

MEMORANDUM OF UNDERSTANDING
for the listing of
Hong Kong Exchanges and Clearing Limited
on
The Stock Exchange of Hong Kong Limited

BETWEEN
Securities and Futures Commission
Hong Kong Exchanges and Clearing Limited
and
The Stock Exchange of Hong Kong Limited

22nd August 2001

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Limited

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BETWEEN:

- (1) **Securities and Futures Commission of**
12th Floor, Edinburgh Tower, The Landmark, 15 Queen’s Road
Central, Hong Kong (“**SFC**”);
- (2) **Hong Kong Exchanges and Clearing Limited of**
12th Floor, One International Finance Centre, 1 Harbour View
Street, Central, Hong Kong (“**HKE**”); and
- (3) **The Stock Exchange of Hong Kong Limited of**
1st Floor, One and Two Exchange Square, Central, Hong Kong
 (“**SEHK**”).

A. HKEx is the holding company of SEHK and a recognized exchange controller within the meaning of the Merger Ordinance (as defined below). SEHK is a company of which HKEx is the controller within the meaning of the Merger Ordinance.

B. In the context of the listing of HKEx on the Main Board of SEHK, and as contemplated by section 13 of the Merger Ordinance, the SFC, HKEx and SEHK entered into a Memorandum of Understanding for the listing of Hong Kong Exchanges and Clearing Limited on The Stock Exchange of Hong Kong Limited on 19 June 2000 (“**First MOU**”).

C. The SFC, HKEx and SEHK, parties to the First MOU, wish to amend the terms of the First MOU and have agreed to enter into this MOU to replace and supersede the First MOU. The amendments provide for the extension of the scope of the First MOU to cover GEM as well as the Main Board of SEHK and remove or bring up-to-date certain provisions of the First MOU which had become spent by passage of time.

1.1 Definitions

GEM	the Growth Enterprise Market operated by SEHK
GEM Listing Rules	Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited

Listing Rules

Main Board Listing Rules and/or GEM Listing Rules, as

Rules, then the context in which the word or expression is used shall determine which definition applies;

- (b) references to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date hereof) from time to time and shall include any provisions of which they are a re-enactment (whether with or without modification); and
- (c) words importing the singular meaning include the plural meaning and vice

- (f) this MOU shall be a public document and the contents hereof may be disclosed and copies may be furnished by any party to any third party without the consent of the other parties.

2.4 Amendment

- 2.4.1 This MOU may be varied, amended or supplemented at any time by an addendum signed by all parties (“**Addendum**”).

3. LISTING ARRANGEMENTS

3.1 General powers and rights

- 3.1.1 The SFC shall, instead of SEHK, take all actions and make all decisions in relation to HKEx that would be taken by SEHK in the case of other applicants and issuers except in the case of any action or decision in respect of which the SFC states in writing that it is satisfied that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by SEHK.
- 3.1.2 Without prejudice to the terms of this MOU, the parties shall have the powers and functions, rights and obligations (as the case may be) provided for them respectively in the Relevant Listing Rules. The powers and functions of the SFC referred to in this MOU (including those in the Relevant Listing Rules) are hereinafter referred to as “**SFC (HKEx Listing) Powers**”.

3.2 Listing of HKEx

- 3.2.1 Pursuant to the terms of the First MOU, the SFC had the power to receive and consider HKEx’s application for listing on the Stock Exchange of Hong Kong and any pre-application documents. The SFC also had the power, subject to HKEx’s rights of appeal, to reject HKEx’s application or approve (with or without conditions) the application. Upon approval of the application, the SFC would be responsible for the supervision of HKEx’s compliance with the Listing Rules as a listed issuer.
- 3.2.2 Pursuant to the terms of the First MOU, the SFC, in relation to HKEx’s application for listing, could advise SEHK of any administrative steps it reasonably required SEHK to take on its behalf. The SFC could not require SEHK to take steps which SEHK would not take with respect to other applicants for listing. SEHK was required to carry out the administrative steps within the time period and in a like way to that which it would do with respect to other applicants for listing.
- 3.2.3 In exercise of its power under the First MOU, the SFC approved HKEx’s application for listing and HKEx became a listed company on the Main Board on 27 June 2000.

