

4/79

IN THE PRIVY COUNCIL

No. 9 of 1977

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

COMMISSIONER OF INLAND REVENUE

Appellant

- and -

FAR EAST EXCHANGE LIMITED

Respondent

RECORD OF PROCEEDINGS

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Notice

18th October
1976

ON APPEAL
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

COMMISSIONER OF INLAND REVENUE

Appellant

- and -

FAR EAST EXCHANGE LIMITED

Respondent

RECORD OF PROCEEDINGS

No. 1

In the Court
of Appeal of
Hong Kong

10

CASE STATED BY BOARD OF
REVIEW 29th November 1975
PURSUANT TO SECTION 69 OF
THE INLAND REVENUE ORDINANCE
(CAP.112)

No. 1

Case Stated
29th November
1975

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1. At hearings before the Board of Review, the Far East Exchange Limited (hereinafter called "the Taxpayer") appealed against, inter alia, an assessment for additional corporation profits tax for the year of assessment 1971/72 in the sum of \$4,880,000 with tax payable thereon of \$732,000 on the ground that the said sum of \$4,880,000 was composed entirely of entrance fees paid by its members, and being of a capital nature, did not enter into the computation of the assessable profits of the Taxpayer. The assessment appealed against was made upon the Taxpayer under the following circumstances :-

30

2. The Taxpayer was incorporated on 31st October, 1969 under the Hong Kong Companies

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29th November
1975 -
continued

Ordinance (Cap.32) as a company limited by guarantee and not having a share capital.

3. By a notice in the press on the 16th December 1969, the Chairman and the Committee of the Taxpayer announced that their Exchange would commence trading on Wednesday the 17th December 1969 at 10.00 a.m. at 201, China Building, Hong Kong.

4. On 22nd April 1971 the Taxpayer submitted through its Tax Representatives, its Corporation Profits Tax Returns for the years of assessment 1969/70, 1970/71 and 1971/72 showing assessable profits of \$46,352, \$165,936 and \$181,033 respectively, supported by the Taxpayer's accounts for the period 31st October 1969 to 31st December 1970, and tax computations prepared on the basis that the Taxpayer commenced business as a share dealings centre on the same date as its date of incorporation. 10

5. The Assessor without any enquiry into the returns and accounts assessed the Taxpayer to Corporation Profits Tax for the years of assessment 1969/70, 1970/71 and 1971/72 in the amounts shown in the Returns as aforesaid and the Notices of Assessment were all dated 7th May 1971. The profits declared were calculated as the profits derived from three main sources: subscriptions, listing and other fees, and the sale of publications. 20

6. On 11th January 1973, after examining the 1972/73 Corporation Profits Tax Return and Accounts, the Assessor wrote to the Tax Representatives of the Taxpayer saying that on reviewing the case, he noted that members' entrance fees of \$7,680,000 and Founders' contribution of \$550,000 constituting part of the business income of the Taxpayer had not yet been taken into account in assessing the Taxpayer for the years of assessment 1969/70, 1970/71 and 1971/72; he then indicated he would raise additional assessments on the Taxpayer for the years of assessment 1969/70, 1970/71 and 1971/72 by including the said sums as part of the assessable profits applicable to each year of assessment. In this letter, the Assessor drew the Tax Representatives' attention to 30 40

Section 24(2) of the Inland Revenue Ordinance.

7. The figures of ~~¥~~7,680,000 and ~~¥~~550,000 representing respectively members' entrance fees and Founders' contribution referred to in paragraph 6 were taken from the Taxpayer's balance sheet as at 31st December 1970 under the heading "Accumulated Fund".

10 8. The Assessor raised additional assessments on the Taxpayer for the years of assessment 1969/70, 1970/71 and 1971/72. The Notices of Additional Assessment were all dated 22nd May 1973. The said Notices of Additional Assessment showed additional assessable profits of ~~¥~~2,929,649, ~~¥~~7,035,012 and ~~¥~~7,035,012 with tax payable thereon of ~~¥~~439,447, ~~¥~~1,055,251 and ~~¥~~1,055,251 for the said years of assessment 1969/70, 1970/71 and 1971/72 respectively.

20 9. Following the lodging of objections by the Taxpayer to the said additional assessments the Commissioner determined that the sums upon which additional assessments for the years of assessment 1969/70, 1970/71 and 1971/72 were raised should be changed to ~~¥~~5,350,000, ~~¥~~8,150,000 and ~~¥~~4,880,000 respectively with tax payable thereon of ~~¥~~802,500, ~~¥~~1,222,500 and ~~¥~~732,000 respectively.

30 10. By consent of the parties the Additional Profits Tax Assessments for 1969/70 and 1970/71 were annulled by the Board of Review.

11. It was agreed by the Taxpayer that -

(a) the said sum of ~~¥~~4,880,000, the subject of the additional assessment for the year of assessment 1971/72, is composed entirely of entrance fees paid to the Taxpayer by its members, and

40 (b) if entrance fees paid to the Taxpayer by its members are taxable then ~~¥~~4,880,000 is the correct figure to enter into the computation of the taxable profits of the Taxpayer for the year of assessment 1971/72 such

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continued

figure being the total entrance fees received by the Taxpayer from its members during the basis period for such year of assessment.

12. It was conceded by the Taxpayer that -
- (a) the Taxpayer carried on a trade association in circumstances such as are stated in section 24(2), and
 - (b) the whole of its income (including entrance fees and subscriptions) was therefore deemed to be receipts from business. 10
13. On behalf of the Taxpayer it was contended that any entrance fee received by the Taxpayer was of a capital nature and could not in law be subject to any charge to profits tax.
14. On behalf of the Commissioners it was contended that -
- (a) on a true construction of Part IV of the Inland Revenue Ordinance, and in particular section 24(2), the entrance fees in question amounting to \$4,880,000 are subject to a charge for profits tax whether they are of an income or of a capital nature, and 20
 - (b) the said entrance fees are in any event of an income nature.
15. The following authorities were cited to the Board of Review :-
- Liverpool Corn Trade Association Ltd. v. Monks, 10 T.C. 442; 30
 - C.I.R. v. Transvaal Bookmakers' Association, 19 S.A.T.C. 14;
 - Cornish Mutual Assurance v. I.R.C. (1962) A.C. 281;
 - New York Life Insurance Co. v. Styles, (1889) 14 A.C. 381;
 - Kneen v. Martin, 19 T.C. 33;
 - Jones v. The South-West Lancashire Coal Owners' Association Ltd., 11 T.C.790; 40
 - C.I.R. v. Roberts, 9 T.C. 603;
 - Reynolds v. Commissioner of Income Tax

(1967) A.C.1;
 Public Trustee v. I.R.C., (1960) A.C.398;
 Hong Kong Taxation by Newton (2nd ed.,
 pp.78 - 79);
 Simon's Taxes (3rd ed., Vol.A, para. A1,
 306, p. 181).

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 continued

10 16. Annexed and forming part of this Case
 and marked as shown are copies of the follow-
 ing documents to which the Court will need
 to refer in considering its opinion on the
 questions set out in paragraph 18 below :-

Annexure

Document

"A₁"

Memorandum and Articles
 of Association of the
 Taxpayer prior to amend-
 ment of 24th November
 1970.

20 "A₂"

Memorandum and Articles
 of Association of the
 Taxpayer following amend-
 ment of 24th November 1970.

"B₁"

Profit and Loss Account
 of the Taxpayer for the
 period from 31st October
 1969 to 31st December
 1970.

"B₂"

Balance Sheet of the
 Taxpayer as at 31st
 December 1970.

30 "B₃"

Auditors' Report dated
 18th January 1971.

40 17. We, the members of the Board of Review
 who heard the Appeal gave our decision in
 writing on 10th March 1975. We found that the
 sum of \$4,880,000 derived from entrance fees
 would not be chargeable to profits tax if it
 consists of receipts of a capital nature but
 would be chargeable if it consists of receipts
 of an income nature. We further found that
 the Taxpayer's accounts, audited by Chartered
 Accountants, show the entrance fees to be
 capital assets and that this would appear to

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accord with standard accounting practice.
We considered that the Commissioner had an
onus upon him to prove that the entrance
fees are of an income nature and thus
exigible to tax and that he had not
discharged this onus.

In the result we allowed the Taxpayer's
appeal and annulled the additional assessment
in question.

18. The questions of law for the opinion of the Court are :- 10

- (i) Did the Board err in law in finding that the sum of \$4,880,000 derived from entrance fees would not be chargeable to profits tax if it consists of receipts of a capital nature.
- (ii) Is there any or any sufficient evidence to support the Board's finding that the Taxpayer's accounts show the entrance fees to be capital assets. 20
- (iii) Did the Board err in law in failing to find that the entrance fees were of an income nature.

Dated this 25th day of November 1975.

(Sgd.) S.V.Gittins
S.V.Gittins, Q.C. J.P.
Chairman

(Sgd.) D.Barrett
D.Barrett, F.C.I.S.
Member 30

(Sgd.)
David WU Chung-shing, B.A.
Member

(Sgd.) A. Zimmern
A. Zimmern, Q.C.
Member

Ref: B/R 14/74 : D.13/74 : SG. 2/75

IRA/3/41

No. 2

No. 2

JUDGMENT OF THE HONOURABLE
MR. JUSTICE LEONARD

Judgment of
the Honour-
able Mr.
Justice
Leonard
5th October
1976

IN THE COURT OF APPEAL 1975 No. 1
(Inland Revenue)

on appeal from the Board of Review

BETWEEN:

COMMISSIONER OF INLAND
REVENUE Appellant

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and

FAR EAST EXCHANGE LTD. Respondent

Coram: Briggs, C.J.
McMullin & Leonard, JJ.

Date: 5th October, 1976

J U D G M E N T

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The respondent, The Far East Exchange Ltd., as appears from the case stated, is a limited company incorporated under the Hong Kong Companies Ordinance (Cap.32) as a company limited by guarantee and not having a share capital. It has as its objects inter alia: (a) to provide a securities market place; (e) to establish an exchange or place of meeting for stock and share brokers; (g) to acquire suitable premises for a stock exchange; (h) to carry on in the premises so acquired the business of a stock exchange. By its Articles of Association its members are members of "the Exchange". They are limited in number to 150. Subject to this and to certain

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immaterial restrictions any person of the age of 21 years and upwards being of good repute and standing who desires to carry on the businesses of a stock-broker is eligible for membership.

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 the Honourable
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 Leonard
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 1976 -
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Candidates for membership are elected by the Committee of the Exchange. Once elected they become liable to pay entrance fees and subscriptions. The article relating to entrance fees in force at the relevant time reads :

"11. The entrance fee of the exchange shall be decided by the committee. Entrance fee will be deemed to be capital receipts and under no circumstances will entrance fee be refundable."

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The subscription is payable monthly in advance on the 1st day of each month, and a member elected after 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 Articles of Association deal specifically with "seats" in the exchange providing that all seats shall belong to the exchange but every member shall be entitled to the benefit of a seat to be allocated by the committee. In the very article which so stipulates it is also laid down that "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..."

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Article 14 forbids the assignment of any rights, benefits or privileges of membership "other than the right of disposal upon resignation." Article 15 provides for resignation by the giving of one calendar month's notice. Article 16 empowers a resigning member to "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." There are similar provisions in Article 17 to cater for death or bankruptcy; the nominee of the personal representative or trustee in bankruptcy is again not required to pay any entrance fee if elected. It is then only by expulsion from membership, by the failure of a resigning member or of his personal representative or trustee in bankruptcy as the case may be to nominate a successful candidate for election that the "chain of membership", if I may use the

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expression, is broken. Article 18 is of importance to my considerations. It reads :

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the Honourable
Mr. Justice
Leonard
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continued

"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 and paid by 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."

The articles then, albeit in a somewhat tortuous manner, recognise the ownership of the benefit of a seat as a saleable asset which, as is common ground, is in the hands of the member, a capital asset. The respondent differs radically from the London Stock Exchange or other stock exchanges following the customs and usages on the London Stock Exchange. Its members, restricted in number to 150, become entitled "to the benefit of a seat and all benefits appertaining thereto". This entitlement is defeasible or terminable only by expulsion or by resignation, death or bankruptcy without the appointment of an acceptable nominee but it is only in the event of expulsion that the seat and all benefits appertaining thereto revert to the respondent to be used as the respondent shall think fit. If a resigning member or the personal representatives or trustee of a deceased or bankrupt member fails to make an acceptable nomination a vacancy in the membership occurs but any moneys received from the person ultimately elected pass to the resigning member or to the personal representative or trustee of the deceased or bankrupt member, as the case may be. A candidate for membership becomes entitled to this indefeasible right only upon election and payment of both entrance fee and

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subscriptions for Article 5 requires that "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 election and payment of the prescribed fees, the candidate shall become a member of the Exchange and shall be entitled to the benefit of a seat on the Exchange." The contrasting position of the London Stock Exchange is set out by Lord Atkinson in Weinberger v. Inglis (1919) A.C.606 at page 622 :

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"The right or privilege which a person acquires by the payment of an entrance fee, and the yearly subscription and subsequent election as a member, is simply the right to be admitted to the Stock Exchange building, or any particular and specified part of it, to transact the business of a broker and jobber or of either of them therein for the year, 'from March 25 then instant or last preceding the admission of such member.' He simply gets a licence to enter the buildings of the trustees and managers of the Stock Exchange undertaking, or any particular and specified part thereof, for and during the year mentioned to transact the business named. That licence terminates with the year named. There is, in my view, no continuity or connection whatever between the membership of a member for one year and his membership for a succeeding year. An existing member has no legal or equitable right or claim to be re-elected for the year succeeding his year of actual membership, though no doubt he may hope or expect that he will be re-elected, but March 25 in each year is a new point of departure at which newly created relations and rights spring into existence."

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From that he goes on to say at page 623 :

"It is clear that all the member buys by the payment of his entrance fee and his annual subscription on the occasion of his first election is the right or privilege or licence to enter into and to transact his business on the Stock Exchange, up to March 25 following the date of his admission."

