

China Corporate Bulletin

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PRC

China Strengthens the Control over Foreign Representative Offices

On January 15, 2010 the State Administration for Industry and Commerce ("SAIC") and the Ministry of Public Security jointly promulgated the *Circular Regarding Strengthening the Administration for the Registration of Representative Offices of Foreign Enterprises* (the "Circular"). According to the Circular, the authorities want to strengthen their management over foreign representative offices because a few of the offices have been found to amend their registration details without approval and conduct activities in violation of the regulations. Highlights of the measures are:

- During the procedures to establish or change the name of a representative office, the applicant must provide the offshore parent company's certificate of incorporation and a bank reference letter, both of which must now be notarized and consularized. Additionally, the certificate of incorporation must now show that the parent company has been in existence for at least two years;
- The Circular reiterates that a representative office's registration certificate, which serves as proof of the office's lawful establishment, can only have a one-year term. This term has not been strictly implemented. The local registration authorities have often issued registration certificates that are valid for more than one year. The Circular emphasizes that registration certificates issued with a term exceeding one year should be exchanged for a corrected version.
- Whereas there had been no restriction on the maximum number of representatives allowed in a representative office, the Circular now sets that number at four (including the chief representative). Because foreign employees of a representative office must be registered as "representatives" for the purpose of obtaining their work permit in China, this restriction effectively caps the number of foreign employees at four.

Please refer to the full Chinese text of the Circular at:
http://www.saic.gov.cn/zw/gk/zyfb/lhfw/lhfw/wstzqyj/201001/t20100115_79464.html

China Vows to Improve Foreign Investment

On December 30, 2009 the Chinese government announced, during the State Council Executive Meeting, that China will take the following steps with respect to foreign investment:

1. The government will revise the *Catalogue of Industries for Guiding Foreign Investment* to broaden the scope of industries that are open to foreign investment, and to encourage foreign investments in the areas of advanced manufacturing, high-technology, modern services, clean technology, energy-saving and environmental protection;

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If you have questions or comments regarding this bulletin, please contact:

Seung Chong
 Partner
 + 852 2822 8422
schong@whitecase.com

John Leary
 Partner
 + 86 21 6132 5910
jleary@whitecase.com

Jeremy Leifer
 Partner
 + 852 2822 8753
jleifer@whitecase.com

Vivian Tsoi
 Partner
 + 86 10 5912 9620
vtsoi@whitecase.com

2. The government will guide foreign companies to invest in the middle and western regions of China by promulgating a series of supportive measures;
3. The government will encourage the injection of foreign capital into the restructuring and reorganization of domestic Chinese enterprises through mergers and acquisitions. It plans to do so by accelerating the utilization of foreign capital for the establishment of credit guarantee companies for small and medium sized enterprises, broadening the domestic financing channels for foreign invested enterprises, and guiding the financial institutions to increase their support for foreign invested enterprises through RMB loans.
4. The government will further simplify and increase the transparency of foreign investment approval procedures; and
5. The government will simplify the procedures for converting foreign exchange capital into local currency.

The above five areas published by the State Council set out a roadmap for its policy on the development of China's foreign investment in 2010.

Please refer to the full Chinese text of the State Council Executive Meeting discussing China's foreign investment policy at: http://www.gov.cn/lidhd/2009-12/30/content_1500149.htm

China Removes Its Local Content Requirement for Wind Equipment

On December 25, 2009, the National Development and Reform Commission ("NDRC") promulgated a circular (NDRC Energy [2009] No. 2991) that removed its requirement that all wind farm projects in China must use at least 70 percent domestically manufactured wind equipment. According to the circular, wind farm projects must purchase wind equipment through public bidding, starting from the date of the circular.

Local content requirements for wind equipment had been in place in China for over a decade. The NDRC established 40 percent and 50 percent requirement levels in 1995 and 2003, respectively, and increased that figure to 70 percent in 2005. These requirements aimed to protect and encourage the growth of local wind turbine manufacturers in their initial developmental stages.

The removal of the local content requirement may be important for foreign wind turbine manufacturing companies with superior technology and know-how that want to enter the Chinese wind energy industry. This is because although the domestic wind manufacturing sector has significantly progressed over the last few years, there is still an insufficient number of manufacturers that have the capabilities needed to produce larger capacity whole wind turbines (2MW and above) and key components. The removal of the local content requirement allows more foreign competition in the

domestic wind energy market and may promote the market's development towards more advanced, higher capacity and better quality wind turbines.