3.3 Ongoing listing procedures

- 3.3.1 Upon and from HKEx's listing, the SFC shall, in relation to HKEx, have all the powers and functions that SEHK has in relation to a listed issuer, except SEHK's power to make Listing Rules pursuant to section 34 (1) of the Stock Exchanges Unification Ordinance (Cap. 361). SEHK shall have, and be entitled to exercise, its normal powers and functions in the case of any action or decision in respect of which the SFC has stated in writing that a conflict of interest will not arise if that action or decision were to be taken or made, as the case may be, by SEHK.
- 3.3.2 The SFC has established a framework for exercising those SFC (HKEx Listing) Powers which are concerned with listing matters. Such framework has been set out in the Relevant Listing Rules. The provisions of the Relevant Listing Rules are set out in **Appendix 2**. The parties acknowledge that the Relevant Listing Rules may be changed pursuant to section 34 of the Stock Exchanges Unification Ordinance (Cap. 361). The version of the Relevant Listing Rules appended hereto is attached for ease of reference only and any change to the Relevant Listing Rules after the entry into force of this MOU will not constitute an amendment of this MOU requiring an Addendum.
- 3.3.3 SEHK will not, unless requested by the SFC and agreed by SEHK:
- (a) be bound to monitor the Listing Rules in relation to HKEx;
 - (b) enforce the Listing Rules in relation to HKEx; or
 - (c) except as provided in clause 5, make any referral under its statutory obligations to the SFC in relation to HKEx.
- 3.3.4 SEHK will nominate the person or persons in the Listing Division who:
- (a) from time to time, may be contacted by the SFC to discuss Listing Rule policy or administration or any other matters in relation to HKEx as a listed issuer (e.g., enforcement issues or general waiver policy); and
 - (b) will give the SFC the information referred to in clause 3.5.1.
- 3.3.5 All communications and contacts between the Listing Division and the SFC in relation to any matters referred to in clause 3.3.4 are deemed confidential and shall

3.3.6 SEHK will take action as required by the SFC in relation to:

- (a) the admission to, suspension or removal from, listing on the Stock Exchange of Hong Kong of HKEx's securities; and
- (b) the suspension or resumption on SEHK's trading system of trading in HKEx's securities.

SEHK will do so within the respective time limits as reasonably prescribed by the SFC or in lieu thereof in a timely manner, and in the way as reasonably prescribed by the SFC or in lieu thereof and to the extent practicable, in a like way to that which it would do with respect to other listed issuers.

3.3.7 In relation to HKEx as a listed issuer, the SFC will advise SEHK of any administrative steps it reasonably requires SEHK to take on its behalf. The SFC shall not require SEHK to take steps which SEHK would not take with respect to other listed issuers. SEHK will carry out the administrative steps within the time period and in a like way to that which it would do in respect of other listed issuers.

3.4 Company announcement procedures

3.4.1 The SFC will advise SEHK of any administrative steps it reasonably requires SEHK to take on its behalf in relation to any division of the decision-making and administrative steps involved in HKEx issuing company announcements. The SFC shall not require SEHK to take steps which SEHK would not take with respect to other listed issuers. SEHK will carry out the administrative steps within the time period and in a like way to that which it would do with respect to other listed issuers.

3.4.2 If a document for release to the market is served on SEHK that should have been served on the SFC acting in the place of SEHK as the regulator of HKEx in respect of listing matters, SEHK will:

- (a)

- 3.4.3 The SFC may specify documents, or classes of documents, required by the Relevant Ordinances to be served on a securities exchange that will not be subject to this clause 3.4.

3.5 Listing Rule waiver procedures

- 3.5.1 When the SFC receives a waiver application from HKEx in respect of the Listing Rules, the Listing Division shall at the request of the SFC as soon as reasonably practicable provide the SFC with the following:

- (a) access to SEHK's internal waivers database;
- (b) if asked, background papers retained by SEHK in relation to the waiver decisions in (a); and
- (c) if asked, advice on SEHK's policy, or administration, in relation to the relevant Listing Rule.

The above information may be provided wholly or in part by way of a direct data link.

- 3.5.2 Regulatory information given to the SFC in connection with an application for a waiver will be treated confidentially by the SFC.

