

# Chapter 1

## GENERAL

### INTERPRETATION

1.01 Throughout this book, the following terms, save where the context otherwise requires, have the following meanings:

**“accounts”**

has the same meaning as “financial statements” and vice-versa

**“associate”**

(a) in relation to ~~any director, chief executive, substantial shareholder or management shareholder (being an individual)~~ means:—

(i) his spouse; ~~and~~

(ii) any child or step-child, natural or adopted, under the age of 18 years of such individual the director, chief executive, substantial shareholder or management shareholder or of his spouse (together with (a)(i) above, the “family interests”);

~~(iii)~~ the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object and any company (“trustee-controlled company”) in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the “trustee interests”); ~~and~~

(iv) a holding company of a trustee-controlled company or a subsidiary of any such holding company; and

~~(iii)~~ any company in the equity capital of which he ~~and/or~~, his family interests, any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30% per cent (or such ~~lower other~~ amount as may from time to time be specified in the Takeovers s

Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and

(b) in relation to ~~a substantial shareholder or management shareholder (being a company)~~ means:—

(i) any other company which is its subsidiary or holding company or is a fellow subsidiary of any such holding company or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of ~~350% per cent~~ (or such ~~lower~~ other amount as may from time to time be specified in the Takeover Codes as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors;

(ii) the trustees, acting in their capacity as such trustees, of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to the company's knowledge) a discretionary object and any company ("trustee-controlled company") in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the "trustee interests");

(iii) a holding company of a trustee-controlled company or a subsidiary of any such holding company; and

(iv) any other company in the equity capital of which the company, such other companies referred to in (b)(i) above, any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in the Takeovers Code as being the level

for triggering a mandatory general offer) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company

Notes: This definition is:—

1 modified in the context of:—

(a) connected transactions, by virtue of rules ~~20.11~~ and 20.12; and

(b) PRC issuers, by virtue of rule 25.04; and

2 extended so as to apply to Sponsors, by virtue of rule 6.35, underwriters, by virtue of rules 16.13, 16.15 and 29.22, and significant shareholders, Sponsors and underwriters by virtue of rule 10.12;

**“authorised representative”**

a person appointed as an authorised representative by a listed issuer under rule 5.~~24~~<sup>19</sup>

**“connected person” or “person connected”**

(a) in relation to a company other than a PRC issuer, and other than any subsidiaries of a PRC issuer, means a director, chief executive, substantial shareholder or management shareholder of such company or any of its subsidiaries or an associate of any of them; and

(b) in relation to a PRC issuer means a promoter, director, supervisor, chief executive, substantial shareholder or management shareholder of the PRC issuer or any of its subsidiaries or an associate of any of them

Note: This definition is ~~extended~~<sup>modified</sup> for the purposes of Chapter 20 by virtue of the provisions of rules 20.11~~0~~ and 20.12~~1~~.

**“controlling shareholder”**

any person who is or group of persons who are together entitled to exercise or control the exercise of ~~35~~<sup>30</sup>% (or such ~~lower~~<sup>other</sup> amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer or who is or are in a position to control the composition of a majority of the board of directors of the issuer; or in the case of a PRC issuer, the meaning ascribed to that phrase by rule 25.10

**“corporate communication”**

any document issued or to be issued by an issuer for the information or action of holders of any of its securities, including but not limited to:—

(a) the directors' report and its annual accounts together with a copy of the auditors' report thereon and, where applicable, its summary financial report;

- (b) the half-year report and, where applicable, its summary half-year report;
- (c) the quarterly report;
- (d) a notice of meeting;
- (e) a listing document; ~~and~~
- (f) a circular; and
- (g) a proxy form

**“family interests”**

the same meaning as in (a)(iii) of the definition of “associate”

**“financial statements”**

has the same meaning as “accounts” and vice-versa

**“holding company”**

the ~~same~~ meaning ~~as attributed to it~~ in section 2 of the Companies Ordinance, but interpreting the term “subsidiary” in accordance with the definition of “subsidiary” under this rule 1.01

**“Hong Kong Financial Reporting Standards” or “HKFRS”**

financial reporting standards approved by the Council of the Hong Kong Society of Accountants (“HKSA”), and includes all Statements of Standard Accounting Practice (“SSAP”) and interpretations of HKFRS approved by the HKSA from time to time

**“International Financial Reporting Standards” or “IFRS”**

financial reporting standards and interpretations approved by the International Accounting Standards Board (“IASB”), and includes all International Accounting Standards (“IAS”) and interpretations issued under the former International Accounting Standards Committee (“IASC”) from time to time

**“management shareholder”**

means any person who is (or group of persons who together are) entitled to exercise or control the exercise of ~~5%-per cent~~ or more of the voting power at general meetings of the issuer and who is (or are) able, as a practical matter, to direct or influence the management of the issuer;

Notes: 1 *The Exchange will not ordinarily consider a shareholder with board representation, including but not limited to a professionally managed fund, as a management shareholder if it can be demonstrated that it does not actively participate in the management of the issuer’s business.*

2 *For the purposes of the GEM Listing Rules, a controlling shareholder will, in all cases, be deemed to be a management shareholder.*

<b>“<del>the</del> public”</b>	the meaning ascribed to that phrase by rule 11.23 and “in public hands” shall be construed accordingly
<b>“published on the GEM website”</b>	published, in the form prescribed by the GEM Listing Rules, in both the English and Chinese languages on the GEM <del>W</del> website
<b>“subsidiary”</b>	<p><u>includes:</u></p> <p>(a) the <del>same</del>-meaning <u>as attributed to it</u> in section 2 of the Companies Ordinance;</p> <p>(b) <u>any entity which is accounted for and consolidated in the audited consolidated accounts of another entity as a subsidiary pursuant to applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards; and</u></p> <p>(c) <u>any entity which will, as a result of acquisition of its equity interest by another entity, be accounted for and consolidated in the next audited consolidated accounts of such other entity as a subsidiary pursuant to applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards</u></p>
<b>“substantial shareholder”</b>	<p>in relation to a company means a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the company</p> <p><i>Note: This definition is qualified in the case of connected transactions falling within rule 20.1<u>32</u>(1)(b)(i).</i></p>
<b>“Takeovers <del>s</del> Code”</b>	the Code on Takeovers and Mergers approved by the Commission as amended from time to time

# Chapter 2

## GENERAL

### INTRODUCTION

#### Characteristics of GEM

2.13 The GEM Listing Rules require, and emphasise the on-going need for, comprehensive and timely disclosure of relevant information by all listed issuers. In this regard, particular attention is drawn to the following matters:—

- (1) A new applicant is required, in its initial listing document, to prepare a detailed statement of its active business pursuits over the period specified in rule 11.12(2) and a detailed statement of business objectives (see rule 11.15). It is subsequently required, in respect of its half-year end (in the event this follows listing) and full-year end for the financial year in which it is listed and the half-year ends and full-year ends of the two financial years thereafter, to draw up a comparison of actual business progress to the information provided in the statement of business objectives for the equivalent period and explain any material differences (including as to its use of proceeds, as indicated in the initial listing document) (see rules 18.4~~23~~ and 18.6~~42~~ respectively);
- (2) A listed issuer is required to publish audited annual accounts and half-year and quarterly reports, which reports need not be audited (see Chapter 18);
- (3) Rule 17.10 sets out the general obligation of disclosure which applies to all listed issuers without prejudice to the specific instances requiring disclosure as set out in other provisions of Chapter 17 or elsewhere in the GEM Listing Rules;
- (4) The directors of an issuer are collectively and individually responsible for ensuring the issuer's full compliance with the disclosure obligations and all other obligations imposed upon issuers under the GEM Listing Rules; and
- (5) For the purposes of the GEM Listing Rules, the principal means by which issuers are required to disclose information is publication on the GEM website. Issuers are not generally required to disclose information by means of paid announcements in gazetted newspapers. Accordingly, shareholders and investors should note that they need to have access to the GEM website in order to obtain up-to-date information on listed issuers.

2.14 The Exchange expects each director of an issuer to be cognizant of the GEM Listing Rules and reasonably familiar with the obligations and duties imposed upon him 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 Repurchases.

#### Disclaimer and GEM characteristics statements

2.20 Any listing document or circular and every annual report and accounts (including, where applicable, a summary financial report), half-year [\(including, where applicable, a summary half-year report\)](#) and quarterly report issued by an issuer pursuant to the GEM Listing Rules (excluding any Explanatory Statement issued pursuant to rule 13.08) must contain, at a prominent position in the document, and in bold type, a statement in the following terms concerning the characteristics of GEM:—

"Characteristics of The Growth Enterprise Market ("GEM") of The Stock Exchange of Hong Kong Limited (the "Exchange")

GEM has been established as a market designed to accommodate companies to which a high investment risk may be attached. In particular, companies may list on GEM with neither a track record of profitability nor any obligation to forecast future profitability. Furthermore, there may be risks arising out of the emerging nature of companies listed on GEM and the business sectors or countries in which the companies operate. Prospective investors should be aware of the potential risks of investing in such companies and should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Given the emerging nature of companies listed on GEM, there is a risk that securities traded on GEM may be more susceptible to high market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in the securities traded on GEM.

The principal means of information dissemination on GEM is publication on the internet website operated by the Exchange. Listed companies are not generally required to issue paid announcements in gazetted newspapers. Accordingly, prospective investors should note that they need to have access to the GEM website in order to obtain up-to-date information on GEM-listed issuers."

### **Material interest in a transaction**

2.26 Where a transaction or arrangement of an issuer is subject to shareholders' approval under the provisions of the GEM Listing Rules, any shareholder that has a material interest in the transaction or arrangement shall abstain from voting on the resolution(s) approving the transaction or arrangement at the general meeting. Issuers must comply with the requirements set out in rules 17.47(4) and 17.47(5).

*Note: For the avoidance of doubt, any provision in the GEM Listing Rules requiring any other person to abstain from voting on a transaction or arrangement of an issuer which is subject to shareholders' approval shall be construed as being in addition to the requirement set out in rule 2.26.*

2.27 For the purpose of determining whether a shareholder has a material interest, relevant factors include:

- (1) whether the shareholder is a party to the transaction or arrangement or an associate (as defined in rule 1.01) of such a party; and
- (2) whether the transaction or arrangement confers upon the shareholder or his associate a benefit (whether economic or otherwise) not available to the other shareholders of the issuer.

There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.

2.28 The issuer must, to the extent that it is aware having made all reasonable enquiries, include in the listing document or circular:

- (1) a statement as at the date by reference to which disclosure of the shareholding is made in the listing document or circular as to whether and to what extent any shareholder who is required to abstain from voting under the GEM Listing Rules controls or is entitled to exercise control over the voting right in respect of his shares in the issuer;

(2) particulars of:

(a) any voting trust or other agreement or arrangement or understanding (other than an outright sale) entered into by or binding upon any such shareholder; and

(b) any obligation or entitlement of any such shareholder as at the date by reference to which disclosure of the shareholding of any such shareholder is made in the listing document or circular,

whereby he has or may have temporarily or permanently passed control over the exercise of the voting right in respect of his shares in the issuer to a third party, either generally or on a case-by-case basis;

(3) a detailed explanation of any discrepancy between any such shareholder's beneficial shareholding interest in the issuer as disclosed in the listing document or circular and the number of shares in the issuer in respect of which he will control or will be entitled to exercise control over the voting right at the relevant meeting; and

(4) steps undertaken by the shareholder (if any) to ensure shares being the subject of the discrepancy referred to in rule 2.28(3) are not voted.

#### **Fees and other charges**

2.296 Of relevance to issuers, the details of the initial listing fee, annual listing fee, subsequent issue fee and other charges, together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in Appendix 9. In addition, of relevance to Sponsors, Appendix 9 sets out details of the application fee and review fee.



# Chapter 3

## GENERAL

### COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF THE GEM LISTING COMMITTEE, THE LISTING APPEALS COMMITTEE AND THE GEM LISTING DIVISION

#### Disciplinary procedures

3.11 The sanctions in rule 3.10 may be imposed or issued against any of the following:—

- (a) a listed issuer or any of its subsidiaries;
- (b) any director of a listed issuer or any of its subsidiaries or any alternate of such director;
- (c) any member of the senior management of a listed issuer or any of its subsidiaries;
- (d) any substantial shareholder of a listed issuer;
- (e) any management shareholder or significant shareholder;
- (f) any professional adviser of a listed issuer or any of its subsidiaries;
- (g) the person fulfilling the role of the listed issuer's qualified accountant (as such role is prescribed in rule 5.105);
- (h) any authorised representative of a listed issuer;
- (i) any supervisor of a PRC issuer; and
- (j) the guarantor of an issuer in the case of a guaranteed issue of debt securities.

For the purposes of this rule “professional adviser” includes any financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the GEM Listing Rules.

*Notes: 1 The scope of any disciplinary action taken, in particular any ban imposed on a professional adviser pursuant to rule 3.10(5), shall be limited to matters governed by or arising out of the GEM Listing Rules.*

*2 In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 3.11. In particular, professional advisers’ obligations to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of the GEM Listing Rules are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member.*

*3 The Exchange’s powers of sanction against any Sponsor (and/or any director or employee of any Sponsor) are set out in rules 6.67 and 6.68.*

# Chapter 5

## GENERAL

### DIRECTORS, SECRETARY AND CORPORATE GOVERNANCE MATTERS

#### Directors

- 5.02 Every director must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director 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 every director of an issuer:—
- (1) to be cognizant of the GEM Listing Rules and reasonably familiar with the obligations and duties imposed upon him and the issuer pursuant to the GEM Listing Rules, the Securities and Futures Ordinance, the Companies Ordinance, the Takeovers Code and the Code ~~of on~~ Share Repurchases. 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 him by the Exchange.
- 5.04 Every director shall comply with ~~the required standard of dealings set out in~~ rules 5.481 to 5.6758 of this Chapter or the issuer's own set of rules ~~on in~~ no less exacting terms. ~~(See rules 5.46 and 5.47)~~

#### *Independent non-executive directors*

- 5.05 ~~Subject to the transitional provisions in rule 5.08: Every issuer must ensure that, at all times;~~
- (1) ~~every its~~ board of directors ~~of an issuer must~~ include at least ~~23~~ 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.*

- 5.06 ~~An issuer shall, pursuant to rule 17.51(3), 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 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. The issuer shall appoint a sufficient number of independent non-executive directors to meet the minimum number required under rule 5.05(1) or appoint an independent non-executive director to meet the requirement set out in rule 5.05(2) within 3 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 satisfy the Exchange that he has 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 23 if, in the opinion of the Exchange, the size of the board or other circumstances of the issuer justify it.

5.08 In respect of all issuers whose securities were admitted to listing on or before [31 March, 2004], the following transitional provisions apply:—

- (1) the issuer must have at least one independent non-executive director who has appropriate professional qualifications or accounting or related financial management expertise by [30 September, 2004]; and
- (2) the issuer must have at least 3 independent non-executive directors by [30 September, 2004].

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

- (1) the holding of a shareholding interest in the issuer of not more than 1 per cent of the total issued share capital will not normally be treated by the Exchange as a bar to independence, but where the director has received those shares as a gift from or by means of other financial assistance from a connected person of the issuer, this will tend to indicate that he is not independent;
  - (2) as an indication of independence, the director should normally have no past or present financial or other interest in the business of the issuer or its subsidiaries, (other than a shareholding within the parameters set out in sub-paragraph (1) or an interest as a director or professional adviser) and no past or present connection with any connected person of the issuer other than as professional adviser, which, in either case, might affect his exercise of independent judgment;
  - (3) an independent non-executive director would not be expected by the Exchange to have any management function in the group.
- (1) holds more than 1% of the total issued share capital of the issuer;

Notes: 1. An issuer wishing to appoint an independent non-executive director holding an interest of more than 1% must satisfy the Exchange, 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 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 connected persons) as part of his director's fee or pursuant to share option schemes established in accordance with Chapter 23;
- (3) is a director, partner or principal of a professional adviser which currently provides or has within one year immediately prior to the date of his proposed appointment provided services, or is 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 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 one year immediately prior to the date of the proposed appointment, or any of their associates;
- (4) has a material interest in any principal business activity of or is involved in any material business dealings with the issuer, its holding company or their respective subsidiaries or with any 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, a substantial shareholder or management 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, step-brother and step-sister of, a director, the chief executive, a substantial shareholder or management shareholder of the issuer is, for the purpose of rule 5.09(6), considered to be connected with that director, chief executive, substantial shareholder or management 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, a substantial shareholder or management 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 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 connected persons of the issuer.

An independent non-executive director shall submit to the Exchange a written confirmation in respect of the above factors concerning his independence and that there are no other factors that may affect his independence at the same time as the submission of his declaration, undertaking and acknowledgement in the form set out in Appendix 6 and shall inform the Exchange as soon as practicable if there is any subsequent change of circumstances which may affect his independence. Each independent non-executive director must provide an annual confirmation of his independence to the issuer. The issuer must confirm in each of its annual reports whether it has received such confirmation and whether it still considers the independent non-executive director to be independent.

*Note: ~~The factors set out in rule 5.09 are included for guidance only and are not intended to be exhaustive. In circumstances of any doubt, the Exchange should be consulted prior to the relevant appointment. The factors set out in this rule are not intended to be exhaustive. The Exchange may take account of other factors relevant to a particular case in assessing independence.~~*

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 to the satisfaction of the Exchange, 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 Independent non-executive directors who were appointed by issuers on or before [31 March, 2004] shall submit to the Exchange a written confirmation in respect of the factors set out in rule 5.09 concerning their independence no later than [30 September, 2004].

5.12<sup>07</sup> 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.

#### *Non-executive directors*

5.13<sup>08</sup> Every non-executive director, whether independent or not, must be appointed for a specific term and that term should be disclosed in the annual report and accounts of the issuer. A person accepting an appointment as a non-executive director must ensure that he can give sufficient time and attention to the affairs of the issuer and should not accept the appointment if he cannot.

#### **Company secretary**

5.14<sup>09</sup> The secretary of the issuer must be a person who has the requisite knowledge and experience to discharge the functions of the secretary of the issuer and who:—

- (1) is a member of The Hong Kong Institute of Company Secretaries, a solicitor or barrister as defined in the Legal Practitioners Ordinance or a professional accountant; or
- (2) is an individual who, by virtue of his academic or professional qualifications or relevant experience, is capable of discharging those functions.

#### **Qualified accountant**

5.15<sup>10</sup> Every issuer must ensure that, at all times, it ~~retains-employs~~ an individual; on a full time-basis; ~~whose. The~~ responsibility ~~it must be of such individual to assist~~ must include oversight of the group issuer and its subsidiaries in connection with its financial reporting procedures and internal controls and compliance with the requirements under the GEM Listing Rules with regard to financial

reporting and other accounting-related issues. The individual must be a member of the senior management of the issuer (preferably an executive director) and must be a qualified accountant and a fellow or associate member of the Hong Kong Society of Accountants or a similar body of accountants recognised by that Society for the purpose of granting exemptions from the examination requirement for membership of that Society.

*Note: This rule and rule 5.183 do not apply to an issuer of debt securities, the equity securities of which are not listed on GEM.*

5.16# The qualified accountant's responsibilities must include, as a minimum, the following matters:—

- (1) advising on and assisting the board of directors of the issuer in developing and implementing financial reporting, internal control and other procedures to provide the board with a reasonable basis for making proper judgments as to the financial position and prospects of the group; and
- (2) unless he is otherwise a member of the audit committee of the issuer, liaising with the audit committee to assist it in monitoring the development and implementation of such procedures.

5.17# The person appointed as the qualified accountant 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 any person as the qualified accountant until it has appointed a replacement. Where a person's appointment as qualified accountant is terminated, both the issuer and the individual concerned should immediately notify the Exchange, in each case stating the reason why such appointment was terminated.

5.18# If, at any time, the issuer fails to retain an individual to take on the role of the qualified accountant, the issuer must immediately announce this matter in accordance with the publication requirements set out in Chapter 16, failing which the Exchange reserves the right to announce the same.

### **Compliance officer**

5.19# Every issuer must ensure that, at all times, one of its executive directors assumes responsibility for acting as the issuer's compliance officer.

*Note: This rule and rule 5.23# do not apply to an issuer of debt securities, the equity securities of which are not listed on GEM.*

5.20# The compliance officer's responsibilities must include, as a minimum, the following matters:—

- (1) advising on and assisting the board of directors of the issuer in implementing procedures to ensure that the issuer complies with the GEM Listing Rules and other relevant laws and regulations applicable to the issuer; and
- (2) responding promptly and efficiently to all enquiries directed at him by the Exchange.

5.21# A person appointed as the compliance officer 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 any person as the compliance officer until it has appointed a replacement. Where a person's appointment as the compliance officer 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.

5.22~~17~~ If the Exchange is not satisfied that any person appointed as the compliance officer is fulfilling his responsibilities adequately, it may require the issuer to terminate his appointment as compliance officer and appoint or designate a replacement.

5.23~~18~~ If, at any time, the issuer fails to appoint or does not have a compliance officer, the issuer must immediately announce this matter in accordance with the publication requirements set out in Chapter 16, failing which the Exchange reserves the right to announce the same.

### **Authorised representatives**

5.24~~19~~ 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~~20~~ The responsibilities of an authorised representative are as follows:—

- (1) supplying the Exchange with details in writing of how he can be contacted including home, office and mobile telephone numbers and, where available, facsimile numbers and electronic mail addresses;
- (2) for so long as the issuer continues to have a Sponsor, assisting the Sponsor in its 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.*

*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~~21~~ 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~~23~~ 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~~23~~ Every issuer must establish an audit committee comprising ~~a minimum of 2 members 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 ~~(and, in the case of a committee of 2, both 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~~4~~ to 5.33~~27~~ do not apply to an issuer of debt securities, the equity securities of which are not listed on GEM.*

*2 The transitional provisions set out in rule 5.08 shall apply.*

*3 For further guidance on establishing an audit committee, issuers may refer to "A Guide for Effective Audit Committee" published by 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~~24~~ The board of directors of the issuer must ~~provide~~approve and approve~~provide~~ written terms of reference for the audit committee which clearly establish the committee's authority and duties.

