Charltons - Hong Kong Law Newsletter - 06 June 2005

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# Proposed Revision Of The SFC's Guidance Note On Prevention Of Money Laundering And Terrorist Financing

# New Shareholder Remedies Under The Companies Ordinance Effective 15 July, 2005

## Introduction

The Securities and Futures Commission (the **SFC**) has published a consultation paper on its Proposed Revised Prevention of Money Laundering and Terrorist Financing Guidance Note (the "Revised Guidance Note") and has invited comments to be submitted by 10 June, 2005. The full text of the consultation paper is available on the [SFC website](http://www.hksfc.org.hk/).

The amendments to the Companies Ordinance (the **CO**) relating to shareholder remedies set out in Schedule 3 to the Companies (Amendment) Ordinance 2004 (the **CAO**) will come into effect on 15 July, 2005.

The purpose of this note is to highlight the principal features of the Revised Guidance Note and of the new shareholder remedies under the amended CO. The text in blue can be clicked through to view more information on a selected subject.

## I. Proposed Revision Of The SFC's Guidance Note On Prevention Of Money Laundering And Terrorist Financing

### 1. Background

The SFC proposes to revise its existing guidance note on prevention of money laundering and terrorist financing to bring it in line with the revised 40 Recommendations and Nine Special Recommendations for combating terrorist financing and money laundering issued by the Financial Action Task Force on Money Laundering (the **FATF**) and to incorporate industry-specific guidance on client identification and beneficial ownership published by the International Organization of Securities Commissions (**IOSCO**).

The Revised Guidance Note which will be published under Section 399 Securities and Futures Ordinance (the **SFO**) consists of two parts. Part I provides a general background to the subjects of money laundering and terrorist financing and summarises at Appendix A the main provisions of applicable Hong Kong anti-money laundering and anti-terrorist financing legislation. Part II sets out detailed guidelines on the measures that licensed corporations and their associated entities are expected to take in implementing anti-money laundering and anti-terrorist financing controls.

### 2. Scope

The Revised Guidance Note will apply to all corporations licensed by the SFC and their associated entities that are not authorized financial institutions (ie. banks, restricted licence banks and deposit taking companies under the Banking Ordinance)(together **licensed corporations**). To avoid regulatory overlap, registered institutions under the SFO and associated entities that are authorized financial institutions are required to observe only the guidelines on prevention of money laundering published by the Hong Kong Monetary Authority (the **HKMA**).

Registered institutions and associated entities that are authorized financial institutions are however required to have regard to securities or futures-specific guidance in the Revised Guidance Note that is not covered in the HKMA's guidelines. This includes:

* the risk management procedures to be undertaken where the customer due diligence process cannot be satisfactorily completed after securities transactions have been conducted on behalf of the customer (subsection 6.1.8);
* omnibus accounts established in the name of a financial or professional intermediary (subsection 6.6); and
* examples of suspicious transactions relating to the securities sector (Appendix C(ii)).

The Revised Guidance Note, like the existing guidance note, will not have the force of law. Failure by a licensed corporation to comply with the Revised Guidance Note's requirements may however reflect adversely on its fitness and properness to be licensed under the SFO. In the case of inconsistency between the Revised Guidance Note and any applicable law, code or regulatory requirement, the provision requiring the higher standard of conduct will apply.

The principal features of the Revised Guidance Note are summarised below.

### 3. Guiding Principles (Subsection 4.1)

As a "one-size-fits-all" approach is not considered appropriate, each licensed corporation is required to consider the specific nature of its business, organizational structure, type of customer and transaction, etc. to satisfy itself that the measures taken are adequate and appropriate and follow the spirit of the suggested measures and procedures. Thus where reference is made in the Revised Guidance Note to a licensed corporation being satisfied as to a matter, it must be able to justify its assessment to the SFC or any other relevant authority.

### 4. Customer Acceptance And Risk Profiling (Section 5)

Licensed corporations are required to establish customer acceptance policies and procedures that aim to identify the types of customers that are likely to pose a higher than average risk of money laundering and terrorist financing. The Revised Guidance Note also requires clear internal policies on which level of management should approve business relationships with such customers. It sets out certain factors to be taken into account when determining the risk profile of particular customers or types of customers (subsection 5.2).

Customers should be re-classified as higher risk if, following initial acceptance, the pattern of account activity does not fit with the licensed corporation's knowledge of the customer. A suspicious transaction report should also be considered (Subsection 5.4).