- 3.5.3 Waivers granted and not granted to HKEx will be recorded by SEHK in its internal database. The SFC will give SEHK a copy of the entry to be recorded.

3.6 Fees and expenses

- 3.6.1 HKEx will pay the SFC the following fees:

- (a) in relation to HKEx's listing application, and ongoing listing, any fees required by the Listing Rules; and
- (b) in comparable circumstances applying to HKEx, any fee that would have been payable to SEHK by other applicants and issuers in connection with their listing on the Stock Exchange of Hong Kong.

- 3.6.2

4. CONFLICTS OF INTEREST AND MARKET INTEGRITY

4.1 Conflicts of interest

- 4.1.1 Section 13(2)(a) of the Merger Ordinance requires the SFC to be satisfied that HKEx has put in place procedures (detailing among other things the powers and functions, rights and obligations of the SFC and HKEx respectively) to deal with conflicts of interest that may arise between, on the one hand, the interests of HKEx as a listed company and/or the companies of which it is the controller, and on the other hand, the interests of the proper performance of regulatory functions by such companies. The parties have agreed those procedures as are set out in **Appendix 3**.

4.2 Market integrity

- 4.2.1 In the First MOU, HKEx and the SFC acknowledged that, with the coming into effect of the Merger Ordinance, there was a need to formalize new arrangements as soon as reasonably practicable for the effective discharge of their respective responsibilities in relation to SFC oversight of HKEx and its subsidiaries, supervision of Exchange Participants and market surveillance to reduce any areas of duplication of function, to facilitate a smooth and cooperative working relationship and to enable the SFC more effectively to discharge its statutory obligation of supervision and that the SFC had supplied HKEx with a draft of a proposed Memorandum of Understanding covering these matters as a basis of further discussions. The parties agreed to work together in good faith and in a spirit of mutual cooperation to consider that draft and to finalize as quickly as reasonably practicable an appropriate Memorandum of Understanding.
- 4.2.2 Before the signing of the Memorandum of Understanding referred to in clause 4.2.1, the parties agreed that each of them would continue to observe the then existing Memoranda of Understanding, arrangements and practices delineating their respective areas of operation and the information-sharing arrangements between them, including those arrived at in an exchange of correspondence in relation to disciplinary arrangements and information-sharing immediately prior to the coming into force of the Merger Ordinance.
- 4.2.3 Pursuant to a Memorandum of Understanding dated 20 February 2001, the SFC and HKEx established arrangements between them with respect to SFC oversight and supervision of Exchange Participants and market surveillance.

5. MARKET SURVEILLANCE

- 5.1 Where SEHK, in the course of its surveillance of Exchange Participants (in relation to trading and clearing matters) and listed issuers or as a result of complaints or market intelligence, detects unusual market activity (whether of an Exchange Participant, their representative or clients) involving HKEx's securities which reveals a possible breach of any of the Relevant Ordinances, business rules or conditions of a licence, SEHK will immediately inform the SFC. This clause 5.1

6.5.2 The parties acknowledge that:

(a)

6.6 Effect on other arrangements

- 6.6.1 The Amended and Restated Memorandum of Understanding Governing Listing Matters and the Amended and Restated Addendum to the Memorandum of Understanding Governing Listing Matters both dated 6 March 2000 between the SFC and SEHK shall have effect subject to any conflicting provisions of this MOU or of the Relevant Listing Rules.
- 6.6.2 With effect from the date of this MOU, this MOU will supersede, repeal and replace the First MOU in its entirety.
- 6.6.3 In the event of there being any conflict between the provisions of this MOU and/or the Relevant Listing Rules and any other arrangements entered into between the SFC and HKEx and/or SEHK with respect to listing matters, the provisions of this MOU and/or the Relevant Listing Rules shall prevail.

6.7 SFC may delegate powers and functions

- 6.7.1 The SFC may delegate its powers and functions under this MOU and the Relevant Listing Rules pursuant to section 9 of the Securities and Futures Commission Ordinance (Cap. 24).