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10 The successful candidate for election to the
respondent buys by the payment of his
prescribed fees i.e. his "entrance fee and
his subscription for the current accounts"
membership of the exchange and entitlement to
the benefit of a seat on the exchange. This
later entitlement is for an indefinite period,
is not defeasible by the action of the
respondent and can be sold. At the outset of
its dealings with members the respondent had
20 for disposal the benefit of 150 seats and once
150 have been allotted unless and until its
articles are changed it could have no more.
The consideration for which the respondent
allotted the benefit of a seat was not the
entrance fee but the entrance fee and the
subscription for the current month ("the
prescribed fees"). I note that in the passage
which I have quoted Lord Atkinson spelled out
the consideration payable by the member of the
30 London Stock Exchange in similar fashion but
do not however consider that the fact that
the entrance fee is only part of the considera-
tion is of significance. The entrance fee is
part of the consideration paid for the allot-
ment of the benefit of a seat and it is the
character of the entrance fee that is to be
determined. It is capital viewed from the
stand-point of the member, is it also capital
when viewed from the stand-point of the
40 respondent?

The long title of the Inland Revenue
Ordinance is "to impose a tax on property,
earnings, profits and interest". It is funda-
mental to it that it is not an income tax
ordinance nor is it a capital tax ordinance.
Its general tendency or "scheme" appears to be
to impose tax on "yield" (to use a neutral term).

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Thus property tax is based on the rateable value of land or buildings or land and buildings as assessed for rating purposes under the Rating Ordinance less an allowance for repairs and outgoings and is payable by the person who pays the rates or by the owner; that the Ordinance looks to the yielding capacity of the land or buildings as the subject of its taxation, seems clear from section 7 which provides for reduction of property tax for unoccupied land or buildings. The salaries tax and interest tax I need not comment upon. I turn then to Part 4 of the Ordinance which deals with profits tax. It is to be noted that the term "profits" is not defined. By section 14 this tax is 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 ... for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with Part 4 of the Ordinance." The definition of the term "assessable profits" is of no assistance to us in the interpretation of this section for it reads :

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"'assessable profits' means the profits in respect of which a person is chargeable to tax for the basic period for any year of assessment calculated in accordance with the provisions of Part 4."

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It is argued on behalf of the Commissioner on the basis of the expressio unius rule that section 14 imposes a charge on all profits whether they be of a capital or a revenue nature. In other words that the correct method of arriving at assessable profits is to compute the total receipts for the year in question arising out of the trade, profession or business deduct from that total any receipts from the sale of capital assets and deduct from the resulting figure all allowable deductions and regard the balance as profits.

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The dicta of Rowlatt, J. in Cape Brandy Syndicate v. I.R.C. (1921) 1.K.B. 64 at page 71

that in a taxing Act "one has to look merely at what is clearly said; there is no room for any intendment. There is no equity about the tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied one can only look fairly at the language used." have been brought to our attention by counsel for the appellant. They are so often quoted with approval that I consider there to be some danger when considering a tax Ordinance that other canons of construction may be forgotten. Rowlatt, J. clearly intended no such thing. The sentences quoted are used to combat "wide and fanciful constructions" often sought to be given to the maxim that in a taxing Act clear words are necessary in order to tax the subject and the notion that words are to be unduly restricted against the Crown or there has been any discrimination against the Crown in the Acts. Such cardinal rules as the rule that words should be construed according to the intention expressed in the Act without speculating of the intention of the Legislature are not to be forgotten. It is to the intention expressed one looks having regard to the ordinance as a whole. As Lord Russell of Killowen C.J. said in Attorney-General v. Carlton Bank (1899) 2 Q.B. 158 at page 164 :

"I see no reason why any special canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, namely to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. The Court must no doubt ascertain the subject matter to which the particular tax is by the statute intended to be applied but when once that is ascertained, it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations

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of hardship or of business convenience
 or the like."

All this is impliedly accepted by the appellant
 in his seeking to rely on the expressio unius
 rule, a rule which Lopes L.J. has stigmatized
 as :

"Often a valuable servant, but a dangerous
 master to follow in the construction of
 statutes or documents. The exclusio
 is often the result of inadvertence or
 accident, and the maxim ought not to be
 applied, when its application, having
 regard to the subject matter to which it
 is to be applied, leads to inconsistency
 or injustice." (Colquhoun v. Brooks (1888)
 21 Q.B.D. 52 at page 65)

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It is pointed out by counsel for the respondent
 that here the reference to sale of a capital
 asset may have been inserted ex abundantia
 cautela and that to suggest that capital profits
 arise from a trade, profession or business is
 to strain the language. I agree and find it
 difficult to say that profits arising from the
 sale of capital assets can be said to arise
 from a trade, profession or business. They
 arise rather from its cessation in part or in
 whole or from a reduction of its nature or the
 manner in which it is carried on. Had it been
 intended to impose by section 14 a charge on
 capital profits it would scarcely have been
 appropriate in section 15(1)(c) to except from
 "sums received by or accrued to a person by
 way of grant, subsidy or similar financial
 assistance in connexion with the carrying on
 of a trade, profession or business in the Colony"
 "sums in connection with capital expenditure
 made or to be made by the person" when
 deciding what sums should be deemed to be
 receipts arising from a trade profession or
 business. It is noteworthy that no other of the
 sums mentioned in section 15 as "deemed to be
 receipts arising in or derived from the Colony
 from a trade, profession or business" is of a
 capital nature. Again if one follows the
 computations suggested by counsel for the

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appellant section 17(1)(c) could give rise to an anomaly. That section provides that :

"for the purpose of ascertaining profits in respect of which a person is chargeable to tax under this Part no deduction shall be allowed in respect of -

(c) any expenditure of a capital nature or any loss or withdrawal of capital;"

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10 Let us take the case of a trader who receives insurance moneys payable on the destruction of his premises, premises which he has improved during the year in question by expenditure of a capital nature. If the insurance moneys (a capital receipt) are to attract taxation it would be anomalous if he was not permitted to deduct from them the expenditure of a capital nature he had incurred in the improvement of the premises before their
20 destruction. It is however because profits of a capital nature cannot in my view truly be said to arise from a trade, profession or business as distinct from its cessation or reduction that I would hold that Legislature did not intend to impose and did not impose a charge on profits of a capital nature by section 14 of the Ordinance.

30 Are these entrance fees then to be regarded as capital receipts? I am persuaded that they are. The factors which contribute to persuade me that on balance these entrance fees should be regarded as capital as they come to the hands of respondent are (1) they are unquestionably capital in the hands of candidates for membership. This I regard as the slightest of guides to their character as they come to the hands of the Far East Exchange Ltd. but it is some indication. (2) the articles of association "deem" them to be capital receipts. The use of the word "deem" here in the articles is rather
40 a strange one for frequently that word is used in legal documents and particularly in the definition section of Ordinance with a nuance somewhat different from indeed contradictory of the ordinary dictionary meaning of "tell", "say" or "declare". A draftsman frequently deems a thing to be what in ordinary parlance it is not

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so that this factor does not take me much further towards a decision. Again this particular article may well have been framed with one eye cast over the shoulder at the Collector of Inland Revenue. The same consideration applies to (3) the fact that they are treated as capital in the accounts of the respondent. These two factors can weigh no more than a scruple in the balance. Not so however with (4) the fact found by the Board that so to deal with them "accords with standard accounting practice". That the Board, on what evidence we know not, finds as a fact, by which I am bound, that professional accountants have a standard practice to treat them as capital I must regard as of considerable weight. (5) their non-recurrent nature. It is quite true that the articles envisage that the respondent will receive 150 such payments. On receipt of anyone payment and the first subscription, it parts in exchange, with the benefit of one seat. Let us suppose it has parted with 149. No one, I opine, would contend that in receiving the 150th payment it received a payment which had any measure of recurrence or periodicity. It would be a final payment received "once and for all". Any further demand for membership and the benefit of a seat cannot be met unless and until some one is expelled or the articles are altered. Once one determines the character of one entrance fee one determines the character of all for that a number may be paid does not of itself confer on any one payment a recurrent or periodic quality. Mr. Somerville has argued trenchantly that there is a degree of recurrence and that in any event it or its absence is not a crucial factor and among the cases he cited to us were two which appear to me to require detailed consideration. I refer to Liverpool Corn Trade Association Ltd. v. Monks 10 T.C. 442 and C.I.R. v. Transvaal Bookmakers Association (Co-op) Ltd. (1953) S.A. Tax Cases 14.

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The Association in Monk's Case 10 T.C. 442 was a limited company having a share capital of £60,000 divided into 400 shares of £150 each of which 375 were issued. Members were elected and any person becoming elected was required to

pay an entrance fee and an annual subscription and to acquire one share of the association within one month of his election unless the directors by resolution agreed to extend his time. No member could hold more than one share in addition to that which he was required to acquire. Non-members might become subscribers to the association. On the hearing of the appeal it was contended (a contention not raised in the instant case) that the association was a mutual one and that surplus from any transactions with its members was not a profit assessable to income tax but it was held that it was not a mutual association that profit arising from its transaction with members was assessable and that in the computation of profits the entrance fees must be included. The question for decision in that case in no way turned on whether entrance fees were or were not capital but rather on "the effect of the decision of the House of Lords in the well-known and much-discussed case of The New York Life Insurance Co. v. Styles 2 T.C. 460. The passage in which Rowlatt, J. distinguishes Monk's Case 10 T.C. 442 from Styles 2 T.C.460 (on one phrase of which much emphasis was placed by counsel for the appellant) reads :

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"But in a case of this kind, where there is a share capital, with a chance of dividends, a chance of a right to dividends if declared, upon share capital and to the one side of that a dealing with people who happen to be the owners of the share capital, affording benefits to those people one by one individually, for which they pay money by way of subscriptions and by way of entrance fees as a sort of overriding subscription, if I may use that word, which opens the door to subscriptions, there is no reason at all for saying that you are to neglect the incorporation, or that you can regard otherwise than as profits the difference which is obtained by dealings between that corporation and people who happen to be its members. Now I think that is right. I hope I am

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not presumptuous ... in saying that ...
 in spite of what was said in the Carlisle
 and Silloth Golf Club case (6 T.C. 48
 and 198) but it seems to me that in that
 case there was no incorporation, no
 independent share capital, and that
 really the people were only providing
 themselves with the facilities of the
 golf course ..."

It is clear to me that in using the phrase I
 have underlined Rowlatt, J. was not in any 10
 way advertng to the question as to whether
 entrance fees could bear a character distinct
 from subscriptions particularly in a case where
 there was no share capital and members are not
 shareholders. Furthermore in Monk's Case
 10 T.C. 442 membership was not, by reason of
 the power of the directors to extend indefinitely
 the time within which a member was obliged to
 acquire his qualifying share, limited in number
 and membership could not be sold as it can in 20
 the instant case. In the instant case again
 there is no share capital.

In the Transvaal Case (1953) S.A. Tax
 Cases 14 it was expressly held that entrance
 fees were not of a capital nature. The taxpayer
 in that case was that is described as a.... [sic]
 "closed co-operative trading society with
 'limited liability'". This description itself
 does not imply that its rules contained any 30
 limitation on the number of its members although
 that there was a limitation of some kind is clear
 because we are told by De Villiers, J. that
 there was a waiting list. It derived what is
 referred to in the facts set out in the judgment
 of De Villiers, J. as its "income" in part from
 entrance fees payable by its members. Under its
 rules and on resignation each member became
 entitled to nothing of what he paid but to
 2/3rds of the basic fee paid by the new member -
 something different to what is paid in. So far 40
 as I can determine it is this fact that made
 De Villiers, J. form the view that the entrance
 fee is non-recurrent as far as the member is
 concerned but recurrent as far as the associa-
 tion is concerned rather than the fact that the

10 association failed to show that the entrance fee was not gross income under section 7 of the Income Tax Act of 1941. Unfortunately we were not referred to the wording of this section for its terms were clearly of importance to Price, J. who mentions that the onus was on the association to show that the entrance fees were accruals of a capital nature "and also that they were not received for services to be rendered". Price, J.'s judgment turns on his conclusion that services were rendered and that "the money that buys the services is that provided by the basic entrance fees and the subscriptions".

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20 There appear to me to be at least two distinguishing factors between the Transvaal Case (1953) S.A. Tax Cases 14 and the instant case. Firstly there was a measure of recurrence in the Transvaal Case (1953) S.A. Tax Cases 14 as De Villiers, J. acknowledges at page 26. He does not say how it arose but that the association would get the entirety of a new member's entrance fee and be obliged to give the retiring member 2/3rds of it is something to which he must have adverted. In the instant case a new member as distinct from an original member pays no entrance fee, he pays the retiring member (admittedly through the respondent) such sum as they agree the "benefit of the seat" and any concomitant advantages to be worth. There can be no doubt as to the nature of the transaction which takes place between a resigning member on the personal representative or trustee of a deceased or bankrupt member and the nominated successor. It is a sale and purchase. Secondly, it is in our Ordinance nowhere laid down that a person assessed must show, of payments which he contends are capital, that they were not received for services to be rendered. A third
30 distinction may lie in the manner in which membership is limited as to number. All we know as to this in the Transvaal Case (1953) S.A. Tax Cases 14 is that there was a waiting list.
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I am of the opinion then on balance that entrance fees are of a capital nature. I do not

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consider that the fact that an entrance fee is not refundable on expulsion alters this for it does not lie in the power of the Far East Exchange to create the circumstances under which a member may be expelled. It might possibly be argued, although it was not so argued before us, that the first subscription bears the same character as the entrance fee since both must be paid before the benefit of a seat is allotted and that since it has been conceded that subscriptions are receipts on revenue account entrance fees must also be. This however seems to me entirely too facile. In making the concession that subscriptions are receipts on revenue account counsel for the respondent did not advert to the possibility of the first subscription being of a different character to those succeeding.

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Having held entrance fees to be capital receipts and having accepted that section 14 does not impose a charge on capital profits I now ask if section 24(2) obliges me to treat entrance fees as receipts from business. The section reads :

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"(1) 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.

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(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

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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 profit therefrom.

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10 (3) In this section, 'members' means those persons entitled to vote at a general meeting of the club, or similar institution, or trade association."

