

documents. If such identity has not been identified, CS Group should set out the nature and description of the type(s) of business to be acquired, the status of negotiation, and the acquisition strategy in the listing documents. However, to simplify the case, the acquisition of "Gustoso Caffè" during the IPO process is not taken into account and any accounts or the nature or description of "Gustoso Caffè" are not included in this Book.

Question: Is William's company suitable or ready for being listed?

1. LISTING CONSIDERATIONS

2.005 Points for consideration for listing the shares of a company include:

1. The purpose of listing the shares of a company –

in practice, the most common reason is that a company wants to raise funds for its proposed projects/investments. Such a company has the intention to raise money from the public instead of utilising its internal resources for further development or expansion. New source of funds can be used for re-investment.

The company may want to broaden its shareholders base and invite multi-international investment institutions to become their strategic investors. The introduction of such strategic investors can increase its shares liquidity in the stock market. Furthermore, it may want to establish its reputation and visibility in local and foreign markets in order to capture more market share in its industry. Listing may initiate a chance for the company to enter into lucrative contracts which are only reserved for listed public companies. All in all, listing can bring about long term benefits.

The existing shareholders can through listing monetise their investment and offer themselves an opportunity to look for other business opportunities.

The company may utilise the funds raised from the listing for repayment of debt or working capital.

As to how CS Privateco Limited can raise funds to acquire the business of Italian specialty coffee, Gustoso Caffè, in Hong Kong, please refer to Part 4 of this Chapter.

2. Whether the company and management realise that the listing process will involve plenty of time and resources –

it will usually take at least six months to two years for restructuring before floatation and a lot of professionals have to be engaged in the listing process. One has to consider what steps should be done next in case of the proposed project/investment cannot be carried out due to failure of floatation. He or she may have to take a risk that the target investment might also be acquired by

other competitors since the fundraising exercise may take at least one year to complete.

Chapter 4 of this publication demonstrates a high-listing-expenses situation in respect of CS Listedco Limited and lists the types of professionals involved in the pre-listing and post-listing process;

3. Whether existing shareholders are willing to forgo their control in the company after listing –

the existing shareholders should be aware that certain transactions entered into between themselves and the company previously may require approval from other shareholders who have no material interest in those transactions after listing.

Both William and Sandra as well as their controlled corporations have many business transactions with CS Group. In the prospectus, those connected transactions should be disclosed. After listing, those non-exempt connected transactions will have to be approved by those shareholders who have no material interest in the transactions (rule 14A.36 of the Listing Rules). Chapter 7 of this publication illustrates the connected transactions entered into by each of William and Sandra with the proposed listed company, CS Listedco Limited;

Whether the company is aware of the on-going obligations a listed company should comply with –

the company has to comply with the Listing Rules/GEM Listing Rules, Securities and Futures Ordinance (SFO), and Takeovers Code, in addition to the company law of its jurisdiction. The company will also be closely monitored by the public, government regulators, and the media;

5. Public attention –

the management of the proposed listed company should bear in mind that any changes of senior personnel may have impact on the public confidence toward the company and the stock price may be affected as a result. The company may have to be prepared to tackle the potential problems with such fluctuation;

6. One's readiness to play the role of a director of a listed company and to communicate with public shareholders and investors –

under the Listing Rules or GEM Listing Rules, every director should always know his or her responsibilities as a director of a listed company and its conduct, business activities, and development. If one is unable pay sufficient time and attention to the listed company's affairs, he or she will not be advised to accept his or her appointment of director. Yet, if he or she opts not to become a director to manage the listed company, he or she may feel unconfident about appointing another individual to act as an agent, i.e. director, on his or her behalf to manage the company;

3.011 Below are areas of guidelines which cover sponsor's due diligence:

- | | |
|--|---|
| • Submission Readiness | • Legal and Regulatory Compliance |
| • Disclosure to the Market | • Foreign Lawyers |
| • Verification Practice | • Third Parties including Expert Advisers |
| • Knowing the Listing Applicant and its Directors | • Accountants |
| • Business Model | • Assets Inspection and Property Valuers' Reports |
| • Interviews of Major Business Stakeholders | • Environmental Due Diligence |
| • Controlling Shareholders | • Biological Assets |
| • Connected Persons/Connected Transactions | • Record Keeping |
| • Financial Due Diligence | • Sponsor Appointment, Fees and Controls |
| • Internal Controls | • Public Offer Management |
| • Distributors, Franchisees and Consignees | • Communications with Regulators |
| • Anti-Corruption, Anti-Money Laundering and Sanctions | • Provision of Information to Analysts |
| • Escalation of Critical Matters to Management | • Dealing with "Material Deficiencies" |
| | • Material Contracts |

Source: Charlton J, "The new regulatory regime for IPO sponsors" (18 September 2013)

3.012 A sponsor will take the following steps to perform the required due diligence for the above-listed areas; such steps are as follows:

1. conduct public searches and background searches;
2. review records, documents and plans;
3. interview and make relevant inquiries with the relevant persons, like directors, shareholders, suppliers and customers, etc;
4. verify information by documents provided or available in the public domain;
5. obtain further documents, information and confirmation;
6. compare itself with relevant industry peers;
7. identify key risks; and
8. assess strengths and weaknesses.

A sponsor is expected to refer to and/or abide by relevant regulatory references, for instances, Listing Rules, Guidance letters, Code of Conduct, Due diligence guidelines, Listing Decisions, SFC Dual Filing Updates and SFC Thematic Investigation Reports, etc, to perform its tasks diligently. 3.013

2. LISTING PROCESS FOR THE MAIN BOARD AND LISTING PROCESS FOR THE GEM BOARD

2.1 Listing Process for the Main Board

Appointment of Sponsors

Appointment of a sponsor at least 2 months before submission of an application and to notify the Exchange 3.014



Submission of the Listing Application

(no Chinese AP-Publication before 1 April 2014)

- submit listing application Form A1, application proof (AP) and all other relevant documents under rule 9.10A(1) of the Listing Rules
- information must be substantially complete

Please view the Guidance of Documentary Requirements and Administrative Matters for New Listing Application for a comprehensive document checklist – http://www.hkex.com.hk/eng/rulesreg/listrules/listarchive/listarc_listgud/documents/g156-13_mu1406.pdf 3.015



3-Day Check

(from 1 October 2013 – 30 September 2014)

- from 1 October 2013 to 30 September 2014, the Hong Kong Exchanges and Clearing Limited (the Stock Exchange) conducted an initial check (3-day check) with limited qualitative assessment of all AP-vetting ("AP" being application proof) based on the prescribed checklist in Table B (3-day checklist) of the Stock Exchange Guidance Letter, HKEx-GL56-13 – http://www.hkex.com.hk/eng/rulesreg/listrules/listarchive/listarc_listgud/documents/g156-13_mu1406.pdf. This is not a substitute for the detailed and qualitative assessment of AP-vetting.

For Table B, please view the Guidance on: (i) the disclosure requirements for substantially complete application proofs; (ii) a 3-day checklist for disclosure matters that the Stock Exchange will check in application proofs prior to acceptance; and (iii) the publication of application proofs and post-hearing information packs on the Stock Exchange's website. 3.016



paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the SFC (the Code of Conduct). The amendments to the Corporate Finance Adviser Code of Conduct and the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers should also be complied with.

Benson further explains to all parties in the meeting, “as a sponsor, Richwealth will have to be formally appointed two months before the Form A1, i.e. the listing application form, is submitted to the Stock Exchange. Bill, you will need to carefully consider whether you agree to confirm Richwealth’s appointment and how many sponsors to appoint for Project Mars as the two-month period starts to run when the replacement sponsor or last sponsor (for multiple sponsors), as the case may be, is formally appointed.² If you have no objection, Richwealth will sign the engagement letter containing specified obligations for CS Group and its directors submitted to you yesterday and deliver a copy of the letter to the Stock Exchange”.

