
資料摘要

英國及美國的規管機構 在加強上市公司的企業管治方面 採取的措施及研究中的建議

1. 背景

1.1 財經事務委員會(下稱“事務委員會”)於 2002 年 3 月 20 日要求資料研究及圖書館服務部(下稱“研究部”),就“海外司法管轄區的規管機構所採取的措施及研究中的建議”進行一項研究,以便事務委員會討論“加強對上市公司的規管及提升公司的企業管治”¹的議題。研究部選取英國及美國為是項研究的對象,因為這兩個國家均擁有具領導地位的環球金融中心(即倫敦和紐約),而且其經驗或會有助事務委員會委員討論這項議題。

2. 英國

金融服務管理局(Financial Services Authority): 倫敦證券交易所的規管機構

2.1 在英國,根據《金融服務及市場法令》(Financial Services and Markets Act)第 VI 部,金融服務管理局²擔任倫敦證券交易所的規管機構³。具體而言,金融服務管理局須負責:

¹ 有關資料載於研究部在 2003 年 3 月 6 日發表的資料摘要(IN15/02-03 號文件),題為“若干海外地方有關企業管治的原則”。

² 根據《金融服務及市場法令》,金融服務管理局為英國的主要金融規管機構,並履行以下 9 項職能:(a)認可符合必要條件(包括誠信、能力及財政健全程度)的金融機構,並審批該些金融機構從事受規管活動;(b)為金融機構制訂審慎監管標準;(c)監管金融機構;(d)監察投資市場及交易所的誠信事宜;(e)執行《金融服務及市場法令》,以保障金融產品及服務的消費者;(f)減少金融罪案;(g)參與國際活動;(h)促進公眾對金融制度的瞭解;及(i)處理消費者的投訴及賠償。

³ 《金融服務及市場法令》在 2000 年 5 月 1 日制定後,金融服務管理局擔當規管倫敦證券交易所的職能。

(a) 批准證券上市

- 金融服務管理局透過審批招股書及上市資料，批核上市的申請。在公司獲准上市前，金融服務管理局須確保發行人⁴已符合《上市規則》⁵所訂的所有相關條件。然而，金融服務管理局不會調查或核實申請人呈交的文件所載的資料是否準確或完整，亦不會查核資料的來源。發行人的董事的基本責任是確保該等文件準確及完整。

(b) 規管保薦人

- 金融服務管理局負責審核保薦人。這些保薦人是向發行人提供若干服務的顧問。金融服務管理局承諾確保該等保薦人已符合《上市規則》的有關規定。

(c) 對發行人施加及執行所須持續遵守的規定

- 金融服務管理局透過在《上市規則》訂明須持續履行的責任，並在《指引手冊》⁶提及該等責任，以及訂定良好企業管治原則⁷的自願性守則(該守則稱為《綜合守則》⁸，內容載於附錄 I)，促使發行人準確及適時地向市場披露所有有關資料。此外，金融服務管理局不會調查或核實所提供的資料是否準確或完整，但會保留要求發行人提供更多資料的權力。
- 根據《金融服務及市場法令》，金融服務管理局獲賦權執行《上市規則》，包括有權就發行人違反《上市規則》的情況施加罰則，以及向在知情的情況下違反《上市規則》的發行人的董事施加罰則。

⁴ 發行人是指正向(或已向)投資者出售證券的公司。

⁵ 《上市規則》是金融服務管理局為執行《金融服務及市場法令》第 VI 部而制定的規則。該等規則刊載於“上市規則”一書內，並不時予以修訂。

⁶ 《指引手冊》已發出，以便使用者瞭解《上市規則》的適用範圍。

⁷ 在英國，由卡德伯里爵士(Sir Cadbury)提出的通用企業管治的定義是“企業管治在於保持經濟及社會目標之間與個人及大眾目標之間的平衡。設立管治架構是為了鼓勵有效率地運用資源，亦同樣為要求管理者就管理此等資源的工作問責，目的是盡量平衡個人、企業和社會的利益。”

⁸ 《綜合指引》附加在《上市規則》內。

(d) 暫停及取消上市資格

- 如沒有足夠資料確保某證券在市場有秩序買賣，金融服務管理局可暫停及取消該證券的上市資格。暫停該證券上市，可保障投資者不會在無法取得該公司的全部及完整資料的情況下進行交易。如某公司的證券出現特殊情況，以致交易不能如常進行，金融服務管理局或會撤銷有關證券的上市資格。

2.2 金融服務管理局在實施《上市規則》及執行第 2.1 段指明的一般職能時，必須顧及根據《金融服務及市場法令》第 73(1) 條訂定的下列原則：

- (a) 需以最有效率及最具經濟效益的方法運用其資源；
- (b) “對某人施加監管造成的負擔或限制，在一般的情況下，應與監管造成負擔或限制後，預計該人因而可獲的利益相稱”的原則；
- (c) 在推動上市證券進行創新方面有好處；
- (d) 對維持資本市場的國際特色及英國競爭地位有好處；
- (e) 在進行任何履行此等職務的工作時，需盡量減低對競爭帶來的不利影響；及
- (f) 對促進與上市證券有關的競爭有好處。

2.3 在執行一般職能時，金融服務管理局考慮以下的目的：

- (a) 簡化發行人的證券上市程序，並同時保障投資者；
- (b) 透過上市規則，特別是有關持續責任的制度，在披露的標準，以及發行人處理事務和整體市場的操守方面，加強投資者的信心；
- (c) 確保上市證券以切合其性質及數量的方式上市，並協助建立一個開放及有效率的市場，以進行該等上市證券的交易；
- (d) 確保發行人在進行上市時及其後，就本身及其上市證券作出完整及適時的披露；及

- (e) 確保上市股本證券的持有人，在公司的業務運作及有關該公司的管理及組成方面出現重大轉變時，有充分的機會事先作出考慮及就有關轉變進行投票。

為加強上市公司的企業管治而採取的措施

2.4 為改善上市公司的企業管治水平，金融服務管理局已公布《綜合守則》。該項守則已納入《上市規則》內，訂明良好管治的原則及最佳守則。

2.5 《綜合守則》包括 14 項原則。在這些原則下，一共訂有 45 條詳細守則條文。此等條文亦列在最佳守則內。(有關英國企業管治在九十年代發展及演變的討論，請參閱附錄 II。)

