MARKET SUPERVISION BY HONG KONG REGULATORS ON DISCLOSURE OF INTERESTS AND INSIDER DEALING

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ABSTRACT

Insider dealing is detrimental to a fair market since insider dealers use special information obtained from their privileged positions to trade and to take advantage of the general investing public. It undermines the market integrity and investor's confidence in Hong Kong as a well-regulated financial centre.

The Securities (Insider Dealing) Ordinance was enacted to combat circumstances where insiders such as directors and substantial shareholders use confidential information to make personal gain from the trade. In order to effectively monitor their trading activities, the Securities (Disclosure of Interests) Ordinance requires these connected persons to notify the company and the Stock Exchange of their interests in shares of a listed company as well as subsequent changes.

Both regulations came in force eight years ago in 1991. This paper will discuss their adequacy in maintaining a transparent market in Hong Kong and protection of investors. It is hoped that this paper can be a basis of further study by regulators and researchers.

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CHAPTER I

INTRODUCTION

The securities market has gained a prominent role in global finances. There has been an increasing number of corporations raise funds through listing. Institutional and private investors also place more and more money into securities market. As at January 1999, there are 680 listed companies in Hong Kong. Hong Kong is the fourth largest securities market in Asia with a capitalisation of US$316 billion[1]. It ranks next to Tokyo(US$2,246bil), Osaka (US$1,721bil) and Australia (US$347bil).

The variety and complexity of securities products increases with this growing enthusiasm to the market. In times when the market was bullish before the Asian Currency Crisis, there was huge influx of institutional and private investors in the local market. Unfortunately, many small investors have limited knowledge on the securities and most trades are speculative in nature and rumours driven. The huge participation by the public did not transform Hong Kong to a mature market, if not on the contrary. Unusual trading activities, large fluctuation in share prices, unconfirmed market rumours were nearly norms of the days.

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[1] SEHK, Regional Monitor Issue No. 21

Securities regulators are armed with the responsibility to maintain a well-regulated market that protects the interests of investors. In 1997, the Securities and Futures Commission ['SFC'] successfully prosecuted eight persons and companies for illegal activities such as unregistered dealing, short selling and unlicensed foreign exchange trading[2]. The number of prosecution increased by more than four times to thirty-four in 1998. Among these successful cases, two in 1997 and three in 1998 are related to the contravention of Securities (Disclosure of Interests) Ordinance.

The importance of improving market regulation has rarely been so laudable, when the stock market collapsed from its all-time high in late 1997 and the investing public and practitioners suffered unfathomable losses. What kind of regulation should be in place to create a healthier market?

[2] SFC, Enforcement Actions, http://www.hksfc.org.hk/eng/enforce/intro.htm

Objective of Securities Regulations

An effective regulatory framework is fundamental to the soundness of the securities market. International Organisation of Securities Commissions ['IOSCO'] has identified three core objectives of securities regulations[3]:

(1) The protection of investors

(2) Ensuring the markets are fair, efficient and transparent

(3) The reduction of systemic risk

The Protection of Investors

Regulations should ensure that investors are provided with sufficient information for making informed investment decisions. Market manipulation, false and misleading statements and insider dealings are examples where listed companies and their insiders use price sensitive information to make profit. To this end, there should be full disclosure requirements on them and a mechanism to monitor their trading activities.

Securities trading are taking on a global perspective and its participants are no longer limited to local investors. In order to preserve market integrity and to effectively monitor cross border trading, regulators should align domestic disclosure, accounting and auditing requirements with international standards.

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[3] IOSCO, Objectives and Principles of Securities Regulations, 1998

Regulators should also ensure market intermediaries treat investors in a fair manner. There should be comprehensive inspection, surveillance and compliance programmes in place, as well as minimum standard on code of conduct and business ethics on practitioners.

Most important of all, securities regulators should be vested with sufficient power to enforce the securities law. Most fraudulent or prohibited transactions are structurally complex and legal proceedings are resources intensive. It is unlikely that general investors would have comparable capability to take action against the wrongdoers. Regulators should take appropriate action to protect the interests of investors.

Ensuring that Markets are Fair, Efficient and Transparent

Regulations should aim to prevent improper and unfair market practices. All participants are treated equally and there is no favouritism towards a special group. Any attempt to contravene the law should be detected and penalised.

Regulators should promote a transparent trading environment and establish an effective mechanisms to provide investors with fair access to market and price information. In particular, information should be timely disseminated to the general public and be truly reflected in prices of the securities.

The Reduction of Systemic Risk

Regulators should closely supervise market intermediaries to ensure that they meet capital adequacy and prudential requirements. They should also promote the adoption of risk management policies in intermediaries. Appropriate steps should be taken to evaluate and monitor investment risk on an ongoing fashion.

In addition, as there are more and more cross border investments, regulators of different jurisdictions should cooperate and share information.

Regulatory Framework of the Hong Kong Securities Market

SFC was established by the Securities and Futures Commission Ordinance in 1989 as an independent statutory body. The two main roles of SFC are protection of investors and encouraging the development of Hong Kong securities market. It administers nine principal Ordinances: SFC Ordinance, Securities Ordinance, Commodities Trading Ordinance, Stock Exchange Unification Ordinance, Securities and Futures (Clearing House) Ordinance, Protection of Investors Ordinance, Securities (Disclosure of Interests) Ordinance, Leveraged Foreign Exchange Trading Ordinance and Securities (Insider Dealing) Ordinance. In addition, the SFC issues regulations and guidelines to supplement these statutory instruments.

The SFC also supervises the Hong Kong Stock Exchange, Hong Kong Future Exchange, clearing houses and financial intermediaries. These self-regulatory bodies

are responsible to ensure that market integrity is maintained and proper practices are upheld by their members.

Objective of This Study

The objective of this study is to review the adequacy of our regulations to achieve the objective of establishing a fair and transparent market in Hong Kong. In this respect, the disclosure regime and prohibition of insider dealing are identified as the main areas of interests.

This paper will compare the Hong Kong Securities (Disclosure of Interests) Ordinance and Securities (Insider Dealing) Ordinance with the corresponding legislation in Singapore, namely Companies Act and Securities Industry Act. Major differences will be highlighted and reviewed if they reflect inadequacy in our regulations. Meeting international standards is the central theme of this paper. Finally, this paper will suggest some areas that are in need of improvement.

Methodology

This study will mainly compare (1) Hong Kong Securities (Disclosure of Interests) Ordinance and Singapore Companies Act; (2) Hong Kong Securities (Insider Dealing) Ordinance and Singapore Securities Industry Act. On selected items, comparison will also be made with other major securities market such as US, UK, Australia and Malaysia to illustrate the differences. This study will also discuss some of the proposed amendments to Securities (Disclosure of Interests) Ordinance put forward by the SFC. Cases in Hong Kong and Singapore will be used as examples of illustrations.

CHAPTER II

DISCLOSURE OF INTERESTS

Development of Securities (Disclosure of Interests) Ordinance in Hong Kong

After the global market crash in 1987, the Government commissioned the Securities Review Committee to conduct a review on the Hong Kong securities market and its regulations. Findings of the Committee was published in the Hay Davison Report which was issued in May 1988. The report called for a number of regulatory reforms in Hong Kong. Among its recommendations, adequacy of disclosure requirements was highlighted as a major area in need of improvement so as to establish a fair and transparent market.

The Securities (Disclosure of Interests) Ordinance (Cap 396) ['SDIO'] came into force in 1991. It requires:

1. person who holds more than 10% of the voting shares of a corporation listed on the Stock Exchange of Hong Kong to disclose such shareholdings within five days, as well as subsequent changes in his shareholdings which is more than 1%.
2. shareholders of listed companies to provide information on their shareholdings upon demand by the company.

3. directors and chief executives to disclose their shareholdings in a company and associated company.
4. the Financial Secretary may appoint inspectors to conduct investigation on possible breach of disclosure duty. Person who fails to comply with this Ordinance will be penalised.

This Ordinance was amended in 1991 to cover three major changes. First, the application of SDIO was extended to listed companies that are incorporated overseas. Secondly, the SFC may, after consulting the Financial Secretary, publish guidelines for the exemption of any listed company from all or any of the provisions of this Ordinance. Thirdly, freezing order on shares was applicable to locally incorporated companies only. There has been no major amendments on the Ordinance since 1991.

Disclosure of Interests in Shares

When Disclosure is Required?

Section 3 of SDIO sets out the general circumstances that a person comes under the duty of disclosure. A person should disclose his shareholding if he holds more than 10% of the share capital of a listed company[4] and any subsequent changes of more than the same percentage in his shareholding[5]. SDIO also applies to director,

[4] S6(1)
[5] SDIO, S4(5)(b)

chief executive of a listed company and their families who hold shares in the company or its associated company[6].

Furthermore, when two or more persons enter into an agreement to acquire shares of a target company, each party is under the duty of disclosure[7].

In Singapore, the duty of disclosure is stipulated in the Companies Act ['CA'] applies to both private and public companies. Listed companies are further required by the Corporate Disclosure Policy[8] to disseminate material information to the public timely. The trigger percentage of substantial shareholding in Singapore is 5%, and it is two times lower than the 10% limit in Hong Kong. Furthermore, the CA does not provide a definite interpretation on 'change in interests'. A substantial shareholder that acquires or disposes voting shares in the company is deemed to have a change in interests and should notify the company[9] within the required timeframe.

Who Should Disclose?

Under SDIO, substantial shareholders, directors and chief executives are under the obligation of disclosure[10]. In order to avoid the loophole of layering shareholding through family members, they should disclose if their spouse and any child of them under the age of 18 years has an interest in the company[11]. If a company has a substantial interest in another company, and a person controls one-third of the

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[6] SDIO, s28(2)
[7] SDIO, s10(4)
[8] SES Listing Manual, Chapter 12
[9] CA, s83(3)

voting power of the former company, the person should also disclose his interest in that company[12].

In Singapore, substantial shareholders and directors have different duties of disclosure. Substantial shareholder is not required to report interests hold by his immediate family members. He is also not required to disclose ownership in subsidiary or associated companies, probably because the Act already requires shareholder to file this information separately with each company that he owns. On the other hand, a director faces more stringent disclosure requirement and he is deemed to have an interest if it is held by his spouse or child[13].

The duty of disclosure arises when a person knows that he acquires or disposes an notifiable interest in shares of a listed company, or when there is any change in his shareholding. In Singapore, it is a defence if the person can prove that he does not have knowledge of his interest on the date of summon or only aware in less than 7 days before the date of summon[14]. Such defence is not available in SDIO.

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[10] Please refer to Appendix 1-3 for the current disclosure notice forms
[11] SDIO, s8(1) and s31(1)
[12] SDIO, s8(2)
[13] CA, 164(5)
[14] CA, s90(1)

To Whom It should be Disclosed?

The SDIO requires notification to be made to the listed company and the Exchange[15], and that the Exchange should receive this notification before the listed company[16]. If the listed company is a financial institution, the company should also notify the Hong Kong Monetary Authority[17]. Notification should be made in writing within 5 days[18].

This mechanism provides the public with two channels to access this information. First, the Stock Exchange of Hong Kong will publish this information in newspaper and in its website upon receipt[19]. Also, every listed company shall keep a register[20] and inscribe information into the register within 3 days[21] of receiving the notification. This register is open to public for inspection without charge.

In Singapore, the substantial shareholder shall notify only the company concerned[22] within two days[23]. Notification to the Exchange or MAS is not required. Similar to Hong Kong, the company should keep a register for public inspection[24], and any person may require the company to furnish a copy of its register. The company shall deliver such copy within 7 days. This time frame is shorter than the 10 days requirement in Hong Kong.

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[15] SDIO, s 17(2) and s32(2)
[16] SDIO, s7(1)(b)(ii) and paragraph 14(3) of Part II of the Schedule to the Ordinance
[17] SDIO, s17(3) and s32(3)
[18] SDIO, S7(1)(a) and paragraph 13(1) of Part II of the Schedule to the Ordinance
[19] SDIO, s17(2)
[20] SDIO, s16(1) and s29(1)
[21] SDIO, s16(3)
[22] CA, s82(1)
[23] CA, s82(2)
[24] CA, s88(1)

Directors, on the other hand, should notify the company within 24 hours[25] and in case his directorship related to a listed company, he should also notify the Exchange within the same period[26]. The Exchange may publish such information.

Penalty

Non-compliance with the disclosure requirement is a criminal offence in Hong Kong and Singapore.

In Hong Kong, if a company fails to keep its register properly, the company and its concerned officers are liable to a fine of HK$2,000 and a further fine of HK$200 per day if the offence persists[27]. A much heavier penalty will be imposed if a person fails to submit notification promptly or submits a false statement. He will be subject to a maximum fine of HK$100,000 and to imprisonment for 2 years[28].

In addition, where a company is guilty of an offence under section 15(3), 24(3), 28(8), 31(6), 42(3) or 45(1) resulting from negligence by its officers, the officers as well as the company are guilty and can be punished accordingly[29].

In Singapore, failure to give notices to the company as required under sections 82,83,84 or 86 is an offence. The person is liable to a fine not exceeding S$5,000 and

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[25] CA, 165(2)
[26] CA, s166(a)
[27] SDIO, s16(10) and s30(7)
[28] SDIO, s24(3), 28(8), s31(6)
[29] SDIO, s48(1)

a further fine of S$500 per day if the offence continues[30]. The same penalty also applies to non-compliance with s91 as discussed below. In this regard, non-compliance with disclosure requirement is considered as a more serious offence in Hong Kong since the person can be subject to imprisonment.

The Financial Secretary may make a restriction order on shares or order the sale of shares. When a restriction order is placed on the shares, those shares cannot be transferred, cancelled or removed. Where the shares are unissued, the company is not allowed to issue these shares or to transfer the right that will be issued with them[31]. In addition, any agreement to transfer the shares or rights of shares is void[32]. Person who fails to comply with Section 44 is liable to a fine of HK$10,000 and to imprisonment for 6 months. The Court of First Instance or the Financial Secretary may, on application, order the sale of these shares or the removal of such restriction.

Company Investigation

In Hong Kong, a listed company may request a person to provide information on his interest in share if the company believes that this person has an interest in its shares in the past 3 years[33]. Person who fails to notify or provides false statement is liable on summary conviction to a fine of HK$10,000 and on conviction upon indictment to a fine of HK$100,000[34].

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[30] CA, s89
[31] SDIO, s44(1)
[32] SDIO, s44(2)
[33] SDIO, s18
[34] SDIO, s24(3)

Similar provisions are available in CA. In addition, it entrusts the company with additional power to identify the ultimate beneficial owner of its shares[35]. The company can request any of its members to disclose whether he holds any voting shares of the company as beneficial owner or as trustee. In the latter case, the company can further require him to advise the ultimate beneficial owner of these shares. A person who fails to comply with this section or makes false statement shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$10,000 or to imprisonment for a term not exceeding 2 years.

Regulatory Investigation

The Financial Secretary may appoint an investigator to conduct an investigation so as to determine the true person who controls the company[36]. The inspector is empowered to request officers to produce all books and documents and to attend hearings[37]. Those who fails to cooperate can be punished by the Court of First Instance as if he has been guilty of contempt of the Court[38]. Upon completion of the investigation, the inspector will submit a report to the Financial Secretary[39]. The Financial Secretary may also request a person to provide information on owner of shares[40].

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[35] CA, s92
[36] SDIO, s33(1)
[37] SDIO, s36(1)
[38] SDIO, s38(3)
[39] SDIO, s39(1)
[40] SDIO, s42(1)

If relevant facts about any shares cannot be identified, the Financial Secretary may place restriction order on shares of this company[41]. For instance, in 1993, Asia Securities Ltd and Quatro Enterprises Ltd sold a total of 60,000,000 shares in ASIL to Wong Sheu Chui. The Financial Secretary ordered an investigation on the membership of Asia Securities International Ltd (ASIL) to determine the persons who control its policy.

In 1992, the Financial Secretary ordered an investigation under s143 of Companies Ordinance on whether there was a breach on the Hong Kong Code of Takeovers in the placement of 419million shares of the World Trade Centre Group Ltd to 14 placees. He also ordered an investigation under s33 of SDIO to determine persons who were financially interested in the company or controlled its policy. However, ownership of a total of 9.8% shares held by three nominee companies incorporated in the British Virgin Island remained unidentified. The Financial Secretary subsequently made a restriction order on these shares pursuant to s41 of SDIO. The objective of this order was to force the disclosure of the true identity of the shareowner.