It will be noted that subsection 1 which refers to a club or similar institution contains the phrases "gross receipts on revenue account (including entrance fees and subscriptions)" and deems to be receipts from
20 business "the whole of the income from transactions with members and others (including entrance fees and subscriptions)" Subsection 2 - the subsection which requires our construction - does not use the expression "receipts on revenue account". It does not equate entrance fees with subscriptions in its opening phrases but it does, as does subsection 1, deem to be receipts from
30 business "the whole of the income of such association from transactions both with members and others (including entrance fees and subscriptions)".

I do not consider that the word "income" is used in the section as a term of art or in contradistinction to "capital" or as having a meaning different from "receipts" (a word used earlier in subsection 2) I say this because, while in general one would seek to give different meanings to different words in the same section the word "income" must
40 and is clearly intended to have the same meaning in both subsections and if I were to regard it as distinct in meaning from "receipts" in subsection 2 I could see no reason for not regarding it as distinct from "receipts on revenue account" in subsection 1.

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It must, then mean "receipts" or "incomings". To the inevitable question "why then not repeat the use of the word 'receipt'?" I can only answer that constant repetition of the word "receipts" would be tiresome and that even a law draftsman must be allowed some of the spice of life. This is not an Income Tax Ordinance so that there is no reason for regarding the word "income" as having a specialised meaning. I therefore do not regard the expression in brackets "(including entrance fees and subscriptions)" as being governed by the word "income" and consider that on a true interpretation of the section the word "including" operates to extend the word "income" as in Reynolds v. C.I.T. [1967] 1 AC 1

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I nevertheless consider that by the acceptance of the entrance fee and initial subscription the respondent secured the purchase price of the benefit of a seat on the Exchange. What the members wanted when they joined the Exchange was the benefit of a seat - that is what they were "buying". To my mind it would be quite unrealistic to hold otherwise especially in the conditions which appertained in Hong Kong during those years. If that was what the members were "buying" it was what the respondent was "selling". As I have indicated the respondent's position was in sharp contrast to that of London Stock Exchange. Lord Atkinson did not hesitate to use the word "buying" in relation to the acquisition of annual membership in that body. The respondent's Articles of Association read in their entirety bearing in mind the emphasis which they give to "seats" and the manner in which the benefit of them may be transferred or disposed of on death or bankruptcy make it clear that the provision of the benefit of seats to members is the manner in which some of the essential objects of the respondent are to be realised. To confer on members ownership of the benefit of the seats and to limit the number of seats was the manner in which the respondent elected to attract membership and so attain its objects. Once the benefit of a seat was

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allotted it passed irrevocably from the control of the respondent. The respondent could never, of its own motion, allot that benefit again. It could not expel a member without cause and expulsion apart could not regain control of the seat. In accepting the entrance fee and the first subscription from successful candidates for membership the respondent was therefore in effect selling a capital asset.

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It was conceded by counsel for the appellant, and, I consider, rightly conceded, that if the entrance fees be regarded as the consideration for the sale of a capital asset profits arising from them do not attract taxation. I say "rightly conceded" because section 14 is the charging section. It lays down when profits tax shall be charged and excludes profits arising from the sale of capital assets. Its opening words are: "subject to the provisions of this Ordinance" (one of which provisions is section 24(2)) and its closing ones "as ascertained in accordance with this part". It might be argued that section 24(2) by providing that the person carrying on an association should be chargeable in respect of the profits from "the whole of the income of such association ... (including entrance fees and subscriptions)" operated so as to oblige one to read the words in brackets in section 14 as "(excluding profits arising from the sale of capital assets but not excluding profits arising from the sale of capital assets where the consideration for such sale is an entrance fee)". Such an argument, if advanced, might be met in a number of ways. Firstly by the answer that the phrase "subject to the provisions of the Ordinance" qualifies "shall be charged" and not the exclusion so that it operates only to subject section 14 to other provisions granting relief. This answer is strengthened by the suggestion implicit in the words "as ascertained in accordance with this part." that section 24 does no more than indicate how profits are to be ascertained while section 14 charges them. Secondly it might be

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met by construing the word "chargeable" in section 24(2) as meaning "chargeable under section 14"; and thirdly by the argument that the phrase "entrance fee" in section 24(2) is not apt to describe the payments labelled "entrance fees" in the respondent's Articles of Association. None of these answers in itself may be conclusive but I am satisfied that the two sections read together do not clearly evince an intention to tax the subject on profits from entrance fees that are the consideration for the sale of a capital asset.

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For these reasons I would answer the questions posed by the case stated as follows:

(i) Did the Board err in law in finding that the sum of ~~£~~4,880,000 derived from entrance fees would not be chargeable to profits tax if it consists of receipts of a capital nature?

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A. No because they consisted not only of receipts of a capital nature but also of profits arising from the sale of capital assets.

(ii) Is there any or any sufficient evidence to support the Board's finding that the taxpayer's accounts show the entrance fees to be capital assets?

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A. The accounts themselves do not so show them. They do however show them to be capital items.

(iii) Did the Board err in law in failing to find that the entrance fees were of an income nature?

A. No. The construction of section 24(2) is such that had the profits arising from them been found not to be profits resulting from the sale of capital assets they would be taxable not because

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they were of an "income nature" but because they were deemed to be receipts from business and the respondent would have been chargeable in respect of the profits from them. This does not arise since I regard the profits arising from their receipt to be profits from the sale of capital assets.

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10 The respondent should have the costs of
this case stated.

Mr. Somerville, C.C. for Crown/Appellant
Mr. Beattie, Q.C. & Andrew Li (Woo & Woo) for
respondent.

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No. 3

JUDGMENT OF THE HONOURABLE
 MR. JUSTICE McMULLIN

IN THE COURT OF APPEAL 1975 No. 1
 (Inland Revenue)
 on appeal from the Board of Review

BETWEEN

COMMISSIONER OF INLAND
 REVENUE

Appellant

and

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FAR EAST EXCHANGE LTD.

Respondent

Coram: Briggs, C.J. McMullin & Leonard, JJ.
 Date: 5th October 1976

J U D G M E N T

McMullin, J.:

The Far East Exchange Ltd. is a company limited by guarantee, incorporated on the 31st of October 1969 under the Companies Ordinance. Its principal objects, as provided by Paragraph 3 of the Memorandum of Association, cover such matters as the providing of a securities market place where high standards of honour and integrity shall prevail; to promote honourable practices amongst its member brokers; to discourage and suppress malpractices and to settle disputes and differences between stock and share brokers or between stock or share brokers and their clients. The final one of these principal objects is in these terms :

"(e) To establish an Exchange or place of 30

meeting for stock and share
brokers."

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By Article 2 the number of members is limited to 150. By Article 9 members are to pay a monthly subscription of \$500 to the Exchange and by Article 11 an aspiring member is to pay an entrance fee the amount of which is to be decided by the committee. There were 11 founder members of the Exchange. We have not been informed how many members there were at the time of the assessment with which we are now concerned nor do we know what amount was paid by each individual by way of entrance fee. It can be assumed however that the fee was a very heavy one since the sum standing against that item in the company's books on the 31st of December 1970 was no less than \$7,680,000.

It is contended for the Crown that these fees are chargeable to corporation profits tax under Part 4 of the Inland Revenue Ordinance. The dispute between the taxpayer and the Crown arose in January 1973 when the assessor had examined the company's corporation profits tax return on its accounts for the year 1972/73. Prior to that apparently no question had been raised as to the possible liability of these fees to taxation. The company was then, however, informed that upon a review of the situation it was the assessor's opinion that such fees must be brought into computation under section 24(2) of the Ordinance for the purpose of assessing the tax due. Revised computations for the years 1969/70, 1970/71 and 1971/72 were presented to the company which in due course lodged objections to the additional assessments. For reasons which do not appear in the case stated, the additional profits tax assessment for the years 1969/70 and 1970/71 were, by consent of the parties, annulled but it was agreed that the sum of \$4,880,000 the subject of the additional assessment for the year 1971/72 was composed entirely of entrance fees paid to the taxpayer by its members. If chargeable to tax the sum to be paid by the taxpayer in respect thereof would be \$732,000.

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At the hearing of the appeal against this assessment before the Board of Review it was conceded by the taxpayer that it was a trade association within the description contained in section 24(2) and, further, that the whole of its income was to be deemed receipts from business within the terms of that section. It was however argued for the taxpayer that these fees, being of the nature of capital payments from the members of the Exchange, were so held in the hands of the taxpayer and were therefore not to be brought into computation as part of the company's income chargeable to tax under section 14. 10

For the Commissioner it was argued that the entrance fees were of the nature of income and not of capital in the hands of the taxpayer; secondly, that even if they were of the nature of capital payments, and even if they formed part of the capital assets of the taxpayer, they were, in any event, caught by the provisions of section 24(2) and were chargeable to tax. 20

The Board of Review came to the conclusion that the entrance fees were to be regarded as capital assets and were therefore not chargeable and they allowed the appeal. Against that decision the Commissioner now appeals.

Mr. Beattie, who appeared in this court for the respondent (the taxpayer) conceded that the finding of the Board was in error upon two matters, which however he regarded as being peripheral and immaterial to that finding. In arriving at their conclusion the members of the Board emphasized the fact that in the audited accounts of the respondent company the entrance fees are shown as a capital item. They regarded this as being in accordance with standard practice and they therefore considered that the Commissioner "had an onus upon him to prove that the entrance fees are of an income nature and thus exigible to tax..." They went on to find that he had not discharged that onus. Clearly that was wrong. It was for the respondent company to show that these funds were not subject to tax. The book entries are some 40

evidence that the taxpayer did regard these sums as being part of its capital assets, but the principle is well established that nomenclature is no safe guide to the intrinsic quality of such items in denoting whether in fact they are of a capital or revenue nature. (See Simon's Taxes Third Edition Vol. A at page 149 Para. A1.205). With Mr. Beattie however, I prefer to regard the reference to onus as nothing more than a somewhat unfortunate way of describing the effect which the evidence placed before them generally had upon the minds of the members of the Board in coming to their conclusion. In any event, upon the hearing of this appeal it is immaterial how the Board arrived at its conclusions. We are asked to say whether or not those conclusions are supportable upon the evidence showing how the sums accrued and were dealt with by the taxpayer and no material part of that evidence is presently in dispute. I think Mr. Beattie was right to say that there are but two issues before us, viz.: (a) are these fees of a capital nature? and, (b) if they are does the relevant part of the Inland Revenue Ordinance require them to be included as receipts of the company in computing the extent of the company's liability to profits tax? In the course of his argument Mr. Somerville for the Crown, perhaps by way of meeting an objection which did not materialise raised the question whether the Far East Exchange was to be considered as being of the nature of a mutual association such as was (in part at least) the insurance company in Municipal Mutual Insurance Ltd. v. Hills (H.M. Inspector of Taxes) (1932) 16 Tax Cases 430. In that case the revenue authorities conceded that the fire insurance business carried on by the company was a business of mutual insurance which did not attract liability to assessment to income tax. The reason for that would seem to have been that the fire policy holders constituted a body all the members of which contributed to a fund for the insurance of themselves against fire hazards and any surplus assets in that fund over and above the calls made upon it by contributors to the scheme would be returned to the contributors

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by way of bonus or premium reduction etc. The dispute concerned the other part of the company's business which was that of employer's liability and miscellaneous insurance. The court found that the surplus funds arising from the carrying on of that business, which was conducted not only with the members of the company but also with outsiders, were chargeable to tax as they did not arise from mutual insurance. Mr. Somerville felt constrained to argue that the Far East Exchange was not such a mutual association. I will not deal with the points of distinction which he sought to make in setting off the situation of the present respondent from that of the insurance company in Hills' Case (1932) 16 Tax Cases 430 (although I incline to the view that no adequate distinction exists) for the point appears to me to be entirely immaterial. It is common ground that the wording of section 24 of the Ordinance applies to such mutual associations provided the given association comes within the prescription of its opening clause. If, that is to say not less than half of its revenue comes from members' subscriptions the association will not escape the tax solely because its business is conducted only with its own members and its income derives wholly or substantially from them. Therefore even if the Far East Exchange is to be regarded as a mutual association with a total identity between the contributories and the participators coupled with a scheme of distribution of its asset in a manner which would not accord with the ordinary idea of trading profits it would not on that account escape taxation upon that surplus because section 24 appears to be specifically designed to extend the assessor's net to such funds. I pass to what appear to be the two basic issues before us.

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The first of these issues is whether the fees in question are to be considered part of the company's capital assets as distinct from income derived from its activities as a company. I used the word "activities" advisedly because the part of the Ordinance which we are considering, Part 4, relates to the charging of trading profits to tax and it is difficult to

regard this company as being in any ordinary sense a trading company. If it is, however, by virtue of the provisions of section 24 of the Ordinance, deemed to be carrying on a business and if it has profits which are taxable under this part of the Ordinance they must presumably be deemed to be trading profits. For a start, then, I think it is clear that, as Mr. Beattie contends, section 14 - the section creating profits tax - has no bearing upon any increment in the value of assets which are of a capital nature. I confess I am by no means sure of the nature of the boundary which sets off all things of a capital nature from those of the nature of income but I think it is clear at any rate that any increase in the value of a company's share capital or in the value of land or other such assets held by it cannot fall subject to any levy under this part of the Ordinance.

I think Mr. Beattie's illustration of the anomalous results of holding capital profits to be within the section was convincing. He points out that it would be strange if profits realised from the sale of a building are not to be taken in computation of taxable profits - as they are not, since they are expressly excluded by section 14 - whereas moneys recovered under an insurance policy after the building had been destroyed by fire would fall subject to computation if it be held that the express exclusion from computation of one sort of capital profits leaves included profits derived in any other way from a capital source. I think counsel rightly regarded as conclusive against this view the fact that by section 17(1)(c) no loss of a capital nature is permitted to be deducted for the purpose of ascertaining chargeable profits. It can scarcely have been the intention of the Legislature that a company should be charged upon insurance moneys so recovered, as upon trading profits, without being permitted to offset against such "profits" the value of the building - the capital asset lost by fire - when the insurance moneys represent merely the replacement in cash of the value of that capital asset. But in any event Mr. Somerville did not seriously dispute - and I think in the

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end he really admitted - that section 14 is restricted to profits of the nature of revenue deriving from trading. But he maintains (a) that these fees are in any event to be regarded as revenue derived from trading and, alternatively, (b) if they are not of that nature but are of a capital nature they are nevertheless by virtue of the provisions of section 24(2) deemed to be part of the whole of the income of the company chargeable to profits under that section.