2.6 《綜合守則》第 1 部載述企業管治的原則及適用於所有上市公司的守則條文。第 1 部主要涵蓋以下範疇：

- (a) 董事的職責及董事局的成員組合；
- (b) 董事的薪酬水平及組成部分；
- (c) 與機構股東對話；
- (d) 有建設性地利用周年大會；及
- (e) 問責性及審計職能。

2.7 第 2 部載有適用於機構股東投票、與公司對話及對公司管治安排作出的評審的原則及守則條文。

2.8 值得注意的是，儘管《綜合守則》並非強制性的守則，上市公司須就企業管治進行匯報，以及解釋未有符合守則的範疇。根據《上市規則》第 12.43A(a)及(b)條，上市公司須在其年報及帳目中載有：

- (a) 一項聲明，述明上市公司應用《綜合守則》第 1 部所訂的原則的情況，提供充分解釋，使其股東能評估其表現。

- (b) 一項聲明，述明上市公司在會計期內有否一直遵守《綜合守則》第 1 部所訂的條文。上市公司如沒有遵守該守則的條文，或只遵守部分守則條文或(在條文屬須予持續遵守性質的情況下)只在會計期內的部分時間遵守有關條文，便須指明該公司沒有遵守的守則條文，以及(在適用的情況下)在那一段期間持續出現不遵守的情況，並就不遵守有關條文作出解釋。

2.9 《綜合守則》呼籲上市公司董事須每年就其內部監控的成效進行至少一次的檢討。核數師的傳統角色，只限於就內部財政規控進行覆核。把檢討工作擴展至運作及遵守的管控，以及風險管理事宜的該項規定，標誌着重大的轉變及挑戰。為此，英格蘭及威爾斯特許會計師公會(Institute of Chartered Accountants of England and Wales)在 1999 年 2 月成立了特恩布爾委員會(Turnbull Committee)，以協助公司推行新規定提供指引。

2.10 特恩布爾委員會於 1999 年 9 月發表了“就《綜合守則》為董事制訂的內部監控指引”(特恩布爾報告)(The Turnbull report)。特恩布爾報告的目的是，就實施《綜合守則》載列的內部監控建議，向上市公司的董事提供指引。該報告特別旨在就應用《綜合守則》第 D.2⁹ 項原則時提供可採用的指引，以及決定守則第 D.2.1¹⁰ 及 D.2.2¹¹ 條所須遵行的程度。

2.11 特恩布爾報告指出，一間上市公司的內部監控應：

- (a) 融合於其運作之內，而非視為另一項工作；
- (b) 能就公司內外不斷轉變的風險作出應變；及
- (c) 使公司能因應其主要風險，適當地應用內部監控。

⁹ 第 D.2 項的原則：董事局應維持一個穩健的內部監控制度，以保障股東的投資及公司的資產。

¹⁰ 第 D.2.1 條：董事應每年至少一次就集團內部監控系統的效用進行檢討，並須向股東匯報已進行的檢討。該項檢討應涵蓋所有監控工作，包括財政監控、運作監控、監控遵守及風險管理等。

¹¹ 第 D.2.2 條：並無內部審計職能的公司應不時檢討需否制訂該項職能。

2.12 該報告要求公司評審及管理其主要風險，以及評估有關的內部監控系統的成效。該報告籲請董事局定期檢討內部監控系統在管理主要風險方面的成效報告，及每年進行評估，並在其年報內陳述有關內部監控的情況。

研究中的加強上市公司企業管治建議

2.13 鑒於出現了安隆(Enron)及世界通訊(Worldcom)的事件，而社會對企業管治及商業誠信有很高的要求，金融服務管理局現正就其《上市規則》進行一次重大的檢討¹²，主要目的在於確保金融服務管理局繼續提供一個具成本效益的制度，以便各行業能有渠道在資本市場融資；並運作該制度，以維持公眾對市場的信心及保障投資者。金融服務管理局透過制定、監察及執行《上市規則》履行此任務。

2.14 金融服務管理局於 2002 年 7 月發表了《討論文件 14：檢討上市制度》，以引發討論及收集意見。金融服務管理局在該份討論文件中闡明，有 5 個主題或需要在政策方面詳加考慮，計有：企業管治、企業溝通、股東的權利及義務、財務資料，及保薦人制度。

2.15 金融服務管理局在每項主題之下提及該局擬考慮的主要事宜，以及就規管方面作出轉變的建議可能帶來的影響。由於金融服務管理局會在其後的諮詢文件內制訂其政策工作，該局將須就每個主題個別考慮以下問題：就市場所要求獲得的保障及清晰度而言，制定高水平的原則或更明確的規則是否最適當的做法。

就有關企業管治主題的事宜進行的討論

2.16 關於企業管治，金融服務管理局表示，在安隆倒閉以後，企業管治的水平瞬即成為各方關注的焦點。金融服務管理局在為上市公司釐定及應用企業管治的標準時，已考慮上市制度所擔當的角色。

¹² 該項檢討由包括金融服務管理局員工及市場參與者的多個小組進行，由一個代表參與倫敦證券市場相關各方的諮詢委員會負責監管。

2.17 金融服務管理局表示，該局在釐定企業管治標準方面所擔當的角色現時甚為有限。《上市規則》規定上市公司的董事及高層管理人員在業務管理方面有適當的專業知識及經驗，但金融服務管理局並無獲賦權批准上市公司委任董事。¹³ 現時，上市公司的章程賦權公司在其周年大會上委任及確認其董事。

2.18 當局對發行人在籌集資金前就其管理及管治安排所進行的評估表示關注。貿易及工業部在 2001 年建議，就籌集資金及發行新股制訂《操守準則》。然而，由於多間主要的會計師事務所提出反對，此項建議並無落實。金融服務管理局將詳細地研究此事。

2.19 英國政府在回應“公司法檢討”¹⁴ 的報告時建議，《綜合守則》應保持其非法定文件地位。然而，英國政府亦表示擬成立一個標準委員會或類似的機構負責制定規則，要求公司披露有否遵守有關守則。

2.20 《上市規則》現時並沒有提供指引，說明倘若某些董事同時擔當多個不同董事局的職務，而有關職務會影響他們行事時以有關公司的利益為先，應如何處理有關的利益衝突。《上市規則》亦沒有就一名董事可擔任其他公司(不管該等公司為獨立公司，還是附屬公司)的董事職務數目設定限制。因此，金融服務管理局計劃檢討《上市規則》應否提供此範疇的指引，以免日後出現該等問題。此做法亦可讓金融服務管理局藉此機會檢討該等投資機構的披露規定。