7. EFFECTIVE DATE AND TERMINATION OF MOU

- 7.1 This MOU shall come into force on the date hereof or such other date as may be agreed in writing between the SFC and HKEx.
- 7.2 This MOU will continue in force until:
 - (a) HKEx ceases to be a listed issuer for the purposes of the Listing Rules, or
 - (b) subject to the Merger Ordinance, all parties agree in writing to terminate 6.9007 Tc4(twe14.4)-3ng SFC at

DATED this 22nd day of August 2001

SIGNED FOR AND ON BEHALF OF THE)

Appendix 1

Section 13 of the Exchanges and Clearing Houses (Merger) Ordinance

**13. Provisions applicable where recognized
exchange controller, etc, seeks to be
listed company**

(1) In this section -
“listed company” means a listed company within the meaning of section 2(1) of the

(4) By virtue of this section, the Commission shall have such powers and functions as are provided for it under –

(a) rules made for the purposes of subsections (2)(a) and (3);

(b) arrangements referred to in subsection (2)(b).

(5) Where a fee is payable to the Stock Exchange Company by a person for the taking of an action or the making of a decision which may be taken or made, as the case

Appendix 2

Part A

Chapter 38 of the Main Board Listing Rules

Chapter 38

LISTING OF HKEC

- 38.01 This Chapter sets out requirements that must be satisfied for the securities of HKEC to be listed on the Exchange. HKEC is the holding company of the Exchange and a recognized exchange controller within the meaning of the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (the “Merger Ordinance”). The Exchange is a company of which HKEC is the controller within the meaning of the Merger Ordinance.
- 38.02 In the context of the listing of HKEC, and as contemplated by section 13 of the Merger Ordinance:
- (1) the Exchange has included this chapter in the Exchange Listing Rules; and
 - (2) HKEC and the Exchange have entered into a memorandum of understanding with the Commission.

Powers and functions of the Commission and the Exchange

- 38.03 Without limitation of the Commission’s general powers and functions in relation to listing matters, the Commission has the following powers and functions in relation to HKEC’s application for listing and status as a listed issuer:
- (1)

Exchange, the Exchange shall have, and be entitled to exercise, its normal powers and functions in taking the relevant action or making the relevant decision.

the Commission and one market representative. Any meeting of the SFC (HKEC Listing) Committee convened to review an earlier decision or ruling of the SFC (HKEC Listing) Committee (i.e. where the SFC (HKEC Listing) Committee is performing a role equivalent to that of the Listing (Review) Committee) shall consist of members who were not present at the meeting which made the earlier decision or ruling.

- 38.07 The SFC (HKEC Listing) Appeals Committee shall consist of the Chairman of the Commission and the non-Executive Directors of the Commission. The quorum necessary for the transaction of any business of the SFC (HKEC Listing) Appeals Committee shall be the Chairman of the Commission and two non-Executive Directors of the Commission or, in the absence of the Chairman of the Commission from Hong Kong, three non-Executive Directors of the Commission.
- 38.08 Each of the SFC (HKEC Listing) Committee and the SFC (HKEC Listing) Appeals Committee may elect any of its members to be chairman and may

Appendix 2

Part B

Chapter 36 of the GEM Listing Rules

Chapter 36

Pa

Listing of HKEC

36.01 In the context of the listing of HKEC on the Main Board, and as contemplated by section 13 of the Exchanges and Clearing Houses (Merger) Ordinance (Cap. 555) (the “Merger Ordinance”):

(1) (1)

(2) the Commission shall exercise such powers and functions through and within the framework described in rules 38.05 to 38.08 of the Main Board Listing Rules as if:

- (a) references to “HKEC” were replaced with references to “the relevant applicant or issuer”;
- (b) references to “Listing Committee” were replaced with “GEM Listing Committee”;
- (c) references to “Listing (Review) Committee” were replaced with “GEM Listing (Review) Committee”;
- (d) references to “Listing Division” were replaced with “GEM Listing Division”;
- (e) references to “the Executive Director – Listing” were replaced with “the Executive Director – GEM Listing Division”; and
- (f) references to “Chapters 2A and 2B” were replaced with “Chapters 3 and 4”.

Appendix 3

Procedures to deal with conflicts of interest

Introduction

1. Set out below are the procedures, powers and functions that will be adopted and/or exercised by the Securities and Futures Commission (the “

SFC Representatives means any one or more director, manager or other executive of the SFC from time to time nominated by the SFC for the purposes of these Procedures.