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I have found it very difficult to derive from the decided cases (Sec) to which we were referred by counsel any clear endorsement in principle for the opposing views of counsel in the present case. In every case there are marked differences upon the facts and in none of the cases was the court considering legislative provisions substantially the same as those with which we are here concerned. Thus in Commissioner for Inland Revenue v. Transvaal Bookmakers Association (Co-operative) Ltd. (1953) 19 S.A. Tax Cases 14 under the particular legislation (section 7 and 7b of the South African Income Tax Act No. 31 of 1941) the onus was cast upon the taxpayer to show that certain entrance fees were (a) accruals of a capital nature and (b) that they were not received for services to be rendered. We do not know the precise wording of that provision and the decision of both the judges concerned with the appeal appear, so far as these fees are concerned, to turn upon the conclusion that the fees together with certain subscriptions were to be regarded as paid by the members of the association for services and facilities afforded to them by the association. The question whether they were capital or income seems to have been resolved wholly by reference to that conclusion. Unlike the fees in the present case which are not, under the Articles, refundable to members under any circumstances and which do not fall to be paid again by an incoming new member (with the possible exception of a vacancy occurring upon the expulsion of an existing member) there was provision in the Articles of the Association in the Transvaal Case (1953) 19 S.A. Tax Cases 14 for the payment of a fee by an incoming member

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in place of a member who had resigned, two-thirds of that fee going to the resigning member. The recurrent nature of those fees is, as Mr. Beattie points out, a factor setting off the Transvaal Case (1953) 19 S.A. Tax Cases 14 from the present case and tending to show that the fees were in truth of the nature of income deriving from transactions between the South African Association and its members. A further difference is that the Transvaal Co. was limited by share and not by guarantee as is the Far East Exchange. It is a point to keep in mind, because, although in the end the matter turns upon the precise interpretation of the legislative provisions involved, yet in considering the length to which the law is intended to extend it must not be forgotten that profits from trading in the ordinary commercial sense is a kind of yard-stick whereby the intention of the Legislature may be gathered. A company limited by guarantee (and not by share capital, giving its members the chance of a right to dividends if declared) is one which is, to quote the words of Palmer's company Law (21st Edition page 23) :

"at least in its pure form...obviously unsuitable as a form of organisation for ordinary business purposes..."

In the Liverpool Corn Trade Association Ltd. v. Monks (H.M. Inspector of Taxes) (1926) Tax Cases 442 the association was, once again, one of a mutual character but limited by shares upon which, at some stage in its history, dividends had been declared. The main purpose of the organisation was to provide a clearing house, a market, an exchange and arbitration and other facilities for the persons engaged in that trade. Non-members might however become subscribers and would be charged for the use of its facilities. For members and non-members alike these charges were proportionate to the use they made of the buildings and facilities of the association. Members paid entrance fees on becoming shareholders and there were also annual subscriptions. The point in issue was whether the amount by which the subscriptions and fees paid by the

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members over and above the cost of keeping up the building in affording the facilities was to be regarded as taxable profits of the company. Rowlatt, J. held that profits arising from the association's transactions with its own members, including entrance fees and subscriptions were to be regarded as profits for the purpose of Case 1 of Schedule D of the Income Tax Act 1918. In deciding that such an association can have profits the learned judge seems to have relied heavily on the fact that it was a company with share capital capable of yielding dividends to the shareholders and also on the fact that the assets of the company could be used for the purpose of getting payment for their use from members. The case is obviously of no great assistance here, but Mr. Somerville relies upon the judgment because in the course of it the learned judge referred to the entrance fees as a "sort of overriding subscription" and counsel enlists that somewhat adventitious support for his view that since it is not denied in the present case that subscriptions are of the nature of income so also must be the entrance fees. For my own part I cannot regard a glancing blow of that kind as possessing even the strength of obiter. Since there was at that date an express provision in the English Income Tax Act exempting from income tax the profits made by a society for dealing with its members one can only assume that the circumstances outlined above, special to that particular association, were such as to persuade the learned judge that the manner of the association's carrying on its business put it outside the protection thus afforded. Once again the facts and the legislative provisions involved seem to me to be too dissimilar to those concerned in the present case to enable me to extract anything by way of principle in the resolution of our present problem.

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In the Commissioner of Inland Revenue v. Cornish Mutual Assurance Co. Ltd. (1926) 12 Tax Cases 841 we do indeed have a company, like the present, limited not by share but by guarantee. The business of the association was

that of mutual fire insurance for the benefit of its members. Membership was, however, not limited but any person might become a member simply by taking out a policy from the association. Scrutton L.J. (at page 860) says :

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"It only insures its members, but persons become its members by taking a policy from it, so that it deals with the whole world but converts the whole world into its members when the assured takes its policy."

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Two questions fell to be resolved: firstly, whether the association could be said to carry on a trade or business within the meaning of section 52(2) of the Act 1920; secondly, whether the surplus funds arising from transactions with members were to be treated as profits of trading notwithstanding that the association was a mutual trading concern. So far as the second question was concerned the matter was directly covered by paragraph H of section 53 which provided that :

"Profits shall include in the case of mutual trading concerns the surplus arising from transactions with members."

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The real point to be decided therefore was whether or not the association did carry on a business. On appeal from the decision of Rowlatt, J. the several learned judges in the Court of Appeal unanimously dissented from the view - which had been accepted by the judge of first instance - that the decision in Styles v. New York Life Insurance Co. 2 Tax Cases 460 had established that such mutual associations do not carry on a trade at all. All of those learned judges, and later in the House of Lords on appeal, Viscount Cave, L.C. affirming this decision, took the view that this opinion of the learned judge at first instance was a misunderstanding of certain expressions used by Lord Watson in the Styles' Case 2 Tax Cases 460. Both

No. 3
 Judgment of
 the Honourable
 Mr. Justice
 McMullin
 5th October
 1976 -
 continued

the Court of Appeal and the House of Lords came to the conclusion that such associations do carry on a trade. Again, the facts and the points at issue and the relevant legislation differ widely from those with which we are concerned. Insofar as they are relevant however I am in full agreement with the analysis of certain of those decisions which appears in the judgment of Leonard J. which I have had the advantage of reading prior to forming my own mind upon the matter. 10

I am satisfied that the fees paid by the members in this case are of the nature of capital and not of income both in the hands of the members and of the taxpayer. I think Mr. Beattie is right when he says that the entrance fee is to be regarded as the purchase price of a seat upon the Exchange. No doubt that expression is to some extent metaphorical and it is true that the articles refer to the benefit of the seat rather than the seat itself. But the framers of the articles themselves seem to be in two minds about how the metaphor is related to the reality for although in Article 13 it is provided that all seats in the Exchange shall belong to the Exchange and that every member shall be entitled to the benefit of a seat allocated by the Committee, the same Article goes on to say that upon the expulsion of a member: 20 30

"the seat and all benefits appertaining thereto shall revert to the Exchange ..."
 (my emphasis).

I stress the following factors. (1) This is an association limited in membership to 150 persons. Every member as he is elected and when he pays his fee acquires his seat (or the benefit of it) for a period of unlimited duration which may extend to the end of his life. When he resigns he can nominate a successor to whom he can sell his seat (subject always of course to the approval of the appointed successor by the Committee and to the right of the association to recover from the moneys in its hands, realized from the sale of the seat, of anything owed to it by the resigning member). 40

What the member acquires, by election and payment of his fee, and what the Exchange gives in return for the fee is analogous to the sale of a partnership in a firm or to the sale of a business together with its goodwill. What is given on one side and received on the other is, in the case of each member, as simple and as final a transaction as any such sale. (2) The payment of this fee secures to the member the benefit of one seat out of that 150. The disposable seats are successively reduced in number by such sales. (3) The seat is permanently parted with subject to a possible re-allocation upon expulsion. (4) The seat can be sold by a member to anyone - subject only to the successor's being approved by the Committee. (5) The entrance fees are not refundable. (6) The fees are of a once-and-for all, non-recurrent nature. I would like to say something further on this last matter. Unlike Mr. Somerville I regard the element of non-recurrence in the payment of these fees as a matter of considerable importance in denoting the nature of these funds. I regard as wholly unreal the suggestion that because all of the potential 150 members do not pay their fees at one and the same time this piecemeal fee payment must be regarded as having in itself an element of recurrence in the payment of fees. The question of recurrence falls to be considered in relation to the individual member and the individual seat. As to that, with the possible exception of a vacancy which occurs upon the expulsion of a member, there is no element of recurrence at all. Insofar as such an element does arise upon the expulsion of a member I would regard that feature of the situation, as Mr. Beattie asks us to regard it, as a factor de minimis.

No. 3

Judgment of
 the Honourable
 Mr. Justice
 McMullin
 5th October
 1976 -
 continued

As to section 24(2) itself, it is to be noted that it makes the percentage of "subscriptions" the qualifying mark whereby an association of this kind is to be deemed to be carrying on a business. It is easy enough to see that regular monthly or other subscriptions can be regarded as income on

No.3
 Judgment of
 the Honourable
 Mr. Justice
 McMullin
 5th October
 1976 -
 continued

, the same footing as periodic receipts from any commercial enterprise. But where the Legislature extends that notion of business receipts to membership fees one would expect that it would do so in the same basis, viz.: that such fees were also a recurrent periodic incoming revenue from members of the association. In some of the decided cases the fees were of that nature, either because there was an element of recurrence deriving from the departure of an existing member or else because, membership being unlimited, the association could look forward to indefinite future accruals of revenue from that source. But where from the outset the number of fees recoverable is limited to a certain figure and where there is nothing truly recurrent in their incidence, the notion of this being a receipt from trade is more than artificial - it is quite unrealistic. The Far East Exchange is not in the business of selling seats on a stock exchange - not even on this particular Exchange. If it were, the money received from each such sale would indeed be an item of its income. Rather, it is in the business of managing premises and providing facilities on behalf of a limited number of stockbrokers whose patronage it enlists by selling its principal assets - the seats upon the exchange - plus their appurtenant benefits - to those stockbrokers at a stated price.

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My conclusion therefore is that these fees are to be regarded as profits of a company arising from the sale of capital assets and therefore expressly excluded from charge under section 14 and that they are correspondingly excluded from the words in brackets in subsection 2 of section 24 - "(including entrance fees and subscriptions)". It may be that a case would arise in which fees were shown to be of the nature of capital and yet not deriving from the sale of a capital asset and in such a case it may well be that it would be right to say that the words just now quoted within the brackets operate either to extend the ordinary technical meaning of the word "income" which occurs earlier in the

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section or else that that word is to be understood in a wider and non-technical sense as "all incomings" in which case entrance fees of a capital nature, but not deriving from sale of a capital asset would be caught by the subsection. I am aware that section 14 commences with the words "subject to the provisions of this Ordinance..." but I cannot think that they operate to expel these funds from their refuge between the brackets in section 14 on the ground that the words bracketed in section 24(2) extend to capture any funds which may be labelled "fees". I cannot believe that the Legislature intended to strike with one hand at resources which it sought to protect with the other or that in extending the notion of trading profits to members' subscriptions it wished further to extend it to entrance fees, unless these were of the nature of subscriptions. It may be that the opening words of section 14 are intended to save later provisions, such as section 87 which gives the Governor power to exempt from taxation any person or body but as to that I would prefer not to express a decided opinion. For the reasons given however the appeal must fail and I would answer the questions posed by the Board in the same way as my brother Leonard.

No. 3

Judgment of
 the Honourable
 Mr. Justice
 McMullin
 5th October
 1976 -
 continued

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Mr. Somerville, C.C. for Crown /Appellant
 Mr. Beattie, Q.C. & Andrew Li (Woo & Woo) for
 respondent.

No. 4

Judgment of
the Honourable
Sir Geoffrey
Briggs, Chief
Justice
5th October
1976

No. 4

JUDGMENT OF THE HONOURABLE
SIR GEOFFREY BRIGGS, CHIEF
JUSTICE

IN THE COURT OF APPEAL
on appeal from the Board of Review

BETWEEN:

COMMISSIONER OF INLAND
REVENUE

Appellant

and

10

FAR EAST EXCHANGE LTD.

Respondent

Coram: Briggs, C.J.
McMullin & Leonard, JJ.

Date: 5th October, 1976

J U D G M E N T

I have read the judgments of the other
two judges in this case, with which I am
in complete agreement.

(Signed)

(Geoffrey Briggs)
President.

20

41.

No. 5

ORDER DISMISSING APPEAL
BY WAY OF CASE STATED

No. 5

Order dis-
missing
Appeal by
way of Case
Stated
5th October
1976

B E T W E E N :

COMMISSIONER OF INLAND
REVENUE Appellant

and

FAR EAST EXCHANGE LTD. Respondent

BEFORE THE HONOURABLE SIR GEOFFREY BRIGGS,
CHIEF JUSTICE, THE HONOURABLE MR. JUSTICE
MCMULLIN AND THE HONOURABLE MR. JUSTICE
LEONARD IN THE COURT OF APPEAL

10

O R D E R

UPON Appeal by way of case stated from
the decision of the Board of Review dated
the 10th day of March 1975 made unto this Court
by counsel for the Appellant.

AND UPON hearing Counsel for the Appellant
and for the Respondent.

20

AND UPON reading the said case stated.

THIS COURT DID ORDER that the said appeal
should stand for judgment.

AND the said appeal standing this day for
judgment in the presence of counsel for the
Appellant and for the Respondent.

THIS COURT DOTH ORDER that the said
decision dated the 10th day of March 1975 be
affirmed.

No. 5
Order dis-
missing
Appeal by
way of Case
Stated
5th October
1976 -
continued

AND IT IS ORDERED that the Appellant do
pay to the Respondent its costs occasioned
by the said appeal such costs to be taxed.

Registrar.

