

Legislative Council Panel on Financial Affairs

Progress in Implementing the Corporate Governance Action Plan

PURPOSE

This paper informs Members of the progress in implementing the Corporate Governance Action Plan introduced to Members in January 2003.

BACKGROUND

2. We introduced to Members a Corporate Governance Action Plan at a meeting with the Panel in relation to the Policy Address held on 13 January 2003. The Plan is aimed at enhancing the quality of our market through keeping our corporate governance standards in line with international standards so as to reinforce our position as an international financial centre as well as a premier capital formation centre for the Mainland. It was drawn up in collaboration with the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEx) to identify priority areas, assign ownership and devise a timeframe for implementation.

3. We have identified in the Plan the following five priority areas –
- (a) Upgrading the Listing Rules and Listing Functions;
 - (b) Tightening the regulation of Initial Public Offering (IPO) intermediaries;
 - (c) Effective Roll Out of the Securities and Futures Ordinance;
 - (d) Successful completion of the Standing Committee on Company Law Reform's (SCCLR) Phase II Corporate Governance Review; and
 - (e) Early implementation of SCCLR's Recommendations from its Phase I Corporate Governance Review.

4. During the past nine months, concerned parties have taken actions to implement the initiatives under these priority areas. The Administration has also been monitoring progress closely. With input from SFC and HKEx, we have prepared an update of the implementation progress at the **Annex**.

ADVICE SOUGHT

5. Members are invited to note the progress made in implementing the Corporate Governance Action Plan.

Financial Services Branch
Financial Services and the Treasury Bureau
October 2003

**Corporate Governance Action Plan
Progress Update as at October 2003**

Tasks	Progress as at October 2003
Five Priority Areas	
Priority I: Upgrading the Listing Rules and Listing Functions	
<ul style="list-style-type: none"> • By Q2 2003: HKEx to introduce amendments to the Listing Rules and promulgate a revised Code on Best Practice to implement various corporate governance measures consulted since Jan 2002. 	<ul style="list-style-type: none"> • Substantial progress has been made. A number of salient policy issues relating to the amendments to the Listing Rules have been considered by the Listing Committee and policy direction has been given. Several policy issues have been re-examined and revised policy directions agreed. SFC has provided policy input at each stage. • Amendments to the Listing Rules (Main Board and GEM) have been drafted and are in the process of being finalised. The draft text of rules will be exposed for a limited period to relevant professionals for comments. • Code of Corporate Governance Practices (the “Code”) drafted with input from a Working Group comprising a cross section of market participants. In drafting the Code, extensive reference made to the UK Combined Code (finalized in July 2003), SCCLR Phase II proposals, and the IOSCO Principles of Auditor Independence and Role of Corporate Governance in Monitoring an Auditor’s Independence. • The draft Code is to be discussed by the Listing Committee in late October. Consideration to be given on whether to engage in further consultation on the draft Code and its implementation. <p>Action by : HKEx</p>

Tasks	Progress as at October 2003
<ul style="list-style-type: none"> By Q1 2003: HKEx to complete streamlining of the listing process in order to improve quality control at the point of entry by focussing on critical matters. 	<p>Completed</p> <ul style="list-style-type: none"> Consolidated team roles implemented in Q1. Revised guidelines issued in June 2003. HKEx will make further refinements as necessary to improve efficiency and effectiveness of IPO vetting. <p>Action by : HKEx</p>
<ul style="list-style-type: none"> By phases, starting from Q2 to Q4 2003: HKEx to amend the Listing Rules to improve the initial and continuing listing requirements and delisting procedures, following consultation started in July and November 2002. 	<ul style="list-style-type: none"> For initial listing criteria and continuing obligations, work on conclusions report and drafting of rule amendments has substantially been completed. Target to implement relevant rule amendments in Q1 2004. For continuing listing criteria, delisting and related issues, a summary and analysis of responses has been prepared. HKEx to consider recommendations, with policy input from SFC in Q4, 2003. Policy advice to be sought from the Listing Committee in Q1 2004. <p>Action by : HKEx</p>
<ul style="list-style-type: none"> By Q4 2003: The Administration to follow up recommendations of the FS-appointed Expert Group scheduled for publication in March 2003 with a view to improving Listing Functions; and delineating roles of FSTB, SFC and HKEx under the tiered regulatory structure. 	<ul style="list-style-type: none"> FSTB issued a consultation paper on proposals to enhance regulation of listing on 3 October 2003. <p>Action by : FSTB</p>