The full text of the circular in Chinese language can be found at: http://www.sc.gov.cn/zwgk/gggs/jm/200912/t20091223_875555.shtml

Hong Kong

Publication of First Phase Consultation Paper on the Companies Ordinance Rewrite

The Hong Kong Companies Ordinance ("CO") was last substantially reviewed and amended in 1984, bringing it broadly in line with the Companies Act 1948 in England and Wales. Some changes have been made since then, such as those introduced in the Companies (Amendment) Ordinance 2004, but these changes have on the whole been piecemeal. In 2006, a major and comprehensive exercise to reform the CO was launched and the first phase consultation paper was released in December 2009. The consultation paper seeks to canvass the views of the general public in relation to, amongst other things, corporate governance, director interests, derivative actions and the registration of charges. A second consultation phase is due to be launched in the first half of 2010 and will cover the winding-up and insolvency-related provisions.

The key principles guiding the reform and subsequent amendments, as a whole, are:

1. catering for small and medium sized enterprises;
2. enhancing corporate governance;
3. complementing Hong Kong's role as an international business and financial centre; and
4. encouraging the use of information technology.

The key changes proposed in the first consultation paper are:

1. Enhancing Corporate Governance: The proposed changes include (i) codifying the current common law duties of care owed by directors to companies; (ii) restricting the use of corporate directors; (iii) issuing a comprehensive set of rules for proposing and passing written resolutions; (iv) strengthening auditor's rights; and (v) enhancing shareholder remedies.
2. Ensuring Better Regulation of Hong Kong Incorporated Companies: The proposed changes include (i) introducing electronic incorporation of companies; (ii) removing the share qualification requirement for directors; (iii) amending the registration of charges regime, such that the particulars of a

charge will be available to the public, as well as shortening the period to register a charge from five weeks to 21 days; (iv) improving the enforcement regime to give the Registrar power to obtain documents, records and information, as part of the enforcement of certain provisions; and (v) with regards to the offence provisions under the CO which punish not only the Company but also its officers, to replace the phrase "officer in default" with "responsible person", thereby widening the number of people who could be held responsible, as well as widening the definition of default to include acts of omission or negligence.

3. Simplifying Company Procedures to Lower Running Costs:
The proposed changes include (i) widening the scope of companies which can take advantage of simplified reporting requirements; (ii) introducing an alternative court-free procedure for reduction of capital based on the solvency test; (iii) allowing all companies to purchase their own shares regardless of the source of funds, subject to a solvency test; (iv) simplifying financial assistance provisions; and (v) introducing a court-free statutory amalgamation procedure for wholly-owned intra-group companies.

The consultation paper also seeks to get the views of the public on topical issues, such as:

1. Whether the "headcount" test (whereby a vote is carried out on the basis of the number of people attending a meeting without any reference to the number of shares they own) for approving a scheme of arrangement or compromise (for both listed and non-listed companies) contained in Section 166(2) of the CO should be retained or the court given the discretion to dispense with the test, or abolished.¹
2. Whether details of directors' residential addresses and identification numbers should continue to be disclosed, or, subject to directors providing reasonable justification, the HKCR being able to exercise discretion as to whether to disclose the information or not.
3. Whether the current stringent regulation of a directors' fair dealings of private companies associated with a listed or public company should be maintained, or extended to non-listed public companies or relaxed. Currently, a private company that is a member of a group of companies which includes a listed company is subject to the same (and more burdensome) regulation in respect of prohibitions on loans, quasi-loans and credit transactions in favor of directors or directors of its holding company or another company controlled by one or more of its directors.

¹ The consultation on the issue was in response to a recent court case in Hong Kong where this issue arose.

4. Whether the common law derivative action as preserved under section 168BC(4) of the CO, should continue to be preserved or whether the statutory derivative action should be extended to cover multiple derivative actions. The abolition of the common law derivative action would remove the right of members of non-Hong Kong companies to seek derivative actions in the Hong Kong courts even if Hong Kong is the appropriate jurisdiction for the hearing of the matter ("*forum conveniens*") and it is permitted under the rules in the country of incorporation of the companies in question.

The first consultation phase is due to close on March 16, 2010.

