share allotment).

If the listing timetable of the public offer set out in the prospectus is amended to comply with Section 44A(1) of the Companies Ordinance, an announcement on the new timetable must be made on the business day

after the bad weather, and no pre-vetting by the Exchange is required. The applicant need not issue a supplemental prospectus.

For a copy of the guidance letter GL31-12, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istquid/Documents/gl31-12.pdf>.

Depository Receipts

In July 2012, the Exchange published a guidance letter describing the market practice of pre-release and pre-cancellation of depository receipts (DRs), including the rationale and regulatory basis. The guidance also contains good background information on the nature of the DR regime and its benefits to overseas issuers and investors.

For a copy of the guidance letter GL39-12, please follow the link:

<http://www.hkex.com.hk/eng/rulesreg/listrules/istquid/Documents/gl39-12.pdf>.

Enforcement News

Hontex Issued Repurchase Offer

In September 2012, Hontex International Holdings Company Limited (Hontex) issued an offer document for the repurchase of its shares (Repurchase Offer) following orders made by the Court of First Instance in legal proceedings brought by the SFC.

The Repurchase Offer, which is not available to Hontex's controlling shareholders, is the result of legal proceedings brought by the Securities and Futures Commission (SFC) against Hontex in relation to false and misleading statements in its IPO prospectus. Hontex agreed that the following prospectus disclosures were false and misleading:

- its turnover and profit before tax for the three years ended 31 December 2008;
- the value of its cash and cash equivalents for the years ended 31 December 2007, 2008 and 30 June 2009; and
- the number of franchise stores as at 31 December 2008 and 8 December 2009.

The Repurchase Offer is made to all shareholders holding Hontex shares on

(Continued on Page 14)

财务

- 财务表现（如收入、毛利及 / 或纯利）较招股章程披露的过往财务业绩出现逆转趋势；
- 市场利率、所售主要产品 / 所提供产品及 / 或主要原材料价格出现不利转变；

贸易

- 失去主要客户 / 供货商或有证据显示他们的财务状况 / 表现下滑；
- 有证据或传言影响客户接纳申请人的产品 / 服务或客户提出重大退货 / 回收要求；
- 供货商、客户或其他权益人对申请人的诉讼 / 可能的诉讼；
- 国际社会对与申请人有业务往来的国家 / 公司进行制裁；

营运

- 丧失许可证 / 牌照 / 专利权或其他知识产权或有证据显示对申请人业务关系重大的法律及规则转变；
- 政府补贴或税务优惠或其他政府资助个别行业的政策有所转变；
- 禁止采用结构性合约或其他监管事宜等的法规修订；
- 有证据显示申请人主要生产单位 / 资产 / 存货已过时或已有实质损坏；
- 现有的重大诉讼 / 声称申索发现新的或任何不利发展；
- 失去主要雇员；
- 重大劳资纠纷 / 罢工；或任何其他对申请人营运环境造成不利影响或可能不利影响的重大事实；

另外，申请人应留意：

- 联交所一般期望申请人在其招股章程「概要」及其他相关章节中以个别段落作出定性及定量的披露，为投资者提供重要的摘要；
- 倘申请人的财务表现转差，联交所期望其招股章程披露最新

主要营运数据（如销量、平均售价、产量等）；及

- 即使有减低对申请人财务或营运损失的影响的缓和因素，申请人仍须继续披露任何不利转变。

欲查阅指引信GL41-12的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/gl41-12_c.pdf

**保荐人及上市申请人
应至少考虑
在短期内曾否出现
或预期会出现
任何不利转变。**

发出招股章程当天就恶劣天气情况的安排

2012年8月，联交所修订其指引信GL31-12，以涵盖在刊发招股章程当天就恶劣天气的各项安排。

若刊发招股章程当天的上午9时有8号或以上台风讯号及 / 或黑色暴雨警告在香港生效，上市申请人必须采取所需行动，以确保遵守《公司条例》第44A(1)条（延遲对有关股份作出分配）的规定。

若为确保遵守《公司条例》第44A(1)条而修订招股章程所载的公开招股上市时间表，上市申请人须在恶劣天气后的营业日发出公告公布新时间表，而公告毋须经联交所预先审阅。申请人毋须刊发补充招股章程。

欲查阅指引信GL31-12的中文本，请点击以下链接：

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

预托证券

2012年7月，联交所发布了指引以说明预托证券「预先发行」及「预先取消」的市场做法，并阐释其容许这些做法的理由及相关监管基准。

该指引信亦提供很好的背景信息，以解释预托证券机制的性质及其对海外发行人和投资者的好处。

欲查阅指引信GL39-12的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/GL39-12_C.pdf