4.003 A sponsor’s written engagement letter must comply with the requirements of rule 3A.05 of the Listing Rules or rule 6A.05 of the GEM Rules (as the case may be) as to certain obligations which it must impose on the listing applicant and its directors.

4.004 If only one sponsor is appointed, that sponsor must be independent from the listing applicant in accordance with the independence test set out in rules 3A.07 and 6A.07 of the Listing Rules and GEM Rules, respectively (as the case may be). If there are two or more sponsors, at least one sponsor must be independent and his or her independence shall be disclosed in the listing document.

4.005 The sponsor has to conduct reasonable due diligence inquiries³ when their engagement is confirmed and then they can give their declaration as soon as practicable after the listing hearing on or before the date of issue of the listing document. In an actual case, generally, more extensive due diligence steps will be taken.

As a final point of introduction, Benson explains to the other professionals in the meeting, “Richwealth can also act as the compliance adviser to the newly Main Board listed issuer for the period starting on the listing date and ending on the date of publication of results for the first full financial year commencing after listing and on the date of publication of results for the second full financial year commencing after listing for GEM issuers”.

Other persons, advisers and professionals appointed for the listing process then introduce themselves:

- **legal advisors to the sponsors (according to Hong Kong law)** – “we, White & Black, will provide legal advice to the sponsor, Richwealth, in relation to IPO matters based on Hong Kong legal and regulatory requirements. We are therefore the sponsor’s lawyers”;

² Main Board Listing Rule 3A.02B.

³ The typical due diligence steps expected of sponsors of initial listing applications are set out in Practice Note 21 of the Main Board Listing Rules and Practice Note 2 of the GEM Rules.

- **legal advisors to the company (according to Hong Kong law)** – “we, Johnson & Walter Solicitors, Co are the proposed listed company’s lawyers. Apart from providing legal advice relating to Hong Kong laws, we carry out the group reorganisation, conduct directors’ training, and prepare relevant IPO documents”;

- **reporting accountants** – “we, Morris & Greenfield, are the reporting accountants of CS Group. We report on the historical financial information for the relevant track record period and, as the case may be, the stub period. In addition, where the prospectus includes *pro forma* financial information, an opinion on profit forecast, we will include the document in the report. We will opine on profit financial and issue appropriate comfort letters”; and

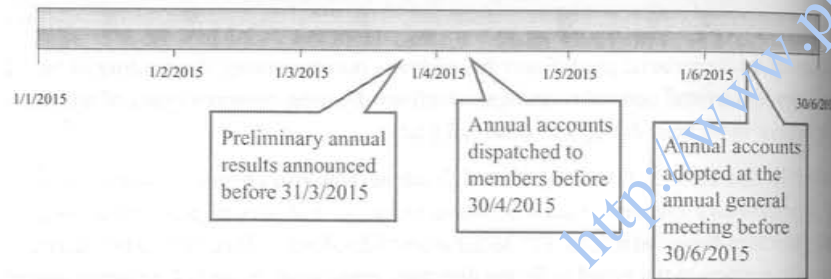
- **independent property valuers** – “we are independent valuers with professional qualification as prescribed by rules 5.08(1) and (2) of the Listing Rules. We prepare independent valuation on the property interests held by CS Group for inclusion in the prospectus. For those properties outside Hong Kong, we have valuers with the appropriate professional qualifications and experience of valuing property interests in the same location and category to carry out the valuation”.

Benson emphasises, “the above IPO party list is not exhaustive or complete as there should be other professionals to be engaged at different stages, for example:

- a printing house can provide labour support and a venue, to facilitate drafting sections and all-parties’ meetings, compile and bulk print the prospectus;
- legal advisers to the company according to Cayman Islands law should be required for Project Mars should the Cayman Islands be chosen as the jurisdiction of the place of incorporation of the proposed listed company;
- as CS Group has business in the PRC, legal advisers of PRC law should also be engaged as a result;
- a public relation consultant will be needed to advise on communications, facilitate road shows, provide event support as well as arrange the celebration dinner upon listing;
- a share registrar will be required to process and ballot the public offer applications, prepare and dispatch share certificates to successful applicants, process share transfers of the listed company and maintain the register of members after listing;
- there should be receiving banks to receive and process IPO applications and to refund cheques to unsuccessful applicants; and
- for an overseas issuer, it should appoint a person authorised to accept service of process and notices on its behalf in Hong Kong”.

2.1 Annual Results

- 5.006** A listed issuer shall send to its members and other holders of its listed securities either: (a) its annual report including its annual accounts together with a copy of the auditors' report thereon; or (b) its summary financial report not less than 21 days before the date of the listed issuer's annual general meeting and in any event not more than four months after the end of the financial year in accordance with rules 13.46(1)(a) and (2)(a) of the Listing Rules. It shall make up its annual accounts for a date within six months after the accounting reference date (ss 429 to 431 of the new Companies Ordinance (New CO) as for Hong Kong incorporated and registered companies and rule 13.46(2)(b) of the Listing Rules). Pursuant to rule 13.49(1) of the Listing Rules, the company shall also publish its preliminary annual results announcement in respect of each financial year not later than three months after the end of the financial year, which has been agreed with the auditors (rule 13.49(2) of the Listing Rules) and must comply with the provisions in Appendix 16 of the Listing Rules.
- 5.007** In the case of CS Listedco Limited, since it was listed in April 2014 on the Hong Kong Stock Exchange (the Stock Exchange) (to recap on the listing process, see Chapter 3 of this Book), based on the financial year ended 31 December, the 2014 annual accounts should be made up to 31 December 2014 and the annual results should be released prior to the end of March 2015. The preliminary schedule for the release of final results of CS Listedco Limited should be as follows:



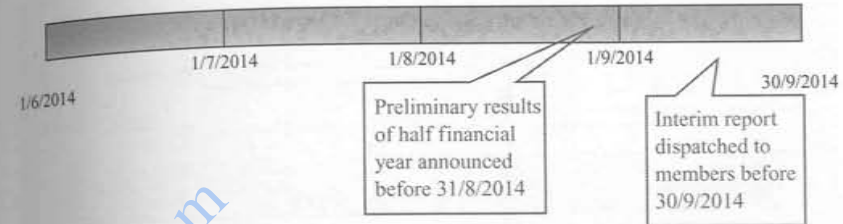
- 5.008** Where a listed issuer is unable to make such an announcement, it must make an explanatory announcement setting out the expected date of results announcement in accordance with rule 13.49(3) of the Listing Rules.

2.2 Interim Results

- 5.009** In respect of the first six months of each financial year, unless that financial year is of six months or less, a listed issuer shall send to its members and other holders of its securities either: (i) an interim report; or (ii) a summary interim report not later than three months after the end of that period of six months in accordance with rule 13.48(1) of the Listing Rules. In addition, it shall publish a preliminary announcement in respect of its results for the first half of each financial year not later than two months

after the end of that period of six months in accordance with rule 13.49(6) of the Listing Rules. This rule also requires the making of an explanatory announcement with the expected date of results announcement in case of failure to publish the interim results within the aforementioned two-month period.

Accordingly, CS Listedco Limited has to make up its interim accounts for the six months ending on 30 June 2014 and announce its interim results before 31 August 2014, the first results announcement by the company after listing. The preliminary schedule is as follows:



2.3 Timetable for the Annual and Interim Results Publication

One day, Wesley calls William and advises him, "CS Listedco Limited has to announce its interim results for the six months ended 30 June 2014 after the successful listing in April 2014".

