

Chapter 5

GENERAL

DIRECTORS, COMPANY SECRETARY, BOARD COMMITTEES, AUTHORISED REPRESENTATIVES AND CORPORATE GOVERNANCE MATTERS

Directors

5.01 The board of directors of an issuer is collectively responsible for its management and operations. The Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This means that every director must, in the performance of his duties as a director:—

- (1) act honestly and in good faith in the interests of the company as a whole;
- (2) act for proper purpose;
- (3) be answerable to the issuer for the application or misapplication of its assets;
- (4) avoid actual and potential conflicts of interest and duty;
- (5) disclose fully and fairly his interests in contracts with the issuer; and
- (6) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer.

Directors must satisfy the required levels of skill, care and diligence. Delegating their functions is permissible but does not absolve them from their responsibilities or from applying the required levels of skill, care and diligence. Directors do not satisfy these required levels if they pay attention to the issuer's affairs only at formal meetings. At a minimum, they must take an active interest in the issuer's affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.

Directors are reminded that if they fail to discharge their duties and responsibilities, they may be disciplined by the Exchange and may attract civil and/or criminal liabilities under Hong Kong law or the laws of other jurisdictions.

Note: These duties are summarised in "A Guide on Directors' Duties" issued by the Companies Registry. In addition, directors are generally expected by the Exchange to be guided by the Guidelines for Directors and the Guide for Independent Non-executive Directors published by the Hong Kong Institute of Directors (www.hkiod.com). In determining whether a director has met the expected standard of care, skill and diligence, courts will generally consider a number of factors. These include the functions that are to be performed by the director concerned, whether he is a full-time executive director or a part-time non-executive director and his professional skills and knowledge.

5.02 Directors must have the character, experience and integrity and be able to demonstrate a standard of competence commensurate with their position as directors of an issuer. The Exchange may request information regarding the background, experience, other business interests or character of any director or proposed director of an issuer. The Exchange expects all directors of an issuer:—

- (1) to be cognizant of the GEM Listing Rules and reasonably familiar with the obligations and duties imposed upon them and the issuer pursuant to the GEM Listing Rules, the Securities and Futures Ordinance, the Companies Ordinance, the Takeovers Code and the Code on Share Buy-backs. The Exchange reserves a right to require directors to demonstrate their knowledge and understanding of the same; and
- (2) to respond, in a prompt and efficient manner, to all enquiries directed at them by the Exchange.

5.02A Directors, in accepting to be directors of a listed issuer, shall be considered as having:

- (1) irrevocably appointed the listed issuer as their agents, for so long as they remain directors of the issuer, for receiving on their behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and
- (2) authorised the Executive Director – Listing, or to any person authorised by the Executive Director – Listing to disclose any of their personal particulars given by them to members of the GEM Listing Committee or the Commission and, with the approval of the Chairman or a Deputy Chairman of the Exchange, to such other persons, as the Executive Director – Listing may from time to time think fit.

5.02B Every director of a listed issuer must, in the exercise of his powers and duties as a director of the issuer:

- (1) comply to the best of his ability with the GEM Listing Rules;
- (2) use his best endeavours to procure the issuer to comply with the GEM Listing Rules;
- (3) use his best endeavours to procure any alternate of his to comply with the GEM Listing Rules; and
- (4) comply to the best of his ability, and use his best endeavours to procure the issuer to comply, with the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the SFO, the Takeovers Code, and the Share Buy-backs Code and all other securities laws and regulations from time to time in force in Hong Kong.

5.02C Every director of a listed issuer, whether when he is a director of the issuer or after ceasing to be so, shall:

- (1) provide to the Exchange and the Commission as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:
 - (a) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and
 - (b) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and
- (2) cooperate in any investigation conducted by the Listing Division and/or the GEM Listing Committee or the Commission, including answering promptly and openly any questions addressed to the director, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the director is requested to appear.

5.02D Every director of a listed issuer must obtain legal advice from a firm of solicitors qualified to advise on Hong Kong law as regards the requirements under the GEM Listing Rules that are applicable to him as a director of a listed issuer and the possible consequences of making a false declaration or giving false information to the Exchange.