执法新闻

洪良发出购回要约

2012年9月，洪良国际控股有限公司（「洪良」）遵照原讼法庭早前就证券及期货事务监察委员会（证监会）提起的诉讼所颁布的命令，发出有关购回股份的要约文件（「购回要约」）。该购回要约乃证监会就洪良在首次公开招股章程中作出虚假及误导性陈述而对其提出起诉所取得的结果，而洪良并无向控股股东提出购回要约。洪良承认其首次公开招股章程所载的下列披露属虚假及具误导性：

- 其截至2006年、2007年及2008年12月31日止各年度营业额数字，及其除税前溢利，均在要项上属虚假及具误导性；
- 其截至2007年12月31日、2008年12月31日及2009年6月30日止各年度的现金及现金等价物的价值；
- 于2008年12月31日及2009年12月8日的特许经营店数目。

洪良向曾认购或购买洪良股份并于2012年6月20日（即原讼法庭颁令当日）仍然持有洪良股份的所有股东提出购回要约。

20 June 2012, being the date of the Court of First Instance's order, who subscribed for or bought Hontex shares and still hold them.

If all shareholders accept the Repurchase Offer, Hontex will pay out a total of

HK\$1.03 billion to approximately 7,700 shareholders. The Repurchase Offer is being administered by court-appointed administrators and will remain open for acceptance for 35 days until 29 October 2012.

For a copy of the offer document, please follow the link:

<http://www.hkexnews.hk/listedco/listconews/ehk/2012/0924/LTN20120924010.pdf>.

Court of Appeal Upheld Insider Dealing Convictions

In September 2012, the Court of Appeal upheld the insider dealing convictions of Mr. Du Jun, former managing director of Morgan Stanley Asia Ltd, for insider dealing in shares of CITIC Resources Holdings Ltd (CITIC Resources), but reduced Du's term of imprisonment from seven years to six years and lowered the fine from HK\$23.3 million to HK\$1.688 million.

The Court of Appeal upheld the trial judge's findings that:

- on nine occasions between 15 February and 30 April 2007, Du purchased a total of 26.7 million shares of CITIC Resources for \$86 million while he was part of a team of Morgan Stanley's bankers advising Hong Kong-listed CITIC Resources on a proposed deal to acquire oil field assets in China; and
- Du counseled or procured his wife to deal in CITIC Resources shares on 27 February 2007.

In reducing the fine, the Court of Appeal took into account the ongoing civil proceedings commenced by the SFC against Du under section 213 of the SFO in which the SFC is seeking remedial orders against Du for the benefit of his trading counterparties.

The Court of Appeal considered that "the laudable objective of the section 213 proceedings ... would in the particular circumstances of this case be defeated if fines

were imposed at the expense of counterparties entitled to damages".

SFC commenced proceedings against E&Y

In August 2012, the SFC commenced proceedings in the Court of First Instance against Ernst & Young Hong Kong (E&Y) for failing to produce to the SFC specified accounting records.

Although the case is the first of its kind in Hong Kong, Deloitte & Touche was previously charged by the US Securities and Exchange Commission with violating U.S. securities laws in its refusal to hand over its audit work papers of Chinese computer company Longtop Financial Technologies Limited.

The Court of Appeal considered that "the laudable objective of the section 213 proceedings ... would in the particular circumstances of this case be defeated if fines were imposed at the expense of counterparties entitled to damages".

The SFC was seeking the audit working papers and underlying accounting documents relating to E&Y's work as the reporting accountant and auditor for Standard Water Limited (Standard Water). Standard Water applied for listing to the Exchange on 9 November 2009. In March 2010, E&Y suddenly informed the Exchange of its resignation as reporting accountants and auditors of Standard Water upon discovery of certain inconsistencies in documentation provided by the company. Shortly afterwards, Standard Water also withdrew its listing application.

E&Y did not comply with this request and claimed that it did not have the relevant records which were held in the Mainland by its joint venture partner in the Mainland, Ernst & Young Hua Ming (EY Hua Ming), whose staff were the ones involved in the engagement. Ernst & Young also claimed the documents could not be produced because of restrictions under PRC law.

The SFC is invoking section 185 of the SFO, which empowers the court to inquire into the circumstances of E&Y's non-compliance with the SFC's request for these records. The Court can order E&Y to comply with the SFC's request if it is satisfied that E&Y does not have any reasonable excuse for not complying.

Regulatory Watch

New Takeovers Code Practice Note 19 - Chain principle offer price

In September 2012, the SFC issued a new Practice Note 19 to provide guidance on how to determine the offer price where a chain principle offer has been triggered.