### 5. Customer Due Diligence (Section 6)

Licensed corporations are required to undertake customer due diligence (**CDD**) measures to an extent that is sensitive to the risk of money laundering and terrorist financing depending on the type of customer, business relationship or transaction. Customer due diligence is defined at footnote 4 to subsection 4.2.2 as comprising:

1. identify the customer, ie. know who the individual or legal entity is;
2. verify the customer's identity using reliable, independent source documents, data or information;
3. identify beneficial ownership and control, ie. determine which individual(s) ultimately own(s) or control(s) the customer and/or the person on whose behalf the transaction is conducted;
4. verify the identity of the beneficial owner of the customer and/or the person on whose behalf the transaction is conducted, corroborating the information provided in relation to (iii); and
5. conduct on-going due diligence and scrutiny, ie. perform on-going scrutiny of the transactions and account throughout the course of the business relationship to ensure that transactions being conducted are consistent with the licensed corporation's knowledge of the customer, its business and risk profile, taking into account, where necessary, the customer's source of funds.

#### Timing of Verification (Subsections 6.1.7 and 6.1.8)

Generally, licensed corporations should verify the identity of the customer and beneficial owner before establishing a business relationship. If customer due diligence cannot be performed satisfactorily at the account opening stage, the licensed corporation should not commence the business relationship or perform the transaction and should consider making a suspicious transaction report.

However, where transactions conducted on customers' behalf need to be executed very rapidly due to market conditions or in the case of non face-to-face business, the Revised Guidance Note permits verification to be completed after the establishment of the business relationship provided that:

* completion of verification occurs within a reasonably practicable timeframe; and
* appropriate risk management procedures are adopted to monitor transactions by the customer in the interim period. These should include a set of measures such as limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out that fall outside the expected norms of that type of relationship.

If a licensed corporation cannot perform the customer due diligence process satisfactorily within a reasonably practicable timeframe after commencing the business relationship, it should, if possible, discontinue the relationship and consider making a suspicious transaction report.

#### Existing Customers (Subsections 6.1.9 to 6.1.11)

While the new customer identification procedures are not required to be applied to existing customers, licensed corporations are required to take reasonable steps to ensure that existing customers' records remain up-to-date and relevant and to consider undertaking periodic reviews of such records. The Revised Guidance Note gives examples of appropriate times for the review of existing customer records.

### 6. Risk-Based Approach (Subsection 6.2)

One of the key provisions of the Revised Guidance Note is the introduction of a risk-based approach recognizing that certain customers may be of a higher risk category depending on circumstances such as their background, type of business relationship or transaction, etc. As such, each of the CDD measures should be applied on a risk-sensitive basis.

The basic principle is that more extensive CDD should be carried out for higher risk categories of customers, business relationships and transactions and conversely, that simplified due diligence procedures are appropriate for lower risk categories. The relevant enhanced or simplified CDD process will also vary from case to case depending on the specific customer's background, transaction type and particular circumstances.

Licensed corporations should establish in their customer acceptance policies the risk factors for determining what types of customers and activities are to be categorized as low or high risk. They must also satisfy themselves that the use of simplified CDD is reasonable in the circumstances and approved by senior management. The opening of high risk accounts requiring enhanced CDD should also be subject to senior management approval.

#### Lower Risk Customers (Subsection 6.2.3)

Examples of lower risk categories of customers include:

* financial institutions that are authorized and supervised by the SFC, the HKMA or the Office of the Commissioner of Insurance or by an equivalent authority in a FATF member or equivalent jurisdiction;
* public companies listed on a stock exchange specified in Part 3 of Schedule 1 to the SFO (which include the London, New York and Tokyo Stock Exchanges);
* government administrations or enterprises in non-NCCT[[1]](#footnote-36) jurisdictions where the risk of money laundering is considered to be low and there are no doubts as to the beneficial ownership of the enterprise; and
* pension, superannuation or similar schemes providing retirement benefits to employees where contributions are made by way of deductions from wages and the scheme rules do not permit the assignment of a member's interest.

#### High Risk Customers (Subsection 6.2.6)

Examples of high risk categories of customers include:

* complex legal arrangements such as unregistered or unregulated investment vehicles;
* companies that have nominee shareholders or a significant portion of capital in the form of bearer shares;
* persons (including corporations and other financial institutions) from or in countries that do not or insufficiently apply the FATF's Recommendations (such as jurisdictions designated as NCCTs by the FATF or those known to the licensed corporation to lack proper standards in the prevention of money laundering and terrorist financing); and
* non face-to-face customers (ie. customers whose accounts are opened using a non face-to-face approach such as the internet).