No. 6
Notice of
Motion for
Leave to
Appeal to
Her Majesty
in Council
18th October
1976

No. 6

NOTICE OF MOTION FOR
LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

BETWEEN:

COLLECTOR OF INLAND REVENUE Appellant 10

and

FAR EAST EXCHANGE LTD. Respondent

TAKE NOTICE that the Court of Appeal will
be moved on Wednesday the 3rd day of November
1976 at 9.30 o'clock in the forenoon on the
sitting of the Court, or so soon thereafter as
Counsel can be heard, by Counsel on behalf of
the abovenamed Appellant for an order that
leave be granted to the Appellant to appeal to
Her Majesty the Queen in Her Privy Council from
the decision and judgment of this Honourable
Court pronounced by the Court on the 5th day of
October 1976 the Appellant undertaking to comply
with the provisions of the Rules and Instructions
concerning Appeals to Her Majesty the Queen
in Her Privy Council.

20

Dated the 18th day of October 1976.

43.

S.H. Mayor

Registrar

signed

(H.J. Somerville)
Counsel for the Appellant

To the abovenamed Respondent, Far East Exchange
Ltd., and its Solicitors, Messrs. Woo & Woo

Estimated time: not exceeding 15 minutes

No. 6

Notice of
Motion for
Leave to
Appeal to
Her Majesty
in Council
18th October
1976 -
continued

No. 7

ORDER ALLOWING CONDITIONAL
LEAVE TO APPEAL TO HER
MAJESTY IN COUNCIL

BETWEEN:

COMMISSIONERS OF INLAND
REVENUE

Appellant

and

FAR EAST EXCHANGE LTD.

Respondent

BEFORE THE HONOURABLE MR. JUSTICE MCMULLIN AND
MR. JUSTICE LEONARD IN COURT

O R D E R

UPON the application of the Appellant, and upon hearing Counsel for the Appellant and the counsel for the Respondent IT IS ORDERED that leave be granted to the Appellant to appeal to Her Majesty the Queen in Her Privy Council from

No. 7

Order allow-
ing condi-
tional leave
to Appeal to
Her Majesty
in Council
3rd November
1976

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No. 7
 Order allow-
 ing condi-
 tional leave
 to appeal to
 Her Majesty
 in Council
 3rd November
 1976 -
 continued

the decision and Judgment of this Honourable Court pronounced by the Court of Appeal on the 5th day of October 1976 provided that security be furnished in the form of undertaking by the Attorney General on behalf of the Crown in the amount stipulated by Rule 3 of Order in Council not exceeding \$30,000 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 him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of the Appeal to be given to the Respondent and that Record of documents in the Appeal to Privy Council to be prepared and despatched to England within 3 months from today's date; and the costs of this application be costs in the appeal.

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Dated the 3rd day of November, 1976

S.H. Mayo

Registrar

45.

No. 8

ORDER ALLOWING FINAL LEAVE
TO APPEAL TO HER MAJESTY
IN COUNCIL

BETWEEN:

COMMISSIONER OF INLAND
REVENUE

Appellant

and

FAR EAST EXCHANGE LTD.

Respondent

No.8

Order allow-
ing Final
Leave to
appeal to
Her Majesty
in Council
8th March
1977

10

BEFORE THE HONOURABLE SIR GEOFFREY BRIGGS,
CHIEF JUSTICE AND THE HONOURABLE MR. JUSTICE
MCMULLIN IN COURT

O R D E R

UPON hearing Counsel for the Appellant and
for the Respondent, IT IS ORDERED that the
Appellant do have final leave to appeal to Her
Majesty in her Privy Council from the decision
and judgment of the Court of Appeal pronounced
on the 5th day of October, 1976.

20

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

Dated the 8th day of March, 1977

(Sgd)

(S.H. MAYO)
Registrar

Exhibit A1
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
31st October
1969 -

EXHIBITS

A1 - MEMORANDUM AND ARTICLES OF
ASSOCIATION OF THE FAR EAST
EXCHANGE LIMITED

ANNEXURE A1

M E M O R A N D U M
AND
ARTICLES OF ASSOCIATION
OF THE
FAR EAST EXCHANGE LIMITED

10

Incorporated the 31st day of October, 1969

WOO and WOO
Solicitors & c.
HONG KONG

COMPANIES ORDINANCE
(CHAPTER 32)

SPECIAL RESOLUTION
of
FAR EAST EXCHANGE LIMITED

Passed on the 13th November 1969

20

At an Extraordinary General Meeting of member duly held and convened at the Registered Office, Room 201, China Building Hong Kong on the 13th day of November 1969, the following resolution was duly passed as Special Resolution :-

"That Article 24 of the Articles of Association be deleted and be substituted by the following :-

24. Subject to the approval of the Committee, a Member may appoint a lawful Attorney to act for him in all matter concerning his business and activities as a Member. The Attorney may conclude bargains on behalf of his principal. A Member and his partners (if any) will be fully liable for the acts of the Attorney so appointed. Until the Attorney is removed and

notice in writing to that effect shall have been given to the Committee, all the rights of the Member (including the rights of access to the Exchange) will remain vested only with the Attorney.

Ronald Fook Shiu Li
Chairman

Exhibit A1
Memorandum
and Articles
of Association
of
the Far East
Exchange
Limited
31st October
1969 -
continued

COMPANIES ORDINANCE
(CHAPTER 32)

SPECIAL RESOLUTIONS
of

FAR EAST EXCHANGE LIMITED

Passed on the 20th November, 1969

At an Extraordinary General Meeting of members duly held and convened at the Registered Office, Room 201, China Building, Hong Kong on the 20th day of November, 1969, the following resolutions were duly passed as Special Resolutions :-

1. That for the purpose of carrying on its business more efficiently the following clause be added to Clause 3(n) to the Memorandum of Association :-

(n) to draw make accept endorse discount execute and issue Promissory Notes, Bills of Exchange, warrants debentures and other negotiable or transferable instruments.

2. That Article 46 of the Articles of Association be deleted and be substituted by the following :-

46. All cheques shall be signed by such Members of the Committee, officers or persons as the Committee shall authorize.

Ronald Fook Shiu Li
Chairman

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Exhibit A1
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
31st October
1969 -
continued

COPY
CERTIFICATE OF INCORPORATION

I HEREBY CERTIFY that
FAR EAST EXCHANGE LIMITED

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

GIVEN under my hand this Thirty-first
day of October, One thousand nine hundred
and sixty-nine.

10

(Sd.) R. KWAN
for Registrar of Companies
Hong Kong

Hong Kong
Stamp Duty
\$20.00
24.10.69

MEMORANDUM OF ASSOCIATION
OF THE
FAR EAST EXCHANGE LIMITED

20

1. The name of the Association is the
"FAR EAST EXCHANGE LIMITED ()".

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 provide a securities market place where high standards of honour and integrity shall prevail, and to promote and maintain just and equitable principles of trade and business.
- (b) To protect the interests of such brokers, and to promote honourable practices and to discourage and suppress malpractices.
- 10 (c) To record transactions between such brokers and to furnish reliable quotations of the price of shares and stocks, if called upon to do so.
- (d) To act as arbitrator in the settlement, if desired to do so, of all disputes and differences between stock and share brokers or between stock or share brokers and their clients arising in the course of business.
- 20 (e) To establish an Exchange or place of meeting for stock and share brokers.
- (f) To make rules for any of the above purposes and to make and from time to time alter (if necessary) a scale of charges for brokerage in share transactions.
- 30 (g) To purchase, take on lease, hire or otherwise acquire a suitable room or rooms, building or buildings in Hong Kong for a Stock Exchange; to fit and furnish the same as an Exchange, or to cause the same to be suitably fitted and furnished.
- (h) To carry on in the premises so purchased, leased or otherwise acquired the business of a Stock Exchange.
- (i) To construct, maintain and alter any buildings necessary or convenient for the purposes of the Association.
- 40 (j) To borrow any monies required for the

Exhibit A1
 Memorandum
 and Articles
 of Association
 of
 the Far East
 Exchange
 Limited
 31st October
 1969 -
 continued

Exhibit A1
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 31st October
 1969 -
 continued

purposes of the Association upon such securities as may be determined, and to invest the monies of the Association upon such securities 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.

- (k) Generally to purchase, take on lease or exchange, hire or otherwise acquire, or obtain options over any real and personal property 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. 10
- (l) 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. 20 30
- (m) To borrow, raise or secure the payment of moneys 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, 40

and to reissue any such securities for such consideration or purpose as may be thought fit.

Exhibit A1
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
31st October
1969 -
continued

10 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.

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

Names, Addresses and Description of Subscribers

RONALD FOOK SHIU LI
9, Shouson Hill Road East,
Hong Kong,
Certified Accountant.

WONG KAI MING
9A, Bowen Road,
Hong Kong,
Managing Director

30 LI FOOK HING
8, Barker Road,
The Peak,
Hong Kong,
Naval Architect.

PING K. NG
111, Robinson Road,
2nd Floor,
Hong Kong,
Architect-Structural Engineer.

Exhibit A1 Names, Addresses and Descriptions of Subscribers

Memorandum
and Articles
of Association
of
the Far East
Exchange
Limited
31st October
1969 -
continued

KWAN MAN WAI
10, Shek O Headland,
Hong Kong,
Certified Accountant.

PAK KWONG
31, Lyttelton Road,
1st Floor,
Hong Kong,
Architect.

10

FUNG SUN CHUNG
234, Prince Edward Road,
Kowloon,
Merchant.

MURJANI BHAGWANDAS KEWALRAM
3, Henderson Road,
Jardine Lookout,
Hong Kong,
Merchant.

EDWARD P.H. WOO
23, Kennedy Road,
7th Floor,
Hong Kong,
Solicitor.

20

AUDREY PEI-FUNG CHOW
57, Beacon Hill Road,
5th Floor, Flat A,
Kowloon
Married Woman.

LIU LIT MAN
Lieu Chong Hing Bank Ltd.,
24, Des Voeux Road Central,
Hong Kong,
Banker.

30

Dated the 21st day of October 1969

WITNESS to the above signatures:

(Sd.) WOO TSZ TONG
Solicitor
HONG KONG

ARTICLES OF ASSOCIATION Hong Kong
 Stamp Duty
 \$20.00
 24.10.69
 OF THE
 FAR EAST EXCHANGE LIMITED

Exhibit A1
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 31st October
 1969 -
 continued

PRELIMINARY

Inter-pretation 1. The marginal notes hereto shall not affect construction hereof, and in these Articles unless there is something in the subject or context inconsistent therewith:-

10 "The Exchange" means the "FAR EAST EXCHANGE LIMITED ()".

"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.

20 "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 or Honorary Secretary of the Exchange.

30 "The Treasurer" means the person for the time being performing the duties of Treasurer or Honorary 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.

Exhibit A1
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 31st October
 1969 -
 continued

"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. 10

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

MEMBERSHIP

Limita-
 tion of
 number
 of
 members

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

Who may
 be
 Members

3. Any person of the age of twenty-one years and upwards, who desires to carry on the business of a stockbroker, 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 but the Committee shall not be required to give any reason for its refusal whatsoever. 20

Appli-
 cation
 for
 Member-
 ship

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 :- 30

To the Committee of the
 FAR EAST EXCHANGE LIMITED 40

Gentlemen,

Exhibit A1
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
31st October
1969 -
continued

10

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 Rules of the Exchange, and I hereby authorise you, in the event of my election, to enter my name on the Register of 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.

The following particulars are correct :-

Full name and candidate

Address

Age

20

Names and addresses 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 Far East Exchange Limited.

Proposer

Secunder

Dated

30

Inform- (b) The candidate and his proposer
ation and seunder shall give all such informa-
regard- tion regarding the candidate's character
ing can- antecedents or otherwise as may be
didate required from him or them by the
Committee.

Exhibit A1
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 31st October
 1969 -
 continued

Notice of candidature (c) Seven clear days before the meeting of the Committee at which such candidate is to be balloted for, notice of the candidature shall be posted on a board to be kept for that purpose on the premises of the Exchange and shall be posted to each member of the Committee present in the Colony.

(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. 10

(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) The balloting Committee shall be formed of the General Committee for the time being. 20

(g) At each ballot seven members voting shall be sufficient to form a ballot and three members of Committee shall open the Ballot Box. Three black balls to exclude.

(h) 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 thereafter. 30

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

(j) The General Committee may for any purpose thought desirable suspend and appoint a later date for a ballot without any further posting of notice of candidature.

Notice of election 5. On the election of a member the fact shall forthwith be notified to him in 40

writing by the Secretary, and a copy of the Memorandum and Rules of the Exchange shall be sent 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 election and payment of the prescribed 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.

Exhibit A1
Memorandum
and Articles
of Association
of
the Far East
Exchange
Limited
31st October
1969 -
continued

10

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 was material.

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Notice of re-jection 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

Address- 8. The address given by every es of member in his proposal form shall be members his registered address, unless and for until any member shall change his election registered address by notice in writing to the Secretary.

30

SUBSCRIPTIONS AND ENTRANCE FEES OF MEMBERS

Annual Subscr- 9. The Subscription to the Exchange iption shall be such sum not exceeding \$500.00 per month as the Committee may from time to time determine to be paid monthly in advance on the first day of each month. A member elected after the first day in any month shall not

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Exhibit A1
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 31st October
 1969 -
 continued

be liable to pay his monthly subscrip-
 tion 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.

Default
 in pay-
 ment of
 Subscr-
 iption

10. If any member fails to pay
 any subscription or any other indebted-
 ness or any part thereof within one
 month of 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.

10

Entrance
 fee

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

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PARTNERSHIPS

Members
 not to
 be in
 part-
 nership
 without
 consent

12. No member of the Exchange shall
 enter into or be in partnership with
 any person resident or carrying on
 business in this Colony without the
 consent in writing of the Exchange.

SEATS ON THE EXCHANGE

Seats
 on Ex-
 change

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.