Chain principle offer

As a result of acquiring statutory control of a company (which need not be a company to which the Takeovers Code applies), a person or group of persons may in turn obtain or consolidate control over a second company because the first company holds 30% or more of the voting rights of the second company.

In such a case, Note 8 to Rule 26.1 of the Takeovers Code provides that the acquirer of the first company may trigger an obligation to make a mandatory general offer for the second company if the Note's criterion under either the substantiality test or the purpose test is met.

Calculation of the chain principle offer price

When calculating the chain principle offer price, the objective is to establish how much of the price paid for the first company is attributable to its holding in the second company. The offer price should be calculated objectively taking into consideration the transacted price for shares in the first company and the relative value of the second company.

The mechanism for pricing chain principle offers may differ depending on the circumstances such as the nature of businesses and assets involved. For example, asset values are normally used to determine the chain principle offer price for asset-based

(Continued on Page 16)

假如所有股东均接纳购回要约，洪良将向约 7,700 名股东支付合共港币 10.3 亿元。购回要约由法庭委任的管理人负责管理。接纳要约的期限为 35 天，直至 2012 年 10 月 29 日为止。

欲查阅该要约文件的中文本，请点击以下链接：

http://www.hkexnews.hk/listedco/listconews/senhk/2012/0924/LTN20120924009_C.pdf

上诉法庭维持内幕交易罪成的判决

2012 年 9 月，上诉法庭维持对摩根士丹利亚洲有限公司（「**摩根士丹利**」）前董事总经理杜军因就中信资源控股有限公司（「**中信资源**」）的股份进行内幕交易而被判处罪成的裁决，但将杜的监禁刑期由七年减为六年，并将罚款额从港币 2,330 万元降至港币 168.8 万元。

上诉法庭今天维持主审法官的下列裁决，指：

- 杜在 2007 年 2 月 15 日至 4 月 30 日期间，曾先后九次买入合共 2,670 万股中信资源股份，涉及金额达港币 8,600 万元。杜当时是摩根士丹利一个工作小组的成员，负责向在香港上市的中信资源就收购中国油田资产的建议交易提供意见；及
- 杜在 2007 年 2 月 27 日怂使或促致其妻子进行中信资源股份交易。

上诉法庭调低罚款额，是考虑到证监会正根据《证券及期货条例》第 213 条对杜展开的民事法律程序，藉此寻求向杜作出补救命令，以维护其交易对手的利益。

上诉法庭认为，就「本案的特殊情况而言，假如施加的罚款会牺牲有权获取损害赔偿的交易对手的利益……这便违背了根据第 213 条展开法律程序的良好原意」。

证监会对安永展开法律程序

2012 年 8 月，证监会就安永会计师事务所（「**安永**」）未有交出指明的会计纪录一事，在原审法院对安永展开法律程序。

虽然此案件是香港的首开先例，但在美国，美国证券交易委员会早前已就德勤会计师事务所（「**德勤**」）拒绝交出其有关中国软件公司东南融通的审计工作底稿一事对德勤提出控诉，指德勤违反美国证券法律。

上诉法庭认为，就「本案的特殊情况而言，假如施加的罚款会牺牲有权获取损害赔偿的交易对手的利益……这便违背了根据第 213 条展开法律程序的良好原意」。

证监会要求安永交出有关其担任标准水务有限公司（「**标准水务**」）的申报会计师及核数师期间的审计工作底稿及相关会计文件。标准水务于 2009 年 11 月 9 日向联交所申请上市。2010 年 3 月，安永突然通知联交所，表示因发现标准水务所提供的文件内容前后矛盾，故已辞任该公司的申报会计师及核数师。标准水务随后亦撤回其上市申请。

安永没有遵从此要求，声称没持有该等纪录，并指受委聘的工作由其内地合营伙伴安永华明执行，而相关纪录亦由安永华明在内地持有。安永亦声称碍于中国法律的限制，无法交出有关文件。

证监会现就此案引用《证券及期货条例》第 185 条。该条文赋权原审法院就安永不遵从证监会的要求交出该等纪录的情况，进行查讯。如法庭信纳安永是在没有合理辩解下不遵从证监会的要求，便可命令安永遵从有关要求。

监管观察

新《收购守则》应用指引 19—连锁关系原则要约价

2012 年 9 月，证监会发布新应用指引 19，就当连锁关系原则要约被触发时应如何厘定要约价提供指引。

连锁关系原则要约

在某些情况下，一个人或一组人可能会由于取得一间公司（该公司不必是《收购守则》适用的公司）的法定控制权，继而基于第一间公司持有第二间公司 30% 或以上的投票权而取得或巩固对第二间公司的控制权。