### 7. Due Diligence For Specific Types Of Customer (Subsections 6.3 to 6.11)

The "know your customer" guidelines have been elaborated upon to provide detailed guidance on the CDD measures required for specific types of customers. The guiding principle is that licensed corporations should be able to justify that they have taken objectively reasonable steps to satisfy themselves as to the true identity of their customers including beneficial owners.

#### Corporate Customers (Subsections 6.4 and 6.5)

CDD includes identifying and verifying the customer and the beneficial owner(s). In the case of corporate customers, this generally requires identifying and verifying the substantial shareholders, directors and authorized persons, and following through the chain of ownership to the ultimate principal beneficial owners and to verify the identify of those individuals. Guidance is given as to the level of detail and the type and amount of information and documents required to be obtained for corporate customers.

##### Listed Companies and Regulated Investment Vehicles

In line with the risk-based approach, the type and amount of identification information and documents that should be obtained depends on the risk category of the corporate customer. A corporate customer that is listed on a stock market of a FATF member country or on a specified stock exchange as defined in the SFO (see section 6 above), or is a subsidiary of such a listed company, or is a state-owned company in a non-NCCT jurisdiction (provided that the risk of money laundering in that jurisdiction is considered to be low and there is no doubt as to the ownership of the enterprise), is considered to be low risk and the company itself can be regarded as the person whose identity is to be verified and there is no need to make further inquiries about the identity of the substantial shareholders, individual directors or authorized signatories of the account (subsection 6.5.1). Evidence should however be sought that any individual operating the account has the necessary authority to do so.

In the case of a corporate customer that is a regulated or registered investment vehicle, such as a collective investment scheme or mutual fund that is subject to regulatory disclosure requirements, it is not necessary to identify and verify the identity of any unit holder of that investment vehicle (Subsection 6.5.2).

##### High Risk Corporates (Subsection 6.4.3)

Conversely, for higher risk corporate customers or where there is any doubt as to the identity of the beneficial owners, shareholders, directors or account signatories, the Revised Guidance Note suggests enhanced CDD measures.

Specific guidance is given with respect to companies which have a significant proportion of their capital in the form of bearer shares (subsection 6.4.5). Licensed corporations are advised to have procedures in place to monitor the identity of all substantial shareholders. This may require licensed corporations to consider whether to immobilize the shares, for example by holding them in custody, or to require annual declarations from substantial shareholders as to their percentage shareholding and any sale or transfer of the shares to be notified to the licensed corporation.

In the case of companies with nominee shareholders, licensed corporations are advised to obtain satisfactory evidence of the identity of the company's beneficial owners (Subsection 6.4.6).

#### Omnibus Accounts of Financial or Professional Intermediaries (Subsection 6.6)

Financial and professional intermediaries commonly open accounts with licensed corporations which are held in the name of the intermediary but are used to conduct securities, futures or leveraged foreign exchange transactions on behalf of its customers (ie. omnibus accounts).

Where an omnibus account is opened by a financial or professional intermediary, it will generally be sufficient to conduct identification and verification of the omnibus account holder and it is not necessary to "drill down" through the intermediary to identify and verify the pool of customers for whom the intermediary performs transactions (subsection 6.6.1).

In the case of an omnibus account opened by a financial intermediary which is authorised and supervised by the SFC, the HKMA or the Commissioner of Insurance or by an equivalent authority in a FATF member or ''equivalent" jurisdiction, simplified CDD is appropriate. It will generally be sufficient for the licensed corporation to verify that the financial intermediary is on the list of authorized and supervised financial institutions in the relevant jurisdiction. Evidence as to the authority of the individual opening the account should also be obtained. "Equivalent jurisdictions" mean jurisdictions applying standards of prevention of money laundering and terrorist financing equivalent to those of the FATF. In the Revised Guidance Note these are defined as including all European Union members, Antilles and Aruba of the Kingdom of the Netherlands, the Isle of Man, Guernsey and Jersey.

Enhanced CDD is required for omnibus accounts opened by financial or professional intermediaries:

* which are incorporated in non-cooperative countries;
* which are incorporated in jurisdictions in which they neither have a physical presence nor are affiliated with a regulated financial group having such presence; or
* where it has not been established that the intermediary has established reliable systems to verify customer identity.

The opening of a new omnibus account relationship requires senior management's approval (subsection 6.6.7).