¹³ 銀行、保險公司及投資公司委任董事及高層人員時須經金融服務管理局批准。

¹⁴ 英國政府於 2002 年 7 月發表一份白皮書，就“公司法檢討督導小組”(Steering Group of the Company Law Review)的總結報告作出回應。該白皮書指出，政府計劃為所有公司簡化及更新公司法。新的《公司法案》的條文亦會對金融服務管理局的工作造成影響，因為公司法及《上市規則》之間有若干重疊的範疇，包括企業管治標準、董事的薪酬及財務資料的披露等。

就與企業管治主題有關的建議作出的回應

2.21 金融服務管理局在 2003 年 1 月發表另一份討論文件，題為《檢討上市制度：就討論文件 14 作出的回應》。該份討論文件概述就討論文件 14 所討論的主題提出的意見，以及金融服務管理局的回應。金融服務管理局表示，回應者支持《綜合守則》，認為該守則提供一個可促進高水平企業管治的適當架構。回應者普遍認為《綜合守則》應保持其非法定文件地位及維持靈活性。回應者特別指出，規則第 12.43A(a)及(b)條規定的“遵守或解釋”方法，可鼓勵公司遵守《綜合守則》，因此有其價值。

2.22 金融服務管理局回應時表示，該局：

(a) 同意《綜合守則》有助加強企業管治。

(b) 會和政府合作，以決定應否成立一個標準委員會執行“遵守或解釋”的規定。

進行檢討的擬議時間表

2.23 金融服務管理局擬發表進一步的諮詢文件，以研究《檢討上市制度：就討論文件 14 作出的回應》所提及的事宜，並更詳細研究其他事宜。上述諮詢文件現時分別定於 2003 年夏季及 2004 年春季公布。有關檢討預期於 2004 年 6 月完成。

3. 美國

證券交易委員會：證券交易所的規管機構

3.1 美國藉制定《1934 年證券交易法》(the Securities Exchange Act of 1934)，創立證券交易委員會(the Securities and Exchange Commission)，作為規管該國證券業的機構。根據《1934 年證券交易法》，證券交易委員會獲賦權：

- (a) 規管國家的證券交易所¹⁵，包括位於紐約市的主要交易所：紐約證券交易所(the New York Stock Exchange)¹⁶ (下稱“紐約交易所”)、美國全國證券交易商協會自動報價系統 (the National Association of Securities Dealers Automated Quotation System)¹⁷ (下稱“納斯達克”)及美國證券交易所(the American Stock Exchange)¹⁸ (下稱“美國交易所”)，以及其他規模較小的地區性證券交易所¹⁹；及
- (b) 負責經紀行、過戶代理²⁰ 及結算公司的註冊、規管及監督工作。

3.2 就證券交易所的規管，證券交易委員會負責：

- (a) 檢討及審批個別證券交易所的上市標準
 - 證券交易委員會透過檢討及審批個別證券交易所的上市標準，建立及維持一個公平、井然有序及有效率的市場。
- (b) 透過資料披露保障投資者
 - 證券交易委員會負責監督企業向投資大眾披露的重要資料²¹。企業在首次發售股票時，必須遵守有關資料披露的規例，然後持續及定期作出有關披露。該委員會的職員會就公司提交的披露文件作例行審閱，並協助公司詮釋該委員會的規則。
- (c) 執行證券法例
 - 證券交易委員會負責執行影響投資公司(包括互惠基金)及投資顧問的證券法例。在向業界行使聯邦證券法的時候，證券交易委員會致力改善有關披露，務求將投資者所承受的風險減至最低而無須向受規管實體收取不必要的費用。

¹⁵ 美國有 10 間證券交易所，這些交易所屬自我規管機構。

¹⁶ 就市價總值及交投量而言，紐約交易所是全球最大的證券交易所。

¹⁷ 納斯達克是全球首個電子證券市場，該市場由屏幕操作，透過先進的電腦及電訊網絡進行交易。

¹⁸ 美國交易所僅次於紐約交易所，是美國第二大的大堂交易所，有大量普通股、指數股份及股本衍生證券在該交易所進行買賣。

¹⁹ 這些地區性證券交易所分別位於波士頓、費城、辛辛那提城、芝加哥、三藩市及洛杉磯。

²⁰ 過戶代理是指備存股票及債券持有人紀錄的機構。

²¹ 有關資料包括新發售證券的登記陳述書、周年及季度提交存檔的文件、召開周年大會前送交股東的委任代表資料、派發予股東的年報、與股權收購(股權收購是通常以高於當時市價的溢價大量購買某公司股票收購行動。)有關的文件，以及與合併收購有關的存檔文件。

(d) 就涉嫌違規的情況執行調查工作

- 證券交易委員會就涉嫌違反證券法例的情況具有執行調查工作的權力，此點極為重要。雖然證券交易委員會僅具民事執法權力，但該委員會與全國各刑事執法機構緊密合作，就須嚴加處理的失當行為提出刑事檢控。

證券交易所的職能及上市標準

3.3 證券交易委員會是美國證券業的最終規管機構，而證券交易所則執行以下的主要職能：

- (a) 審批公司的上市申請；
- (b) 在公司違反上市標準時把公司從交易所除牌；
- (c) 制定規管上市公司業務的規則及規例。

3.4 各證券交易所本身亦訂有一套上市標準，目的是：

- (a) 向申請在有關證券交易所上市的公司提供指引及程序；
及
- (b) 訂明有關證券交易所將公司停牌或除牌的情況。

3.5 雖然各證券交易所的上市標準實際上有很多共同點，但他們本身或會制訂數項與其他證券交易所不同的上市標準，以吸引某些類別及規模的公司。就紐約交易所、納斯達克及美國交易所而言，他們所公布的上市標準主要有以下的分別：

- (a) 在紐約交易所上市的公司須擁有最少 6,000 萬美元的市價總值；及
- (b) 在納斯達克及美國交易所上市的公司須擁有最少 5,000 萬美元的市價總值。

3.6 公司如未能遵從有關證券交易所上市標準所訂明的一連串條件，將會面對被該交易所除牌的風險。個別證券交易所在決定是否將有關公司除牌時，主要考慮以下的數種情況：

- (a) 在紐約交易所上市的公司，如在連續 30 個交易日內，其平均全球市價總值少於 5,000 萬美元，以及股東持有股本的總額少於 5,000 萬美元，將面對被除牌的風險；
- (b) 在納斯達克上市的公司，須將其股票的買入價維持在每股不低於 1 美元的水平。未能遵守此項規定的公司可能會遭納斯達克除牌；及
- (c) 在美國交易所上市的公司，如股東持有的股本少於 200 萬美元，而該公司在持續營運下蒙受虧損及／或在最近 3 個財政年度中有兩個年度蒙受淨虧損，則該公司將被除牌。