*Note: For further guidance on establishing an audit committee, issuers may refer to "A Guide For The Formation Of An Audit Committee" published by the Hong Kong Society of Accountants in December, 1997. Issuers may adopt the terms of reference set out in that guide, except that the committee may have a minimum of 2 members, or they may adopt any other comparable terms of reference for the establishment of an audit committee.*

5.30~~25~~ The duties of the audit committee must comprise at least the following matters:—

- (1) reviewing, in draft form, the issuer's annual report and accounts, half-year report and quarterly reports and providing advice and comments thereon to the issuer's board of directors. In this regard:—
  - (a) members of the committee must liaise with the issuer's board of directors, senior management and the person appointed as the issuer's qualified accountant and the committee must meet, at least once a year, with the issuer's auditors; and
  - (b) the committee should consider any significant or unusual items that are, or may need to be, reflected in such reports and accounts and must give due consideration to any matters that have been raised by the issuer's qualified accountant, compliance officer or auditors; and
- (2) reviewing and supervising the issuer's financial reporting and internal control procedures.



- 5.31~~26~~ The issuer must ensure that full minutes are kept of all meetings of the audit committee.
- 5.32~~27~~ The executive directors of the issuer must ensure that members of the audit committee are provided full and unlimited access to all books and accounts of the issuer and any employees, consultants and advisers they may, from time to time, wish to consult.
- 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).

### **Board practices and procedures**

- 5.34~~28~~ Rules 5.35~~29~~ to 5.45~~39~~ set out the minimum standards of good practice concerning the general management responsibilities of the board of directors (and related matters) with which issuers and their directors must comply. All issuers are encouraged to devise their own minimum standards on no less exacting terms, in the interests not only of their independent non-executive directors, but of the board of directors as a whole.
- 5.35~~29~~ Full board meetings should be held no less frequently than every 3 months. "Full" board meetings means meetings at which directors are physically present and not "paper" meetings or meetings by circulation.
- 5.36~~30~~ The directors' fees and any other reimbursement or emolument payable to an independent non-executive director must be disclosed in full in the annual report and accounts of the issuer (see rules 18.27 and 18.28).
- 5.37~~31~~ Except in emergencies an agenda and accompanying board papers should be sent in full to all directors at least 2 clear days before the intended date of a board meeting (or such other period as the board agrees).
- 5.38~~32~~ Except in emergencies adequate notice should be given of a board meeting to give all directors an opportunity to attend.
- 5.39~~33~~ All directors, executive and non-executive, are entitled to have access to board papers and materials. Where queries are raised by non-executive directors, steps should be taken to respond as promptly and fully as possible.
- 5.40~~34~~ Full minutes should be kept by a duly appointed secretary of the meeting and such minutes should be open for inspection at any time in office hours on reasonable notice by any director.
- 5.41~~35~~ If, in respect of any matter discussed at a board meeting, the independent non-executive directors hold views contrary to those of the executive directors, the minutes should clearly reflect this.
- 5.42~~36~~ Arrangements should be made in appropriate circumstances to enable the independent non-executive directors of the board, at their request, to seek separate professional advice at the expense of the issuer.
- 5.43~~37~~ If a matter to be considered by the board involves a conflict of interest for a director, a full board meeting should be held and the matter should not be dealt with by circulation or by committee and any director to whom the conflict relates may not form part of the quorum, nor participate in any discussion nor vote at such meeting in respect of such matter.

- 5.4438 Every director on the board is required to keep abreast of his responsibilities as a director of an ~~listed~~ issuer. Newly appointed board members should receive an appropriate briefing on the issuer's affairs and be provided with relevant corporate governance materials on an ongoing basis.
- 5.4539 The board of directors should give due consideration to all recommendations made to it, from time to time, by the issuer's company secretary, qualified accountant, compliance officer and audit committee.

## Securities transactions by directors

### *Basic principles*

- 5.4640 Rules 5.4841 to 5.5867 set out the ~~required minimum~~ standard of ~~good practice~~ against which issuers and their directors must measure their ~~own~~ conduct ~~with respect to securities transactions by the directors regarding transactions in securities of their issuers~~ (the "~~minimum 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 ~~transactions~~dealings in which he is or is deemed to be interested are conducted in accordance with the ~~required minimum~~ 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.~~
- 5.4841 The Exchange regards it as desirable that directors of ~~an listed~~ issuers should hold securities in their ~~own companies~~ issuer.
- 5.4942 Directors wishing to ~~buy or sell such~~deal in any securities ~~in an issuer~~ must first have regard to the ~~statutory~~ provisions ~~in of~~ Part ~~XV~~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.~~
- 5.43 ~~The purpose of the minimum standard of dealings is to provide guidance to directors on when those occasions arise. Rules 5.53 and 5.54, which require notification, complement a Hong Kong issuer's obligations under section 352 of the Securities and Futures Ordinance to maintain a register of directors' interests and short positions in the securities of the issuer and should assist the issuer to meet its statutory duties.~~
- 5.5044 The single most important thrust of the ~~minimum 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 ~~which are or may be any~~ price-sensitive ~~information must should~~ refrain from dealing in the issuer's securities as soon as they become aware of them or privy to them ~~up to the formal announcement until proper disclosure of the information them by the issuer~~ in accordance with the requirements of Chapter 16. ~~Directors who are privy to relevant negotiations or agreements or any price-sensitive information should caution t~~ Those directors who are not so privy ~~should be cautioned~~ that there may be ~~unpublished~~ price-sensitive information and that they ~~must should~~ not deal in the issuer's securities for a similar period.
- 5.5145 In addition, a director ~~must should~~ 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 by the director and issuer before a period during which the director is prohibited from dealing 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; and
  - (e) an acquisition of qualification shares by a director where, under the issuer’s constitutional documents, the final date for acquiring such shares falls within a period during which the director is prohibited from dealing under the required standard of dealings and the director cannot acquire such shares at another time.

5.53~~46~~ For the purpose of the minimum 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.

~~5.47 When a director places investment funds under professional management, even where discretion is given, the managers should nonetheless be made subject to the same restrictions and procedures as the director himself in respect of proposed dealings in the issuer's securities.~~

~~5.48 For the purpose of the minimum standard of dealings, any dealing by a director in derivative warrants (of the type referred to in the Main Board Listing Rules) issued in respect of the listed securities of the issuer shall be treated as a dealing in the securities of the issuer.~~

*Absolute prohibitions*

~~5.549~~ A director ~~must should~~ not deal in any of the securities of the issuer at any time when he is in possession of unpublished price-sensitive information in relation to those securities, or where clearance to deal is not otherwise conferred upon him under rule 5.61.

~~5.550~~ A director ~~must should~~ not deal in the securities of ~~any other an~~ issuer listed on GEM or ~~on~~ the Main Board when by virtue of his position as a director of ~~his own company, another issuer,~~ he is in possession of unpublished price-sensitive information in relation to those securities.

~~5.561~~ During the period commencing 1 month immediately preceding the earlier of:

~~(i)~~ (1) the date of the board meeting (as such date is first notified to the Exchange in accordance with rule 17.48) for the approval of the issuer's results for any year, half-year or quarter-year period or any other interim period (whether or not required under the GEM Listing Rules); and

~~(ii)~~ (2) the deadline for the issuer to publish an announcement of its results for any year, half-year or quarter-year period under rules 18.49, 18.78 or 18.7953 or any other interim period (whether or not required under the GEM Listing Rules),

and ending on the date of the results announcement, a director ~~should~~must not deal in any securities of the issuer 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, he must comply with the procedure in rules ~~5.536~~1 and ~~5.546~~2.

*Note: Directors should note that the period during which they are not allowed to deal under rule ~~5.515~~6 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 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 associates is, a beneficiary of the trust, dealings by the trust will not be regarded as his dealings.~~

~~5.592~~ The ~~minimum~~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 ~~infant~~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~~53~~ A director ~~should~~must not deal in any securities of the listed issuer without first notifying in writing the chairman ~~for other a~~ director~~(s)~~ (other than himself) designated by the board appointed for the specific purpose~~;~~, and receiving a dated written acknowledgement. In his own case, the chairman ~~must~~should first notify the board at a board meeting, or alternatively notify ~~the other a~~ director~~(s)~~ (other than himself) designated by the board appointed for the purpose and receive a dated written acknowledgement before any such dealing. The designated director must not deal in any securities of the listed issuer without first notifying the chairman and receiving a dated written acknowledgement.

5.62~~54~~ The procedure established within the issuer ~~should~~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~~55~~ Any director of the issuer who acts as trustee of a trust ~~should~~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 ~~should~~must likewise advise the investment manager.

5.64~~56~~ Any director who is a beneficiary, but not a trustee, of a trust which deals in securities of the issuer ~~should~~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 ~~should~~must ensure that the trustees are aware of the issuer's companies of which he is a director.

5.65~~57~~ 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~~58~~ The directors of the issuer ~~should~~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 be in possession of unpublished price-sensitive information in relation to the securities of any ~~listed~~ issuer on GEM or the Main Board does not deal in those securities at a time 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 annual and half-year reports:

- (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.

# Chapter 6

## GENERAL

### SPONSORS

#### Eligibility criteria

6.14 A prospective Sponsor must have sponsored initial public offering transactions and have other relevant corporate finance experience.

*Notes: 1 For these purposes, a prospective Sponsor must demonstrate that it has:—*

- (a) acted as lead sponsor on at least 2 completed initial public offering transactions over the 5-year period prior to the application date or, failing which, it has acted as a co-sponsor on at least 3 completed initial public offering transactions over the same period; and*
  - (b) other relevant corporate finance experience.*
- 2 For the purpose of this rule “corporate finance experience” includes experience derived from providing advice on matters such as notifiable transactions, connected transactions (or their equivalent under the rules of other stock exchanges), mergers and acquisitions, takeovers subject to the Takeovers Code (or its equivalent in other jurisdictions) and/or other appropriate and significant transactions or equity-fund raising exercises.*
- 3 The Exchange reserves the discretion to waive or relax the requirement set out in Note 1(a) above, in exceptional circumstances, where the prospective Sponsor can demonstrate to the satisfaction of the Exchange that it has proven experience in sponsoring initial public offering transactions and recognised expertise in this regard, as gained over a period in excess of 5 years prior to the application date.*
- 4 The Exchange reserves the further discretion to waive or relax the requirements set out in this rule, where:—*
- (a) the prospective Sponsor, whilst not itself having the experience required under this rule, is a member of a group within which there exists entities that do have the requisite experience (as assessed by reference to Notes 1 to 3 above) and provided always that there is a sufficiently close nexus between the prospective Sponsor and those entities, based upon which the prospective Sponsor can be expected to benefit; or*
  - (b) in exceptional circumstances, the prospective Sponsor is newly-formed and, in all respects other than this rule, complies with the criteria set out in rules 6.12 to 6.19.*

*For the purposes of sub-paragraph (a) of this Note, the prospective Sponsor must provide details of the relevant experience of the named entities within the group, of the nexus between the prospective Sponsor and those entities and of how the relevant experience of those entities is expected to be shared with or imparted to the prospective Sponsor, to the satisfaction of the Exchange.*

- 5 *For the purposes of this rule, it is not an absolute requirement that the initial public offering transactions in question should have involved entities listed on the Main Board or on GEM and, accordingly, similar experience derived from initial public offering transactions on other stock exchanges may, on a case by case basis, be regarded as satisfactory by the Exchange.*

### **Responsibilities of the Sponsor**

#### *Responsibilities concerning each new applicant for which the Sponsor acts*

- 6.47 The Sponsor, together with the new applicant, must complete the application for listing in the form set out in Appendix 5A. In addition, the Sponsor must, prior to issue of the listing document, submit to the Exchange the Sponsor's declaration in the form set out in Appendix 7G confirming that:—
- (1) all the documents required by the GEM Listing Rules to be submitted to the Exchange prior to the issue of the listing document have been so submitted;
  - (2) the Sponsor has satisfied itself, to the best of its knowledge and belief, having made due and careful enquiries, that:—
    - (a) the new applicant is suitable for listing on GEM;
    - (b) the new applicant is in compliance with all of the qualifications for listing set out in the GEM Listing Rules;
    - (c) the listing document is in compliance with the GEM Listing Rules and that:—
      - (i) the information contained in the listing document is accurate and complete in all material respects and not misleading;
      - (ii) there are no other matters the omission of which would make any statement in the listing document misleading;
      - (iii) all opinions of the directors of the new applicant expressed in the listing document have been arrived at after due and careful consideration on their part and are founded on bases and assumptions that are fair and reasonable; and
      - (iv) the directors of the new applicant have made sufficient enquiries so as to enable them to give the confirmations set out in the "responsibility statement" contained in the listing document;
    - (d) there are no matters other than those disclosed in the listing document or otherwise in writing to the Exchange which should have been taken into account by the Exchange in considering the application for listing of the relevant securities; and
  - (3) the directors of the new applicant have had explained to them the nature of their responsibilities under the GEM Listing Rules and other applicable laws and provisions relating to securities and the Sponsor has satisfied itself to the best of its knowledge and belief, having made due and careful enquiries that:—
    - (a) the directors have the requisite expertise and experience;
    - (b) they appreciate the nature of those responsibilities and can be expected to honour their obligations under the GEM Listing Rules and other applicable laws and provisions relating to securities;



- (c) they can be expected to prepare and publish all information necessary for an informed market to take place in the new applicant's securities; and
- (d) they can be expected, generally, to honour their obligations, both in relation to shareholders and to the new applicant's creditors.

*Note: For the purposes of this rule and rule 6.52, "applicable laws and provisions relating to securities" include the Securities and Futures Ordinance, the Companies Ordinance, the Takeovers s Code and the Code on Share Repurchases.*

# Chapter 7

## GENERAL

### **ACCOUNTANTS' REPORTS AND PRO FORMA FINANCIAL INFORMATION**

#### **When required**

7.01 This Chapter sets out the detailed requirements for accountants' reports on the profits and losses, assets and liabilities of, and other financial information on, an issuer and/or a business or company, to be acquired or disposed of (as the case may be) by an issuer for inclusion in listing documents or circulars. Accountants' reports are required to be included in the following listing documents and circulars:—

- (1) a listing document issued by a new applicant, but subject to rule 14.11(6) relating to a listing document supporting an introduction;
- (2) a listing document issued by a listed issuer in connection with an offer of securities to the public for subscription or purchase which is required by either section 38(1) or section 342(1) of the Companies Ordinance to set out the reports specified in Part II of the Third Schedule to that Ordinance; ~~and~~
- (3) a circular issued in connection with a major transaction, a very substantial acquisition or a reverse takeover (see rules 19.6755 and 19.6956) unless the company being acquired is itself a company listed on GEM or the Main Board; and
- (4) a circular issued in connection with a very substantial disposal (see rule 19.68).

*Note: By virtue of rules 11.11 and 27.07, the accountants' report required to be included in the listing document of a new applicant must cover the requisite financial period ending not more than 6 months before the date of the listing document.*

#### **Reporting accountants**

7.02 All accountants' reports must be prepared by professional accountants who are qualified under the Professional Accountants Ordinance for appointment as auditors of a company and who are independent both of the issuer and of any other company concerned to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the guideline requirements on independence (~~Statement 1.203~~) issued by the Hong Kong Society of Accountants, provided that, in the case of a circular issued by a listed company in connection with the acquisition of an overseas company, the Exchange may be prepared to permit the accountants' report to be prepared by a firm of accountants which is not so qualified but which is acceptable to the Exchange. Such a firm must normally have an international name and reputation and be a member of a recognised body of accountants.

#### **Basic contents of accountants' report for a listing document**

7.03 In the case of a new applicant (rule 7.01(1)) and an offer of securities to the public for subscription or purchase falling within rule 7.01(2), the accountants' report must include:—

##### *History of results*

- (1) the results of the issuer or, if the issuer is a holding company, the consolidated results of the issuer and its subsidiaries covering:
  - (a) at least the 2 financial years immediately preceding the issue of the listing document;

- (b) where the issuer satisfies the conditions set out in rule 11.12(3), at least the 12 month period from the commencement of its active business pursuits; or
- (c) such shorter period as may be acceptable to the Exchange (see rule 11.14);

*Note: The accountants' report must cover a period of at least 24 months of active business pursuits in the case of a new applicant described in rule 11.12(2)(a).*

- (2) the results of any business or subsidiary acquired, agreed to be acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (on the same basis, where the subsidiary is itself a holding company, as in (1) above) in respect of each of the 2 financial years referred to in (1) above (or in respect of the period since commencement of such business or the incorporation or establishment of such subsidiary, as the case may be, if this occurred within such 2 year period).

#### *Balance sheet*

- (3)
  - (a) the balance sheet of the issuer and, if the issuer is itself a holding company, the consolidated balance sheet of the issuer and its subsidiaries in each case as at the end of each of the two financial years to which the latest audited accounts of the issuer have been made up except that if the listing document is not required by either section 38(1) or section 342(1) of the Companies Ordinance to set out the reports specified in Part II of the Third Schedule of that Ordinance and the issuer is itself a holding company then the accountants' report need only include the consolidated balance sheet of the issuer and its subsidiaries;
  - (b) in the case of banking companies, the balance sheet as at the end of each of the two financial years prepared in accordance with rule 7.03(3)(a) must include information on the assets and liabilities set out in the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority;
- (4)
  - (a) the balance sheet of any business or subsidiary acquired, agreed to be acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (on the same basis, where the subsidiary is itself a holding company, as in (3) above) in each case as at the end of each of the two financial years to which the latest audited accounts of such business or subsidiary (as the case may be) have been made up;
  - (b) in the case of banking companies, the balance sheet as at the end of each of the two financial years prepared in accordance with rule 7.03(4)(a) must include information on the assets and liabilities set out in the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority;

#### *Cash flow statement*

- (4A) the cash flow statement of the issuer or, if the issuer is itself a holding company, the consolidated cash flow statement of the issuer and its subsidiaries in each case for each of the two financial years to which the latest audited accounts of the issuer have been made up;

#### *Statement of changes in equity*

- (4B) a statement of changes in equity of the issuer for each of the two financial years to which the latest audited accounts of the issuer have been made up;

*Additional disclosures for Financial Conglomerates*

- (4C) where the issuer is regarded as a financial conglomerate (see rule 18.37B) in any of the two financial years to which the latest audited accounts have been made up, the information required by rule 18.37A in respect of the financial year or years in which the issuer is regarded as a financial conglomerate;

*Other*

- (5) the earnings per share and the basis of computation in respect of each of the years referred to in (1) and (2) above except that the accountants' report need not include this information if, in the opinion of the reporting accountants, such information is not meaningful having regard to the purpose of the accountants' report or if combined results are presented in accordance with rule 7.098 or if the accountants' report relates to an issue of debt securities;
- (6) all movements to and from any reserves including movements arising from:—
- (a) consolidation or acquisition (i.e. the write-off of goodwill/establishment of a capital reserve);
  - (b) the revaluation of assets;
  - (c) the translation of accounts denominated in foreign currencies; or
  - (d) the redemption or repurchase of shares of the issuer.
- if those movements are not reflected in the results in respect of each of the years referred to in (1) and (2) above;
- (7) a statement of the indebtedness as at the end of each of the period reported on showing, as regards bank loans and overdrafts and separately as regards other borrowings of the issuer (or of the issuer and its subsidiaries, including any company which will become a subsidiary by reason of any acquisition falling within rules 7.03(2) and (4)), the aggregate amounts repayable:—
- (a) on demand or within a period not exceeding 1 year;
  - (b) within a period of more than 1 year but not exceeding 2 years;
  - (c) within a period of more than 2 years but not exceeding 5 years; and
  - (d) within a period of more than 5 years;
- (8) the details of the principal accounting policies which have been applied in respect of the period reported on;
- (9) a statement of any significant subsequent events which have occurred to any business or company or within any group covered by the accountants' report since the end of the period reported on or, if there are no such events, a statement of that fact; and
- (10) any other matters which appear to the reporting accountants to be relevant having regard to the purpose of the accountants' report.

*Note: Where a new applicant satisfies the conditions set out in rule 11.12(3) or rule 11.14, references to "the two financial years" or "the financial year" in rules 7.03(2) to 7.03(7) shall mean the period(s) described in rule 7.03(1)(b) or rule 7.03(1)(c) (as the case may be).*

*Specific detail concerning financial information*

7.04 The report on results and financial position under rules 7.03(1) to (4) above must disclose separately at least the following information:—

- (1) Income statement
  - (a) turnover;
  - (b) investment and other income;
  - (c) profit (or loss) on sale of investments or properties;
  - (d) cost of goods sold;
  - (e) interest on borrowings;
  - (f) depreciation/amortisation;
  - (g) profit (or loss) before taxation, including the share of the profit (or loss) of affiliated companies, with separate disclosure of any items included therein which are exceptional because of size, nature and incidence;
  - (h) taxation on profits (Hong Kong and overseas) in each case indicating the basis of computation, with separate disclosure of the taxation on share of affiliated companies' profits;
  - (i) profit (or loss) attributable to minority interests;
  - (j) profit (or loss) attributable to shareholders;
  - (k) rates of dividend paid or proposed on each class of shares (with particulars of each such class) and amounts absorbed thereby and any waivers of dividend except that the accountants' report need not disclose this information:—
    - (a) if combined results are presented in accordance with rule 7.098 and, in the opinion of the reporting accountants, such information is not meaningful having regard to the purpose of the report; ~~or~~
    - (b) if the accountants' report relates to an issue of debt securities; or
    - (c) in the case of a major transaction; and
  - (l) details of any special dividend proposed to be paid after the date of the accountants' report;
- (2) Balance sheet information as follows, if applicable:
  - (a) fixed assets;
  - (b) current assets
    - (i) stocks;

- (ii) debtors including credit policy and ageing analysis of accounts receivable;
    - (iii) cash at bank and in hand; and
    - (iv) other current assets;
  - (c) current liabilities
    - (i) borrowings and debts; and
    - (ii) ageing analysis of accounts payable;
  - (d) net current assets (liabilities);
  - (e) total assets less current liabilities;
  - (f) non-current liabilities
    - (i) borrowings and debts;
  - (g) capital and reserves; and
  - (h) minority interests.
- (3) in the case of banking companies, the information on results and financial position set out in the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority ~~must~~should be provided in place of that set out in sub paragraph (1) (with the exception of that required by sub-paragraphs 1(k) and 1(l)) and (2) above ~~; and~~
- (4) Segment information

The income statement and balance sheet shall, in addition to that information required by (1) to (2) immediately above, include the information required by:—

- (a) Statement of Standard Accounting Practice 26 segment reporting if the issuer prepares its annual financial statements in accordance with ~~standard accounting practices in~~ Hong Kong Financial Reporting Standards; or
- (b) International Accounting Standard 14 reporting financial information by segment if the issuer prepares its annual financial statements in accordance with International Accounting ~~Accounting~~ Financial Reporting Standards; or
- (c) the relevant accounting standards dealing with segment reporting in Generally Accepted Accounting Principles in the United States of America (US GAAP) if the issuer prepares its annual financial statements in accordance with US GAAP.