William replies, "I am unfamiliar with the process of releasing interim results of a listed company, so I am going to rely on you as a corporate consultant to handle the matter and advise me on how to publish the interim results, step by step".

Wesley adds, "you may also seek for Benson's assistance, the compliance advisor for the release of interim results, since Richwealth has the obligation to assist the company to comply with the Listing Rules for the first full financial year after listing".

Before proceeding, Wesley asks William, "what is the tentative date for the board meeting to release the interim results, if you have set one?"

William asks in response, "what is the latest date to hold the board meeting? I am clueless about this."

Wesley explains, "all things considered – including when accounts can be prepared by and received from Judy, 31 August 2014 should be the latest date to release the interim results. However, as 31 August 2014 falls on a Sunday, the last business day to trade securities on the Stock Exchange before the deadline will be 29 August 2014, and therefore 29 August 2014 should be the latest practicable date to release the results".

5.010

(vi) statement of directors' remuneration/share option benefits confirmation to auditors;	para 13(3) of Appendix 16 of LR	
(vii) consent for re-election of directors at the forthcoming AGM and confirm relevant biographical details of each director proposed to be re-elected for inclusion in the circular;	paras 24, 24A and 24B of Appendix 16 of LR LR 13.74 of Chapter 13	
(viii) record of training obtained from each director;	Codes A.6.5 and I(i) of Appendix 14 of LR	
(ix) acknowledgement obtained from directors of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities for their execution; and	Code C.1.3 of Appendix 14 of LR	
(x) annual review and confirmation of continuing connected transactions by INEDs and auditors, if any (please see below and Chapter 7 of this Book for more information about the annual review by INEDs and confirmation by auditors)	LRs 14A.55 to 14A.59 of Chapter 14A	

Prepare annual results announcement including a chairperson statement and management discussion and analysis (MD&A) (including an explanation of the basis on which the issuer generates or preserves value over the longer term (the business model) and the strategy for delivering the issuer's objectives)	paras 32 and 52 of Appendix 14 of LR Code C.1.4 of Appendix 14 of LR	Listed issuers are highly recommended by the Stock Exchange to take note of the matters discussed in the financial statements review programme report issued by the Stock Exchange from time to time and also stay alert to changes to the Listing Rules, accounting standards and other disclosure requirements when preparing any financial report. Companies incorporated in Hong Kong listed on the Stock Exchange should include a "business review" with a number of environmental, social and governance (ESG) areas in the directors' report section of their annual reports, where content of which in certain extent overlap the content of MD&A, those listed issuers are highly recommended to include the content of such business review in the MD&A so as to comply with the Listing Rules and the New CO
Prepare an annual report including but not limited to: (i) <i>directors' report (covering purchase, sale or redemption of listed securities, share option scheme details, if any)</i> (see Appendix 1 – Sample document 3, with assumptions all information based on the Hong Kong Financial Reporting Standards in respect of annual financial statements 2012); (ii) <i>corporate governance report</i> ;	Appendix 16 of LR and Company law of the relevant overseas jurisdiction Appendix 14 of LR	

that are registered non-Hong Kong companies (e.g. companies incorporated in the Cayman Islands or Bermuda) but registered under Part 16 of the New CO.

- 5.029 In general, a private company (not a subsidiary of a public company at any time during the financial year) or a company limited by guarantee, within nine months after the end of the accounting reference period by reference to which the company's financial year is determined and in the case of any other company the period is six months, should hold an AGM.
- 5.030 If the accounting reference period is the company's first accounting reference period and is longer than 12 months, an AGM should be held within nine or six months (depending on the type of the company) after the anniversary of the company's incorporation or three months after the end of that accounting reference period, whichever is later.
- 5.031 For example, if a company, X, a private company, was incorporated on 1 February 2010, and it fixed its financial year end date as 31 December, its current financial year should be 1 January 2014 to 31 December 2014 and end date (i.e. primary accounting reference date) of company's accounts should be 31 December 2014 under the New CO. Company X's first accounting reference period under the New CO which come into effect on 3 March 2014 should be 1 January 2015 to 31 December 2015. Therefore, Company X should hold its AGM before 30 September 2016 under the New CO, i.e. within nine months after the end of the company's accounting reference period. Also, the company has to hold an AGM to issue its financial statements to its shareholders before 30 September 2015 in accordance with Sch 11, Part 12 – s 107 of the New CO for the financial year 2014.
- 5.032 If a private company was incorporated under the New CO on, say, 18 June 2014, its directors have fixed the primary accounting reference date as 31 December, its first accounting reference period will be 18 June 2014 to 31 December 2014 and the latest AGM date should be 30 September 2015. However, if the directors of the company have not fixed the primary accounting reference date (s 369(5)) on or before 30 June 2015 (the last day of the month in which the company's anniversary of incorporation falls), the first accounting reference period will be 18 June 2014 to 30 June 2015 and the latest AGM date will be 18 March 2016.
- 5.033 Under ss 612(2)(b) and 613 of the New CO, a company is not required to hold an AGM if: (a) everything that is required or intended to be done at the meeting (by resolution or otherwise) is done by a written resolution; and (b) a copy of each document, like any accounts or records required to be laid before the company at the meeting or produced at the meeting are provided to each member, on or before the circulation date of the written resolution or pass a resolution at a general meeting by all members.
- 5.034 However, the company is required to deliver a copy of the resolution to the Registrar of Companies for registration within 15 days after it is passed. After passing the resolution, the company will not be required to hold any AGMs for the financial year or for subsequent financial years to which the resolution relates under s 622 of the New CO. Further, if the company has only one shareholder, no meeting can be held under s 612(2)(a) of the New CO.
- 5.035 As financial statements are still required to be prepared in respect of each financial year and that a company does not have to hold an AGM under s 612, the

requirement to lay accounts in respect of each financial year shall be within six or nine months (as the case may be) after the end of the accounting reference period under ss 429(1) and 431 of the New CO.

A private company (not a subsidiary of a public company) or a company limited by guarantee shall lay accounts and for any other company within nine months and six months respectively after the end of the accounting reference period (ss 431(1) (a) and (b)) in order to align with the timing for holding AGM under s 610 of the New CO.

5.036

2.6.2 AGMs for listed companies

CS Listedco Limited should hold its first AGM before 30 June 2015 for the adoption of audited accounts for the financial year of 2014 by shareholders of the company. Before holding the AGM, relevant procedures of the release of annual results and publication of annual report, and issuance of notice of the AGM should be set out as illustrated in the above checklist – “Checklist for Preliminary Results of the Announcement of the Financial Year Ended 31 December 2014 – Annual Report, Circular – Explanatory Statement, Notice of Annual General Meeting and Proxy Form”.

5.037

Question: What are the roles of company secretarial practitioners in planning, co-ordinating and getting ready for an AGM, immediately before and after the AGM, and post-AGM?