In 1993, the group received a takeover offer from Rovtec Investment Ltd for all its share at a price of HK$1.96 per share. Shareholders were positive to the offer and applied to seek a court order for the sale of its frozen shares. The court finally granted an order to sell the frozen shares. In reaching this judgement, the court considered that (1) It was in the public interest to sell these shares; (2) Adequate steps had been taken to identify the ultimate shareholder; (3) Shares had been blocked for a

[41] SDIO, s41(1)

significant period of time without any result; and (4) A thorough investigation had been conducted on the company and further investigation ordered by the Court is unnecessary.

Investigation power in Singapore[42] is similar to Hong Kong. The Minister of Finance may apply to the Court for orders restraining the disposal of his shares and the exercise of rights attached to shares. The Court may also make an order prohibiting the payment of shares, directing the sale of shares, or directing the company not to register the transfer of specific shares.

In terms of judicial power on restriction order, the regulation in Hong Kong is more stringent as it extends to unissued shares and contravention of this provision may result in imprisonment.

Commentary

Some of the requirements of SDIO are comparatively loose[43]. In this regard, SFC issued a Consultation Paper on Amendments to the Securities (Disclosure of Interests) Ordinance ['Consultation Paper'] on 30th June 1998 and proposed a number of changes to improve market transparency. The Consultation paper was concluded on 30th September. SFC has incorporated the public comments and issued a consultation conclusion on March 1999[44]. In the following part of this section, we

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[42] CA, s91(1)
[43] Please refer to Appendix 4 for a comparison for disclosure requirements between HK and Singapore
[44] Please refer to Appendix 5 for the proposed initial substantial shareholder notice and Appendix 6 for a summary of the Consultation Paper.

will review some of the proposed changes by the SFC with respect to the above discussions on Singapore.

Reduce Disclosure Threshold to 5%

The current disclosure level of 10% is not only high comparing to Singapore, it is also the highest in major international markets. With the exceptions of Malaysia (2%) and UK (3%), the disclosure level is 5% in Australia, Japan, Indonesia, US, New Zealand, Thailand and PRC[45]. Reducing the disclosure threshold to 5% is a significant step towards international standard. This threshold was first been suggested in the Hay Davison Report in 1988 based on the following considerations:

'(a) 5% fall in line with international standards;

(b) 10% of a company's capital in Hong Kong is likely to be a much higher percentage of the free float then in other countries and consequently 10% of the free float wields a disproportionate amount of influence to its size;

(c) 10% makes it too easy for large investors to hide significant shareholdings and consequently to conceal their dealings in those shares; and

(d) 5% would be more effective in stamping out material insider trading.'[46]

This alignment with international standard is particularly important with the increasing cross-border transactions facilitated by new technologies. It essentially eliminates a loophole where global investors can take advantage of jurisdiction

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[45] SFC, Consultation Paper on the amendments of SDIO published on 30th June 1998, pp12
[46] Paragraph 12.13, Hay Davison Report at pp.316-317

differences. More important, it can improve market transparency and allow the regulators to spot unusual trading pattern at an earlier stage. It will also provide more information that is useful to the regulators in enforcing its other duties, such as the identification of insider dealing. The effect is an overall improvement in the level of market supervision.

Timeliness of Disclosure

In Hong Kong, notification should be completed within 5 days. It is three days more than Singapore and also more than most of the other jurisdictions[47] including UK (2 days), PRC (3 days), Thailand (1 day), Australia (2 days) and New Zealand (immediate). The original proposal suggested to reduce the notification period to two days so as to improve market transparency. However, the public is not supportive of this proposal. Major problems they perceived are the time zone differences and the complicated shareholding structure of worldwide corporations. The SFC counter-proposed to reduce the period to three days in order to align with the requirement of Mainland China. This change will nevertheless put our disclosure regime closer to the international counterparts.

In addition, the SFC proposed to remove the requirement that notification should be filed with the Exchange prior to the Company. The existing requirement is impractical, since filings are usually handled by the company secretaries and therefore has technically breached the regulation in practice.

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[47] Supra n38

Disclosure of Change in Interest

Current regulation requires substantial shareholders to notify when there is a change in interests to a different percentage level. This measurement may not produce a meaningful representation of the actual change in shareholding. For instance, a change in 0.99% (from 11% to 11.99%) may be exempted from the notification requirement but a change of merely 0.4% (from 11.7% to 12.1%) may not. The SFC therefore proposed to change the rule from 'same percentage level' to 'change less than 0.5% across a percentage level'.

The current proposal has the advantage of providing a more well-defined basis to measure the change in interests. However, the measurement itself seems quite complicated and the compilation of which will be time consuming. It will inadvertently increase the compliance burden of company secretaries. It is often argued that much resources has been spent on compliance reporting which are in fact counter-productive. For many medium-sized companies, detailed information required by the regulators are not available in the computer system. Reports are compiled manually. Furthermore, additional time is required to satisfy additional requirements. It poses another difficulty to reduce the notification period.

There is no easy answer to the conflict between cost and benefit of an enhanced disclosure system. Yet, we are fortunate that our disclosure requirement is still simpler than a number of other countries like Singapore, which requires directors to disclose any change in interests within twenty-four hours.

Details of Registered Shareholder

In an attempt to remove onerous compliance burden, the SFC proposed to exempt substantial shareholders from notifying changes in particulars of each registered shareholders. Despite many countries, including Singapore, still adopt this practice, the regulator considers that this change will not reduce market transparency since the company is still required to maintain this register which is subject to public inspection. Also, most shares are registered in the name of HKSCC Nominees and changes in interest will not change the registered shareholder.

Disclosure of Considerations and Agreements

Such requirement is not available in Singapore. This requirement can spot collective purchase of securities that aims to interfere share price movements. The SFC further proposed substantial shareholder to disclose considerations in acquiring or disposing interests in shares either on or off the exchange. However, it seems difficult to ensure and check its compliance in practice. Most commercial agreements are confidential in nature and are not lodged with any statutory body. It is questionable how SFC can ascertain the existence of such agreement prior to an investigation. By then, the knowledge of it would be retrospective. This requirement relies on voluntary disclosure by the shareholder and the information provided can hardly be verified. In other words, the effectiveness of its improving market transparency is susceptible.

Shareholding Structure of Corporate Substantial Shareholder[48]

The problem of corporate interest is that a company is a separate legal entity and it holds its own assets rather than on behalf of the shareholder. Thus, if a private company A wholly-owned a listed company B, a substantial shareholder who holds 75% of company A does not hold an equivalent of 75% of company B and is not a substantial shareholder of company B. If company B is held by several private companies and each of these companies holds less than 10% of company B, a shareholder can easily shield his true shareholdings in both companies.

In Singapore, both listed and unlisted companies are under the duty of disclosure. This requirement is onerous and ineffective since many private companies are unconnected with the listed ones. This notification requirement simply creates piles of reports that are mostly irrelevant to public interests.

In Hong Kong, shareholding of many family owned companies are split into small parcels and held by unlisted companies owned by family members. By doing so, the substantial shareholders can hide their true shareholding. Shares are held by nominee or offshore companies that are exempted from the disclosure requirement. To improve market transparency, it is proposed that notification should include person who holds more than 10% interest in a substantial shareholder's share capital. This proposal was revised after public consultation. If a company is a substantial shareholder of a listed company, the notification should state particulars of its

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[48] SFC, Consultation on the Amendments to the SDIO, 30th June 1998, pp23-26

controllers. So long as the listed company act independently from its parent company, disclosure by controllers of parent company is not required.

Recommendations

Details of Disclosure

The regulator should ensure that adequate and appropriate information is disclosed to the public. The basis of judgement is that the information should be useful and understandable for the public to make investment decision. In most cases, information needed by the public can be very different from those of regulators. Regulators are equipped with the knowledge to interpret technical terminology and the additional duty of market surveillance. Some of the existing requirements, such as disclosing particulars of substantial shareholder, are clearly of low interest to the public. The disclosure mechanism has generated piles of data that has little effect on improving market transparency, at least from the perspective of general investors.

Disclosure requirements should align with the spirit of disclosure. The SFC should continue to abandon the outdated and redundant provisions. Regulators should avoid the situation where 'The information we have is not what we want; The information we want is not what we need; the information we need is not available.'[49] SFC should continue to simplify information disclosed to the public.

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[49] Finagle's Law cited in (1975) 63 Harvard Business Review 106

Compliance Burden

The essence of the disclosure regime is to identify the person who has the power to control the company. However, many of the current requirements do not seem to achieve this objective. For example, the requirement that notification must be made to the Exchange before it is made to the company and the proposed disclosure of consideration and terms of agreement. Some of the provisions are obsolete and pointless, or requires substantial corporate resources to compile the information required. The result is creation of additional and unnecessary compliance burden, while these resources can produce more meaningful information. As the SFC noted in its Consultation Paper, they should consider 'the cost of complying with additional disclosure requirement and the potential risk of providing excess information to the market.'[50] It is a difficult task. Nevertheless, SFC should pay more attention to the business viability and avoid the danger of becoming a bureaucratic agency.

Definition of Terms

There is a trend of interpretation and re-interpretation of the terms of provisions as regulators discover that market players use loose definitions to their advantage. It is nearly impossible to nail down a term to one single meaning, and any attempt to do so is fruitless. It results in an increasing complicated legislature which is difficult to be understood. This seems to go hand in hand with the additional disclosure details, most of which are beyond public comprehension.

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[50] SFC, Consultation on the Amendments to the SDIO, 30th June 1998, pp4

As the regulator promotes the use of plain language in prospectus, this same approach should apply here. To illustrate, the Singapore Companies Act is written in simple English and is much easier to understand.

International Standards

Several provisions of the SDIO are outdated. For example, the notification threshold of 10% lags behind our international counterparts by some 10 years. Most countries develop their own disclosure requirements based on the US or Australia model. They have also added some local ingredients to fit its domestic operations. Nonetheless, meeting international standards is an important fact that local regulators should not ignore. Being a major international financial centre, our legislation and legal framework should develop towards the global direction.

Many law reform bodies, such as Australia, Singapore and PRC, have been keeping a watchful eye on development in overseas jurisdictions. SFC also recognises the importance of meeting international standards, and has incorporated some breakthrough changes in its latest proposal. Unfortunately, the rapid change of the securities market and the lengthy period to pass the amendments can easily render the proposed changes outdated before they are enacted. The problem will be magnified if the regulation is only reviewed once every ten years. The SFC should review the regulation more regularly as its resources permitted.

Transparency of Ownership

Generally, the proposed changes will improve the mechanism of disclosure regime in Hong Kong. However, the low transparency of ownership will reduce their effectiveness.

Disclosure regimes do not require nominees and trustees to report the ultimate beneficial owners of shares that are held by them. The concept of separate legal entity, as demonstrated in the case of Salomon v Salomon[51], enables beneficial owners of conceal their identities. The nominee is the legal owner of the shares and is not required to disclose the beneficial owner whose shares are held by them. Most listed companies in Hong Kong are family-owned and its shareholding is usually concentrated among few family members. Their shares are usually held by nominee company.

As such, most company registers become a list of nominee companies but the beneficial owner remains anonymous. It defeats the purpose of the share register, which aims to reveal the identity of controllers of the company. It is necessary to identify these controllers so as to ensure compliance with regulations, such as the Securities (Insider Dealing) Ordinance. In the absence of an effective counteract mechanism, the public and regulators have to rely on voluntary disclosure by the interested parties and verification of information is often too difficult if not impossible.

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[51] [1897] AC 22 HL

On the contrary, Singapore puts a greater emphasis on revealing the beneficial owner of any interest. The regulations in Singapore empower the companies to identify the true identities of its shareholders, and require them to strictly adhere to this principle in practice. For instance, bearer shares are not acceptable in most financial transactions. On the contrary, the 'know your customer' rule is not strictly enforced in Hong Kong. Banks generally have a higher awareness in this area, as they are required by the Code of Banking Practice to do so. SFC should also strictly enforce this requirement on brokers and financial intermediaries so that shareholders of offshore companies are identifiable.

Some western countries such as UK and US have already strengthened their regulations in this regard. The importance of disclosure of beneficial owner is to provide regulators with critical information to trace illegal trading activities. Although Hong Kong regulators have an extensive power to enforce regulations, the lack of fundamental information hampers their ability to effectively exercise their duties. With the increasing volume and complexity of securities transactions, this area is certainly in need of improvement.

The problem here is further aggravated with a large number of family-controlled business and highly complicated shareholding structures. The original proposal by SFC requires person who holds more than 10% interest in a company which is a substantial shareholder of a listed company. Admittedly, this may pose a practical problem since the person may be a trustee which means the notification will

not provide meaningful information. As long as disclosure of beneficial owner is not required, nominees and trustees will continue to be an ideal shield for shareholding.

The essences of the disclosure are to provide regulators and the investing public with adequate information to make informed investment decisions and to maintain an orderly market. Such information is crucial to the supervision of market manipulation and insider dealing. In the next chapter, we will discuss regulations of insider dealing in Hong Kong and Singapore.

CHAPTER III

INSIDER DEALING

Development of Securities (Insider Dealing) Ordinance in Hong Kong

The insider dealing regulation was first introduced in Hong Kong in 1974 as part of the Securities Ordinance. At that time, insider dealing was a criminal offence. On conviction, person would subject to a maximum fine of HK$50,000 and an imprisonment of two years. However, in 1978, the Securities (Amendment) Ordinance repealed this part from the Ordinance. The Insider Dealing Tribunal can only declare public censure on the offender. Insider Dealing was not an offence since then.

In 1991, the Securities (Insider Dealing) Ordinance (Cap 395) ['SIDO'] came in place to widen the scope of insider dealing and to give further power to the Tribunal to penalise the offender. The Insider Dealing Tribunal is empowered to disqualify an insider from being a director of a company. It can also order the insider to pay a penalty of not exceeding three times the amount of profit gained or loss avoided. This legislation was subsequently amended in 1994 and 1995 to enhance the coverage of the Ordinance and it has been in operation until today.

Overview of the Supervision of Insider Dealing Activities in Hong Kong and Singapore

The SIDO defines the circumstances which are classified as insider dealing, as well as power of the Insider Dealing Tribunal to inquire and to issue order on the insider dealer. It applies to all listed companies on the Stock Exchange of Hong Kong. Companies incorporated overseas must abide by this legislation.

Broadly speaking, insider dealing takes place when an insider uses price-sensitive information knowingly to trade in the listed securities of that company. It is equally unlawful if he procures a tippee to trade. The SFC will watch for unusual movement of stock prices and trading pattern[52]. When SFC identify a suspected case, it will further investigate and submit a report to the Financial Secretary. The Financial Secretary will review and decide if he should refer the case to the Insider Dealing Tribunal for further inquiry. The Insider Dealing Tribunal has the statutory power to obtain documents, require any person to attend sittings and to issue order and penalty. The convicted person can be fined up to HK$100,000 or an imprisonment of 6 months if he refuses to cooperate. The Tribunal can also issue disqualification order. However, insider dealing by itself is not a criminal or civil offence. The Tribunal can only register its order with the Court of Appeal and it is an offence to contravene an order of the court.

The Tribunal will publish a report after its inquiry. There are eight cases published by the Tribunal so far, which are 1) the Success Holdings Report; 2) the

[52] Please refer to Appendix 7 for the investigation process of insider dealing in Hong Kong

Public International Investments Report; 3) Yanion International Holdings Report; 4) the Hong Kong Parkview Group Report; 5) the Chevalier (OA) International Report; 6) the Hong Kong Worsted Mills Report; 7) Ngai Hing Hong Company Limited; and 8) Emperor (China Concept) Investments Limited.

In Singapore, the provisions against insider dealing are included in Section 103, 104 and 105 of the Securities Industry Act ['SIA']. Section 103 defines circumstances of prohibited insider dealing activities. Section 104 sets out the penalty imposed on a convicted person. Section 105 deals with the compensation that the convicted person is liable to pay to the other person who suffers loss from the insider dealing transaction. The Corporate Disclosure Policy issued by The Stock Exchange of Singapore also prohibits an insider to trade in the securities unless the price-sensitive information is disseminated to the general public[53]. Insiders should wait 24 hours after a press release and 48 hours if the announcement is conducted through less widespread channel.

Singapore does not designate a third party, say the Hong Kong Insider Dealing Tribunal, to investigate and to proceed against the alleged case of insider dealing. Such responsibility lies with the Monetary Authority of Singapore[54].

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[53] SES Listing Manual, s1207
[54] SIA, s(5) to (13)

Circumstances of Insider Dealing

When Insider Dealing Takes Place[55]?

