

38/84

No. 1 1984

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

KOWLOON STOCK EXCHANGE LIMITED *Appellant*

AND

COMMISSIONER OF INLAND REVENUE *Respondent*

RECORD OF PROCEEDINGS

EDMUND W.H. CHOW & CO.,
Solicitors for the Appellant
LEGAL DEPARTMENT OF HONG KONG
for the Respondent

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Kowloon Stock Exchange Limited

vs.

Commissioner of Inland Revenue

No. 1 Case Stated
22/10/80

CASE STATED pursuant to section 69 of the Inland Revenue Ordinance (Cap. 112) on the application of the Kowloon Stock Exchange Limited.

10

(1) At the hearing before the Board of Review, Kowloon Stock Exchange Limited (hereinafter called "the Taxpayer") appealed against the Determination of the Commissioner of Inland Revenue (hereinafter called "the Commissioner").

(2) The Decision of the Board of Review was as follows:-

20

1. Kowloon Stock Exchange Ltd. (the Taxpayer) was incorporated in Hong Kong on 10th March 1970 as a company limited by guarantee and not having a share capital. It opened its exchange premises to members for their business on 5th January 1972.

2. As reflected by the Income and Expenditure Account for the period from 23rd March 1970 to 31st May 1972 the Taxpayer received the following:-

30

Members' monthly subscriptions	\$130,660
Bank Interest	29,755
Sundry Service: Change Name	22,000

Expenses reimbursed from members:-

Coffee Bar	\$1,782	
Photostatic Service	352	
Coloured writing pen	188	
Sales Record	696	3,018
		<u>\$185,433</u>

3. In addition to the receipts mentioned in paragraph 2 the Taxpayer received the following up to 31st May 1972:-

40

(i) Founders' Contributions:

Received on account March 1970	
- June 1971	\$30,000
Balance received July 1971	
- 31st March 1972	320,000
	<u>\$350,000</u>

(ii) Members' Entrance Fees:

August 1971 - 31st March 1972	\$5,595,000
1st April 1972 - 31st May 1972	<u>150,000</u>
	<u>\$5,745,000</u>

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10 4. On 6th September 1973 a Notice of Assessment and Demand for Profits Tax for the year of assessment 1971/72 was issued and the assessable profits of \$3,085,022 were computed as follows:-

YEAR OF ASSESSMENT 1971/72

Section 18(3)

Basis Period: 5th January 1972 -
31st March 1972

	Loss for period ended 31st May 1972 per account submitted	\$328,612
	Less: Uniform, initial purchase	959
20	Depreciation charged	<u>29,676</u>
		<u>30,635</u>
		\$297,979
	Less: Founders' Contribution	350,000
	Members' Contribution	<u>5,745,000</u>
	Profit	<u>6,095,000</u>
		<u>\$5,797,023</u>
	Average Profit for 5th January 1972 - 31st March 1972	
30	$\frac{87}{158} \times 5,797,023$	\$3,192,031
	Less: Depreciation Allowance	
		<u>107,009</u>
	Assessable Profit	<u>\$3,085,022</u>
	Tax payable	<u>\$ 462,753</u>

During the hearing it was agreed that the denominator for the calculation of Average Profit for 5th January 1972 to 31st March 1972 should be "148" and not "158" as stated.

40 5. On 24th September 1973, Messrs. Stephen Law & Co. lodged on behalf of the Taxpayer an objection against the 1971/72 assessment on the ground that the Taxpayer "has amended its Articles of Association in that no subscription shall be payable by its members and as such the Taxpayer is not a trade association within the

meaning of Section 24(2) of the Inland Revenue Ordinance". In this letter it was also added that all the subscriptions previously paid by members have been or would be refunded.

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10 6. The Taxpayer's objection was rejected by the Commissioner in his Determination and further the Commissioner exercised his discretion under Section 18(7) and increased the assessable profits to \$5,701,211 with tax payable thereon of \$855,181.

7. The Taxpayer appealed to the Board of Review and the grounds of appeal were as follows:-

20 1. The Return submitted on behalf of the Appellant dated 16th January 1973 for profits tax under Part IV of the Inland Revenue Ordinance for the year in question in the sum of \$328,612.23 ought to have been accepted by the assessor and an assessment made accordingly;

2. The assessor erroneously charged the Appellant to profits tax under section 24(2) of the Ordinance in that:-

30 (a) the Appellant had duly furnished a return of its assessable profits arising in Hong Kong from its business carried on in Hong Kong and the assessor ought in law to have ascertained the tax payable by the Appellant on the basis of such return under section 14 of the Ordinance and not under section 24(2);

(b) the Appellant was not and did not carry on a trade association;

40 (c) alternatively, if (which is denied) the Appellant was a trade association, not more than half its receipts by way of subscription were from persons who claimed or would have been entitled to claim that such sums were allowable deductions for the purposes of section 16;

(d) alternatively the Appellant carried on a club or similar institution which received from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions) and is accordingly not assessable to profits tax.

10 3. Alternatively, for the purposes of computation of profits under section 24(2) there should have been excluded from the gross receipt the Founders' Contribution and Entrance Fees received by the Appellant from its members;

20 4. Alternatively, any Founders' Contribution and Entrance Fees received by the Appellant from its members being of a capital nature should not have been brought into account in the computation of its annual profit and loss;

5. The Appellant had, for the year of assessment ending 31st March 1972, no receipts by way of subscription, the amount of subscription payable by members having been determined as nil - hence the provisions of section 24(2) were not applicable;

30 6. The Commissioner wrongly applied section 18(3) of the Inland Revenue Ordinance by holding that the Appellant had commenced business on 1st July 1971;

7. The Commissioner wrongly exercised his discretion under section 18(7).

40 8. At the hearing of the appeal the Taxpayer relied upon and argued grounds 2(b), 2(c), 2(d), 6 and 7. In this connection it was agreed that the decision of the Privy Council in CIR v. Far East Exchange Ltd. PC App. No. 9 of 1977 was not applicable as the points taken in this appeal were not canvassed in the former case.

Ground of Appeal 2(b): That the Taxpayer was not and did not carry on a trade association.

9. The law applicable to this ground of appeal is Section 24(2) of Cap. 112 prior to its amendment by Ordinance 40 of 1972 and was as follows:-

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10 "(2) Where a person carries on a trade association in such circumstances that more than half its receipts by way of subscriptions are from persons who claim or would be entitled to claim that such sums were allowable deductions for the purposes of section 16, such person shall be deemed to carry on a business, and the whole of the income of such association from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from business, and such person shall be chargeable in respect of the profits therefrom."

20 The amending ordinance added the words "professional or business" between the words "trade" and "association" in line one.

10. For the Taxpayer it was contended that

- (a) the word "trade" in its general connotation is more restrictive than the word "business";
- 30 (b) the "deeming" provisions of section 24(2) create an artificial situation whereby receipts including capital receipts are made liable to profits tax. Hence a narrow meaning should be given to "trade association" and the section should be confined to associations dealing with "trade and manufacture" and "adventures and concerns in the nature of trade", i.e., with buying and selling; and
- 40 (c) the Taxpayer's members must be brokers, and a stockbroker is defined in the taxpayer's articles of association as "a person carrying on business in this Colony as a broker in the purchase or sale of stocks, shares either solely or in conjunction with other business". As a broker, a member does not carry on a trade. He carries on a business by buying and selling as agent

for clients. As broker he does not buy
and sell for himself.

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11. For the Commissioner it was contended -

- (a) In section 2 of Cap. 112, the definition section, "'trade' includes every trade and manufacture, and every adventure and concern in nature of trade".
- 10 (b) "Trade" in tax legislation is a word of the widest import and is not restricted to a regular business of buying and selling [see Barry v. Cordy (1946) 2 All E.R. 396 per Scott L.J. at 400 and B.N.S.W. v. The Commonwealth (1948) 76 C.L.R. 1 at 381].
- (c) Blackburn's Contract of Sale defines "broker" thus-
- 20 "A broker for sale is a person making it a trade to find purchasers for those who wish to sell, and vendors for those who wish to buy, and to negotiate and superintend the making of the bargain between them."
- This definition was adopted by Hannen, J. in Mollett v. Robinson (1872) LR 7 C.P. at 97 and in 8th Benjamin on Sale 275.
- (d) Object 3(b) of the Taxpayer's Memorandum of Association is -
- 30 "To maintain high standards of commercial honour and integrity among its members and to promote and maintain just and equitable principles of trade and business."
- (e) The Taxpayer's members carry on a trade, and therefore the Taxpayer is a trade association.

Conclusions of the Board.

40 12. The definition of "trade" in Section 2 of Cap. 112 is very similar to that in the U.K. Income Tax Acts. This word was considered by the Court of Appeal in Barry v. Cordy (1946) 2 AER 396. At p. 399 Scott, L.J. adopted the words of Lord Wright in the Bolton Corporation case that "trade" in legal usage is a term of the widest scope [See also Dixon, J. in the High Court of Australia in Bank of New South Wales v. Commonwealth, (1948) 76 C.L.R. 1 at 381].

We find that the members of the Taxpayer carry on a trade, and therefore the Taxpayer is a trade association.

This ground of Appeal fails.

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Ground of Appeal 2(c); That "subscriptions" in Section 24(2) covers "founders' contributions" and "entrance fees" as well as "monthly subscriptions".

10 13. Section 24(2) provides that where the Taxpayer is a trade association it is only where more than half its receipts by way of subscriptions are allowable deductions under Section 16 to the subscribers that the whole of its income (including entrance fees and subscriptions) are deemed to be receipts from business and chargeable in respect of profits therefrom.

20 14. The Taxpayer's accounts for the period ended 31st May 1972 showed, inter alia, the following items of receipts:-

Members' monthly subscriptions	\$ 130,660
Founders' contributions	350,000
Members' contributions by way of entrance fees	5,745,000

15. Founders' contributions and entrance fees are not deductible under Section 16 by the payers thereof, so that if these 2 items are treated as subscriptions, the deeming provisions would not come into effect.