Notes:

1. *A new applicant shall ensure that each of its directors as at listing has obtained the legal advice referred to in this rule before commencement of dealings of its securities on the Exchange, and must disclose in its listing document (i) the date on which each of its directors obtained the legal advice referred to in this rule and; (ii) that each director has confirmed he understood his obligations as a director of a listed issuer.*
2. *A listed issuer shall ensure that each of its proposed directors has obtained the legal advice referred to in this rule before his appointment becomes effective, and must disclose in the next published annual report following the directors' appointment (i) the date on which each of its proposed directors obtained the legal advice referred to in this rule and; (ii) that each proposed director has confirmed he understood his obligations as a director of a listed issuer.*

5.02E For issuers of debt securities, references to "directors" in rules 5.02B to 5.02D should be read as references to members of the issuer's governing body where applicable.

5.03 The directors of an issuer are collectively and individually responsible for ensuring the issuer's full compliance with the GEM Listing Rules.

5.04 Every director shall comply with the required standard of dealings set out in rules 5.48 to 5.67 of this Chapter or the issuer's own set of rules on no less exacting terms. (See rules 5.46 and 5.47)

Independent non-executive directors

5.05 Every board of directors of an issuer must include:

- (1) at least 3 independent non-executive directors; and
- (2) at least one of the independent non-executive directors must have appropriate professional qualifications or accounting or related financial management expertise.

Note: With regard to "appropriate accounting or related financial management expertise," the Exchange would expect the person to have, through experience as a public accountant or auditor or as a chief financial officer, controller or principal accounting officer of a public company or through performance of similar functions, experience with internal controls and in preparing or auditing comparable financial statements or experience reviewing or analysing audited financial statements of public companies. It is the responsibility of the board to determine on a case-by-case basis whether the candidate is suitable for the position. In making its decision, the board must evaluate the totality of the individual's education and experience.

5.05A An issuer must appoint independent non-executive directors representing at least one-third of the board.

Note: The issuer must comply with this rule by 31 December 2012.

5.06 An issuer shall immediately inform the Exchange and publish an announcement containing the relevant details and reasons if at any time the number of its independent non-executive directors falls below:

- (1) the minimum number required under rule 5.05(1) or at any time it has failed to meet the requirement set out in rule 5.05(2) regarding qualification of the independent non-executive directors; or
- (2) one-third of the board as required under rule 5.05A.

The issuer shall appoint a sufficient number of independent non-executive directors to meet the minimum number required under rule 5.05(1) or 5.05A or appoint an independent non-executive director to meet the requirement set out in rule 5.05(2) within three months after failing to meet the requirement(s).

5.07 In addition to fulfilling the requirements and continuing obligations of rules 5.01, 5.02 and 5.09, every independent non-executive director must have the character, integrity, independence and experience to fulfil his role effectively. The Exchange may stipulate a minimum number of independent non-executive directors which is higher than 3 if, in the opinion of the Exchange, the size of the board or other circumstances of the issuer justify it.

5.08 [Repealed 1 October 2020]

5.09 In assessing the independence of non-executive directors, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:—

- (1) holds more than 1% of the number of issued shares (excluding treasury shares) of the issuer;

- Notes:*
1. *An issuer wishing to appoint an independent non-executive director holding an interest of more than 1% must demonstrate, prior to such appointment, that the candidate is independent. A candidate holding an interest of 5% or more will normally not be considered independent.*
 2. *When calculating the 1% limit set out in rule 5.09(1), the issuer must take into account the total number of shares held legally or beneficially by the director, together with the total number of shares which may be issued to the director or his nominee upon exercise of any outstanding share options, convertible securities and other rights (whether contractual or otherwise) to call for the issue of shares.*

- (2) has received an interest in any securities of the issuer as a gift, or by means of other financial assistance, from a core connected person or the issuer itself. However, subject to Note 1 to rule 5.09(1), the director will still be considered independent if he receives shares or interests in securities from the issuer or its subsidiaries (but not from core connected persons) as part of his director's fee or pursuant to share schemes established in accordance with Chapter 23;

- (3) is or was a director, partner or principal of a professional adviser which currently provides or has within two years immediately prior to the date of his proposed appointment provided services, or is or was an employee of such professional adviser who is or has been involved in providing such services during the same period, to:
 - (a) the listed issuer, its holding company or any of their respective subsidiaries or core connected persons; or
 - (b) any person who was a controlling shareholder or, where there was no controlling shareholder, any person who was the chief executive or a director (other than an independent non-executive director), of the listed issuer within two years immediately prior to the date of the proposed appointment, or any of their close associates;
- (4) currently, or within one year immediately prior to the date of the person's proposed appointment, has or had a material interest in any principal business activity of or is or was involved in any material business dealings with the issuer, its holding company or their respective subsidiaries or with any core connected persons of the issuer;
- (5) is on the board specifically to protect the interests of an entity whose interests are not the same as those of the shareholders as a whole;
- (6) is or was connected with a director, the chief executive or a substantial shareholder of the issuer within 2 years immediately prior to the date of his proposed appointment;