Companies (Amendment) Bill 2010

On January 22, 2010, the Companies (Amendment) Bill 2010 (the "**Companies Bill**") and the Business Registration (Amendment) Bill 2010 (the "**BR Bill**") were both gazetted in Hong Kong. Both were scheduled for introduction into the Legislative Council for their first reading on February 3, 2010. The introduction of the Companies Bill comes ahead of the Government initiative to rewrite the Companies Ordinance (Cap. 32 of the Laws of Hong Kong) ("**CO**"), as there is a need to amend the CO in parallel with the development of ICRIS II (see below), whilst at the same time taking advantage of the opportunity to implement other changes in law. The proposed changes to the CO contained in the Companies Bill and to the Business Registration Ordinance (Cap. 310 of the Laws of Hong Kong) ("**BRO**") contained in the BR Bill are set out below.

Streamlining the Company Formation Procedures

Expedited Incorporation Process

It is proposed that amendment be made to the CO to facilitate Phase II of the Integrated Companies Registry Information System ("**ICRIS II**") currently being developed by the Hong Kong Companies Registry ("**HKCR**") which is expected to come into operation in late 2010/early 2011. This will enable on-line applications for company registration (i.e. local company incorporation and registration of non-Hong Kong companies) and filing of company documents. The CO amendments will relate to changes in the registration procedure, e.g. to allow the signing of incorporation forms using passwords, streamline the attestation requirements for signatures by founder members and facilitate the issue of certificates of incorporation/registration by electronic means, etc.

Expedited Change of Company Name Approval Process
Changes will also be made to the change of company name approval process so that a company name will be accepted for registration instantaneously if it satisfies certain preliminary requirements i.e. that it is not identical to another name on the register and does not contain certain specified words or expressions. The new procedure will shorten the processing time for company incorporation from four working days to one day. This will put Hong Kong on a par with comparable jurisdictions like the United Kingdom and Singapore.

Extension of the Powers of the HKCR to Direct a Change of Company Name

To address the concerns that Hong Kong's laws for the protection of trademark / brand name owners should be strengthened, the company name registration system will be enhanced to improve enforcement against possible abuses by "shadow companies" (i.e. Hong Kong companies with names very similar to existing and established trademarks or trade names of other companies and which may pose as representatives of the owners of such marks or names to produce counterfeit products in Mainland China bearing these marks or trade names). This will be achieved by giving the HKCR the power to act under a court order to direct a "shadow company" to change its name. The HKCR may substitute the company's name with its registration number if it fails to comply with the HKCR's direction to change its name. The same power to substitute names of a company will be given to the HKCR where a company fails to comply with a direction to change its name that is too like that of another company on the register.

Deemed Simultaneous Application for Business Registration

On the implementation of ICRIS II and electronic incorporation of companies by the CR, any person who submits an application for company registration will be deemed to have applied for business registration at the same time. The CR will issue the business registration certificate on behalf of the Commissioner of Inland Revenue ("IRD") together with the certificate of incorporation / registration to the applicant. With simultaneous application in place, an on-line application for registration of a local company and business registration will be completed through a single step and within one day, compared with the current average of four working days to complete the two registrations under the existing system. The BRO will therefore be required to be amended e.g. to provide that a person who makes an application for company registration is deemed to have also made an application for business registration.

Electronic Communications with Any Person Other Than the Registrar

Amendments have recently been made to the Listing Rules of The Stock Exchange of Hong Kong Limited ("SEHK") to allow a listed issuer to send corporate communications to its shareholders by making them available on the listed issuer's website if the shareholders agree, or are deemed to have so agreed. It is proposed that the CO be amended so that a Hong Kong company can also make use of its website to communicate with its shareholders. It is proposed that the CO be amended to generally enable documents or information to be sent or supplied by a company to anyone other than the HKCR under the CO through electronic means. It is however proposed that shareholders' rights be preserved to request a company to deliver hard copies of documents to them free of charge and allow individual shareholders to choose not to communicate with companies electronically.

Exempting Listed Companies from Giving Notice of Closure of Register of Members by Advertisement in a Newspaper

Section 99(1) of the CO requires a Hong Kong incorporated company to give notice of closure of its register of members / debenture holders by advertisement in a newspaper. However, the Listing Rules require a listed company to publish its notice of closure of register of members on the SEHK's website instead of in a newspaper (see Rules 2.07C and 13.66 of the Main Board Listing Rules). As a result, a listed company incorporated in Hong Kong is required to publish its notice of closure of register of members both in a newspaper and on the SEHK's website. It is proposed that the CO be amended to allow listed companies to give notice of closure of registers of members / debenture holders in accordance with the Listing Rules.