30 16. It was contended on behalf of the Taxpayer that "subscriptions" include "Founders' Contributions" and "Entrance Fees" for the following reasons:-

40 (a) "Subscriptions" is an ordinary English word which in this case means those sums of money subscribed by members towards the attainment of the objects of the Taxpayer. They are "subscriptions" whether they are paid by Founders as "Founders' Contributions" towards the establishment of the Exchange, or by members on first joining as "Entrance Fees", or in monthly sums as "monthly subscriptions".

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(b) Meanings given by the Shorter Oxford English Dictionary include the following:-

SUBSCRIBE:

11. To promise to pay (a sum of money) to or towards a particular object; to undertake to contribute (money) in support of any object.
- 10 12. To undertake to contribute money to a fund, to a society, party, etc.

SUBSCRIPTION:

7. The action or an act of subscribing money to a fund or for stock; the raising of a sum for a certain object by collecting contributions from a number of people.
- 20 8. A contribution of money for a specified object; the fixed sum promised or required as a periodical contribution by a member of a society etc. to its funds.

(c) The name given to a transaction by the parties concerned does not necessarily decide the nature of the transaction. The question always is what is the real character of the payment. [C.I.R. v. Wesleyan & General Assurance Society (1946) 30 T.C. 11 at 25.]

30

17. The points to the contrary raised on behalf of the Commissioner were as follows:-

(a) The word "subscriptions" has a variety of meanings. The meaning to be applied must be gathered from the context in which it is used. [7th Craies on Statute Law 169-171] In construing a word in a statute regard must be had to the context in which the word is used and the object of the legislature. If necessary its meaning should be limited to one which is consistent with Section 24(2) as a whole. [Craies at 177]

40

- (b) Upon a true construction of Section 24(2) the word "subscriptions" is used to denote recurrent payments as distinct from payments of a once and for all character, see also paragraph 8 of the meaning of "subscription" in the Shorter Oxford English Dictionary [paragraph 16(b) above].
- 10 (c) Section 24(2) distinguishes between entrance fees and subscriptions. Only payments which could be considered for deduction under Section 16 are envisaged in the use of the word "subscriptions". Thus, payments of a capital nature are excluded. Founders' contributions and entrance fees would be payments of a capital nature.
- 20 (d) The amendment of Section 24(2) in 1971 by the deletion of the words "entrance fees" and from before "subscriptions" where that word appears was made because only subscriptions are deductible and entrance fees are not deductible, being of a capital nature.
- 30 (e) The Taxpayer's Articles of Association clearly differentiated between "entrance fees", "founders' contributions" and "subscriptions". These descriptions indicated their real and intended characters and were not just different labels for payments of the same kind.
- (f) The special resolution passed by the Taxpayer on 11th September 1973 amended the Articles of Association by abolishing subscriptions. This was only applicable to ordinary subscriptions and not to founders' contributions and entrance fees.

40 Conclusion of the Board.

18. We find the arguments on behalf of the Commissioner compelling and we adopt them.

This ground of appeal fails.

Ground of Appeal 2(d): That the Taxpayer carried on a club or similar institution.

19. This involves Section 24(1) of Cap. 112, and it is not disputed that if the Taxpayer carries on a club or similar institution, receipts from Founders' contributions and entrance fees will not be brought into charge for profits tax.

20. For the Taxpayer it was contended -

10 (a) That the section is not confined to institutions with social objectives only as otherwise there would be no profits chargeable to tax.

(b) The Taxpayer falls within all the requirements of the definition of a club in Bohemian Club v. Acting Federal Commissioner of Taxation, (1918) 24 C.L.R. 334 at 337 -

20 "a club is a voluntary association of persons who agree to maintain for their common personal benefit, and not for profit, an establishment the expenses of which are to be defrayed by equal contributions of an amount estimated to be sufficient to defray those expenses, and the management of which is entrusted to a committee chosen by themselves."

(c) Section 24(1) should be liberally construed in view of the words "club or similar institution".

30 21. For the Commissioner it was contended that an association of persons whose main purpose is the acquisition of gain cannot be regarded as a club.

6 Halsbury's Laws of England, 4th edition
201 states:-

40 "Definition. A club, except a proprietary club or an investment club, may be defined as a society of persons associated together, not for the purpose of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; but trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes."

10 "The word 'club' means essentially an
association of individuals in a way
that involves to some degree the
factors of free choice (which connotes
a power of exclusion), permanence,
corporate identity and the pursuit as a
common aim of some joint interest other
than the acquisition of gain (or some
mutual advantage directly connected
with the acquisition of gain, such as
those provided by membership of a
professional society or trade union).
It is the last-named qualification that
distinguishes clubs from business or
professional partnerships, and from
trade unions and the like.
20 Nevertheless, the mere fact that the
acquisition of gain may be incidental
to the true activities of an assoc-
iation does not appear to prevent the
association from having the character
of club."

Dixon, J. in Bennett v. Cooper (1948) 76
C.L.R. 570 at 580, in the High Court of
Australia said:-

30 "In most attempts to state the
characteristics of a club prominence is
given (a) to the nature of the objects
for which the members are associated in
a body, (b) to the contribution of
members to a common fund to meet the
expenses, and (c) to the existence of
rules governing the mode in which
persons may be chosen for admission to
membership. The objects may be social
or sporting or they may be for the
pursuit or promotion of some branch of
40 knowledge or of art, but the purpose
must not be gain; for that would mean a
partnership of trading company. It is
not necessary that gain to the
institution should be rigidly excluded
from its every activity or operation;
it is the purpose for which the body is
established that must not include the
pursuit of gain to the body or its

members if it is to be a club. In short the association may be formed for any object that is neither gainful nor unlawful."

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Conclusions of Board.

22. We find that the contentions of the parties are inconclusive.

10 23. As to the definition in the Bohemian Club case, relied on by the Taxpayer, it is at least implied that one of the primary purposes of the Taxpayer is the personal profit of its members.

20 24. On the other hand an investment club is an association formed for the purpose of making profit for its members and yet it is recognised by Halsbury as a form of club. A Proprietary club is also recognised by Halsbury as a species of club and yet its main purpose is also that of making profit for its proprietor. Moreover such clubs have not been expressly excluded by the legislature from Section 24(1).

25. However, the Taxpayer in this appeal does not fit into either the investment or proprietary club classes. Its members do not aim at profit through the activities of the Taxpayer but through their own independent operations as stockbrokers.

30 26. We find that the members of the Taxpayer became members for the main purpose of enabling themselves to carry on business as stockbrokers and thus earn profits. We think that the authorities are ambiguous and uncertain as to whether this disqualifies the Taxpayer from being regarded as a "club or similar institution" under Section 24(1).

27. We therefore find that the Taxpayer has not discharged the onus on it of establishing a claim to exemption based on the fact that it is a "club or similar institution". This ground of appeal therefore also fails.

40 Grounds of Appeal 6 and 7: That the Taxpayer commenced business on 5th January 1972 and not on 1st July 1971 as determined by the Commissioner.

28. The Commissioner in his Determination on this point stated:-

10 "I think the Assessor was wrong to select 5th January 1972 as the date of commencement of business. I consider the Association commenced to carry on business as a trade association when the founders decided to go ahead and collect in full the Founders' Contribution and to solicit and collect the Entrance Fees from its prospective members. From the evidence supplied and in the absence of a precise date, this seems to be around the 1st July and I think it is reasonable to take 1st July 1971 as the date of commencement of its business as a trade association."

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29. Matters relied on in support of the Commissioner's Determination included the following:-

- 20 (a) Between 23rd October 1970 and 14th December 1971 the Taxpayer engaged in correspondence with the Collector of Stamp Revenue and the Registrar General concerning stamping concessions and compliance with conditions for recognition as a stock exchange.
- 30 (b) On 3rd December 1971 the Taxpayer undertook to indemnify the Government for any loss due to the failure of members to pay the correct amount of stamp duty.
- (c) The Taxpayer arranged lectures for its members on the law and practice of stamp duty in about November 1971.
- (d) The Taxpayer negotiated for premises for the stock exchange, the lease being executed on 16th November 1971.
- 40 (e) The Taxpayer compiled rules embodying "Board Trading Rules" prior to 28th December 1971.
- (f) The Taxpayer approached the Chinese University concerning extramural courses for the training of professional brokers in 1971.
- (g) The Taxpayer commenced to design a central electronic communication system.

30. We also note that the Taxpayer was incorporated on 10th March 1970. From correspondence produced to the Board it was proved that the Taxpayer was authorised to operate a stock exchange on 5th January 1972 and that before that date it could not do so. Furthermore, monthly subscriptions were charged to members from 5th January 1972.

10 31. We find that the principal object of the Taxpayer was to provide a place where its members could carry on their business.

32. From the facts before us we find that the matters relied on on behalf of the Commissioner were activities preparatory to the commencement of business by the Taxpayer and that the commencement date of business deemed to be carried on by section 24(2) was 5th January 1972.

20 33. Accordingly this ground of appeal is allowed.

Quantum of assessable profits.

30 34. While section 24(2) deems a business to be carried on by a trade association in certain circumstances, the subsection is in our view nevertheless subject to the normal rules governing the commencement of a business. Thus in the absence of a statutory rule imposing an artificial commencement date the normal rule that the date of commencement is a question of fact applies.

35. We have found that the Taxpayer or commenced business on 5th January 1972, and applying section 18(3), its profits will be assessed on the basis that the whole of its income (including entrance fees and founders' contributions) during the period from 5th January 1972 to 31st March 1972 shall be deemed to be receipts from business as provided by section 24(2).

40 36. We are of the opinion that apportionment under section 18(7) does not arise in this case and we hold accordingly.

37. The case is remitted to the Commissioner for the assessment to be revised in accordance with the Board's opinion that the commencement date of the Taxpayer's business is 5th January 1972 and that profits tax shall be assessed on

its income in accordance with section 24(2) during the period 5th January 1972 to 31st March 1972.

*In the Board
of Review*

(3) Two appendices are annexed to and form part of this Case Stated:-

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Appendix A : Memorandum and Articles of the Taxpayer.