Note: Without prejudice to the generality of the foregoing, any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, stepbrother and step-sister of, a director, the chief executive or a substantial shareholder of the issuer is, for the purpose of rule 5.09(6), considered to be connected with that director, chief executive or substantial shareholder. A father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a director, the chief executive or a substantial shareholder of the issuer may in some circumstances also be considered to be so connected. In such cases, the issuer will need to provide the Exchange with all relevant information to enable the Exchange to make a determination.

- (7) is, or has at any time during the 2 years immediately prior to the date of his proposed appointment been, an executive or a director (other than an independent non-executive director) of the issuer, of its holding company or of any of their respective subsidiaries or of any core connected persons of the issuer;

Note: An "executive" includes any person who has any management function in the company and any person who acts as a company secretary of the company.

- (8) is financially dependent on the issuer, its holding company or any of their respective subsidiaries or core connected persons of the issuer.

The independent non-executive director must confirm to the issuer or the new applicant (as the case maybe), and the issuer must confirm in the announcement on the appointment of such independent non-executive director, and in the case of new applicant, in the Application Proof, each draft listing document subsequently submitted to the Exchange and the listing document, that the director has confirmed:

- (a) his independence as regards each of the factors referred to in rule 5.09(1) to (8);

- (b) his past or present financial or other interest in the business of the issuer or its subsidiaries or any connection with any core connected person (as such term is defined in the GEM Listing Rules) of the issuer, if any; and
- (c) that there are no other factors that may affect the independent non-executive director's independence at the time of his appointment.

Each independent non-executive director shall inform the issuer and the Exchange as soon as practicable if there is any subsequent change of circumstances which may affect his independence. The issuer must confirm in each of its annual reports whether it still considers the independent non-executive director to be independent.

Notes: 1. The factors set out in rule 5.09 are included for guidance only and are not intended to be exhaustive. The Exchange may take account of other factors relevant to a particular case in assessing independence.

- 2. When determining the independence of a director under rule 5.09, the same factors should also apply to the director's immediate family members. "Immediate family member" is defined under rule 20.10(1)(a).*

5.10 Where a proposed independent non-executive director fails to meet any of the independence guidelines set out in rule 5.09, the issuer must demonstrate, prior to the proposed appointment, that the person is independent. The issuer must also disclose the reasons why such person is considered to be independent in the announcement of his appointment as well as in the next annual report published after his appointment. In cases of doubt, the issuer must consult the Exchange at an early stage.

5.11 [Repealed 1 October 2020]

5.12 If an independent non-executive director resigns or is removed from office, both the issuer and the individual should immediately notify the Exchange, in each case stating the reasons therefor.

5.12A [Repealed 1 March 2019]

5.13 [Repealed 1 January 2005]

5.13A Directors of a listed issuer shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

- (1) as soon as reasonably practicable after their appointment, their telephone number, mobile phone number, facsimile number (if available), email address (if available), residential address, contact address (if different from the residential address) for correspondence from and service of notices and other documents by the Exchange or the Commission and other personal particulars as may be prescribed from time to time by the Exchange;
- (2) for so long as they remain as directors of the issuer, any change to the contact information as described in sub-rule (1) as soon as reasonably practicable and in any event within 28 days of such change; and
- (3) for a period of 3 years from the date on which they cease to be directors of the issuer, any change to the contact information as described in sub-rule (1) as soon as reasonably practicable and in any event within 28 days of such change.

Any correspondence from and/or service of notices and other documents by the Exchange or the Commission to the directors when they are directors of the listed issuer or after they cease to be so, for whatever purposes (including but not limited to the service of notice of disciplinary proceedings) shall be deemed to have been validly and adequately served on them when the document or notice is served personally or is sent by post, facsimile or email to the address or number they provide to the Exchange. It is the responsibility of directors and former directors to keep the Exchange informed of their up-to-date contact details. If directors or former directors fail to provide the Exchange with their up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to them, they may be not alerted to any proceedings commenced against them by the Exchange or the Commission.