In Hong Kong, insider dealing occurs when a person, in possession of relevant information, deals in listed securities[56]. Such relevant information can be primary information obtained by a person connected with the corporation concerned, or secondary information that a person obtained from another insider. It is against this Ordinance whether the insider deals in the securities directly by himself, or provides such information to another person who he knows will make use of the information to trade. It is also unlawful if the person who receives such information makes use of it to deal in the securities, irrespective of whether the person actively seeks the information or is only a passive recipient[57]. One essential element to establish an insider dealing case is that the recipient knows it is relevant information and is provided by a person connected with the corporation.

Generally, SIA[58] and SIDO are similar in terms of the definition of insider dealing. In both jurisdictions, a tippee who receives price-sensitive information from an insider can be charged of insider dealing. However, sub-tippee is not caught. One major difference is the dealing by tippees. In Singapore, it is only an offence if the insider and the tippee are associated or they have any prior arrangement for the

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[55] Please refer to Appendix 8 and 9 for circumstances of insider dealing in Hong Kong and Singapore
[56] SIDO, s9
[57] Attorney-General's Reference (No1 1988) [1989] 1AC 971, English Court of Appeal
[58] SIA, s103

communication of price-sensitive information[59]. According to SIDO, dealing of tippee is insider dealing and the non-existence of collaboration is irrelevant.

Consider an example where X overheard a price-sensitive information from an insider Y and he trades by using such information. It is possible that X is not deemed to engage in insider dealing in either Hong Kong or Singapore. It is a defence in Hong Kong if X does not know Y is an insider. In Singapore, it should prove that X and Y are not 'associated'.

Who is "Connected Person"?

According to SIDO, connected persons are those who have access to information as a result of their positions and/or relationship with the corporation[60]. A person is deemed connected if he has one of the following connections in the past six months. It includes officers, directors and substantial shareholders who hold more than 10% of the company's share. It also includes officers of another company that has professional or business relationship with this company, such as bankers, financial advisors and auditors. It only applies to officers of public bodies such as LEGCO and SEHK. Application of SIDO also extends beyond natural person to a corporation if any of its directors or employees is connected.

Again, coverage of SIDO and SIA in this area is quite similar. The SIA lists out potential insider by their positions or occupations. On the other hand, SIDO is

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[59] SIA, s103(3)
[60] SIDO, s4(1)

more general and verbose. It puts more emphasis on the nature of relationship between a person and a company that may reasonably provide him with insider information. For instance, SIA explicitly states trustees and persons administering an arrangement are insiders[61]. This is only implied in the SIDO.

A more material difference between the two is the interpretation of substantial shareholder, which was discussed in the previous chapter. Singapore, similar to most other advanced countries, regards substantial shareholders as those who hold more than 5% of the voting shares of a corporation. In Hong Kong, the threshold limit is 10%. This threshold should be lowered to increase market transparency.

What is 'Relevant Information'?

Relevant information is the specific information about a company which is not generally known to the investor and is likely to materially affect the price of its securities[62]. Thus, for example, if a person knows that a transaction will materialise and the announcement of this information will affect the price of a listed security, he is in possession of relevant information.

In Hong Kong, a person has relevant information if the following are established:

(i) he knew the information

(ii) he knew that it is 'specific information'

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[61] SIA, s103(12)(e)
[62] SIDO, s8

(iii) he knew what sort of people who are accustomed to deal in the stock

(iv) he knew what are generally known to them

(v) he knew what they would do if they had the same information that he had

Defence to Insider Dealing

In Hong Kong and Singapore, it is a defence to insider dealing if the person does not know it is insider information[63]. Hong Kong court also accepts defence that the person's intention of dealing in the securities is not related to making a profit or avoiding a loss[64]. These are two of the most commonly used defences for insider dealing. However, this section only applies when there is evidence to show that the trading itself is wholly unconnected with such motive. A person makes a profit if the value of his share increases, and it is independent of whether the share has been sold or if there is any profit realised. In other words, the fact that a person realised a loss or did not sell the share after making a book profit cannot be used as a proof of motive. It can only be treated as a relevant evidence.

The Tribunal will also consider a defence that a person is compelled by circumstances to realise his profit no matter he had or had not the relevant information. Success Holdings attempted to defend itself based on this argument. However, the court rejected this argument as it failed to prove that the profit motive was not a significant consideration.

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[63] SIDO, s5(a) and SIA, s103(11)
[64] SIDO, s10(3)

Yainon International is the only Tribunal case that based its argument on loss avoidance. The defendant claimed that he needed to liquidate the shares and used the sale proceeds to purchase a property. However, the company did not purchase any property nor had any property under consideration at the time of the transaction. The court has subsequently rejected this defence.

Consequences of Insider Dealing

Insider Dealing is not a criminal offence in Hong Kong. The Insider Dealing Tribunal can only issue the following orders[65]:

(a) a disqualification order that prohibits a person from being a director, liquidator, receiver or manager of a company for a maximum period of 5 years.

(b) pay to the Government an amount not exceeding three times the profit gained or loss avoided.

(c) a penalty of an amount not exceeding three times the profit gained or loss avoided.

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[65] SIDO, s23

Disqualification Orders

It is the duty of every officer of a corporation to ensure that proper safeguards are in place to prevent the company and its employees from insider dealing[66]. If any officer of a corporation committed an offence, he and the company are guilty and shall be liable to be proceeded against and punished accordingly[67].

The Tribunal has laid down the principles of issuing disqualification order in The Success Holdings Report[68]:

'(a) In determining whether to disqualify an insider dealer from holding office as a director of a listed company, or of listed companies, there comes into play a number of considerations. The determination will take into account the need to ensure the integrity of the securities market; to protect the public from further abuse by that person of the privileged position of trust which that office carries; to deter others from breaching that trust; and to mark the disapproval of the investment community with the conduct of the insider dealer.

(b) In determining whether to disqualify an insider dealer from holding office as a director of a private company, one should have regard to the connection, if any, of the company with the insider dealing, and any relationship between the insider dealer and the private company; and the impact upon the individual of such a disqualification.'

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[66] SIDO, s13
[67] SIDO, s34(1)
[68] Report of Insider Dealing Tribunal on Success Holdings Ltd, Point (6) & (7) of page 97

Insider dealing is a criminal offence in Singapore. Directors and officers of a convicted company who take part in the transaction are also guilty of the offence. They are liable to pay a fine not exceeding SG$50,000 or to an imprisonment for a term not exceeding 7 years[69]. In addition, the Court may also make order disqualifying them from being a director and management of companies for 5 years[70].

Financial Penalties

The Tribunal can impose a maximum penalty not exceeding three times the profit gained or loss avoided by all persons as a result of insider dealing[71]. The Tribunal will consider the difference between purchase price of shares before the information is available to the public and the new price level within a reasonable period. Profit or loss arisen after the reasonable period will be treated separately from insider dealing. If price of the share falls, it is possible that the profit gained calculated by the Tribunal is greater than the actual profit realised. For instance, in the Hong Kong Worsted Mills case, Tai had not sold his shares and subsequently, share price fell and he incurred a loss. When the Tribunal made reference to the share price movements within the reasonable period, it concluded that there was a 'profit arising' of HK$6 million and ordered a payment of HK$3 million.

It is worthwhile to note that Section 23(1)(b) measures the profit gained resulted from the dealing of the insider dealer only, and Section 23(1)(c) extends to

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[69] SIA, s104
[70] CA, s157

total profit gained of any other person who took advantage of the insider information. A tipper shall pay a penalty equivalent to three times of the total gain of the tippees.

In Singapore, the company has to pay a maximum fine of SG$100,000[72]. In addition, the convicted person should also pay compensation to the person who suffers loss from the transaction. The amount of compensation is the difference between the price of securities in that transaction and the likely price if insider dealing has not occurred[73].

Case Studies

In this section, we shall look into two cases investigated by the Hong Kong Insider Dealing Tribunal and to see if the outcome would be different if the investigation is conducted in Singapore.

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[71] SIDO, s25
[72] SIA, s104(a)& (b)
[73] SIA, s105 (1) & (2)

A Successful Case

- Hong Kong Parkview Group Ltd[74]

Background

Hong Kong Parkview Group Ltd ['HKPVG'] was listed in Hong Kong under the name of Ming Ren Investment and Enterprises Ltd on 24th November 1973. This company is controlled by the Hwang family which holds 74.84% of the voting shares as at 13th August 1993. Mr. C.S. Hwang is the founder of the company. On 13th August 1993, Mr. C.S. Hwang and Mr. Peter Sin purchased 974,000 shares and 100,000 shares of HKPVG respectively. Closing price of HKPVG share on 13th August was $2.85. On the same day, Hwang flew to Beijing to meet with the General Manager of UNIPEC, Mr Jiang Yun-long. On 17th August, HKPVG announced that a placement of 89million shares to UNIPEC at HK$2.85 per share. On 19th August, the share price increased to $4.325. The inquiry was to determine whether Hwang and Sin should be identified as insider dealer.

Key questions

The questions considered by the Tribunal were:

(i) Was Mr. C.S. Hwang a person connected to HKPVT as defined in s4(1)(c) of SIDO?

(ii) Did they possess relevant information at the time of purchase?

(iii) Did they know that it was relevant information?

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[74] Report of Insider Dealing Tribunal on Hong Kong Parkview Group Ltd

Connected person

Hwang's shareholding in HKPVG is 6.73%. Singapore would undoubtedly regard him as a substantial shareholder and connected person since the threshold there is 5%[75]. However, this shareholding level does not make him a substantial shareholder in Hong Kong. Therefore, the Tribunal had to established that he was an insider by virtue of the business relationship between himself and the company[76].

Hwang was the Chairman of HKPVG until June 1992. However, he did not move out his office in Central and still worked there frequently. The Tribunal considered that Hwang had only removed his title but not his authority or influence on the company.

Albeit his retirement, Hwang had successfully strike a number of deals for HKPVG such as the Beihei oil refinery, Hainan oil refinery, Indonesian oil as well as the placement with UNIPEC in question.

Hwang's son George was the Chairman of HKPVG at that time. The Tribunal found that George had little involvement in the placement, and his approval was merely a formality. On the other hand, the Tribunal discovered a fax from UNIPEC to Hwang that reads 'Reference is made to the agreement between you and the undersigned dated 13th August 1993, we hereby agree to take up 89 million shares in

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[75] SIA, s103(9)(b) & (c)
[76] SIDO, s4(c)(i)

the capital of your company....'[77]. It revealed that Hwang was the true decision maker behind the scene.

The Tribunal concluded that Hwang is a connected person as defined by s4(1)(c) of SIDO.

Relevant information

In deciding whether Hwang possessed relevant information, the Tribunal had to ascertain that the information must be 'specific', 'not generally known' and 'likely to materially affect the price of those securities.'

Specific

On 13th August, Hwang knew that he would offer the placement of HKPVG to UNIPEC and he had reason to believe that his offer will be accepted. The information he possessed is specific enough for the purpose of s8 and s9(1) of SIDO.

According to s103 of SIA, information need not be specific. If the information was possessed as a consequence of his position in the company, it is insider dealing. The question of 'specific or not' would not pose a big difference in this case. In *PP v Choudhury*[78], specific is construed as 'contradistinction to general'. The main concern is not whether the information is precise. It is insider information if the knowledge of it would affect the investment decision of a reasonable investor.

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[77] Report of Insider Dealing Tribunal on Hong Kong Parkview Group Ltd, pp30
[78] (1976) 68 DLR (3d) 592

In Singapore, it is an important criterion to prove that the insider obtained information by virtue of his position or business connection with the company. If the information is obtained from an outside source, he is not liable to insider dealing. For example, if Hwang obtained such information from a friend whom he knew was not a connected person, he was not liable of insider dealing in Singapore. Unfortunately, since he obtained such information in his capacity of substantial shareholder, he would be liable.

Not generally known

The placement was not generally known to the public until it was announced on 17th August. On 13th August, the date when Hwang purchased the shares, the investing public was not aware of this placement. In fact, it is natural that this kind of confidential information is not available to the public before the announcement. Purchase before public announcement could be insider dealing.

In Singapore, it is an offence to use price-sensitive information if the counterparty is not aware of such information. Insiders should not trade on the listed securities within 24 hours of publishing the press release[79]. However, there is no requirement on unlisted securities. The purpose of the timeframe is to ensure that there is sufficient dissemination of the information to the public. If an insider trades before the suggested timeframe, it can be argued that the information is not yet generally available and he could be charged of insider dealing.

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[79] Corporate Disclosure Policy of SES Listing Manual, ch12

Likely to materially affect the price of those securities

Between 12th to 20th August, share price of HKPVG rose 64% when the Heng Seng Index only rose 2.8%. Part of the rise was caused by Hwang's purchase on 13th August. It was also attributed to the fact that the placee was a PRC company and there was a general bullish sentiment on China concept shares at that time.

Interestingly, the Tribunal made reference to a Singapore case *PP v Alan Ng Poh Meng* in its interpretation of 'likely to materially affect the price of those securities'. In circumstances as such, the court should consider whether it is more likely than less likely to affect the price of the securities.

Since s103 of SIA creates criminal liability, men rea must be shown before such liability can be established. It must be proven that the insider information was a factor that the insider used to reach the transaction decision. Once the court found that he had insider information and he subsequently entered into transaction, the insider should show that such information was not a factor in his decision.

Considering the facts available to the Tribunal, there will be no problem to establish that Hwang possessed relevant information and his trade was driven by this information. He would be convicted in Singapore.

Knowledge

Considering the above findings, it is obvious that Hwang knew he possessed relevant information. In fact, Hwang attempted to drive up the share price so that he could bargain a higher placement price with UNIPEC. This will be discussed in the following session.

Defence

It is a defence if the insider establishes that 'he entered into the transaction otherwise than with a view to the making of profit...by the use of relevant information.'[80] However, the proof of non-profit making motive cannot be a defence in Singapore.

Hwang argued that he had not sold the shares to realise the profit, he was a steady buyer of HKPVG shares before and after the placement, and the shares were bought for long term investment instead of quick profit. The Tribunal found that his primary objective was to drive up the share price and thereby a higher price for the placement. The placement will inject a large amount of cash to the company and was certainly beneficial. Although his motive may not be personal gain, it is nevertheless profit-related.

[80] SIDO, s10(3)

Mr. Peter Sin

There is no evidence to show that he did attend the meeting on 13th August which the placement was discussed, or that he has any knowledge of the placement before his purchase. If Sin purchased shares because he knew Hwang had purchased large amount of shares, it is not insider dealing. Insider dealing can be established if he knew that Hwang was using insider information to trade. Sin was therefore not considered as an insider in Hong Kong or Singapore.

Conclusion

The Tribunal concluded that Hwang contravened s9(1)(a) and the defence of s10(3) does not apply. He was disqualified as director of HKPVG and its subsidiaries for 6 months. He should also pay $1,065,550 as profit gained and another $1,065,550 as penalty. Lastly, he should pay 80% of expense incurred by the inquiry.

An Unsuccessful Case

- Chevalier (OA) International Ltd[81]

Background

Chevalier (OA) International Ltd ['COAL'] was listed in Hong Kong in 1988. Mr. Y.C. Chow is the Chairman of the Chevalier Group of Companies. On 26th April 1993, COAL issued 632,001,000 shares of which 53.79% was owned by Chow.

[81] Report of Insider Dealing Tribunal on Hong Kong Parkview Group Ltd, pp30

Between 26th April and 5th July 1993, Chow sold 28,180,000 shares representing 4.5% of his shareholding.

COAL had been making a profit since its listing on 1988 until 1992/3 but the size of profit was diminishing. In 1992, the company announced a joint venture with Telstra on second generation cordless telephone ('CT2') and this project required heavy capital expenditure. On 13th January 1993, the company announced an interim loss of HK$16.878 million. Share price of COAL subsequently fell from 40 cents to 38 cents. On 12th August 1993, it reported a loss for the year of HK$84.51million. Share price fell from 40cents to 31cents in two weeks.

In between the interim and final results announcements, share price and turnover of COAL shares had on several occasions out-performed the market. Chow's share was sold during this period when the share price was the highest.

The sales were effected by Capital Growth Limited which was the trustee of Chow's family trust namely Grace Hsin Ya Jen Trust. The trustee held a substantial number of warrants of Chevalier International Holdings Ltd ['CIHL'] and these warrants must be exercised before yearend to get the dividend. It was claimed that Chow sold his COAL shares to raise funds to exercise the warrants.

Key questions

There is no question that Chow is a connected person by virtue of his position as a Director and Chairman (either in Hong Kong or Singapore). The key questions are:

(i) Did the sale of the 28.18million COAL shares come about as a result of Chow's 'dealing' in those shares or 'counselling or procuring another to deal'. When did it take place?

(ii) What information did Chow possess at the time of his dealing or counselling or procuring?

(iii) Does that information qualify as relevant information?