Tasks	Progress as at October 2003
Priority II: Tightening the regulation of IPO intermediaries	
<ul style="list-style-type: none"> By Q1 2003: HKEx to consult the market on amendments to the Listing Rules to tighten regulation of IPO intermediaries, in particular sponsors and financial advisors. Target is implementation in H2, 2003. 	<ul style="list-style-type: none"> Consultation period ended on 31 July. HKEx has completed analysing 129 consultation responses. HKEx/SFC to reach joint agreement on recommendations to take forward proposals in Q4 2003. Recommendations and conclusion report to be put forward to Listing Committee at end Q4 2003. <p>Action by : HKEx and SFC</p>
<ul style="list-style-type: none"> By Q1 2003: SFC to put forward proposals to the Standing Committee on Company Law Reform (SCCLR) on amendments to the Companies Ordinance to extend the prospectus-related liability to IPO sponsors, and possibly, other IPO intermediaries, for ensuring quality disclosure to investors. 	<p>Completed</p> <ul style="list-style-type: none"> SFC has submitted the proposals to the SCCLR. The SCCLR considered the proposals but did not endorse them. The issue of sponsor liability has been raised in a different context under the consultation exercise on tightening regulation of IPO intermediaries referred to above. <p>Action by : SFC</p>
<ul style="list-style-type: none"> By Q3 2003: FSTB, in consultation with the Hong Kong Society of Accountants, to finalise legislative proposals to enhance the regulation of the accountancy profession. 	<ul style="list-style-type: none"> A Member's Bill to be sponsored by Hon Eric Li will be shortly introduced into the Legislative Council to provide for the opening up proposals. A consultation paper to the relevant stakeholders on the Independent Investigation Board proposal was released on 19 September 2003. <p>Action by : HKSA FSTB</p>

Tasks	Progress as at October 2003
Priority III: Effective Roll Out of the Securities and Futures Ordinance	
<ul style="list-style-type: none"> By 1 April 2003: SFC to formulate an effective strategy in enforcing the Securities and Futures Ordinance (SFO), in particular with regard to execution of “dual filing”, inquiries into corporate misconduct, regulation of licensed IPO sponsors, cooperation with HKEx in combating pre-IPO market manipulation, etc. SFC to adopt a case specific approach as a corporate regulator under SFO and ‘dual filing’. 	<p>Completed</p> <ul style="list-style-type: none"> SFO came into effect on 1 April 2003. <p>Action by : SFC</p>

Tasks	Progress as at October 2003
Priority IV: Successful completion of SCCLR Phase II Corporate Governance Review	
<ul style="list-style-type: none"> By Q1 2003: The Administration, SFC and HKEx to render full support to the SCCLR for completion of its Phase II Review, with SFC and HKEx putting forward further proposals to SCCLR, including amendments to the Companies Ordinance on related party transactions, shareholders' rights, disclosure requirements, liability of professional advisers relating to misstatements in listing documents, etc. 	<p>Completed</p> <ul style="list-style-type: none"> Consultation paper issued on 11 June 2003. The proposals relate to different aspects of directorship (including directors' roles, duties, qualifications, training and remuneration, as well as connected transactions, board procedures and board committees, etc); shareholders' rights; and corporate reporting with focus mainly on external auditors and corporate regulation. Consultation period expired on 30 September 2003. The Administration is now analysing the comments received. <p>Action by : FSTB SFC HKEx</p>
Priority V: Early implementation of SCCLR Recommendations from its Phase I Corporate Governance Review	
<ul style="list-style-type: none"> By Q1 2003: FSTB and SFC to release a joint consultation paper on the concept to empower SFC to conduct derivative actions for minority shareholders of a listed company, including legal issues, scope and effectiveness of remedies, and possible implementation arrangements. 	<ul style="list-style-type: none"> Joint FSB/SFC consultation commenced in May. Late submissions received until early October. Consultation conclusion to be issued by end of November 2003. <p>Action by : FSTB SFC</p>
<ul style="list-style-type: none"> By Q2 2003: FSTB to introduce to LegCo a Companies (Amendment) Bill to enhance corporate governance by implementing SCCLR Phase I recommendations relating to shareholders' remedies. 	<ul style="list-style-type: none"> Bill introduced into LegCo on 25 June 2003. The relevant legislative proposals relate to statutory derivative action, unfair prejudice remedies, orders for inspection of company records, and injunction orders. The Bill is now at the Bills Committee stage. <p>Action by : FSTB</p>

Tasks	Progress as at October 2003
<ul style="list-style-type: none"> ● By Q4 2003: FSTB, in consultation with the listed sector and the accountancy profession, to finalise and take forward a proposal to establish a Financial Reporting Review Panel to investigate financial statements of companies and enforce changes thereto. 	<ul style="list-style-type: none"> ● Consultation paper on the proposal was released on 19 September 2003. <p>Action by : FSTB</p>

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