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- 10 Privi- 14. No member, other than the
leges of right of disposal upon resignation,
member- shall assign any rights, benefits or
ship not privileges of membership or create
to be any pledge, hypothecation or lien
assigned thereon or therein, and no notice
of any assignment, pledge, hypothe-
cation 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.
- 20 Resig- 15. Any member, unless under
nation suspension, may give one calendar
of month's notice in writing of his
member 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 resigna-
tion given by a member called upon to
resign by the Committee shall not
be withdrawn.
- 30 Nomina- 16. Any member who has given
tion of notice of resignation may from the
new date thereof until such notice expires
member nominate or cause to be nominated
to fill and put up for election as a member
vacancy such person desirous of becoming a
member to fill the vacancy. The
nominee if approved will not be
required to pay any Entrance Fee.
- 40 Death 17. On the death or bankruptcy
or of any member his membership shall
Bank- cease and a vacancy in the membership
ruptcy shall occur. Upon any vacancy in the
of membership occurring through the death
member 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

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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.

Alloca-
 tion of
 moneys
 received
 from new
 member

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 and paid by 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.

10

20

Vacancy
 on ex-
 pulsion

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

Powers
 of Com-
 mittee
 on
 vacancy
 occur-
 ring

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.

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21. Subject as 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

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10 Employment of authorized clerk 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.

20 (b) Subject to registration, a member may employ Sales Representatives. A Sales 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.

Members liable for bargains made by clerk 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 and usages of the Exchange for bargains personally made by them.

30 No member to authorize any person other than his authorized clerk to conclude bargains 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.

40 Registration 25. Every Authorized Clerk and Sales Representative shall make an application in writing in the form authorized by the Committee to be registered, and agree to come under the rulings of the Committee, and if he is approved of,

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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.

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.

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SUBSCRIPTIONS AND ENTRANCE FEES OF AUTHORIZED CLERKS AND SALES REPRESENTATIVE

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.

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FOUNDERS

28. (a) Messrs. Ronald Fook Shiu Li, B.K. Murjani, Ping K. Ng, Liu Lit Man, Pak Kwong, Kwan Man Wai, Wong Kai Ming, Li Fook Hing, Fung Sun Chung, Edward P.H. Woo and Madam Audrey Chow shall be Founders of the Exchange.

(b) Each of the Founders shall contribute a sum not exceeding H.K.\$50,000.00 towards the establishment of the Exchange.

(c) A Founder shall be entitled to nominate a respectable person to be a member of the Exchange and such nominated member shall

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not be required to pay any Entrance Fee for his admission. In the absence and until such nomination, a Founder shall be entitled to a seat in the Exchange.

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(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.

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(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

Offices

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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 2 Vice Chairmen.

30. (a) The first Chairman shall be Mr. Ronald Fook Shiu Li.

(b) The first Vice-Chairmen shall be Mr. B.K. Murjani and Mr. Ping K. Ng.

Secre-
tary

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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.

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Vacancies 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.

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

ROTATION OF COMMITTEE

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-Chairmen and the Secretary 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.

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Meetings of Committee 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.

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Any three members of Committee may convene meeting 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.

Power of quorum 37. A meeting of the Committee for the time being at which a quorum is present shall be competent to exercise

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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.

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When acts
of
Committee
valid
notwith-
standing
defective
appointment

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.

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Chairman

39. The Chairman or in his absence the Vice-Chairmen 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 and when required and shall give to the Committee all the information in his power which the Committee may require.

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MINUTES

Minutes
to be made

40. 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.

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(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.

Minutes to
be open to
inspection
of members

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

And any such minutes of any such meeting

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of the Committee, Sub-Committee or the Exchange, if purporting 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

- Powers of Exchange vested in Committee 10
41. 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.
- Powers of Committee
42. 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. 20
- (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. 30
- (d) To enter into such contracts and do all such acts and things 40

as they may think fit for the purposes of the Exchange

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- (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.
- (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 interests 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 forms of contract, the regulation of

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 tion of
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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. 10

(l) In the event of a member making complaint in writing to the Committee that another member has not observed the rules or bye-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. 20 30

Copies of
 rules and
 amendments
 to be sent
 to members

43. 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 posted upon the Notice board in the Exchange. 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 40

of a general meeting of the Exchange.

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THE SECRETARY AND TREASURERS

Secretary

44. (a) The Secretary and 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.

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Register of
Members,
etc.

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

ACCOUNTS

Accounts

45. The Committee shall cause true accounts to be kept of the moneys received and expended by and of the assets, credits and liabilities of the Exchange, and at the Ordinary Meeting in each year shall lay before the members a Statement of Accounts and Balance Sheet made up to a date not more than three months before the meeting from the time when the last preceding balance sheet was made up. Every such Statement of Accounts and Balance Sheet shall be signed by at least two members of the Committee and the Secretary.

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Cheques

46. All cheques shall be signed by the Secretary or Treasurer and the Chairman or, in his absence, one other member of the Committee.

SEAL

Seal

47. The Seal of the Exchange shall never 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

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 tion of
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they shall sign every document to
 which the seal is affixed.

AUDIT

Appoint-
 ment of
 Auditors

48. The Exchange shall at each .
 Annual General Meeting appoint an auditor
 or auditors authorized as such according
 to the provisions of the Companies
 Ordinance of the Exchange to hold office
 until the next Annual General Meeting
 who shall examine and certify to the
 correctness of the Accounts of the
 Exchange and issue a balance sheet.

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Provisions
 as to
 Auditors

49. (a) A person other than a
 retiring auditor shall not be capable
 of being appointed an auditor at an
 Annual General Meeting unless notice
 of the intention to nominate that person
 as auditor shall have been given by a
 member to the Committee not less than
 fourteen days before the Meeting, and the
 Committee shall send a copy of any such
 notice to the retiring auditor and shall
 give notice thereto to the Members
 either by advertisement or in any other
 mode allowed by these Articles not less
 than seven days before the Annual
 General Meeting.

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(b) The Committee may fill any
 casual vacancy in the office of auditor.

(c) The auditor or auditors shall 30
 make a report to the members on the
 accounts examined by them and on every
 balance sheet laid before the members
 in General Meeting during their tenure
 of office, and the report shall state :-

(1) Whether or not he has or
 they have obtained all the
 information and explanations
 that he has or they have
 required.

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(2) Whether in his or their

opinion the Balance Sheet referred to in his or their Report is properly drawn up so as to exhibit a true and correct view of the state of the Exchange's affairs according to the best of his or their information and the explanations given to him or them and as shewn by the books of the Exchange.

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(d) A member shall not be qualified for appointment as auditor of the Exchange, nor shall a person who is a partner of or in the employment of a member.

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(e) Every auditor shall have access at all times to the books and accounts of the Exchange and shall be entitled to require from the Committee all such information as may be necessary for the performance of the duties of the auditors and they shall be entitled to attend any General Meeting of the Exchange in respect of such accounts.

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GENERAL MEETINGS

General
Meeting of
Members

50. 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. Any matter relating to the constitution and management of the Exchange may also be discussed at such meeting. Such meetings shall be called

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Ordinary Meeting; all other meetings of the Exchange shall be called Extraordinary Meetings. The first General Meeting shall be held on or before the 31st March.

When
 Extra-
 ordinary
 meeting
 to be
 called

51. 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. 20
- (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. 30
- (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 meetings are to be convened by the Committee. 40

Quorum

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

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Evidence
of pass-
ing of
resolution
where no
poll

53. At any meeting 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.

10

Poll

54. 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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No
proxies

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Other
business to
proceed
notwith-
standing
demand of
poll

55. 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.

Disqualifi-
cation from
voting

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

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Adjourn-
ment of
general
meetings

57. 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

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Power to
 adjourn
 meetings

week at the same time and place, and if at such adjourned meeting a quorum is not present shall be a quorum and may transact the business for which the meeting was called.

58. 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.

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Chairman
 of meeting

59. 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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Notice
 of
 meetings

60. 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.

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Omission
 to give
 notice

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

BANKRUPTCY AND OFFENCES

62. (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

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member of the Exchange until such Petition has been heard and been adjudicated upon.

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Effect of
bankruptcy
etc. of
member

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(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.

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(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

Liability
of members
for their
engage-
ments

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63. (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 which 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.

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Members'
accounts

(b) The Committee shall have power by notice in writing to call upon any member or members whenever

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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

Power of
 expulsion
 and sus-
 pension

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

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- (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

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- 10 (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
- (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 any article or rule of the Exchange; or
- 20 (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
- 30 (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
- 40 (j) That any member has been convicted of a criminal offence; or

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- (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 the members of such Committee present in the Colony.

Committee may re-commend resignation in lieu of expulsion

65. 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.

Conclusive evidence of expulsion or suspension

66. 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.

Exhibit A1
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
31st October
1969 -
continued

Suspension until enquiry held 67. 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.

10 Evidence

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

Voting on expulsion

69. 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 show of hands.

20

Publica-
tion of
names of
persons
expelled

70. The Committee shall have power to publish in the local newspapers the name of any member expelled in 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 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.

30

Reports
to be
made of
malprac-
tices
etc.

40

71. 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.

Exhibit A1
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
31st October
1969 -
continued

Privi- 72. Any complaint made or informa-
leged tion given a member or by any other
communi- person, body or firm to the Committee
cations or the Secretary in respect of any
member of the Exchange shall be
privileged.

Person 73. No person who has been
expelled expelled from the Exchange shall be
not eli- eligible for re-election.
gible

for re- 74. No member of the Exchange shall 10
election have the right to be represented at
any meeting of the Committee held under
Article 64 by solicitor or counsel but
he may if he so desires solicit the
assistance of another member of the
Exchange.

INDEMNITY TO OFFICERS

Indemni- 75. Every member of the Committee
ty to and all officers and servants of the
officers Exchange shall be indemnified by the 20
Exchange against all 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 30
a lien on the property and and assets
of the Exchange and have priority as
between the members over all other
claims.

NOTICES

76. (a) A notice may be served by
the Exchange upon any member :-

Service (1) Either personally or by sending
by post it through the Post Office in a
or de- prepaid cover or letter 40
livery addressed to such member at
his registered address;

By posting
in the
Exchange

(2) By posting such notice
upon such notice board
in the office of the
Exchange.

Exhibit A1
Memorandum
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tion of
the Far East
Exchange
Limited
31st October
1969 -
continued

10

(b) Any notice sent by post
shall be deemed to have been served
when the cover or letter containing
the same would be delivered in the
ordinary course of Post; and in
proving such service it shall be
sufficient to prove that the cover
or letter containing the notice was
properly addressed and put in the
Post.

20

(c) A notice so posted up in
the office of the Exchange shall be
deemed to be well served at the
expiration of twenty-four hours
after it is so posted up and a
declaration by the Secretary or any
member of the Committee that any
such notice was posted on the notice
board on a certain date shall be
conclusive evidence of the fact.

WINDING UP

30

Winding
up when
member-
ship
falls
below
twenty

77. If at any time the number of
members falls below twenty the Committee
shall summon an Extraordinary General
Meeting, and such meeting may by an
extraordinary resolution declare that
the Exchange ought to be wound up, and
on such resolution being passed the
Exchange shall be wound up accordingly.

Names, addresses and descriptions of
subscribers

RONALD FOOK SHIU LI
9, Shouson Hill Road East,
Hong Kong,
Certified Accountant

Exhibit A1

Names, addresses and description of subscribers

Memorandum
and Articles
of Association
of the Far East
Exchange
Limited
31st October
1969 -
continued

WONG KAU MING 9A, Bowen Road, Hong Kong, Managing Director.	
LI FOOK HING 8, Barker Road, The Peak, Hong Kong, Naval Architect	10
PING K. NG 111, Robinson Road, 2nd Floor, Hong Kong, Architect-Structural Engineer	
KWAN MAN WAI 10, Shek O Headland, Hong Kong, Certified Accountant	
PAK KWONG 31, Lyttelton Road, 1st Floor, Hong Kong, Architect.	20
FUND SUN CHUNG 234, Prince Edward Road, Kowloon, Merchant.	
MURJANI BHAGWANDAS KEWALRAM 3, Henderson Road, Jardine Lookout, Hong Kong, Merchant.	30
EDWARD P.H. WOO 23, Kennedy Road, 7th Floor, Hong Kong, Solicitor.	

Names, addresses and description of subscribers	Exhibit A1
AUDREY PEI-FUNG CHOW 57, Beacon Hill Road, 5th Floor, Flat A, Kowloon, Married Woman.	Memorandum and Articles of Associa- tion of the Far East Exchange Limited 31st October 1969 - continued
LIU LIT MAN Liu Chong Hing Bank Ltd., 24, Des Voeux Road Central, Hong Kong, Banker.	

10

Dated the 21st day of October, 1969

WITNESS to the above signatures:

(Sgd.) WOO TSZ TONG
 Solicitor,
 HONG KONG.

EXHIBITS

Exhibit A 2
Amended
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
24th November
1970

A2 - AMENDED MEMORANDUM AND
ARTICLES OF ASSOCIATION OF
THE FAR EAST EXCHANGE LIMITED

ANNEXURE A2

M E M O R A N D U M
AND
ARTICLES OF ASSOCIATION
OF
FAR EAST EXCHANGE LIMITED

10

As altered by Special Resolution
passed on the 24th day of November, 1970

WOO AND WOO
Solicitors &c.
HONG KONG

Re-printed by
EMPIRE PRINTING COMPANY
Tung Chong Factory Bldg.,
658 King's Road
2nd Floor, Flat A
Hong Kong
TEL: H-610902
1970

20

C O P Y

CERTIFICATE OF INCORPORATION

I HEREBY CERTIFY that

FAR EAST EXCHANGE LIMITED

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

30

GIVEN under my hand this Thirty-first day of October, One thousand nine hundred and sixty-nine

(Sd.) Sham Fai
for Registrar of Companies
Hong Kong

Exhibit A2
Amended
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
24th November
1970 -
continued

COMPANIES ORDINANCE (CHAPTER 32)

SPECIAL RESOLUTION
OF
FAR EAST EXCHANGE LIMITED

10

Passed on the 25th November, 1970

At an Extraordinary General Meeting of members duly held and convened at the Registered Office, Room 201, China Building, Hong Kong on the 24th day of November, 1970 the following resolutions were duly passed as Special Resolutions :-

20

1. That for the purpose of carrying on its business more efficiently the Memorandum of Association be amended by the addition of the new objects as contained in sub-clauses 3(o), (p), (q) and (r) set out in the new Memorandum of Association as produced to the meeting, and for the purpose of identification, subscribed by Mr. Ronald Fook-Shiu Li, the Chairman of the Exchange.