(iv) Did he know it was relevant information?

(v) If the ingredients of s9(1)(a) have been proved by the evidence, should Chow not be identified as an insider dealer by virtue of s10(3) of CAP 395?

'Dealing' or 'counselling or procuring'?

The crucial point is when the 'dealing' or counselling or procuring' took place. Did it end with his discussion with Peter Ng in March, or continue in April or early May? If so, did he know information in this period was relevant? The Tribunal proceeded on the basis that Chow 'counselled or procured' the sales when he persuaded Peter Ng, director of the trust, to dispose of COAL shares.

What information Chow possessed?

Chow received monthly consolidated management accounts every month. However, he claimed that he was not aware of the actual loss each month nor related such information with his sale of COAL shares on 26th April. He was not aware of the loss incurred by the CT2 business because he was not in charge of the telecommunication area. Nevertheless, evidence showed that Chow did review the management accounts. The Tribunal established that he knew the interim loss of HK$17 million had increased to HK$46.99 million as at February 1993. Furthermore, the Tribunal concluded that as early as May 1993, Chow knew that loss for the year would be HK$7 million greater than the monthly accounts.

Was it relevant information?

The Tribunal has to consider whether the knowledge of a year end loss of HK$54 million is specific, not generally known and likely to materially affect the price of COAL shares. Upon investigation, it concluded that all ingredients of 'relevant' information are proved to be in existence. Information on the forthcoming annual loss of such size is specific. Chow certainly knew more information than the public. Share price of COAL had surged up from its true value of 38 cents to over 60 cents in the anticipation of Shougang takeover. Despite the bullish sentiment at that time, information on yearend loss would dampen the speculation and likely to materially affect the share price.

Did Chow know that he possessed relevant information?

Evidences show that Chow had made a number of arrangements to hide the sale of his shares. It implies that he knew he had relevant information which would materially affect the price if it is known to the public. First, the trustee did not appoint a stockbroker to sell the share. Instead, Chow made the arrangement with a friend, C.H. Chow who was not a stockbroker. C.H. conducted the trade through the accounts of his relatives and two different brokers, with the intention to keep the sale away from public scrutiny. Later, Chow appointed Tung (who is a professional stockbroker) to replace C.H. to sell his share. An 'Oklahoma' account was later opened to further distant Chow from the sale. On 15th April, Chow told Tung that share price may increase over 50cents.

Defence

Chow claimed that his intention of the sale was to raise funds to exercise the CIHL warrants. The sale was not driven by loss avoidance. He had not considered the anticipated fall in share price after disappointing year end results announcements. His defence was accepted by the Tribunal considering that: (1) Chow has reported his dealing to SEHK accurately and timely; (2) Funds raised was applied to purchase the warrants; (3) He has informed his fellow directors of the disposal; (4) It was a logical choice to sell COAL share at that time; and (5) His credibility is acceptable.

Conclusion

It was concluded that Chow's sale of COAL shares was not deemed to be an insider dealing. Since the defence used by Chow is not acceptable in Singapore court, there is a high probability that Chow would be convicted if this case was proceeded in Singapore.

Commentary

The above discussions have highlighted some major differences in insider dealing regulation between Hong Kong and Singapore. In this section, we will review whether the SIDO should adopt some of the practice of SIA or suggestions of other proponents.

Should Insider Dealing be a Criminal Offence in Hong Kong?

It is often considered that current SIDO does not provide sufficient penalty for deterring purpose. Insider dealing is a criminal offence in Singapore but not in Hong Kong. An offender shall only pay a financial penalty of three times the profit gained. In Singapore, the convicted person can be subject to an imprisonment of seven years.

If insider dealing was a criminal offence in Hong Kong, it will be even more difficult to start a prosecution. The prosecutor should be able to present a higher standard of proof to start a criminal proceeding. However, the collection of sufficient evidence is very difficult as insider dealing transactions are well covered by layering transactions and offshore or nominee companies. The regulator may have to give up

the prosecution because of insufficient evidence. It is noteworthy that there is only one case, *pp v Allan Ng Poh Meng* taken to the Singapore court since the enactment of SIA in 1986. This case was proceeded in 1989 and there has been no case in the past ten years. The increasing complexity of securities transactions and corresponding difficulties in obtaining the necessary evidence make it difficult to start criminal prosecution. On the contrary, the Hong Kong Insider Dealing Tribunal has looked in nine cases since the enactment of the current SIDO in 1991.

The best legislation should be good in theory and in practice. The current arrangement in Hong Kong gives regulators more flexibility and enables them to catch suspected cases more effectively.

Should Insider Dealing be a Civil Offence in Hong Kong?

If insider dealing is a civil offence, the person who suffers from the insider dealing can start a lawsuit against the insider. Will there be more cases reported? It may be true that this will provide an additional avenue uncover an insider dealing case. However, even regulators who are well equipped with the resources and knowledge find it difficult to successfully take action against insider dealings. Naturally, it will be more difficult for general public. The legal process itself is costly and lengthy, not to mention the technicality involved in identifying and getting the person convicted. It remains questionable if this is effective means to successful conviction.

Should Compensation Order be Imposed in Hong Kong?

At present, investigation of insider dealing is initiated by the regulator and the public has low initiative to report suspected cases. If suffered persons are compensated for the loss resulted from insider transactions, will they have a better incentive to do so?

Again interestingly, though the Singapore court can make compensation order, no such order has been successfully made in the past 13 years.

To make a compensation order, the court needs to ascertain the identity of the person and to prove that he suffered from a transaction with an insider who trades on specific information. First, in the exchange-traded transaction, trades are conducted through a broker. Considering the vast number of trades, it is difficult to identify the counterparty. Secondly, it is even more difficult to prove that this person suffered a loss because of insider trading. Exchange-based transaction is price driven and the sale will go through whenever orders matched. Identity of the counterparty is unimportant. In other words, the person will sell his share anyway and insider dealing seems to have no effect on this transaction. Furthermore, the method of calculating profit gained or loss avoided is controversial, and we can expect additional difficulties when an additional factor (i.e. the amount of loss suffered by the person) is involved. It therefore seems that even the provision for compensation order is included in the Ordinance, there will be many problems to put it in practice.

Should the Existing Penalty be Increased?

The existing penalty of three times the profit gained or losses avoided is already high. Though it can be argued that none of the nine cases investigated by the Tribunal are requested to pay the maximum penalty, the current scale is high in international standard. In the Hong Kong Worsted Mills inquiry, total monetary penalty is more than HK$33.8 million. In Singapore, the maximum penalty is S$50,000 to individual and S$100,000 to corporate. Even in the US, the maximum financial penalties to individual and corporate are US$1mil and US$2.5mil respectively.

The fact that maximum penalty is not imposed on these insiders is a matter of independent legal judgement. It should not seen as a demonstration of weakness in the Tribunal or the regulation itself.

The major consideration of potential insider dealer is the probability of being caught and convicted. The amount of penalty will only come as a second thought. If there is only a meagre opportunity of conviction, the potential gain may well outweigh the penalty. In other words, simply increasing the amount of penalty will not achieve the deterring effect. It should go hand in hand with strict enforcement of the regulation.

Recommendations

International Cooperation

Most jurisdictions have a cooperation arrangement in place, called the Memorandum of Understandings [MOUs], that allows regulators to obtain information from their counterparts. Such information ranges from public information like company registry and trading history to confidential transaction details obtained from investigation. For instance, the SFC has signed a MOU with Singapore as well as many other regional regulators such as Australia and Malaysia.

In the investigation of Crownhampton Limited on possible insider dealing activities, the buying orders were placed through Singapore banks and SFC has sought assistance from the MAS to obtain evidence. However, the Bank Secrecy Law does not allow MAS to disclose the identity of customers.

Insider dealers can easily shield transactions through offshore companies. Despite the presence of MOUs, regulatory differences among jurisdictions means that cross border monitoring is extremely difficult and in most cases, impossible. In particular, no matter how comprehensive a regulation is, insider dealer can structure the transactions to get through the loopholes. The best way to Hong Kong regulators perhaps, is to align its policy with its major counterparts worldwide so that we are on level playing field. Global investors will have less opportunity to take advantage of regulatory differences. In addition, joint investigation with overseas regulators can more effectively deal with cross-border transactions.

Reward the Informant

At present, the government pays financial reward to the informant who can provide critical evidence on severe cases, such as murderer and burglary. Similarly, SFC may consider to reward the informant. For example, US regulator will pay up to 10% of the penalty to the informant.

The informant can be the employee of the same company, or person who has business relationship with the insider. They may have been induced to collaborate with the insider but have declined to do so. Or they may have participated in the transaction. In all circumstances, the informant will have concern on the bad consequences of his reporting, such as termination of his employment. In order to encourage related parties to inform, there should be protection clauses or provisions in regulations to protect them from repercussion.

Public Education

Following from the above discussion, the SFC should increase the public awareness on a 'rightful' securities transaction. It is similar to the promotion of anti-corruption by ICAC. After more than 20 years, the ICAC has successfully instilled a correct attitude among the public. SFC has been spending much efforts on public education. It is certainly a direction which it should further explore.

Corporate Governance

Securities practitioners argued that the disclosure requirement to the SFC may sometimes infringe the confidentiality of commercial agreement. In addition, it is difficult to avoid leakage of price-sensitive information. Clerical staff, secretaries and junior officers may possess this information in the course of exercising their duties. However, many of them have a low awareness of keeping the information in confidence. These circumstances cannot be well defined by law. It is the responsibility of listed companies to establish a sufficient internal control and reporting mechanism.

SFC should promote a high standard of corporate governance through the issuance of clear principles and best practice guides to listed companies. These guidelines are not statutory nor a minimal standard. It serves as a basis for company to formulate an appropriate code of conduct and practices to be observed by its staff.

It is common in Hong Kong that most listed companies only maintain the minimum public float of 35% and the remaining is concentrated in a few substantial shareholders, usually family members. The operation of many family businesses is opaque. Furthermore, most listed companies are incorporated overseas and are not regulated by the Companies Ordinance. In order to ensure a level playing field for investors, there should be good corporate governance policy to ensure that the company acts vigilantly to maximise the interests of all shareholders. Apart from imposing duty of disclosure and due diligence in securities trading, the SFC should

require listed companies to meet accounting and auditing standards that meet internationally quality.

Self Regulation

It is the responsibility of SFC to provide an environment that encourages corporate governance. However, its enforcement is a private responsibility. There is limit on the comprehensiveness of regulations but not on the variety of transactions. The market should determine what should be done and what should not be done. To this end, it is more appropriate for the market participants to supervise and uphold the standard among themselves.

SFC should delegate the continual monitoring duty to the frontline self-regulatory bodies such as the SEHK. In the past, the SEHK has been criticised as a member's club that acts in favour of member's interests. SFC should make the SEHK more accountable to the general public and increase its supervision on the self regulatory system. In addition, there should be parallel development in the statutory requirements such as disclosure of interests and non-statutory rules issued by the SEHK.

Most importantly, SEHK should cultivate an ethical business culture. It is one of the primary duties of market practitioners to ensure compliance and it is in their best interests to do so. Malpractice such as insider dealing are detrimental to market integrity and confidence of international investor. They should protect a fair playing field for all participants.

Continual Improvement of the Regulation and Investigation

The most effective way to counteract insider dealing is improving our regulation. It is glad that SFC has been continuously updating itself on market development and proposing changes to the existing regulations (The SIA has not been updated since 1986!). Regulations should be tightened in response to current market practice and be streamlined to remove redundant requirements. A solid legal framework and regulation will enable the regular to fully exercise its power to combat illegal activities.

CHAPTER IV

CONCLUSION

Hong Kong has gained a reputation for its well established supervisory framework and one of the most efficient market in international terms. However, its regulatory requirements seems to lag behind its worldwide counterparts and there have been calls for improvement to support the growth of the local securities market.

In this regard, SFC has issued a consultation paper on the amendments to the Securities (Disclosure of Interests) Ordinance in June 1998. The Consultation was concluded on September 1998 and a conclusion has been issued on March 1998. The proposal aims to align local disclosure requirements with international standards; to update the Ordinance on current market practices; to improve market transparency and to remove those unnecessary burdensome statutory requirements. Some of the proposed amendments are discussed in Chapter II.

In the previous chapters, we have discussed a number of improvements on regulations to increase market transparency and to protect investors' interests. However, these suggestions alone cannot create a well-regulated market if there is no corresponding enhancement in power of our regulator. Regulator should be sufficiently empowered to administer and enforce the regulations. SFC would be a *paper tiger* unless its enforcement power is improved to give it the same strength of regulators of other jurisdictions.

At present, the comprehensive legal framework and disclosure mechanism still seems inadequate to catch insider dealing activities. An investigation by the SFC and then by the Insider Dealing Tribunal took years to complete. The long investigation period poses an additional problem in collection of evidence. Witnesses may not recall details of the incidence and even cannot be contacted. Furthermore, the involvement of two investigation parties may duplicate the resources and therefore ineffective. The merit of Insider Dealing Tribunal is being independent and objective. On the other hand, it will be more effective if SFC is solely responsible for the investigation process and can penalise the offender. There will be a better chance of successful conviction.

This inadequacy is further aggravated by the fact that the supervisory power of SFC does not extend to the securities arm of financial institutions, which is now being monitored by the HKMA. This arrangement creates a grey area that practitioners may take advantage of supervisory differences, though HKMA and SFC frequently exchange market information. In order to improve the level of market supervision, HKMA and SFC should jointly supervise the securities activities of banks.

There is a trend to merge different supervisory bodies into a single and powerful regulator on the international front. A good example is the Monetary Authority of Singapore (MAS) in Singapore. It has much wider power to supervise the whole family of financial institutions, including banks, securities firms and insurance companies. In case where one unit commits a prohibited activity, the regulator may

punish the whole group by more stringent regulatory supervision, or even revoke its licence.

A super-regulator may be hindered by its size and bureaucratic structure to be effective. Sadly, the Financial Services Authority (FSA) is being regarded as a big elephant with many internal problems. This is perhaps one of the reasons why the public is not receptive to the idea of a powerful regulator in Hong Kong. There are also worries that a powerful regulator will result in over-regulation.

Nonetheless, if SFC is given additional authority and discretion in exercising its duties to maintain market integrity and transparency, it creates a better trading environment that promotes the public interests. The regulator should be sufficiently empowered to supervise, investigate and bring justice to the public. At the same time, there should be an increasing acceptance of the power of regulator and tightening of regulations. Disclosure and enforcement are two key factors of successful market supervision.

APPENDICE

APPENDIX 1

CORPORATE SUBSTANTIAL SHAREHOLDER NOTICE

DISCLOSURE OF INTEREST

No statutory form has been prescribed under the Ordinance. This notice form is provided for your use by the Securities and Futures Commission.

You should, however, note that your statutory obligations are determined by the Ordinance not by the notice form provided. When making your disclosure, therefore, you must satisfy yourself as to the requirements of the Ordinance and, if in doubt, you should seek appropriate legal advice. You are free to make the required disclosures in some other written form.

EXPLANATORY NOTE FOR CORPORATE SUBSTANTIAL SHAREHOLDERS ON COMPLETING THIS NOTICE FORM

GENERAL INFORMATION

References to the Ordinance are references to the Securities (Disclosure of Interests) Ordinance (Cap. 396).

This notice form is to be completed by corporations/companies when making their disclosures of a notifiable interest in relevant share capital of the listed company disclosed at paragraph 1 of the notice form.

This notice form is to be used by corporations/companies to notify the Stock Exchange of Hong Kong (the "SEHK") and the listed company concerned of, amongst other things, the following:—

(i) An interest in 10% or more of the relevant share capital (i.e. voting shares) of a listed company.
(ii) Ceasing to have a notifiable interest (i.e. dropping below 10%).
(iii) An increase or decrease in the percentage level of your holdings that results in you crossing over a whole percentage number (e.g. 10.9% increases to 11.1%).

The term "substantial shareholder" is not defined in the Ordinance but is used in this notice form and these notes for descriptive purposes only. A substantial shareholder is someone who has an interest in 10% or more of the relevant share capital concerned (i.e. voting shares of the company).

For record purposes it is advisable to keep a copy of all disclosures that are made.

You should note that the duties of disclosure of substantial shareholders, in most cases, have to be fulfilled within 5 days next following the day upon which those duties arise. In cases of doubt, legal advice should be taken.

If any of the interests in relevant share capital of the listed company are held as a result of a section 9 acquisition agreement then you are advised to take legal advice as no standard notice form is provided by the Securities and Futures Commission for the purposes of disclosure.

If you have insufficient space, complete your disclosures on a separate sheet — a photocopy of an uncompleted page 2 could be used provided that it is signed and clearly marked "Additional Sheet".