10 Appendix D : Special Resolution of the Taxpayer passed on 11/9/73 (this document is dated 24/9/73).

(4) The questions of law for the opinion of the High Court are as follows:-

- (i) Whether, on a proper construction of the provisions of section 24(2), having regard to the evidence adduced before the Board of Review, the Appellant could be said to have been carrying on a trade association: ground 2(b);
- 20 (ii) Whether the words 'receipts by way of subscriptions' in section 24(2) exclude the sums subscribed by members of the Kowloon Stock Exchange by way of Founders' Contributions and Entrance Fees: ground 2(c);
- 30 (iii) Whether, on a proper construction of the provisions of section 24(1), having regard to the evidence adduced before the Board of Review, the Appellant was carrying on a 'club of similar institution': ground 2(d).

Dated this 22nd day of Oct 1980.

Signed

S.V. Gittins, Q.C., J.P.
Chairman

Signed

Alexander S.K. Au, A.C.C.A.,
A.H.K.S.A.
Member

40

Signed

Professor P.G. Willoughby
Member

Signed

David C.S. Wu, B.A.
Member

Ref. B/R 15/74; D 3/80; SC. 1/80
IRA/2/292; IRA/3/59

BETWEEN

Kowloon Stock Exchange Ltd. Appellant

and

Commissioner of Inland Revenue Respondent

Coram : Hon. Leonard, V.-P., Cons & Barker, JJ.A.

Date : 13th July, 1983.

10

J U D G M E N T

Cons, J.A. :

The Kowloon Stock Exchange Ltd. ("the exchange") is a company limited by guarantee, incorporated on the 10th of March 1970. Its objects are set out in the Memorandum of Association, the Principal ones being :-

20

"(a) To furnish, purchase, take on lease, hire or otherwise acquire, exchange rooms, security market places, meeting places and other facilities for the convenient transaction of business by stock brokers, share brokers, exchange brokers and brokers in gold and silver and other precious metals, commodities, foreign exchange and money of all kinds and to obtain licences in that behalf for members where required.

30

(b) To maintain high standards of commercial honour and integrity among its members and to promote and maintain just and equitable principles of trade and business.

(c) To protect the interests of such brokers, and to promote honourable practices.

40

(d) To record transactions between such brokers and to furnish reliable quotations of the price of shares and stocks, gold and silver and other precious metals, commodities and foreign exchange and money of all kinds.

10 (e) To occupy and take up a role with similar organisations and associations in the vital delicate and rapidly changing aspect of the Hong Kong economy - the finance of Hong Kong industry and the provision of necessary safeguards of the investors who directly and indirectly entrust their savings to the stock and shares markets.

(f) To act as arbitrators in the settlement of all disputes and differences between member brokers or between member brokers and their clients arising in the course of business and of those between any parties."

20 In pursuance of the first object the exchange obtained premises, curiously enough on Hong Kong Island, and opened its doors for business in January 1972.

30 By the Articles of Association the management and control of the exchange is in the hands of a committee consisting of the 14 Founder Members and 10 others elected by the general membership. Election of members, restricted to 150, is in the hands of the same committee. On election each new member is required to pay an entrance fee of \$20,000 and a monthly subscription not exceeding \$500. (In September 1973 the Articles were amended to provide that no subscription should be paid to the exchange but that instead members should be liable to reimburse the exchange for expenses incurred by the exchange on their behalf, as might from time to time decided by the committee. But nothing turns on that amendment in this appeal.) Non-payment of dues renders the member liable to expulsion and the committee has disciplinary powers should there be a breach of the exchange rules or conduct "injurious to the character or interests, or prejudicial to the objects, of the exchange".

40 It can be seen from this brief summary that both the constitution and the organisation of the exchange are much the same as in many sporting, political or other clubs. From this it is said to follow that for tax purposes it is "a

club or similar institution". The relevant section is Section 24(1) of the Inland Revenue Ordinance Cap. 112 :-

No. 2 Judgment
13/7/83
(Continued)

10 "Where a person carries on a club or similar institution which receives from its members not less than half of its gross receipts on revenue account (including entrance fees and subscriptions), such person shall be deemed not to carry on a business; but where less than half of its gross receipts are received from members, the whole of the income from transactions both with members and others (including entrance fees and subscriptions) shall be deemed to be receipts from a business, and such person shall be chargeable in respect of the profits therefrom."

The Ordinance itself contains no definition of a club.

20 6 Halsbury 4th Ed. para. 201 gives this:-

30 "A club, except a proprietary club or an investment club, may be defined as a society of persons associated together, not for the purposes of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; but trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes. The association must be private and have some element of permanence."

Daly's Club Law, 7th Ed. puts it this way :-

"....."

40 The word 'Club' means essentially an association of individuals in a way that involves to some degree the factors of free choice (which connotes a power of exclusion), permanence, corporate identity and the pursuit as a common aim of some joint interest other than the acquisition of gain (or some mutual advantage directly connected with the acquisition of gain, such as those provided by membership of a professional society or trade union). It is the last-named qualification that

distinguishes clubs from business or professional partnerships and from trade unions and the like. Nevertheless, the mere fact that the acquisition of gain may be incidental to the true activities of an association does not appear to prevent the association from having the character of a club."

10 In Bennett v. Cooper ⁽¹⁾ Dixon J., sitting
in the High Court of Australia gave this summary
:-

20 "In most attempts to state the
characteristics of a club prominence is
given (a) to the nature of the objects for
which the members are associated in a body,
(b) to the contribution of members to a
common fund to meet the expenses, and (c)
to the existence of rules governing the
mode in which persons may be chosen for
admission to membership. The objects may be
social or sporting or they may be for the
pursuit or promotion of some branch of
knowledge or of art, but the purpose must
not be gain; for that would mean a
partnership or trading company. It is not
necessary that gain to the institution
should be rigidly excluded from its every
activity or operation; it is the purpose
for which the body is established that must
30 not include the pursuit of gain to the body
or its members if it is to be a club. In
short the association may be formed for any
object that is neither gainful nor unlawful
: see Wertheimer on Clubs, 5th ed. (1935),
Ch. I., and Halsbury, Laws of England, 2nd
ed. vol. 4, par. 877."

40 He went on to refer to the description
given by Griffiths C.J. in The Bohemians
Club v. The Acting Federal Commissioner of
Taxation ⁽²⁾ :-

"A voluntary association of persons who
agree to maintain for their common personal
benefit, and not for profit, an
establishment the expenses of which are to
be defrayed by equal contributions of an

(1) (1948) 76 C.L.R. at 570

(2) (1918) 24 C.L.R. at 334

amount estimated to be sufficient to defray those expenses, and the management of which is entrusted to a committee chosen by themselves."

No. 2 Judgment
13/7/83
(Continued)

This description was accepted by their Lordships of the Privy Council in Fletcher v. The Income Tax Commissioner⁽³⁾.

10 We have set out these references at length to show that what we take to be the common understanding of the word "club", namely, an association formed for other than business purposes, is supported by good authority. We note that in each emphasis is placed on the absence of financial advantage to the members, other than as merely incidental to the general purpose. In our view this feature is of crucial importance. A predominant intention to benefit members in that way is by itself sufficient to prevent an association having otherwise common
20 characteristics from being ranked as a club.

Now there can be no doubt that those who join the exchange do so with the object of personal financial gain. Counsel however has sought to distinguish the object of the members from that of the exchange itself. He observes that while the exchange does provide facilities for members to make money on their own account, and by their own individual efforts, the exchange by itself does not make a profit; and
30 at the same time it serves the community in general by providing both a forum wherein limited companies may raise finance for their business activities together with a well ordered and regulated market in which the public may buy and sell shares by way of investment.

40 With respect to counsel we do not think that the exchange can be thus divorced from its members. Without them it would be no more than an empty and useless shell. It was for them that it was originally created and through them that in reality it exists. They are an integral part of its operation. No doubt some advantage does also accrue to the community as a whole, but the primary object of the exchange is the financial benefit of those who belong. For this reason it cannot be classified as a club.

(3) (1972) A.C. 414 at 422

10 When we pass on to the words "or similar institution" we find it difficult to envisage what kind of institution the Legislature may have had in mind. But we do not propose to speculate. As we have already observed, the dominant exclusionary feature of a club is gain or profit to its members. In our view whatever other similarities there may be, that feature remains of paramount importance in answering the question of whether anything is or is not "a similar institution". We thus conclude that any association which has as its primary object the financial benefit of its members likewise cannot fall within that further phrase.

The Board of Review has posed three questions for our consideration. To that which asks :-

20 "Whether on a proper construction of the provisions of Section 24(1), having regard to the evidence adduced before the Board of Review, the appellant was carrying on a 'club or similar institution'."

Our answer is "No".

30 Having come to the conclusion that the exchange is not a club for the purposes of Section 24(1), it then becomes necessary to decide whether it is caught by the provisions of sub-section (2) which, at the time we are concerned with, applied only to a person carrying on a "trade association".

Trade as such is not defined in the Ordinance, which merely provides in Section 2(1) that it shall include "every trade and manufacture, and every adventure and concern in the nature of trade".

40 This is very similar to the definition in the United Kingdom Income Tax Acts so that the Board of Review felt themselves able to rely upon the view adopted in Barry v. Cordy (4) that "'trade' is in legal usage, a term of the widest scope". The Board also referred to the comments of Dixon J. in the High Court of Australia :-

"It has been said that 'trade' strictly means the buying and selling of goods. That, however, is a specialized meaning of

(4) (1946) 2 All E.R. 396 at 399

the word. The present primary meaning is much wider, covering as it does the pursuit of a calling or handicraft, and its history emphasizes rather use, regularity and course of conduct, than concern with commodities." (5)

Similar views have been expressed in the House of Lords, e.g. Lord Reid in Ransom v. Higgs (6):-

10 "The Income Tax Acts have never defined trade or trading farther than to provide that trade includes every trade, manufacture, adventure or concern in the nature of trade. As an ordinary word in the English language 'trade' has or has had a variety of meanings or shades of meaning. Leaving aside obsolete or rare usage it is sometimes used to denote any mercantile operation but it is commonly used to denote operations of a commercial character by which the trader provides to customers for reward some kind of goods or services.