*Note: The information required by this rule may be provided on the face of the income statement or the balance sheet, as appropriate, or in the notes to the financial statements.*

## Basic contents of accountants' report for certain notifiable transaction circulars

- 7.05 In the cases referred to in rule 7.01(3) concerning a circular in connection with a reverse takeover, a very substantial acquisition or a major transaction on the acquisition of a business, company or companies,~~a very substantial acquisition or a reverse takeover~~, the accountants' report must include:—

### *Three year history of results*

- (1) (a) the results, for the relevant period, of the business which, or of the company (or, if that company is itself a holding company, of the company and its subsidiaries) in whose share capital an interest, has been acquired, agreed to be acquired or is proposed to be acquired since the date to which the latest published audited accounts of the issuer have been made up; provided always that where any company in question has not or will not become a subsidiary of the issuer, the Exchange may be prepared to relax this requirement;

*Note: For the purposes of this rule, the "relevant period" comprises each of the 3 financial years (applicable to such business or company) immediately preceding the issue of the circular (or, if less, the period since commencement of such business or the incorporation or establishment of such company, as the case may be, if less) or such shorter period as may be acceptable to the Exchange.*

- (b) in the case of banking companies, the report on results prepared in accordance with rule 7.05(1)(a) must include the information on results set out in the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority;

### *Three year balance sheet*

- (2) (a) the balance sheet of the business which, or of the company (and, if that company is itself a holding company, the consolidated balance sheet of the company and its subsidiaries) in whose share capital an interest has been acquired, agreed to be acquired or is proposed to be acquired since the date to which the latest published audited accounts of the issuer have been made up, in each case as at the end of each of the three financial years (or the end of each of the financial years since commencement of such business or the incorporation or establishment of such company, as the case may be, if less) to which the latest audited accounts of such business or company (as the case may be) have been made up;
- (b) in the case of banking companies, the balance sheet as at the end of each of the three financial years (or the end of each of the financial years since commencement of such business or the incorporation or establishment of such company, as the case may be, if less) must include the information on the assets and liabilities set out in the Financial Disclosure by Locally Authorized Institutions issued by the Hong Kong Monetary Authority;

### *Three year cash flow statement*

- (2A) the cash flow statement of the business which, or of the company (or, if that company is itself a holding company, of the company and its subsidiaries) in whose share capital an interest, has been acquired, agreed to be acquired or is proposed to be acquired since the date to which the latest published audited accounts of the issuer have been made up, in each case for each of the three financial years (or for each of the financial years since commencement of such business or the incorporation or establishment of such company, as the case may be, if less) to which the latest audited accounts of such business or company (as the case may be) have been made up;

*Three year statement of changes in equity*

- (2B) a statement of changes in equity of the business which, or of the company (or, if that company is itself a holding company, of the company and its subsidiaries) in whose share capital an interest, has been acquired, agreed to be acquired or is proposed to be acquired since the date to which the latest published audited accounts of the issuer have been made up, in each case for each of the three financial years (or for each of the financial years since commencement of such business or the incorporation or establishment of such company, as the case may be, if less) to which the latest audited accounts of such business or company (as the case may be) have been made up;

*Additional disclosures for Financial Conglomerates*

- (2C) where the business or company acquired or to be acquired is regarded as a financial conglomerate (see rule 18.37B) in any of the three financial years (or for each of the financial years since commencement of such business or the incorporation or establishment of such company, as the case may be, if less) to which the latest audited accounts have been made up, the information required by rule 18.37A in respect of the financial year or years in which the issuer is regarded as a financial conglomerate;

- (3) all movements to and from any reserves including movements arising from:—

- (a) consolidation or acquisition (i.e. the write-off of goodwill/establishment of a capital reserve);
- (b) the revaluation of assets; ~~or~~
- (c) the translation of accounts denominated in foreign currencies; or
- (d) the redemption or repurchase of shares of the issuer,

if those movements are not reflected in the results in respect of each of the financial years referred to in (1) above;

- (4) a statement of the indebtedness as at the end of each of the period reported on showing, as regards bank loans and overdrafts and separately as regards other borrowings of the business or company or company and its subsidiaries covered by the accountants' report, the aggregate amounts repayable:—

- (a) on demand or within a period not exceeding 1 year;
- (b) within a period of more than 1 year but not exceeding 2 years;
- (c) within a period of more than 2 years but not exceeding 5 years; and
- (d) within a period of more than 5 years,

except that such an analysis of debt repayments need not be included in the case of a major transaction (see rule 19.6755);

- (5) the details of the principal accounting policies which have been applied in respect of the period reported on;



- (6) a statement of any significant subsequent events which have occurred to any business or company or company and its subsidiaries covered by the accountants' report since the end of the period reported on or, if there are no such events, a statement of that fact; and
- (7) any other matters which appear to the reporting accountants to be relevant having regard to the purpose of the accountants' report.

~~7.06~~ In the cases referred to in rule 7.01(4) concerning a circular in connection with a very substantial disposal, the accountants' report on the listed issuer's group (i.e. the issuer and its subsidiaries and any business or subsidiary acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up with the business, company or companies being disposed of shown separately as (a) discontinuing operation(s)) must include all the information referred to in rule 7.05 in respect of such group.

~~7.07~~ The report on results and financial position under rules 7.05(1) and (2) must disclose separately the information referred to in rule 7.04.

### **Requirements applicable in all cases**

~~7.08~~ In all cases:—

- (1) the accountants' report must include a statement of:
  - (a) whether or not the accounts for the period reported on have been audited and, if so, by whom; and
  - (b) whether or not any audited accounts have been made up since the end of the last financial period reported on;
- (2) the reporting accountants must express an opinion as to whether or not the relevant information gives, for the purposes of the accountants' report, a true and fair view of the results and cash flows for the period reported on and of the balance sheet as at the end of each of the period reported on;
- (3) the accountants' report must state that it has been prepared in accordance with the Auditing Guideline – Prospectuses and the reporting accountant (Statement 3.340) issued by the Hong Kong Society of Accountants ~~or any comparable standard issued from time to time by the International Auditing Practices Committee of the International Federation of Accountants;~~
- (4) the reporting accountants must be named in the accountants' report; and
- (5) the accountants' report must be dated.

### **Individual or combined results**

~~7.09~~ In the case of a new applicant (rule 7.01(1)) and an offer of securities to the public for subscription or purchase falling within rule 7.01(2), the reporting accountants must report on the consolidated or combined financial history of results and the consolidated or combined ~~statement of assets and liabilities~~ balance sheet of the issuer and its subsidiaries and any business or subsidiary acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up, unless otherwise agreed by the Exchange.

~~7.10~~ In the case of a circular issued by a listed issuer in connection with the acquisition of more than one business and/or company and/or group of companies, the reporting accountants must report on the individual financial histories of results and the individual ~~statements of assets and liabilities~~ balance sheet of each of those businesses, companies or groups of companies referred to in rule 7.05, unless otherwise agreed by the Exchange.

## Disclosure

~~7.11#~~ The information to be disclosed in respect of rules 7.03, ~~7.09#~~ and ~~7.10#~~ must be in accordance with best practice which is at least that required to be disclosed in respect of those specific matters in the accounts of a company under the Companies Ordinance and ~~Statements of Standard Accounting Practice issued from time to time by the Hong Kong Society of Accountants~~ Hong Kong Financial Reporting Standards or ~~the International Accounting Financial Reporting Standards as promulgated from time to time by the International Accounting Standards Committee~~ and, in the case of banking companies, the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority.

## Accounting standards

~~7.12#~~ The financial history of results and the ~~statement of assets and liabilities~~ balance sheet included in the accountants' report must normally be drawn up in conformity with Hong Kong Financial Reporting Standards ~~accounting standards approved by the Hong Kong Society of Accountants and laid down in the Statements of Standard Accounting Practice issued from time to time by that Society~~ or ~~in conformity with the~~ International Accounting Financial Reporting Standards ~~as promulgated from time to time by the International Accounting Standards Committee~~.

*Note: The issuer must apply one of these bodies of standards consistently and shall not change from one body of standards to the other, unless there are reasonable grounds to justify such change.*

~~7.13#~~ The financial history of results and ~~statement of assets and liabilities~~ the balance sheet included in the accountants' report of a listing applicant, which is listed, or is to be simultaneously listed, on the New York Stock Exchange or the Nasdaq National Market of the United States of America may, be drawn up in conformity with Generally Accepted Accounting Principles in the United States of America (US GAAP) provided that:—

- (1) the overseas listing applicant has adopted US GAAP for the purposes of reporting to shareholders on the New York Stock Exchange or the Nasdaq National Market of the United States of America; and
- (2) the overseas listing applicant's principal activity does not consist of property development and/or investment.

~~7.14#~~ Except as provided in rule ~~7.13#~~, a listing applicant must obtain the prior approval of the Exchange if it proposes that the accountants report should be drawn up otherwise than in conformity with either of the standards referred to in rule ~~7.12#~~. Such approval will only be given in exceptional circumstances. If such approval is given, the Exchange will normally require the report to contain a statement of the financial effect of the material differences (if any) and a summary of any material differences in disclosure (if any) from either of the standards referred to in rule ~~7.12#~~.

~~7.15#~~ Whilst the report for a PRC issuer must normally be drawn up in accordance with either of the standards referred to in rule ~~7.12#~~, such report may, in addition, include (in a separate part) financial information conforming with PRC accounting rules and regulations, provided that the report contains a statement of the financial effect of the material differences (if any) and a summary of any material differences in disclosure (if any) from either of the standards referred to in rule ~~7.12#~~.

~~7.16#~~ Without prejudice to the provisions of rules ~~7.14#~~ and ~~7.15#~~, any significant departure from either of the accounting standards referred to in rule ~~7.12#~~ must be disclosed and explained and, to the extent practicable, the financial effects of such departure quantified.

~~7.17~~ The relevant standards will normally be those current in relation to the last financial year reported on and, wherever possible, appropriate adjustments **mustshould** be made to show profits for all periods in accordance with such standards. ~~Where there has been a change in standards during the current financial year of the issuer, the report must contain a statement of the financial effect of any material differences arising out of such change (if any) and a summary of any material differences in disclosure arising out of such change (if any).~~

### Statement of adjustments

~~7.18~~ In preparing the accountants' report, the reporting accountants **mustshould** make such adjustments (if any) as are in their opinion appropriate for the purposes of the accountants' report and state therein that all adjustments considered necessary have been made, or (where appropriate) that no adjustments were considered necessary. Where adjustments are made, a written statement (the statement of adjustments) is required to be made available for public inspection, and **mustshould** be signed by the reporting accountants (see paragraph 52 of Part A and paragraph 42 of Part B of Appendix 1).

*Note: Where a listing applicant is seeking a simultaneously listing and is precluded by the regulation in that jurisdiction from making adjustments as envisaged by rule ~~7.18~~, additional information should be provided to show details of the adjustments (if any) and the effect of such on the results and net assets and liabilities as if such adjustments would have been made for purpose of the accountants' report prepared on the basis in accordance with the Auditing Guideline "Prospectus and the Reporting Accountant" issued by the Hong Kong Society of Accountants."*

~~7.19~~ The statement of adjustments must set out, for each of the years reported upon, each adjustment made and be sufficiently detailed so as to reconcile the figures in the accountants' report with the corresponding figures in the audited accounts and must give the reasons therefor.

~~7.20~~ Where the accountants' report is set out in a listing document the statement of adjustments relating to that report must be submitted to the Exchange in anticipated final draft form in accordance with rules 12.22(3) and 28.13(7) and in certified form in accordance with rules 12.24(6) and 28.14(3). In every other case, the statement of adjustments must be submitted to the Exchange at the same time as the proofs of the circular containing the accountants' report are submitted.

### Reference to other reports

~~7.21~~ Where the reporting accountants refer to reports, confirmations or opinions of valuers, accountants or other experts, the names, addresses and professional qualifications of such other persons or firms **mustshould** be stated in the report. In any case, the listing document or circular will be required to include a statement that such other persons or firms have given and have not withdrawn their written consent to its issue with the inclusion of such references in the form and context in which they are included.

### Qualified or modified reports

~~7.22~~ Where the reporting accountants qualify or modify their accountants' report, they **mustshould** refer to all material matters about which they have reservations. All reasons for the qualification or modification **mustshould** be given and its effect quantified if this is both relevant and practical. A qualified or modified accountants' report in respect of a new applicant may not be acceptable where the qualification or modification relates to a matter of significance to investors.

~~7.23~~ Where the accountants' report relates to a very substantial disposal or an acquisition which is a major transaction, very substantial acquisition or a reverse takeover and the report is expected to be qualified, the Exchange ~~should~~ **must** be consulted at an early stage.

## Additional matters for disclosure

7.24~~23~~ Where the business of the issuer necessitates extra disclosure to the members in its annual accounts by virtue of special legislation, the equivalent disclosure must be made in the report.

### General

7.25~~24~~ Where the issuer is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of the Tenth Schedule to the Companies Ordinance, nothing herein shall require any financial information to be included in the accountants' report which need not be disclosed in a balance sheet or profit and loss account of the issuer which is drawn up in accordance with that Ordinance by virtue of any of those provisions or as a direct effect or result of any of those provisions. In the case of such issuers the opinion of the reporting accountants which is required by 7.0~~8~~7(2) may be expressed on an appropriate basis.

*Note: Insurance and shipping companies will not be entitled to avail themselves of the benefits of the provisions of Part III of the Tenth Schedule to the Companies Ordinance.*

7.26~~25~~ It is emphasised that these requirements are not exhaustive and that further information may be required, or the required information varied, by the Exchange where it considers it necessary. In cases of doubt or difficulty, the reporting accountants ~~must~~should consult the Exchange through the issuer's Sponsor or, in circumstances where the issuer is no longer required to have (and does not otherwise retain) a Sponsor, through the issuer's authorised representative or financial adviser.

### Pro Forma Financial Information

7.27 In the cases referred to in rule 7.01(3) concerning a circular in connection with a major transaction, the pro forma financial information required under rules 19.67(4)(a)(ii) or 19.67(4)(b)(ii) on the enlarged group (i.e. the issuer, its subsidiaries and any business or subsidiary or, where applicable, assets acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (including but not limited to any business, company or companies being acquired)) must include all the information referred to in rule 7.31 in respect of such enlarged group.

7.28 In the cases referred to in rule 7.01(3) concerning a circular in connection with a reverse takeover or a very substantial acquisition, the pro forma financial information required under rules 19.69(4)(a)(ii) or 19.69(4)(b)(ii) on the enlarged group (i.e. the issuer, its subsidiaries and any business or subsidiary or, where applicable, assets acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up (including but not limited to any business, company or companies being acquired)) must include all the information referred to in rule 7.31 in respect of such enlarged group.

7.29 In the cases referred to in rule 7.01(4) concerning a circular in connection with a very substantial disposal, the pro forma financial information required under rules 19.68(2)(a)(ii) or 19.68(2)(b)(ii) on the remaining group must include the information referred to in rule 7.31 in respect of such remaining group.

7.30 In the case of a new applicant (rule 7.01(1)) which has acquired or proposed to acquire any businesses or companies, which would at the date of application or such later date of acquisition before listing of the applicant be classified as a major subsidiary, since the date to which the latest audited accounts of the issuer have been made up, it must include in its listing document the pro forma financial information required under rule 7.31 in respect of the enlarged group (i.e. the new applicant, its subsidiaries and any businesses or companies acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up).

*Note: For purposes of rule 7.30, all acquisitions or proposed acquisitions since the date to which the latest audited accounts of the issuer have been made up, whether of businesses or companies, should be aggregated. If the aggregated total assets, profits or revenue represents 5% or more under any of the percentage ratios as defined under rule 19.04(9), these acquisitions will be deemed to be an acquisition of a major subsidiary for the purpose of rule 7.30. 100% of the major subsidiary's total assets, profits or revenue (as the case may be) or, where the major subsidiary itself has subsidiaries, the consolidated total assets, profits or revenue (as the case may be) of the major subsidiary is to be compared to the total assets, profits or revenue (as the case may be) shown in the issuer's latest published audited consolidated financial statements irrespective of the interest held in the major subsidiary.*

7.31 Where an issuer includes pro forma financial information in any document (whether or not such disclosure of pro forma financial information is required under the GEM Listing Rules), that information must comply with rules 7.31(1) to (6) and a report in the terms of rule 7.31(7) must be included in the relevant document.

(1) The pro forma financial information must provide investors with information about the impact of the transaction the subject of the document by illustrating how that transaction might have affected the financial information presented in the document, had the transaction been undertaken at the commencement of the period being reported on or, in the case of a pro forma balance sheet or net asset statement, at the date reported. The pro forma financial information presented must not be misleading, must assist investors in analysing the future prospects of the issuer and must include all appropriate adjustments permitted by rule 7.31(6), of which the issuer is aware, necessary to give effect to the transaction as if the transaction had been undertaken at the commencement of the period being reported on or, in the case of a pro forma balance sheet or net asset statement, at the date reported on.

(2) The information must clearly state:

- (a) the purpose for which it has been prepared;
- (b) that it is prepared for illustrative purposes only; and
- (c) that because of its nature, it may not give a true picture of the issuer's financial position or results.

(3) The information must be presented in columnar format showing separately the unadjusted financial information, the pro forma adjustments and the pro forma financial information. The pro forma financial information must be prepared in a manner consistent with both the format and accounting policies adopted by the issuer in its financial statements and must identify:

- (a) the basis upon which it is prepared; and
- (b) the source of each item of information and adjustment.

Pro forma figures must be given no greater prominence in the document than audited figures.

(4) Pro forma financial information may only be published in respect of:

- (a) the current financial period;
- (b) the most recently completed financial period; and/or

(c) the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document;

and, in the case of a pro forma balance sheet or net asset statement, as at the date on which such periods end or ended.

(5) The unadjusted information must be derived from the most recent:

(a) audited published accounts, published half-year reports or published half-year or annual results announcements;

(b) accountants' report;

(c) previously published pro forma financial information reported on in accordance with rule 7.31(7); or

(d) published profit forecast or estimate.

(6) Any adjustments which are made to the information referred to in rule 7.31(5) in relation to any pro forma statement must be:

(a) clearly shown and explained;

(b) directly attributable to the transaction concerned and not relating to future events or decisions;

(c) factually supportable; and

(d) in respect of a pro forma profit or cash flow statement, clearly identified as to those adjustments which are expected to have a continuing effect on the issuer and those which are not.

(7) The pro forma financial information must be reported on in the document by the auditors or reporting accountants who must report that, in their opinion:

(a) the pro forma financial information has been properly compiled on the basis stated;

(b) such basis is consistent with the accounting policies of the issuer; and

(c) the adjustments are appropriate for the purposes of the pro forma financial information as disclosed pursuant to rule 7.31(1).

(8) Where pro forma earnings per share information is given for a transaction which includes the issue of securities, the calculation is to be based on the weighted average number of shares outstanding during the period, adjusted as if that issue had taken place at the beginning of the period.

# Chapter 8

## GENERAL

### VALUATION OF AND INFORMATION ON PROPERTIES

#### When required

8.02 In the case of an acquisition or disposal of any property, or a company whose assets consist solely or mainly of property, where ~~any of the percentage ratios (as defined in rule 19.04(9)) of the transaction exceeds 25%, the consideration payable exceeds 50 per cent of the net tangible assets of the acquiring or disposing group~~, then a valuation of and information on such property must be included in the circular issued to shareholders in connection with the acquisition or disposal (see rules ~~19.5466(3) and 19.69(3)~~), unless, in the case of an acquisition, the interest in the property is acquired from the Hong Kong Government (or, at the discretion of the Exchange, a body related to the Hong Kong Government), in any such case, at a public auction or by sealed tender.

Notes: ~~1 “Net tangible assets” of the acquiring or disposing group means the aggregate of the share capital and reserves, excluding minority interests and intangibles, as shown in the listed issuer’s latest published audited accounts or consolidated accounts, subject to any adjustments or modifications arising by virtue of the provisions of rules 19.09 or 19.10.~~

~~2 For the purposes of this rule and rule 8.03, a circular issued “in connection with an acquisition” includes a listing document issued on a rights issue, the proceeds of which are to be used to retire a debt with which the property or company had previously been acquired provided that such a listing document need not contain such a valuation report if a circular containing such a valuation report was issued to shareholders at the time of the acquisition of the property or company.~~

8.03 In the case of an acquisition or a disposal of any property from or to a connected person, a valuation of and information on such property must be included in any circular issued to shareholders in connection with the acquisition or disposal (see rule 20.~~5947(76)~~).

# Chapter 9

## GENERAL

### SUSPENSION AND RESUMPTION OF DEALINGS, CANCELLATION AND WITHDRAWAL OF LISTING

#### Suspension

9.03 An issuer shall endeavour to avoid any suspension of dealings in its securities.

- Notes:*
- 1 *Recourse to suspension should only be made where necessary in the interests of all parties.*
  - 2 *In many cases the appropriate course of action, which the Exchange expects all issuers to follow so far as reasonably practicable, will be for the issuer to publish an announcement in order to avoid the need for a suspension.*
  - 3 *In circumstances where a detailed announcement may take time to prepare, the issuer should, subject to rules 19.375 and 20.4735 concerning announcements in respect of notifiable and connected transactions, consider making a short announcement to disclose information which is or may be of a price sensitive nature immediately it is the subject of a decision (and for the purpose of avoiding a suspension). This could be followed, at the soonest practicable opportunity thereafter, with a detailed announcement giving all information required by the GEM Listing Rules.*

#### Resumption

9.11 In the case of a suspension pending an announcement of any matter which is or may be of a price sensitive nature, the issuer shall use its reasonable endeavours to issue the announcement before commencement of the next half-day trading session on GEM (or before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day in the case of an announcement of a notifiable transaction (see rule 19.343) or a connected transaction (see rule 20.4735)). In circumstances where it is not possible, for whatever reason, to issue the announcement within this time scale, the issuer shall, if requested to do so by the Exchange:—

- (1) issue a “holding” announcement on the GEM website, before commencement of the next half-day trading session on GEM; and
- (2) request a resumption of dealings in its securities with effect from commencement of the next half-day trading session on GEM.