When completing this notice form use block letters, preferably typewritten.

In cases of ambiguity staff of the SEHK may telephone you for clarification.

If you have any queries about the Ordinance or your obligations thereunder you should consult your legal or other professional adviser. The fact that you do not have all the information required by the notice form should not prevent you from filing the notice form if you are aware you are under a duty to disclose. Information not currently available should be provided when it becomes available.

You must always complete the entire form, particularly paragraph 5, even if you are only supplying details required by section 7(6) and there has been no disclosable change in the size of your interests.

This notice form is only to be completed by a person properly authorized by the corporation/company making disclosure.

FILING REQUIREMENTS

A signed copy of this notice must be filed with the SEHK using one of the following methods:—

By Post — The SDI Unit
Compliance Division
The Stock Exchange of Hong Kong Ltd.
G.P.O. Box 10023
Hong Kong

This is dedicated P.O. Box for the SDI Unit only. You should not use the general SEHK P.O. Box.

By Hand — The SDI Unit
Compliance Division
The Stock Exchange of Hong Kong Ltd.
Tower I & II, Exchange Square
Central, Hong Kong

By Fax — Fax No.: 8456328

For security reasons, no other SEHK fax number should be used. You are asked to pay particular attention to ensuring the proper fax number is used.

Telephone confirmations of fax notification can be obtained from 5233799. You are asked to restrict use of this service to significant or price sensitive notifications.

A signed copy of this notice form must also be filed with the company referred to at paragraph 1 of the notice form at its registered office or principal place of business in Hong Kong. You should take every reasonably practicable step to ensure that the notice form reaches the SEHK first.

Ref. No.:

CORPORATE SUBSTANTIAL SHAREHOLDER NOTICE

Notice pursuant to Part II of the Securities (Disclosure of Interests) Ordinance (CAP. 396)

(1) Name of listed company in whose relevant share capital the notifiable interest is held.

COMPANY NAME _____ STOCK CODE ⌊__⌋

(N.B.: Please note that references to listed company in this notice form are references to the company disclosed here.)

(2) Relevant share capital in listed company to which notification relates: CURRENCY _____ CLASS _____ DESCRIPTION BY NOMINAL VALUE ⌊_____⌋

(3) Identification of corporation making disclosure

FULL NAME _____ BUSINESS REGISTRATION NO. _____

ADDRESS OF REGISTERED OFFICE _____

ADDRESS OF PRINCIPAL PLACE OF BUSINESS IN HONG KONG _____

PLACE OF INCORPORATION _____ LISTED ON SEHK Yes / No * (*Delete as appropriate)

NAME OF PERSON TO WHOM ENQUIRIES CAN BE DIRECTED (Surname First) _____ CONTACT PHONE NO. _____

(4) Information disclosed pursuant to Part II of the Ordinance.

DAY MONTH YEAR

(a) DATE event or change of circumstances took place giving rise to this duty of disclosure. ⌊__⌋ ⌊__⌋ ⌊__⌋

(b) REASON FOR DISCLOSURE [see Explanatory Note then tick appropriate box number(s)] 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐

(5) Details of interest in relevant share capital of listed company.

(a) Present number of shares in which corporation making disclosure is interested and/or deemed to be interested. ⌊_____⌋

(b) Previous number of shares in which corporation making disclosure was interested and/or deemed to be interested. ⌊_____⌋

Note: Please also fill in Page 2 for the completion of this disclosure.

(6) If any of the notifiable interest in the relevant share capital of the listed company is held jointly with another party, complete this paragraph.

DETAILS OF INDIVIDUAL OR CORPORATION WITH WHOM SHARES ARE JOINTLY OWNED:

NAME (Surname First for Individual)	HKID/Passport No.	ADDRESS	NUMBER OF SHARES HELD

(7) If any of the notifiable interest in the relevant share capital of the listed company (described at paragraph (2) of Page 1) is held as a result of S.8(2), (3) and (4) of the Ordinance (i.e. corporate interests, see Explanatory Note), complet this paragraph.

NAME OF CORPORATION	ADDRESS OF CORPORATION	NUMBER OF SHARES HELD BY CORPORATION

(8) Name and address of registered shareholders of the shareholding in listed company disclosed at paragraph (5) (a) of Page 1.

NAME (Surname First for Individual)	HKID/Passport No.	ADDRESS	PRESENT NUMBER OF SHARES

(Please continue on separate sheet if insufficient space available.)

AUTHORIZED SIGNATORY

Print name: _____ Position held at the company: _____

Before signing this notice form, the signatory should make sure all the information disclosed herein is correct, and the signatory has the necessary authority to make disclosure for the company.

Signature: _____ Date: ⌊_⌋⌊_⌋⌊_⌋ Day Month Year

CF002 5/91

INSTRUCTIONS ON COMPLETING THE NOTICE FORM

The box marked "Ref. No." can be used for your own record purposes.

1. Paragraph 1
Complete the name of the company and its stock code. The stock code can be obtained from the SEHK or from the company concerned. Even if the stock code is not known the notice form should still be completed and filed.

2. Paragraph 2
Describe the relevant share capital to which the notification relates. A small number of companies listed on the Stock Exchange of Hong Kong have two classes of share capital, each with voting rights (i.e. "A" and "B" shares). If the corporation/company is a substantial shareholder of both classes of share capital then two separate notices should be completed.

3. Paragraph 3
The name and address of the corporation/company making disclosure of its interests must be set out in full in English.

4. Paragraph 4
In order to disclose the reason for disclosure at 4(b), tick the box number corresponding to one or more of the following reasons. For example, if you acquire shares which increase the notifiable percentage level then you would tick the boxes numbered "1" and "3". If your acquisition is as a result of a company, in which you are interested pursuant to section 8, acquiring shares you would tick the boxes numbered "1", "3" and "4".

You should note that if you tick the box numbered "7" then, apart from signing, you do not need to complete the remainder of the notice form.

Reason for disclosure	Box Number
Acquisition/disposal of an interest in relevant share capital of listed company giving rise to a duty to disclose.	"1"
Initial disclosure	"2"
Change in percentage level of notifiable interest	"3"
Acquisition/disposal of an interest in relevant share capital by a corporation subject to section 8(2), (3) and (4) (see note 1)	"4"
Disclosure of particulars required by section 7(6) (see note 2)	"5"
Change in particulars required by section 7(6) (see note 2)	"6"
Cease to have notifiable interest	"7"

Note 1:
Section 8(2), (3) and (4) deems you to be interested in shares in the relevant share capital of a listed company that are held by a corporation the directors of which are accustomed to act in accordance with your directions or in which you can exercise one-third or more of the voting rights.

Note 2:
The particulars required by section 7(6) of the Ordinance are the names of and the number of shares held by the registered shareholders.

5. Paragraph 5
All interests in relevant share capital including those that the corporation/company is deemed to be interested in as a result of section 8 (i.e. corporate interests) are to be disclosed. If this is an initial disclosure paragraph 5(b) is not applicable.

6. Paragraph 6
The name of the person or company with whom a joint interest in shares is held should be disclosed. It should be noted that the person or company with whom the joint interest is held has to make separate disclosures of their own if they have a notifiable interest.

7. Paragraph 7
Disclose the interests in relevant share capital held through other corporations pursuant to section 8 of the Ordinance. If you have any doubts about the consequences of section 8 of the Ordinance legal advice should be taken. If these corporations' interests exceed the notifiable percentage they will have to make separate disclosures.

8. Paragraph 8
The Ordinance requires the disclosure of the names and addresses of the registered shareholders of the shareholding in the listed company disclosed at paragraph 5(a). Lack of knowledge of these particulars should not prevent a notice form being filed. These particulars can be sent to the SEHK and the company concerned when they are obtained.

YOU MUST SIGN THE NOTICE FORM AND INDICATE IN WHAT CAPACITY YOU ARE SIGNING IT.

YOU SHOULD CHECK THE NOTICE FORM BEFORE SIGNING IT TO MAKE SURE THAT EVERYTHING THAT YOU HAVE STATED IS CORRECT.

APPENDIX 2

INDIVIDUAL SUBSTANTIAL SHAREHOLDER NOTICE

DISCLOSURE OF INTEREST

No statutory form has been prescribed under the Ordinance. This notice form is provided for your use by the Securities and Futures Commission.

You should, however, note that your statutory obligations are determined by the Ordinance not by the notice form provided. When making your disclosure, therefore, you must satisfy yourself as to the requirements of the Ordinance and, if in doubt, you should seek appropriate legal advice. You are free to make the required disclosures in some other written form.

EXPLANATORY NOTE FOR INDIVIDUAL SUBSTANTIAL SHAREHOLDERS ON COMPLETING THIS NOTICE FORM

GENERAL INFORMATION

References to the Ordinance are references to the Securities (Disclosure of Interests) Ordinance (Cap. 396).

This notice form is to be completed by individuals when making their disclosures of a notifiable interest in the relevant share capital of the listed company disclosed at paragraph 1 of the notice form.

If you are a director or chief executive do not complete this notice form. A separate notice form is available and should be used.

This notice form is to be used by individuals to notify the Stock Exchange of Hong Kong (the "SEHK") and the listed company concerned of, amongst other things, the following:—

(i) An interest in 10% or more of the relevant share capital (i.e. voting shares) of a listed company.

(ii) Ceasing to have a notifiable interest (i.e. dropping below 10%).

(iii) An increase or decrease in the percentage level of your holdings that results in you crossing over a whole percentage number (e.g. 10.9% increases to 11.1%).

The term "substantial shareholder" is not defined in the Ordinance but is used in this notice form and these notes for descriptive purposes only. A substantial shareholder is someone who has an interest in 10% or more of the relevant share capital concerned (i.e. voting shares of the company).

For record purposes, it is advisable to keep a copy of all disclosures that are made.

You should note that the duties of disclosure of substantial shareholders, in most cases, have to be fulfilled within 5 days next following the day upon which those duties arise. In cases of doubt, legal advice should be taken.

If any of your interests in the relevant share capital of the listed company are held as a result of a section 9 acquisition agreement then you are advised to take legal advice as no standard notice form is provided by the Securities and Futures Commission for the purposes of disclosure.

If you have insufficient space, complete your disclosures on a separate sheet — a photocopy of an uncompleted page 2 could be used provided that it is signed and clearly marked "Additional Sheet".

When completing this notice form use block letters, preferably typewritten.

In cases of ambiguity staff of the SEHK may telephone you for clarification.

If you have any queries about the Ordinance or your obligations thereunder you should consult your legal or other professional adviser. The fact that you do not have all the information required by the notice form should not prevent you from filing the notice form if you are aware you are under a duty to disclose. Information not currently available should be provided when it becomes available.

You must always complete the entire form, particularly paragraph 5, even if you are only supplying details required by section 7(6) and there has been no disclosable change in the size of your interests.

FILING REQUIREMENTS

A signed copy of this notice form must be filed with the SEHK using one of the following methods:—

By Post — The SDI Unit
Compliance Division
The Stock Exchange of Hong Kong Ltd.
G.P.O. Box 10023
Hong Kong

This is dedicated P.O. Box for the SDI Unit only. You should not use the general SEHK P.O. Box.

By Hand — The SDI Unit
Compliance Division
The Stock Exchange of Hong Kong Ltd.
Tower I & II, Exchange Square
Central, Hong Kong

By Fax — Fax No.: 8456323

For security reasons, no other SEHK fax number should be used. You are asked to pay particular attention to ensuring the proper fax number is used.

Telephone confirmations of fax notification can be obtained from 5233799. You are asked to restrict use of this service to significant or price sensitive notifications.

A signed copy of this notice form must also be filed with the company referred to at paragraph 1 of the notice form at its registered office or principal place of business in Hong Kong. You should take every reasonably practicable step to ensure that the notice form reaches the SEHK first.

Ref. No.:

INDIVIDUAL SUBSTANTIAL SHAREHOLDER NOTICE

Notice pursuant to Part II of the Securities (Disclosure of Interests) Ordinance (CAP. 396)

(1) Name of listed company in whose relevant share capital the notifiable interest is held.

COMPANY NAME _____ STOCK CODE ☐☐☐☐☐

(N.B.: Please note that references to listed company in this notice form are references to the company disclosed here.)

(2) Relevant share capital in listed company to which notification relates: CURRENCY _____ CLASS _____ DESCRIPTION BY NOMINAL VALUE ☐☐☐☐☐☐☐☐

(3) Identification of person making disclosure

NAME _____ HKID/Passport No. ☐☐☐☐☐☐☐☐☐☐

(Surname First)

NAME IN CHINESE _____ Chinese Character Code _____

ADDRESS _____

CONTACT PHONE NO. _____

(4) Information disclosed pursuant to Part II of the Ordinance.

DAY MONTH YEAR

(a) DATE event or change of circumstances took place giving rise to this duty of disclosure. ☐☐ ☐☐ ☐☐

(b) REASON FOR DISCLOSURE [see Explanatory Note then tick appropriate box number(s)] 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐

(5) Details of interest in relevant share capital of listed company.

(a) Present number of shares in which person making disclosure is interested and/or deemed to be interested. ☐☐☐☐☐☐☐☐☐☐☐☐

(b) Previous number of shares in which person making disclosure was interested and/or deemed to be interested. ☐☐☐☐☐☐☐☐☐☐☐☐

Note: Please also fill in Page 2 for the completion of this disclosure.

(6) If any of the notifiable interest in the relevant share capital of the listed company is held jointly with another party, complete this paragraph.

DETAILS OF INDIVIDUAL OR CORPORATION WITH WHOM SHARES ARE JOINTLY OWNED:

NAME (Surname First for Individual)	HKID/Passpon No.	ADDRESS	NUMBER OF SHARES HELD

(7) If any of the notifiable interest in the relevant share capital of the listed company (described at paragraph (2)) of Page 1 is held as a result of the deeming provisions contained in section 8(1) of the Ordinance (i.e. family interests, see Explanatory Note), complete this paragraph.

NAME OF FAMILY MEMBER (Surname first)	HKID/Passport No.	NUMBER OF SHARES HELD BY FAMILY MEMBER

(8) If any of the notifiable interest in the relevant share capital of the listed company (described at paragraph (2)) of Page 1 is held as a result of S.8(2), (3) and (4) of the Ordinance (i.e. corporate interests, see Explanatory Note), complete this paragraph.

NAME OF CORPORATION	ADDRESS OF CORPORATION	NUMBER OF SHARES HELD BY CORPORATION

(9) Name and address of registered shareholders of the shareholding in listed company disclosed at paragraph (5) (a) of Page 1.

NAME (Surname First for Individual)	HKID/Passport No.	ADDRESS	PRESENT NUMBER OF SHARES

(Please continue on separate sheet if insufficient space available.)

Before signing this notice form, the signatory should make sure all the information disclosed herein is correct.

Signature: _____ Date: ⌊_⌋⌊_⌋⌊_⌋ Day Month Year

INSTRUCTIONS ON COMPLETING THE NOTICE FORM

The box marked "Ref. No." can be used for your own record purposes.

1. Paragraph 1
Complete the name of the company and its stock code. The stock code can be obtained from the SEHK or from the company concerned. Even if the stock code is not known the notice form should still be completed and filed.

2. Paragraph 2
Describe the relevant share capital to which the notification relates. A small number of companies listed on the Stock Exchange of Hong Kong have two classes of share capital, each with voting rights (i.e. "A" and "B" shares). If you are a substantial shareholder of both classes of share capital then you should complete two separate notices.

3. Paragraph 3
Complete your name and address.

4. Paragraph 4
In order to disclose the reason for disclosure at 4(b), tick the box number corresponding to one or more of the following reasons. For example, if you acquire shares which increase the notifiable percentage level then you would tick the boxes numbered "1" and "3". If your acquisition is as a result of a family member acquiring shares you would tick the boxes numbered "1", "3" and "4".

You should note that if you tick the box numbered "8" then, apart from signing, you do not need to complete the remainder of the notice form.

Reason for disclosure	Box Number
Acquisition/disposal of an interest in relevant share capital of listed company giving rise to a duty to disclose.	"1"
Initial disclosure	"2"
Change in percentage level of notifiable interest	"3"
Acquisition/disposal of an interest in relevant share capital by a family member (i.e. spouse or children under 18)	"4"
Acquisition/disposal of an interest in relevant share capital by a corporation subject to section 8(2), (3) and (4). (see note 1)	"5"
Disclosure of particulars required by section 7(6) (see note 2)	"6"
Change in particulars required by section 7(6) (see note 2)	"7"
Cease to have notifiable interest	"8"

Note 1:
Section 8(2), (3) and (4) deems you to be interested in shares in the relevant share capital of a listed company that are held by a corporation the directors of which are accustomed to act in accordance with your directions or in which you can exercise one-third or more of the voting rights.