為加強上市公司的企業管治而採取的措施

3.7 在 1998 年，紐約交易所及納斯達克倡議成立提升企業審計委員會成效藍帶委員會(the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committee)(下稱“藍帶委員會”)，研究審計委員會的成效。藍帶委員會在 1999 年的報告中，承認審計委員會的重要性，並提出 10 項改善審計委員會成效的建議。因應這些建議，紐約交易所、納斯達克及其他證券交易所分別修訂其與審計委員會有關的上市標準。

3.8 鑒於在 2002 年上半年出現多宗廣受關注的企業倒閉²² 個案，證券交易委員會要求紐約交易所及納斯達克檢討其企業管治²³ 標準及就其規則提出修訂建議，以訂定更嚴格的上市公司標準。同時，國會亦通過了《2002 年薩班斯-奧克斯利法令》(the Sarbanes-Oxley Act of 2002)(下稱“該法令”)，以期挽回公眾對證券市場的信心。該法令在 2002 年 7 月 30 日獲總統簽署成為法律。

3.9 該法令規定美國各證券交易所在企業披露及財務申報方面進行全面改革，以加強上市公司在財政披露方面所承擔的責任。

²² 有關例子包括安隆(Enron)倒閉及主要電訊公司(包括環球電訊(Global Crossing)及世界通訊(Worldcom))破產。

²³ 企業管治是指公司把企業的責任、誠信及向股東的問責程度維持在適當水平方面的做法。

3.10 該法令訂有 11 項標題，當中有 69 項條文，是自《1934 年證券交易法》制定以來，當局對影響證券市場的企業行為所作出的最嚴密的監察。該條例的各項規定不單適用於美國的上市公司，亦適用於投資公司及所有在任何一所全國證券交易所公開買賣證券的外國公司。該法令有以下重點：

(a) 為董事及行政人員制訂企業管治標準

- 該法例規定行政總裁／財務總裁分別作出兩項不同的核證。在第一項核證中，行政總裁／財務總裁必須就每份呈交證券交易委員會並載有財務報表的定期報告，以書面形式作出以下證明：
 - (i) 該報告符合《1934 年證券交易法》中的適用申報規定；及
 - (ii) 該報告所載資料在所有實質方面均能中肯地反映申報公司的財政狀況及營運業績。
- 在第二項核證中，行政總裁及財務總裁必須在每份呈交證券交易委員會的周年及季度報告中表明：
 - (i) 該名總裁已審閱該份報告；
 - (ii) 對於關鍵性的事實，該份報告並無任何不實陳述或遺漏，故所作出的陳述並無誤導性；
 - (iii) 該名行政總裁／財務總裁已制訂週全的內部監控措施，以確保他們知悉有關報告所載關乎該公司的重要資料；
 - (iv) 有關總裁已向公司的獨立核數師及審計委員會披露有關監控措施在設計及實施方面的所有嚴重缺陷；及
 - (v) 有否對內部監控措施作出重大更改或就監控方面的嚴重缺陷或重大弱點採取修正行動。

(b) 成立上市公司會計監察委員會

- 該法令部分條文旨在就成立一個由證券交易委員會管理的上市公司會計監察委員會(Public Company Accounting Oversight Board)作出規定。該委員會有權向註冊會計師事務所及其僱員進行調查和紀律處分程序，以及施以制裁²⁴。

(c) 為核數師的獨立性制訂標準

- 該法令明確禁止註冊會計師事務所向其審計客戶提供非審計服務，這些服務包括：
 - (i) 設計及實施財務資訊系統；
 - (ii) 評估或估值服務、提出公正意見；
 - (iii) 精算服務；
 - (iv) 內部審計的外判服務；
 - (v) 管理人力資源職能；
 - (vi) 投資銀行服務；及
 - (vii) 法律服務。

(d) 為企業責任制訂新標準

- 該法令增訂一項有關企業審計委員會標準的條文，以修訂《1934年證券交易法》第10A條。該項新訂條文：
 - (i) 使審計委員會負責委任及報償任何受僱於證券發行人的註冊會計師事務所，並監察其工作；
 - (ii) 規定審計委員會每名成員均須為有關發行人的董事局成員，否則必須為獨立人士；及

²⁴ 上市公司會計監察委員會的制裁權力，包括暫時吊銷公司的註冊或暫時禁止個別人士參與有關註冊公司運作。

(iii) 規定每個審計委員會必須制訂程序，以接受、備存及處理發行人就會計、內部會計監控或審計事宜所接獲的申訴，以及僱員就有問題的會計或審計事宜以機密方式提交的匿名意見書。

(e) 加強財政披露

— 證券交易委員會須制訂規則，處理以下受關注事項：

(i) 披露所有或會嚴重影響發行人財政狀況的實質帳外交易及關係；及

(ii) 以不誤導的方式提供訂明規格的財務資料，而有關資料按一般接納會計原則(GAAP)與發行人的財政狀況相符。

— 發行人須披露其高級財務人員的專業操守守則，如並無制訂有關守則，則須說明理由。證券交易委員會亦須在 2002 年 11 月 1 日前制訂規則，規定發行人披露他們的審計委員會成員中是否最少有一名財務專家，若否，則須說明理由。

(f) 須披露分析員的利益衝突

— 證券交易委員會有責任制訂規則，以處理有關證券分析員在研究報告或公開場合推介股本證券時或會出現的利益衝突。

(g) 下令作進一步的研究及報告

— 國會已下令審計長(Comptroller General)²⁵ 進行一項研究，以找出導致會計師事務所合併的原因，以及對證券市場和在市場集資所造成的影響。

²⁵ 審計長負責掌管總會計局(the General Accounting Office)，即國會的審計、估值及調查機關。

(h) 提高罰則及執法

- 該法令訂明，任何人如明知而更改、破壞、損毀或隱瞞任何紀錄、文件或其他物件，而用意是使該物件的完整性受到破壞或使其不能在正式程序中使用，此人可被判處罰款或最高可被監禁 20 年，或兩者同時施行。該法令亦訂有法定保障，避免僱主向遵守該法令條文的告密人採取歧視性行動。
- 證券交易委員會獲賦權向法院提出呈請，在調查涉嫌違反聯邦證券法例情況的期間，託管向任何董事、人員、僱員、合夥人、管制人員或代理人繳付的非經常款項。
- 如行政總裁或財務總裁被發現明知財務報表沒有遵守規定，仍就該等財務報表作出核證，可被判處最高罰款 100 萬美元及／或監禁 10 年。至於蓄意違反該法例的行為，可被判處最高罰款 500 萬美元或最多監禁 20 年。