Note: For issuers of debt securities, references to "directors" in rule 5.13A should be read as references to members of the issuer's governing body where applicable.

Company secretary

- 5.14 The issuer must appoint as its company secretary an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging the functions of company secretary.

Notes: 1 The Exchange considers the following academic or professional qualifications to be acceptable:

- (a) a Member of The Hong Kong Chartered Governance Institute;*
- (b) a solicitor or barrister (as defined in the Legal Practitioners Ordinance); and*
- (c) a certified public accountant (as defined in the Professional Accountants Ordinance).*

2 In assessing "relevant experience," the Exchange will consider the individual's:

- (a) length of employment with the issuer and other issuers and the roles he played;*
- (b) familiarity with the GEM Listing Rules and other relevant law and regulations including the Securities and Futures Ordinance, Companies Ordinance, Companies (Winding Up and Miscellaneous Provisions) Ordinance, and the Takeovers Code;*
- (c) relevant training taken and/or to be taken in addition to the minimum requirement under rule 5.15; and*
- (d) professional qualifications in other jurisdictions.*

- 5.15 In each financial year an issuer's company secretary must take no less than 15 hours of relevant professional training.

5.16 [Repealed 1 January 2009]

5.17 [Repealed 1 January 2009]

5.18 [Repealed 1 January 2009]

- 5.19 [Repealed 1 January 2024]
- 5.20 [Repealed 1 January 2024]
- 5.21 [Repealed 1 January 2024]
- 5.22 [Repealed 1 January 2024]
- 5.23 [Repealed 1 January 2024]

Authorised representatives

- 5.24 Every issuer must ensure that, at all times, it has 2 authorised representatives. The authorised representatives must be 2 individuals from amongst the issuer's executive directors and company secretary (unless the Exchange, in exceptional circumstances, agrees otherwise).
- 5.25 The responsibilities of an authorised representative are:—

- (1) supplying the Exchange with details in writing of how to contact him including home, office, mobile and other telephone numbers, email address and correspondence address (if the authorised representative is not based at the registered office), facsimile numbers if available, and any other contact details prescribed by the Exchange from time to time;
- (2) for so long as the issuer continues to have a Sponsor or Compliance Adviser, assisting the Sponsor or Compliance Adviser in their roles as set out in the GEM Listing Rules, in particular the Sponsor's role as the principal channel of communication with the Exchange concerning the affairs of the issuer;

Notes: 1 In this regard, the authorised representatives shall provide the Sponsor with the information necessary to enable the Sponsor to fulfil its duty of communicating on the issuer's behalf with the Exchange and ensure the issuer meets its obligations to the Sponsor and Compliance Adviser as set out in Chapter 6A.

2 In the event that the Exchange, for whatever reason, is unable to contact or liaise with the Sponsor concerning any particular matter relevant to the issuer, the authorised representatives will be expected to assume full responsibility for contacting or responding to the Exchange concerning that matter.

- (3) from such time as the issuer is no longer required to have (or does not otherwise retain) a Sponsor, acting as the principal channel of communication between the Exchange and the listed issuer (in particular, as regards any communication required prior to commencement of trading in the morning); and
- (4) ensuring that whenever he is away, a suitable alternate is appointed (and authorised to speak on behalf of the issuer), available and known to the Exchange and supplying the Exchange with details in writing of how such alternate may be contacted including home, office and mobile telephone numbers and, where available, facsimile numbers and electronic mail addresses.

Note: If the authorised representatives and, or their alternates are based outside Hong Kong (or are otherwise expected to be frequently outside Hong Kong), they must ensure that they can be readily contactable by the Exchange on the contact details provided to the Exchange under this rule.

- 5.26 A person appointed as an authorised representative should only terminate his appointment after first notifying the Exchange of such proposed termination and the reasons therefor; and except in exceptional circumstances, the issuer should not terminate the appointment of the authorised representative until it has appointed a replacement. Where a person's appointment as an authorised representative is terminated, both the issuer and the individual concerned should immediately notify the Exchange of such termination in each case stating the reason why such appointment was terminated.
- 5.27 If the Exchange is not satisfied that any person appointed as an authorised representative is fulfilling his responsibilities adequately, it may require the issuer to terminate his appointment and appoint or designate a replacement.

Audit committee

- 5.28 Every issuer must establish an audit committee comprising non-executive directors only. The audit committee must comprise a minimum of 3 members, at least one of whom is an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise as required in rule 5.05(2). The majority of the audit committee members must be independent non-executive directors of the issuer. The audit committee must be chaired by an independent non-executive director.