#### Trust and Nominee Accounts (Subsection 6.8)

Licensed corporations are required to take reasonable measures to understand the relationship among the relevant parties in handling a trust or nominee account. There should be satisfactory evidence of the identity of the trustees or nominees and the persons for whom they act.

#### Politically Exposed Persons (PEPs) (Subsection 6.9)

PEPs are defined as individuals who have been entrusted with prominent public functions, for example, heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials. Middle ranking or more junior officials in the foregoing categories are not PEPs.

Licensed corporations are required to have appropriate risk management systems in place to determine whether a customer is a PEP and to conduct enhanced CDD on this type of customer on a risk-sensitive basis. The decision to open an account for a PEP should be taken at senior management level. Subsection 6.9.7 sets out a list of risk factors to be considered in the handling of PEP accounts.

#### Non Face-to-Face Customers (Subsection 6.10)

This refers to the situation where the customer is not interviewed and the signing of the account opening documentation and sighting of the customer's identity documents is not conducted in the presence of an employee of the licensed corporation, for example where the account is opened via the internet. In the case of non face-to-face customers, the account opening procedures should satisfactorily ensure the identity of the customer.

Licensed corporations are required to observe the relevant requirements of the Code of Conduct for Persons Licensed or Registered with the Securities and Futures Commission (the **Code**) regarding the account opening procedures using a non face-to-face approach. The signing of the client agreement and sighting of the customer's identity documents should be certified as required by paragraph 5.1(a) of the Code. Alternatively, the client's identity (other than corporate customers), can be verified in accordance with paragraph 5.1(b) of the Code. A financial intermediary regulated and incorporated in, or operating from, a FATF member or equivalent jurisdiction may also be used to certify the singing of the client agreement and sighting of related identity documents (subsection 6.10.3). Where the signing of the customer agreement and sighting of identity documents is witnessed by certifiers in a jurisdiction which is not a FATF member or an equivalent jurisdiction, licensed corporations should assess the reliability of the documents and information provided and consider taking additional measures.

#### Reliance on Introducers for Customer Due Diligence (Subsection 6.11)

Licensed corporations can rely on the identification and verification procedures carried out on customers introduced by third parties if specified criteria are met and they continue to take responsibility for knowing the customer. The criteria for reliance include that:

1. the licensed corporation should satisfy itself prior to reliance that it is reasonable to rely on the introducer to apply a CDD process; and
2. the introducer should be incorporated in, or operating from, a FATF member or equivalent jurisdiction and be:  
     
   a. regulated by the SFC, the HKMA, the Office of the Commissioner of Insurance or by an authority that performs similar functions; or  
     
   a. if not so regulated, able to demonstrate it they has adequate procedures to prevent money laundering and terrorist financing.  
     
   Where CDD conducted by an introducer can be relied on, licensed corporations need only obtain the necessary customer information (but not the related documentation) from the introducer, with the exception of obtaining copies of documentation pertaining to the customer's identity at the account opening stage as is required by paragraph 6.2(1)(a) of the Code. The licensed corporation must however be satisfied that all other relevant documents will be provided by the introducer upon request without delay.

Introducers based in high risk jurisdictions, such as NCCTs or jurisdictions that are inadequately regulated as to CDD should not be relied upon.

### 8. Designation Of An Officer For Reporting Of Suspicious Transactions (Subsection 10.2)

The Revised Guidance Note requires that an officer responsible for the compliance function within the licensed corporation be appointed to act as a central reference point within the organization to facilitate the onward reporting of suspicious transactions to the Joint Financial Intelligence Unit. The role of this compliance officer is not simply that of a passive recipient of ad hoc reports of suspicious transactions: rather, the compliance officer should play an active role in the identification and reporting of suspicious transactions. This might involve regular review of exception reports of large or irregular transactions provided by the licensed corporation's internal system as well as reports made by front-line staff. The specific task of reviewing reports may be delegated to other staff, but the compliance officer or supervisory management should oversee the review process.

### 9. High Standards When Recruiting For Key Positions With Respect To Anti-Money Laundering And Anti-Terrorist Financing (Subsections 11.1 and 11.2)

Licensed corporations should identify the key positions within their organizations with respect to anti-money laundering and anti-terrorist financing and should adopt adequate screening and training procedures to ensure that all employees taking up such key positions are suitable and competent to perform their duties.