20
30 The contexts in which the word 'trade' has been used in the Income Tax Acts appear to me to indicate that operations of that kind are what the legislature had primarily in mind. If I go back to the Act of 1842 I find that Schedule D covered inter alia the annual profits or gains arising from any profession, trade, employment or vocation and that Rule 1 of Case I provided that the tax was to be charged on the balance of the profits and gains of such trade, manufacture, adventure or concern in the nature of trade. And I find nothing in later legislation to alter the fundamental conception of trade in that old Act."

40 However we are with respect able to draw little if any assistance from these authorities, for the structure of the United Kingdom Tax Laws is not the same as that provided by the Inland Revenue Ordinance. In particular the Legislature there has drawn no express distinction between trade and business as it has done in this

(5) Bank of New South Wales v. The Commonwealth
(1948) 76 C.L.R. 1 at 381

(6) (1974) 1 W.L.R. 1594 at 1601

jurisdiction. Profits Tax is recoverable in accordance with Part IV of our statute. The actual charging section is Section 14 which reads, in part, as follows :-

10 "Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in the Colony in respect of his assessable profits arising in or derived from the Colony for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part."

20 The threefold expression "trade, profession or business" is repeated in most of the succeeding sections of the part, being occasionally restricted to "trade or business" as e.g. in Section 16B and 16C. Some of the instances may perhaps result from later amendments, like Section 24(2) itself, which now refers to persons carrying on a "trade, professional or business association". Counsel for the exchange however does not rely on that amendment. The important feature which he stresses is that even at the relevant time Section 14 did include the threefold expression. He submits, and we think correctly, that the
30 Legislature must therefore have intended to draw some distinction between the three, otherwise only the word "trade" would have been used, or perhaps "business", either of which would have been construed in the same way as in the United Kingdom.

40 What then is the distinction between a trade and a business? We have come to the conclusion that it must be as suggested in the Bank of New South Wales, and indeed as it was accepted in the ancient case of Doe d. Wetherell v. Bird⁽⁷⁾, i.e. trade is restricted to the buying and selling of goods.

It is submitted however that even so stock brokers cannot be said to be traders for, as a general rule, they do not buy and sell shares for themselves but do so only as agents for

(7) (1834) 2 Ad. & El. 161 at 165

10 others against commission. We do not think that is sufficient distinction. Apart perhaps from the occasional giving of advice the whole compass of a stock broker's occupation is contained in the buying and selling of shares. The precise manner in which he makes his profit therefrom appears to us to be immaterial. Our view that a stock broker is thus a trader finds support from Hannen J. in Mollett v. Robinson⁽⁸⁾
:-

20 "The definition of a broker given by my Brother Blackburn in his work on the Contract of Sale, p. 81, is as follows :-
'A broker for sale is a person making it a trade to find purchasers for those who wish to sell, and vendors for those who wish to buy, and to negotiate and superintend the making of the bargain between them.' This is the proper description of a broker for sale throughout the whole commercial world."

30 23 Halsbury (4th Ed.) para. 314 and Simons Taxes para. B1.1216 divide trade association into three main classes, namely (1) those which exist to watch the general interest of members, (2) those which provide a specific service, and (3) those which exist for the purpose of maintaining prices. For the reasons we have just given, we are satisfied that the exchange falls within classes (1) and (2). To the question which asks -

"Whether on a proper construction of the provisions of Section 24(2), having regard to the evidence adduced before the Board of Review, the appellant could be said to have been carrying on a trade association."

Our answer is "Yes".

40 The third and final question is the true construction of the word "subscriptions" as it appears in the phrase "receipts by way of subscriptions" in the same sub-section. The importance of this will be seen when the sub-section is set out (as it was) in full :-

(8) (1872) 7 L.R.C.P. 84 at 97

10 "24(2) Where a person carries on a trade,
association in such circumstances
that more than half its receipts by
way of subscriptions are from persons
who claim or would be entitled to
claim that such sums were allowable
deductions for the purposes of
section 16, such person shall be
deemed to carry on a business, and
the whole of the income of such
association from transactions both
with members and others (including
entrance fees and subscriptions)
shall be deemed to be receipts from
business, and such person shall be
chargeable in respect of the profits
therefrom."

The receipts of the exchange over the relevant
period include the following amounts :-

20 "Members' subscriptions \$130,660.
Entrance fees \$5,745,000.
Founders contributions \$350,000."

30 The 14 Founder Members were not required to
pay entrance fees but each contributed instead
the sum of \$40,000. It is common ground that
these contributions and the other members'
entrance fees are not allowable deductions for
the purposes of Section 16, so that if they may
properly be said to be "subscriptions" the
exchange will, in the circumstances, escape the
clutches of the sub-section.

We have been referred to the Shorter Oxford
English Dictionary for the meaning of the word
"subscription", in particular the meanings given
at Nos. 7 and 8 :-

40 "7. The action or an act of subscribing
money to a fund or for stock; the
raising of a sum of money for a certain
object by collecting contributions from
a number of people; a scheme for
raising money in this way. Also, an
undertaking or agreement to subscribe
so much.

8. A contribution of money for a specified
object; spec. the fixed sum promised or
required as a periodical contribution
by a member of a society, etc. to its

funds, or for the purchase of a periodical publication, or in payment for a book published 'by subscription'."

No. 2 Judgment
13/7/83
(Continued)

10 These two references alone show that the word does not always carry a single specific meaning. We have therefore to look at the context in which it is used and when we do this we have no hesitation in concluding that the Legislature did not intend entrance fees to fall within the word "subscriptions". This is apparent from the express reference to such fees later in this sub-section. We are confirmed in our view by the history of the legislation. Until 1972 the sub-section read "receipt by way of entrance fees and subscriptions". The words "entrance fees and" were deleted by Ordinance 40 of that year.

20 The position as to Founders contributions is not quite so clear, but we think on balance that by the similarity of their nature to that of entrance fees, they too must be excluded. In any event the amount received by the exchange under this head would have made no material difference.

30 The final question asks "whether the words 'receipts by way of subscriptions' in Section 24(2) exclude the sum subscribed by members of the Kowloon Stock Exchange by way of founder's contributions and entrance fees". Our answer to that question is "Yes".

We should mention for the sake of completeness that these questions have been brought direct to this court with leave granted in accordance with Sec. 69A of the Ordinance. For the reasons we have given the appeal must be dismissed.

(P.F.X. Leonard)
Vice-President

(D. Cons)
Justice of Appeal

40 _____
(Dennis Barker)
Justice of Appeal

Kemal Bokhary, Q.C. & B.K. Ho (M/S Yu, Tsang & Loong) for the Appellant.
H.J. Somerville, Deputy Crown Solicitor (Legal Department) for the Respondent.

IN THE COURT OF APPEAL

*In the Court
of Appeal*

INLAND REVENUE APPEAL NO. 1 OF 1980

BETWEEN

KOWLOON STOCK EXCHANGE LTD. Appellant

and

COMMISSIONER OF INLAND REVENUE Respondent

No. 3 Order of the
Court of Appeal
13/7/83

10 BEFORE THE HONOURABLE MR. JUSTICE LEONARD,
VICE-PRESIDENT, THE HONOURABLE MR. JUSTICE CONS
AND THE HONOURABLE MR. JUSTICE BARKER, JUSTICES
OF APPEAL

O R D E R

UPON READING the Notice of Appeal dated the 4th day of November 1980 filed on behalf of the Appellant by way of appeal against the decision of Case Stated by Board of Review dated the 22nd day of October 1980.

20 AND UPON HEARING Counsel for the Appellant and Counsel for the Respondent.

IT IS ORDERED that the answer to the first question put by the Board of Review in paragraph (4) (i) of the Case Stated be "Yes".

AND IT IS ORDERED that the answer to the second question put by the Board of Review in paragraph (4) (ii) of the Case Stated be "Yes".

AND IT IS ORDERED that the answer to the third question put by the Board of Review in paragraph (4) (iii) of the Case Stated be "No".

30 AND IT IS FURTHER ORDERED that the Appeal brought by the Appellant be dismissed with costs to the Respondent.

Dated the 13th day of July 1983.

(C.J. Perrior)
Ag. Registrar

*In the Court
of Appeal*

IN THE COURT OF APPEAL

INLAND REVENUE APPEAL NO. 1 OF 1980

No. 4 Notice of
intention to apply
to the Court of
Appeal for leave to
appeal to the Privy
Council

BETWEEN

KOWLOON STOCK EXCHANGE LTD. Appellant

and

COMMISSIONER OF INLAND REVENUE Respondent

10 TAKE NOTICE that the Appellant intends to
apply to the Court of Appeal for leave to appeal
to the Privy Council against the Judgment of the
Court of Appeal dated the 13th day of July 1983.

Dated the 19th day of July, 1983

YU, TSANG & LOONG,
Solicitors for the Appellant

To: The Commissioner of Inland Revenue

Notice of Motion for Leave to Appeal to the
Privy Council

*In the Court
of Appeal*

IN THE COURT OF APPEAL
INLAND REVENUE APPEAL NO. 1 OF 1980

No. 5 Notice of
Motion for leave to
Appeal to the Privy
Council
25/7/83

BETWEEN

KOWLOON STOCK EXCHANGE LTD. Appellant

and

10 COMMISSIONER OF INLAND REVENUE Respondent

20 TAKE NOTICE that on Friday, the 29th day
of July 1983 at ten o'clock in the fore noon or
so soon thereafter as Counsel can be heard, the
Court of Appeal will be moved by Counsel for the
abovenamed Appellant, for leave to appeal
against the Judgment herein of the Court of
Appeal given on the 13th day of July, 1983 and
for an Order that the costs of this application
be costs in the cause of the appeal to the
Judicial Committee of the Privy Council upon
such condition as the Honourable Court shall
deem fit.