Note 2:
The particulars required by section 7(6) of the Ordinance are the names of and the number of shares held by the registered shareholders.

5. Paragraph 5
Disclose all the shares that you are interested in, including those that you are deemed to be interested in as a result of section 8 (i.e. family and corporate interests). If this is an initial disclosure paragraph 5(b) is not applicable.

6. Paragraph 6
You should disclose the name of the person or company with whom you have a joint interest in shares. You should note that the Ordinance requires that the person or company with whom you have the joint interest has to make separate disclosures of their own if they have a notifiable interest.

7. Paragraph 7
You should disclose the interests held by your family members. This is so that the company concerned and the SEHK can distinguish between the shares that you hold absolutely and those that you are deemed to hold as a result of your family relationship. The family member/s concerned will have to make a separate disclosure if the shares they hold or are deemed to hold exceed the notifiable percentage.

8. Paragraph 8
Disclose the interest in relevant share capital that you are deemed to hold through other corporations pursuant to section 8 of the Ordinance. If you have any doubts about the consequences of section 8 of the Ordinance legal advice should be taken. If these corporations' interests exceed the notifiable percentage they will have to make separate disclosures. There is a separate notice form for corporate disclosures.

9. Paragraph 9
The Ordinance requires you to disclose the names and addresses of the registered shareholders of the shareholding in the listed company disclosed at paragraph 5(a). If you do not have these particulars this should not prevent you from filing your notification. These particulars can be sent to the SEHK and the company concerned when you obtain them.

YOU SHOULD CHECK THE NOTICE FORM BEFORE SIGNING IT TO MAKE SURE THAT EVERYTHING THAT YOU HAVE STATED IS CORRECT.

APPENDIX 3

DIRECTORS AND CHIEF EXECUTIVES NOTICE

DISCLOSURE OF INTEREST

No statutory form has been prescribed under the Ordinance. This notice form is provided for your use by the Securities and Futures Commission.

You should, however, note that your statutory obligations are determined by the Ordinance not by the notice form provided. When making your disclosure, therefore, you must satisfy yourself as to the requirements of the Ordinance and, if in doubt, you should seek appropriate legal advice. You are free to make the required disclosures in some other written form.

EXPLANATORY NOTE FOR DIRECTORS AND CHIEF EXECUTIVES ON COMPLETING THIS NOTICE FORM

GENERAL INFORMATION

References to the Ordinance are references to the Securities (Disclosure of Interests) Ordinance (Cap. 396).

This notice form is to be completed by directors, chief executives and shadow directors of a listed company when disclosing all their interests in the securities of their company and its associated companies. It is also to be used by directors etc. when disclosing a notifiable interest in relevant share capital (i.e. 10% or more of the voting shares) for the purposes of Part II of the Ordinance.

The term "substantial shareholder" is not defined in the Ordinance but is used in this notice form and these notes for descriptive purposes only. A substantial shareholder is someone who has an interest in 10% or more of the relevant share capital concerned (i.e. voting shares of the company).

For record purposes it is advisable to keep a copy of all disclosures that are made.

If any of your interests in the relevant share capital of the listed company are held as a result of a section 9 acquisition agreement then you are advised to take legal advice as no standard notice form is provided by the Securities and Futures Commission for the purposes of disclosure.

If you have insufficient space, complete your disclosures on a separate sheet - a photocopy of an uncompleted page 2 could be used provided that it is signed and clearly marked "Additional Sheet".

When completing this notice form use block letters, preferably typewritten.

In cases of ambiguity staff of the Stock Exchange of Hong Kong (the 'SEHK') may telephone you for clarification.

If you have any queries about the Ordinance or your obligations thereunder you should consult your legal or other professional adviser. The fact that you do not have all the information required by the notice form should not prevent you from filing the notice form if you are aware you are under a duty to disclose. Information not currently available should be provided when it becomes available.

You must always complete the entire form, particularly paragraph 10, even if you are only supplying details required by section 7(6) and there has been no disclosable change in the size of your interests.

FILING REQUIREMENTS

A signed copy of this notice form must be filed with the SEHK using one of the following methods:—

By Post — The SDI Unit
Compliance Division
The Stock Exchange of Hong Kong Ltd.
G.P.O. Box 10023
Hong Kong

This is dedicated P.O. Box for the SDI Unit only. You should not use the general SEHK P.O. Box.

By Hand — The SDI Unit
Compliance Division
The Stock Exchange of Hong Kong Ltd.
Tower I & II, Exchange Square
Central, Hong Kong

By Fax — Fax No.: 8456328

For security reasons, no other SEHK fax number should be used. You are asked to pay particular attention to ensuring the proper fax number is used.

Telephone confirmations of fax notification can be obtained from 5233799. You are asked to restrict use of this service to significant or price sensitive notifications.

A signed copy of this notice form must also be filed with the company referred to at paragraph 2 of the notice form at its registered office or principal place of business in Hong Kong. You should take every reasonably practicable step to ensure that the notice form reaches the SEHK first.

You have five days next following the day the duty to disclose arose to comply with the Ordinance.

INSTRUCTIONS ON COMPLETING THE NOTICE FORM

The box marked "Ref. No." can be used for your own record purposes.

1. Paragraph 1
This statement is required by sections 15(2) and 23(6) of the Ordinance.

2. Paragraph 2
You should fill in the full name of the company of which you are a director or chief executive and the stock code, if you have it.

3 Paragraph 3
You should identify yourself by giving your full name.

A contact telephone number should be provided so that the SEHK can quickly clarify any matter arising out of any of the information that you have provided.

Ref. No.:

DIRECTOR'S/CHIEF EXECUTIVE'S NOTICE

Notice pursuant to Part II and III of the Securities (Disclosure of Interests) Ordinance (CAP. 396)

(1) I AM A DIRECTOR OR CHIEF EXECUTIVE OF THE LISTED COMPANY MENTIONED BELOW AND THIS NOTICE IS GIVEN IN PERFORMANCE OF THE DUTIES IMPOSED BY THE ORDINANCE.

(2) Identification of listed company of which person making disclosure is a director or chief executive.

COMPANY NAME _____ STOCK CODE ☐☐☐☐

(3) Identification of director or chief executive who is making disclosure.

NAME (Surname first) _____ HKID/Passport No. ☐☐☐☐☐☐☐☐☐☐ CONTACT PHONE NO. _____

(4) I have or have ceased to have a notifiable interest (i.e. 10% or over) in the relevant share capital of the listed company details of which are set out in paragraph (10) on Page 2. Yes / No * (* Delete as appropriate)

(5) If your answer to paragraph (4) above is "No", you do not have to complete this and paragraphs (6), (7), (8) and (9).

(a) DATE event or change of circumstances took place giving rise to this duty of disclosure. DAY ☐☐ MONTH ☐☐ YEAR ☐☐

(b) REASON FOR DISCLOSURE [see Explanatory Note then tick appropriate box number(s)] 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐

(6) If any of the notifiable interest in the relevant share capital of the listed company is held jointly with another party, complete this paragraph.

DETAILS OF INDIVIDUAL OR CORPORATION WITH WHOM SHARES ARE JOINTLY OWNED:

NAME (Surname First for Individual)	HKID/Passport No.	ADDRESS	NUMBER OF SHARES HELD

(7) If any of the notifiable interest in the relevant share capital of the listed company (described at paragraph (2)) is held as result of the deeming provisions contained in section 8(1) of the Ordinance (i.e. family interests, see Explanatory Note), complete this paragraph.

NAME OF FAMILY MEMBER (Surname first)	HKID/Passport No.	NUMBER OF SHARES HELD BY FAMILY MEMBER

(8) If any of the notifiable interest in the relevant share capital of the listed company (described at paragraph (2)) is held as a result of S.8(2), (3) and (4) of the Ordinance (i.e. corporate interests, see Explanatory Note), complete this paragraph.

NAME OF CORPORATION	ADDRESS OF CORPORATION	NUMBER OF SHARES HELD BY CORPORATION

(9) Name and address of registered shareholders of the notifiable interest in relevant share capital referred to at paragraph (4) of Page 1.

NAME (Surname First for Individual)	HKID/Passport No.	ADDRESS	NUMBER OF SHARES HELD

(10) Declaration of interests subsisting at the date of this notice form and transactions in the securities of the listed company and associated corporations since date of last notice form.

(A) NAME OF CORPORATION	(B) CLASS AND/OR DESCRIPTIONS OF SECURITIES	(C) PREVIOUS BALANCE	(D) PRESENT BALANCE	(E) TRANSACTIONS INVOLVED			
				ACQUISITION	DISPOSAL	DATE OF TRANSACTION (Day/Month/Year)	CONSIDERATION PER UNIT
				☐	☐	/ /	
				☐	☐	/ /	
				☐	☐	/ /	

(11) Grants, assignments and exercises of rights to subscribe for securities of listed company and associated corporations.

GRANTS OF RIGHTS

(A) NAME OF CORPORATION	(B) CLASS OF SECURITIES	(C) NUMBER OF SECURITIES	(D) DATE GRANTED (Day/Month/Year)	(E) PERIOD DURING WHICH RIGHTS EXERCISABLE	(F) UNIT PRICE TO BE PAID FOR SECURITIES	(G) CONSIDERATION (IF ANY)
			/ /			
			/ /			
			/ /			

EXERCISES AND ASSIGNMENTS OF RIGHTS

(A) NAME OF CORPORATION	(B) CLASS OF SECURITIES	(C) NUMBER OF SECURITIES	(D) NAMES(S) IN WHICH SHARES REGISTERED UPON EXERCISE ONLY (Surname first for Individual)	(E) CONSIDERATION UPON ASSIGNMENT

(Please continue on separate sheet if insufficient space available.)

Before signing this notice form, the signatory should make sure all the information disclosed herein is correct. Signature: _____ Date: ☐☐ Day ☐☐ Month ☐☐ Year

CF001 5/91

4. Paragraph 4

If you are a substantial shareholder you should also complete, as appropriate, paragraphs 5, 6, 7, 8 and 9. Relevant share capital is defined in the Ordinance and means a listed company's share capital carrying the right to vote.

5. Paragraph 5

Complete this paragraph only if you are a substantial shareholder.

In order to disclose the reason for disclosure at 5(b), tick the box number corresponding to one or more of the following reasons. For example if you acquire shares which increase the notifiable percentage level then you would tick the boxes numbered "1" and "3". If your acquisition is as a result of a family member acquiring shares you would tick the boxes numbered "1", "3" and "4".

You should note that if you tick the box numbered "8" then you can proceed to paragraph 10 of the form.

Reason for disclosure	Box Number
Acquisition/disposal of an interest in relevant share capital of listed company giving rise to a duty to disclose.	"1"
Initial disclosure	"2"
Change in percentage level of notifiable interest	"3"
Acquisition/disposal of an interest in relevant share capital by a family member (i.e. spouse or children under 18)	"4"
Acquisition/disposal of an interest in relevant share capital by a corporation subject to section 8(2), (3) and (4) (see note 1)	"5"
Disclosure of particulars required by section 7(6) (see note 2)	"6"
Change in particulars required by section 7(6) (see note 2)	"7"
Cease to have notifiable interest	"8"

Note 1:
Section 8(2), (3) and (4) deems you to be interested in shares in the relevant share capital of a listed company that are held by a corporation the directors of which are accustomed to act in accordance with your directions or in which you can exercise one-third or more of the voting rights.

Note 2:
The particulars required by section 7(6) of the Ordinance are the names of and the number of shares held by the registered shareholders.

6. Paragraph 6

You should disclose the name of the person or company with whom you have a joint interest in shares. You should note that the person or company with whom you have the joint interest has to make separate disclosures of their own if they have a notifiable interest.

7. Paragraph 7

You should disclose the interests held by your family members. This is so that the company concerned and the SEHK can distinguish between the shares that you hold absolutely and those that you are deemed to hold as a result of your family relationship. The family member/s concerned will have to make a separate disclosure if the shares they hold or are deemed to hold exceed the notifiable percentage (i.e.10%).

8. Paragraph 8

Disclose your interest in relevant share capital held through other corporations pursuant to section 8 of the Ordinance. If you have any doubts about the consequences of section 8 of the Ordinance you should consult your legal adviser. If these corporations' interests exceed the notifiable percentage of 10% they will have to file separate disclosures.

9. Paragraph 9

The Ordinance requires you to disclose the names and addresses of the registered shareholders of the relevant share capital in which you are interested i.e. the names and addresses of those that hold the voting shares in the listed company disclosed at paragraph 10. If you do not have these particulars this should not prevent you from filing your notification. These particulars can be sent to the SEHK and the company concerned when you obtain them.

10. Paragraph 10

You must disclose all your interests in securities of the listed company and its associated corporations. If you are a substantial shareholder it is here that you disclose the size of that interest. You are referred to the Schedule to the Ordinance and section 28, particularly. If you have any doubt as to what interests have to be disclosed you should consult your legal adviser, immediately. Section 31(1) states that a director or chief executive is taken to be interested in the shares or debentures in which his spouse or child under 18 years of age is interested if they are not themselves a director or chief executive. You should disclose those interests in this paragraph.

In column 10(A) provide the name of the corporation in which the interest subsists.
In column 10(B) give a description of the class of securities in which you are interested e.g. "1992 10% debentures".
Columns 10(C) and (D) are self-explanatory.
In column 10(E) you do not have to disclose what type of transaction was involved but you should provide the date and the consideration per unit.

11. Paragraph 11

From time to time the listed company of which you are a director or chief executive may grant you rights to subscribe for securities. Equally, associated corporations of the listed company may grant you rights to subscribe for securities. Paragraph 11 is to be used to disclose these interests. Part II of the Schedule to the Ordinance sets down the information that has to be disclosed in this paragraph. Section 31(3) requires directors and chief executives to disclose the grant by the company of a right to subscribe for shares in the company to their spouse or child under 18 years of age. You should disclose these matters in this paragraph.
This paragraph also allows you to disclose details of when you exercise or assign rights to subscribe. This information is required by Part III of the Schedule.

YOU SHOULD CHECK THE NOTICE FORM BEFORE SIGNING IT TO MAKE SURE THAT EVERYTHING THAT YOU HAVE STATED IS CORRECT.

APPENDIX 4

COMPARISON OF DISCLOSURE REQUIREMENTS IN HONG KONG AND SINGAPORE

	Hong Kong	**Singapore**
Regulations	Securities (Disclosure of Interests) Ordinance	Companies Act Corporate Disclosure Policy
What securities is concerned?	listed	listed and unlisted
When disclosure is required?		
Shareholding more than	10%	5%
Change in interests	more than same percentage	any change
Agreement to buy shares of a company	✓	x
Who should disclose?		
Substantial Shareholders	✓	✓
Substantial Shareholders' Family	✓	x
Directors & Chief Executives	✓	✓
Directors & Chief Executives' Family	✓	✓
A company that controls > 1/3 voting right of another company	✓	x
To whom it should be disclosed?		
The company	✓	✓
The Stock Exchange	✓	✓ listed company only
Banking Regulator	✓ bank only	x
When disclosure should be completed?		
Substantial Shareholder	5 days	2 days
Directors & Chief Executives	5 days	24 hours
Should the company keep a register for public inspection?	✓	✓
Failure to provide information		
Maximum Penalty	HK$100,000 & imprisonment for 2 years	S$5,000 and S$500 per day if offence persists
Restriction order on shares	✓	✓
Company Investigation		
on shareholding	✓	✓
on ultimate beneficial owner	x	✓

APPENDIX 5

PROPOSED INITIAL SUBSTANTIAL SHAREHOLDER NOTICE

Please refer to the General Notes for general guidance. For completion of specific items, please refer to the Specific Notes. References to Specific Notes are marked [SN#] for ease of reference.

To : Listed Company name : _____ **Stock Code :** _____
The Stock Exchange of Hong Kong Limited

From : Substantial Shareholder *[SN1]*

English & Chinese name (surname first) : _____

_____

Address : _____

_____ Contact no: _____ HKID/Passport No. _____

Additional information required from corporate Substantial Shareholder:

Business registration no. : _____ Place of Incorporation : _____
Registered office : _____
Principal place of business : _____
Person to whom enquiries can be directed : _____ Contact no. : _____
Listing status: (a) □ listed on SEHK or other recognised exchange(s) (b) □ listed on other exchange(s)
(c) □ Not listed *(If (a) applies, go to Paragraph 1; if (b) or (c) applies, complete the following.)*
Issued share capital: _____
Is any of the Substantial Shareholder's shareholder a director of the Listed Company: □ Yes □ No
If yes, state name(s) of the director shareholder(s) and his shareholding in the Substantial Shareholder:

_____

_____

State name and address of person(s) holding 10% or more of the Substantial Shareholder's issued shares and/or persons in accordance with whose directions the Substantial Shareholder or its directors are used to act:

Name	*Address*	*% of shares held*

1. **The Notifiable Interest** *[SN2]*

Notice is given that the Substantial Shareholder has on _____ (the "***Relevant Date***") an interest in _____ shares representing _____% of the issued share capital of the Listed Company (the "***Notifiable Interest***"). In calculating this interest, the issued share capital of the Listed Company is taken to be _____ divided into _____ shares of nominal value _____ each.