Providing for Multiple Statutory Derivative Actions

The statutory derivative action ("SDA") procedure contained in the CO allows a member of a company to bring an action or intervene in the proceedings on behalf of the company in respect of "misfeasance" (i.e. "fraud, negligence, default in compliance with any enactment or rule of law, or breach of duty" in Section 168BB(2) of the CO) committed against the company. The CO only gives members of the company a right to seek leave to commence a SDA, i.e. only "simple" derivative actions as opposed to "multiple" derivative actions (i.e. allowing a member of a related company to commence or intervene in SDA on behalf of the company) can be taken. It is proposed that, in view of a recent court case of *Waddington Ltd. v Chan Chun Hoo* CACV No. 220 of 2005 in which both the Court of Appeal and the Court of Final Appeal ruled that a "multiple" derivative action is maintainable in Hong Kong under the common law and considered it appropriate for the CO to be extended to cover "multiple" SDA, it is proposed that the CO be amended to expand the scope of SDA to cover "multiple" derivative actions.

Amendments to Remove Obstacles to the Introduction of Paperless Holding and Transfer of Shares or Debentures

It is proposed that amendments to the CO be made to remove, or provide exceptions to, the limitations arising from provisions in the CO that compel the use of paper documents of title and paper instruments of transfer in relation to shares and debentures. This would be a step in the legislative process to allow for the development of a scripless market in Hong Kong. The SFC is currently working with the SEHK and the Federation of Share Registrars on a proposed operational model for implementing a scripless market and have issued a consultation paper on the proposed model on December 30, 2009.

Hong Kong High Court Clarifies Certain Ingredients Constituting the Offence of Failing to Disclose an Interest in Shares of a Listed Corporation

In a recent judgment the Hong Kong High Court has clarified certain ingredients constituting the offence of failing to comply with the duty of disclosure that arises when a person acquires a notifiable interest in shares of a listed corporation, within the time period required by the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (“SFO”). The judgment was given in relation to an appeal from conviction at first instance in criminal prosecution proceedings brought by the Securities and Futures Commission (“SFC”). The defendant’s appeal was dismissed.

The prosecution had been brought under section 328(a) of the SFO (*Offences for non-compliance with notification requirements*) which provides that a person who *without reasonable excuse* fails to perform within the prescribed period the duty of disclosure arising under the Division 2 of Part XV of the SFO commits an offence and is liable on conviction (i) on indictment to a fine of HK\$100,000 and to imprisonment for two years, or (ii) on summary conviction to a fine of HK\$10,000 and to imprisonment for six months.

“Without Reasonable Excuse”- Burden of Proof

One of the questions raised by the appellant (defendant) was where should the burden of proof lie in proving “*without reasonable excuse*” in section 328(a). The appellant argued that the lower court had erred in law in imposing the evidential burden upon the appellant to prove “reasonable excuse” in relation to his failure to perform the duty of disclosure. Conversely, the SFC argued that the burden of proof was on the appellant on the balance of probabilities, or alternatively that the lower court was correct in construing the SFO as imposing an evidential burden on the appellant to raise the issue of reasonable excuse, and in finding that the burden was not discharged. The court held that “the ingredients of the offence alleged against the appellant require proof by the prosecution of knowledge in the appellant of the occurrence of the relevant event. It is only with that knowledge, that culpability is imposed in

consequence of a failure to make disclosure of a notifiable interest. The prosecution was required to prove beyond reasonable doubt that the appellant (i) acquired an interest in the issued share capital of [the listed corporation] and (ii) failed to give the requisite notice, if the interest is a notifiable one, within three business days of *knowing* of the occurrence of that event or otherwise, of *coming to know* of its occurrence. [Italics added]”.

The Court held that there was no compelling reason to justify removing the presumption of innocence by imposing the persuasive burden of proof (i.e. the substantive burden) on the appellant. Instead the Court adopted the approach of imposing an evidential burden on the appellant to point to evidence that raised the issue of *reasonable excuse* for his failure to make the required disclosure. There must be evidence in support of a *reasonable excuse* which was sufficiently substantial that it raised a reasonable doubt as to the defendant’s guilt. Unless such reasonable doubt was removed, the prosecution would have failed to prove its case. If, on the other hand, the accused failed to bring or point to any evidence on the issue or if the evidence brought was rejected or was not sufficiently substantial to raise a reasonable doubt, the *reasonable excuse* part of the offence would not stand in the way of the prosecution proving its case beyond reasonable doubt.

In the event the lower court had been correct in determining that there was no evidence whatsoever as to why the appellant failed in his duty of disclosure, that there was no reasonable excuse for him not making the required disclosure and finding him guilty of the offence.