Dated the 25th day of July, 1983

YU, TSANG & LOONG,

Solicitors for the Appellant

To: The Commissioner of Inland Revenue
Legal Department,
Hong Kong.

No. 6 Order of the
Court of Appeal
granting conditional
leave to appeal to
the Privy Council
29/7/83

BETWEEN

KOWLOON STOCK EXCHANGE LTD. Appellant

and

COMMISSIONER OF INLAND REVENUE Respondent

10 BEFORE THE HONOURABLE MR. JUSTICE LEONARD,
VICE-PRESIDENT, THE HONOURABLE MR. JUSTICE CONS,
AND THE HONOURABLE MR. JUSTICE YANG, JUSTICES OF
APPEAL, IN COURT

O R D E R

20 UPON the application of the Appellant by
way of Notice of Motion filed herein on the 25th
day of July, 1983 AND UPON hearing Counsel for
the Appellant and Counsel for the Respondent AND
UPON reading the Affirmation of Yu Yui Chiu
filed herein on the 26th day of July, 1983. IT
IS ORDERED that the Appellant do have leave to
30 appeal to Her Majesty in Council from the
Judgment herein of the Court of Appeal given on
the 13th day of July, 1983 CONDITIONAL UPON the
Appellant do enter into good and sufficient
security to the satisfaction of the Court in the
sum of \$40,000.00 for the due prosecution of the
appeal and the payment of all such costs as may
become payable to the Respondent in the event of
the Appellant's not obtaining an order granting
it final leave to appeal, or of the appeal being
dismissed for non-prosecution, or Her Majesty in
Council (as the case may be) ordering the
Appellant to pay the Respondent's costs of the
appeal AND UPON the Record of Proceedings being
prepared and despatched to England within 3
months from the date hereof.

AND IT IS ORDERED that the costs of this
application be costs in the appeal.

Dated the 29th day of July, 1983.

40

N.J. Barnett
Registrar

EXHIBITS

"A"

MEMORANDUM

AND

ARTICLES OF ASSOCIATION

OF

KOWLOON STOCK EXCHANGE LIMITED

(九龍證券交易所有限公司)

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970

Incorporated the 10th day of March 1970.

Peter Chan Po Fun & Company,
Public Accountants,
HONG KONG

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21, CHI KIANG STREET, 4TH FL. BLOCK 'A'
KOWLOON, HONG KONG
TEL. K-640670 644538

(COPY)

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

CERTIFICATE OF INCORPORATION

—————
I HEREBY CERTIFY that
KOWLOON STOCK EXCHANGE LIMITED

(九龍證券交易所有限公司)

is this day incorporated in Hong Kong under the
Companies Ordinance, and that this Company is
limited.

Given under my hand this day
of One Thousand Nine Hundred and
Seventy.

for Registrar of Companies,
Hong Kong.

MEMORANDUM OF ASSOCIATION

of the

KOWLOON STOCK EXCHANGE LIMITED

(九龍證券交易所有限公司)

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

1. The name of the Association is the "KOWLOON STOCK EXCHANGE LIMITED (九龍證券交易所有限公司)".

2. The Registered Office of the Association will be situate in Victoria, Hong Kong.

3. The objects for which the Association is formed are:-

- (a) To furnish, purchase, take on lease, hire or otherwise acquire, exchange rooms, security market places, meeting places, and other facilities for the convenient transaction of business by stock brokers, share brokers, exchange brokers and brokers in gold and silver and other precious metals, commodities, foreign ex change and money of all kinds and to obtain licences in that behalf for members where required.
- (b) To maintain high standards of commercial honour and integrity among its members and to promote and maintain just and equable principles of trade and business.
- (c) To protect the interests of such brokers, and to promote honourable practices.
- (d) To record transactions between such brokers and to furnish reliable quotations of the price of shares and stocks, gold and silver and other precious metals, commodities and foreign exchange and money of all kinds.

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

- (e) To occupy and take up a role with similar organisations and associations in the vital delicate and rapidly changing aspect of the Hong Kong economy-the finance of Hong Kong industry and the provision of necessary safeguards of the investors who directly and indirectly entrust their savings to the stock and shares markets.
- (f) To act as arbitrators in the settlement of all disputes and differences between member brokers or between member brokers and their clients arising in the course of business and of those between any parties.
- (g) To make rules for any of the above purpose and to make and from time to time alter a scale of charges for brokerage in share and other transactions.
- (h) To borrow any monies required for the purposes of the Exchange upon such securities as may be determined and to invest the monies of the Exchange upon such security as may from time to time be determined, and generally to do all such other things as are incidental or conducive to the attainment of the above objects.
- (i) Generally to purchase, take on lease or exchange hire or otherwise acquire, or obtain options over, to construct, maintain, fit, furnish and decorate and alter any buildings where necessary, any real and personal property including rooms, flats, offices, buildings and any rights or privileges which the Exchange may think necessary or convenient for the purposes of its business, or capable of being profitably dealt with in connection with any of the Exchange's property or rights for the time being.
- (j) To sell, improve, manage, develop, enfranchise, let on lease, mortgage, grant licences or other rights or options over, exchange, dispose of, turn to account, or otherwise deal with, all or any part of the lands, securities, assets, undertaking,

property or rights of the Association or any part thereof, for such consideration as the Association may think fit, and in particular for shares, stocks, debentures, debenture stock, securities or obligations of any other company having objects altogether, or in part similar to those of this Association.

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970

- (m) To borrow, raise or secure the payment of money in such manner as the Exchange shall think fit and in particular by the issue of debentures or debenture stock, perpetual or otherwise, and mortgages or other instruments for securing the payment thereof, with or without a charge upon all or any of the Exchange's property or assets (both present and future), including its uncalled capital, and to redeem, purchase or pay off any such securities, and to reissue any such securities for such consideration or purpose as may be thought fit.
4. Every member of the Association undertakes to contribute to the assets of the Association in the event of the same being wound up while he is a member or within one year thereafter, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and expenses of winding up the same, and for the adjustment of the rights of the contributories among themselves such amount as may be required, not exceeding one hundred dollars.
5. The liability of the members is limited.

(Continued)

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

We, the several persons whose names and addresses are subscribed, are desirous of being formen into an Association in pursuance of this Memorandum of Association.

Names, addresses and descriptions of subscribers

- (Sd.) Peter Po Fun Chan,
70D, MacDonnell Road,
Ground floor,
Hong Kong
Public Accountant

- (Sd.) Chee Ying Cheung,
650 Castle Peak Road,
7th floor,
Kowloon
Manufacturer

- (Sd.) Chung Ming Fai,
Room 802 Lok Hoi Tung
Building,
Hong Kong
Merchant

- (Sd.) Chan Ching Pow,
92 Pokfulam Road, Flat 2C,
La Clare Mansion,
Hong Kong
Merchant

- (Sd.) Lau Kwong,
6 Fontana Gardens,
16th floor, Caning Path,
Tai Hang Road,
Hong Kong
Manufacturer

- (Sd.) Jimmy Hai Ling Woo,
55 Beacon Hill Road,
7th floor, Flat C,
Kowloon
Manufacturer

- (Sd.) Chau Wan,
47 Hillwood Road,
3rd floor,
Kowloon
Merchant

- (Sd.) Chen Kee Hwa,
12A, Peace Mansion,
152 Tai Hang Road,
Hong Kong
Financier

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

Dated the 2nd day of March, 1970
Witness to the signatures

(Signed) Laurence G. Chung,
Certified Accountant,
Hong Kong.

ARTICLES OF ASSOCIATION

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

of the
KOWLOON STOCK EXCHANGED LIMITED
(九龍證券交易所有限公司)

Preliminary

In these Articles unless there is something in the subject or context inconsistent therewith:-

"The Exchange" means the "KOWLOON STOCK EXCHANGE LIMITED (九龍證券交易所有限公司)"

"Member" means a member of the Exchange.

"Stockbroker" or "Sharebroker" means a person carrying on business in this Colony as a broker in the purchase or sale of stocks, shares, bonds, debentures and other securities, either solely or in conjunction with other business.

"The Committee" means the Committee of the Exchange for the time being and includes any Sub-Committee appointed by the Committee.

"The Secretary" means the person for the time being performing the duties of Secretary of the Exchange.

"The Ordinance" means the "Companies Ordinance Cap. 32".

"The Treasurer" means the person for the time being performing the duties of Treasurer of the Exchange.

"Special Resolution" and "Extraordinary Resolution" have the meanings assigned thereto respectively by the Companies Ordinance.

"The Seal" means the Seal of the Exchange.

"The Office" means the registered office for the time being of the Exchange.

"In writing" and "written" include printing, lithography, and other modes of representing or reproducing words in a visible form.

"Rules of the Exchange" means and includes the Articles of Association and any rules, regulations or by-laws made thereunder.

Words importing the singular number only include the plural number and vice versa, where the context so permits.

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Membership

2. The number of members to be registered shall be One hundred and fifty.

3. Any person of the age of twenty-one years and upwards, who desires to carry on the business of a stockbroker, or of a broker described on the Memorandum of Association of the Exchange shall, subject to the rules of the Exchange, and subject to there being a vacancy for membership, be eligible for membership of the Exchange. PROVIDED that the Committee shall have an absolute discretion to refuse membership if it is of the opinion that the admission of any particular applicant or applicants will not be to the best interest of the Exchange or its members and the Committee shall not be required to give any reason therefor.

4 (a) Any person desirous of becoming a member of the Exchange, together with the proposer and seconder, shall sign and send or deliver to the Secretary an application in writing in the following form:-

To the Committee of the

KOWLOON STOCK EXCHANGE LIMITED

Gentlemen,

I desire to become a member of the above Exchange and I hereby agree, if elected, to become a member of the Exchange and to be bound by the Memorandum and any Rules of the Exchange and I hereby authorize you, in the event of my election, to enter my name on the Register of the Members of the Exchange and I hereby agree, immediately upon being notified of my admission as a Member, to pay the Entrance Fee and to be bound by the Memorandum and Rules of the Exchange.