*Notes:* 1 *Any holding announcement required for the purpose of this rule, should be in substantially the following form:—*

*“This announcement is made at the request of The Stock Exchange of Hong Kong Limited. The Stock Exchange of Hong Kong Limited takes no responsibility for the contents of this announcement, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this announcement.*



*The directors of [ ] are aware that there remains outstanding information relating to the Company which is or may be of a price sensitive nature and which it is not practicable to publish at this time.*

*An announcement concerning this information will be made in due course, at the soonest practicable opportunity.*

*As required pursuant to the GEM Listing Rules, the Company has requested the resumption of dealings in its securities with effect from [ ].*

***In the meantime, investors are advised to exercise caution when dealing in the securities of the Company.***

*Made by order of the Board of [ ], the directors of which collectively and individually accept responsibility for the accuracy of this announcement."*

- 2 A holding announcement of the type referred to in Note 1 above must be published in accordance with the requirements of Chapter 16.

### **Withdrawal of listing**

9.19 Subject to rule 9.23, aAn issuer that has an alternative listing on another regulated, regularly operating, open stock exchange or securities market recognised for this purposes by the Exchange, may not voluntarily withdraw its listing on GEM unless:—

- (1) the prior approval of shareholders has been obtained by way of an ordinary resolution passed at a duly convened meeting of the shareholders of the issuer;
- (2) the prior approval of holders of any other class of listed securities, if applicable, has been obtained; and
- (3) the issuer has given its shareholders and holders of any other class of listed securities, if applicable, at least 3 months notice of the proposed withdrawal of the listing. This minimum notice period must run from the date on which the shareholders approve the voluntary withdrawal of listing and such notice must include details of how to transfer securities to and trade those securities on the alternative market.

In deciding whether an alternative listing is acceptable the Exchange must be satisfied that the alternative market is open and readily accessible by Hong Kong investors. A market to which access by Hong Kong investors is restricted (for example, by foreign exchange controls) will not be acceptable.

9.20 Subject to rule 9.23, if the issuer has no such alternative listing, the issuer may not voluntarily withdraw its listing on GEM without the permission of the Exchange unless:—

- (1) the issuer has obtained the prior approval of its shareholders and holders of any other class of listed securities, if applicable, at a duly convened meeting of shareholders and a separate meeting of holders of any other class of listed securities, if applicable, at which ~~the directors chief executive and~~ any controlling shareholders or and their respective associates, ~~do not vote and, at the shareholders meeting, a majority in number representing three-fourths in value shall abstain from voting in favour. Where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders;~~

- (2) the approval of withdrawal of the listing referred to in rule 9.20(1) must be given by at least 75% of the votes attaching to any class of listed securities held by holders ~~shareholders present and~~ voting either in person or by proxy at the meeting ~~vote in favour~~. For the purpose of determining the percentage, the listed securities held by directors, the chief executive and any controlling shareholders or their respective associates that vote against the resolution at the meeting are to be included; ~~and~~
- (3) the number of votes cast against the resolution is not more than 10% of the votes attaching to any class of listed securities held by holders permitted under rule 9.20(1) to vote in person or by proxy at the meeting. For the purpose of determining the percentage, the listed securities held by directors, the chief executive and any controlling shareholders or their respective associates that vote against the resolution at the meeting are to be included; and
- (42) the shareholders and holders of any other class of listed securities, if applicable, other than the directors (excluding independent non-executive directors), chief executive and controlling shareholders, are offered a reasonable cash alternative or other reasonable alternative.

9.21 In relation to any withdrawal of listing under rule 9.20, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the withdrawal of listing was made or approved by the board, and their associates; and
- (2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the withdrawal of listing was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

9.22 In relation to any withdrawal of listing under rule 9.20, the issuer must comply with the requirements under rules 17.47(4) to 17.47(7) and rules 17.47A, 17.47B and 17.47C.

9.23 An issuer may voluntarily withdraw its listing on the Exchange, irrespective of whether it has an alternative listing or not, if:-

- (1) after a general offer a right to compulsory acquisition is exercised pursuant to applicable laws and regulations (the requirements of which are, where the issuer is not a company incorporated in Hong Kong, at least as onerous as those applicable if it were) resulting in the acquisition of all the listed securities of the issuer, or
- (2) the issuer is privatised by way of a scheme of arrangement or capital reorganisation which is governed by the Takeovers Code and all the relevant requirements, including the shareholders' approval requirements, under the Takeovers Code have been complied with,

and, in either case, it has given its shareholders notice of the proposed withdrawal of the listing by way of an announcement and the intention not to retain the issuer's listing on the Exchange has been stated in a circular to shareholders.

# Chapter 10

## EQUITY SECURITIES

### METHODS OF LISTING

#### Placing

10.12 A placing by or on behalf of a new applicant or by or on behalf of a listed issuer of securities of a class new to listing must be supported by a listing document which must comply with the relevant requirements of Chapter 14 and such a placing must comply with the following specific requirements:—

- (1) No allocations will be permitted to nominee companies unless the name of the ultimate beneficiary is disclosed, without the prior written consent of the Exchange.
- (2) Details of the placing must be published in accordance with the requirements of rules 16.07 or 16.08, as applicable, and (as regards the results) in accordance with sub-paragraph (4) below and rule 16.16.
- (3) In relation to any initial public offering to be effected by way of a placing or which includes a placing tranche, the listing document issued in connection therewith must state details of any arrangements to allocate securities to any placee on a preferential basis, as referred to in rule 13.02. The Exchange reserves the right to reject any such proposed arrangements.
- (4) The announcement of the results of the placing required pursuant to rule 16.16 must include a brief generic description of the placees. If securities have been placed with different groups of placees, then the announcement must contain a description of each group and the number of shares placed with each group, provided that certain types of placee (as specified in Note 1 to this rule) must be identified on an individually-named basis, with the number of shares placed with each named placee also being disclosed. In the case of an initial public offering effected by way of a placing or which included a placing tranche, the announcement must also include information on:—
  - (a) the level of interest in the placing;
  - (b) a table showing the distribution of the placing shares; and
  - (c) an analysis of the distribution, in particular, the concentration of the placing shares, including but not limited to the number of placing shares that are placed with the top 1, 5, 10 and 25 placees. Where, in the view of the Exchange, there is a high concentration of shares being marketed for which listing is sought with a few placees, a statement substantially in the following form:

“Investors should be aware that the concentration of shareholders may affect the liquidity of the shares of the [issuer]. Consequently, shareholders and potential investors are advised to exercise caution when dealing in such shares.”

*Notes: 1 The purpose of this rule is to enable shareholders and investors to understand the broad composition of the ownership of the placed shares immediately prior to trading in those shares. The groups of placees which the issuer must identify in the announcement, to the extent applicable, include:—*

- (a) *management shareholders and their associates (on an individually-named basis);*

- (b) *directors and their associates (on an individually-named basis);*
- (c) *substantial shareholders and their associates (on an individually-named basis);*
- (d) *in relation only to an initial public offering effected by way of a placing or which included a placing tranche, significant shareholders and their associates (on an individually-named basis);*
- (e) *employees;*
- (f) *the Sponsor and its associates;*
- (g) *the lead broker and/or any distributor and any connected clients of either (as defined in Note 2 below);*
- (h) *customers or clients of the issuer;*
- (i) *suppliers to the issuer; and*
- (j) *the underwriters (if any) and their associates, if different from (f) or (g) above.*

*The announcement should, if applicable, give particulars of any duplication between the descriptions of placees and must indicate the number and proportion of shares placed to the public.*

2 *For the purposes of sub-paragraph (g) of Note 1 above "connected client" in relation to an Exchange Participant means any client of such Exchange Participant who is:—*

- (a) *a partner of such Exchange Participant;*
- (b) *an employee of such Exchange Participant;*
- (c) *where the Exchange Participant is a company,*
  - (i) *any person who is a substantial shareholder of such Exchange Participant; or*
  - (ii) *a director of such Exchange Participant;*
- (d) *the spouse or infant child or step child of any individual described in (a) to (c) above;*
- (e) *a person in his capacity as trustee of a private or family trust (other than a pension scheme) the beneficiaries of which include any person in (a) to (d) above;*
- (f) *a close relative of any person in (a) to (d) above where his account is managed by such Exchange Participant in pursuance of a discretionary managed portfolio agreement; or*
- (g) *a company which is a member of the same group of companies as such Exchange Participant.*

3 For the purposes of this rule, “associate” (in the context of any significant shareholder, the Sponsor or underwriters (if any)) shall have the same meaning as set out in rule 1.01, save that it shall be construed as also applying to a significant shareholder, Sponsor and an underwriter.

- (5) Dealings in the securities cannot commence until the Exchange has been supplied with and approved a list setting out the names, addresses and identity card or passport numbers (where individuals) and the names, addresses and business registration numbers (where companies) of all placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each placee. The Exchange reserves the right to require submission of such further information (on an electronic spreadsheet or such other format as it may request) on the placees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership.
- (6) Separate Marketing Statements in the form set out in Appendix 5D signed by each of: (a) the lead broker; (b) any distributor(s); and (c) any Exchange Participant referred to in rule 12.26(6)(a), must be lodged with the Exchange before dealings commence.
- (7) The lead broker and each distributor and Exchange Participant referred to in sub-paragraph (6) above must keep a record of their placees for at least 3 years following the placing. This record should contain the information referred to in sub-paragraph (5) above.

### **Rights issue**

10.26 If a rights issue is not fully underwritten:—

- (1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and
- (2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.

*Note: In the circumstances set out in rule 10.26(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be “scaled” down to a level which does not trigger an obligation to make a general offer.*

10.29 If the proposed rights issue would increase either the issued share capital or the market capitalisation of the issuer by more than 50% ~~per cent~~ (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—

- (1) ~~made in the previous 12 months~~ the rights issue must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and
- (2) the issuer shall set out in the circular to shareholders the purpose of the proposed rights issue, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity

securities in the 12 months immediately preceding the announcement of the proposed rights issue, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.29A Where shareholders' approval is required under rule 10.29, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their associates; or
- (2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.29B Where shareholders' approval is required under rule 10.29, the issuer must comply with the requirements under rules 17.47(4) to 17.47(7) and rules 17.47A, 17.47B and 17.47C.

10.31 (1) In every rights issue, the issuer may make arrangements to:—

- (a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or
- (b) dispose of securities not subscribed by allottees under provisional letters of allotment in the market, if possible, for the benefit of the persons to whom they were offered by way of rights.

The offer of such securities must be fully disclosed in the rights issue announcement, listing document and any circular.

- (2) If no arrangements or arrangements other than those described in rule 10.31(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renounees and the rights issue is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements such circumstances must be specifically approved by shareholders, and those persons who are materially interested have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. Where any shareholder is required to abstain from voting at the general meeting, the issuer must comply with the requirements under rules 17.47(4) and 17.47(5). The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

### **Open offer**

10.35 An open offer must be made conditional on shareholders' approval in the circumstances set out in rules 10.39, ~~and~~ 10.41 and 10.42(2).

10.37 If an open offer is not fully underwritten:—

- (1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and

- (2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.

*Note: In the circumstances set out above in rule 10.37(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be “scaled” down to a level which does not trigger an obligation to make a general offer.*

10.39 If the proposed open offer would increase either the issued share capital or the market capitalisation of the issuer by more than 50%~~per cent~~ (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—

- (1) ~~made in the previous 12 months~~ the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and
- (2) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.39A Where shareholders’ approval is required under rule 10.39, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or
- (2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.39B Where shareholders’ approval is required under rule 10.39, the issuer must comply with the requirements under rules 17.47(4) to 17.47(7) and rules 17.47A, 17.47B and 17.47C.

10.42 (1) In every open offer the issuer may make arrangements to dispose of securities not validly applied for by shareholders in excess of their assured allotments, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis. The offer of such securities must be fully disclosed in the open offer announcement, listing document and any circular.

- (2) If no arrangements or arrangements other than those described in rule 10.42(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. Where any shareholder is required to abstain from voting at the general meeting, the issuer must comply with the requirements under rules 17.47(4) and 17.47(5). The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.432 An open offer must be supported by a listing document which must comply with the relevant requirements of Chapter 14.

10.443 Open offers require compliance with the publication requirements set out in rule 16.13.

### **Capitalisation issue**

10.454 A capitalisation issue is an allotment of further securities to existing shareholders, credited as fully paid up out of the issuer's reserves or profits, in proportion to their existing holdings, or otherwise not involving any monetary payments. A capitalisation issue includes a scrip dividend scheme.

10.465 A capitalisation issue must be supported by a listing document, in the form of a circular to shareholders, which must comply with the relevant requirements of Chapter 14.

### **Consideration issue**

10.476 A consideration issue is an issue of securities as consideration in a transaction or in connection with a takeover or merger or the division of an issuer.

10.487 A consideration issue must be announced by the issuer in accordance with rules 19.343 and 19.354.

### **Exchange, substitution or conversion**

10.498 Securities may be brought to listing by an exchange or a substitution of securities for or a conversion of securities into other classes of securities. A conversion of securities includes:—

- (1) the exercise of options, warrants or similar rights to subscribe or purchase securities as granted in accordance with Chapter 21;
- (2) the conversion of convertible equity securities as issued in accordance with Chapter 22;
- (3) the exercise of options granted to or for the benefit of participants as granted in accordance with Chapter 23; and
- (4) the conversion of convertible debt securities in accordance with Chapter 34.

10.5049 An exchange or a substitution of securities must be supported by a listing document, in the form of a circular to shareholders, which must comply with the relevant requirements of Chapter 14.



### **Other methods**

10.5150 Securities may also be brought to listing by:—

- (1) an issue of new shares as a result of a consolidation, sub-division or capital reduction of existing listed securities; or
- (2) such other methods as the Exchange may from time to time approve.

10.5254 An issue of new shares as a result of a consolidation, sub-division or capital reduction must be supported by a listing document, in the form of a circular to shareholders, which must comply with the relevant requirements of Chapter 14.

# Chapter 11

## EQUITY SECURITIES

### QUALIFICATIONS FOR LISTING

#### General conditions applicable to all issuers

- 11.06 Both the issuer and its business must, in the opinion of the Exchange, be suitable for listing. Without limiting the generality of this rule, an issuer whose assets consist wholly or substantially of cash or short-dated securities will not normally be regarded as suitable for listing: except where the issuer or group is solely or mainly engaged in the securities brokerage business. "Short-dated securities" means securities such as bonds, bills or notes which have less than 1 year to maturity.
- 11.07 The issuer must have persons appointed to the following offices and, or to perform the following roles and the issuer must ensure that such persons have satisfied the following rules prior to appointment:—
- (1) directors – rules 5.02, 5.05 and 5.1308;
  - (2) company secretary – rule 5.1409;
  - (3) qualified accountant – rules 5.1510;
  - (4) compliance officer – rule 5.1914;
  - (5) authorised representatives – rule 5.2419; and
  - (6) members of the audit committee – rules 5.283 and 5.294.

#### Additional conditions applicable to new applicants

##### *Property-related matters*

- 11.16 A new applicant that is a property company must have, in respect of a substantially major portion of its PRC properties, long-term title certificates and/or, in respect of a substantially major portion of its properties not situated in the PRC, other appropriate evidence of title, regardless of whether such properties are completed or still under development.

*Note: For the purposes of rules 11.16 to 11.19:—*

- (1) a "property company" is a company whose non-cash ~~one the~~ assets ~~of which~~ consist solely or mainly of properties or ~~the interests in properties or interests in companies or entities whose non-cash assets consist solely or mainly of properties and whose income of which~~ is mainly derived from those properties, ~~or interests in companies the assets of which consist mainly of properties or the income of which is mainly derived from those properties~~; and
- (2) the Exchange has a discretion to decide on whether or not any title certificate constitutes a "long term" title certificate.

# Chapter 13

## EQUITY SECURITIES

### RESTRICTIONS ON PURCHASE, DISPOSAL AND SUBSCRIPTION

#### Restrictions and notification requirements on issuers purchasing their own shares on a stock exchange

*Procedures to be complied with*

13.08 The issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders' meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—

- (1) a statement of the total number and description of the shares which the issuer proposes to purchase;
- (2) a statement by the directors of the reasons for the proposed purchase of shares;
- (3) a statement by the directors as to the proposed source of funds for making the proposed purchase, which shall be funds legally available for such purposes in accordance with the issuer's constitutive documents and the laws of the jurisdiction in which the issuer is incorporated or otherwise established;
- (4) a statement as to any material adverse impact on the working capital or gearing position of the issuer (as compared with the position disclosed in its most recent published audited accounts) in the event that the proposed purchases were to be carried out in full at any time during the proposed purchase period, or an appropriate negative statement;
- (5) a statement of the name of any directors, and to the best of the knowledge of the directors having made all reasonable enquiries, any associates of the directors, who have a present intention, in the event that the proposal is approved by shareholders, to sell shares to the issuer, or an appropriate negative statement;
- (6) a statement that the directors have undertaken to the Exchange to exercise the power of the issuer to make purchases pursuant to the proposed resolution in accordance with the GEM Listing Rules and the laws of the jurisdiction in which the issuer is incorporated or otherwise established;
- (7) a statement as to the consequences of any purchases which will arise under the Takeovers Code of which the directors are aware, if any;
- (8) a statement giving details of any purchases by the issuer of shares made in the previous 6 months (whether on GEM or otherwise), giving the date of each purchase and the purchase price per share or the highest and lowest prices paid for such purchases, where relevant;
- (9) a statement as to whether or not any connected persons of the issuer have notified the issuer that they have a present intention to sell shares to the issuer or have undertaken not to sell any of the shares held by them to the issuer, in the event that the issuer is authorised to make purchases of shares;

- (10) a statement giving the highest and lowest prices at which the relevant shares have traded on GEM during each of the previous twelve months; and
- (11) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19.

*Notes: 1 The Explanatory Statement need not contain the statement set out in rule 2.20 concerning the characteristics of GEM nor information on the interests (if any) of the Sponsor (as referred to in rule 6.35) and all directors, management shareholders and their respective associates (as referred to in rule 11.04).*

*2 The Explanatory Statement must be reviewed by the Exchange prior to its dispatch to shareholders of the issuer and must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon.*

#### *Dealing restrictions*

13.11 The following dealing restrictions must be adhered to:—

- (1) an issuer shall not purchase shares on GEM for a consideration other than cash or for settlement otherwise than in accordance with the trading rules of the Exchange from time to time;
- (2) an issuer shall not knowingly purchase shares from a connected person and a connected person shall not knowingly sell his shares to the issuer, on GEM;
- (3) an issuer shall procure that any broker appointed by the issuer to effect the purchase of shares shall disclose to the Exchange such information with respect to purchases made on behalf of the issuer as the Exchange may request;
- (4) an issuer shall not purchase its shares on GEM at any time after a price sensitive development has occurred or has been the subject of a decision until such time as the price sensitive information is made publicly available. In particular, during the period of 1 month immediately preceding the earlier of:
  - (i) the date of the board meeting (as such date is first notified to the Exchange in accordance with rule 17.48) for the approval of the issuer's results for any year, half-year or quarter-year period or any other interim period (whether or not required under the GEM Listing Rules); and
  - (ii) the deadline for the issuer to publish an announcement of its results for any year, half-year or quarter-year period under rules 18.49, 18.78 or 18.79 or any other interim period (whether or not required under the GEM Listing Rules),  
and ending on the date of the results announcement, either the preliminary announcement of the issuer's annual results or the publication of the issuer's half-year report or a quarterly report, the issuer may not purchase its shares on GEM, unless the circumstances are exceptional;
- (5) an issuer shall not purchase its shares on GEM if that purchase would result in the number of listed securities which are in the hands of the public falling below the relevant minimum prescribed percentage for that issuer (as determined by the Exchange at the time of listing under rule 11.23);

- (6) ~~an issuer may only purchase shares on GEM if the following restrictions as to price and timing are adhered to:—~~
- ~~(a) the purchase price should not be higher than the latest (or current) independent bid price or the last independent sale (contract) price quoted or reported on the system (as defined in the Rules of the Exchange), whichever is higher; and~~
  - ~~(b) the issuer shall not make the opening bid nor any bid in the last 30 minutes before the close of normal trading hours as stipulated in the Rules of the Exchange; and~~
- (6) an issuer shall not purchase its shares on GEM if the purchase price is higher by 5% or more than the average closing market price for the 5 preceding trading days on which its shares were traded on GEM; and
- (7) the Exchange may waive all or part of the above restrictions if, in the opinion of the Exchange, there are exceptional circumstances (such as, but without limitation, political or economic events having a material adverse effect on the price of shares of the issuer or issuers listed on GEM generally) justifying the waiver of such restrictions. A waiver may be granted either with respect to a fixed amount of securities of an issuer or generally or on such conditions as the Exchange shall specify and may be expressed to continue for a stated period of time or until further notice.

#### **Restrictions on disposal of shares following the listing of a new applicant**

13.15 For the purposes of rules 13.15 to 13.20, the following terms have the following meanings:—

- (1) “excluded securities” means securities of the new applicant allotted or sold pursuant to the initial public offering (including any placing) conducted in conjunction with the application for listing;
- (2) “initial management shareholder” means any management shareholder of the issuer immediately prior to the date of the issuer’s initial listing document and any person referred to in Note 1 below.

*Notes: 1 The Exchange will normally regard the following persons, if they are shareholders of the issuer immediately prior to the listing date, to be initial management shareholders:—*

- (i) a member of the senior management of the issuer, including but not limited to any person identified as senior management in the issuer’s initial listing document;*
- (ii) a director of the issuer; or*
- (iii) a shareholder of the issuer who is represented on the board of directors of the issuer, including but not limited to an investment fund.*

*2 The Exchange reserves a power to deem any party to be an initial management shareholder in circumstances where, prior to the date of the issue of the listing document, that party has been a management shareholder and on or after the listing date, that party again becomes a management shareholder.*

- (3) “listing date” means the date on which securities of the new applicant commence trading on GEM;

(4) “relevant securities,” in relation to an initial management shareholder or significant shareholder, means:—

- (a) securities of the issuer (other than excluded securities) in issue immediately prior to the listing date;
- (b) securities of the issuer arising from the exchange, substitution or conversion of securities (other than excluded securities) in issue immediately prior to the listing date;
- (c) securities of the issuer arising pursuant to the exercise of any options, warrants or similar rights (other than excluded securities) held immediately prior to the listing date;
- (d) securities of the issuer allotted pursuant to any capitalisation issue effected after the listing date, other than those allotted in respect of excluded securities (and provided always that no securities allotted by way of scrip dividend shall comprise relevant securities);
- (e) securities of the issuer subscribed by any initial management shareholder pursuant to an issue of securities made in the manner described in rule 13.15(5)(b);
- (f) securities of the issuer issued within 6 months of the listing date pursuant to rules 17.29(1), 17.29(2), 17.29(3), 17.29(4) or ~~rule 17.29(52)~~ and subscribed by or allotted to any such shareholder (or where rule 17.29(52) is applicable, any shareholder described in rule 17.29(52)(e)); and
- (g) securities of the issuer returned to the shareholder as part of the stock lending arrangement described in rule 13.15(5)(a)(iii)

in respect of which he is entitled to exercise or control the exercise of the voting power at general meetings of the issuer; and

(5) references to a “disposal” (of securities) includes the creation of any option, rights or interests (over such securities) but shall exclude the following:

- (a) any stock lending arrangement with an underwriter of the initial public offering of the new applicant’s securities which satisfies the following conditions:
  - (i) the stock lending arrangement is fully described in the initial listing document and must be for the sole purpose of covering any short position prior to the exercise of the underwriter’s over-allotment option or similar right;
  - (ii) the maximum number of shares to be borrowed from the relevant shareholder is the maximum number of shares that may be issued upon full exercise of the over-allotment option; and
  - (iii) the same number of shares borrowed is returned to the relevant shareholder and deposited with the escrow agent (see rules 13.16 and 13.17) within 3 business days after the last day on which the over-allotment option may be exercised or, if earlier, the date on which the over-allotment option is exercised in full; and

- (b) any placing and issue of securities made in the manner described in rule 20.3123(3)(d) during the second six month period of the issuer's listing date where:
  - (i) there is no change in the number of relevant securities held by the relevant shareholder before and after completion of the placing and issue of securities; and
  - (ii) the placing of securities does not result in a controlling shareholder of the issuer ceasing to be a controlling shareholder after completion of the placing and issue of securities.