### 10. Internal Audit (Subsection 4.2.3(f))

Licensed corporations' policies and procedures on the prevention of money laundering and terrorist financing should cover the role of the internal audit or compliance function in ensuring compliance with anti-money laundering and anti-terrorist financing policies, procedures and controls, including testing of the system for detecting suspected money laundering transactions, evaluating and checking the adequacy of exception reports generated on large and/or irregular transactions, the quality of reporting of suspicious transactions and the level of awareness of front-line staff of their responsibilities in this regard.

### 11. Overseas Branches And Subsidiaries (Subsection 4.3.2)

The Revised Guidance Note contains a new notification requirement for licensed corporations to notify the SFC in the event that their overseas branch or subsidiary is unable to observe its group standards on CDD requirements.

### 12. Examples Of Suspicious Transactions (Appendix C(ii))

The list of examples of investment related suspicious transactions has been expanded to include:

1. frequent funds transfers or cheque payments to or from unverified or difficult to verify third parties;
2. the involvement of offshore companies on whose accounts multiple transfers are made, especially when they are destined for a tax haven, and to accounts in the name of companies incorporated under foreign law of which the customer may be a shareholder; and
3. non-resident accounts with very large movements with subsequent fund transfers to offshore financial centres.

### 13. Effective Date

The SFC proposes to publish the consultation conclusions on the proposals in the consultation paper and the final revised Guidance Note in the third quarter of 2005. It intends to allow a grace period of 3 months after publication of the final form of the revised Guidance Note for licensed corporations to attain compliance.

### 14. Consultation

Comments on the Revised Guidance Note should be sent by 10 June, 2005:

By mail to: Intermediaries Supervision Department, Securities and Futures Commission, 8/F Chater House, 8 Connaught Road Central, Hong Kong (Re: Consultation on proposed revised Prevention of ML and TF Guidance Note);

By fax to: (852) 2523 4598;

By on-line submission to: <http://www.sfc.hk> (Please enter subsection "Speeches & Publications - Publications - Consultation Papers and Conclusions");

By e-mail to: [gn ml tf@sfc.hk](mailto:gn%20ml%20tf@sfc.hk)

## II. The Companies (Amendment) Ordinance 2004

### 1. Statutory Derivative Actions (Part IVAA)

The new Part IVAA creates a statutory right for a shareholder of a company who has obtained the leave of court to:

1. bring an action on behalf of the company for a wrong done to the company; or
2. bring an action on behalf of the company in respect of any matter where the company has failed to bring proceedings due to a wrong done to the company; or
3. intervene in existing proceedings to which the company is a party and continue, discontinue or defend those proceedings on behalf of the company where the company has failed to do so due to a wrong done to the company.

A wrong in this context means fraud, negligence, default in compliance with any enactment or rule of law, or breach of duty.

#### Conditions for Leave

The conditions for the grant of leave to bring or continue proceedings on behalf of a company are that the court should be satisfied that:

1. it is prima facie in the interest of the company that leave be granted;
2. if the application is for leave to bring proceedings on behalf of the company, that there is a serious question to be tried and the company has not brought the proceedings;
3. if the application is for leave to intervene in existing proceedings, the company has not diligently continued, discontinued or defended those proceedings; and
4. the shareholder has served written notice on the company stating his intention to apply for leave and the reasons for his intention at least 14 days before making the application for leave, unless the court grants leave to dispense with the service of written notice under Section 168BD(4).

#### Effect of Approval or Ratification

The fact that conduct has been approved or ratified by the company's shareholders does not prevent a member from bringing or intervening in proceedings on behalf of the company or from applying for leave to do so (Section 168BF). The court may however take any approval or ratification into account in determining the judgment or order (including any order as to damages) to be made but must have regard to the following matters with respect to the shareholders who approved or ratified the relevant conduct:

1. the extent of the shareholders' independence of the conduct when they approved or ratified it;
2. how well informed they were about the conduct at the time of approval or ratification;
3. whether or not they acted for proper purposes having regard to the company's interests when they approved or ratified the conduct (Section 168BF(2)).

#### Dual Statutory/Common Law Derivative Actions

To deal with the possibility that a shareholder might bring a derivative action under the common law as well as under the CO, the amendments give the court discretion to:

1. dismiss an application for leave to commence a derivative action under the CO if the applicant has already exercised a common law right to commence proceedings on behalf of the company in respect of the same matter or to intervene in the same proceedings (Section 168BC(5)); and
2. order any common law proceedings brought or continued on behalf of a company to be stayed or dismissed or judgment to be entered or any pleading or indorsement of any writ in such proceedings to be struck out or amended, where the applicant has already been granted leave under Section 168BC(3) to bring or continue proceedings on behalf of the company in respect of the same matter (Section 168BE).