30

2. That the new Articles of Association as produced to the meeting, and for the purpose of identification, subscribed by Mr. Ronald Fook-Shiu Li, the Chairman of the Exchange, be adopted as the Articles of Association of the Exchange in substitution for the existing Articles of Association of the Exchange.

Ronald Fook-Shiu Li
Chairman

Exhibit A2
 Amended
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 24th November
 1970 -
 continued

Hong Kong
 Stamp Duty
 \$20.00
 24.10.69

MEMORANDUM OF ASSOCIATION
 OF THE
 FAR EAST EXCHANGE LIMITED

1. The name of the Association is the "FAR EAST EXCHANGE LIMITED ()".
2. The Registered Office of the Association will be situate in Victoria, Hong Kong. 10
3. The objects for which the Association is formed are :-
 - (a) To provide a securities market place where high standards of honour and integrity shall prevail, and to promote and maintain just and equitable principles of trade and business.
 - (b) To protect the interests of such brokers, and to promote honourable practices and to discourage and suppress malpractices. 20
 - (c) To record transactions between such brokers and to furnish reliable quotations of the price of shares and stocks, if called upon to do so.
 - (d) To act as arbitrator in the settlement, if desired to do so, of all disputes and differences between stock and share brokers or between stock or share brokers and their clients arising in the course of business. 30
 - (e) To establish an Exchange or place of meeting for stock and share brokers.
 - (f) To make rules for any of the above purposes and to make and from time to time alter (if necessary) a scale of charges for brokerage in share transactions.

- (g) To purchase, take on lease, hire or otherwise acquire a suitable room or rooms, building or buildings in Hong Kong for a Stock Exchange; to fit and furnish the same as an Exchange, or to cause the same to be suitably fitted and furnished.
- (h) To carry on in the premises so purchased, leased or otherwise acquired the business of a Stock Exchange.
- 10 (i) To construct, maintain and alter any buildings necessary or convenient for the purposes of the Association.
- (j) To borrow any monies required for the purposes of the Association upon such securities as may be determined, and to invest the monies of the Association upon such securities 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.
- 20
- (k) Generally to purchase, take on lease or exchange, hire or otherwise acquire, or obtain options over any real and personal property 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.
- 30
- (l) 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
- 40

Exhibit A2
 Amended
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
 Limited
 24th November
 1970 -
 continued

Exhibit A2
Amended
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of Associa-
tion of
the Far East
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24th November
1970 -
continued

or in part, similar to those of this Association.

- (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. 10
- (n) To draw make accept endorse discount execute and issue Promissory Notes, Bills of Exchange, warrants debentures and other negotiable or transferable instruments. 20
- (o) To guarantee the fidelity of members and to indemnify and make good losses incurred by members or other persons dealing with a member in default.
- (p) To invest and deal with the money of the Association not immediately required upon such securities and in such manner as may from time to time be determined.
- (q) To give guarantees and to receive and give undertakings. 30
- (r) Generally to do all such other things as are incidental or conducive to the attainment of the above objects.

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 40

amount as may be required, not exceeding one hundred dollars.

5. The liability of the members is limited.

(sic) WE, the several persons whose names and addresses are subscribed, are desirous or being formed into an Association in pursuance of this Memorandum of Association

Exhibit A2
Amended
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
Limited
24th November
1970 -
continued

Names, Addresses and Descriptions of Subscribers

10

RONALD FOOK SHIU LI
9, Shouson Hill Road East,
Hong Kong,
Certified Accountant.

WONG KAU MING
9A Bowen Road,
Hong Kong,
Managing Director.

20

LI FOOK HING
8, Barker Road,
The Peak,
Hong Kong,
Naval Architect.

PING K. NG
111, Robinson Road,
2nd Floor,
Hong Kong,
Architect-Structural Engineer.

30

KWAN MAN WAI
10, Shek O Headland,
Hong Kong,
Certified Accountant.

PAK KWONG
31, Lyttelton Road,
1st Floor,
Hong Kong,
Architect.

Exhibit A2 Names, Addresses and Descriptions of Subscribers

Amended

Memorandum
and Articles
of Association
of the Far East
Exchange
Limited
24th November
1970 -
continued

FUNG SUN CHUNG
234 Prince Edward Road,
Kowloon,
Merchant.

MURJANI BHAGWANDAS KEWALRAM
3, Henderson Road,
Jardine Lookout,
Hong Kong,
Merchant.

10

EDWARD P.H. WOO
23, Kennedy Road,
7th Floor,
Hong Kong,
Solicitor.

AUDREY PEI-FUNG CHOW
57, Beacon Hill Road,
5th Floor, Flat A,
Kowloon,
Married Woman.

20

LIU LIT MAN
Liu Chong Hing Bank Ltd.,
24, Des Voeux Road Central,
Hong Kong,
Banker.

Dated the 21st day of October, 1969.

WITNESS to the above signatures:

(Sd.) Woo Tze Tong
Solicitor,
Hong Kong.

30

Hong Kong
Stamp Duty
\$ 20.00
24.10.69

Exhibit A2
Amended
Memorandum
and Articles
of Associa-
tion of
the Far East
Exchange
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24th November
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continued

ARTICLES OF ASSOCIATION
OF THE
FAR EAST EXCHANGE LIMITED

PRELIMINARY

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

"The Exchange" means the "FAR EAST EXCHANGE LIMITED () ."

"Member" means a member of the Exchange.

20 "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 or Honorary Secretary of the Exchange.

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

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

Exhibit A2
Amended
Memorandum
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tion of
the Far East
Exchange
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24th November
1970 -
continued

"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.

10

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

MEMBERSHIP

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

3. (a) Membership shall be restricted to
persons born in Hong Kong or having been
resident in Hong Kong for five out of seven
years immediately prior to admission.

20

(b) Any Director or employee of a
licensed bank shall be excluded from membership.

(c) A body corporate cannot be a member
of the Exchange.

(d) Except as aforesaid, any person of
the age of 21 years and upwards being of good
repute or standing and who desires to carry on
the businesses of a Stockbroker shall be
eligible for membership of the Exchange.

30

(e) 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 or that the admission
of additional membership in general will not
be to the best interest of the Exchange or its
members, but the Committee shall under no
circumstances be required to give any reason for

its refusal whatsoever. The decision of the Committee shall be final.

Exhibit A2
Amended
Memorandum
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Exchange
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continued

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

FAR EAST EXCHANGE LIMITED

10

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 Rules of the Exchange, and I hereby authorise you, in the event of my election, to enter my name on the Register of 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.

20

The following particulars are correct:-

Full name of candidate

Address

Age

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

(Signature)

30

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 Far East Exchange Limited.

Proposer

Secunder

Dated

Exhibit A2
 Amended
 Memorandum
 and Articles
 of Associa-
 tion of
 the Far East
 Exchange
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 24th November
 1970 -
 continued

(b) The candidate and his proposer and seconder shall give all such information concerning the candidate including place of birth, nationality, date of birth, length of residence in Hong Kong and other information regarding the candidate's character, antecedents or otherwise as may be required from him or them by the Committee.

(c) Only a member of the Committee shall have the right to propose the admission of a candidate to be a member of the Exchange. 10

(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) The balloting Committee shall be formed of the General Committee for the time being, and the ballot shall take place at such time and place as the General Committee shall decide. 20

(f) At each ballot seven members voting shall be sufficient to form a ballot and three members of Committee shall open the Ballot Box. Two black balls to exclude.

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

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 election and payment of the prescribed 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. 30 40

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 was 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

10 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

20 9. The Subscription to the Exchange shall be such sum as the Committee may from time to time determine to be paid monthly in advance on the first day of each month. A member elected after 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.

30 10. If any member fails to pay any subscription or any other indebtedness or any part thereof within one month of 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.

40 11. The entrance fee of the Exchange shall be decided by the Committee. Entrance Fee will be deemed to be capital receipts and under no circumstances will Entrance Fee be refundable.

Exhibit A2
Amended
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continued

Exhibit A2

PARTNERSHIPS

Amended
Memorandum
and Articles
of Association
of the Far East
Exchange
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24th November
1970 -
continued

12. No member of the Exchange shall enter into or be in partnership with any person resident or carrying on business in this Colony 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. 10

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. 20

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. 30

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 will be considered and balloted for 40

membership in the same way as any other candidate but if approved by the Committee for membership, the nominee will not be required to pay any Entrance Fee.

10 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 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 nominated 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 will be considered and balloted
20 for membership in the same way as any other candidate but if approved by the Committee for membership, the Nominee will not be required to pay any Entrance Fee.

30 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 and paid by 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.

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

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

Exhibit A2
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tion of
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 tion of
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 Exchange
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 24th November
 1970 -
 continued

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.

10

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 approval and 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.

20

(b) Subject to approval and registration, a member may employ Sales Representatives. A Sales 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.

30

(c) The Committee shall have full power to investigate into the conduct and integrity of any person intended to be appointed as an Authorized Clerk or Sales Representative. The Committee shall have an absolute discretion to withhold or to withdraw approval at any time but the Committee shall not be required to give any reason for its action. The decision of the Committee shall be final.

40

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 and usages of the Exchange for bargains personally made by them.

Exhibit A2
Amended
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tion of
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10 24. Subject to the approval of the Committee which approval may be withheld at any time, a Member may appoint a lawful Attorney to act for him in all matters concerning his business and activities as a Member. The Attorney may conclude bargains on behalf of his principal. A Member and his partner (if any) will be fully liable for the acts of the Attorney so appointed. Until the Attorney is removed and notice in writing to that effect shall have been given to the Committee, all the rights of the Member (including the rights of access to the Exchange) will remain vested only with the Attorney.

20

30 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 of, 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.

40 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 REPRESENTATIVE**

27. Upon registration, an Authorized

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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.

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FOUNDERS

28. (a) Messrs. Ronald Fook Shiu Li, B.K. Murjani, Ping K. Ng, Liu Lit Man, Pak Kwong, Kwan Man Wai, Wong Kai Ming, Li Fook Hing, Fung Sun Chung, Edward P.H. Woo, and Madam Audrey P.F. Chow shall be Founders of the Exchange.

(b) Each of the Founders shall contribute a sum of not exceeding H.K. \$50,000.00 towards the establishment of the Exchange.

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(c) A Founder shall be an Advisor of the Exchange for life and as such he shall be entitled to attend and to make representation at any meeting of the Committee, but unless a Founder is voted to serve on the Committee a Founder shall have no right to vote at any meeting of the Committee. The Founders or the survivors of them may nominate any member to fill the post of Advisor should such a post be left vacant at any time.

30

(d) The Founders and the members of the Committee immediately prior to recognition of the Exchange by the Governor in Council shall together constitute a Board of Advisors. In the protection of the interest of the Exchange the Board of Advisors may by a single majority of such Advisors present and voting make recommendation to the Committee relating to :-

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- (1) the admission of any particular candidate as a Member of the Exchange; and

- (2) the application of the fund or assets of the Exchange in any particular manner or the doing of any act by which the Exchange may incur a financial liability;

and if such recommendation is not accepted call upon the Committee to refer the said matter for decision by a General Meeting of members. Upon such recommendation being made and pending the decision of the members in a General Meeting, the Committee shall have no power to act contrary to the recommendation of the Board of Advisors.

10

(e) A Founder or a Member of the Committee immediately prior to recognition of the Exchange by the Governor in Council shall be entitled to nominate a respectable person to be a member of the Exchange. The Nominee will be considered and balloted for membership in the same way as any other candidate for membership. If duly balloted for membership such nominated member shall not be required to pay any Entrance Fee for his admission.

20

(f) A Founder or a Member of the Committee immediately prior to recognition of the Exchange by the Governor in Council who has exercised his right of nomination shall not be required to pay any further subscriptions and he shall have no power to make any further nomination in pursuance of Article 16. Once the right of nomination is exercised, a Founder or a Member of the Committee immediately prior to recognition of the Exchange by the Governor in Council shall have no right to appoint any Attorney, Authorized Clerk or Sales Representative.

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(g) The Founders shall be entitled to be paid such remuneration as the Exchange shall decide at a General Meeting.

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THE COMMITTEE

29. (a) The management and control of

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the Exchange shall be vested in the Committee.

(b) The Committee shall consist of 15 members which shall be elected at a General Meeting.

(c) Membership of the Committee of the Exchange shall be limited to persons holding a seat at the Exchange.

(d) The Committee shall elect its own Chairman and two Vice Chairmen.

(e) At each Annual General Meeting at least one-third of the members longest in office shall retire but shall be eligible for re-election. If more than one-third of the members shall have been longest in office for a term of equal length, those to retire shall be determined by lot. 10

Article 29(b) the Committee shall have power to co-opt not more than 3 members of the Exchange to serve on the Committee if in the opinion of the Committee, the service of such number or members will be in the best interest of the Exchange. The appointment of any such co-opted member shall terminate at the next annual General Meeting of members. 20

(g) The Committee shall also have power to co-opt a member of the Exchange to act in place of any member of the Committee who is temporarily absent from Hong Kong, and any such co-opted member shall cease to act as a member of the Committee on the return to Hong Kong of the member who was temporarily absent. 30

(h) Notice shall be given in writing to the Secretary of the names of any candidates to fill any vacancies on the Committee at an Annual General Meeting and such notice shall be endorsed by each such candidate by way of confirmation of his willingness to serve if elected and shall bear the name of a Proposer and Seconder. Any such notice shall be given to the Secretary not less than 14 days before 40

the meeting at which the election is to take place, and in the event of more names being submitted than the number of vacancies to be filled, election shall be by a show of hands at the Annual General Meeting. No voting by proxy shall be allowed.

(i) At any election after 31st December 1970 the personal attendance of the Proposer, seconder and the candidate shall be a pre-requisite.

30. (a) The first Chairman shall be Mr. Ronald Fook Shiu Li.

(b) The first Vice-Chairman shall be B.K. Murjani and Mr. Ping K. Ng.

