

CHAPTER 4

IMPLEMENTATION

WORKING PARTY AND TRANSITION PERIOD

4.1 The outline of our proposed solution appears in the Executive Summary, at paragraph 53, and we shall not repeat it here. We concentrate in this section on some of the issues which will arise in the implementation of our proposal. These issues will require negotiation between the HKEx and SFC in particular, in order to ensure a smooth transition, and no doubt the Government will encourage that process as needed, including appointing a top level **working party** involving the three tiers to resolve the details as soon as possible. The comments made here are intended to assist that process.

4.2 We have consulted widely in the course of preparing this report, and canvassed many of the same people whom the PIPSI had consulted just a few months before on related issues. We are confident that we have identified the views of all of the people who wish to express a view, and that our recommendations will receive broad support. We believe that there would be widespread approval if the Government were to take the view that further formal consultation on the concept we propose was unnecessary, and we doubt that any further consultation would elicit different opinions. We are strongly of the view that the interests of Hong Kong will be better served by the Government taking an early decision to implement our proposal and commence that process. Views expressed after publication on details, as opposed to the concept, can of course be taken into account in the implementation process.

4.3 We consider that a **transition period of 18 months** would be necessary and desirable to send the right messages, that Hong Kong is re-organising but there is no crisis, and it will be business as usual during the transition. Dual-filing will be in operation as from 1 April 2003 in any event, and as noted elsewhere, that will give the SFC an immediate role in assisting the HKEx to lift the quality of listings.

STAFFING

4.4 As recommended in paragraph 3.3 of Chapter 3, we propose that as far as possible staff of the Listing Division should be offered employment in the new HKLA. They should in fairness be given that assurance at the earliest opportunity.

4.5 We expect that some will decline that offer, for a variety of reasons, including in some cases that they wish to remain with the HKEx, which will in our proposal have a continuing role of deciding their own entry and exit criteria and conduct codes or rules for listed stocks to trade on the stock market. But we hope that, with the encouragement of the HKEx, in whose interest it will be, enough senior and experienced people will accept the offers that there can be no doubt that the HKLA staff administering the Listing Rules are familiar with them.

4.6 Of course, this is not to say that all the transferred staff are guaranteed employment **indefinitely** at the HKLA, any more than they are now at the HKEx. There is a need to refresh and upgrade the skill levels of the staff working on the listing process, as more elements based on judgement and direct experience of markets are brought into the system.

4.7 The offer of employment should as far as possible be on **terms that are no less favourable** in overall effect, than the present employment with the HKEx. It will not be possible to replicate the terms exactly, since the HKEx as a listed company has been able to offer inducements such as options, which are not possible for the SFC. But these inducements can be valued under the supervision of the working party mentioned in paragraph 4.1 if necessary.

4.8 The SFC is in the process of recruiting some 15 staff as part of the dual-filing regime, and they together with the transferred staff of the Listing Division, should form the nucleus of the staff of the HKLA. But the process of attracting, training and retaining well-qualified staff within the HKLA should be ongoing.

FINANCE

4.9 If the Listing Division is viewed as an accounting entity, there is a surplus of revenue over expenditure. In forming our recommendations, our guiding assumptions have been that, as far as possible –

- (a) the HKEx should not be materially worse off, and if possible not worse off at all, as a result of the proposed changes, which means that the listing fees need to be shared in some fashion between the HKEx and the HKLA;
- (b) total listing fees paid by listing applicants and issuers should not rise in the short term as a result of this change, and should only rise at all if the amount spent on the activities related to listing needs to rise in response to market needs;
- (c) the costs of the HKLA should be fully recovered from listing fees, that is, they should not be a drain on the resources available to the SFC for its other work; and
- (d) the HKEx should have a significant reduction in its cost base following the transfer of the listing function to the HKLA.

4.10 There will be setup costs, as the SFC cannot absorb up to 100 extra staff without leasing and fitting out premises. These may need to be amortised over several years, and to be factored into the setting of the listing fees.

4.11 We have recommended that the HKLA and HKEx collect fees for listing and trading on the stock exchange separately. Some may say that separate payment is undesirable as it introduces duplication and is inefficient, but it is a minor inefficiency in the scheme of things. New York and London have gone for the separate payment arrangement. Of course, the HKLA and HKEx may well agree on a basis for a single payment shared between them.