13.16 A new applicant shall procure that every initial management shareholder who is a shareholder immediately prior to the listing date:

- (1) places in escrow, with an escrow agent and on such terms as are acceptable to the Exchange, all his relevant securities for a period of:
  - (a) commencing on the date by reference to which disclosure of the shareholding of the initial management shareholder is made in the listing document and ending on the date which is 12 months from the listing date; or
  - (b) where that shareholder's relevant securities represent no more than 1%~~per cent~~ of the issued share capital of the new applicant as at the listing date, commencing on the date by reference to which disclosure of the shareholding of the initial management shareholder is made in the listing document and ending on the date which is 6 months from the listing date;
- (2) undertakes to the new applicant and the Exchange that, for the periods specified in rule 13.16(1), he will not, save as provided in rule 13.18:
  - (a) dispose of (nor enter into any agreement to dispose of) nor permit the registered holder to dispose of (or to enter into any agreement to dispose of) any of his direct or indirect interest in his relevant securities; or
  - (b) otherwise create (nor enter into any agreement to create) nor permit the registered holder to create (or to enter into any agreement to create) any options, rights, interests or encumbrances in respect of any such interest.

*Notes: 1 The duly completed undertakings, including in respect of the further matters set out in rule 13.19, substantially in the form set out in Appendix 5G, must be delivered to the Exchange, at the latest, before dealings in the new applicant's securities commence on GEM (see rule 12.26(9)).*

*2 Any additional securities of the issuer (or interest therein) acquired by an initial management shareholder following the listing date (except for any relevant securities of the initial management shareholder of the kind described in rules 13.15(4)(e), (f) and (g)) may be disposed of without regard to the restrictions set out in this rule.*

*3 As a transitional measure for listed issuers who commenced dealing of their securities on GEM before 1 October 2001, reference to a "new applicant" in rule 13.16 shall be construed to mean such listed issuers.*

4 Any offer for sale contained in a listing document shall not be subject to the restrictions set out in rule 13.16.

13.17 A new applicant shall procure that every significant shareholder:—

- (1) places in escrow, with an escrow agent and on such terms as are acceptable to the Exchange, all his relevant securities for a period commencing on the date by reference to which disclosure of the shareholding of the significant shareholder is made in the listing document and ending on the date which is 6 months from the listing date; and
- (2) undertakes to the new applicant and the Exchange that, for a period commencing on the date by reference to which disclosure of the shareholding of the significant shareholder is made in the listing document and ending on the date which is 6 months from the listing date, he will not, save as provided in rule 13.18:
  - (a) dispose of (nor enter into any agreement to dispose of) nor permit the registered holder to dispose of (or to enter into any agreement to dispose of) any of his direct or indirect interest in relevant securities; or
  - (b) otherwise create (nor enter into any agreement to create) nor permit the registered holder to create (or to enter into any agreement to create) any options, rights, interests or encumbrances in respect of any such interest.

*Notes: 1 The duly completed undertakings, including in respect of the further matters set out in rule 13.19, substantially in the form set out in Appendix 5H must be delivered to the Exchange, at the latest, before dealings in the new applicant's securities commence on GEM (see rule 12.26(9)).*

*2 Any additional securities of the issuer (or interest therein) acquired by a significant shareholder following the listing date (except for any relevant securities of the significant shareholder of the kind described in rules 13.15(4)(f) and (g)) may be disposed of without regard to the restrictions set out in this rule.*

*3 In the case of a significant shareholder which is a professionally-managed fund owned by multiple investors, the Exchange will normally be prepared to waive the escrow requirement referred to in rule 13.17(1).*

*4 Any offer for sale contained in a listing document shall not be subject to the restrictions set out in rule 13.17.*

13.18 Nothing in rules 13.16 and 13.17 shall prevent the disposal of any interest of an initial management shareholder or significant shareholder in relevant securities in the following circumstances:—

- (1) pursuant to a pledge or charge in favour of an authorised institution (as defined in~~under~~ the Banking Ordinance), as security for a bona fide commercial loan;
- (2) pursuant to a power of sale under the pledge or charge (granted pursuant to sub-paragraph (1));
- (3) on the death of the initial management shareholder or significant shareholder; or
- (4) in any other exceptional circumstances to which the Exchange has given its prior approval.



# Chapter 14

## EQUITY SECURITIES

### LISTING DOCUMENTS

#### *Preliminary*

14.02A The Exchange shall be authorised by new applicants and listed issuers to file their “applications” (as defined in section 2 of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules respectively and new applicants and listed issuers shall be deemed to have agreed to the above by filing such applications and corporate disclosure materials with the Exchange. The authorisation aforementioned shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant such approval. In addition, the Exchange may require and new applicants and listed issuers shall execute such documents in favour of the Exchange perfecting the above authorisation as the Exchange may require. Applications and relevant corporate disclosure materials shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe.

#### **When required**

14.06 The methods of listing required by the GEM Listing Rules to be supported by a listing document are:—

- (1) an offer for subscription;
- (2) an offer for sale;
- (3) a placing of securities of a class new to listing;
- (4) an introduction;
- (5) a rights issue;
- (6) an open offer;
- (7) a capitalisation issue (including in the form of a scrip dividend) or a bonus issue of warrants; **and**
- (8) an exchange or substitution of securities (arising from consolidation or sub-division of shares or a reduction of share capital or otherwise but excluding a conversion of securities into securities of a class already listed); **and**
- (9) any deemed new listing under the GEM Listing Rules.

## Profit forecasts

- 14.29 The issuer must determine in advance with its financial adviser or Sponsor whether to include a profit forecast in a listing document. Where a profit forecast appears in any listing document, it must be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, must be stated. The accounting policies and calculations for the forecast must be reviewed and reported on by the reporting accountants and their report must be set out. The Sponsor or financial adviser must report in addition that it has satisfied itself that the forecast has been stated by the directors after due and careful enquiry, and such report must be set out.

A "profit forecast" for this purpose means any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been audited or published. Any valuation of assets (other than land and buildings) or businesses acquired by an issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.

# Chapter 16

## EQUITY SECURITIES

### PUBLICATION REQUIREMENTS

#### Methods of publication and dissemination

16.04 Without in anyway limiting the publication, notice or dissemination requirements relevant to an issuer under applicable laws or the issuer's own constitutional documents, the following documents shall be subject to the following minimum publication requirements under these GEM Listing Rules:—

- (1) all announcements including notices required under the GEM Listing Rules, must be submitted for publication on the GEM website in accordance with rules 16.17 and 16.18;
- (2) all listing documents, annual reports and accounts (and, where applicable, summary financial reports), half-year reports (and, where applicable, summary half-year reports) and quarterly reports, and all circulars to shareholders required under the GEM Listing Rules, must be submitted for publication on the GEM website in accordance with rules 16.17 and 16.18; and
- (3) all other documents which, in the case of a listed issuer, are corporate communications required under the GEM Listing Rules and, in the case of a new applicant, are required to be published under the GEM Listing Rules in connection with its application for listing must be submitted for publication on the GEM website in accordance with rules 16.17 and 16.18.

#### Publication on the GEM website

16.17 After the GEM Listing Division has confirmed that it has no further comments on any draft announcement, notice or other document, the issuer must submit the cleared version to the Exchange, for publication on the GEM website, together with a written confirmation from or on behalf of the issuer that such version is the cleared version. The cleared version must be submitted in sufficient time so as to enable it to be published on the GEM website in accordance with any time limit prescribed by the GEM Listing Rules. For any announcement, notice or other document required by the GEM Listing Rules to be published on the GEM website but which is not required to be cleared by the Exchange, the issuer must submit the final version of the document, together with a written confirmation from or on behalf of the issuer that the document is required to be published by the issuer. In this regard, the following specific deadlines must be adhered to:

#### Notes:

- (1) The cleared-ready-to-publish version of any announcement or notice must be received by the Exchange before 7.30 p.m.–no later than 9.00 p.m. on any business day, if it is to be published on the GEM website not later than before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the following business day. ~~Issuers must accordingly bear in mind the time required before that, to comment on and clear the form of any announcement or notice in sufficient time to submit the cleared version to the Exchange by 7.30 p.m.~~
- (2) (a) Other than where a prospectus is to be registered under the Companies Ordinance, the ready-to-publish version of any ~~All~~ corporate communications ~~of a listed issuer under by~~ the GEM Listing Rules to be sent by a listed issuer to holders of any of its listed securities must be received by the Exchange before 7.30 p.m.–no later than 9.00 p.m. on the business day last preceding the day on which they are it is so ~~sent by the listed issuer to holders of any of its listed securities (or, where such day is not a business day, before 7.30 p.m. on the business day immediately preceding such day).~~

- (b) Where a prospectus is to be registered under the Companies Ordinance, the listed issuer must submit to the Exchange by electronic means for publication on the GEM website a ready-to-publish version of each of the prospectus and any application forms. Such version must be received by the Exchange no later than 9.00 a.m. on the day of registration of the prospectus under the Companies Ordinance.
- (3) ~~All documents~~The ready-to-publish version of any prospectus (or other listing document) and any application forms issued required to be published under the GEM Listing Rules by a new applicant in connection with its application for listing must be received by the Exchange ~~before 7.30 p.m. no later than 9.00 a.m.~~ before 7.30 p.m. no later than 9.00 a.m. on the day of registration of the prospectus under the Companies Ordinance or, where the listing document is not to be registered, no later than 9.00 p.m. on the business day last preceding its date of issue. they are published by the new applicant (or, where such day is not a business day, before 7.30 p.m. on the business day immediately preceding such day).
- (4) Where a prospectus is to be registered under the Companies Ordinance, the issuer must also provide written confirmation of such registration accompanied by a copy of the letter from the Companies Registry confirming the registration, as soon as the issuer has received this letter.

*Note: Issuers must accordingly bear in mind the time required to comment on and clear the form of any document so as to be able to submit the ready-to-publish version to the Exchange by the stipulated deadline.*

16.18 The ~~cleared~~ready-to-publish version of any announcement, notice or other document, as referred to in rule 16.17 must be provided (by electronic means or on diskette or on CD ROM) to the Exchange (at the address specified pursuant to rule 2.21) in a virus-free electronic format according to the procedures specified by the Exchange from time to time or in such other manner as may be determined and promulgated by the Exchange from time to time.

*Note: The Exchange will rely on the written confirmation from or on behalf of the issuer, as referred to in rule 16.17 and, as such, accepts no responsibility for any defects in the content or format of any announcement, notice or other document submitted for publication on the GEM website and accepts no responsibility for any delay or failure in publication arising out of any such defect.*

# Chapter 17

## EQUITY SECURITIES

### CONTINUING OBLIGATIONS

#### Preliminary

17.01 An issuer shall comply (and undertakes pursuant to its application for listing (Appendix 5A), once any of its securities have been admitted to listing, to comply), at all times, with all of the requirements of the GEM Listing Rules from time to time in force, save for any that are stated not to apply. Set out in this Chapter is the general continuing obligation of disclosure, together with certain other general continuing obligations.

This Chapter is not exhaustive and issuers are reminded that other Chapters contain additional specific obligations, including, in particular, the following:—

Chapter 5	—	Directors, Secretary and Corporate Governance Matters
Chapter 9	—	Suspension and Resumption of Trading, Cancellation and Withdrawal of Listing
Chapter 11	—	Qualifications for Listing
Chapter 13	—	Restrictions on Purchase, Disposal and Subscription
Chapter 16	—	Publication Requirements
Chapter 18	—	Financial Information
Chapter 19	—	<a href="#">Notifiable</a> Transactions
Chapter 20	—	Connected Transactions.

Additional continuing obligations are set out in Chapter 31, in so far as they relate to issuers having debt securities in issue.

#### General matters relevant to the issuer's business

*Exposure to borrowers and other specific circumstances that may require disclosure*

17.14 Without prejudice to any obligation to disclose information pursuant to rule 17.10 and without limiting the scope of that rule, rules 17.15 to 17.21 set out specific instances that give rise to a disclosure obligation on the part of an issuer.

*Notes: 1 Issuers are reminded that transactions and financing arrangements of the sort referred to in rules 17.15 to 17.21 may also be subject to the requirements of Chapter 19 ([Notifiable](#) Transactions) and/or Chapter 20 (Connected Transactions).*

- 2 For the purposes of rules 17.15 to 17.21 the following terms have the following meanings:—

~~“net tangible assets” means the aggregate of capital and reserves (excluding minority interests and intangibles) shown in the issuer’s latest published audited consolidated financial statements.~~

“percentage ratios” shall have the meaning set out in rule 19.04(9) and the percentage ratios shall apply to the requirements under rules 17.15 to 17.21 to the extent applicable.

“relevant advance to an entity” means the aggregate of amounts due from and all guarantees given on behalf of:—

- (i) an entity;
  - (ii) the entity’s controlling shareholder;
  - (iii) the entity’s subsidiaries;
  - (iv) the entity’s affiliated companies; and
  - (v) any other entity with the same controlling shareholder as the entity in question.
- 3 No disclosure is necessary under rules 17.15 to 17.21 where the indebtedness or financial assistance in question arises from a transaction which was approved by shareholders provided that information equivalent to rules 17.17 or 17.18, as applicable, was included in the circular to shareholders of the issuer.
- 4 If the directors consider that any disclosure pursuant to rules 17.15 to 17.21 might prejudice the issuer’s business interests, the Exchange must be consulted as soon as possible.

#### *Advances to an entity*

17.15 A disclosure obligation arises where any of the percentage ratios of the relevant advance to an entity from the issuer or any of its subsidiaries exceeds 258% ~~of the issuer’s net tangible assets~~. For the avoidance of doubt, an advance to a subsidiary of the issuer, or between subsidiaries of the issuer, will not be regarded as a relevant advance to an entity.

17.16 A disclosure obligation arises where the relevant advance to an entity increases from that previously disclosed (whether pursuant to rule 17.15, this rule or rule 17.22) and any of the percentage ratios for the amount of the increase since the previous disclosure is by an amount equivalent to 103% or more ~~of the issuer’s net tangible assets since last disclosed~~.

#### *Financial assistance and guarantees to affiliated companies of an issuer*

17.18 A disclosure obligation arises where any of the percentage ratios of the financial assistance extended by an issuer or any of its subsidiaries to affiliated companies of the issuer, and guarantees given by the issuer or any of its subsidiaries in respect of facilities granted to affiliated companies of an issuer in aggregate exceeds 258% ~~of the issuer’s net tangible assets~~. In these circumstances, the information required to be announced, immediately thereafter, is as follows:

- (1) an analysis of the amount of financial assistance given to, committed capital injection to, and guarantees given for facilities granted to, affiliated companies;

- (2) terms of the financial assistance, including interest rate, method of repayment, maturity date, and the security therefor, if any;
- (3) source of funding for the committed capital injection; and
- (4) banking facilities utilised by affiliated companies which are guaranteed by the issuer or any of its subsidiaries.

*Material changes following listing*

17.25 Any proposed ~~fundamental change in the principal business activities material change to the general character or nature of the business~~ of an issuer or its group must be announced immediately after it has been the subject of any decision, ~~and o~~ Other than with the prior approval of independent shareholders of the issuer in general meeting ~~pursuant to rule 19.89~~, an issuer may not, during the financial year in which dealings in its securities commenced on GEM or the 2 financial years thereafter, implement any such material change.

*Note: ~~A listed issuer shall comply with the requirements set out in rules 19.89 and 19.90. For these purposes directors, chief executives and management shareholders of the issuer and their respective associates shall not be eligible to vote at a general meeting called to approve such change.~~*

*Winding-up and liquidation*

- 17.27 (1) An issuer shall inform the Exchange and make an announcement on the happening of any of the following events, as soon as the same shall come to the attention of the issuer:—
- (a) the appointment of a receiver or manager either by any court having jurisdiction or under the terms of a debenture or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer, its holding company or any major subsidiary;
  - (b) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer, its holding company or any major subsidiary;
  - (c) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment;
  - (d) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets ~~where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% under any of the percentage ratios as defined under rule 19.04(9) which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group as shown in the issuer's latest audited consolidated financial statement; or~~

(e5) the making of any final judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance which is not subject to any or further appeal, which may adversely affect the issuer's enjoyment of any portion of its assets where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% under any of the percentage ratios as defined under rule 19.04(9) which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group as shown in the issuer's latest audited consolidated financial statement.

(2) For the purposes of ~~this rule 17.27(1)(a), (b) and (c)~~, a "major subsidiary" means a subsidiary where the value of its total assets, profits or revenue represents 5% or more under any of the percentage ratios as defined under rule 19.04(9) representing:

~~15% or more of the consolidated net tangible assets, or pre-tax trading profits of the group as shown in the issuer's latest audited consolidated financial statement.~~

Notes: 1 ~~For the purposes of rule 17.27(2) determining whether, on the basis of its assets, a subsidiary falls to be treated as a major subsidiary, 100% of that subsidiary's capital and reserves (excluding minority interests and intangibles) or total assets, profits or revenue (as the case may be) or, where that subsidiary itself has subsidiaries, the consolidated total assets, profits or revenue (as the case may be) capital and reserves (excluding minority interests and intangibles) of that subsidiary is to be compared to the total assets, profits or revenue (as the case may be) capital and reserves (excluding minority interests and intangibles) shown in the issuer's latest published audited consolidated financial statements irrespective of the interest held in the subsidiary.~~

2 ~~For the purposes of determining whether, on the basis of its profits, a subsidiary falls to be treated as a major subsidiary, 100% of that subsidiary's profit before taxation, minority interests and extraordinary items or where that subsidiary itself has subsidiaries, the consolidated profits before taxation, minority interests and extraordinary items of the subsidiary is to be compared to the profit before taxation, minority interests and extraordinary items shown in the issuer's latest published audited consolidated financial statements irrespective of the interest held in the subsidiary.~~

23 ~~In the circumstances referred to in Note 9 to rule 17.10, the Exchange may be prepared to give a dispensation from the requirement to make the information public. However, the Exchange must be informed in any event.~~

3 The issuer must at all times also have regard to its general disclosure obligation under rule 17.10.



## General matters relevant to the issuer's securities

*No further issues of securities within 6 months of listing*

17.29 No further shares or securities convertible into equity securities of a listed issuer (whether or not of a class already listed) may be issued or form the subject ~~to~~of any agreement to such an issue ~~within 6 months from~~within the first 6 months of the date on which securities of the listed issuer first commence dealing on GEM (whether or not such issue of shares or securities will be completed within 6 months from the commencement of dealing), ~~save in respect of~~except for:

- (1) the issue of shares, the listing of which has been approved by the Exchange, pursuant to a share option scheme under Chapter 23;
- (2) the exercise of conversion rights attaching to warrants issued as part of the initial public offering;
- (34) any capitalisation issue, capital reduction or ~~any consolidation, or~~ sub-division ~~or capital reduction~~ of shares; ~~or~~
- (4) the issue of shares or securities pursuant to an agreement entered into before the commencement of dealing, the material terms of which have been disclosed in the listing document issued in connection with the initial public offering; and
- (52) any issue of shares or securities convertible into equity securities of a listed issuer (whether or not of a class already listed) which satisfies the following requirements:
  - (a) the issue is for the purpose of an acquisition of assets which would complement the listed issuer's focused line of business referred to in rule 11.12 and described in the listed issuer's initial listing document, and the acquisition does not constitute a major transaction, very substantial acquisition or reverse takeover pursuant to rules 19.06(3), (54) and (65) respectively;
  - (b) the issue does not result in a controlling shareholder of the listed issuer ceasing to be a controlling shareholder after the issue and, in any event, must not result in a change in control of the listed issuer within the meaning of the Takeovers Code;
  - (c) the issue and any transaction related to it is made subject to the approval of shareholders by way of poll with the following persons abstaining from voting: -
    - (i) any connected person and its associates; and
    - (ii) any shareholder who has an a material interest in the issue and/or the related transaction, other than an interest arising solely by virtue of a shareholding in the listed issuer;
  - (d) the circular in respect of the issue and the related transaction which is despatched to the shareholders of the listed issuer must comply with the requirements of a circular as specified in Chapter 19 and contain such information as is necessary for the independent shareholders to make an informed judgement on the issue and related transaction; and

*Note: The circular must include:*

- (i) *an opinion from an independent financial adviser acceptable to the Exchange stating whether, in the financial adviser's opinion, the terms of the proposed issue and related transaction are fair and reasonable so far*

*as the shareholders of the listed issuer (excluding any of the shareholders described in rule 17.29(52)(c)) are concerned;*

- (ii) a statement as to whether or not the listed issuer and its directors had any plan or intention to acquire the assets concerned before or at the time of the issue of the listed issuer's initial listing document;*
  - (iii) the circumstances under which the opportunity to acquire the assets has arisen;*
  - (iv) the number of new shares or securities to be issued and the dilution effect on shareholders;*
  - (v) information on the assets to be acquired including their value;*
  - (vi) an explanation as to how the issue price for the new shares or securities was fixed;*
  - (vii) reasons for the acquisition and why it is important for the listed issuer to acquire the assets within six months of its listing;*
  - (viii) the effect of the acquisition on the listed issuer's business and prospects and on the statement of business objectives set out in the listed issuer's initial listing document;*
  - (ix) how the acquired assets would complement the listed issuer's business;*
  - (x) details of the persons who would receive the new shares or securities and their connection, if any, with any connected persons of the listed issuer; and*
  - (xi) to the extent known to the listed issuer prior to issue of the circular, details of any undertakings given or to be given pursuant to rule 17.29(52)(e).*
- (e) where, after the issue, any person who subscribed for new shares or securities under the issue:
- (i) would be entitled to exercise or control the exercise of 5% or more of the voting power at general meetings of the listed issuer;
  - (ii) would be a management shareholder; or
  - (iii) would be a director, be represented on the board of directors of the listed issuer or be a member of the senior management of the listed issuer,

such person must comply with the restrictions on disposal of securities set out in rule 13.17(1) (in the case of a person described in rule 17.29(52)(e)(i)), rule 13.16(1)(a) (in the case of a person described in rule 17.29(52)(e)(ii) or (iii) and holding more than 1% of the issued share capital of the listed issuer after the issue) or rule 13.16(1)(b) (in the case of a person described in rule 17.29(52)(e)(ii) or (iii) and holding no more than ~~1% per cent~~ of the issued share capital of the listed issuer after the issue), except that the period(s) specified in rule 13.16(1) or rule 13.17(1) (as the case may be) shall be deemed to have commenced on the date on which securities of the listed issuer commenced trading on GEM.