Answer: Planning, co-ordinating and getting ready for the AGM –

- (1) book the meeting venue and ensure the availability of the chairman, directors, board committees members, independent auditors and their representatives in case of absence;
- (2) co-ordinate with the relevant parties (such as the investor relations/corporate communication department, if any at all) and tasks on the overall run-down and set-up of the meeting;
- (3) co-ordinate with the share registrar/branch share registrar for book closure arrangements, supplying an updated register of members, collection of proxy forms and arranging for acting as scrutinisers;
- (4) prepare all relevant documents and matters to be available at the venue, e.g. statutory records like register of members, minutes book for general meetings, corporate documents like the memorandum and articles of association (now re-titled as “Articles of Association” for Hong Kong incorporated and registered companies) or by-law, register of directors’ or chief executive’s interest and register of substantial shareholders’ interest, sufficient copies of the annual report, corporate governance report, environmental, social and governance report, notice of the AGM, share repurchase mandate and proxy form;
- (5) arrange for the display of a banner, the head-table and catering as well as any expected press conference immediately after the AGM;

<p>Auditor's Remuneration</p> <p>Auditors of the Company should provide an analysis of remuneration in respect of audit and non-audit services. The analysis must include, in respect of each significant non-audit service assignment, details of the nature of the services and the fees paid.</p>	<p>Appendix 14 Code M (auditors' remuneration)</p>
<p>The specimen is as follows:</p> <p>For the year ended 31 December 2014, the fee payable to an external auditor of the Company in respect of audit and non-audit services is set out below:</p> <p>Audit fees: HK\$[]</p> <p>Non-audit fees: HK\$[]</p> <p>Tax representative service: HK\$[]</p>	
<p>Accountability and Audit</p> <p>The Directors acknowledge their responsibility for the preparation and the true and fair presentation of the consolidated financial statements in accordance with Hong Kong Financial Reporting Standards and Hong Kong Accounting Standards, suitable accounting policies have been used and applied consistently, and reasonable and prudent judgement and estimates have been made. The Board is not aware of any material uncertainties relating to events or conditions that may affect the business of the Company or cast doubts on its ability to continue as going concern.</p> <p>The financial information and plans were discussed in the regular Board meetings. The Chairman of the Company is responsible for explaining the latest business development and financial projections to the Directors.</p>	<p>Appendix 14 Code M (a report on the work performed by the Audit Committee)</p>

<p>Company Secretary</p> <p>Where the Company engages an external service provider as its company, its primary corporate contact person at the Company (including his or her name and position) and details of non-compliance with rule 3.29 of the Listing Rules should be stated in this corporate governance report.</p>	<p>Appendix 14 Code N</p>
<p>Mr. Wesley So, the Company Secretary of the Company, who has been a partner of Johnson & Walter Solicitors, Co. for years. He is now the legal adviser and company secretary of the Company. Since Mr. Wesley So is an external service provider to the Company, the primary corporate contact person at the Company is Mr. William Leung, the Chairman of the Company. The Company has complied with rule 3.29 of the Listing Rules during the year under review.</p> <p>*Wesley will resign as the company secretary and Jenny will be appointed as a new company secretary, the details of such change can be found in Chapter 9 of this Book. The company secretary, Jenny, will thereafter become an employee of the CS Listedco Limited and shall have day-to-day knowledge of the company's affairs. As such, CS Listedco Limited can comply with Code F.1.1 of the CG Code.</p>	<p>Code F.1.1 Code F.1.2</p>
<p>Shareholders' Rights</p> <p>The procedures for shareholders to convene an extraordinary general meeting, the procedures by which enquiries are put to the board with sufficient contact details to enable those enquiries to be properly directed, and the procedures and sufficient contact details for putting forward proposals at shareholders' meetings have been set up and upload on the websites of the Company and the Stock Exchange.</p> <p><i>Note:</i> <i>The procedures should also be listed in the corporate governance report. The procedures for shareholders to convene an extraordinary general meeting and putting forward proposal should be subject to the articles of association of the company and enquiries to the board are subject to the listed issuer's shareholders' communication policy on a case-by-case basis.</i></p>	<p>Appendix 14 Code O</p>

and options (including warrants, bonds and debentures convertible into shares of the Company) which might require the shares in the capital of the company to be issued either during or after the end of the Relevant Period (as hereinafter defined);

- (c) the aggregate nominal value of the share capital allotted or agreed conditionally or unconditionally to be allotted or issued (whether pursuant to an option or otherwise) by the Directors pursuant to the approval in paragraph (a) above, otherwise than pursuant to (i) a Rights Issue (as hereinafter defined); or (ii) an issue of shares upon the exercise of options which may be granted under any share option scheme or under any option scheme or similar arrangement for the time being adopted for the grant or issue to grantees as specified in such share option scheme or option scheme or similar arrangement of shares or rights to acquire shares of the Company; or (iii) any scrip dividend schemes or similar arrangements providing for the allotment and issue of shares in lieu of the whole or part of a dividend on shares of the Company in accordance with the articles of association of the Company; or (iv) a specific authority granted by the shareholders of the Company in general meeting, shall not exceed 20 per cent. of the total nominal value of the share capital of the Company in issue at the date of the passing of this resolution and the said approval shall be limited accordingly; and

- (d) for the purpose of this resolution,

LR13.36(3)

“Relevant Period” means the period from the passing of this resolution until whichever is the earliest of:

- (i) the conclusion of the next annual general meeting of the Company;
- (ii) the expiration of the period within which the next annual general meeting of the Company is required by the articles of association of the Company or the Companies Law, Cap 22 (Law 3 of 1961, as consolidated and revised) of the Cayman Islands (the “Companies Law”) or any applicable laws of Cayman Islands to be held; or
- (iii) the passing of an ordinary resolution by shareholders of the Company in general meeting revoking, varying or renewing the authority given to the Directors by this resolution; and

“Rights Issue” means an offer of shares of the Company or issue of options, warrants or other securities giving the right to subscribe for shares of the Company, open for a period fixed by the Directors to holders of shares whose names appear on the register of members of the Company (and, where appropriate, to holders of other securities of the Company entitled to the offer) on a fixed record date in proportion to their then holdings of such shares (or, where appropriate, such other securities) (subject in all cases to such exclusions or other arrangements as the Directors may deem necessary or expedient in relation to fractional entitlements or having regard

to any restrictions or obligations under the laws of, or the requirements of any recognized regulatory body or any stock exchange in, any territory applicable to the Company).”

6. To consider and, if thought fit, pass, with or without modifications, the following resolution as an ordinary resolution:

“THAT:

- (a) subject to paragraph (b) below, the exercise by the Directors during the Relevant Period (as hereinafter defined) of all powers of the Company to repurchase shares of the Company on The Stock Exchange of Hong Kong Limited (the “Stock Exchange”) or on any other stock exchange on which the shares of the Company may be listed and which is recognized by the Securities and Futures Commission of Hong Kong (the “SFC”) and the Stock Exchange for such purpose, and otherwise in accordance with the rules and regulations of the SFC, the Stock Exchange, the Companies Law and all other applicable laws as amended from time to time in this regard, be and the same is hereby generally and unconditionally approved; LR13.36(2)(b)

the aggregate nominal value of the shares of the Company which the Company is authorized to repurchase pursuant to the approval in paragraph (a) above during the Relevant Period (as hereinafter defined) shall not exceed 10 per cent. of the total nominal value of the share capital of the Company in issue at the date of the passing of this resolution, and the authority granted pursuant to paragraph (a) above shall be limited accordingly; and

- (c) for the purposes of this resolution, “Relevant Period” means the period from the passing of this resolution until whichever is the earliest of: LR13.36(3)

- (i) the conclusion of the next annual general meeting of the Company; or
- (ii) the expiration of the period within which the next annual general meeting of the Company is required by the articles of association of the Company or the Companies Law or any applicable laws of Cayman Islands to be held; or
- (iii) the passing of an ordinary resolution by shareholders of the Company in general meeting revoking, varying or renewing the authority given to the Directors by this resolution.”

7. To consider and, if thought fit, pass, with or without modifications, the following resolution as an ordinary resolution:

“THAT conditional upon the ordinary resolution nos. 5 and 6 of the notice convening this meeting being passed, the general mandate granted to the Directors to allot, issue and deal in any unissued shares pursuant to the ordinary resolution no. 5 of the notice convening this meeting be and is hereby extended by the addition to the aggregate nominal value of the share capital of the Company LR13.36(2)(b)

of events or transactions giving rise to the amounts, the identity of the debtor group, interest rate, repayment terms and collateral, if any) as at the interim period end or year end, shall be included in its interim or annual report according to rule 13.20.