在这些情况下，规则 26.1 注释 8 规定第一间公司的收购方，如符合该指引下重大测试或目的测试所列出的标准，或会触发向第二间公司作出强制性全面要约的责任。

计算连锁关系原则要约价的方法，旨在确定第一间公司于第二间公司的持有量，在就收购第一间公司所支付的价格中所占的比重。要约价应于考虑第一间公司的股份成交价以及第二间公司的相对价值后作客观计算。

连锁关系原则要约的定价机制可能因应每宗个案（如业务性质和所涉及资产等）而有所不同。例如，资产

连锁关系原则要约价的计算

值经常会被利用作厘定连锁关系原则要约价；但在其他情况下，

companies. In other situations, earnings may be a more important or relevant consideration.

For a copy of Practice Note 19, please follow the link:

http://www.sfc.hk/web/EN/files/CF/pdf/Practice_Notes/Practice_Note_19_ENG.pdf.

Consultation on subsidiary legislation for the new Companies Ordinance

In September 2012, the Hong Kong Government launched the first of two phases of a public consultation on the subsidiary legislation to be made for the implementation of the new Companies Ordinance. The consultation exercise will cover the following seven pieces of the subsidiary legislation:

1. Companies (Summary Financial Reports) Regulation;
2. Companies (Directors' Report) Regulation;
3. Companies (Specification of Names) Order;
4. Companies (Non-Hong Kong Companies) Regulation;
5. Company Records (Inspection and Provision of Copies) Regulation;
6. Companies (Model Articles) Notice; and
7. Companies (Accounting Standards (Prescribed Body)) Regulation.

The deadline for responses is November 9, 2012. For a copy of the consultation document, please follow the link:

http://www.fstb.gov.hk/fsb/co_rewrite/eng/pub_press/doc/sub_leg_new_comp_ordinance_ph1_e.pdf.

SFC Publishes Aggregated Short Positions

In September 2012, the SFC commenced the weekly publication of aggregated short positions of specified shares under the Securities and Futures (Short Position Reporting) Rules (Rules).

A reportable position is a net short position that amounts to or exceeds the threshold of 0.02% of the market value of the issued share capital of the relevant listed company, or HK\$30 million, whichever is lower, as at the close of the last trading day of each week. Under the Rules, reportable short positions

must be reported to the SFC within two business days from the last trading day of each week. The aggregated short positions reported will be published three business days later, usually on a Friday.

To access the SFC's weekly publication, please follow the link:

<http://www.sfc.hk/web/EN/regulatory-functions/market-infrastructure-and-trading/short-position-reporting/aggregated-short-positions-of-specified-shares.html>.

Consultation on Board Diversity

In September 2012, the Exchange published a consultation paper on proposed amendments to the Corporate Governance Code and Corporate Governance Report concerning board diversity.

Key proposals include:

- a new Code Provision (i.e., requirement to "comply or explain") stating that the nomination committee (or the board) should have a policy concerning diversity in the boardroom and should disclose the policy or a summary of the policy in the corporate governance report;
- each company should also include any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives;
- diversity is clarified to be defined broadly, and there are no proposed prescribed criteria for considering diversity; and
- diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience.

For a copy of the consultation paper, please follow the link:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209.pdf>.

Consultation Conclusions on ESG Reporting

In August 2012, the Exchange published the consultation conclusions on the proposed Environmental, Social and Governance (ESG) Reporting Guide.

Here are the highlights:

What is it?

The proposed Guide sets out ESG subject areas, aspects, general disclosure and key performance indicators (KPIs). The Guide will be a recommended practice and will be appended as a new Appendix 27 to the Listing Rules.

The Guide is divided into four areas: Workplace Quality, Environmental Protection, Operating Practices and Community Involvement. Each of the areas is divided into three sections: aspects, general disclosure recommendations and KPIs.

The Exchange does not expect a company to report on all recommended disclosures from the start. A company with resource constraints could start reporting on a few KPIs and cover only its major operations/subsidiaries. The key is to report on relevant and material KPIs that are material to the company.

When will it apply?

The Guide will apply to companies in financial years ending after 31 December 2012.

Who is responsible for ESG reporting?

The board of directors is responsible for ESG reporting but it may delegate the task of compiling the ESG report to its employees or a committee that reports to the board.

Where should the ESG information be disclosed?

A company may disclose the ESG information in its annual report regarding the same period covered in the annual report, or in a separate report, in print or on its website.

Timeframe for raising level of obligation to "comply or explain"

Subject to further consultation, the Exchange plans to raise the level of obligation of some recommended disclosures to "comply or explain" by 2015. To prepare for the consultation, the Exchange will conduct its first survey of companies' financial reports to be published in 2014.