Notes: 1 *In exceptional circumstances, the Exchange may be prepared to waive the requirements of this rule, for example where the listed issuer raised, at the time of its initial public offering, less than the maximum amount stated in its listing document and so as to enable the listed issuer to raise the shortfall of such maximum amount.*

2 *For the avoidance of doubt, the provisions of rules 13.18 to 13.20 shall apply to a person described in rule 17.29(52)(e) as if references to "initial management shareholder" or "significant shareholder" were references to such person.*

#### *Announcement of issues of securities*

17.30 Before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day following the date on which the directors agree to issue any securities for cash under the authority of a general mandate granted to them by the shareholders in accordance with rule 17.41(2), an issuer shall announce the following information:—

- (1) the name of the issuer;
- (2) the number, class and aggregate nominal value of the securities agreed to be issued;
- (3) the total funds to be raised and the proposed use of the proceeds;
- (4) the issue price of each security and the basis for determining the same;
- (5) the net price to the issuer of each security;
- (6) the reasons for making the issue;
- (7) the names of the allottees, if fewer than 6 in number and, in the case of 6 or more allottees details of such allottees in accordance with rule 10.12(4). The Exchange reserves the right to require submission of such further information (on an electronic spreadsheet or such other format as it may request) on the allottees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership;
- (8) the market price of the securities concerned on a named date, being the date on which the terms of the allotment were fixed;
- (9) the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed issue of securities, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount;
- (910) the conditions to which the issue is subject or a negative statement if applicable; and
- (1011) any other material information with regard to the issue (including any restrictions on the ability of the issuer to issue further securities or any restrictions on the ability of the allottees to dispose of shares issued to them or any restrictions on the ability of existing shareholders to dispose of their securities arising in connection with the allotment).

17.30A Where the securities are issued at a discount of 20% or more to the benchmarked price set out in rule 17.42B, an issuer shall publish a separate announcement on the business day immediately following the day on which the relevant agreement involving the proposed issue of securities is signed. The announcement must disclose, among other things, the following information:

- (1) where there are less than 10 allottees, the name of each allottee (or, if applicable, the name of its beneficial owners) and a confirmation of its independence from the issuer; and
- (2) where there are 10 or more allottees, the name of each allottee (or, if applicable, the name of its beneficial owners) subscribing 5% or more of the securities issued and a generic description of all other allottees, and a confirmation of their independence from the issuer. When calculating the 5% limit, the number of securities subscribed by each allottee, its holding company and any of their subsidiaries must be aggregated.

*Pre-emptive rights*

17.39 Except in the circumstances mentioned in rule 17.41, the directors of an issuer (other than a PRC issuer, to which the provisions of rule 25.23 apply) shall obtain the consent of shareholders in general meeting prior to:—

- (1) allotting, issuing or granting:—
  - (a) shares;
  - (b) securities convertible into shares; or
  - (c) options, warrants or similar rights to subscribe for any shares or such convertible securities; and
- (2) any major subsidiary of the issuer making any such allotment, issue or grant so as materially to dilute the percentage equity interest of the issuer and its shareholders in such subsidiary.

*Notes: 1 Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 17.41 and 17.42.*

*2 The restriction in rule 17.39(2) does not apply if the subsidiary is itself listed in Hong Kong because it is then bound by rule 17.39(1) or its equivalent provision on the Main Board. The issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the issuer's shareholders. In the case of a rights issue, if the issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the issuer's shareholders so that they can thus avoid a material dilution in their percentage equity interests.*

- 3 For the purposes of rule 17.39(2), a “major subsidiary” has the same meaning as set out in rule 17.27(2).
- 4 Dilution in a subsidiary is taken to be material:
- (a) where, following an allotment of shares, the subsidiary will cease to be consolidated in the accounts of the issuer; or
- (b) where ~~any of the percentage ratios under rule 19.04(9) is 5% or more the results of the “assets ratio,” “profits ratio” or “consideration ratio” (calculated in the manner set out in rule 19.07) are 15% or more.~~
- 5 If the subsidiary is itself a listed issuer and an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or issuer’s group) has elected to receive a cash alternative which results in the issuer (or issuer’s group) ceasing to hold a majority interest in the subsidiary, the Exchange may be prepared to grant a waiver from treating this as a material dilution of interest. For such a waiver to be granted it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary.

17.41 No such consent as is referred to in rule 17.39 shall be required:—

- (1) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer, ~~excluding which excludes~~ for that purpose any shareholder ~~that who~~ is resident in a place ~~outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place where such offer is not permitted under the law of that place~~ and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings but subject to rule 10.29; or

*Notes: 1 The issuer must make enquiry regarding the legal restrictions under the laws of the relevant place and the requirements of the relevant regulatory body or stock exchange and may only exclude such overseas shareholders on the basis that, having made such enquiry, it would be necessary or expedient to do so.*

*2 If any shareholders that are resident outside Hong Kong are excluded from an offer of securities pursuant to rule 17.41(1), the issuer shall include an explanation for the exclusion in the relevant circular or document containing the offer of securities. Issuers shall ensure that the circular or offer document is delivered to such shareholders for their information subject to compliance with the relevant local laws, regulations and requirements.*

- (2) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of 20% of the existing issued share capital of the issuer (or in the case of a

scheme of arrangement involving an introduction in the circumstances set out in rule 10.18(3), 20% of the issued share capital of the issuer following implementation of the scheme) plus the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the existing issued share capital of the issuer), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate.

Note: *Other than where independent shareholders' approval has been obtained, an issue of securities ~~for cash~~ to a connected person pursuant to a general mandate given under rule 17.41(2) is only permitted in the circumstances set out in rule 20.3123(3).*

17.42A Where an issuer has obtained a general mandate from its shareholders pursuant to rule 17.41(2), any refreshments of the general mandate before the next annual general meeting shall be subject to the following provisions:

- (1) any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour;
- (2) the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:
  - (a) any parties who were controlling shareholders of the issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their associates; or
  - (b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their respective associates;
- (3) the issuer must comply with requirements set out in rules 17.47(4) to 17.47(7) and rules 17.47A, 17.47B and 17.47C;
- (4) the relevant circular to shareholders must contain information relating to the issuer's history of refreshments of mandate since the last annual general meeting, the amount of proceeds raised from the utilisation of such mandate, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount. The circular must also contain information required under rule 2.28; and
- (5) where the issuer offers or issues securities to its shareholders pro rata to their existing holdings (including where overseas shareholders are excluded for legal or regulatory reasons), it will not be necessary for the issuer to comply with rules 17.42A(1), (2) or (3) in order for it to refresh its general mandate immediately thereafter such that the amount in percentage terms of the unused part of the general mandate upon refreshment is the same as the unused part of the general mandate immediately before the issue of securities. In such cases, it need only obtain approval from its shareholders and comply with rule 17.42A(4).

17.42B In the case of a placing of securities for cash consideration, an issuer may not issue any securities pursuant to a general mandate given under rule 17.41(2) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

- (1) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
- (2) the average closing price in the 5 trading days immediately prior to the earlier of:
  - (a) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
  - (b) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
  - (c) the date on which the placing or subscription price is fixed.

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

## **Meetings**

### *Notices of general meetings*

17.44 An issuer shall ensure that notice of every general meeting is announced on the same day as it is otherwise given to those entitled to receive the same (see also rule 17.46).

### *Proxy forms*

17.45 An issuer shall send with the notice convening a meeting of holders of listed securities to all persons entitled to vote at the meeting proxy forms, with provision for two-way voting on all resolutions intended to be proposed thereat.

*Notes: 1 The object of the requirement relating to proxy forms is to ensure that holders have adequate opportunity to express their views on all resolutions intended to be proposed such as the adoption of the annual accounts and re-election of directors.*

*2 Provided two-way proxy forms are made available, the printing and postal arrangements are matters entirely at the discretion of the issuer. The proxy form must state that if it is returned without an indication as to how the proxy shall vote on any particular matter the proxy will exercise his discretion as to whether he votes and if so how. The proxy form must state that a shareholder is entitled to appoint a proxy of his own choice and must provide a space for the name of such proxy.*

*3 Pursuant to rule 16.04(3), the proxy form must be submitted for publication on the GEM website in accordance with rules 16.17 and 16.18.*

*Notices to ~~overseas~~ members*

17.46 (1) An issuer shall send notices to all holders of its listed securities whether or not their registered address is in Hong Kong.

(2) In addition to any direction of the court, an issuer shall ensure that notice of every meeting of its shareholders or its creditors concerning the issuer (e.g. for winding up petitions, schemes of arrangement or capital reduction) is published by way of announcement on the same day as it is given to those entitled to receive it. The issuer shall despatch a circular to its shareholders at the same time as (or before) the issuer gives notice of the general meeting to approve the transaction referred to in the circular. The issuer shall provide its shareholders with any material information on the subject matter to be considered at a general meeting that comes to the directors' attention after the circular is issued. The issuer must provide the information either in a supplementary circular or by way of an announcement not less than 14 days before the date of the relevant general meeting to consider the subject matter. The meeting must be adjourned before considering the relevant resolution to ensure compliance with this 14-day period requirement by the chairman or, if that is not permitted by the issuer's constitutional documents, by resolution to that effect (see also rule 17.47B).

*Note: The issuer must assess the scale of revisions or updating required and materiality of the new information, revisions or updating required that has come to its attention since publication of the circular when deciding whether to issue a revised or supplementary circular or publish an announcement. Where the revisions or updating required are significant, the issuer must consider carefully whether it would be better to publish a revised or supplementary circular rather than provide particulars of the changes in an announcement. The issuer should not overwhelm or confuse investors with lengthy announcements describing changes to information contained in the original circular.*

17.46A An issuer shall also disclose the details required under rule 17.50(2) (see note 3 to rule 17.50(2)) of any directors proposed to be re-elected or proposed new director in the notice or accompanying circular to its shareholders of the relevant general meeting, if such re-election or appointment is subject to shareholders' approval at that relevant general meeting (including, but not limited to, an annual general meeting).

*Nomination of directors*

17.46B An issuer shall publish an announcement or issue a supplementary circular upon receipt of a notice from a shareholder to propose a person for election as a director at the general meeting where such notice is received by the issuer after publication of the notice of meeting. The issuer shall include particulars of the proposed director in the announcement or supplementary circular.

*Note: The issuer must assess whether or not it is necessary to adjourn the meeting of the election to give shareholders at least 14 days to consider the relevant information disclosed in the announcement or supplementary circular.*

*Meetings of holders of securities*

17.47 (1) An issuer proposing to solicit proxies or votes in connection with any meeting of holders of its securities may only use for such purpose previously published information which remains accurate and is not misleading at the time it is quoted.



- (2) Shareholders must not be put under pressure to vote or abstain from voting at any general meeting and, where their votes are solicited, must be encouraged to consult their professional advisers.
- (3) If the Chairman of the meeting and/or the directors individually or collectively hold proxies in respect of shares holding 5% or more of the total voting rights at a particular meeting, and if on a show of hands a meeting votes in the opposite manner to that instructed in those proxies, the Chairman and/or the directors and the Chairman holding proxies as aforesaid collectively shall demand a poll; provided that if it is apparent from the total proxies held that a vote taken on a poll will not reverse the vote taken on a show of hands (because the votes represented by those proxies exceed 50%, 75% or any other relevant percentage, as the case may be, of the total issued share entitled to vote on the resolution in question) then the directors and/or the Chairman shall not be required to demand a poll.
- (4) Any vote of shareholders taken at a general meeting to approve the following transactions or arrangements must be taken on a poll:
- (a) connected transactions pursuant to Chapter 20 of the GEM Listing Rules;
  - (b) transactions that are subject to independent shareholder' approval pursuant to the GEM Listing Rules;
- Note: "Independent shareholders" means any shareholders other than controlling shareholders of the issuer and their associates or, where there are no controlling shareholders, any shareholders other than directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates.*
- (c) granting of options to a substantial shareholder or an independent non-executive director of the issuer, or any of their respective associates, as required under rule 23.04(1);
  - (d) any issue of shares or securities convertible into equity securities of an issuer pursuant to rule 17.29(5); and
  - (e) any other transactions in which a shareholder has a material interest and is therefore required to abstain from voting at the general meeting.
- (5) If voting at a general meeting is taken on a poll, the issuer shall announce the results of the poll (including (i) the total number of shares entitling the holder to attend and vote for or against the resolution at the meeting, (ii) the total number of shares entitling the holder to attend and vote only against the resolution at the meeting, (iii) the number of shares represented by votes for and against the relevant resolution) by way of an announcement which is published on the business day following the meeting. The issuer shall appoint its auditors, share registrar or external accountants who are qualified to serve as auditors for the issuer as scrutineer for the vote-taking and state the identity of the scrutineer in the announcement. The issuer shall confirm in the announcement whether or not any parties that have stated their intention in the circular to vote against the relevant resolution or to abstain have done so at the general meeting.

- (6) In relation to any transactions or arrangements referred to in rules 17.47(4)(a), 17.47(4)(b) and 17.47(4)(d),
- (a) the issuer shall establish an independent board committee (which shall consist only of independent non-executive directors) to advise shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote, taking into account the recommendations of the independent financial adviser appointed under rule 17.47(6)(b);
  - (b) the issuer shall appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee and the shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote; and
  - (c) the independent board committee shall not consist of any independent non-executive directors who have a material interest in the relevant transaction or arrangement. The independent board committee may consist of only one independent non-executive director if all other independent non-executive directors have a material interest in the relevant transaction or arrangement. If all the independent non-executive directors have a material interest in the relevant transaction or arrangement, no independent board committee can be formed. In that event, the independent financial adviser shall make its recommendation to the shareholders only in the manner prescribed under rule 17.47(7)(b).
- (7) In relation to any transaction or arrangement referred to in rules 17.47(4)(a), 17.47(4)(b) and 17.47(4)(d), the circular to shareholders must contain at least:
- (a) if applicable, a separate letter from the independent board committee advising shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and advising shareholders on how to vote, taking into account the recommendations of the independent financial adviser; and
  - (b) a separate letter from the independent financial adviser containing its recommendation to the independent board committee and shareholders (or, if applicable, to the shareholders only) as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and advising shareholders on how to vote. Such letter must set out the reasons for and the key assumptions made and factors taken into consideration in forming that opinion.

17.47A Parties that are required to abstain from voting in favour at the general meeting pursuant to rules 9.20(1), 9.21, 10.29(1), 10.29A, 10.39(1), 10.39A, 17.42A(1), 17.42A(2), 19.89(2), 19.90(1), 23.04(1) may vote against the resolution at the general meeting of an issuer provided that their intention to do so has been stated in the relevant listing document or circular to shareholders. Any such party may change his mind as to whether to abstain or vote against the resolution, in which case the issuer must, if it becomes aware of the change before the date of the general meeting, immediately despatch a circular to its shareholders or publish an announcement notifying its

shareholders of the change and, if known, the reason for such change. Where the circular is despatched or the announcement is published less than 14 days before the date originally scheduled for the general meeting, the meeting must be adjourned before considering the relevant resolution to a date that is at least 14 days from the date of despatch or publication by the chairman or, if that is not permitted by the issuer's constitutional documents, by resolution to that effect.

17.47B Where under rules 17.46(2) or 17.47A, a meeting is required to be adjourned by resolution, all shareholders are permitted to vote on that resolution. Any shareholders who would have been required to abstain from voting on any resolution that was to be proposed shall vote in favour of the resolution to adjourn the meeting.

17.47C An issuer must have an appropriate procedure in place to record that any parties that must abstain or have stated their intention to vote against the relevant resolution in the listing document, circular or announcement have done so at the general meeting.

#### Voting of directors at board meeting

17.48A Subject to the exceptions set out in Note 5 to Appendix 3, a director of an issuer shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.

### **Changes**

17.50 An issuer shall inform the Exchange and publish an announcement immediately after (and for the purpose of providing details of) any decision made with regard to:—

- (1) any proposed alteration to the issuer's memorandum or articles of association or equivalent documents and, in the case of a PRC issuer, any proposed request by the PRC issuer or a PRC competent authority to waive or otherwise modify any provision of the Regulations;

*Note: Changes to articles of association or equivalent documents must conform with the requirements of Appendix 3 to the GEM Listing Rules and, in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11 (including, for these purposes, the PRC), such changes must conform with Appendix 11.*

- (2) any changes in its directorate (~~or~~and, in the case of a PRC issuer, its supervisory committee), and shall procure that each new director or member of its governing body ~~or~~and, in the case of a PRC issuer, supervisor shall sign and lodge with the Exchange no later than 14 business days prior to the proposed date of his appointment a declaration, undertaking and acknowledgement in the relevant form set out in Appendix 6;

*Notes: 1 Where a new director is appointed or the resignation or re-designation of a director (and, in the case of a PRC issuer, a supervisor) takes effect, the Exchange ~~must~~*should* be informed immediately thereafter. The Exchange ~~must~~*should* be informed of any proposed appointment of a director (and, in the case of a PRC issuer, a supervisor) at least 14 business days in advance.*

*2 The issuer ~~must~~*should* simultaneously make arrangements to ensure that the appointment, ~~or~~resignation or re-designation of the director (and, in the case of a PRC issuer, the supervisor) is announced as soon as practicable.*

3 The issuer shall include the following details of any newly appointed or re-designated director (and, in the case of a PRC issuer, any newly appointed supervisor) in the announcement of his appointment or re-designation:-

- (a) the full name (which should normally be the same as that stated in his declaration, undertaking and acknowledgement in the form set out in Appendix 6 to the GEM Listing Rules) and age;
- (b) positions held with the issuer and other members of the issuer's group;
- (c) previous experience including other directorships held in listed public companies in the last 3 years and other major appointments and qualifications;
- (d) length or proposed length of service with the issuer;
- (e) relationships with any directors, senior management, management shareholders, substantial shareholders, or controlling shareholders of the issuer, or an appropriate negative statement;
- (f) his interests in shares of the issuer within the meaning of Part XV of the Securities and Futures Ordinance, or an appropriate negative statement;
- (g) amount of the director's emoluments (and, in the case of a PRC issuer, the supervisor's emoluments) specified in his service contract and the basis of determining the director's emoluments (and, in the case of a PRC issuer, the supervisor's emoluments) (including any bonus payments, whether fixed or discretionary in nature); and
- (h) any other matters that need to be brought to the attention of holders of securities of the issuer.

4 The issuer shall also disclose in the announcement of resignation of a director (and in the case of a PRC issuer, a supervisor) the reasons given by the director (and in the case of a PRC issuer, the supervisor) for his resignation (including, but not limited to, any information relating to his disagreement with the board, and a statement as to whether or not there are any matters that need to be brought to the attention of holders of securities of the issuer).

5 The Exchange ~~must~~ should be informed of any important change in the holding of an executive office.

- (3) any change in its secretary (see rule 5.~~1409~~), qualified accountant (see rule 5.~~1510~~) compliance officer (see rule 5.~~1914~~) or member of the audit committee (see rule 5.~~2823~~);
- (4) any change in its auditors or financial year end, the reason(s) for the change and any other matters that need to be brought to the attention of holders of securities of the issuer (including, but not limited to, information set out in the outgoing auditors' confirmation in relation to the change in auditors); and

Note: The issuer must state in the announcement whether the outgoing auditors have provided a confirmation that there are no matters that need to be brought to the attention of holders of securities of the issuer. If no such confirmation has been provided, the announcement must state the reason for this.

- (5) any change in its registered address or registered office or (as applicable) its registered place of business in Hong Kong or agent for the service of process in Hong Kong.

### **Appointments outstanding**

17.51 An issuer shall immediately inform the Exchange and publish an announcement containing the relevant details and reasons if:~~in the event that~~

- (1) there remains outstanding the appointment of any individual(s) to the position of qualified accountant and/or compliance officer~~or should the issuer have fewer than 2 independent non-executive directors or be unable to constitute an audit committee, in each case~~ as required pursuant to Chapter 5; or-
- (2) 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. The issuer 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); or
- (3) the number of its independent non-executive directors falls below 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. The issuer shall appoint a sufficient number of independent non-executive directors to meet the minimum number required under rule 5.05(1) or appoint an independent non-executive director to meet the requirement set out in rule 5.05(2) within 3 months after failing to meet the requirement(s).

### **Announcements, circulars and other documents**

#### *Review of documents*

17.53 In addition to the specific requirements set out in the GEM Listing Rules, the issuer shall:—

- (1) submit to the Exchange copies of drafts, for review before they are issued, of any announcements or advertisements relating to the issue of new or further securities (other than pursuant to a capitalisation issue or a scrip dividend scheme) or any announcements or advertisements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in its listed securities (including a suspension of dealings);
- (2) submit to the Exchange copies of drafts, for review before they are issued, of any documents issued in connection with takeovers, mergers or offers;
- (3) submit to the Exchange copies of drafts for review before they are issued, of any proposed amendment to its memorandum or articles of association;
- (4) submit to the Exchange copies of drafts, for review before they are issued, of any announcements, as required under rule 17.43, concerning the pledging or charging of interests in the securities of the issuer by any initial management shareholder or significant shareholder; and

- (5) not issue any of such documents until the Exchange has confirmed to the issuer that it has no further comments thereon.