2.2 Financial Assistance and Guarantees to Affiliated Companies

6.066 According to rule 13.16 of the Listing Rules, if the financial assistance to affiliated companies of a listed issuer, and guarantees given for facilities granted to affiliated companies of a listed issuer together in aggregate exceeds 8% under the assets ratio as defined under rule 14.07(1), the listed issuer must announce as soon as reasonably practicable the following information:

- (1) analysis by company of the amount of financial assistance given to, committed capital injection to, and guarantees given for facilities granted to affiliated companies;
- (2) terms of the financial assistance, including interest rate, method of repayment, maturity date, and the security therefor, if any;
- (3) source of funding for the committed capital injection; and
- (4) banking facilities utilised by affiliated companies which are guaranteed by the listed issuer.

Question: What is meant by “affiliated company”?

6.067 Rule 13.11(2)(a) of the Listing Rules stipulates that for the purposes of subsequent rules 13.12 to 13.19, the expression “affiliated company” refers to a company which, in accordance with Hong Kong Financial Reporting Standards, is recorded using the equity method of accounting in an entity’s financial statements that includes associated companies and jointly controlled entities as defined in those standards.

6.068 CS Group holds good relationships with its business partners and acquired 30% shareholding in each of the two companies, ABC Limited and XYZ Limited, founded by two separate business partners independently. Under the group structure, those companies are classified as jointly controlled entities and in turn, the “affiliated companies” of CS Listedco. These two jointly controlled entities are negotiating with a local bank, ZZZ Bank, for certain bank loans and the bank requested for a corporate guarantee for each of these loans.

Question: Before executing the guarantees, what should Wesley do to ensure compliance with rule 13.16?

Judy notices that CS Group has to provide guarantees in favour of ZZZ Bank for the bank loans to ABC Limited and XYZ Limited up to 30% of the respective loan amounts of HK\$220 million and HK\$100 million.

Accordingly, she calculates the assets ratio in respect of the guarantees and realizes that relevant ratio exceeds 8%.

She then calls Wesley and discusses with him whether the company has to make an announcement pursuant to rule 13.16 of the Listing Rules. Wesley tells her, “CS Group has to disclose information, such as terms of the financial assistance, committed capital injections, guarantees, and source of funding for the committed capital injection where any of the percentage ratios of the financial assistance to affiliated companies of CS Listedco, i.e. ABC Limited and XYZ Limited, and guarantees given for facilities granted to them together in aggregate exceed 8%. The announcement must include all information as set out in rule 13.16”.

Wesley then asks her, “why were such loans required?”

She replies, “I don’t know either. Let’s meet up with William”.

Wesley agrees.

During the meeting, William briefs Wesley and Judy about the purpose of the loans.

William said, “we are planning to establish a new restaurant chain in China through two jointly controlled entities. I expect this project will facilitate our expansion in China. After assessing the financial position, the two jointly controlled entities do not have sufficient funds in hand and need to source funds from ZZZ Bank and in return, CS Listedco is required to provide guarantee in favour of ZZZ Bank. Judy, Wesley, please co-ordinate with the two entities and the bank, and obtain the necessary approval from the directors and then issue the announcement for the Company, if any at all.”

2.2.1 Announcement regarding of loan facilities and guarantees

The following is the extract of the announcement in respect of loan facilities and guarantees granted to affiliated companies: **6.069**

CS LISTEDCO LIMITED

(Incorporated in the Cayman Islands with limited liability)

Stock Code : 7000

PROVISION OF CORPORATE GUARANTEE FOR THE LOAN FACILITY GRANTED TO THE JV COMPANY

The Board announces that on 28 September 2014, WWW Limited (a wholly-owned subsidiary of the Company) as guarantor entered into a guarantee agreement (the “Guarantee Agreement”), pursuant to which WWW Limited agreed to provide a guarantee in favour of ZZZ Bank (the “WWW Guarantee”), in respect of the repayment obligations of the non-secured loan facility of up to an aggregate amount of HK\$320 million granted to ABC Limited and XYZ Limited by ZZZ Bank under a loan agreement (the “Loan”). Each of ABC and XYZ is owned as to 30% equity interests by WWW Limited. The Loan will be used to finance a project participated by ABC Limited, XYZ Limited, and the Company for the establishment of a new restaurant chain in China.

interested so as to exercise or control the exercise of 30% (or any amount specified in the Takeovers Code as the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any subsidiary of this company;

- (b) in relation to a company means:
 - (i) its subsidiary or holding company or a fellow subsidiary of its holding company;
 - (ii) the trustees, acting in their capacity as trustees, of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to the company's knowledge) a discretionary object; or
 - (iii) any other company in the equity capital of which the company, its subsidiary or holding company, a fellow subsidiary of its holding company, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or any amount specified in the Takeovers Code as the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any subsidiary of this other company; and
- (c) a depositary acting in its capacity as a depositary for depositary receipts is not treated as a close associate of holders of the depositary receipts for the purposes of (a) and (b) merely because it is holding the shares of the issuer for the benefit of the holders of the depositary receipts.

7.053 An "associate" (under rules 14A.12 to 14A.13 of the Listing Rules) of a connected person who is an individual includes:

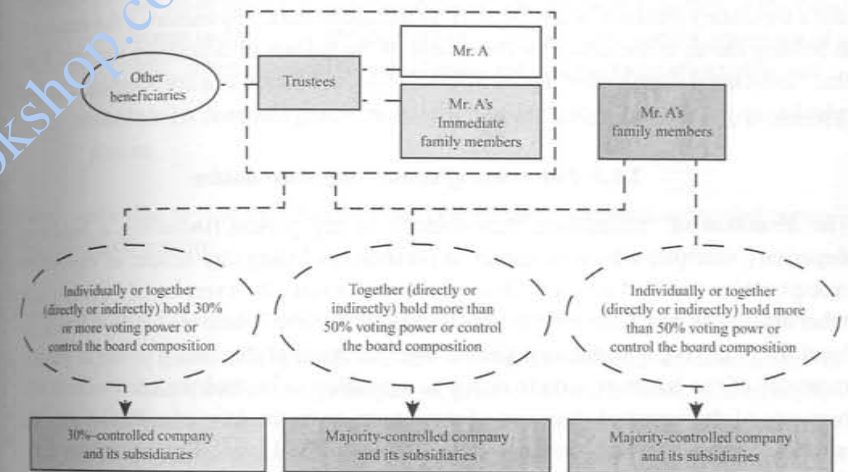
- (1) (a) his spouse; his (or his spouse's) child or step-child, natural or adopted under the age of 18 years (each an "immediate family member");
- (b) the trustees, acting in their capacity as trustees of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object (the "trustees"); or
- (c) a 30%-controlled company held, directly or indirectly, by the individual, his immediate family members and/or the trustees (individually or together), or any of its subsidiaries; or
- (2) (a) a person cohabiting with him as a spouse, or his child, step-child, parent, stepparent, brother, step-brother, sister or step-sister (each a "family member"); or
- (b) a majority-controlled company held, directly or indirectly, by the family members (individually or together), or held by the family members

together with the individual, his immediate family members and/or the trustees, or any of its subsidiaries.