For a copy of the consultation conclusions, please follow the link:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201208cc.pdf>.

盈利可能是更重要或相关的考虑因素。

欲查阅应用指引 19 的中文本，请点击以下链接：

http://www.sfc.hk/web/TC/files/ER/PDF/takeovers_sep_12_chi.pdf

就新《公司条例》附属法例的咨询

2012 年 9 月，针对为落实新公司条例而制定相关附属法例的工作，香港政府开展了第一阶段的公众咨询（咨询总共为两个阶段）。第一阶段就以下七条附属法例咨询公众：

1. 公司（财务摘要报告）规例；
2. 公司（董事报告）规例；
3. 公司（指明名称）令；
4. 公司（非香港公司）规例；
5. 公司纪录（查阅及提供文本）规例；
6. 公司（章程细则范本）公告；及
7. 公司（会计准则（订明团体））规例。

就该咨询发表意见的截止日期为 2012 年 11 月 9 日。欲查阅该咨询文件的中文本，请点击以下链接：

http://www.cr.gov.hk/tc/publications/docs/092012_Consultation_full-c.pdf

证监会开始公布合计淡仓数据

2012 年 9 月，证监会开始根据《证券及期货（淡仓申报）规则》（《规则》），每周公布指明股份的合计淡仓数据。

截至每周最后一个交易日收市为止，如淡仓净额达到或高于申报下限额，即相关上市公司已发行股本的市值的 0.02%，或 3,000 万港元（以较低者为准），即属于须申报的淡仓。根据《规则》，须申报淡仓必须在每周最后一个交易日起计的两个营业日内向证监会申报，而所申报的合

计淡仓数据会于三个营业日后（一般是星期五）公布。

欲查阅该每周公布的中文本，请点击以下链接：

<http://sc.sfc.hk/gb/www.sfc.hk/web/TC/regulatory-functions/market-infrastructure-and-trading/short-position-reporting/aggregated-short-positions-of-specified-shares.html>

有关董事会成员多元化的咨询

2012 年 9 月，联交所发出咨询文件，就《企业管治守则》及《企业管治报告》内有关董事会成员多元化的修订建议咨询各界人士的意见。

主要建议包括：

- 增设守则条文（即「不遵守就解释」的规定），订明提名委员会（或董事会）应制定有关董事会成员多元化的政策，并应在企业管治报告内披露有关政策或政策概要；
- 每个发行人亦应载有其为执行政策而订定的任何可量度目标，以及达成目标的进展；
- 在守则条文中厘清联交所拟取「多元化」的广义，亦不拟规定考虑「多元化」的因素准则；及
- 要获得多样化的观点角度，可以考虑的因素准则有不少，包括（但不限于）性别、年龄、文化 / 教育背景或专业经验等。

欲查阅该咨询文件的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/newsconsul/mktconsul/Documents/cp201209_c.pdf

有关环境、社会及管治报告指引的咨询总结

2012 年 8 月，联交所公布建议中的《环境、社会及管治报告指引》（「该建议指引」）的咨询结果。

重点如下：

该建议指引是甚么？

该建议指引列出环境、社会及管治报告内的主要范畴、层面、一般披露及关键绩效指标。它将成为建议常规，并列入《上市规则》的附录二十七。

该建议指引划分为四大主要范畴：工作环境质素、环境保护、营运惯例及小区参与。每个主要范畴再分为三个部分：层面、一般披露建议及关键绩效指标。

联交所不预期每一家公司一开始的报告即涵盖其所有营运项目及汇报所有建议披露的事宜。资源有限的公司可从数个主要及相关的绩效指标入手，及只涵盖其主要营运项目或附属公司。关键在于该公司应报告主要的相关绩效指标。

该建议指引于何时生效？

它将适用于公司截至 2012 年 12 月 31 日之后日期的财政年度。

谁应对环境、社会及管治报告负责？

董事会对环境、社会及管治报告负责，但编撰报告的工作可以指派公司员工或向董事会汇报的委员会进行。

环境、社会及管治的资料应在哪里披露？

公司可将环境、社会及管治的资料加载年报，有关资料所涵盖的期间宜与年报内容涵盖的时间相同，又或另设报告收载有关资料。披露亦可以印刷本或在其网站上载的方式作出。

实施「不遵守就解释」的时间表

视乎日后的进一步咨询而定，联交所计划于 2015 年或之前将有关责任的程度提高至「不遵守就解释」。为有关咨询做好准备，联

Consultation on Consequential Listing Rule Changes in relation to the PSI Regime

In August 2012, the Exchange released a consultation paper in relation to listing rule changes consequential to the implementation of the PSI regime in order to minimize

duplication and overlap with the new PSI regime (which will be effective January 1, 2013).