In these Procedures, unless provided for above, where the context admits words and expressions the definitions of which are contained or referred to in the Exchanges and Clearing Houses (Merger) Ordinance shall be construed as having the meanings so attributed to them.

The Conflict Committee

3. HKEx shall use its best endeavours to ensure that staff within HKEx and companies of which it is the controller are alert to, and identify, conflicts of interest or potential conflicts of interest which may arise in the course of the performance of regulatory functions. All relevant facts giving rise to any significant conflict of interest or significant potential conflict of interest shall be brought to the attention of the Conflict Committee Secretary at the earliest possible opportunity. For these purposes, “significant” shall mean facts which a reasonable person would regard as giving rise to a conflict of interest or potential conflict of interest. A conflict of interest or potential conflict of interest involving any relevant contract,

Resolution of conflicts of interest

5. Where the Conflict Committee has determined that a conflict of interest or potential conflict of interest does or may arise it shall notify the SFC Representatives of all relevant facts including any proposals for resolving the matter in a manner which assures the proper performance of any relevant regulatory function. The SFC Representatives shall then consider the circumstances of the case and determine whether in their opinion the regulatory function can be discharged without the intervention of the SFC. HKEx shall provide any further particulars that the SFC Representatives reasonably require.
6. If the SFC Representatives are satisfied that any proposal made by the Conflict Committee (incorporating, as applicable, any recommendation of the SFC Representatives) will assure the proper performance of any relevant regulatory functions, then HKEx shall implement such proposal, incorporating, as applicable, any such recommendation of the SFC Representatives.
7. If the SFC Representatives are not satisfied that action taken by HKEx (or a company of which it is the controller) will assure the proper performance of any relevant regulatory function then the SFC shall have the powers and functions provided pursuant to paragraph 11.

Appeal to the Commission

8. If the Conflict Committee disagrees in any respect with the approach taken by the SFC Representatives, the two parties will discuss the differences between them for a period of not more than 5 business days with a view to resolving their differences and reaching an agreed position as regards the conflict of interest or potential conflict of interest. On the expiry of such period if the differences have not been resolved the matter will be referred to the Commission and each of the Conflict Committee and the SFC Representatives shall prepare brief written statements of their respective views and the reasons for adopting those views for submission to the Commission.
9. The Commission shall within 5 business days of receiving such statements provide a written determination setting out (with reasons where applicable) (i) whether in its opinion the relevant facts do give rise to a conflict of interest or potential conflict of interest and, (ii) if so, the proposals, if any, it considers should be made for resolving the matter in a way which assures the proper performance of any relevant regulatory function in order to obviate the need for the SFC to intervene, or (iii) its conclusion that such intervention is unavoidable pursuant to paragraph 11 below.
10. The determination of the Commission shall be final and binding on all relevant parties. The Commission shall act as experts and not as arbitrators.

The Role of the SFC

14. The prohibited behaviour in paragraph 13 shall be regarded as extending to persons with which HKEx (or any company of which it is the controller) has or proposes to have a business relationship or a person with which HKEx (or a company of which it is the controller) has entered into or proposes to enter into a business arrangement.
15. For the purposes of ensuring compliance with paragraphs 13 or 14, if the SFC has concerns at any time as to the proper performance of regulatory functions with respect to any particular person regulated by HKEx or companies of which it is the controller, the SFC shall be entitled to ask HKEx to provide reasonable particulars of any current and proposed business relationships and business arrangements between HKEx and companies of which it is the controller and that person and HKEx shall comply with such request as soon as reasonably practicable following receipt of such request.
16. HKEx shall procure that any company of which it is the controller shall take such actions, make such decisions and exercise such powers and functions in such a way as to avoid any occurrence as is contemplated in paragraphs 13 or 14.

Co-operation regarding conflicts of interest

17. HKEx shall procure that any company of which it is the controller shall comply with the provisions of these Procedures.
18. HKEx shall work with the SFC when the SFC has concerns regarding conflicts of interest, and shall implement any procedures which the SFC reasonably believes will enhance the operation of matters referred to in these Procedures.