研究中的加強上市公司企業管治建議

3.11 為提升企業管治水平以符合該法令的規定，該 3 間具領導地位的證券交易所已就其上市標準提出修改建議。這些修改建議大致相若，其主要考慮因素涵蓋以下事宜：

(a) 為獨立董事訂定標準

- 董事局大部分(或最少 3 名)成員應為獨立董事。董事局須就行政總裁的報償及董事的提名取得獨立董事的批准。董事局必須裁定有關董事與公司並無實質關係，該名董事才可被視為獨立董事。該項裁決包括一段“冷靜”期(就於紐約交易所上市的公司而言，該“冷靜”期為 5 年，而對於在納斯達克或美國交易所上市的公司而言，該“冷靜”期為 3 年)，所有非獨立董事必須在該“冷靜”期過後，才可被視為獨立董事。

(b) 指明審計委員會的成員組合及職能

- 審計委員會所有成員在獲委任時必須具有財務方面的知識。該委員會必須全權負責公司獨立核數師的聘任及解僱，以及審批核數師任何重要的非審計工作。此外，審計委員會獲賦權及撥款聘用獨立律師。

(c) 規定上市公司須制訂及遵從行為守則及維持內部的審計職能

- 上市公司必須制訂及發表業務操守及行為的守則，並披露任何向董事及行政人員提供的寬免。此外，上市公司亦有責任維持內部的審計職能。

(d) 規定董事須持續進修

- 紐約交易所及納斯達克均規定董事須接受持續教育。紐約交易所促請每間上市公司為董事局新成員開辦啟導課程。此外，該交易所亦要求當局成立董事學會，在美國各地為現任及新當選的董事提供持續教育。

(e) 違反擬議管治標準的後果

- 如上市公司被發現違反任何企業管治標準，紐約交易所及美國交易所均會就有關不遵從規定的行為發信警告有關上市公司，如有需要，紐約交易所亦會考慮將該公司除牌。

3.12 同時，該 3 間證券交易所建議的企業管治標準亦有一些不同之處。有關的分別撮錄如下：

(a) 有關行政總裁作出核證的規定

- 紐約交易所建議，每間上市公司的行政總裁均有責任每年作出核證，表明他或她並不察覺該公司出現任何違反紐約交易所企業管治標準的情況。該名行政總裁須進一步證明，他或她已與董事局檢討有關程序及該公司遵守有關程序的情況。雖然納斯達克和美國交易所並無類似規定，但納斯達克表示，發行人如向納斯達克作出任何重要的失實陳述或遺漏，均可能導致被除牌。

(b) 高級職員及董事在獲取財政利益方面的限制

- 紐約交易所規定，審計委員會的成員只可收取董事袍金，作為從有關上市公司收取的唯一報酬。納斯達克則表明，禁止有關公司向其高級職員及董事提供貸款。

(c) 建立核數師與客戶之間的獨立關係

- 紐約交易所建議，禁止核數師與客戶之間建立會影響審計工作的公正及客觀性的關係。

實施建議的擬議時間表

3.13 由於新標準須經證券交易委員會批准才可生效，因此並無確實的實施日期。新標準獲證券交易委員會批准後，將會分階段實施。

4. 整體比較

4.1 下表就英國及美國在加強上市公司企業管治方面採取的措施及研究中的建議作一比較。

列表 —— 英國及美國在加強上市公司的企業管治方面採取的措施及研究中的建議的比較情況

	英國	美國
規管環境		
證券交易所的規管機構	<ul style="list-style-type: none"> • 金融服務管理局 	<ul style="list-style-type: none"> • 證券交易委員會
規管機構的主要職能	<ul style="list-style-type: none"> • 批准證券上市； • 規管保薦人； • 對發行人施加及執行所須遵守的規定；及 • 暫停及取消上市資格。 	<ul style="list-style-type: none"> • 檢討及審批證券交易所的上市標準； • 規管保薦人； • 對發行人施加和執行所須遵守的規定；及 • 透過披露資料保障投資者。
證券交易所的角色	<ul style="list-style-type: none"> • 進行交易的市場 	<ul style="list-style-type: none"> • 審批公司的上市申請； • 在公司違反上市標準時把公司從交易所除牌；及 • 制定規管上市公司業務的規則及規例。

列表 —— 英國及美國在加強上市公司的企業管治方面採取的措施及研究中的建議的比較情況(續)

	英國	美國
在加強上市公司的企業管治方面採取的措施		
所採取的措施	<ul style="list-style-type: none"> 把《綜合守則》納入《上市規則》內。 	<ul style="list-style-type: none"> 經檢討證券交易所的上市標準後，制定《2002年薩班斯——奧克斯利法令》。
企業管治原則下的主要事宜	<ul style="list-style-type: none"> 董事的職責及董事局的成員組合； 董事的薪酬水平及組成部分； 與機構股東對話； 有建設性地利用周年大會；及 問責性及審計職能。 	<ul style="list-style-type: none"> 為董事及行政人員制訂管治標準； 為核數師的獨立性制訂標準； 為企業責任制訂標準； 加強財政方面的披露；及 罰則與執法。
匯報制度	<ul style="list-style-type: none"> 雖然《綜合守則》並非強制性的守則，但上市公司須在其年報及帳目匯報其企業管治，以及解釋未有符合守則的範疇。 	<ul style="list-style-type: none"> 行政總裁及財務總裁須核證發行人向證券交易委員會提交的每份年度或季度報告。
罰則條文	<ul style="list-style-type: none"> 如上市公司未有遵從《上市規則》的規定，金融服務管理局可暫停及取消有關證券的上市資格。 	<ul style="list-style-type: none"> 行政總裁或財務總裁如被發現明知財務報表沒有遵守規定，仍就該等財務報表作出核證，可被判處最高罰款100萬美元及／或監禁10年；及 故意違反該法案，可被判處最高罰款500萬美元或最多監禁20年。

列表 —— 英國及美國在加強上市公司的企業管治方面採取的措施及研究中的建議的比較情況(續)