An "associate" of a connected person which is a company includes: **7.054**

- (1) its subsidiary or holding company, or a fellow subsidiary of the holding company;
- (2) the trustees, acting in their capacity as trustees of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to its knowledge) a discretionary object (the "trustees"); or
- (3) a 30%-controlled company held, directly or indirectly, by the company, the companies referred to in (1) above, and/or the trustees (individually or together), or any of its subsidiaries.

The following diagram compares the definitions of "close associate" and "associate" in Chapters 1 and 14A of the Listing Rules: **7.055**



* Immediate family members include (i) his spouse; and (ii) his or his spouse's children under the age of 18 years.
 * Family members include (i) any person cohabiting with the individual as a spouse; (ii) his or his spouse's children; (iii) his parents; and (iv) his siblings.

Associates of Mr. A under Chapter 1 of the Listing Rules
 Associates of Mr. A under Chapter 14A of the Listing Rules

For PRC issuers only (not applicable to CS Listedco), "a person's associates" include any joint venture partner of a cooperative or contractual joint venture (whether or not it is a separate legal entity) where (rule 14A.15 of the Listing Rules): **7.056**

- (1) the person (being an individual), his immediate family members and/or the trustees; or
- (2) the person (being a company), any company which is its subsidiary or holding company or a fellow subsidiary of the holding company, and/or the trustees,

on the operation of the outlets/restaurants in the event of their relocation will be substantial, the Directors believe that maintaining the lease agreements with the Landlord will ensure the Group's stability in using the relevant premises. The Directors also believe that it is in the interests of the Company to renew the New Master Tenancy Agreements so that the Group may regulate the existing and future tenancy agreements with the Landlord under a common framework agreement.

The Directors (excluding the independent non-executive Directors who will provide their views after considering the opinion of the independent financial adviser) consider that the terms of the New Master Tenancy Agreements have been negotiated on an arm's length basis and on normal commercial terms and are fair and reasonable and in the interests of the Group and the Shareholders as a whole and the Estimated Caps are fair and reasonable and in the interests of the Group and the Shareholders as a whole.

Listing Rule Implications

As at the date of this announcement, Sandra's Property Ltd., Sandra Investment Ltd. and Sandra Holding Property Ltd. are indirectly wholly-owned by Mrs. Sandra Leung and Mrs. Sandra Leung is the executive director of the Company and spouse of Mr. William Leung, chairman and controlling shareholder of the Company and also the mother of Mr. Bill Leung, the executive director of the Company. She also directly/indirectly controls approximately []% of the issued shares of the Company. Accordingly, Mrs. Sandra Leung and her associates are connected persons of the Company under the Listing Rules. The renewal of the New Master Tenancy Agreements therefore constitute a continuing connected transactions of the Company under Chapter 14A of the Listing Rules.

As more than one of the relevant percentage ratios (as defined under Rule 14.07 of the Listing Rules) of the New Master Tenancy Agreements are more than 5% for the Company and each of the Estimated Caps exceeds HK\$10,000,000, the New Master Tenancy Agreements are subject to the reporting, announcement and independent shareholders' approval requirements under Chapter 14A of the Listing Rules for the Company. In view of the interests of Mrs. Sandra Leung in the New Master Tenancy Agreements, Mrs. Sandra Leung and her associates (including but not limited to Messrs. William Leung and Bill Leung) abstain from voting in respect of the resolutions to be proposed at the EGM to approve the New Master Tenancy Agreements, the Estimated Caps and the transactions contemplated thereunder.

Information of CS Group and Sandra's Property Ltd., Sandra Investment Ltd. and Sandra Holding Property Ltd.

CS Group is one of food service retailers operating over 100 outlets in Hong Kong. It provides a diversified range of food services comprising Chinese and western restaurants, fast food outlets and cake and bakery stores in Hong Kong and major cities in the PRC. CS Group also is engaged in providing catering services to several major airlines in Hong Kong and serving their passengers with food and beverages. Sandra's Property Ltd., Sandra Investment Ltd. and Sandra Holding

Property Ltd. are investment holding companies and are principally engaged in property leasing for purpose of rental income.

General

The Company will convene the EGM for the purpose of seeking approval from the Shareholders on the New Master Tenancy Agreements, the Estimated Caps and the transactions contemplated thereunder. The Independent Board Committee has been established comprising all the independent non-executive directors of the Company, namely Mr. Thomas Cheung, Ms. Vivian Lau and Mr. Richard Wong has been formed to advise the Shareholders on transactions to consider the terms of the New Master Tenancy Agreements, the Estimated Caps and the transactions contemplated thereunder, and to advise the Shareholders as to whether the New Master Tenancy Agreements, the Estimated Caps and the transactions contemplated thereunder are in the interests of the Company and the Shareholders as a whole. The Company has, with the approval of the Independent Board Committee, appointed [] Capital Limited as an independent financial adviser in accordance with the requirements under the Listing Rules to advise the Independent Board Committee and the Shareholders on matters in this regard.

The circular of the Company containing, amongst others, further information on: (i) the New Master Tenancy Agreements, the Estimated Caps and the transactions contemplated thereunder; (ii) a letter of recommendation from the Independent Board Committee to the Independent Shareholders; (iii) a letter of advice from the independent financial adviser to the Independent Board Committee and the Shareholders; and (iv) the notice of the EGM, is expected to be dispatched to the Shareholders on or before 3 July 2015.

Hong Kong, 11 June 2015

By order of the Board
CS Listedco Limited
William Leung
Chairman

In summary, unless it has received an exemption, a listed issuer is expected to make disclosure in relation to any connected transaction, continuing connected transaction or notifiable transaction it has entered into.

7.131

Hence, to avoid any potential breaches in the Listing Rules in relation to notifiable transactions, the board of directors of any listed issuer has to implement reporting and monitoring procedures, for instance, arranging for more training on the applicable regulations and rules, in particular, the Listing Rules, to be provided to the directors, members of the management of the group and implement further internal control measures for identifying and monitoring any possible transactions which may constitute notifiable transactions, connected transactions and/or other transactions required to be disclosed under the Listing Rules.

7.132

Note:

The above announcement is simplified for illustration purposes.

2.1.2 Procedures for the proposed increase in authorised share capital

8.016

1. in practice, the resolution for increasing authorized share capital will normally be put forward in an annual general meeting.
2. it is seldom practice for an extraordinary general meeting (EGM) to be convened solely for the purpose of increasing share capital.
3. submit the relevant document checklist, notice of an EGM and circular for the proposed increase in authorised share capital to demonstrate compliance with the Listing Rules as requested by the Stock Exchange in individual cases.
4. dispatch the notice of the EGM together with the circular to shareholders.
5. publish the notice and circular on the websites of the company and Stock Exchange.
6. convene the EGM to approve the ordinary resolution.
7. publish the poll results of the EGM.
8. submit the next day disclosure return and adjust the monthly return when submitted.
9. amend the memorandum and articles of association.
10. file the ordinary resolution with the Cayman Islands registered agent within 15 days after the date of change in the authorised capital.
11. submit Form NN5 at the Companies Registry of Hong Kong within one month after the date of the alteration.

"Alternatively, can we subdivide our share capital to shares of smaller nominal value?", William asks.

"Yes, but this only increases the number of shares while the total amount of share capital will not change", Wesley replies.

William continues to ask, "inspite of this, can you still tell me how it is done?"

2.2 Subdivision of Shares

8.017

The following is an extract of Wesley's memo to William briefing the concept of subdivision of shares:

Subdivision of shares into shares of smaller nominal value involves change of the capital clause in the memorandum of association. For example, we can subdivide every HK\$0.10 share into 4 shares of a nominal value of HK\$0.025 each. In this

way, the number of authorised shares will increase by 4 times without asking for any additional contribution from the existing members or investors. Of course, procedures for the change of the memorandum of association must be observed. In addition to the change of memorandum of association, the proportions of amounts paid and unpaid must remain the same after the subdivision. However, once a decision has been made to submit the proposal to the board, no dealings of the relevant securities should be effected by the Company or any of its subsidiaries until the proposal has been announced or abandoned. Inside information regime under SFO and the Listing Rules must be observed in the meantime. (See Chapter 6 of this Book for more details regarding inside information.)