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The following particulars are correct:-

Full name of candidate

Address

Age

Names and address of persons with whom
candidate is in partnership (if any)

(Signature)

The above-named candidate is personally known to us and to the best of our knowledge he is a suitable person to be elected a member of the Kowloon Stock Exchange Limited.

Proposer

Secunder

Dated

(b) The candidate and his proposer and secunder shall give all such information regarding the candidate's character, antecedents or otherwise as may be required from him or them by the Committee.

(c) Fourteen clear days before the meeting of the Committee at which such candidate is to be balloted for, notice of the candidature shall be sent to each member of the Committee.

(d) A candidate for election may at any time prior to ballot withdraw his application by notice in writing to the Secretary of the Exchange.

(e) At the next meeting of the Committee held after the expiration of 14 clear days from the receipt of an application for membership, the candidate shall be balloted for.

(f) At each ballot seven members voting shall be a quorum for the purpose of the ballot and three members of Committee shall open the Ballot Box. Three black balls will exclude the candidate.

(g) No candidate proposed, balloted for and not elected, or if there are insufficient votes or if elected and such election subsequently becomes void as hereinafter provided, shall be proposed again until the expiration of three months after such ballot.

(h) The number of black balls shall not be disclosed.

(i) The Committee may for any purpose thought desirable suspend and appoint a later date for a ballot.

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5. On the election of a member the fact shall forthwith be notified to him in writing by the Secretary, and a copy of the Memorandum and Rules of the Exchange shall be sent to him together with the current scale of brokerages in force, and a request for the payment of his entrance fee and his subscription for the current accounts. As from the date of his being admitted to membership and his payment of the prescribed subscription and entrance fees, the candidate shall become a member of the Exchange and shall be entitled to the benefit of a seat on the Exchange and he shall be bound by the Memorandum and Rules of the Exchange and the Scale of brokerages.

6. The election of any candidate shall be void and he shall cease to be a member if in any of the particulars or information given by a candidate any mis-representation shall be found to have been made which in the opinion of the Committee is material.

7. Notice shall be given in writing to the proposer and seconder of any candidate who has failed to gain admission to the Exchange.

Registered Address of members

8. The address given by every member in his proposal form shall be his registered address, unless and until any member shall change his registered address by notice in writing to the Secretary.

Subscriptions and Entrance Fees of Members

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9. The Subscription to the Exchange shall be such sum not exceeding \$500.00 per month as the Committee may from time to time determine to be of each month. A member elected after the first day paid monthly in advance on the first day in any month shall not be liable to pay his monthly subscription for any month prior to the one in which his election takes place. The subscription shall continue to be payable notwithstanding any absence of a member from the colony.

10. If any member fails to pay any subscription or any other indebtedness or any part thereof within one month of its becoming due his name shall be posted in the registered office of the Exchange. If such is not then paid within one month from the date his name is posted within three months if such member be absent from the Colony such defaulting member shall be subject to expulsion by the Committee in manner hereinafter provided.

11. The entrance fee of the Exchange shall be decided by the Committee.

Partnerships

12. No member of the Exchange shall enter into or be in partnership with any person without the consent in writing of the Exchange.

Seats on the Exchange

13. All seats in the Exchange shall belong to the Exchange, but every member shall be entitled to the benefit of a seat to be allocated by the Committee. Upon expulsion of any member, the seat and all benefits appertaining thereto shall revert to the Exchange and the expelled member shall have no claim thereon, but nevertheless, remain liable for all moneys which shall be due from him to the Exchange and Member Creditors.

14. No member, other than the right of disposal upon resignation, shall assign any rights, benefits or privileges of membership or create any pledge, hypothecation or lien thereon or therein, and no notice of any assignment, pledge, hypothecation or lien shall be effective as regards the Exchange for any purpose, nor shall any interest be recognised by the Exchange save as in these Articles are specifically mentioned.

15. Any member, unless under suspension, may give one calendar month's notice in writing of his desire to resign his membership. At the expiration of such notice, the member giving such notice shall cease to be a member and a vacancy in the membership shall occur, unless within that period he has withdrawn in writing his notice of resignation. A notice of resignation given by a member called upon to resign by the Committee shall not be withdrawn.

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16. Any member who has given notice of resignation may from the date thereof until such notice expires nominate or cause to be nominated and put up for election as a member such person desirous of becoming a member to fill the vacancy. The nominee if approved will not be required to pay any Entrance Fee.

17. On the death or bankruptcy of any member his membership shall cease and a vacancy in the membership shall occur. Upon any vacancy in the membership occurring through the death lunacy or bankruptcy of any member, the personal representative or the trustee in bankruptcy of such member as the case may be may within the period of twelve calendar months, to be computed from the date of the death or adjudication of such member as the case may be nominate or cause to be nominated and put up for election such person who is desirous of becoming a member to fill the vacancy. The nominee if approved will not be required to pay any Entrance Fee.

18. In the event of any person being nominated by or through a resigning member, personal representative or trustee in bankruptcy of a member, as the case may be, and being put up for election and duly elected, the amount agreed to be by paid such newly elected member shall be paid to the Exchange, and shall subject to the deduction of any moneys owing by such resigning, deceased or bankrupt member to the Exchange or to any member creditor of his, be paid to such resigning member, personal representative or trustee in bankruptcy as the case may be.

19. If any member is expelled from membership of the Exchange, there shall become a vacancy in the membership.

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20. Upon the expiration of any notice of resignation of any member or if no nomination of any candidate for election shall have been received within the stipulated time by or through the resigning member, his personal representative or trustee in bankruptcy, as the case may be, as hereinbefore provided, there shall be deemed to be a vacancy in the membership, The Committee of the Exchange may fill up such vacancy by the election of any person as a member and pay any moneys received by the committee from such newly elected member to such resigning member, his personal representative or trustee in bankruptcy, as the case may be, subject to the deduction of any moneys owing to the Exchange or to any member creditor by such resigning, deceased or bankrupt member.

21. Subject as is hereinbefore provided, any moneys received by the Exchange from any new member may be dealt with in all respects as the Committee in its discretion thinks fit.

Authorized Clerks and Sales Representatives

22. (a) Subject to registration, each member may employ one authorized adult clerk who is not a member of the Exchange who shall be deemed to be the authorized clerk of such member and his partners (if any). Any such authorized clerk may have access to the Exchange and may conclude bargains on behalf of his principals.

(b) Subject to registration, a member may employ Sales Representative. A Sale Representative shall not be entitled to conclude bargains on behalf of his principal and shall not have access to the Exchange without the express approval of the Committee.

23. Members and their partners shall be liable for all bargains made on their behalf by any authorized clerk they employ and shall fulfil such bargains according to the rules of the Exchange for bargains personally made by them.

24. No member shall give authority to any person not being a member (other than his authorized clerk) to conclude bargains on his or their behalf.

25. Every Authorized Clerk and Sales Representative shall make an application in writing in the form authorised by the Committee to be registered, and agree to come under the rulings of the Committee, and if he is approved his name shall be placed upon the Register of Authorized Clerks and Sales Representative kept by the Exchange, and upon such registration, he may join and remain with any member so long as his name remains on the said Register.

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26. No member shall employ an unregistered Authorized Clerk or Sales Representative, and if the name of any Authorized Clerk or Sales Representative, is expunged from the Register, he must be dismissed from employment as such. Every employment of an Authorized Clerk or Sales Representative by a member shall be upon this understanding and any written agreement shall contain a clause to the effect.

Subscriptions and Entrance Fees of Authorized Clerks and Sales Representatives

27. Upon Registration, an Authorized Clerk shall pay to the Exchange an entrance fee of not exceeding \$ 2,000.00 and such sum not exceeding \$ 20.00 per month as the Committee may from time to time determine, to be paid monthly in advance on the first day of each month. Upon registration, a Sales Representative shall pay to the Exchange an entrance fee of not exceeding \$ 1,000.00 and such sum not exceeding \$ 10.00 per month as the Committee may from time to time determine, to be paid monthly in advance on the first day of each month.

Founders

28. Messrs. Peter Po Fun Chan, Chen Kee Hwa, Chang Nan Chong, Chung Ming Fai, Chu Pak Heng, Chee Ying Cheung, Yu Look Yau, Chau Wan, Jimmy Hai Ling Woo, Chan Ching Pow, Lau Kwong, Stephen Pai Ying Chow, Alex Chung Li Ho and Yao Jiang Shing.

shall be Founders of the Exchange.

(b) Each of the Founders shall contribute a sum of not exceeding HK\$40,000.00 towards the establishment of the Exchange.

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(c) A Founder shall be entitled to nominate a respectable person to be a member of the Exchange and such nominated member shall not be required to pay any Entrance Fee for his admission. In the absence of and until such nomination, a Founder shall be entitled to a seat in the Exchange.

(d) A Founder is a Member of the Exchange and a Member of the Committee for life whether the right of nomination above mentioned shall have been exercised. A Founder who has exercised his aforesaid right of nomination shall not be required to pay any further subscriptions.

(e) The Founders shall be entitled to be paid such remuneration as the Committee shall from time to time decide.

(f) A Founder may nominate a successor who shall be entitled to all the benefits of the Founder. Such nomination must be approved by the Committee and it shall not take effect during the life of the Founder.

The Committee

29. The Management and control of the Exchange shall be vested in the Committee which shall consist of all the Founders and not more than 10 other members provided that not more than one member of any firm of Members of the Exchange shall serve on the Committee at the same time, the Committee shall elect its own Chairman and two Vice Chairmen.

30. (a) The first Chairman shall be Mr. Peter P. F. C.

(b) The first Vice-Chairmen shall be elected in the first meeting of the Exchange.

31. There shall also be a Secretary of the Exchange who shall be entitled to such remuneration for his services as the Committee shall determine. The Secretary may be a member of the Exchange or may be one of the Founders or may be a person employed as such by the Committee.

32. (a) The Committee shall have power whenever any member of their body is absent from Hong Kong to appoint another member of the Exchange to act as a member of the Committee during such absence.