Whether an Offence of Strict Liability

The SFC had sought to argue during the appeal that section 328(a) of the SFO was an offence of strict liability. The Court rejected this argument, by referring to the language of section 325(1)(a) and (b) of the SFO (*Time of notification*), which provides that where the duty of disclosure arises, notification is to be given (a) in the case that at the time at which the relevant event occurs the person concerned *knows of its occurrence*, within three business days after the day on which the relevant event occurs; or (b) otherwise, within three business days after the day on which the occurrence of the relevant event *comes to his knowledge*. Given this, the Court held that *knowledge of the occurrence of the relevant event*, namely the acquisition of an interest in listed shares, is an ingredient of the offence contained in section 328 of the SFO. As such, the offence is not one of strict liability.

SEHK Adds British Virgin Islands to the List of Acceptable Jurisdictions for Listing

The SEHK published a decision of the Listing Committee on December 15, 2009 pronouncing the British Virgin Islands (“BVI”) to be an acceptable jurisdiction for an issuer’s place of incorporation under Chapter 19 (*Equity Securities – Overseas Issuers*) of the Listing Rules. It is very common for a BVI incorporated company to

be located under the listed holding company to serve as the sub-holding company for the group operating entities. However, this decision means that subject to satisfying certain requirements (see below), a BVI company can now serve as the listed vehicle for a listing on the SEHK.

Significantly, the Listing Committee decided that future BVI applicants may follow the streamlined process set out in Guidance Letter HKEx-GL12 (published in September 2009) and need not complete a detailed line-by-line comparison with the JPS². The Guidance Letter sets out streamlined procedures for listing overseas companies. It provides that a potential applicant can show that the shareholder protection standards in its home jurisdiction are comparable to the standards of any one of the recognised or accepted jurisdictions, instead of benchmarking directly to Hong Kong standards. In this case, BVI shareholder protection standards were benchmarked against those in the Cayman Islands, being one of the "recognised" jurisdictions. The Committee noted that proposed amendments to a BVI applicant's memorandum and articles of association were substantially similar to those commonly adopted by a Cayman Islands applicant.

In addition, each BVI incorporated applicant will need to satisfy the following requirements:

1. it must amend its constitutional documents to address differences in shareholder protection matters identified in the JPS;
2. it must demonstrate a reasonable nexus between its place of incorporation and its place of business operations;
3. the sponsor must provide a confirmation that it has considered and reviewed all material shareholder protection areas in its due diligence review under Practice Note 21 of the Listing Rules or Practice Note 2 of GEM Rules and it is independently satisfied with the conclusion that the shareholder protection in the BVI is at least equivalent to that in Cayman Islands; and

² The Joint Policy Statement dated March 7, 2007 of the SEHK and the SFC clarifying the Listing Rules' requirements governing the listing of overseas companies, and providing a clear roadmap to assist companies incorporated outside Hong Kong or one of the recognised jurisdictions when seeking a primary listing either on the Main Board or the Growth Enterprise Market. The JPS provided a table of shareholder protection matters representing the key requirements from the SEHK's approach to new applicants from non-recognised jurisdictions. An applicant was expected to provide submissions to demonstrate appropriate shareholder protection standards in the various key aspects under various headings outlined in the table.

4. a legal opinion and a sponsor's confirmation must be provided to confirm that the BVI applicant's constitutional documents do not contain provisions which will prevent it from complying with the Listing Rules and there is nothing in them that will exonerate it from complying with the SFO – Disclosure of Interests and the Hong Kong Codes on Takeovers and Mergers and Share Repurchases.

The approval of the BVI as an acceptable jurisdiction under the Listing Rules is a welcome development that is long overdue and should add significantly to the range of choice of jurisdictions for a holding company available to a potential new applicant for listing.

Consultation Paper on Operational Model for Scripless Securities

On December 30, 2009 the SFC, the SEHK and the Federation of Share Registrars jointly issued a consultation paper entitled "A Proposed Operational Model to Introduce a Scripless Securities Market in Hong Kong" i.e. a market where legal ownership in securities can be held and transferred without paper documents.

Currently, Hong Kong uses physical stock certificates to prove stock ownership. However, a number of leading markets, including the UK, Australia and Mainland China have already implemented a scripless securities market.

Investors on the SEHK can hold and transfer securities in electronic form through the Central Clearing and Settlement System ("CCASS") operated by Hong Kong Securities Clearing Company Limited ("HKSCC"). However, as CCASS is an immobilised securities settlement system, it is only the beneficial interest in the securities that can be held and transferred through CCASS, not legal title which at all times whilst the securities are held within CCASS, is held in the name of the common nominee of HKSCC.