Subdivision of shares will reduce the nominal value and trading price of each share and increase the total number of shares in issue, therefore the market circulation of the subdivided shares can be improved and more investors can be attracted. The shareholders' base of the Company will also be enlarged. In addition, other than the expenses incurred by the Company in relation to the share subdivision, the share subdivision will not, by itself, alter the underlying assets, business operations, management or financial position of the Company or the proportionate interest of the shareholders. In general, the share subdivision could be deemed as in the interests of the Company and shareholders as a whole.

2.2.1 Odd lot of shares resulted

Please also note that the odd lot shares will be formed as a result of share alteration such as bonus shares, subdivision and rights issue since majority of the trading is done via "whole lot shares" and thus the odd lots become difficult to buy or sell. Furthermore, the odd lot always leads a lower share price than whole lot shares, which makes it a loss for the shareholders.

Pursuant to rule 13.65 of the Listing Rules, in the event of any amendment to a listed company's capital structure (such as a consolidation of shares) or any amendment to the board lot size, the Stock Exchange reserves the right to request that adequate arrangements be made to enable resulting odd lot holders either to dispose of their odd lots or to round them up to a board lot. It may be appropriate for the listed company to appoint a broker as its agent to match the sales and purchases of odd lots or for the major shareholder itself or by its agent to stand in the market to buy or sell odd lot securities. The particular circumstances of a listed company may dictate the method by which odd lot holders are to be accommodated and listed companies are urged to consult the Stock Exchange at the earliest opportunity to agree the appropriate trading method.

Note:

According to the point 6.4 of the Guide on Trading Arrangements for Selected Types of Corporate Actions as published by the Stock Exchange, irrespective of the existence of parallel trading, the odd lot arrangement should last for at least three weeks.

After reading the memo, William decides to carry out a subdivision of shares so as to increase the number of authorised shares. Wesley then arranges for the motion at the

8.018

this rule 10.06(1)(b) and that neither the explanatory statement nor the proposed share repurchase has unusual features; and (b) the undertaking from its directors to the Stock Exchange according to rule 10.06(1)(b)(vi).

4.2.3 Ordinary resolutions proposed under general mandate

Question: What are the ordinary resolutions proposed under the general mandate at a annual general meeting?

8.063 The ordinary resolutions proposed to grant the general mandates are:

- (i) to grant to the directors a general and unconditional mandate to allot, issue, grant, distribute and otherwise deal with additional shares not exceeding 20% of the aggregate nominal amount of the share capital of the company in issue at the date of the passing of the relevant resolution (the "issue mandate");
- (ii) to grant to the directors a general and unconditional mandate to exercise all the powers of the company to purchase or repurchase Shares not exceeding 10% of the aggregate nominal amount of the share capital of the company in issue at the date of the passing of the relevant resolution (the "Repurchase Mandate"); and
- (iii) conditional upon the passing of the resolutions to grant the issue mandate and the repurchase mandate, to extend the issue mandate such that the directors be authorised to exercise the powers to allot, issue, grant, distribute and otherwise deal with additional shares pursuant to the issue mandate to the extent to include the aggregate nominal amount of shares purchased or repurchased by the company pursuant to the repurchase mandate.

Note:

Under the Listing Rules, the limit on a general mandate to issue or repurchase shares or a mandate to grant options under a share option scheme is calculated based on the "issued share capital" as at the date of the general meeting approving the mandate. However, in view of the abolition of the nominal value under the New Companies Ordinance, which is applicable to the listed company incorporated Hong Kong, the FAQ, as published by the Stock Exchange, indicates that the Hong Kong incorporated listed company should compute the mandate limits based on its total number of shares in issue as at the date of the general meeting approving the mandates, subject to adjustment in the case of any subdivision and consolidation of shares after the general meeting.

After the explanation of the restrictions of share repurchase, William asks Wesley whether or not the company will need to convene a general meeting and publish the circular and announcements to the shareholders in respect of the share repurchase. "Shareholders' approval in a general meeting, as well as approval by the Chairman of the Takeover Committee of the Securities and Futures Commission (the SFC), will be required if we opt for 'off-market repurchases'. Such approval is normally subject to certain conditions, including the repurchase having been approved by at least 75% of the votes cast on a poll by disinterested shareholders attending the shareholders' meeting and a circular satisfying certain requirements having been sent to the shareholders", Wesley elaborates.

William remarks, "we do not have any plans as to making off-market repurchases, so, let's put this aside for now".

"In regard to the on-market repurchases, we have to include all information in an explanatory statement as required under rule 10.06(1)(b) of the Listing Rules in the circular when sending out the circular and the notice of a general meeting in order to enable the shareholders to make an informed decision on whether to vote for or against the ordinary resolution, Wesley reiterates."

4.2.4 Requirements on the source of funds for shares buy-back

Question: Are there any requirements on the source(s) of funds for the shares buy-back?

A company incorporated in the Cayman Islands (or CS Listedco Limited in the present hypothetical scenario) is, as a general rule, empowered by its Memorandum and Articles of Association to purchase its shares. In accordance with the Cayman Islands Companies Law and the company's articles of association, shares may only be purchased out of the funds of the company which are legally available for such purpose or out of the proceeds of a fresh issue of shares made for the purposes of the purchase or, subject to a statutory test of solvency, out of capital. The premium, if any, payable on purchase must be provided for out of the profits of the company or out of the company's share premium account before or at the time the shares are purchased or, subject to the statutory test of solvency, out of capital. Under Cayman Islands Companies Law, the shares so repurchased have to be treated as cancelled but the aggregate amount of authorised share capital will not be reduced.

8.064

Wesley emphasises, "when we send out the circular containing the Explanatory Statement, directors have to submit a letter to the Stock Exchange confirming that the explanatory statement nor the proposed share repurchase has an unusual feature. Moreover, directors have to submit an undertaking according to Chapter 10.06(1)(b)(vi) of the Listing Rules, i.e. in our case, to undertake to exercise the power of the listed company to make purchases pursuant to the proposed resolution in accordance with the Listing Rules and the articles of association of our company".

4.3 Follow-Up Matter After Shares Buy-Back

Question: After the general meeting for obtaining the general mandate on the repurchase, what should CS Listedco Limited do?

The company must report the outcome of the general meeting by publishing the poll results announcement as soon as possible and in any event at least 30 minutes before the earlier of either the commencement of the morning trading session or any pre-opening session on the business day after the meeting and inform the Stock Exchange the outcome of the approval for the repurchase of the shares.

8.065

- (b) to test the general knowledge, skill and experience that the director has (subjective test).

According to s 466 of the New CO, breach of the above-mentioned duties (under common law rules and/or equitable principles) will subject the director of a Hong Kong company to civil consequences or remedies.

In summary, a director should prepare and equip himself or herself for providing high-quality services as common law generally favours a stringent standard for directors' duties, particularly in the aspects of:

- fiduciary duty; and
- duty of skill, care and diligence.