Please note that disclosure obligations under the Listing Rules identify specific circumstances in which an issuer must disclose information to the public, and they are not alternatives to the statutory disclosure obligations under the PSI regime.

The main change proposed in the consultation paper will be to remove the

existing continuing disclosure obligations in Listing Rule 13.09, which will become part of the statutory regime. In addition, a range of amendments will be made consequential on the removal of these core provisions, as follows:

Key proposals

Current Listing Rules	Proposed Changes
13.09 (<i>general obligation of disclosure</i>)	Deleted, except for Rule 13.09(1)(b) in relation to the obligation to avoid a false market. Revised 13.09 will clarify that such obligation will include the obligation to <i>correct</i> a false market.
Note 1 to Rule 13.09 (<i>no privileged dealing position</i>)	To become new Rule 13.06B
Note 2 to Rule 13.09 (<i>duty to preserve confidentiality of inside information</i>)	To become new Rule 13.06A
Notes 9 and 10 to Rule 13.09 (<i>material matters which affect profit forecasts</i>)	To become new Rules 13.24B(1), (2)
Note 1 to Rule 13.10 (<i>standard announcement in response to Exchange's inquiries</i>)	Directors to confirm having made "due inquiries", and that there is no inside information to be disclosed under Part XIVA of the SFO, before issuing such announcements. If the Exchange's inquiries do not relate to unusual trading movements, confirmation that the issuer is not aware of any reasons for unusual movements will not be required.
13.09(2) (<i>information disclosed to other stock exchanges</i>)	To become new Rule 13.10B

New Listing Rules	Description
13.10A (<i>obligation to apply for trading halts</i>)	Obligation to apply for a trading halt when disclosure under Rule 13.09 cannot be promptly made, or where confidentiality may be lost in respect of inside information under Part XIVA of the SFO and such information cannot be announced promptly.
1.01 (<i>definitions</i>)	New defined terms: "inside information" and "Inside Information Provisions" (this refers to Part XIVA of the SFO). References to the term "price sensitive information" will be replaced by "inside information".

For a copy of the consultation paper, please follow the link: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201208.pdf>.

Consultation on Trading Halts

In July 2012, the Exchange published a consultation paper on proposed trading halts that would allow its listed companies to publish announcements with price sensitive information during trading hours.

Under the proposal, a listed company will be able to release a PSI announcement on the HKExnews website during trading hours,

provided that there is a short halt in trading of the company's shares to enable investors to digest the contents of the announcement. At present, companies are not allowed to publish PSI announcements during trading hours. If a disclosure obligation is triggered during trading hours now, trading in the company's shares must be suspended immediately and will only resume in the next trading session following publication of an announcement.

In addition to bringing Hong Kong in line with international market practices, trading halts would significantly reduce the duration of periods when shares cannot be traded. Trading halts would also result in more accurate intraday securities price discovery, as price discovery would occur as soon as possible after release of all material information relevant to a security's value. Trading halts may also help investors holding products such as structured products, stock

(Continued on Page 20)

交所计划以公司于 2014 年刊发的财务报告作为首次调查的对象。

欲查阅该咨询总结的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/newsconsul/mktconsul/Documents/cp201112cc_c.pdf

有关《上市规则》因应新法定披露机制而作出相关修订的咨询

主要建议

现行的《上市规则》	建议修订
13.09 (一般披露责任)	删除，除了《主板规则》第 13.09(1)(b)条就披露资料以避免发行人证券出现虚假市场的规定将予以保留。修订后的第 13.09 条将澄清该责任应包括纠正虚假市场的意思。
第 13.09 条注 1 (不得处于有利地位)	成为新的第 13.06B 条。
第 13.09 条注 2 (确保内幕消息绝对保密的责任)	成为新的第 13.06A 条。
第 13.09 条注 9 及注 10 (对盈利预测产生影响的重大事件)	成为新的第 13.24B(1)、(2)条。
第 13.10 条注 1 (发行人就回应联交所查询事宜按照《上市规则》的规定发出公告)	董事在作出「合理尽职的查询」后，确认发出公告前并不存在根据《证券及期货条例》第 XIVA 部所规定而须披露的内幕消息。 如联交所的查询与任何证券不寻常价格或成交量变动无关，发行人确认其并不知悉有任何有关该等证券不寻常价格或成交量变动的事宜或事态发展。
第 13.09(2) (于其他证券交易所披露的消息)	成为新的第 13.10B 条。