Overall shortcomings associated with the current system are that it is not completely electronic and in some instances paper is still used (e.g. to some extent in IPOs); and that investors hold only the beneficial interest in the securities, a consequence of which is that they do not generally receive corporate actions directly from issuers, nor can they respond directly to the issuers e.g. to exercise voting rights. It is therefore proposed that Hong Kong implement a scripless securities market (or "dematerialization" as it is also commonly known).

Whilst consultations on this question have taken place previously in 2002 and 2003, the rewrite of the CO has provided fresh impetus to progress this project.

The proposed regime will allow investors to hold and transfer securities electronically in their own names. It is intended that the regime be implemented gradually through the use of a dual system where the existing paper-based regime will be retained and run parallel to the new scripless regime. This will allow investors to

transfer from physical certificates to scripless securities in their own time and enable IPO issuers to offer a scripless share subscription. Once it is thought that the market is ready, the public will be consulted again to make the regime compulsory.

The key features of the proposed model are as follows:

- **Register to Comprise Two Parts:** The register of holders will be made up of two parts – an uncertificated sub-register (which will record all holdings in CCASS) and a certificated sub-register (which will record all holdings outside CCASS).
- **Name on Register:** Investors will be able to hold securities in CCASS in their own names i.e. they will have the option to become the legal owner of the securities.
- **Investor Choice:** Investors will be able to choose to hold their securities in scripless or paper form, in their own name or in the name of a nominee, in an account they can control directly, or through an account controlled by their broker, bank or custodian.
- **Share Registrars to Become CCASS Participants:** A new CCASS Participant category “Registrar Participant”, will be introduced. This will allow share registrars to use the existing CCASS infrastructure to communicate directly with other CCASS Participants and handle instructions relating to uncertificated securities. It will also allow the setting up of accounts for holding securities in dematerialised form with the share registrar directly rather than through a broker/bank/custodian or as an Investor Participant.
- **Scope:** The regime will also apply to other listed securities (e.g. derivative warrants, callable bull/bear contracts) of Hong Kong incorporated companies and (to the extent possible) shares and debentures of overseas incorporated companies that are listed or traded on the SEHK.

The consultation period ends on March 31, 2010. Details of the further legislative amendments that are required to support the new model will be discussed in a separate consultation.

The full text of the consultation paper can be seen through the following link:

http://www.hkex.com.hk/consul/paper/cp200912_e.pdf

Amendment to SEHK Listing Rules to Accelerate Rights Issues and Open Offers

On December 18, 2009 the SEHK published its consultation conclusions in connection with its proposals to accelerate rights issues and open offers, details of which were provided in a consultation paper published on July 31, 2009. Amendments have been made to the Listing Rules with effect from February 1, 2010 as follows:

Amendment to Notice Period for Book Closure

Rights Issue

The notice period for book closure for rights issues has been shortened from 14 calendar days to 6 business days (i.e. 5 clear business days). In addition, the issuer must provide at least two uninterrupted trading days for trading in the securities with entitlements (i.e. cum-rights) before book closure and after publication of the notice of book closure. If cum-rights trading is interrupted due to a typhoon and/ or a black rainstorm warning or trading of the issuer's securities is suspended, then where necessary the book close date will be postponed to provide the market with a minimum of two uninterrupted trading days for trading of the securities during the notice period. The required two uninterrupted trading days do not need to be consecutive.

Open Offers

For open offers, the minimum notice period for book closure has been changed from 14 calendar days to 10 business days.

Amendment to Minimum Subscription Period

The minimum subscription period for both rights issues and open offers has been amended from 14 calendar days to 10 business days, and the maximum subscription period amended from 21 calendar days to 15 business days. For those cases where the issuer has a large number of overseas members and a longer offer period is desirable, the SEHK must be consulted.

The SEHK emphasised that the requirements in the Listing Rules are prescribed minimums only. It remains the responsibility of the issuer and its underwriter to ensure that the entire fund raising arrangements and processes are fair and orderly given the particular circumstances, which would include developing and ensuring a timetable which is workable with its share registrar.

The full text of the amendments to the Main Board Listing Rules and GEM Board Listing Rules are available on the SEHK website at: http://www.hkex.com.hk/rule/mbrule/mb95_ari.pdf and http://www.hkex.com.hk/rule/gemrule/gem33_ari.pdf respectively.

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