Jenny Lo
Company Secretary

3.5 Types of Board Committees

- 9.041** Different types of board committees are set up with specific terms of reference so to deliver and facilitate different corporate governance functions within a company. Some of such terms for committees are prescribed in accordance with the Listing Rules or recommended by the CG Code.
- 9.042** The need of convening the remuneration committee, the nomination committee and the audit committee and their disclosure requirements in the corporate governance report are briefly demonstrated in Chapter 5 of this Book. Immediately below are more details of the prescribed and recommended composition and setup requirements of such committees under the Listing Rules and CG Code.
- 3.5.1 Composition and setup requirements for nomination committees**
- 9.043** A listed company should establish a nomination committee comprising mostly of INEDs which is chaired by the chairperson of the board of directors or an INED (CG Code A.5.1). CG Code A.5.3 states that a nomination committee should make available its terms of reference explaining its role and the authority delegated to it by the board by including them on the Stock Exchange's website and issuer's website.
- 9.044** It should be stressed that the CG Code also recommends a nomination committee (or the board) to have a policy concerning diversity of board members and disclose the policy or a summary of the policy in the corporate governance report with effect from 1 September 2013 (CG Code A.5.6). The corporate governance report should include the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives (CG Code L(d)(ii)). On 2 July 2014, the Stock Exchange issued a letter to listed issuers that it had spot-checks on the issuers on their compliance with the CG Code and found that

cases where issuers confirmed compliance with the code provisions it was in fact not the case. In particular, they noted that in contravention of CG Code A.5.6, a number of issuers neither disclosed their board diversity policies, or a summary of such policies in their corporate governance reports, nor gave considered reasons for non-disclosure.

Board diversity will differ according to the circumstances of issuers. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Every issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.

3.5.2 Composition and setup requirements for remuneration committees

A listed company must establish a remuneration committee chaired by an INED and comprising mostly of INEDs (rule 3.25 of the Listing Rules). The board of directors must approve and provide written terms of reference for the remuneration committee which clearly establish the committee's authority and duties (rule 3.26 of the Listing Rules). The committee's main duties are to make recommendations to the board on the issuer's policy and structure for all directors' and senior management's remuneration and on the establishment of a formal and transparent procedure for developing a remuneration policy.

Note:

If an issuer fails to set up a remuneration committee or at any time has failed to meet any of the requirements in rules 3.25 and 3.26 of the Listing Rules, it must immediately publish an announcement containing the relevant details and reasons. Issuers must set up a remuneration committee with written terms of reference and/or appoint appropriate members to it to meet the requirement(s) within three months after failing to meet them (rule 3.27 of the Listing Rules).

3.5.3 Composition and setup requirements for audit committees

A listed issuer should establish an audit committee comprising NEDs only, mostly INEDs, and chaired by an INED (rule 3.21 of the Listing Rules). Further, there should be a minimum of three members with at least one-third of the board members being INEDs and at least one of the INEDs should possess appropriate professional qualifications or accounting or related financial management expertise (rule 3.21 of the Listing Rules). In fact, a former partner of the issuer's existing auditing firm is recommended to be prohibited from acting as a member of its audit committee for one year from the date of his or her ceasing to be a partner of the auditing firm or to have any financial interest in the auditing firm, whichever is later (CG Code C.3.2).

Note:

1. An issuer shall immediately inform the Stock Exchange if at any time it fails to meet any of the audit committee requirements under rule 3.21 of the Listing Rules. Further, an issuer shall immediately publish an announcement containing the relevant details and reasons if at any time it fails to meet any of the requirements under rules 3.21, 3.25 and 3.26 of the Listing Rules in regard to the written terms of reference of the remuneration committee and/or appointment of appropriate members to the remuneration committee or the audit committee. Thereafter, the

9.045

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9.047

Note:

Whenever a public or listed company is contemplating a transaction relating to movement in the company's shares, company secretarial practitioner should cross check if any implications may arise under the Takeovers Code in addition to the Listing Rules.

8.1.2 Whitewash under the Takeovers Code

Question: What is meant by "whitewash"? What are the bases and procedures for the application of whitewash waiver with the SFC?

- 10.102** Due to the great impact of making an MGO, the Takeovers Code set out various list of transactions which can be "whitewashed". Even if the takeover threshold or 2% creeper provision is reached, the relevant offerors or acquirers are not required to implement an MGO if the transaction is "whitewashed".

"I have great interest to learn about the bases and procedures for the application of whitewash waiver with the SFC. Could you explain in detail?", says William.

Jenny ponders carefully for a while and responds, "generally speaking, there are two kinds of transactions available for whitewashes: (i) new issues of securities; and (ii) share repurchases by the company. Let us discuss the former type first".

- 10.103** Whitewashes, under new issues of securities:

1. according to Note 1 on dispensations from rule 26 ("Note 1 Type") of the Takeovers Code, the action of whitewash means when the issue of new securities as consideration for an acquisition, or a cash subscription, or the taking of a scrip dividend, would otherwise result in an obligation to make a mandatory offer under rule 26, the ED of the Corporate Finance Division of the SFC or any delegate of the ED (ED of the SFC)¹⁸ will normally waive the obligation if there is an independent vote on a poll at a shareholders' meeting;
2. details of the potential holding of voting rights must be disclosed in the document sent to shareholders relating to the issue of the new securities, which must also include the independent advice on the proposals the shareholders are being asked to approve, together with the waiver statement of the ED of the SFC concerning any obligation to make a mandatory offer;
3. if the whitewash is obtained, the person or group of persons acting in concert, who otherwise would have been required to make the mandatory offer, are deemed to have a lowest percentage holding equal to the percentage holding of such person or groups of persons immediately after the whitewash transaction. Any acquisition of additional voting rights by such person or group of persons subsequent to the whitewashed transaction

¹⁸ Takeovers Code, Def-10 – "Executive".

is subject to the 2% creeper provision under rule 26.1 by reference to the lowest percentage holding in the following 12 months;

4. even though the issue of new securities is made conditional upon the prior approval by independent vote at a shareholders' meeting, the ED of the SFC will not normally waive an obligation under rule 26 if the person(s) acting in concert has acquired voting rights in the company (except for subscriptions for new shares which have been fully disclosed in the whitewash circular) in the six months prior to the announcement of the proposals but subsequent to negotiations, discussions or reaching of agreements with the directors of the company relating to the proposed issue of new securities; and, without the prior consent of the ED of the SFC, any acquisitions or disposals of voting rights made by such persons in the period between the announcement of the proposals and the completion of the subscription, a waiver will not be granted or if granted will be invalidated; and
5. the ED of the SFC may also waive the requirement for a person to make a general offer where: (i) the company is in such a serious financial position that an urgent rescue operation which involves the issue of new securities without approval by a vote of independent shareholders is necessary; (ii) there has been an inadvertent mistake and the person disposes of the securities within a limited period to unconnected persons; or (iii) a shareholder holding 50% or less of the voting rights places part of his or her shares with an independent person and, as soon as practicable thereafter, subscribers for new shares up to the number placed at a price substantially equivalent to the placing price less expenses.

8.1.2.1 Special deals with favourable conditions

According to rule 25 of the Takeovers Code, except with the consent of the Executive of the SFC, neither the offeror nor any person acting in concert with it may make any arrangements with shareholders or enter into arrangements to purchase or sell securities of the offeree company, or which involve acceptance of an offer, either during an offer, or when an offer is reasonably in contemplation or for six months after the close of such offer if such arrangements have favourable conditions which are not to be extended to all shareholders. This rule 25 is an extension of General Principle 1 of the Takeovers Code which requires all shareholders as well as all shareholders of the same class to be treated equally and fairly.

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8.1.3 Voluntary offer

A takeover may be made by making a voluntary offer. Unlike an MGO, a voluntary offer may be in cash or securities. A voluntary offer may also be conditional on an acceptance level of shares carrying a higher percentage of voting rights, for example, 90% acceptance is required if the offeror wishes to exercise compulsory acquisition.

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