2. **Particulars of the Notifiable Interest**

(i) Class of issued/unissued* share capital to which the Notifiable Interest relates: *[SN3]* _____

_____

(ii) Number of shares in the Notifiable Interest that are held through derivatives or the interest of which are derived from derivatives: *[SN4]*_____

(iii) Circumstance(s) under which the duty of disclosure arose *(tick the relevant box(es)):*

- ☐ acquisition made on-exchange *[SN5]*
- ☐ acquisition made off-exchange
- ☐ acquisition by way of gift
- ☐ by being a trustee (other than a bare trustee)
- ☐ by being a bare trustee or a nominee of another person
- ☐ by being a beneficiary of a trust other than a discretionary trust
- ☐ by enforcement or exercise of security
- ☐ through a rights issue
- ☐ through a scrip dividend issue
- ☐ through share repurchases made by the Listed Company
- ☐ due to family interest being attributed to Substantial Shareholder under Section [•]
- ☐ due to corporate interest being attributed to Substantial Shareholder under Section [•]
- ☐ by being a party to an agreement to acquire interest in the Listed Company as mentioned in Section [•]
- ☐ by being a controlling shareholder providing cash or other consideration to facilitate acquisition of shares by another person as mentioned in Section [•]
- ☐ by being a settlor of a discretionary trust *[SN6]*
- ☐ Others _____ *(please specify)*

(iv) The capacity in which the Notifiable Interest is held by the Substantial Shareholder: *(please complete the relevant part(s)) [SN6]*

	Nature of interest	*No. of shares concerned*
(a)	as the beneficial owner	_____
(b)	as the legal or registered owner	_____
(c)	as a trustee (other than a bare trustee)	_____
(d)	as a bare trustee or a nominee of another person	_____
(e)	as a beneficiary of a trust not being a discretionary trust.....	_____
(f)	family interest being attributed to Substantial Shareholder under Section [•]	_____
(g)	corporate interest being attributed to Substantial Shareholder under Section [•].....	_____
(h)	as a party to an agreement to acquire interest in the Listed Company as mentioned in Section [•]	_____
(i)	as a controlling shareholder providing cash or other consideration to facilitate acquisition of shares by another person as mentioned in Section [•]	_____
(j)	as a settlor of a discretionary trust	_____
(k)	others _____ *(please specify)*	_____

3. Consideration

(i) Please specify the consideration for the Notifiable Interest or any part of that Interest in Table (a) and/or (b) below. *(If any part of the Notifiable Interest arose or was acquired before the Relevant Date, include information up to four months before the Relevant Date).*

(a) Regarding interests in shares other than interests held through derivatives (if any):

Acquisition Date/ Date interest arose	*On-exchange (state name of exchange)*	*Off-exchange*	*no. of shares*	*Highest price*	*Average price*	*non-cash consideration*

(b) Regarding interests in shares held through derivatives (if any):

Acquisition Date/Date interest arose	*On-exchange (state name of exchange)*	*Off-exch.*	*Description of derivatives (include stock code, if any)*	*No. of units of derivatives*	*Highest price*	*Average price*	*non-cash consider-ation*

(ii) For off-exchange transactions disclosed above, please attach to this Form copies of contracts, agreements, scheme or understanding pursuant to which the Notifiable Interest arose. If there are no such written documents, please attach to this Form a memorandum specifying the material terms of any contracts, agreement, scheme, arrangement or understanding pursuant to which the Notifiable Interest arose. If any part of the Notifiable Interest arose or was acquired before the Relevant Date, include information up to four months before the Relevant Date. *[SN7]*

4. Additional Information on Interest held through Derivatives

If Paragraph 2(ii) applies, please indicate the capacity in which the derivatives are held by the Substantial Shareholder: *(please complete the relevant part(s)) [SN8]*

	Nature of interest	*No. of shares concerned*
(a)	as writer of call option on issued shares.....	_____
(b)	as holder of call option on issued shares.....	_____
(c)	as writer of put option on issued shares	_____
(d)	as holder of put option on issued shares.....	_____
(e)	as holder of derivative call warrants.....	_____
(f)	as issuer of derivative call warrants	_____
(g)	as holder of derivative put warrants	_____
(h)	as issuer of derivative put warrants	_____
(i)	as holder of convertible securities	_____
(j)	as holder of subscription warrants	_____
(k)	long of stock futures	_____
(l)	short of stock futures	_____
(m)	others _____ *(please specify)*	_____

5. Additional Information in relation to Family Interest

If Paragraph 2(iv)(f) applies, please provide information on the spouse and/or children under 18 whose interest in shares in the Listed Company is attributed to the Substantial Shareholder:

Name	*Address*	*Number of shares*

6. Additional Information in relation to Corporate Interest

If Paragraph 2(iv)(g) applies, please provide information on the corporation(s) whose interest in shares in the Listed Company is attributed to the Substantial Shareholder:

Name	*Address*	*Number of shares*

7. Additional Information with respect to Interest being held Jointly

If the Substantial Shareholder holds any part of the Notifiable Interest jointly with any other person(s), please provide information on the other joint holders and their interest in shares in the Listed Company:

Name	*Address*	*Number of shares*

8. Additional Information from Trustee of a Discretionary Trust

If the Substantial Shareholder holds any part of the Notifiable Interest as a trustee of a discretionary trust, please provide information on the trust and settlor(s) of the trust: *[SN9]*

Name of the trust	*No. of shares held by the trust*	*Name and address of settlor*

9. Additional Information from a Party to an Agreement under Section [•]

(i) If Paragraph 2(iv)(h) or (i) applies, please provide information on the other parties to the agreement:

Name	*Address*

(ii) Please attach to this Form a copy of the relevant agreement. If there is no written agreement, please attach to this Form a memorandum specifying the material terms of the relevant agreement, arrangement or understanding. *[SN7]*

10. Declaration

I/We declare that, to the best of my/our knowledge and belief, the information contained in this notice is true and accurate. *The number of pages that are annexed to this notice is_____.

*I/We _____ of _____ _____ am/are giving this notice *on my/our own behalf. / as the agent of _____ and hereby confirm and represent that I/we have been duly authorised to give this notice.

Dated this _____ day of _____

[In the case of a notice given by an individual:]

_____ *[Usual Signature]*
_____ *[Full name]*
_____ *[HKID or Passport No.]*

[In the case of a notice given by a body corporate :]

This notice is given on behalf of _____ [Name of body corporate] by _____ [Name of person signing the notice], _____ [position], who is duly authorised by the board of directors to give this notice.

_____ *[Usual Signature]*
_____ *[Full name]*
_____ *[HKID. or Passport No.]*

** Delete as appropriate*

General Notes

1. *This Form 2 is to be used by a person (individual or corporation) who, after [•], becomes interested in 5% or more of the issued share capital for the time being of a Hong Kong listed company. Please use Form 1 if a person is interested in 5% or more of the issued share capital of a Hong Kong listed company as at [•]; Form 3 if a person's notifiable interest changes by one percentage level; and Form 4 if a person ceases to have an interest in 5% or more of the issued share capital of a listed company.*

2. *References to "Ordinance" is to [Part [•] of the Securities and Futures Ordinance][the Securities (Disclosure of Interests) Ordinance] (Chapter [•] of the Laws of Hong Kong); references to "Section" are to sections of the Ordinance; and references to "Paragraph" are to paragraphs of this Form.*

3. *The term "Substantial Shareholder" is not defined in the Ordinance but is used in this Form and these General and Specific Notes for descriptive purposes only. A substantial shareholder is a person who has an interest in 5% or more of the issued share capital of the listed company named in the Form.*

4. *When making disclosure under this Form, please satisfy yourself on the requirements of the Ordinance, and if in doubt, please seek appropriate legal advice. These General Notes and the Specific Notes are for guidance only.*

5. *Please use block letters (preferably type-written) when completing this Form. If there is insufficient space, please complete your disclosures on separate sheets. Additional sheets must be securely annexed to this Form, clearly marked as "Additional Sheet" and signed by or on behalf of the Substantial Shareholder. Please detach these Notes from the Form prior to submitting it to the listed company and the SEHK.*

6.. *A signed copy of this Form must be filed with the listed company at its registered office or principal place of business in Hong Kong. A separate signed copy of this Form must also be filed with The Stock Exchange of Hong Kong Limited ("SEHK") using one of the following methods :*

By Post -
The SDI Unit
Regulation Division
The Stock Exchange of Hong Kong Ltd.
G.P.O. Box 10023
Hong Kong]

By Hand -
The SDI Unit
Regulation Division
The Stock Exchange of Hong Kong Ltd.
Tower I & II, Exchange Square
Central, Hong Kong

By Fax - Fax No. [•]

7. *The G.P.O. Box set out above is a dedicated P.O. Box for use by the SDI Unit only. Please do not use the general SEHK P.O. Box. For security reasons, no other SEHK fax number should be used. Telephone confirmations of fax notification can be obtained from [•]. Please restrict use of this service to significant or price sensitive notifications.*

8. *Steps should be taken to ensure that a signed copy of this Form reaches the SEHK at the same time as, or immediately after, a similar copy reaches the listed company. A duty of disclosure must be performed within 2 business days next following the day on which the duty arises.*

Specific Notes

1. *Notes on "Substantial Shareholder"*

Information on the Substantial Shareholder and Paragraphs 1, 2, 3 and 10 must be completed in each case. Whether Paragraphs 4 to 9 need to be completed depends on the circumstances of each case.

The section on "Substantial Shareholder" should contain details of the Substantial Shareholder - the person performing a duty of disclosure. This Form may be completed and issued on behalf of a Substantial Shareholder by its duly authorised agent. In such circumstances, the name and details of the agent must also be provided in Paragraph 10. The Substantial Shareholder remains primarily responsible for the information provided.

Notification on a group basis (e.g. on behalf of a corporate group or members of the same family) can be made by using this Form. If notification is given on such basis, all the persons having a duty of disclosure (each being a Substantial Shareholder) must be clearly identified. Details of all such persons and their Notifable Interest as required in this Form must be disclosed in a clear and orderly manner to ensure clarity and facilitate public dissemination of disclosed information by the SEHK. If appropriate, a corporate or family chart may be annexed showing how each Substantial Shareholder is interested in the interest being disclosed, and their relationship with respect to each other.

2. *Note to Paragraph 1*

The Relevant Date refers to the date on which the duty of disclosure arises. If the Substantial Shareholder has or is deemed to have an interest in unissued shares through derivatives, such shares should be taken into account in determining the amount and percentage of the Notifiable Interest. Reference to the "issued share capital" of the Listed Company means the total nominal value of the issued share capital of the Company as at the Relevant Date.

3. *Note to Paragraph 2(i)*

If any part of the Notifiable Interest relates to both the issued and unissued shares of the Listed Company, please specify the class of share capital to which the issued and unissued shares relate.

4. *Note to Paragraph 2(ii)*

If any part of the Notifiable Interest consists of interest in shares held through or derived from derivatives, disclose the number of underlying shares to which the derivatives relate. If Paragraph 2(ii) applies to the Substantial Shareholder, Paragraph 3(i)(b) and 4 must be completed.

5. *On-exchange -v- off-exchange acquisitions*

An acquisition is made "on-exchange" when the transaction took place in the ordinary course of trading of a stock market of a recognised stock exchange or of a futures market of a recognised futures exchange. The reverse applies to an "off-exchange" acquisition. "Ordinary course of trading" in this context, does not include transactions carried out as a "cross" or "special".

6. *Note to Paragraph 2(iv)*

If the Substantial Shareholder holds the Notifiable Interest in more than one capacity, please specify the nature of his interest and indicate the number of shares to which the nature of interest relates.

7. *Notes to Paragraph 4(e) and 9(ii)*

If a memorandum is attached specifying the material terms of any agreement, arrangement or understanding, the material terms should include the name and address of the parties to the agreement, arrangement or understanding. In the case of unlisted derivatives, principal terms such as exercise or conversion price,

expiration date and exercise period should be disclosed. The memorandum must be certified as the true copy of the original by the Substantial Shareholder or the duly authorised agent responsible for filing this Form.

8. *Notes to Paragraph 4(i)*

If derivatives are held by the Substantial Shareholder in more than one capacity, please specify the nature of his interest and indicate the number of underlying shares to which the nature of interest relates.

9. *"Settlor" of a discretionary trust*

The term "settlor" is defined in the Ordinance.

APPENDIX 6

SUMMARY OF CONSULTATION CONCLUSION OF PROPOSED AMENDMENTS
TO THE SECURITIES (DISCLOSURE OF INTERESTS) ORDINANCE

The principal conclusions reached by the SFC regarding the 12 specific areas of consultation contained in the Consultation Paper are summarised as follows:

(1) ***Disclosure threshold*** : Reduce the initial substantial shareholding disclosure threshold from 10% to 5% (pages 13 to 15). No change is made to the original proposals set out in the Consultation Paper.

(2) ***Notification Period*** : Shorten the disclosure notification period from five days to three business days (pages 15 to 18). It was originally suggested that the notification period should be reduced to two business days.

(3) ***Timing of Notification to the Stock Exchange and listed companies*** : Remove the requirement that notification of an interest in shares must be made to the Stock Exchange (***"SEHK"***) prior to notifying the listed company concerned (pages 18 and 19). No change is made to the original proposal.

(4) ***De minimis change exemption*** : Exempt substantial shareholders from the obligation of disclosure when their interests in shares fluctuate by a de minimis amount across a particular percentage level (pages 19 and 20). No change is made to the original proposal contained in the Consultation Paper.

(5) ***Details of registered shareholders*** : Remove the existing provisions requiring substantial shareholders to disclose the particulars and shareholdings of registered holders, and to disclose any change in their particulars (pages 20 and 21). No change is made to the original proposal.

(6) ***Consideration and terms of agreements*** : Substantial shareholders will be required to disclose the consideration payable or receivable by them in acquiring or disposing of interests in shares, whether the transactions take place on-exchange or off-exchange. It is, however, not necessary to disclose consideration in relation to dealings in derivatives as originally proposed (see paragraph (11)(g) below). Further, there is no need for substantial shareholders and directors to disclose agreements or the terms of agreements relating to off-exchange transactions as suggested in the Consultation Paper (pages 21 to 24).

(7) ***Disclosure of persons who control corporate substantial shareholders*** : When performing a duty of disclosure, an unlisted corporate substantial shareholder will be required to disclose the details of any person in

accordance with whose directions or instructions it or its directors are accustomed to act. The proposal that substantial shareholders should also disclose details on its shareholding structure and persons holding 10% or more shares in its issued share capital has been dropped (pages 25 and 26).

(8) ***Discretionary trusts*** : When performing a duty of disclosure, a *"settlor"* of a discretionary trust will be deemed to be interested in the shares held by the trust and may, as a result, be under a separate duty of disclosure. A revised proposed definition of *"settlor"* is included in this Paper. The proposal that trustees of discretionary trusts should be required to disclose the identity of settlor(s) of the trust has been dropped (pages 27 to 30).

(9) ***"Concert party agreements"*** : Extend the scope of a *"concert party agreement"* under section 9 of the Ordinance to include any arrangement under which a controlling shareholder of a listed company provides any loan or security to another person on the understanding, or with the knowledge, that the loan or security will be used or applied to facilitate the acquisition of an interest in shares of the same listed company by that other person (pages 30 and 31). No change is made to the original proposal set out in the Consultation Paper.

(10) ***Investment managers and trust companies*** : Remove the exemption currently made available to Hong Kong registered investment managers and trust companies under the Securities (Disclosure of Interests)(Exclusions) Regulations (pages 32 to 37). No change is made to the original proposal.

(11) ***Derivatives*** :

(a) ***Derivatives in respect of unissued shares***: Extend the scope of derivative interests to cover those in respect of unissued shares (page 38).

(b) ***Calculation of derivative interests***: Use the last known total number of issued shares of a listed company as the denominator or the basis for calculating the percentage of derivative interests (page 39).