31. There shall also be a Secretary and a Treasurer of the Exchange who shall be entitled to such remuneration for his services as the Committee shall determine. The Secretary and the Treasurer need not be a Member of the Exchange or may be one of the Founders.

32. One third the number of members of the Committee shall form a quorum in a meeting of the Committee.

33. The members of the Committee shall be entitled to such remuneration as the Exchange shall in its General Meeting decide.

34. The Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.

35. 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.

36. A meeting of the Committee for the

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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.

37. 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.

10

38. The Chairman or in his absence the Vice-Chairmen 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 and when required and shall give to the Committee all the information in his power which the Committee may require.

20

MINUTES

39. (a) 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.

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(b) Such minutes may be kept in English or in Chinese and they shall be open to the inspection of any Member subject to the approval of the Committee.

(c) Any minutes of any meeting of the Committee, Sub-Committee or the Exchange, if

purporting 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

10 40. 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.

41. 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
- 20 (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.
- 30 (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.
- 40 (d) To enter into such contracts and do all such acts and things as they may think fit for the purposes of the Exchange.

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- (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.
 - (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 interests of members and consistent with the objects of the Exchange. 10
 - (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. 20
 - (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 trans- action of all business, the forms 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. 30
 - (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. 40
 - (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.

10

(m) To create and to manage such fidelity or compensation fund or funds as the Committee shall see fit and to apply both capital and income thereof to indemnify and to make good losses incurred by members or others dealing with a member in default to such extent as the Committee shall see fit.

20

(n) To make vary and to enforce Rules and By-laws in connexion with trading or for the best interest of the Exchange.

30

(o) To order the suspension and expulsion of members including life members and to enforce such orders and other orders of the Committee.

42. 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 posted upon the Notice board in the Exchange. 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

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by-law may be set aside by a special resolution
of a general meeting of the Exchange.

THE SECRETARY AND TREASURER

43. (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.

10

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

ACCOUNTS

44. The Committee shall cause true accounts
to be kept of the moneys received and expended
by and of the assets, credit and liabilities
of the Exchange, and at the Ordinary Meeting
in each year shall lay before the members a
Statement of Accounts and Balance Sheet made
up to a date not more than three months before
the meeting from the time when the last
preceding balance sheet was made up. Every
such Statement of Accounts and Balance Sheet shall
be signed by at least two members of the Committee
and the Secretary.

20

45. All cheques shall be signed by such
Members of the Committee, officers or persons
as the Committee shall authorize.

SEAL

30

46. The Seal of the Exchange shall never
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.

AUDIT

47. The Exchange shall at each Annual General

Meeting appoint an auditor or auditors authorized as such according to the provisions of the Companies Ordinance of the Exchange to hold office until the next Annual General Meeting who shall examine and certify to the correctness of the Accounts of the Exchange and issue a balance sheet.

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10 48. (a) A person other than a retiring auditor shall not be capable of being appointed an auditor at an Annual General Meeting unless notice of the intention to nominate that person as auditor shall have been given by a member to the Committee not less than fourteen days before the Meeting, and the Committee shall send a copy of any such notice to the retiring auditor and shall give notice thereof to
20 the Members either by advertisement or in any other mode allowed by these Articles not less than seven days before the Annual General Meeting.

(b) The Committee may fill any casual vacancy in the office of auditor.

(c) The auditor or auditors shall make a report to the members on the accounts examined by them and on every balance sheet laid before the members in General Meeting during their tenure of office, and the
30 report shall state :-

(1) Whether or not he has or they have obtained all the information and explanations that he has or they have required.

(2) Whether in his or their opinion the Balance Sheet referred to in his or their Report is properly drawn up so as to exhibit a true and correct view of the state of the Exchange's affairs according to the best of his or their information and the explanations given to him or them and as shown by the books of the Exchange.
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(d) A member shall not be qualified for appointment as auditor of the Exchange nor shall a person who is a partner of or in the employment of a member.

(e) Every auditor shall access at (sic) all times to the books and accounts of the Exchange and shall be entitled to require from the Committee all such information as may be necessary for the performance of the duties of the auditors and they shall be entitled to attend any General Meeting of the Exchange in respect of such accounts.

10

GENERAL MEETINGS

49. A General Meeting of the Exchange shall be held once every year 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 the Committee and the Auditor or Auditors for the ensuing year and any other ordinary business. 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 on or before the 31st March.

20

50. 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 :-

30

(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.

40

(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 meetings are to be convened by the Committee.

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51. At all meetings of the Exchange 25% of the Members of the Exchange shall form a quorum.

20

52. At any meeting 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.

53. Each member shall be entitled to one vote by a show of hands at all meetings. Voting by proxy shall not be allowed. The Chairman shall be entitled to a second or casting vote.

30

54. 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.

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

40

56. 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

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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 shall be a quorum and may transact the business for which the meeting was called.

57. 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. 10

58. The Chairman or in his absence the Vice-Chairmen shall take the Chair at all meetings of the Exchange and in their absence the meetings 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. 20

59. 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. 30

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

BANKRUPTCY AND OFFENCES

61. (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. 40

(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 the Committee shall have an absolute discretion 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.

10

(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

62. (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.

20

30

(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,

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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. The expenses incurred shall be borne by the member or members concerned.

EXPULSION AND SUSPENSION

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

10

(a) That any member has been elected under any misrepresentation or by the suppression or any material information which may be required of him by his proposer or seconder; or

(b) That any member has failed or is unable to carry out any of his legal obligations whether such obligations relate to the dealings in stock and shares and whether such obligations arise within or outside the Exchange; or

20

(c) That the conduct of any member is injurious to the character and interests or prejudicial to the objects of the Exchange; or

(d) That any member has violated any of the Rules of the Exchange; or

(e) 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

30

(f) 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

40

- (g) That any member has been convicted of a criminal offence; or
- (h) That any member has defaulted in payment of his subscription ; or
- (i) 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;

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10 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 and unless the Committee is of the
 opinion that the matter is of a trivial
 nature or that there are extenuating circum-
 stances or that the matter is of a technical
 nature, the Committee shall request the
 member to attend a meeting and explain his
 20 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
 30 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 the members of such Committee
 present in the Colony.

40 64. 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.

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65. 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.

66. 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. The member whose conduct is under investigation shall not be entitled to complain of the length of time required for such investigation and the Committee of the Exchange shall be under no obligation whatsoever to compensate a member suspended under this Article even if the investigation subsequently reveals that the conduct of such member is cleared.

10

67. (a) The Committee may consider and act upon such evidence in relation to any matter as they think fit.

20

(b) Any decision of the Committee shall be final and shall not be liable to be set aside or varied by any other authority or body.

68. 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 show of hands.

30

69. 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 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.

40

70. 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.

71. 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.

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

73. No member of the Exchange shall have the right to be represented at any meeting of the Committee held under Article 64 by solicitor or counsel but he may if he so desire solicit the assistance of another member of the Exchange.

INDEMNITY TO OFFICERS

20 74. Every member of the Committee and all officers and servants of the Exchange shall be indemnified by the Exchange against all 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
30 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.

NOTICES

75. (a) A notice may be served by the Exchange upon any member :-

40 (1) Either personally or by sending it through the Post Office in a prepaid cover or letter addressed to such member at his registered address;

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(2) By posting such notice upon such notice board in the office of the Exchange.

(b) Any notice sent by post shall be deemed to have been served when the cover or letter containing the same would be delivered in the ordinary course of the Post; and in providing such service it shall be sufficient to prove that the cover or letter containing the notice was properly addressed and put in the Post.

10

(c) A notice so posted up in the office of the Exchange shall be deemed to be well served at the expiration of 24 hours after it is so posted up and a declaration by Secretary or any member of the Committee that any such notice was posted on the notice board on a certain date shall be conclusive evidence of the fact.

WINDING UP

76. If at any time the number of members falls below twenty the Committee shall summon an Extraordinary General Meeting, and such meeting may by an extraordinary resolution declare that the Exchange ought to be wound up, and on such resolution being passed the Exchange shall be wound up accordingly.

20

Names, Addresses and Descriptions of Subscribers

RONALD FOOK SHIU LI
9, Shouson Hill Road East,
Hong Kong,
Certified Accountant

30

WONG KAI MING
9A Bowen Road,
Hong Kong,
Managing Director

LI FOOK HING
8, Barker Road,
The Peak,
Hong Kong,
Navel Architect.

40

PINK K. NG
111, Robinson Road,
2nd Floor
Hong Kong,
Architect-Structural Engineer.

Names, Addresses and Descriptions of Subscribers Exhibit A2

	KWAN MAN WAI	Amended
	10, Shek O Headland,	Memorandum
	Hong Kong,	and Articles
	Certified Accountant	of Associa-
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	PAK KWONG	the Far East
	31, Lyttelton Road,	Exchange
	1st Floor,	Limited
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	FUNG SUN CHUNG	
	234, Prince Edward Road,	
	Kowloon,	
	Merchant.	
	MURJANI BHAGWANDAS KEWALRAM	
	3, Henderson Road,	
	Jardine Lookout,	
	Hong Kong,	
	Merchant.	
20	EDWARD P.H. WOO	
	23, Kennedy Road,	
	7th Floor,	
	Hong Kong,	
	Solicitor.	
	AUDREY PEI-FUNG CHOW	
	57, Beacon Hill Road,	
	5th Floor, Flat A,	
	Kowloon,	
	Married Woman.	
30	LIU LIT MAN	
	Liu Chong Hing Bank Ltd.,	
	24, Des Voeux Road Central,	
	Hong Kong,	
	Banker.	

Dated the 21st day of October, 1969.

WITNESS to the above signatures:

(Sd.) Woo Tze Tong
Solicitor, Hong Kong.

Exhibit B1
 Profit and
 Loss Account
 of the Far
 East Exchange
 Limited for
 period 31st
 October 1969
 to 31st
 December 1970

EXHIBITS

B1 - PROFIT AND LOSS ACCOUNT OF
 THE FAR EAST EXCHANGE LIMITED
 FOR PERIOD 31ST OCTOBER 1969 TO
 31ST DECEMBER 1970

ANNEXURE "B1"

FAR EAST EXCHANGE LIMITED
PROFIT AND LOSS ACCOUNT

PERIOD FROM 31ST OCTOBER 1969 (DATE OF
 INCORPORATION) TO 31ST DECEMBER 1970

10

INCOME

Subscriptions	257,625
Listing and other fees	327,346
Sale of publications	58,112
Miscellaneous	15
	<u>643,098</u>

CURRENT OPERATING EXPENDITURE - page 5 505,861

OPERATING PROFIT 137,237

INVESTMENT INCOME

Bank interest		20
Local	32,107	
Foreign	<u>201,459</u>	
		<u>233,566</u>
		<u>370,803</u>

OTHER NON-RECURRENT EXPENDITURE

Alteration to premises	170,959	
Formation expenses	4,993	
General meeting expenses	1,930	
Inauguration cocktail party	3,635	
Publicity and public relations	19,161	
Loss on sale of neck-tie and handkerchief sets	<u>203</u>	
		<u>200,881</u>
PROFIT BEFORE TAXATION		<u>169,922</u>

Brought forward	169,922	Exhibit B1
TAXATION		Profit and
Corporation profits tax		Loss Account
1969/70, 1970/71 and 1971/72	<u>74,000</u>	of the Far
		East Exchange
		Limited for
		period 31st
		October 1969
		to 31st
		December 1970
PROFIT AFTER TAXATION	<u>95,922</u>	- continued

Exhibit B2
Balance Sheet
of the Far
East Exchange
Limited as at
31st December
1970

EXHIBITS

B2 - BALANCE SHEET OF THE FAR
EAST EXCHANGE LIMITED AS AT
31ST DECEMBER 1970

ANNEXURE B2

BALANCE SHEET

FIXED ASSETS

At cost, less depreciation - page 6 165,353

INVESTMENT AND ADVANCES

25% interest in King Fund Development Company Limited 10

Shares therein, at cost	40,012	
Advances	<u>1,925,000</u>	
		1,965,012

CURRENT ASSETS - page 7 6,275,545

Deduct:

CURRENT LIABILITIES -		
page 7	<u>79,988</u>	

NET CURRENT ASSETS	<u>6,195,557</u>	20
--------------------	------------------	----

₹ 8,325,922

Representing:

ACCUMULATED FUND

Founders' contributions	550,000
Members' entrance fee	<u>7,680,000</u>
	8,230,000

Less:

Transferred to fidelity fund	<u>2,000,000</u>
	6,230,000
Profit for the period	<u>95,922</u>
	6,325,922

30

	Brought forward	6,325,922
FIDELITY FUND		2,000,000

Exhibit B2
Balance Sheet
of the Far
East Exchange
Limited as at
31st December
1970 -
continued

NOTE

Foreign currency balances have been converted into local currency at approximately those rates ruling at 31st December 1970.

(Sd.)	}	Committee Members
(Sd.)		
(Sd.))	Secretary
(Sd.))	Treasurer

8,325,922

Exhibit B3
Auditors
Report
18th January
1971

EXHIBITS

B3 - AUDITORS REPORT DATED
18TH JANUARY 1971

ANNEXURE B3

COOPER BROTHERS & CO.
SANFORD YUNG & CO.

ASSOCIATED FIRMS
IN PRINCIPAL AREAS
OF THE WORLD

SHELL HOUSE,
QUEEN'S ROAD CENTRAL,
HONG KONG.

REPORT OF THE AUDITORS TO THE MEMBERS

10

We have examined the attached balance sheet at 31st December 1970 of Far East Exchange Limited. We obtained the information and explanations we required.

In our opinion such balance sheet, together with the note thereon, is properly drawn up so as to exhibit a true and correct view of the state of the Exchange's affairs at 31st December 1970, according to the best of our information and the explanations given to us and as shown by the books of the Exchange.

20

(Sd.) Cooper Brothers & Co.

Chartered Accountants

1st January 1971

IN THE PRIVY COUNCIL

No. 9 of 1977

O N A P P E A L
FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

COMMISSIONER OF INLAND REVENUE

Appellant

- and -

FAR EAST EXCHANGE LIMITED

Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London, WC2

SLAUGHTER & MAY,
35 Basinghall Street,
London, EC2V 5DB

Solicitors for the Appellant

Solicitors for the Respondent