	英國	美國
研究中的加強上市公司企業管治建議		
所進行的檢討	<ul style="list-style-type: none"> • 金融服務管理局現正就其《上市規則》進行重大檢討。 	<ul style="list-style-type: none"> • 證券交易委員會正檢討證券交易所就更改企業管治標準所提交的建議。
就企業管治提出的主要事宜	<ul style="list-style-type: none"> • 上市公司董事須經金融服務管理局批准； • 在發行人籌集資金前評估其管理及管治安排； • 成立一個標準委員會，以制定要求公司披露有否遵守綜合守則；及 • 計劃提供指引，以處理董事擔任多個董事局職務的利益衝突。 	<ul style="list-style-type: none"> • 為獨立董事訂定標準； • 指明審計委員會的成員組合及職能； • 規定上市公司須制訂及遵從行為守則，以及維持內部的審計職能； • 規定董事須持續進修； • 違反擬議管治標準的後果； • 由行政總裁核證的規定； • 高級職員及董事在獲取財政利益方面的限制；及 • 建立核數師與其客戶之間的獨立關係。
檢討／實施建議的擬議時間表	<ul style="list-style-type: none"> • 金融服務管理局擬於2003年夏季及2004年春季公布進一步的諮詢文件；及 • 檢討預期於2004年6月完成。 	<ul style="list-style-type: none"> • 由於新標準的生效日期須經證券交易委員會批准，因此並無確實的實施日期。

附錄 I

The Combined Code**Principles of Good Governance and Code of Best Practice**

**Derived by the Committee on Corporate Governance from the Committee's
Final Report and
from the Cadbury and Greenbury Reports.**

Part 1 - Principles of Good Governance**Section 1 - Companies**

A. Directors

The Board

1. Every listed company should be headed by an effective board which should lead and control the company.

Chairman and Chief Executive Officer

2. There are two key tasks at the top of every public company — the running of the board and the executive responsibility for the running of the company's business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.

Board Balance

3. The board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board's decision making.

Supply of Information

4. The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.

Appointments to the Board

5. There should be a formal and transparent procedure for the appointment of new directors to the board.

附錄 I (續)Re-election

6. All directors should be required to submit themselves for re-election at regular intervals and at least every three years.

B. Directors' RemunerationThe Level and Make-up of Remuneration

1. Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

Procedure

2. Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

3. Disclosure

The company's annual report should contain a statement of remuneration policy and details of the remuneration of each director.

C. Relations with ShareholdersDialogue with Institutional Shareholders

1. Companies should be ready, where practicable, to enter into a dialogue with institutional shareholders based on the mutual understanding of objectives.

Constructive Use of the Annual General Meeting

2. Boards should use the Annual General Meeting (AGM) to communicate with private investors and encourage their participation.

D. Accountability and AuditFinancial Reporting

1. The board should present a balanced and understandable assessment of the company's position and prospects.

附錄 I (續)

Internal Control

2. The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.

Audit Committee and Auditors

3. The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

Section 2 - Institutional Shareholders

E. Institutional Investors

Shareholder Voting

1. Institutional shareholders have a responsibility to make considered use of their votes.

Dialogue with Companies

2. Institutional shareholders should be ready, where practicable, to enter into a dialogue with companies based on the mutual understanding of objectives.

Evaluation of Governance Disclosures

3. When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors should give due weight to all relevant factors drawn to their attention.

附錄 I (續)**Part 2 - Code of Best Practice****Section 1 - Companies****A. Directors****A.1 The Board**

Principle Every listed company should be headed by an effective board which should lead and control the company.

Code Provisions

A.1.1 The board should meet regularly.

A.1.2 The board should have a formal schedule of matters specifically reserved to it for decision.

A.1.3 There should be a procedure agreed by the board for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense.

A.1.4 All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the company secretary should be a matter for the board as a whole.

A.1.5 All directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments and standards of conduct.

A.1.6 Every director should receive appropriate training on the first occasion that he or she is appointed to the board of a listed company, and subsequently as necessary.

A.2 Chairman and CEO

Principle There are two key tasks at the top of every public company - the running of the board and the executive responsibility for the running of the company's business. There should be a clear division of responsibilities at the head of the company which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision.

附錄 I (續)Code Provision

A.2.1 A decision to combine the posts of chairman and chief executive officer in one person should be publicly justified. Whether the posts are held by different people or by the same person, there should be a strong and independent non-executive element on the board, with a recognised senior member other than the chairman to whom concerns can be conveyed. The chairman, chief executive and senior independent director should be identified in the annual report.

A.3 Board Balance

Principle The board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board's decision taking.

Code Provisions

A.3.1 The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions. Non-executive directors should comprise not less than one third of the board.

A.3.2 The majority of non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement. Non-executive directors considered by the board to be independent in this sense should be identified in the annual report.

A.4 Supply of Information

Principle The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.

Code Provision

A.4.1 Management has an obligation to provide the board with appropriate and timely information, but information volunteered by management is unlikely to be enough in all circumstances and directors should make further enquiries where necessary. The chairman should ensure that all directors are properly briefed on issues arising at board meetings.

A.5 Appointments to the Board

Principle There should be a formal and transparent procedure for the appointment of new directors to the board.

附錄 I (續)Code Provision

A.5.1 Unless the board is small, a nomination committee should be established to make recommendations to the board on all new board appointments. A majority of the members of this committee should be non-executive directors, and the chairman should be either the chairman of the board or a non-executive director. The chairman and members of the nomination committee should be identified in the annual report.

A.6 Re-election

Principle All directors should be required to submit themselves for re-election at regular intervals and at least every three years.

Code Provisions

A.6.1 Non-executive directors should be appointed for specified terms subject to re-election and to Companies Act provisions relating to the removal of a director, and reappointment should not be automatic.

A.6.2 All directors should be subject to election by shareholders at the first opportunity after their appointment, and to re-election thereafter at intervals of no more than three years. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details to enable shareholders to take an informed decision on their election.

B. Directors' Remuneration

B.1 The Level and Make-up of Remuneration

Principle Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. A proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

Code Provisions

Remuneration policy

B.1.1 The remuneration committee should provide the packages needed to attract, retain and motivate executive directors of the quality required but should avoid paying more than is necessary for this purpose.