(b) For the purpose of electing any member of the Exchange to fill any casual vacancy in the Committee or for the purpose of electing a member of the Exchange to act in the absence of any member of the Committee under this Article the quorum shall be four.

33. The members of the Committee shall be entitled to such remuneration as the Committee shall from time to time decide.

Rotation of Committee

34. At the ordinary General Meeting of the Exchange to be held in each year the whole of the Committee including the Chairman, the Vice-Chairman and the Secretary, if he is a member, shall retire from office but all shall be eligible for re-election. This provision shall not apply to those members in the Committee who are Founders.

35. The Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. Five shall be a quorum.

36. The Secretary on the request of any three members of the Committee shall convene a meeting of the Committee. Questions arising at any meeting shall be decided by a majority of Votes, and in case of an equality, the Chairman of the meeting shall have a second or casting vote.

37. A meeting of the Committee for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the Articles of the Exchange for the time being vested in or exercisable by the Committee generally.

38. All acts done by a meeting of the Committee shall, notwithstanding some defect in the appointment of the Committee or any member thereof, be valid.

39. The Chairman or in his absence one of the Vice Chairmen so elected shall preside at all meetings of the Committee or of any Sub-Committee of which he is a member and shall have a casting vote in addition to his vote as a member. Any member of the Exchange shall attend the meetings of the Committee if any when required and shall give to the Committee all the information in his power which the Committee may require.

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40. The Committee on the nomination of the chairman shall by an affirmative vote of a majority of the members of the committee then in office elect to the committee three representatives of the public to hold office until the subsequent annual meeting of the Exchange and until the successors are elected and take office.

41. These representatives of the public shall be entitled to vote at the meeting of the Committee for the transaction of business where the interest of the public may be affected, and they shall be entitled to receive notices of meetings of the Committee and shall be entitled to be present thereat.

42. These representatives shall be entitled to such remuneration as the Committee shall from time to time decide.

Minutes

43. The Committee Shall cause Minutes to be duly entered in books provided for that purpose:-

- (a) Of the names of all members of the Committee or Sub-Committee and of the Exchange present at each meeting of the Committee or of any Sub-Committee.
- (b) Of all orders and rulings made by the Committee.
- (c) Of all resolutions and proceedings of General Meetings or meetings of the Committee or any Sub-Committee.

44. Such minutes shall be open to the inspection of any Member upon application to the Secretary therefor.

45. Any such minutes of any such meeting of the Committee, Sub-Committee or the Exchange, if purported to be signed by the Chairman of that meeting or of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes.

Powers of the Committee

46. The Committee shall exercise all such powers and do all such acts and things as may be exercised or done by the Exchange that are not by these Articles or by any Ordinance required to be exercised or done by the Exchange in General Meeting.

47. The Committee shall have specific power:-

- (a) To purchase, take on lease, hire or otherwise acquire any buildings or property for the purposes of the Exchange.
- (b) To make and from time to time alter as they may think fit a scale of charges for brokerage on all transactions for the sale and purchase of stocks, shares, bonds, debentures and other securities and gold and silver and other precious metals, commodities, foreign exchange and money of all kinds.
- (c) To delegate, subject to such conditions as they may think fit, any of their powers, to a Sub-Committee, consisting of such members of their body as they think fit, and to fix the quorum of such Sub-Committee. Any Sub-Committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Committee.
- (d) To enter into such contracts and do all such acts and things as they may think fit for the purposes of the Exchange.
- (e) To appoint and remove any servant of the Exchange, and to fix the amount of remuneration of the Secretary or of any servant of the Exchange.
- (f) To utilize the funds of the Exchange in giving legal assistance in connection with all or any of the objects of the Exchange within the limits allowed by law.

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- (g) To utilize the funds of the Exchange in any other legal method which the Committee may be of opinion is advisable in the general interest of members and consistent with the objects of the Exchange.
- (h) To utilize the funds of the Exchange in assisting by all legal means any firm or firms, person or persons; who may be employed in resisting or enforcing any principle connected with the objects of the Exchange or which the Committee may be of the opinion that it is desirable in the general interests of members to resist or enforce.
- (i) to expel from the Committee any member who in the opinion of the majority of the members of the Committee present and voting has been guilty of improper conduct and thereupon a vacancy shall occur in the Committee.
- (j) From time to time not inconsistent with or contrary to these Articles to make, alter and repeal such rules and by-laws as they may think expedient to govern the transaction of all business, the terms of contract, the regulation of the Exchange and the opening and shutting thereof, and the conduct of persons transacting business therein, and generally for the good order and government of members.
- (k) To expunge the name of any Authorized Clerk or Sales Representative from the Register thereof if in the opinion of the Committee it is in the interests of the Exchange.
- (l) In the event of a member making complaint in writing to the Committee that another member has not observed the rules or by-laws of the Exchange in a share transaction, and, if in the opinion of the Committee the matter should be enquired into, then to direct that the member against whom the complaint is made shall produce for the purpose of examination and report to the Committee the books relating to his business as a broker to such auditors as the Committee may appoint, and such member shall forthwith upon being required to do so produce his said books to the auditors for this purpose.

48. The Committee shall send a copy of all rules, by-laws, amendments and repeals made by them to each member of the Exchange to his registered address, and all such rules and by-laws so long as they shall be in force shall be binding on all members of the Exchange upon the same being sent in terms of these articles, provided that no rule or by-law shall be inconsistent with or shall affect or repeal anything contained in the Memorandum or Articles of Association and that any rule or by-law may be set aside by a special resolution passed in a general meeting of the Exchange.

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The Secretary and Treasurer

49. (a) The Secretary or Treasurer shall receive all entrance fees and subscriptions and all other moneys coming to the Exchange. His receipts shall be the only sufficient discharge therefor, and he shall pay all moneys received by him into such Bank as the Committee may direct.

(b) The Secretary shall keep the Registers of Members, Authorized Clerks, Sales Representatives and Partners of Members.

Cheques

50. All cheques shall be signed by the Secretary or Treasurer and countersigned by the Chairman or, in his absence, by one of the vice chairmen.

Seal

51. The Seal of the Exchange shall not be used except with the authority of the Committee previously given and in the presence of two members of the Committee and the Secretary, and they shall sign every document to which the seal is affixed.

General Meetings

52. A General Meeting of the Exchange shall be held every year on or before the 31st March, on such day and place as the Committee may determine, for the purpose of considering the report of the Committee, the accounts and balance sheet of the Exchange and the election of a Chairman, Vice-Chairmen, and Committee from amongst the members together with a Secretary and Auditor or Auditors for the ensuing year.

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Any matter relating to the constitution and management of the Exchange may also be discussed at such meeting. Such meetings shall be called Ordinary Meeting; all other meetings of the Exchange shall be called Extraordinary Meetings. The first General Meeting shall be held within two months after incorporation.

53. The Committee may, whenever they think fit, and shall upon the requisition of one tenth of the members of the Exchange for the time being forthwith proceed to convene an extraordinary general meeting of the Exchange, and in the case of such requisition the following provisions shall have effect:-

- (a) The requisition must state the objects of the meeting and must be signed by all the requisitionists and be deposited with the Secretary and may consist of several documents in like form each signed by one or more requisitionists.
- (b) If the Committee do not proceed to cause a meeting to be held within 21 days from the date of the requisition being so deposited, the requisitionists or a majority of them may themselves convene the meeting, but any meeting so convened shall not be held after 3 months from the date of the deposit.
- (c) Any meeting convened under this Article by the requisitionists shall be convened in the same manner as nearly as possible as that in which meeting are to be convened by the Committee.

54. At all meetings of the Exchange 50% of the Members of the Exchange shall form a quorum.

55. At any meetings of the Exchange unless a poll is demanded by at least five members a declaration by the Chairman that a resolution has been carried or carried by any particular majority, or lost, and an entry to that effect in the Minute Book of the Exchange, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

56. If a poll is duly demanded, it shall be taken at such time and place, and either immediately after an interval or adjournment and either by open voting or by ballot, as the Chairman directs, and the result of the poll shall be deemed the resolution of the meeting at which the poll is demanded. The Chairman shall in case of an equality of votes at the meeting or at the poll, if a poll is demanded, be entitled to a casting vote in addition to the vote to which he is entitled as a member. Subject as herein otherwise mentioned, each member shall be entitled to one vote at all meetings. Voting by proxy shall not be allowed.

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57. The demand of poll shall not prevent the continuance of a meeting for the transaction of any business other than that upon which a poll has been demanded.

58. No member shall be entitled to vote at any meeting if any moneys due from him to the Exchange are one month in arrear.

59. If within half an hour from the time appointed for any meeting a quorum is not present, the meeting, if convened upon such requisition as aforesaid shall be dissolved but in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present, those present shall be a quorum and may transact the business for which the meeting was called.

60. The Chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

61. The Chairman or in his absence the Vice-Chairmen shall take the Chair at all meetings of the Exchange and in their absence the meeting may elect any member of the Committee to take the Chair. If there shall be no member of the Committee present, or if all the members of the Committee present shall refuse to take the Chair, then the members may elect one of themselves to be the Chairman of the meeting.

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62. Seven days' notice of all general meetings shall be given, specifying the place, day and hour of such meeting, and the general nature of the business to be transacted at such meeting. Provided that with the consent in writing of a majority of the members for the time being in Hong Kong, the meeting may be called by a shorter notice.

63. The accidental omission to give any notice to any of the members shall not invalidate any resolution passed at any meeting.

Bankruptcy and Offences

64. (a) Any member against whom a Bankruptcy Petition is filed or who files a Petition for his own bankruptcy shall ipso facto be suspended from acting as a member of the Exchange until such Petition has been heard and been adjudicated upon.

(b) Any member who is adjudicated a bankrupt or who compounds with his creditors under the provisions of any Ordinance relating to bankruptcy shall ipso facto cease to be a member of the Exchange but it shall be lawful for the Committee on the written application of such member, after enquiry, to restore his name to the Register of Members if they think fit, provided he can arrange to acquire a seat, but the member so re-admitted shall not be called upon to pay a fresh Entrance Fee.