Notes: 1 This rule and rules 5.29 to 5.33 do not apply to an issuer of debt securities, the equity securities of which are not listed on GEM.

2 [Repealed 1 October 2020]

3. For further guidance on establishing an audit committee, listed issuers may refer to "A Guide for Effective Audit Committees" published by the Hong Kong Institute of Certified Public Accountants (formerly known as the Hong Kong Society of Accountants) in February 2002. Issuers may adopt the terms of reference set out in that guide, or they may adopt any other comparable terms of reference for the establishment of an audit committee.

4. Please also see the note to rule 5.05(2).

- 5.29 The board of directors of the issuer must approve and provide written terms of reference for the audit committee which clearly establish the committee's authority and duties.

5.30 [Repealed 1 January 2005]

5.31 [Repealed 1 January 2005]

5.32 [Repealed 1 January 2005]

- 5.33 An issuer shall, pursuant rule 17.51(2), immediately inform the Exchange and publish an announcement containing the relevant details and reasons if the issuer fails to set up an audit committee or at any time has failed to meet any of the other requirements set out in rule 5.28 regarding the audit committee. Issuers shall set up an audit committee and/or appoint appropriate members to the audit committee to meet the requirement(s) within 3 months after failing to meet such requirement(s).

Remuneration Committee

- 5.34 An issuer must establish a remuneration committee chaired by an independent non-executive director and comprising a majority of independent non-executive directors.
- 5.35 The board of directors must approve and provide written terms of reference for the remuneration committee which clearly establish its authority and duties.
- 5.36 If the issuer fails to set up a remuneration committee or at any time has failed to meet any of the other requirements in rules 5.34 and 5.35, it must immediately publish an announcement containing the relevant details and reasons. Issuers must set up a remuneration committee with written terms of reference and/or appoint appropriate members to it to meet the requirement(s) within three months after failing to meet them.

Nomination Committee

- 5.36A An issuer must establish a nomination committee chaired by the chairman of the board or an independent non-executive director and comprising a majority of independent non-executive directors.
- 5.37 [Repealed 1 January 2005]
- 5.38 [Repealed 1 January 2005]
- 5.39 [Repealed 1 January 2005]
- 5.40 [Repealed 1 January 2005]
- 5.41 [Repealed 1 January 2005]
- 5.42 [Repealed 1 January 2005]
- 5.43 [Repealed 1 January 2005]
- 5.44 [Repealed 1 January 2005]
- 5.45 [Repealed 1 January 2005]

Securities transactions by directors

Basic principles

- 5.46 Rules 5.48 to 5.67 set out the required standard against which issuers and their directors must measure their conduct regarding transactions in securities of their issuers (the “required standard of dealings”). Any breach of the required standard of dealings will be regarded as a breach of the GEM Listing Rules. A director must seek to secure that all dealings in which he is or is deemed to be interested are conducted in accordance with the required standard of dealings.
- 5.47 An issuer may adopt its own code on terms no less exacting than the required standard of dealings if it so wishes. Any breach of such code will not be a breach of the GEM Listing Rules unless it is also a breach of the required standard of dealings.

- 5.48 The Exchange regards it as desirable that directors of an issuer should hold securities in the issuer.
- 5.49 Directors wishing to deal in any securities in an issuer must first have regard to the provisions of Part XIII and Part XIV of the Securities and Futures Ordinance with respect to insider dealing and market misconduct. However, there are occasions where directors should not be free to deal in the issuer's securities even though the statutory requirements will not be contravened.
- 5.50 The single most important thrust of the required standard of dealings is that directors who are aware of or privy to any negotiations or agreements related to intended acquisitions or disposals which are notifiable transactions under Chapter 19 or connected transactions under Chapter 20 of the GEM Listing Rules or any inside information must refrain from dealing in the issuer's securities as soon as they become aware of them or privy to them until the information has been announced. Directors who are privy to relevant negotiations or agreements or any inside information should caution those directors who are not so privy that there may be inside information and that they must not deal in the issuer's securities for a similar period.
- 5.51 In addition, a director must not make any unauthorised disclosure of confidential information, whether to co-trustees or to any other person (even those to whom he owes a fiduciary duty) or make any use of such information for the advantage of himself or others.