附錄 I (續)

- B.1.2 Remuneration committees should judge where to position their company relative to other companies. They should be aware what comparable companies are paying and should take account of relative performance. But they should use such comparisons with caution, in view of the risk that they can result in an upward ratchet of remuneration levels with no corresponding improvement in performance.
- B.1.3 Remuneration committees should be sensitive to the wider scene, including pay and employment conditions elsewhere in the group, especially when determining annual salary increases.
- B.1.4 The performance-related elements of remuneration should form a significant proportion of the total remuneration package of executive directors and should be designed to align their interests with those of shareholders and to give these directors keen incentives to perform at the highest levels.
- B.1.5 Executive share options should not be offered at a discount save as permitted by paragraphs 13.30 and 13.31 of the Listing Rules.
- B.1.6 In designing schemes of performance related remuneration, remuneration committees should follow the provisions in Schedule A to this code.

Service Contracts and Compensation

- B.1.7 There is a strong case for setting notice or contract periods at, or reducing them to, one year or less. Boards should set this as an objective; but they should recognise that it may not be possible to achieve it immediately.
- B.1.8 If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should be reduced after the initial period.
- B.1.9 Remuneration committees should consider what compensation commitments (including pension contributions) their directors' contracts of service, if any, would entail in the event of early termination. They should, in particular, consider the advantages of providing explicitly in the initial contract for such compensation commitments except in the case of removal for misconduct.
- B.1.10 Where the initial contract does not explicitly provide for compensation commitments, remuneration committees should, within legal constraints, tailor their approach in individual early termination cases to the wide variety of circumstances. The broad aim should be to avoid rewarding poor performance while dealing fairly with cases where departure is not due to poor performance and to take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss.

附錄 I (續)**B.2 Procedure**

Principle Companies should establish a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

Code Provisions

- B.2.1 To avoid potential conflicts of interest, boards of directors should set up remuneration committees of independent non-executive directors to make recommendations to the board, within agreed terms of reference, on the company's framework of executive remuneration and its cost; and to determine on their behalf specific remuneration packages for each of the executive directors, including pension rights and any compensation payments.
- B.2.2 Remuneration committees should consist exclusively of non-executive directors who are independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement.
- B.2.3 The members of the remuneration committee should be listed each year in the board's remuneration report to shareholders (B.3.1 below).
- B.2.4 The board itself or, where required by the Articles of Association, the shareholders should determine the remuneration of the non-executive directors, including members of the remuneration committee, within the limits set in the Articles of Association. Where permitted by the Articles, the board may, however, delegate this responsibility to a small sub-committee, which might include the chief executive officer.
- B.2.5 Remuneration committees should consult the chairman and/or chief executive officer about their proposals relating to the remuneration of other executive directors and have access to professional advice inside and outside the company.
- B.2.6 The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration in the same way as for other matters.

B.3 Disclosure

Principle The company's annual report should contain a statement of remuneration policy and details of the remuneration of each director.

附錄 I (續)Code Provisions

- B.3.1 The board should report to the shareholders each year on remuneration. The report should form part of, or be annexed to, the company's annual report and accounts. It should be the main vehicle through which the company reports to shareholders on directors' remuneration.
- B.3.2 The report should set out the company's policy on executive directors' remuneration. It should draw attention to factors specific to the company.
- B.3.3 In preparing the remuneration report, the board should follow the provisions in Schedule B to this code.
- B.3.4 Shareholders should be invited specifically to approve all new long term incentive schemes (as defined in the Listing Rules) save in the circumstances permitted by paragraph 13.13A of the Listing Rules.
- B.3.5 The board's annual remuneration report to shareholders need not be a standard item of agenda for AGMs. But the board should consider each year whether the circumstances are such that the AGM should be invited to approve the policy set out in the report and should minute their conclusions.

C. Relations with Shareholders**C.1 Dialogue with Institutional Shareholders**

Principle Companies should be ready, where practicable, to enter into a dialogue with institutional shareholders based on the mutual understanding of objectives.

C.2 Constructive Use of the AGM

Principle Boards should use the AGM to communicate with private investors and encourage their participation.

Code Provisions

- C.2.1 Companies should count all proxy votes and, except where a poll is called, should indicate the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands.
- C.2.2 Companies should propose a separate resolution at the AGM on each substantially separate issue, and should, in particular, propose a resolution at the AGM relating to the report and accounts.

附錄 I (續)

C.2.3 The chairman of the board should arrange for the chairmen of the audit, remuneration and nomination committees to be available to answer questions at the AGM.

C.2.4 Companies should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 20 working days before the meeting.

D. **Accountability and Audit**

D.1 **Financial Reporting**

Principle The board should present a balanced and understandable assessment of the company's position and prospects.

Code Provisions

D.1.1 The directors should explain their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities.

D.1.2 The board's responsibility to present a balanced and understandable assessment extends to interim and other price-sensitive public reports and reports to regulators as well as to information required to be presented by statutory requirements.

D.1.3 The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary.

D.2 **Internal Control**

Principle The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.

Code Provisions

D.2.1 The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational and compliance controls and risk management.

D.2.2 Companies which do not have an internal audit function should from time to time review the need for one.

附錄 I (續)**D.3 Audit Committee and Auditors**

Principle The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

Code Provisions

D.3.1 The board should establish an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties. The members of the committee, a majority of whom should be independent non-executive directors, should be named in the report and accounts.

D.3.2 The duties of the audit committee should include keeping under review the scope and results of the audit and its cost effectiveness and the independence and objectivity of the auditors. Where the auditors also supply a substantial volume of non-audit services to the company, the committee should keep the nature and extent of such services under review, seeking to balance the maintenance of objectivity and value for money.

Section 2 - Institutional Shareholders**E. Institutional Investors****E.1 Shareholder Voting**

Principle Institutional shareholders have a responsibility to make considered use of their votes.

Code Provisions

E.1.1 Institutional shareholders should endeavour to eliminate unnecessary variations in the criteria which each applies to the corporate governance arrangements and performance of the companies in which they invest.

E.1.2 Institutional shareholders should, on request, make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged.

E.1.3 Institutional shareholders should take steps to ensure that their voting intentions are being translated into practice.

附錄 I (續)**E.2 Dialogue with Companies**

Principle Institutional shareholders should be ready, where practicable, to enter into a dialogue with companies based on the mutual understanding of objectives.

E.3 Evaluation of Governance Disclosures

Principle When evaluating companies' governance arrangements, particularly those relating to board structure and composition, institutional investors should give due weight to all relevant factors drawn to their attention.

Schedule A: Provisions on the Design of Performance Related Remuneration.