(c) ***Short positions of derivatives***: Require disclosure of short positions of derivatives (e.g. the writing of a call option and the holding of a put option (pages 39 and 40)).

(d) ***Netting-off between long and short positions***: Netting-off between long and short positions of derivatives would not be allowed (pages 40 and 41).

(e) ***Stock futures and purely cash-settled derivatives***: Require disclosure of interests derived from stock futures and purely cash-settled derivatives (pages 41 to 43).

(f) ***The three options relating to aggregation of interests***: Adopt Option 3 as set out in pages 46 and 47 of the Consultation Paper for the purpose of aggregating derivative interests (page 43).

(g) ***Consideration and terms of agreements of derivatives transactions***: The original proposal is changed so that an exemption will be created for derivatives transactions. The proposal would not require disclosure of the consideration, the strike price, the option premium or the option price of a derivative. However, it is still necessary to disclose the exercise period, the expiry date and the number of underlying shares in the notifiable interest that are held through derivatives or the interest of which is derived from derivatives (page 44).

(h) ***Changes in the nature of an interest***: Require disclosure of all changes in the nature of an interest in share, whether resulting from an exercise or expiry of a derivative or otherwise, even if the percentage of interest remains unchanged (pages 44 and 45).

Apart from paragraph (g) above, no changes are made to the original proposals regarding disclosure of derivatives.

(12) ***Disclosure Forms*** : As mentioned in the Consultation Paper, new prescribed notification forms will be designed to enable substantial shareholders and directors to file their notifications systematically (pages 46 and 47).

The Consultation Paper also invited the public to comment on two general issues: first, the disclosure of share pledges made by substantial shareholders in favour of their creditors; and secondly, the practical difficulties that the proposed changes may create for bona fide stock lending and borrowing activities. Having considered public views on these issues, the SFC has formulated its policies as summarised below.

(13) ***Disclosure of pledges of shares*** : Under the existing Ordinance, substantial shareholders who pledge shares as security for loans are not required to disclose interests subject to the pledges unless they have defaulted on the loans, lenders have enforced the security under the pledges, and such actions have resulted in a change in the interest of substantial shareholders in a listed company. The SFC has considered the arguments for and against requiring substantial shareholders to disclose pledges of shares before the enforcement of security by lenders. On balance, the SFC does not consider that it is appropriate to impose such requirement. Reasons for this are set out in pages 47 to 50 below. However, the SFC proposes that provisions should be included in the Ordinance clarifying the circumstances under which lenders would be regarded as having enforced security under share pledges.

(14) ***Stock borrowing and lending*** : The current position under the Ordinance with respect to stock borrowers would remain the same, i.e. a stock borrower is regarded to have acquired an interest in the borrowed shares, and as a result, would need to disclose his interest as a substantial shareholder should his interest exceeds the disclosure threshold. However, the proposal under

paragraph (11)(h) above will affect the disclosure obligation of a stock lender. As the *"loaned"* shares are regarded as a disposal of interests by the lender with a right to call for delivery of the same number of shares, the share lending transaction will be regarded as a change in the nature of the interests and, disclosure is required accordingly (pages 51 and 52).

Apart from the above, the SFC also wishes to raise the following points:

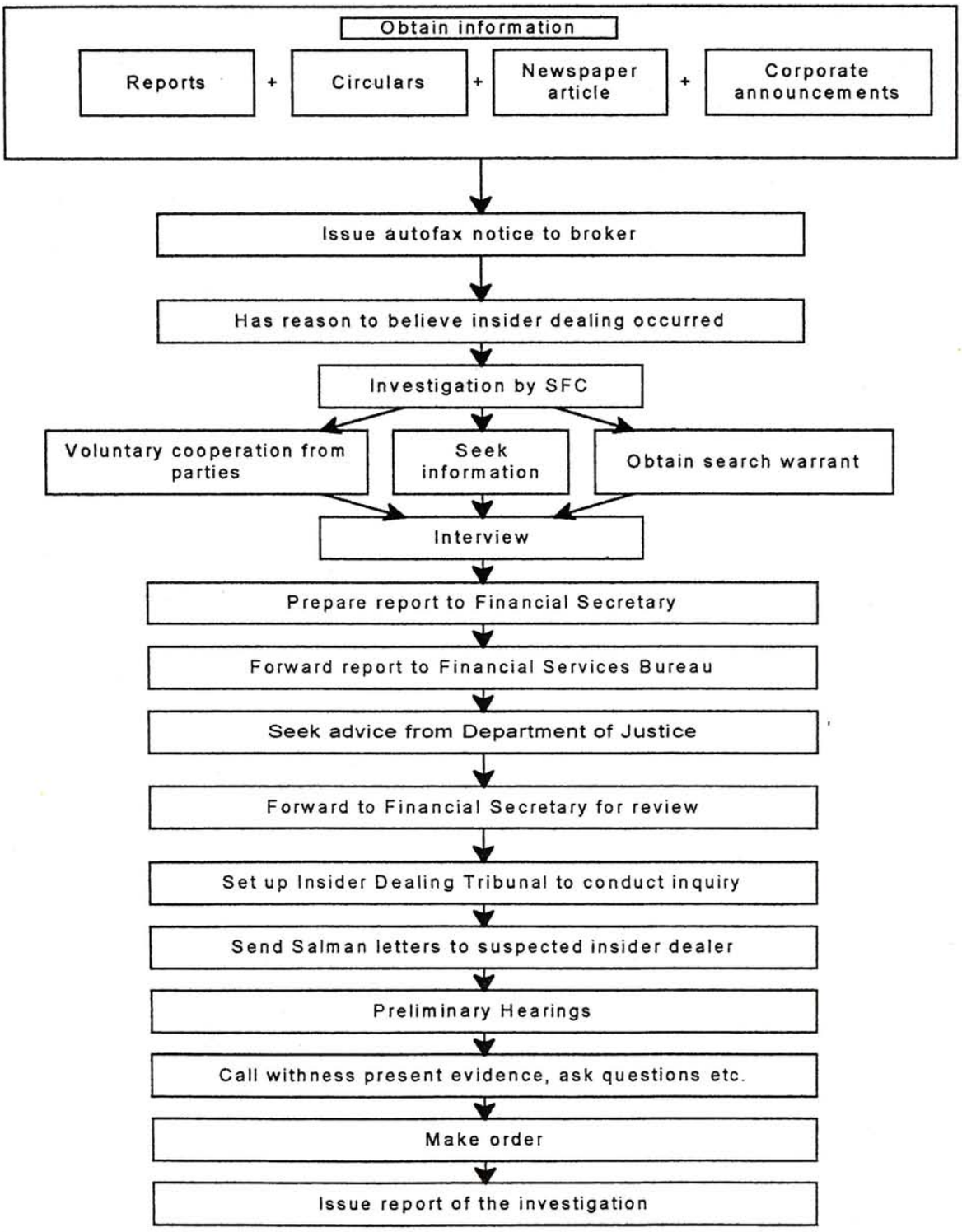
(15) ***Clarification of the "bare trustee" exemption:*** Whilst the SFC cannot give authoritative guidance on how the courts will interpret the Ordinance, in practice, the SFC would regard a *"bare trustee"* as someone whose interest in shares is entirely *"passive"*, i.e. a person who holds property in trust for the absolute benefit and at the absolute disposal of other persons, and who has no present beneficial interest in the property and no duties to perform in respect of it, except to convey or transfer it to persons entitled to hold it, or in accordance with such persons' directions. The exemption is accordingly, very narrow (page 35).

(16) ***Disaggregation of group interests for investment managers, custodians and trustees:*** The SFC recognises that substantial shareholders whose interests in shares are derived from their business of managing the investments of other persons or safeguarding the assets belonging to other persons, should be treated differently from shareholders who control, or seek to influence the control of, interests in shares. Accordingly, the SFC proposes that where the organisational structure of a corporate group is such that the voting and investment powers over interests in shares held by a company which carries on the business of an investment manager, a custodian, or a trustee are exercised by it independently from its holding or related entities, then aggregation of interests held by such a company with those held by its holding or related entities is not required. The SFC suggests that the Ordinance should be amended to allow *"disaggregation"* of group interests as mentioned above. This proposal is made with the view to reduce the compliance burden of corporate groups which have investment managers, custodians, and trustees (wherever incorporated or registered) within their structures (pages 35 and 36).

(17) ***Clarification on interests which subsist by virtue of any authorised unit trusts and mutual fund corporations:*** In view of the uncertainty regarding the scope of section 14(1)(b)(i) of the Ordinance, the SFC proposes that the Ordinance be amended to clarify that (i) interests held by a person as the trustee of a collective investment scheme authorised by the SFC will be disregarded for the purposes of disclosure; (ii) interests held by a holder of such a scheme will also be disregarded; and (iii) interests held by the fund manager or *"operator"* of such a scheme may be *"disaggregated"* from those of its group members on the basis as set out in paragraph (16) above (pages 36 and 37).

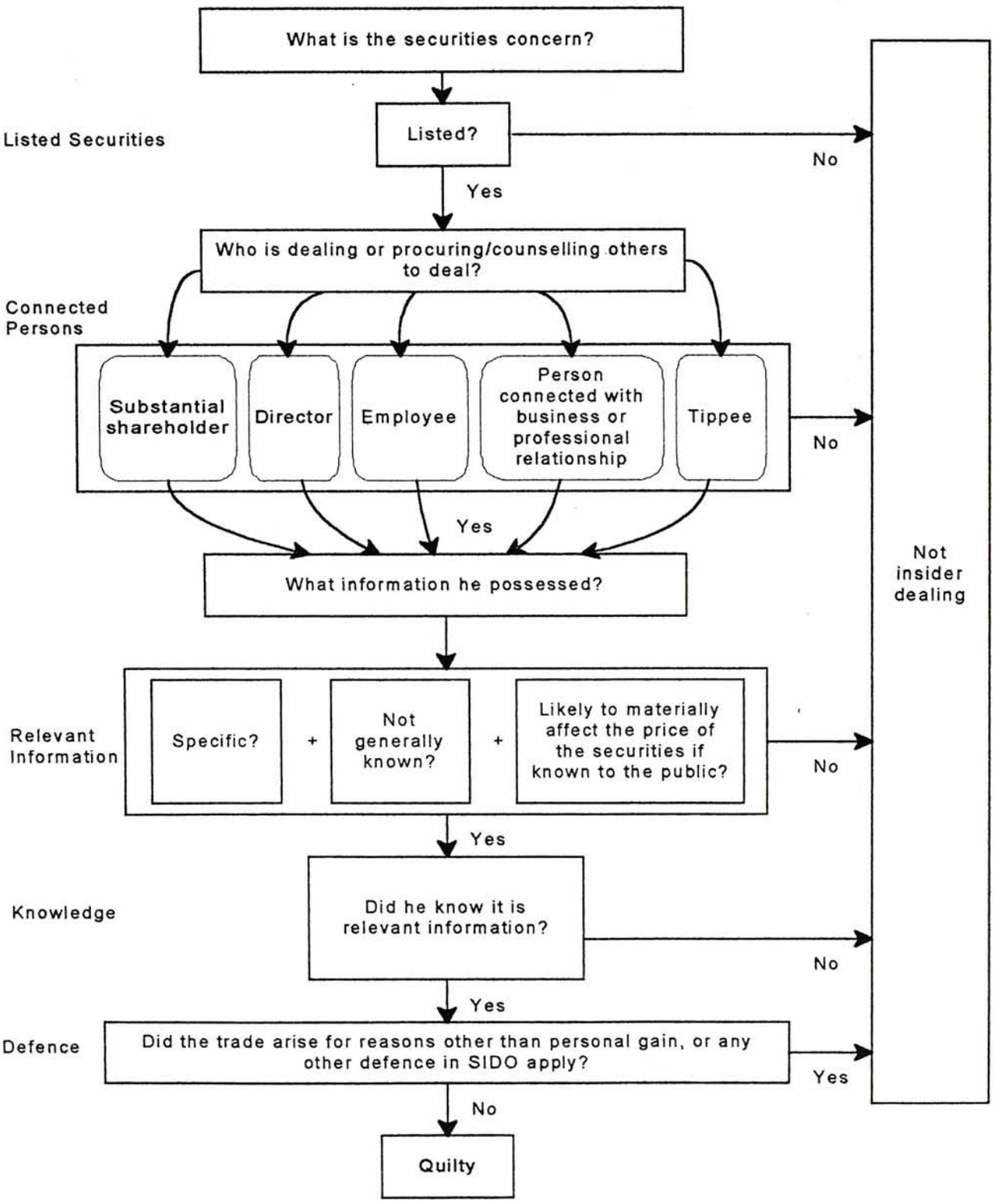
APPENDIX 7

INVESTIGATION PROCESS OF INSIDER DEALING IN HONG KONG



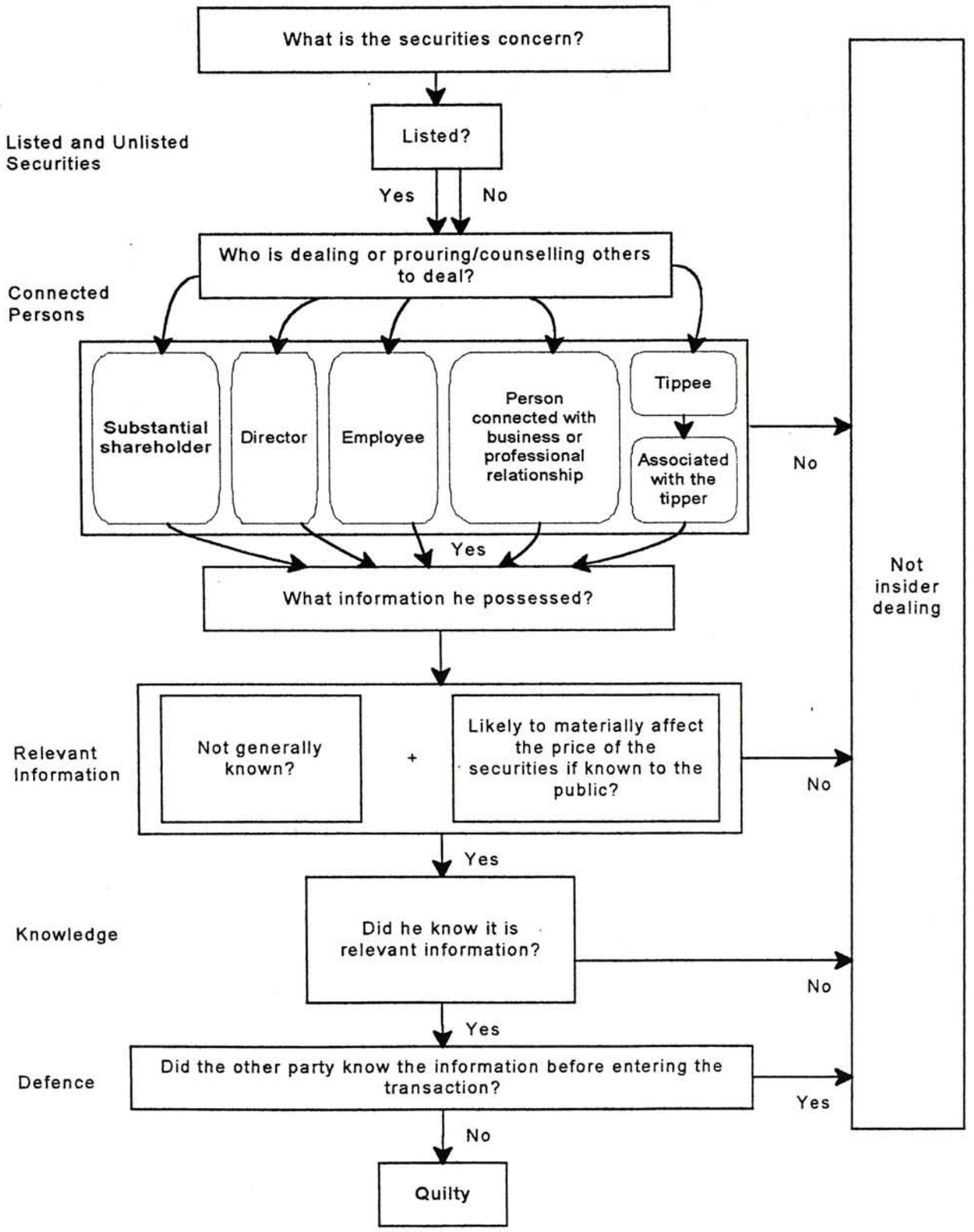
APPENDIX 8

INSIDER DEALING – WHEN IT TAKES PLACE IN HONG KONG?



APPENDIX 9

INSIDER DEALING – WHEN IT TAKES PLACE IN SINGAPORE?



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