Interpretation

- 5.52 For the purpose of the required standard of dealings:
- (1) "dealing" includes, subject to rule 5.52(4), any acquisition, disposal or transfer of, or offer to acquire, dispose of or transfer, or creation of pledge, charge or any other security interest in, any securities of the issuer or any entity whose assets solely or substantially comprise securities of the issuer, and the grant, acceptance, acquisition, disposal, transfer, exercise or discharge of any option (whether call, put or both) or other right or obligation, present or future, conditional or unconditional, to acquire, dispose of or transfer securities, or any interest in securities, of the issuer or any such entity, in each case whether or not for consideration and any agreements to do any of the foregoing, and "deal" shall be construed accordingly;
 - (2) "beneficiary" includes any discretionary object of a discretionary trust (where the director is aware of the arrangement) and any beneficiary of a non-discretionary trust;
 - (3) "securities" means listed securities and any unlisted securities that are convertible or exchangeable into listed securities and structured products (including derivative warrants), such as those described in Chapter 15A of the Main Board Listing Rules, issued in respect of the listed securities of an issuer;
 - (4) notwithstanding the definition of "dealing" under rule 5.52(1), the following dealings are not subject to the required standard of dealings:
 - (a) taking up of entitlements under a rights issue, bonus issue, capitalisation issue or other offer made by the listed issuer to holders of its securities (including an offer of shares in lieu of a cash dividend) but, for the avoidance of doubt, applying for excess shares in a rights issue or applying for shares in excess of an assured allotment in an open offer is a "dealing";

- (b) allowing entitlements to lapse under a rights issue or other offer made by the issuer to holders of its securities (including an offer of shares in lieu of a cash dividend);
- (c) undertakings to accept, or the acceptance of, a general offer for shares in the issuer made to shareholders other than those that are concert parties (as defined under the Takeovers Code) of the offeror;
- (d) exercise of share options or warrants or acceptance of an offer for shares pursuant to an agreement entered into with an issuer before a period during which dealing is prohibited under the required standard of dealings at the pre-determined exercise price, being a fixed monetary amount determined at the time of grant of the share option or warrant or acceptance of an offer for shares;
- (e) an acquisition of qualification shares where, under the issuer's constitutional documents, the final date for acquiring such shares falls within a period when dealing is prohibited under the required standard of dealings and such shares cannot be acquired at another time;
- (f) dealing where the beneficial interest or interests in the relevant security of the listed issuer do not change;
- (g) dealing where a shareholder places out his existing shares in a "top-up" placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price (after expenses) is the same as the price at which the existing shares were placed out;
- (h) dealing where the beneficial ownership is transferred from another party by operation of law; and
- (i) acceptance or vesting of shares pursuant to the terms of share awards granted by a listed issuer before a period during which dealing is prohibited under this code at the purchase price, if any, fixed at the time of grant of the awards.

5.53 For the purpose of the required standard of dealings, the grant to a director of an option to subscribe or purchase his company's securities shall be regarded as a dealing by him, if the price at which such option may be exercised is fixed at the time of such grant. If, however, an option is granted to a director on terms whereby the price at which such option may be exercised is to be fixed at the time of exercise, the dealing is to be regarded as taking place at the time of exercise.

Absolute prohibitions

5.54 A director must not deal in any of the securities of the issuer at any time when he possesses inside information in relation to those securities, or where clearance to deal is not otherwise conferred upon him under rule 5.61.

5.55 A director must not deal in the securities of an issuer listed on GEM or the Main Board when by virtue of his position as a director of another issuer, he possesses inside information in relation to those securities.

- 5.56 (a) A director must not deal in any securities of the listed issuer on any day on which its financial results are published and:
- (i) during the period of 60 days immediately preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results; and
 - (ii) during the period of 30 days immediately preceding the publication date of the quarterly results (if any) and half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results,
- unless the circumstances are exceptional, for example, where a pressing financial commitment has to be met as described in rule 5.67. In any event, the director must comply with the procedure in rules 5.61 and 5.62.
- (b) The listed issuer must notify the Exchange in advance of the commencement of each period during which directors are not allowed to deal under rule 5.56(a).

Note: Directors should note that the period during which they are not allowed to deal under rule 5.56 will cover any period of delay in the publication of a results announcement.