1. Remuneration committees should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to enhance the business. Upper limits should always be considered. There may be a case for part payment in shares to be held for a significant period.
2. Remuneration committees should consider whether the directors should be eligible for benefits under long-term incentive schemes. Traditional share option schemes should be weighed against other kinds of long-term incentive scheme. In normal circumstances, shares granted or other forms of deferred remuneration should not vest, and options should not be exercisable, in under three years. Directors should be encouraged to hold their shares for a further period after vesting or exercise, subject to the need to finance any costs of acquisition and associated tax liability.
3. Any new long term incentive schemes which are proposed should be approved by shareholders and should preferably replace existing schemes or at least form part of a well considered overall plan, incorporating existing schemes. The total rewards potentially available should not be excessive.
4. Payouts or grants under all incentive schemes, including new grants under existing share option schemes, should be subject to challenging performance criteria reflecting the company's objectives. Consideration should be given to criteria which reflect the company's performance relative to a group of comparator companies in some key variables such as total shareholder return.
5. Grants under executive share option and other long-term incentive schemes should normally be phased rather than awarded in one large block.
6. Remuneration committees should consider the pension consequences and associated costs to the company of basic salary increases and other changes in remuneration, especially for directors close to retirement.
7. In general, neither annual bonuses nor benefits in kind should be pensionable.

附錄 I (續)**Schedule B: Provisions on what should be Included in the Remuneration Report.**

1. The report should include full details of all elements in the remuneration package of each individual director by name, such as basic salary, benefits in kind, annual bonuses and long term incentive schemes including share options.
2. Information on share options, including SAYE options, should be given for each director in accordance with the recommendations of the Accounting Standards Board's Urgent Issues Task Force Abstract 10 and its successors.
3. If grants under executive share option or other long-term incentive schemes are awarded in one large block rather than phased, the report should explain and justify.
4. Also included in the report should be pension entitlements earned by each individual director during the year, disclosed on one of the alternative bases recommended by the Faculty of Actuaries and the Institute of Actuaries and included in the UK Listing Authority's Listing Rules. Companies may wish to make clear that the transfer value represents a liability of the company, not a sum paid or due to the individual.
5. If annual bonuses or benefits in kind are pensionable, the report should explain and justify.
6. The amounts received by, and commitments made to, each director under 1, 2 and 4 above should be subject to audit.
7. Any service contracts which provide for, or imply, notice periods in excess of one year (or any provisions for predetermined compensation on termination which exceed one year's salary and benefits) should be disclosed and the reasons for the longer notice periods explained.

附錄II

企業管治於九十年代在英國發展及演變的情況

I. 在英國，企業管治在九十年代的關注重點集中在董事的職責及預期他們所達到的標準。企業管治財務事宜委員會(Committee on the Financial Aspects of Corporate Governance)(一般稱為“卡德伯里委員會”)(Cadbury Committee)的成立，是對英國企業管治方法作出的首次重要檢討。

II. 1992年12月，卡德伯里委員會發表一套守則，提供務實的企業管治方針²⁶。在訂立1992年的守則後，格林伯里董事薪酬研究小組(Greenbury Study Group on Directors' Remuneration)於1995年就董事局的薪酬事宜提供更多指引²⁷。1998年，漢佩企業管治委員會(Hampel Committee on Corporate Governance)採納及修訂卡德伯里及格林伯里兩套守則²⁸。

III. 除進行此項檢討外，委員會的職責包括進一步檢討董事、股東及核數師在企業管治中的角色。漢佩報告書的研究結果，導致倫敦證券交易編製成《綜合守則》。

IV. 隨着《綜合守則》的實施，英格蘭及威爾斯特許會計師公會成立工作小組，就該守則第D2條有關內部監控程序的規定訂出更多指引。有關的總結報告書(亦稱“特恩布爾報告”)於1999年9月公布。

²⁶ 報告書制訂一套最佳工作守則，討論加強董事的法律責任及職責的優點、審計職能，以及董事局、公司核數師及股東之間的關係。

²⁷ 此報告書討論私營公用事業的薪酬福利，該等薪酬福利普遍被視為過高。

²⁸ 此委員會根據卡德伯里委員會及格林伯里委員會的建議成立，這兩個委員會建議應成立一個新委員會以檢討其報告結果的實施情況。委員會的職責是確保過往成立之委員會所作的建議能達到其原來目的。此外，委員會須重新研究董事、股東及核數師在企業管治中的角色。

附錄 III

NYSE

Listed Company Manual

Last Modified: 12/20/1999

Section 3 Corporate Responsibility

303.00 Corporate Governance Standards

In addition to the numerical listing standards, the Exchange has adopted certain corporate governance listing standards. These standards apply to all companies listing common stock on the Exchange. However, the Exchange does not apply a particular standard to a non-US company if the company provides the Exchange with written certification from independent counsel of the company's country of domicile stating that the company's corporate governance practices comply with home country law and the rules of the principal securities market for the company's stock outside the United States.

附錄 III (續)**NYSE Listed Company Manual**

Last Modified: 12/20/1999

303.00 Corporate Governance Standards**303.01 Audit Committee**

- (A) **Audit Committee Policy.** Each company must have a qualified audit committee.
- (B) **Requirements for a Qualified Audit Committee.**
- (1) **Formal Charter.** The Board of Directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify the following:
- (a) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes and membership requirements;
 - (b) that the outside auditor for the company is ultimately accountable to the Board of Directors and audit committee of the company, that the audit committee and Board of Directors have the ultimate authority and responsibility to select, evaluate and, where appropriate, replace the outside auditor (or to nominate the outside auditor for shareholder approval in any proxy statement); and
 - (c) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the Board of Directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

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- (2) **Composition/Expertise Requirement of Audit Committee Members.**
- (a) Each audit committee shall consist of at least three directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");
 - (b) Each member of the audit committee shall be financially literate, as such qualification is interpreted by the company's Board of Directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and
 - (c) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.
- (3) **Independence Requirement of Audit Committee Members.** In addition to the definition of "Independent" provided above in (2) (a), the following restrictions shall apply to every audit committee member:
- (a) **Employees.** A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event that the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor.
 - (b) **Business Relationship.** A director (i) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (ii) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company's Board of Directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the Board of Directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated.

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"Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced Board of Directors' determination after three years following the termination of, as applicable, either (1) the relationship between the organization with which the director is affiliated and the company, (2) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (3) the direct business relationship between the director and the company.

- (c) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.
- (d) Immediate Family. A director who is an immediate family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship.

(Since 1956 the Exchange has required all domestic companies listing on the Exchange to have at least two outside directors on their boards.)

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