新《上市规则》	描述
第 13.09(2) (短暂停牌期间的责任)	发行人就握有根据《上市规则》第 13.09 条必须披露的资料而未能及时作出披露，或出现某些情况引致有关内幕消息的机密或已泄露而未能及时发出公告，则发行人有责任申请短暂停牌。
1.01 (释义)	新界定的词汇：「内幕消息」及「内幕消息条文」(指《证券及期货条例》第 XIVA 部)。 以「内幕消息」一词取代以下各词：「股价敏感资料」、「价格敏感资料」及「可(能)影响(证券)价格的资料」。

欲查阅该咨询文件的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/newsconsul/mktconsul/Documents/cp201208_c.pdf

有关短暂停牌的咨询

2012 年 7 月，联交所发出咨询文件，就建议实施短暂停牌以准许发行人于交易时间内刊发股价敏感资料公告咨询市场意见。

2012 年 8 月，联交所发出咨询文件，就《上市规则》因应上市法团披露股价敏感资料的责任被纳入法例而作出的相关修订建议，务求减低该等修订与法定披露机制(将自 2013 年 1 月 1 日起生效)重复和互相重叠的情况，咨询各界人士的意见。

请注意，《上市规则》内的披露责任为发行人须向其证券持有人

及公众披露资料的特定情况，而并非为法定披露机制所提出的法定披露责任提供其他选择。

咨询文件中的主要修订建议为《上市规则》第 13.09(1)条内现行披露资料的持续责任将由于与法定披露责任重复而删除。此外，删除这些主要条款之后，须同时作出一连串的相关改动，详情如下：

在该建议下，上市发行人将可于联交所的交易时间内在「披露易」网站发布股价敏感资料公告，但股份须短暂停牌以容许投资者有时间掌握公告内容。现时，上市公司不可于交易时间内

刊发股价敏感资料。如于交易时间内出现须予披露的事情，须立即停牌，并只可于刊发公告后的下一交易时段方可复牌。

该建议除了令香港更符合国际市场常规，更可大幅缩减停牌时

options and stock futures close out their positions to avoid bearing risk overnight.

A summary of the key proposals is as follows:

1. A listed issuer's PSI announcements will be allowed to be released on the HKExnews website during the Exchange's trading hours and subject to a short trading halt, for the purposes of digestion of contents of announcements by the public.
2. The proposed duration of 30 minutes trading halt applies to all PSI announcements to be released during trading hours. Share trading will resume at least 30 minutes after the PSI announcement is published on the HKExnews website. Any trading resumption will take place on the quarter hour or the half hour.
3. To provide at least 30 minutes of trading (including 10 minutes auction session and 20 minutes of continuous trading) after lifting of trading halts.
4. All existing orders of the securities in the securities market entered before a trading halt or a suspension are to be cancelled automatically by the Exchange at the time of halt.
5. To facilitate price discovery, a single price auction will take place in the securities market for the relevant stocks and structured products upon lifting of a trading halt. The auction session will last for 10 minutes.
6. Results announcements will be published during the current publication windows as far as possible. The Exchange may grant a trading halt for the publication of results announcement if a halt is justified by the issuer.
7. The current practice of releasing non-PSI announcements outside trading hours will remain unchanged.
8. The maximum period for which a trading halt may be granted by the Exchange is two trading days. If the issuer fails to

publish the PSI announcement within the proposed maximum period, the trading halt will lapse and its status will be changed to "suspension" automatically.

9. The current Exchange stock options/futures order handling practices will remain unchanged (i.e., all outstanding orders will be purged automatically by the system at the time of trading halt of the underlying stocks).

For a copy of the consultation paper, please follow the link:
<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201207.pdf>.

Updates to IPO Checklists

1. Checklist I.N. (Standard Comments: To be addressed when replying to the Exchange's first comment letter)

The Exchange has updated certain disclosure requirements in relation to the biographical details of the directors and senior management:

- tabular format is now required; and
- biographies of directors and senior management must include academic background, professional qualifications, previous relevant working experience and current and past directorships in listed companies in the last three years.

Sponsors are expected to:

- check whether the accreditation bodies are authorized by competent authorities to grant accreditations (otherwise, sponsors should advise the applicant to remove references to the academic bodies from the listing document or to disclose the fact that the accreditation bodies are not authorized to do so); and
- ascertain whether the courses attended were long distance learning courses or online courses and, if so, specify it in the listing document.