- 5.57 Where a director is a sole trustee, the required standard of dealings will apply to all dealings of the trust as if he were dealing on his own account (unless the director is a bare trustee and neither he nor any of his close associates is a beneficiary of the trust, in which case the required standard of dealings will not apply).
- 5.58 When a director deals in the securities of an issuer in his capacity as a co-trustee and he has not participated in or influenced the decision to deal in the securities and is not, and none of his close associates is, a beneficiary of the trust, dealings by the trust will not be regarded as his dealings.
- 5.59 The required standard of dealings will be regarded as equally applicable to any dealings by the director's spouse or by or on behalf of any minor child (natural or adopted) and any other dealings in which for the purposes of Part XV of the Securities and Futures Ordinance he is or is to be treated as interested. It is the duty of the director, therefore, to seek to avoid any such dealing at a time when he himself is not free to deal.
- 5.60 When a director places investment funds comprising securities of the issuer under professional management, discretionary or otherwise, the managers must nonetheless be made subject to the same restrictions and procedures as the director himself in respect of any proposed dealings in the issuer's securities.

Notification

- 5.61 A director must not deal in any securities of the issuer without first notifying in writing the chairman or a director (other than himself) designated by the board for the specific purpose and receiving a dated written acknowledgement. In his own case, the chairman must first notify the board at a board meeting, or alternatively notify a director (other than himself) designated by the board for the purpose and receive a dated written acknowledgement before any such dealing. The designated director must not deal in any securities of the issuer without first notifying the chairman and receiving a dated written acknowledgement. In each case,
- (1) a response to a request for clearance to deal must be given to the relevant director within five business days of the request being made; and

- (2) the clearance to deal in accordance with (1) above must be valid for no longer than five business days of clearance being received.

Note: For the avoidance of doubt, the restriction under rule 5.54 applies if inside information develops following the grant of clearance.

- 5.62 The procedure established within the issuer must, as a minimum, provide for there to be a written record maintained by the issuer that the appropriate notification was given and acknowledged pursuant to rule 5.61, and for the director concerned to have received written confirmation to that effect.
- 5.63 Any director of the issuer who acts as trustee of a trust must ensure that his co-trustees are aware of the identity of any company of which he is a director so as to enable them to anticipate possible difficulties. A director having funds under management must likewise advise the investment manager.
- 5.64 Any director who is a beneficiary, but not a trustee, of a trust which deals in securities of the issuer must endeavour to ensure that the trustees notify him after they have dealt in such securities on behalf of the trust, in order that he in turn may notify the issuer. For this purpose, he must ensure that the trustees are aware of the issuers of which he is a director.
- 5.65 The register maintained in accordance with section 352 of the Securities and Futures Ordinance should be made available for inspection at every meeting of the board.
- 5.66 The directors of the issuer must as a board and individually endeavour to ensure that any employee of the issuer or director or employee of a subsidiary company who, because of his office or employment in the company or a subsidiary, is likely to possess inside information in relation to the securities of any issuer on GEM or the Main Board does not deal in those securities when he would be prohibited from dealing by the required standard of dealings if he were a director.

Exceptional circumstances

- 5.67 If a director proposes to sell or otherwise dispose of securities of the issuer under exceptional circumstances where the sale or disposal is otherwise prohibited under the required standard of dealings, the director must, in addition to complying with the other provisions of the required standard of dealings, comply with rule 5.61 regarding prior written notice and acknowledgement. The director must satisfy the chairman or the designated director that the circumstances are exceptional and the proposed sale or disposal is the only reasonable course of action available to the director before the director can sell or dispose of the securities. The issuer shall give written notice of such sale or disposal to the Exchange as soon as practicable stating why it considered the circumstances to be exceptional. The issuer shall publish an announcement immediately after any such sale or disposal and state that the chairman or the designated director is satisfied that there were exceptional circumstances for such sale or disposal of securities by the director. An example of the type of circumstances which may be considered exceptional for such purposes would be a pressing financial commitment on the part of the director that cannot otherwise be satisfied.

Disclosure

5.68 In relation to securities transactions by directors, an issuer shall disclose in its interim reports (and summary interim reports, if any) and the Corporate Governance report contained in its annual reports (and summary financial reports, if any):

- (1) whether the issuer has adopted a code of conduct regarding securities transactions by directors on terms no less exacting than the required standard of dealings;
- (2) having made specific enquiry of all directors, whether its directors have complied with, or whether there has been any non-compliance with, the required standard of dealings and its code of conduct regarding securities transactions by directors; and
- (3) in the event of any non-compliance with the required standard of dealings, details of such non-compliance and an explanation of the remedial steps taken by the issuer to address such non-compliance.