- Notes:*
- 1 *4 copies of each document are required, which should be submitted in sufficient time for review and, if necessary, re-submission prior to dissemination or final printing.*
  - 2 *Upon submission, for review, of the first draft of any document by electronic means, the issuer or other responsible party, is required to notify the GEM Listing Division of such submission by telephone, facsimile or letter.*
  - 3 *In the case of documents issued in connection with takeovers, mergers or offers covered by the Takeovers Code, the Exchange will pass its comments on the document and, if appropriate, its confirmation that it has no further comments thereon in writing to the Commission who will notify the issuer of any such comments and the Exchange's confirmation that it has no further comments thereon. The issuer should ensure that the Commission furnishes it with a copy of the Exchange's letter confirming that it has no further comments thereon.*
  - 4 *It is not necessary to submit a draft of a half-year, quarterly or other interim report or preliminary announcement of results so long as it conforms with the requirements of chapter 18, unless it contains any information falling within rule 17.53(1).*
  - 5 *Changes to articles of association or equivalent documents must conform with the requirements of Appendix 3.*
  - 6 *The Exchange reserves the right to require an issuer to issue a further announcement or document, particularly if the original announcement or document was not required by the GEM Listing Rules to be reviewed by the Exchange, or if the original announcement or document is misleading or is likely to create a false or misinformed market.*

17.53A The Exchange shall be authorised by the issuer to file "applications" (as defined in section 2 of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules respectively and issuers shall be deemed to have agreed to the above by filing such applications and such corporate disclosure materials with the Exchange. The authorisation aforementioned shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant such approval. In addition, the issuer undertakes to execute such documents in favour of the Exchange perfecting the above authorisation as the Exchange may require. Applications and relevant corporate disclosure materials shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe.

*Presentation of information*

17.56 Without prejudice to any specific requirements of the GEM Listing Rules as to content or responsibility for the document in question, any announcement, listing document or circular required pursuant to the GEM Listing Rules ~~should~~must be prepared having regard to the following general principles:—

- (1) the information contained in the document ~~should~~must be clearly presented and ~~should be~~ in the plain language format specified or recommended by the Exchange and/or the Commission from time to time; and
- (2) the information contained in the document ~~should~~must be accurate and complete in all material respects and not be misleading or deceptive, ~~in which regard~~In complying with this requirement, the issuer ~~should avoid~~must not, among other things:—
  - (a) ~~omitting~~ material facts of an unfavourable nature or ~~failing~~ to accord them with appropriate significance;
  - (b) ~~presenting~~ favourable possibilities as certain or as more probable than is likely to be the case;
  - (c) ~~presenting~~ projections without sufficient qualification or explanation; or
  - (d) ~~presenting~~ risk factors in ~~such a~~ misleading way ~~as to create a positive implication.~~

17.56A Any listing document, circular or announcement issued by an issuer pursuant to the GEM Listing Rules must disclose the name of each director as at the date of the relevant listing document, circular or announcement.

*Forwarding of documents, circulars, etc.*

17.57 An issuer shall forward to the Exchange:—

- (1) 25 copies of each of the English language version and the Chinese language version of:
  - (a) all circulars to holders of the issuer's listed securities; and
  - (b) its annual report and accounts and, where applicable, its summary financial report; and
  - (c) its half-year report and, where applicable, its summary half-year report and quarterly reports.

at the same time as they are despatched to holders of the issuer's listed securities with registered addresses in Hong Kong;

- (2) 10 copies of documents relating to takeovers, mergers and offers, notices of meetings, forms of proxy, reports, announcements or other similar documents at the same time as they are issued; and
- (3) 10 certified copies of all resolutions of the issuer including resolutions concerning any of the matters set out in rules 17.39 to 17.41, other than resolutions concerning any other routine business at an annual general meeting, within 15 days after they are passed.

- Notes: 1 *Wherever practicable, the issuer should provide the Exchange and shareholders with such reasonable number of additional copies of these documents as the Exchange and shareholders may request.*
- 2 *The copies referred to in Note 1 above may be in photocopied form, provided always that such copies are all complete and legible.*

*Circulars to holders of securities*

17.59A An issuer shall disclose in each circular to shareholders convening a general meeting the procedure by which shareholders may demand a poll pursuant to its constitutional documents.

*Registration services*

17.67 Save as provided in rules 17.64 to 17.66 or rules 17.68 to 17.74, the issuer shall not and shall use all reasonable endeavour to ensure that neither ~~it nor~~ its registrar nor other agents will charge holders or transferees any other fees for any dealings with them in connection with the transfer or transmission of its listed securities.

*Takeovers and share repurchases*

17.89 An issuer must comply with the Takeovers s Code and the Code on Share Repurchases.

- Notes: 1 *Where the consideration under an offer includes securities for which listing is being or is to be sought, the offer document(s) will constitute a listing document. Whether the consideration under an offer comprises cash or securities (or a combination of both), drafts of all documents to be issued in connection with takeovers, mergers or offers must be submitted to the Exchange for review in accordance with rule 17.53.*
- 2 *The Exchange will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Takeovers s Code and Code on Share Repurchases directly to the party that submits the draft document (or its advisers). The Exchange will at the same time provide a copy of such comments to the Commission.*

*Directors' service contracts*

17.90 An issuer shall ~~procure that no service contract of 3 years or longer duration shall be granted by the issuer or any of its subsidiaries to any director or proposed director of the issuer or to any director or proposed director of any subsidiary without~~obtain the prior approval of ~~the~~its shareholders ~~of the issuer~~ in a general meeting (at which the relevant director and his associates shall~~did~~ not vote on the matter-) for any service contract to be granted by the issuer or any of its subsidiaries to any director or proposed director of the issuer or to any director or proposed director of any of its subsidiaries which:-

- (a) is for a duration that may exceed 3 years; or
- (b) in order to entitle the issuer to terminate the contract, expressly requires the issuer to give a period of notice of more than 1 year or to pay compensation or make other payments equivalent to more than 1 year's remuneration.



The remuneration committee of the issuer (if any and provided that such committee has a majority of independent non-executive directors) or an independent board committee shall form a view in respect of service contracts that require shareholders' approval and advise shareholders (other than shareholders who are directors with a material interest in the service contracts and their associates) as to whether the terms are fair and reasonable, advise whether such contracts are in the interests of the issuer and its shareholders as a whole and advise shareholders on how to vote. An independent non-executive director who has a material interest in any such contracts shall not sit on the independent board committee.

*Note: A contract is relevant whether or not reduced to writing. A service contract is relevant whether granted by the issuer or any of its subsidiaries. A service contract not for a fixed period is to be regarded as running at least until the earliest date on which it can lawfully be determined by the employing company without payment of compensation (other than statutory compensation). Where an arrangement exists under which a director can require the issuer or any of its subsidiaries to enter into a further service contract with him, the arrangement will be regarded as a provision for extending the period of his existing service contract and taken into account in determining its duration.*

17.91 Directors' service contracts entered into by an issuer or any of its subsidiaries in accordance with the GEM Listing Rules on or before [31 January, 2004] are exempt from the shareholders' approval requirement under rule 17.90. Upon any variation as to duration or payment on termination or any other material terms of the directors' service contracts or renewal of any such directors' service contracts, the issuer must comply in full with the requirements set out in rule 17.90 in respect of the service contracts effected after such variation or renewal. Pursuant to rule 18.24A, the issuer must include particulars of any service contracts that are exempt under this rule in its annual reports during the term of any such service contracts.

# Chapter 18

## EQUITY SECURITIES

### FINANCIAL INFORMATION

#### Introduction

18.01 This Chapter sets out the continuing obligations of a listed issuer with regard to the disclosure of routine financial information on an annual, half-yearly and quarterly basis. It also sets out certain recommended disclosure items on management discussion and analysis (see rule 18.83) that listed issuers are encouraged to include in their half-year and annual reports. These recommended disclosure items are not obligatory, but merely items relating to good practice which are recommended for disclosure. Additional requirements, relating to non-routine financial disclosure, are set out in the following Chapters:

Chapter 7	—	Accountants' Reports <u>and Pro Forma Financial Information</u>
Chapter 14	—	Listing Documents
Chapter 19	—	<u>Notifiable</u> Transactions
Chapter 20	—	Connected Transactions

Additional disclosure requirements in respect of routine financial information are set out in the following Chapters, in so far as they relate to the following issuers:—

Chapter 24	—	Overseas issuers
Chapter 25	—	PRC issuers
Chapter 31	—	Issuers of debt securities

*Note: In circumstances where the disclosure requirements of Chapters 24 or 25, as appropriate, are inconsistent with the requirements of this Chapter, the requirements of Chapters 24 or 25, as appropriate, shall prevail.*

#### Annual reports

##### *Distribution*

18.03 The listed issuer shall send to:—

- (1) every member of the listed issuer; and
- (2) every other holder of its listed securities,

a copy of either (i) the directors' report and its annual accounts and, where the listed issuer prepares group accounts, the group accounts, together with a copy of the auditors' report thereon or (ii) its summary financial report, not less than 21 days before the date of the listed issuer's annual general meeting and not more than 3 months after the date upon which the financial period ended. The Issuer may send a copy of its summary financial report to a member and a holder of its listed securities in place of a copy of its annual report and accounts, provided

that it complies with [rule 18.81 and](#) the relevant provisions set out in section 141 of the Companies Ordinance and in the Companies (Summary Financial Reports of Listed Companies) Regulation or, in the case of overseas issuers, with provisions no less onerous than the above provisions for listed issuers incorporated in Hong Kong.

Nothing in this rule shall require the listed issuer to send any of the documents referred to therein to:—

- (a) a person of whose address the listed issuer is unaware; or
- (b) more than one of the joint holders of any of its listed securities.

*Notes: 1 “Group accounts,” for the purposes of a Hong Kong listed issuer, has the meaning ascribed to it under section 124(1) of the Companies Ordinance.*

*2 The directors' report, auditors' report, annual accounts (including group accounts) and, where applicable, summary financial report must be in the English language and must be accompanied by a Chinese translation or be in the Chinese language accompanied by an English translation. In respect of overseas members, it shall be sufficient for the listed issuer to mail an English language version of either (i) its directors' report, auditors' report and annual accounts or (ii) its summary financial report if such documents contain a prominent statement in both English and Chinese to the effect that a Chinese translation is available from the listed issuer, on request.*

*3 Section 122 of the Companies Ordinance requires the annual accounts of a Hong Kong listed issuer which are laid before the listed issuer at its annual general meeting to be made up to a date falling not more than 6 months before the date of the meeting. An overseas issuer (including for such purposes, a PRC issuer) must make up its annual accounts to a date not more than 6 months before the date of its annual general meeting.*

*4 The Exchange may at its discretion suspend dealings in or cancel the listing of the securities of the listed issuer if it falls into arrears in the issue of its directors' report and accounts. If the listed issuer has significant interests outside Hong Kong it may apply for an extension of the 6 month period. However, the attention of a Hong Kong listed issuer is drawn to section 122 (1B) of the Companies Ordinance which requires any extension of the time limit to be approved by the High Court.*

*5 The listed issuer must send 25 copies of each of the English language version and the Chinese language version of the directors' report, annual accounts and, where applicable, the summary financial report to the Exchange at the same time as they are sent to holders of the listed issuer's listed securities with registered addresses in Hong Kong (see rule 17.57).*

#### *Accounting standards*

18.04 Annual accounts of a listed issuer are required, subject to rule 18.05 and rule 18.06, to conform with either [Hong Kong Financial Reporting Standards](#) ~~accounting standards approved by the Hong Kong Society of Accountants and laid down in the Statements of Standard Accounting Practice issued from time to time by that Society~~ or the International [Financial Reporting Accounting Standards](#) ~~as promulgated from time to time by the International Accounting Standards Committee.~~

*Note: The issuer must apply one of these bodies of standards consistently and shall not change from one body of standards to the other unless there are reasonable grounds to justify such change. All reasons for any such change must be disclosed in the annual accounts.*

*Information to accompany directors' report and annual accounts*

18.07 The listed issuer shall include the information set out in rules 18.08 to 18.48 in its directors' report and annual accounts. Each set of financial statements presented in an annual report shall include, at a minimum, the components set out below. Unless stated to the contrary the financial information specified in these rules may be included outside the financial statements and will therefore be outside the scope of the auditors' report on the financial statements. The income statement and balance sheet set out in the financial statements must include at least the information set out in rule 18.50BA. Banking companies (meaning banks, restricted licence banks and deposit-taking companies as defined in the Banking Ordinance) shall, in addition, comply with the Financial Disclosure by Locally Incorporated Authorized Institutions as issued by the Hong Kong Monetary Authority.

- (1) balance sheet;
- (2) income statement;
- (3) cash flow statement;
- (4) statement of changes in equity;
- (5) comparative figures for the statements referred to in (1) to (4) immediately above for the corresponding previous period; and
- (6) accounting policies and explanatory notes.

*Notes: 1 The Exchange may authorise the omission from an annual report of specified items of information if it considers that disclosure of such information would be contrary to the public interest or seriously detrimental to the listed issuer. The Exchange will only authorise such omission provided it is satisfied that the omission is not likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question. The listed issuer or its representatives will be responsible for the correctness and relevance of the facts on which any application for such exemption is based.*

*2 The annual report and accounts must contain, at a prominent position, and in bold type, a statement about the characteristics of GEM, in the form set out in rule 2.20.*

*3 If an accounting estimate reported in prior interim period of the current financial year is changed during the subsequent interim period of the same financial year and has a material effect in that subsequent interim period, the nature and amount of a change in an accounting estimate that has a material effect in the current financial year or which is expected to have a material effect in subsequent periods should be disclosed. If it is impracticable to quantify the amount, this fact should be disclosed.*

18.08 ~~(1) For accounting periods commencing before 1st January, 2001, a listed issuer shall include a description of the principal activities of the group and, where 2 or more such activities are so described, a statement giving in respect of each such activity the turnover and contribution to trading results attributable to it.~~

*Note: For these purposes, a "principal activity" is one which achieved profits and losses numerically equivalent to 10% or more of the consolidated profit or loss of the group.*

~~(2) For accounting periods commencing on or after 1st January, 2001, a listed issuer shall include in its financial statements the information required by:—~~

~~(1a) Statement of Standard Accounting Practice 26 segment reporting if it prepares its annual financial statements in accordance with standard accounting practices in Hong Kong Financial Reporting Standards; or~~

~~(2b) International Accounting Standard 14 reporting financial information by segment if it prepares its annual financial statements in accordance with International Accounting Financial Reporting Standards; or~~

~~(3e) the relevant accounting standards dealing with segment reporting in Generally Accepted Accounting Principles in the United States of America (US GAAP) if it prepares its annual financial statements in accordance with US GAAP.~~

~~18.09 (1) For accounting periods commencing before 1st January, 2001, a listed issuer shall provide a geographical analysis of consolidated turnover and, if the contribution to profit or loss from a specific area is abnormal in nature, the contribution to trading results of those trading operations carried on by the listed issuer and/or its subsidiaries outside the country in which the main place of business of the listed issuer (or the group of which the listed issuer is a member) is situated, unless such operations comprise less than 10% of the consolidated turnover and 10% of the consolidated trading results of the group.~~

~~Notes: 1 Transactions within the group should be excluded.~~

~~2 A broad geographical analysis of net turnover by way of figures or percentages, given by market (not necessarily given country by country), will be acceptable. Where analysis is required, the analysis should be by continent but if 50% of total overseas operations relates to 1 continent, a further analysis, for example, by country within that continent, will be required. Overseas operations include direct exports from the country in which the main place of business of the listed issuer (or the group of which the listed issuer is a member) is situated and activities carried out otherwise than in such country.~~

~~3 In respect of trading results an appropriate statement should be included where, for a proper appraisal of the business of the listed issuer (or the group of which the listed issuer is a member), holders of listed securities should be aware of significant contributions derived from activities carried out in any one territory. No analysis of the contribution to trading results is required unless the contribution to profit or loss from a specific area is "abnormal" in nature. "Abnormal" is defined as substantially out of line with the normal ratio of profit to turnover. For example, if a 40% profit is earned by the group in relation to turnover in one continent compared with 10 per cent on turnover elsewhere, this fact should be made apparent.~~

~~(2) For accounting periods commencing on or after 1st January, 2001, a listed issuer shall include in its financial statements the information required by:—~~

- (a) ~~Statement of Standard Accounting Practice 26 segment reporting if it prepares its annual financial statements in accordance with standard accounting practices in Hong Kong; or~~
- (b) ~~International Accounting Standard 14 reporting financial information by segment if it prepares its annual financial statements in accordance with International Accounting Standards; or~~
- (c) ~~the relevant accounting standards dealing with segment reporting in Generally Accepted Accounting Principles in the United States of America (US GAAP) if it prepares its annual financial statements in accordance with US GAAP.~~

18.09 (1) In relation to connected transactions that are not exempt under rule 20.31, particulars of the transactions pursuant to rule 20.45.

(2) In relation to continuing connected transactions that are not exempt under 20.33, particulars of the transactions pursuant to rules 20.45 and 20.46.

(3) Where a listed issuer includes in its annual report particulars of a connected transaction or continuing connected transaction (as the case may be) in accordance with the Statement of Standard Accounting Practice "Related Party Disclosures" issued by the Hong Kong Society of Accountants or applicable International Financial Reporting Standards, a statement as to whether or not the transaction falls under the definition of "connected transaction" or "continuing connected transaction" (as the case may be) in Chapter 20. The listed issuer must also confirm whether or not it has complied with the disclosure requirements in accordance with Chapter 20.

18.15 (1) Subject to rule 18.15(2), a statement as at the end of the relevant financial year showing the interests and short positions of each director and chief executive of the listed issuer in the shares, underlying shares and debentures of the listed issuer or any associated corporation (within the meaning of Part XV of the Securities and Futures Ordinance):

- (a) as recorded in the register required to be kept under section 352 of the Securities and Futures Ordinance; or
- (b) as otherwise notified to the listed issuer and the Exchange pursuant to the ~~required minimum~~ standards of dealings by directors of listed issuers as referred to in rule 5.46~~0~~; or
- (c) if there is no such interests or short positions, a statement of that fact,

provided that the Exchange may agree, in its sole discretion, that compliance with this sub-paragraph may be modified or waived in respect of any associated corporation if, in the opinion of the Exchange, the number of associated corporations in respect of which each director and chief executive is taken or deemed to have an interest under Part XV of the Securities and Futures Ordinance is such that compliance with this sub-paragraph would result in particulars being given which are not material in the context of the group and are of excessive length.

- (2) The information required to be included by virtue of rule 18.15(1) must specify the company in which interests or short positions are held, the class to which those securities belong and the number of such securities held, but need not disclose:
- (a) the interests of a director or a chief executive officer in the shares of the listed issuer or any of its subsidiaries if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares; or
  - (b) the non-beneficial interests of directors or chief executive officers in the shares of any subsidiary of the listed issuer in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the parent company of that subsidiary or the listed issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member.

*Note: Where interests in securities arising from the holding of such securities as qualifying shares are not disclosed pursuant to the exception provided in this paragraph, a general statement should nevertheless be made to indicate that the directors hold qualifying shares.*

- 18.20 A statement as to the reasons for any significant departure from accounting standards approved by the Hong Kong Society of Accountants, if the relevant accounts are drawn up in accordance with ~~accounting standards approved by the Hong Kong Society of Accountants-Hong Kong Financial Reporting Standards~~, or the International Accounting Standards ~~Committee~~Board, if the relevant accounts are drawn up in accordance with ~~the International Accounting Financial Reporting Standards promulgated from time to time by the International Accounting Standards Committee~~.

*Note: In this regard, refer to rules 18.04 to 18.06.*

- 18.23 Where ~~any of the percentage ratios (as defined under rule 19.04(9)) of any~~ properties held for development and/or sale or for investment purposes held by the group ~~exceeds 5% represent an amount in excess of 15% of the value of the listed issuer's net tangible assets or consolidated net tangible assets, as the case may be, or earn an amount in excess of 15% of the listed issuer's pre-tax operating profit or consolidated pre-tax operating profit, as the case may be, in respect of the financial year~~, the following information:

- (1) in the case of property held for development and/or sale:—
  - (a) an address sufficient to identify the property, which generally must include the postal address, lot number and such further designation as is registered with the appropriate government authorities in the jurisdiction in which the property is located;
  - (b) if in the course of construction, the stage of completion as at the date of the annual report and accounts;
  - (c) if in the course of construction, the expected completion date;
  - (d) the existing use (e.g. shops, offices, factories, residential, etc.);
  - (e) the site and gross floor area of the property; and
  - (f) the percentage interest in the property.

- (2) in the case of property held for investment:—
- (a) an address sufficient to identify the property, which generally must include the postal address, lot number and such further designation as is registered with the appropriate government authorities in the jurisdiction in which the property is located;
  - (b) the existing use (e.g. shops, offices, factories, residential, etc.); and
  - (c) whether the property is held on short lease, medium term lease or long lease or, if situated outside Hong Kong, is freehold; and
- (3) such other details as may be prescribed or requested from time to time by the Exchange, provided that if, in the opinion of the directors of the listed issuer, the number of the properties is such that compliance with this rule would result in particulars of excessive length being given, compliance with this rule shall not be required except in the case of properties which in the opinion of the directors are material.

18.24 Statements as to:—

- (1) the unexpired period of any service contract, which is not determinable by the employer within one year without payment of compensation (other than statutory compensation), of any director proposed for re-election at the forthcoming annual general meeting or, if there are no such service contracts, a statement of that fact; and
- (2) the length of the term of appointment of every non-executive director (as required pursuant to rule 5.1308).

18.24A Particulars of any service contracts that are exempt under rule 17.91.

- 18.25 Particulars of any contract of significance subsisting during or at the end of the financial year in which a director of the listed issuer is or was materially interested, either directly or indirectly, or, if there has been no such contract, a statement of that fact.

Notes: 1 A “contract of significance” is one where any of the percentage ratios (as defined under 19.04(9)) of the transaction is 1% or more, which represents in amount or value a sum equal to 5% or more of:—

- ~~(a) in the case of a capital transaction or a transaction of which the principal purpose is the granting of credit, the net tangible assets of the listed issuer; or~~
- ~~(b) in other cases, the total purchases, sales, payments or receipts, as the case may be, of the listed issuer.~~

~~Where the listed issuer has subsidiaries, comparison must be made with the purchases, sales, payments, receipts or net tangible assets of the group on a consolidated basis.~~

- 2 An interest in a transaction or arrangement is material for the purposes of disclosure in the accounts if the omission of information relating to that contract or arrangement could have changed or influenced the judgement or decision of a person relying on the relevant information.



