

Corporate Governance Developments From Around The World



A. United Kingdom & Europe

United Kingdom: Disclosure of Contracts for Difference

On 2 July 2008, the UK Financial Services Authority published a policy update on disclosure of contracts for difference (“CFDs”). These financial instruments are purely economic positions over shares held under a derivative contract. The FSA has decided that long CFD positions will become discloseable under the UK Disclosure and Transparency Rules. The threshold level for disclosure will be three percent of total voting rights. This is the same level as that for shares. The new rules are expected to come into force in September 2009.

For more information, please go to: <http://www.fsa.gov.uk/>

B. The Americas

United States: Directors and Corporate Social Responsibility

A proposal to amend the California Corporations Code has been put before the California State Legislature. Assembly Bill 2944 proposes amending section 309 of the California Corporations Code. This provides that a director must act in good faith, in the manner in which he/she believes to be in the best interests of the corporation and its shareholders.

The proposed amendment will provide that in acting in the best interests of the corporation, the director may consider:

- The long-term and the short-term interests of the corporation and its shareholders; and

- The effects that the corporation’s actions may have in the short term or in the long term upon any of the following:
 - The prospects for potential growth, development, productivity, and profitability of the corporation;
 - The economy of the state and the nation;
 - The corporation’s employees, suppliers, customers, and creditors;
 - Community and societal considerations; and
 - The environment.

For more information, please go to: <http://www.leginfo.ca.gov>

C. Asia Pacific

Singapore: Acquisitions Involving Profit Guarantees

On 24 March 2008, the Singapore Exchange Limited issued a note setting out the responsibilities of the Board and Financial Advisers of a listed company in assessing acquisitions where the purchase consideration is based on or includes profit guarantee provided by vendors. In assessing proposed acquisitions involving profit guarantees, the Board and the company's financial adviser must do the following:

- assess whether the profit guarantee provided is realistic;
- assess the adequacy of compensation should the profit guarantee fail to materialise;
- put in place proper safeguards to ensure the company's right of recourse when the profit guarantee is not met; and
- ensure that the proposed acquisitions are in compliance with all relevant rules and regulations, including the Exchange's requirements on Very Substantial Acquisitions, Major Transactions and Discloseable Transactions.

It is the responsibility of the Board to apprise the shareholders promptly of its assessment of the commercial merits of the potential acquisition. The Board is also required to inform the shareholders of the basis of its decision in relation to the proposed acquisition.

On their part, the financial advisers must provide the Board with their opinion on whether the proposed acquisition is on normal commercial terms and is not prejudicial to

the interest of the company and its shareholders. They must also be prepared to fully disclose the basis for its opinion if asked by the Board, the shareholders of the company or the Exchange.

For more information, please go to: <http://www.sgx.com/>

Singapore: Proposed Amendments To The Listing Rules

The Singapore Exchange Limited ("SGX"), in a Consultation Paper issued on 10 July 2008, has proposed the inclusion of new rules into the SGX Listing Rules to, among others, introduce the listing of life science companies with no financial track records, and new classes of investment funds. Life science companies with no financial track record will now be able to list on the SGX if they meet several criteria including the following:

- ability to attract funds from investors such as institutional investors; and
- the intention to raise funds from the IPO to bring identified products to market and generate revenue.

The listed companies are required to provide quarterly disclosure on the use of funds to ensure transparency and timely disclosure of material information.

For more information, please go to: <http://www.sgx.com/>

Australia: Second Edition Corporate Governance Guidelines

The Australian Securities Exchange Limited Corporate Governance Council ('Council') released in August 2007 the Second Edition

Corporate Governance Guidelines ('SECGG'). This is the first revision of the Council's Principles of Good Governance and Best Practice Recommendations since they issued in March 2003. The effective date for the SECGG is a listed entity's first financial year commencing on or after 1 January 2008. Where an entity's financial year begins on 1 January, the disclosure will be required in relation to the financial year 1 January 2008 to 31 January 2008 and will be made in the annual report published in 2009. However, if the listed entity's financial year begins on 1 July, disclosure in relation to the financial year 1 July 2008 to 30 June 2009 will be required. The disclosure will be made in the annual report published in 2009.

The SECGG sets out a list of 'relationships affecting independent status' that a company should take into consideration when determining the independence of a director, rather than providing a definition of independence. The SECGG also requires companies to disclose their reasons for considering a director 'independent' notwithstanding the existence of one of these relationships.

In June 2008, the Council released the Revised Supplementary Guidance to Principle 7 of the SECGG ('Recognise and Manage Risk'). Principle 7 makes it clear that material business risks involve both financial and non-financial risk. The Revised Supplementary Guidance stressed that a sound framework of risk oversight, risk management and internal control underpins reliable financial reporting, compliance with



relevant laws and regulations, and effective and efficient operations.

For more information, please go to: <http://www.asx.com.au/>

Australia: Listing Rule Amendments

On September 2008, the Australian Securities Exchange Limited ('ASX') released the details of the Listing Rule amendments expected to take effect by year end 2008. One of the proposed amendments related to the information required to be included in Appendix 5B: Mining Exploration Entity Quarterly Report. The Listing Rules provide that mining exploration entities must complete Appendix 5B and submit it to the ASX within one month after the end of each quarter of the financial year. The mining entity must provide in Appendix 5B a consolidated statement of cash flows, including operating activities cash flows in respect of four payments for exploration and evaluation. The entity must also disclose estimates of forward cash outflows in relation to exploration and evaluation, and development.

To present a complete picture of the company's likely cash flows for the forthcoming quarter and to provide a more meaningful disclosure to investors, it is proposed that Appendix 5B be amended to include production and administration (as well as exploration and evaluation and development) in the fourth section of the Appendix relating to estimates of cash outflows for the next quarter.

Another proposed amendment related to timing of reporting of all of the investments held by Listed Investment Companies ('LICs') and their child entities. The amendment will have the effect of enabling LICs to disclose in their annual report a list of investments held by it and its child entities as at the balance date, rather than as at six weeks before the annual report is sent to security holders. The amendment will remove timing issues which make compliance with the Listing Rules problematic for some LICs.

For more information, please go to: <http://www.asx.com.au/>

Hong Kong: Insider Trading

A finance manager of a listed company today became the first person to be convicted of insider dealing under the Securities and Futures Ordinance (SFO) since its inception in 2003.

The charges involved the trading of the shares of Sino Golf Holdings Limited (Sino Golf) by the accused during her employment with a wholly owned subsidiary of the company.

The Securities and Futures Commission alleged she avoided a loss on her investment in Sino

Golf Holdings Limited's shares using information not known to the market at the time, namely, that a major debtor of Sino Golf Holdings Limited, Huffey Corporation, which owed Sino Golf about \$11.9 million, had filed for Chapter 11 bankruptcy protection in the United States. The accused had sold all of her shares in Sino Golf Holdings Limited before the market was made aware of the impact of the bankruptcy. The accused, who pled guilty, was sentenced to six months' imprisonment suspended for two years, and fined a total of \$200,000 (being \$50,000 for each of the four counts).

For more information, please go to: <http://www.sfc.hk>