2. Checklist V.D. (Summary of key financial ratios during the track record period)

Changes have been made by the Exchange to the definitions of gearing ratio and debt to equity ratio:

Gearing ratio = Total debt/Total equity x 100%
 (previously defined as "Total debt/Total assets x 100%")

Debt to equity ratio = Net debt/Total equity x 100%

(previously defined as "Net debt/Total assets – Total liabilities x 100%")

For a copy of the relevant checklists, please follow the link:

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

Guide on Enhancing Regulation of the Listed Structured Products Market

In July 2012, the Exchange published a *Guide on Enhancing Regulation of the Listed Structured Products Market*. The Guide covers a number of regulatory enhancement measures in three main areas: (a) enhancement of issuers' internal controls and standardization of listing documents, (b) improvement of liquidity provision standards and (c) management of issuers' credit risks.

The Guide also includes the *Industry Principles on Liquidity Provision for Listed Structured Products*, which were developed jointly by a working group of listed structured products issuers, the SFC and the Exchange after extensive discussions.

For a copy of the Guide, please follow the link:
<http://www.hkex.com.hk/eng/rulesreg/listrules/istguid/Documents/guideline0712.pdf>.

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.

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间。倘实施建议中的短暂停牌，可为市场带来更准确的即日证券价格，因上市公司发布会影响其证券价值的重大资料后，市场可尽快反映这些消息于有关证券的最新价格之上。该建议亦可让衍生产品（包括结构性产品、股票期权及股票期货）的投资者将未平仓合约平仓，而毋须承担隔夜风险。

主要建议概述如下：

1. 上市发行人可于联交所的交易时间内在「披露易」网站发布股价敏感资料公告，但股份须短暂停牌，以便公众有时间掌握公告内容。
2. 建议中的30分钟短暂停牌时间适用于所有在交易时间内发布的股价敏感资料公告。股份将于股价敏感资料公告在「披露易」网站刊发至少30分钟后复牌。任何复牌须于每15分钟或每半小时进行。
3. 短暂停牌结束后须有至少30分钟的交易时间（包括10分钟竞价交易时段及20分钟持续交易时段）。
4. 在证券市场所有于短暂停牌或停牌前已输入但仍未完成的证券买卖盘，一律由联交所在短暂停牌时自动取消。
5. 为方便厘定价格，短暂停牌结束后，在证券市场的相关证券及结构性产品将进行单一价格竞价。竞价交易时段将进行10分钟。
6. 业绩公告须尽可能于现有登载时段内刊发。如发行人可提供理据，联交所或会批准短暂停牌以刊发业绩公告。

7. 现时于交易时段以外时间发布非股价敏感资料公告的做法维持不变。
8. 联交所可批准短暂停牌的时间最长为两个交易日。如发行人未能于建议中的时限内刊发股价敏感资料公告，有关短暂停牌将告失效并自动改为「停牌」。
9. 现时交易所处理股票期权 / 期货买卖盘的做法会维持不变（即系统在正股短暂停牌时将会自动清除当时所有尚未完成的买卖盘）。

欲查阅该咨询文件的中文本，请点击以下链接：

http://www.hkex.com.hk/chi/newsconsul/mktconsul/Documents/cp201207_c.pdf

IPO 清单更新内容

1. 清单 I.N. (标准意见：需在回复联交所的首份意见函时解释)

联交所已经更新了有关董事和高级管理人员简介信息的披露规定：

- 现需采用表格形式；及
- 董事和高级管理人员的简介必须包括教育背景、专业资质、之前的有关工作经历、现在以及过去三年在上市公司担任董事的情况。

保荐人需：

- 检查认证机构是否经有权授予认证资格的机构进行授权（否则，保荐人应建议申请人在上市文件中删除提及学术机构之

处，或者披露认证机构并未获授权如此行事的事实）；及

- 确定所学课程是否是远程教育还是在线课程，如果是该等课程，需在上市文件中载明。

2. 清单 V.D. (过往记录期内主要财务比率的概述)

联交所已更改关于杠杆比率和债权比率的定义：

杠杆比率 = 债务总额/股权总额 x 100% (之前定义为“债务总额/资产总额 x 100%”)

债权比率 = 债务净额/股权总额 x 100% (之前定义为“债务净额/资产总额 - 总负债 x 100%”)

欲获得有关清单，请点击以下链接（只设英文版本）：

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

《加强管理上市结构产品市场指南》

2012年7月，联交所公布了《加强管理上市结构产品市场指南》。指南在以下三个主要领域规定了多项加强管理的措施：

(a) 加强发行人的内部控制并推动上市文件的标准化，(b) 提高流动性准备标准以及 (c) 管理发行人信贷风险。

指南还包括由上市结构产品发行人、证监会和联交所在进行大量讨论后共同制定的关于上市结构产品流动性准备的产业原则。

欲获得指南，请点击以下链接：

http://www.hkex.com.hk/chi/rulesreg/listrules/listguid/Documents/guideline0712_c.pdf

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。