(c) In the event of any member being convicted of a criminal offence he shall be suspended from membership pending the Committee's enquiry and be subject to expulsion as hereinafter provided.

Members' Contracts

65. (a) Every member of the Exchange shall be personally liable for and shall fulfil according to the rules and usages of the Exchange all bargains entered into by him for the sale or purchase of shares, stocks, bonds, debentures or other securities whether the distinguishing numbers of any shares or stocks, bonds, debentures or other securities are set forth in any contract, or writing or not, unless he furnishes to the party from whom he is buying or for whom he is selling before the completion of the bargain the name of the person for whom he is buying or to whom he is selling as the case may be.

(b) The Committee shall have power by notice in writing to call upon any member or members whenever the Committee shall think it expedient to submit his or their books to an auditor or auditors to be named in the notice calling upon them so to do and to furnish such auditor or auditors with all the information and explanation which he or they may require for the purpose of compiling a balance sheet of such member's or members' affairs, which balance sheet shall be submitted by the auditor or auditors to the Committee, who if they are of the opinion that from such balance sheet such member or members is or are unable to fulfil his or their obligations, shall deal with such member or members in accordance with the provisions of Article 64.

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Expulsion and Suspension

66. Whenever it shall have come to the notice of the Committee:-

- (a) That any member has wilfully deviated from or evaded or attempted to evade the scale of charges for brokerage for the time being authorized by the Committee,
- (b) That any member has wilfully transacted business in shares with any person who has been expelled from or called upon to resign from the Exchange, except for the purpose of carrying out any contract entered into prior to such expulsion or resignation; or
- (c) That any member has wilfully transacted business in shares with any person carrying on business as a stockbroker in Hong Kong who is not a member of the Exchange or some Association authorized by the Committee from time to time; or
- (d) That any member has entered into partnership or is in partnership as a stockbroker with any person resident in the Colony without the approval of the Exchange; or

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- (e) That any member has been elected under any misrepresentation or by the suppression of any material information which may be required of him by his proposer or seconder; or
- (f) That any member has failed or is unable to carry out any of his obligations or has violated the provisions of the memorandum or Rules of the Exchange; or
- (g) That the conduct of any member is injurious to the character and interests or prejudicial to the objects of the Exchange; or
- (h) That any member has shielded or assisted, or omitted to report, or dealt with, any member whom he has known to have acted contrary to the rules of the Exchange; or
- (i) That any member has dealt with any outside person, body, firm, corporation or company who or which may have been posted in the Exchange or otherwise notified to the members as one who or which has made default in carrying out his, her or its engagements relating to shares whether legal or otherwise; or
- (j) That any member has been convicted of a criminal offence; or
- (k) That any member has defaulted in payment of his subscription; or
- (l) That any member has failed to pay any moneys due to the Exchange other than his subscription after the due notice in writing calling upon him to pay;

the Committee shall investigate the matter at a meeting of the Committee and if satisfied that a prima facie case has been established in respect of any of the above matters shall within fourteen days request the member to attend a meeting and explain his conduct in regard to the

matter. If the committee shall, at such meeting or at any adjournment thereof, be of opinion after considering the explanation (if any) of the member or if the member fails to attend such meeting in his absence and in the absence of any explanation that the complaint is well founded it may either expel such member from the Exchange or suspend him for such period as may be deemed expedient, or take such other disciplinary action as the Committee may think proper in the interest of the Exchange, provided that no member shall be expelled by the Committee except by a majority vote of two-thirds of such Committee present in the Colony.

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

67. The Committee may, instead of exercising their power of expulsion, call upon the member concerned by written notice to resign, and if within seven clear days from the date of such notice, such member shall not have sent in notice of his resignation, they may then proceed to expel him.

68. A resolution of suspension, or expulsion, recorded in the Minute Book of the Committee and signed by the Chairman of the meeting deciding on the suspension or expulsion shall be conclusive evidence thereof.

69. The Committee shall have power, if they think fit, to suspend any member whose conduct is under investigation until they have enquired into such matter and come to a decision thereon.

70. The Committee may consider and act upon such evidence in relation to any matter as they think fit.

71. At any meeting called to consider any question of expulsion the voting shall be by show of hands unless a vote by ballot is demanded by not less than three members of the Committee in which event the voting shall be by ballot in lieu of a vote by a show of hands.

72. The Committee shall have power to publish in the local newspapers the name of any member expelled from the Exchange and also to notify such expulsion in any other way they may think fit. No action or other proceeding shall under any circumstances be maintained by the member referred to in such publication or notification

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

against any person printing, publishing or circulating the same, and the application for membership of the member expelled shall operate as a licence to any such person to print, publish or circulate such advertisement or notification.

73. Every member of the Exchange shall immediately report to the Committee any violation by a member of the Rules of the Exchange which may come under his notice.

74. Any complaint made or information given by a member or by any other person, body or firm to the Committee or the Secretary in respect of any member of the Exchange shall be privileged.

75. No person who has been expelled from the Exchange shall be eligible for re-election.

76. No member of the Exchange shall have the right to be represented at any meeting of the Committee held under Article 66 by solicitor or counsel but he may if he so desire solicit the assistance of another member of the Exchange.

Indemnity to Officers

77. Every member of the Committee and all officers and servants of the Exchange may be against all indemnified costs, losses and expenses which any such member, officer, or servant may incur or become liable to by reason of any contract entered into, or act or deed done by him as such member of the Committee, officer or servant, or in any way in the discharge of his duties, and the amount required to discharge such indemnity shall immediately attach as a lien on the property and assets of the Exchange and have priority as between the members over all other claims.

Accounts.

78. The committee shall cause proper books of account to be kept with respect to-
all sums of money received and expended by the Exchange and the matter in respect of which the receipt and expenditure takes place; all sales and purchases of goods by the Exchange and the assets and liabilities of the Exchange.

79. The books of account shall be kept at the registered office of the Exchange, or at such other place as the Committee thinks fit, and shall always be open to the inspection of the Committee.

80. The Committee shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Exchange or any of them shall be open to the inspection of members.

81. The Committee shall from time to time in accordance with section 122 of the Ordinance, cause to be prepared and to be laid before the Exchange in general meeting such profit and loss accounts balance sheets and reports as are referred to in that section.

82. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Exchange in general meeting together with a copy of the auditor's report shall not less than seven days before the day of the meeting be sent to all persons entitled to receive notices of general meeting of the Exchange.

Audit.

83. Auditors shall be appointed and their duties regulated in accordance with sections 131, 140 and 141 of the Ordinance.

Notices.

84. A notice may be given by the Exchange to any member either personally or by sending it by registered post to him to his registered address, and when notice is sent by registered post to him to his registered address, the notice shall be deemed to have effected at the expiration of 24 hours after the letter containing the same was posted.

First Secretary

85. Miss Betty Hiang shall be the first secretary of the Exchange to hold office until the first meeting of the committee.

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

Names, addresses and descriptions of subscribers

Exhibit "A"
Memorandum and
Articles of
Association of
the Kowloon
Stock Exchange
Limited
10th March, 1970
(Continued)

Peter Po Fun Chan,
70D, MacDonnell Road,
Ground floor,
Hong Kong
Public Accountant

Chee Ying Cheung,
650 Castle Peak Road,
7th floor,
Kowloon
Manufacturer

Chung Ming Fai,
Room 802 Lok Hoi Tung
Building,
Hong Kong
Merchant

Chan Ching Pow,
92 Pokfulam Road, Flat 2C,
La Clare Mansion,
Hong Kong
Merchant

(Sd.) Lau Kwong,
6 Fontana Gardens,
16th floor, Caning Path,
Tai Hang Road,
Hong Kong
Manufacturer

(Sd.) Jimmy Hai Ling Woo,
55 Beacon Hill Road,
7th floor, Flat C,
Kowloon
Manufacturer

(Sd.) Chau Wan,
47 Hillwood Road,
3rd floor,
Kowloon
Merchant

(Sd.) Chen Kee Hwa,
12A, Peace Mansion,
152 Tai Hang Road,
Hong Kong
Financier

" B "

SPECIAL RESOLUTION

OF

THE KOWLOON STOCK EXCHANGE LIMITED

Exhibit "B"
Special Resolution
of the Kowloon
Stock Exchange
Limited
24th September 1973

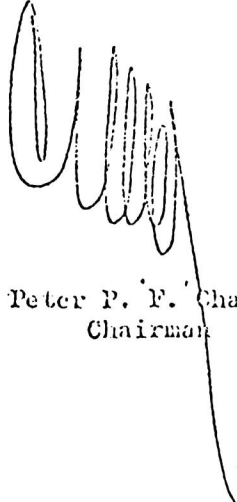
Passed on the 11th day of September, 1973.

At an Extraordinary General Meeting of members of the Kowloon Stock Exchange Limited held at Room 303C Melbourne Plaza, 33 Queen's Road, Central, Hong Kong on Tuesday, 11th September, 1973 at 5:30 p.m. the following Special Resolution was duly passed:-

"That Articles 9 and 10 shall be deleted and substituted by the following new articles:

- '9. No subscription shall be paid to the Exchange.
10. Members shall be liable to reimburse any moneys paid on their behalf for the expenses incurred in the Exchange to such sub-committee as from time to time decided by the Committee. If any member fails to pay such indebtedness or any part thereof within one month of its becoming due his name shall be posted in the registered office of the Exchange. If such is not then paid within one month from the date his name is posted or within three months if such member be absent from the Colony such defaulting member shall be subject to expulsion by the Committee in manner hereinafter provided."

Dated the 24th September, 1973.



Peter P. F. Chan
Chairman

In the Privy Council

ON APPEAL

FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN

KOWLOON STOCK EXCHANGE LIMITED *Appellant*

AND

COMMISSIONER OF INLAND REVENUE *Respondent*

RECORD OF PROCEEDINGS

EDMUND W.H. CHOW & CO.,
Solicitors for the Appellant
LEGAL DEPARTMENT OF HONG KONG
for the Respondent