The above provisions apply only to dual derivative actions by the same shareholder. There is nothing to prevent different shareholders from taking separate common law and statutory derivative actions in respect of the same matter.

#### Orders for Costs (Section 168BI)

The court may grant an order as to the costs incurred or to be incurred in relation to any proceedings brought or intervened in or any application for leave to bring or intervene in such proceedings by the shareholder bringing or intervening in proceedings, the company or any other party to the application or proceedings. An order for costs against the company may require it to indemnify the shareholder against costs incurred out of its assets. The court may only make an order for costs in favour of the shareholder bringing or intervening in proceedings or applying for leave to do so, if it is satisfied that the member acted in good faith in, and had reasonable grounds for, bringing or intervening in the proceedings or applying for leave to do so.

### 2. Inspection Of Companies' Records (Section 152FA)

An application to court for an order for a shareholder(s) of a company (whether incorporated in Hong Kong or overseas) or another person on the shareholder(s) behalf to inspect the company's records may be made by:

1. shareholders holding at least one fortieth of the total voting rights of shareholders having the right to vote at a general meeting of the company at the date of the application;
2. shareholders holding shares in the company on which there has been paid up at least HK$100,000 in total; or
3. 5 shareholders or more.

The court may grant such an order if satisfied that the application is made in good faith and the inspection is for a proper purpose. A person authorized to inspect records is also entitled to copy them unless the court orders otherwise.

A shareholder or other person authorized to inspect a company's records under Section 152FA must obtain the company's prior written consent to disclose to any other person any information or document obtained from the inspection unless a court order has been obtained authorizing the disclosure under Section 152FA or 152FB or the disclosure is required for any criminal proceedings or is otherwise permitted by law (Section 152FC). A person cannot be authorized to inspect any records that are subject to legal professional privilege (Section 152FD).

### 3. Alternative Remedy To Winding-Up In Cases Of Unfair Prejudice (Section 168A)

A shareholder can apply to court for an order under Section 168A on the ground that the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of the shareholders generally or of some part of the shareholders (including the shareholder making the application). The section specifies a number of orders which may be made by the court including: an order regulating the company's future affairs; an order restraining the commission or continuance of certain conduct; an order that proceedings be brought by the company on terms ordered by the court; the appointment of a receiver or manager of the company's property or business; an order providing for the majority shareholders or the company to buy the shares of the other members; or an order altering the company's memorandum and articles of association.

The amendments to Section 168A will:

1. apply the section to overseas companies (ie. companies incorporated outside Hong Kong which have an established place of business in Hong Kong) as well as to Hong Kong incorporated companies (it currently applies only to Hong Kong incorporated companies);
2. give the courts specific power to award damages plus interest to shareholders (including the shareholder making the application) whose interests have been unfairly prejudiced (Section 168A(2)(b)); and
3. allow past members (including their personal representatives) to apply under Section 168A and be awarded damages and interest in respect of unfairly prejudicial conduct which occurred at the time they were members (Section 168A(2B)). Persons who ceased to be a member of a company before 15 July, 2005 (being the date when Schedule 3 to the CAO will come into effect) will not be counted as "past members" for these purposes.

### 4. Injunctions (Section 350B)

The new Section 350B allows the court to grant an injunction:

1. restraining a person from contravening the CO or breaching his fiduciary or other duties owed to the company; or
2. requiring a person to do any act or thing which he is required to do under the CO (which he is refusing or failing to do).

Such injunctions may be made on the application of the financial secretary or any shareholder or creditor of the company whose interests are affected by the relevant conduct. The court may also order the relevant person to pay damages either in addition to, or in substitution for, the grant of an injunction.

*The purpose of this note is to summarise the principal features of the SFC's proposed revised Guidance Note on Prevention of Money Laundering and Terrorist Financing and the new shareholder remedies under Schedule 3 to the Companies (Amendment) Ordinance 2004. Specific advice should be sought in relation to any particular situation.*

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1. "NCCT" means non-cooperative countries and territories identified by the FATF to have critical deficiencies in their anti-money laundering systems or a demonstrated unwillingness to co-operate in anti-money laundering efforts. The current list of NCCTs is available on the FATF website at www.fatf-gafi.org. [↑](#footnote-ref-36)