18.26 Particulars of any contract of significance between the listed issuer, or one of its subsidiary companies, and a controlling shareholder or any of its subsidiaries.

*Note: For the purposes of this rule and rule 18.27, the words “controlling shareholder” mean any shareholder entitled to exercise, or control the exercise of, 305 per cent (or such ~~lower~~ other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the listed issuer or one which is in a position to control the composition of a majority of the board of directors of the listed issuer.*

18.28 Information concerning the emoluments, pension and any compensation arrangements for the directors and past directors of the listed issuer as is specified in sections 161 and 161A of the Companies Ordinance (which information must be provided irrespective of where the listed issuer is in fact incorporated). The information provided pursuant to this rule must include, ~~at least, the following particulars~~ details of directors’ and past directors’ emoluments, on a named basis, as follows:

- (1) the ~~aggregate of the~~ directors’ fees for such financial year;
- (2) the ~~aggregate of the~~ directors’ basic salaries, housing allowances, other allowances and benefits in kind;
- (3) the ~~aggregate of~~ contributions to pension schemes for directors or past directors for such financial year;
- (4) the ~~aggregate of~~ bonuses paid or receivable by directors which are discretionary or are based on the listed issuer’s, the group’s or any member of the group’s performance (excluding amounts disclosed in (5) and (6) below) for such financial year;
- (5) the ~~aggregate of~~ amounts paid during such financial year or receivable by directors as an inducement to join or upon joining the listed issuer; ~~and~~
- (6) the ~~aggregate of~~ compensation paid during such financial year or receivable by directors or past directors for the loss of office as a director of any member of the group or of any other office in connection with the management of the affairs of any member of the group distinguishing between contractual and other payments (excluding amounts disclosed in (2) to (5) above); ~~and~~;
- (7) information on share options held by directors as required under rule 23.07.

Notes: 1 *In the case of a PRC issuer, references to directors or past directors in this rule shall also mean and include past and present supervisors (as appropriate).*

21 *Sub-paragraphs (2) to (6) of this rule require an analysis of the amounts to be disclosed in the issuer’s accounts under the provisions of section 161(1) of the Companies Ordinance.*

32 *Where a director is contractually entitled to bonus payments which are fixed in amount such payments are more in the nature of basic salary and accordingly ~~should~~ must be disclosed under sub-paragraph (2) ~~of~~ to this rule.*

~~43~~ *In addition to discretionary bonus payments, all bonus payments to which where a director is contractually entitled to bonus payments which are determined as a percentage of turnover or profits of the listed issuer or any of its subsidiaries, then such payments should and which are not fixed in amount, together with the basis upon which they are determined, must be disclosed under sub-paragraph (4) of this rule.*

~~54~~ *Where the information provided under sub-paragraphs (1) to (5) of this rule does not disclose the full compensation of a director for the financial year, any outstanding element of compensation must also be provideddisclosed.*

18.29 ~~The following additional information in respect of directors' emoluments:—~~

- ~~(1) the information required pursuant to rule 18.28 must be analysed by individual director or past director and such that it is apparent as to which are the independent non-executive directors (but without any obligation to disclose any individual by name); and~~
- ~~(2) A listed issuer shall include particulars of any arrangement under which a director has waived or agreed to waive any emoluments.~~

*Note: Where a director has agreed to waive future emoluments, particulars of such waiver must be given together with those relating to emoluments which accrued during the past financial year. This applies in respect to emoluments from the listed issuer or any of its subsidiaries or other person.*

18.29A The following information in respect of the group's emolument policy:

- (1) a general description of the emolument policy and any long-term incentive schemes of the group; and
- (2) the basis of determining the emolument payable to its directors.

18.30 Additional information in respect of those 5 individuals whose emoluments (excluding amounts paid or payable by way of commissions on sales generated by the individual) were the highest in the listed issuer or the group for the year and details of the increase of each of their emoluments. Where all 5 of these individuals are directors of the listed issuer and the information required to be disclosed by this ~~rule paragraph~~ has been disclosed in the emoluments of directors as required by rule 18.28 directors' remuneration above, a statement of this fact shall be made and no additional disclosure is required. Where the details of one or more of the individuals whose emoluments were the highest have not been included in the emoluments of directors directors' remuneration above, the following information shall be disclosed:—

- (1) the aggregate of basic salaries, housing allowances, other allowances and benefits in kind for such financial year;
- (2) the aggregate of contributions to pension schemes for such financial year;
- (3) the aggregate of bonuses paid or receivable which are discretionary or are based on the listed issuer's, the group's or any member of the group's performance (excluding amounts disclosed in (4) and (5) below) for such financial year;
- (4) the aggregate of amounts paid during such financial year or receivable as an inducement to join or upon joining the listed issuer or the group;

- (5) the aggregate of compensation paid during such financial year or receivable for the loss of any office in connection with the management of the affairs of any member of the group distinguishing between contractual payments and other payments (excluding amounts disclosed in (1) to (3) above); and
- (6) an analysis showing the number of individuals whose remuneration (being amounts paid under (1) to (5) above) fell within bands from HK\$nil up to HK\$1,000,000 or into higher bands (where the higher limit of the band is an exact multiple of HK\$500,000 and the range of the band is HK\$499,999).

Notes: 1 *It is not necessary to disclose the identity of the highest paid individuals, unless any of them are directors of the listed issuer.*

2 *The purpose of these disclosures is to provide shareholders with an indication of the fixed management costs of groups and accordingly employees who are higher paid by virtue of sales commissions are to be omitted from this disclosure.*

### **Additional disclosure for Financial Conglomerates**

18.37A Where a listed issuer is regarded as a financial conglomerate (as defined in rule 18.37B below), the listed issuer shall, in addition to the requirements as set out in all preceding paragraphs, include in its annual report at least the information as set out in rule 18.37A(1) to 18.37A(4) inclusive. Information required by rule 18.37A(1) to 18.37A(3) should be included in the financial statements.

(1) Income Statement

- (a) interest income;
- (b) interest expense;
- (c) gains less losses arising from dealing in foreign currencies;
- (d) gains less losses on trading securities or other investments in securities;
- (e) gains less losses from other dealing activities;
- (f) gains less losses arising from derivative products;
- (g) charge for bad and doubtful debts;
- (h) gains less losses from disposal of investment securities or non-trading securities;
- (i) provisions on held-to-maturity securities and investment securities or provisions on held-to-maturity securities and non-trading securities; and
- (j) operating profit by products and divisions.

(2) Balance Sheet

- (a) cash and short-term funds (with an analysis between cash and balances with banks and other financial institutions, money at call and short notice and treasury bills where applicable);

- (b) trading securities or other investments in securities (investments in securities should be distinguished between equities and debt securities and analysed between those which are listed and those which are unlisted. The analysis should be provided separately for held-to-maturity securities, investment securities, other investments in securities, trading securities and non-trading securities where applicable. Market value of the listed securities as at the balance sheet date should also be disclosed);
- (c) advances and other accounts (with an analysis between advances to customers, advances to banks and other financial institutions, accrued interest and other accounts, provisions for bad and doubtful debts and the related collateral security);
- (d) held-to-maturity securities and investment securities or held-to-maturity securities and non-trading securities (with an analysis of held-to-maturity securities, investment securities, other investments in securities, trading securities and non-trading securities separately into those issued by central governments and central banks, public sector entities, banks and other financial institutions; corporate entities; and others. Market value of listed securities as at the balance sheet date should also be disclosed);
- (e) issued debt securities;
- (f) other accounts and provisions such as obligations on leases, sale and repurchase agreements, and forward contracts (with an analysis where material); and
- (g) a maturity profile of the following assets and liabilities unless immaterial,

Assets —

Advances to customers.

Placements with banks and other financial institutions.

Certificates of deposit held.

Debt securities (with an analysis into those included in held-to-maturity securities, trading securities or other investments in securities and investment securities or non-trading securities).

Liabilities —

Deposits and balances of banks and other financial institutions.

Current, fixed, savings and other deposits of customers.

Certificates of deposit issued.

Issued debt securities.

(3) Off-Balance Sheet exposures

- (a) contingent liabilities and commitments;
- (b) derivatives (with an analysis into those related to exchange rate contracts and interest rate contracts. The aggregate notional amounts of each significant class of derivative instruments should also be analysed into those entered into for trading or hedging purposes);
- (c) where applicable, the aggregate credit risk weighted amounts of its contingent liabilities and commitments, exchange rate contracts, interest rate contracts and other derivatives, if any; and
- (d) the aggregate replacement costs of its exchange rate contracts, interest rate contracts, and other derivative contracts, if any.

The information required by rule 18.37A(1) to 18.37A(3) inclusive may be provided on the face of the income statement or the balance sheet, as appropriate, or in the notes to the financial statements.

(4) Supplementary Information

(a) Management of risks

A description of the main types of risk arising out of its business, including, where appropriate, credit, interest rate, foreign exchange and market risks arising out of its trading book. It should also include a description of the policies, procedures (including hedging policies) and controls used for measuring, monitoring and controlling those risks and for managing the capital required to support them.

(b) Segmental information

Where a geographical segment of the financial business represents 10% or more of the listed issuer's whole business, then that segment should be further analysed.

*Notes: 1 Listed issuers should provide the information as required by paragraph 18.37(A)(1)(j) in accordance with rules 18.08 and 18.09.*

*2 For disclosure purposes, listed issuers may use different terms to those prescribed in rules 18.37A(2)(b) and (d) provided that the meaning of alternative terms is made clear and the accounting treatment adopted conforms to the requirements set out in accordance with:*

*(a) Statement of Standard Accounting Practice 24 "Accounting for investment in securities" if the listed issuer prepares its financial statements in accordance with ~~standard accounting practices in Hong Kong~~ Financial Reporting Standards; or*

*(b) International Accounting Standards 32 "Financial Instruments: Disclosure and Presentation" and 39 "Financial Instruments: Recognition and Measurement" if the listed issuer prepares its financial statements in accordance with International Accounting Financial Reporting Standards; or*

*(c) the relevant accounting standards dealing with accounting treatment for investment in securities in the Generally Accepted Accounting Principles in the United States of America (US GAAP) if the listed issuer prepares its financial statements in accordance with US GAAP.*

*3 Listed issuers should provide the information as required by rule 18.37A(4)(b) in accordance with the requirements for segmental information as set out in the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority.*

*4 The corresponding amounts for the immediately preceding financial year may be omitted if the disclosures set out in rule 18.37A(1) to (3) are applied for the first time.*

- 5 *Listed issuers shall provide sufficient descriptions in their accounting policy notes or other notes to the financial statements to enable the users of the financial statements to understand how material items have been dealt with.*
- 6 *The items contained in this paragraph shall have the same meanings as prescribed in the Financial Disclosure by Locally Incorporated Authorized Institutions issued by the Hong Kong Monetary Authority.*

18.37B A listed issuer will be regarded as a “Financial Conglomerate” for the purpose of rule 18.37A above only if:—

- (1) ~~any of the percentage ratios (as defined under rule 19.04(9)) of its financial business exceeds 5%. For the avoidance of doubt, the listed issuer must compare the total assets of its financial business to that of the group as at the end of the relevant period for the purpose of the assets ratio under rule 19.07. The listed issuer must compare the revenue and profits of its financial business during the period under review to that of the group for the purpose of the revenue ratio and profits ratio under rule 19.07~~as at the end of the relevant period the net assets of its financial business represent more than 15% of the listed issuer’s consolidated net assets or during the period under review the net profit attributable to the shareholders of the financial business represents more than 15% of the net profit attributable to shareholders of the listed issuer; and
- (2) as at the end of the relevant period its financial business has total assets of over HK\$1,000 million or has customer deposits plus financial instruments held by the public of over HK\$300 million.

*Notes: 1 For the purpose of this rule, financial business includes, but not limited to, the business of securities trading; giving advice in connection with securities; commodities trading; leveraged foreign exchange trading; insurance activities; and money lending.*

~~2 Where:~~

~~(1) a listed issuer has recorded a loss rather than a profit in its accounts; or~~

~~(2) a listed issuers has recorded a negative net assets position in its accounts; or~~

~~(3) a loss rather than a profit is attributable to the “financial business”~~

~~the issuer should consult the Exchange for guidance as to the application of rule 18.37B.~~

*Information in the annual report which is outside the scope of the auditor’s report*

18.39A In relation to an independent non-executive director appointed by a listed issuer during the financial year, the listed issuer shall disclose the reasons why such an independent non-executive director was and is considered to be independent if he has failed to meet any of the independence guidelines set out in rule 5.09.

18.39B A listed issuer must confirm whether it has received from each of its independent non-executive directors an annual confirmation of his independence pursuant to rule 5.09 and whether it still considers the independent non-executive directors to be independent.

18.44 The following information in respect of an issuer:—

- (1) the composition, by name, of the audit committee (which information should be included in the corporate information section of the annual report);
- (2) the work undertaken by the audit committee during the financial year (which information should be included in the report of the directors or the review of operations);
- (3) the number of times that the audit committee met during the financial year;
- (4) the full name and professional qualifications (if any) of:—
  - (a) the company secretary of the issuer;
  - (b) the qualified accountant of the issuer appointed pursuant to rule 5.150; and
  - (c) the compliance officer of the issuer appointed pursuant to rule 5.194; and
- (5) a statement as to whether or not the issuer has complied with rules 5.3428 to 5.4539 concerning board practices and procedures throughout the accounting period covered by the annual report. An issuer that has not complied with rules 5.3428 to 5.4539, or complied with only part of rules 5.3428 to 5.4539 or (in the case of requirements of a continuing nature) complied for only part of such period, must specify the rules with which it has not complied and (where relevant) for what part of the period of such non-compliance continued, and give reasons for any non-compliance. Insofar as the issuer's statement of compliance relates to rule 5.360, such statement must be reviewed by the auditors;
- (6) in respect of the required standard of dealings set out in rules 5.48 to 5.67, a statement in relation to the accounting period covered by the annual report as to:
  - (a) whether the issuer has adopted a code of conduct regarding directors' securities transactions on terms no less exacting than the required standard of dealings;
  - (b) 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 directors' securities transactions; and
  - (c) 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;
- (7) details of non-compliance (if any) with rules 5.05(1) and 5.05(2) and an explanation of the remedial steps taken by the issuer to address such non-compliance relating to appointment of a sufficient number of independent non-executive directors and an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise, respectively; and
- (8) details of non-compliance with rule 5.28 (if any) and an explanation of the remedial steps taken by the issuer to address such non-compliance relating to establishment of an audit committee.

## Preliminary announcement of results for the financial year

### *Preliminary*

- 18.49 A listed issuer must publish (in accordance with the requirements of Chapter 16) a preliminary announcement of the ~~audited~~ results for the financial year, which has been agreed with its auditors containing the information set out in rule 18.50B, on the GEM website on the next business day after approval by or on behalf of the board of its results and in any event not later than 3 months after the date upon which the financial year ended.

*Note: The term financial year refers to the period covered by a listed issuer's financial statements even where the period is not a calendar year.*

### *Content of preliminary announcement*

- 18.50 The preliminary announcement of results for the financial year ~~must confirm that the issuer's annual accounts have been audited and~~ must contain at least the following information in respect of the group:
- ~~(1) the audited financial statements and the auditors' report thereon. The audited financial statements shall include, at a minimum, the following components:~~
    - ~~(a) balance sheet;~~
    - ~~(b) income statement;~~
    - ~~(c) cash flow statement;~~
    - ~~(d) statement of changes in equity;~~
    - ~~(e) comparative figures for the statements referred to in (a) to (d) above inclusive for the corresponding previous period; and~~
    - ~~(f) accounting policies and explanatory notes;~~
  - ~~(2) the information set out in rule 18.41 in relation to management discussion and analysis of results;~~
  - (1) except where the listed issuer is a banking company, the information in respect of the balance sheet and the income statement as set out in rule 18.50B comprising an income statement for the financial year, with comparative figures for the immediately preceding financial year, and balance sheet as at the end of the year, with comparative figures as at the end of the immediately preceding financial year. A banking company shall comply with rule 18.80 as regards the disclosure requirements for the balance sheet and income statement. The listed issuer must include the notes relating to turnover, taxation, earnings per share, dividends and any other notes that the directors consider necessary for a reasonable appreciation of the results for the year. Directors of the listed issuer must ensure that the information contained in the preliminary announcement of results is consistent with the information that will be contained in the annual reports (see rule 18.50A);



Note: Listed issuers are not required to include an audited balance sheet within the meaning of section 129C or other provisions of the Companies Ordinance concerning balance sheets in their preliminary results announcement for the financial year under this rule 18.50. However, the financial information included in the preliminary results announcement must have been agreed with the auditors. This does not affect the listed issuers' obligations under the Companies Ordinance concerning balance sheets as and when they are applicable. Where a listed issuer includes an audited balance sheet in its preliminary results announcement, it must comply with all applicable laws, including the relevant statutory provisions applicable in the listed issuer's place of incorporation.

- (2) a business review covering the following:
  - (a) a fair review of the development of the business of the listed issuer and its subsidiaries during the financial year and of their financial position at the end of the year;
  - (b) details of important events affecting the listed issuer and its subsidiaries which have occurred since the end of the financial year; and
  - (c) an indication of likely future developments in the business of the listed issuer and its subsidiaries;
- (3) where the listed issuer is regarded as a financial conglomerate (as defined in rule 18.37B), the information set out in rule 18.37A;
- (4) particulars of any purchase, sale or redemption by the listed issuer or any of its subsidiaries, of its listed securities during the financial year, or an appropriate negative statement;
- (5) any supplementary information which in the opinion of the directors of the listed issuer is necessary for a reasonable appreciation of the results for the relevant year;
- (65) a statement as to whether or not the listed issuer has complied with rules 5.3428 to 5.4539 concerning board practices and procedures throughout the financial year. A listed issuer that has not complied with rules 5.3428 to 5.4539, or complied with only part of rules 5.3428 to 5.4539 or (in the case of requirements of a continuing nature) complied for only part of such period, must specify the rules with which it has not complied and (where relevant) for what part of the period of such non-compliance continued, and give reasons for any non-compliance. Insofar as a listed issuer's statement of compliance relates to rule 5.360, such statement must be reviewed by the auditors; and
- (6) ~~the information set out in rule 18.50A in relation to the contents of the income statement and balance sheet.~~
- (7) a statement as to whether the annual results have been reviewed by the audit committee of the listed issuer;
- (8) where the auditors' report on the listed issuer's annual financial statements is likely to be qualified or modified (whether or not it is also likely to be qualified), details of the qualification or modification pursuant to rule 18.51; and
- (9) where there are any significant changes in accounting policies, a statement to that fact must be made.

Notes: 1. A listed issuer should apply the accounting policies consistently except where the change in accounting policy is required by an accounting standard which came into effect during the financial year.

2. The term financial year refers to the period covered by a listed issuer's financial statements even where the period is not a calendar year.

18.50A Where, in exceptional circumstances, it becomes necessary to revise the information contained in the listed issuer's preliminary announcement of results in the light of developments arising between the date of publication of the announcement and the completion of the audit, the listed issuer must immediately notify the Exchange and publish an announcement to inform the public. The announcement must provide details of the changes made to the published preliminary announcement of results including any impact on the published financial information of the listed issuer and the reasons for such changes.

Note: The Exchange does not expect there to be any material or substantial difference between the information contained in the listed issuer's preliminary announcement of results and that contained in its audited results.

18.50BA Except for banking companies, which must comply with rule 18.80, the preliminary announcements of results for the half-year, preliminary announcements of results for the financial year, half-year reports and annual reports of a listed issuer must contain at least the following information in respect of the group:—

- (1) Income statement
  - (a) turnover;
  - (b) investment and other income;
  - (c) profit (or loss) on sale of investments or properties;
  - (d) cost of goods sold;
  - (e) interest on borrowings;
  - (f) depreciation/amortisation;
  - (g) profit (or loss) before taxation including the share of profit (or loss) of affiliated companies with separate disclosure of any items included therein which are exceptional because of size and incidence;
  - (h) taxation on profits (Hong Kong and overseas) in each case indicating basis of computation with separate disclosure of the taxation on share of affiliated companies' profits;
  - (i) profit (or loss) attributable to minority interests;
  - (j) profit (or loss) attributable to shareholders;
  - (k) rates of dividend paid or proposed on each class of shares (with particulars of each such class) and amounts absorbed thereby (or an appropriate negative statement);

- (l) all movements to and from any reserves;
  - (m) earnings per share; and
  - (n) comparative figures of the matters specified in (a) to (m) immediately above for the corresponding previous period;
- (2) Balance sheet information as follows, if applicable:
- (a) fixed assets;
  - (b) current assets
    - (i) stocks;
    - (ii) debtors including credit policy and ageing analysis of accounts receivable;
    - (iii) cash at bank and in hand; and
    - (iv) other current assets;
  - (c) current liabilities
    - (i) borrowings and debts; and
    - (ii) ageing analysis of accounts payable;
  - (d) net current assets (liabilities);
  - (e) total assets less current liabilities;
  - (f) non-current liabilities
    - (i) borrowings and debts;
  - (g) capital and reserves;
  - (h) minority interests; and
- (3) Segment information

The income statement and balance sheet of a listed issuer shall, in addition to that information required by rules 18.50BA(1) and (2), include the information required by:—

- (a) Statement of Standard Accounting Practice 26 segment reporting if it prepares its annual financial statements in accordance with ~~standard accounting practices in Hong Kong~~ [Financial Reporting Standards](#); or
- (b) International Accounting Standard 14 reporting financial information by segment if it prepares its annual financial statements in accordance with International ~~Accounting~~ [Financial Reporting](#) Standards; or
- (c) the relevant accounting standards dealing with segment reporting in Generally Accepted Accounting Principles in the United States of America (US GAAP) if it prepares its annual financial statements in accordance with US GAAP.

- Notes: 1 *Where the items of information specified in this rule are unsuited to the listed issuer's activities, appropriate adaptations should be made. Where the requirements of this Rule are unsuited to the listed issuer's activities or circumstances, the Exchange may require suitable adaptations to be made.*
- 2 *The Exchange may authorise the omission from the preliminary announcement of any information if it considers:—*
- (a) *such omission to be necessary or appropriate; or*
- (b) *disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer,*
- provided that such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.*
- 3 *The issuer or its representatives will be responsible for the correctness and relevance of the facts on which any application for an exemption under Note 2 above is based.*
- 4 *The information required by this rule may be provided on the face of the income statement or the balance sheet, as appropriate, or in the notes to the financial statements.*

~~18.50B A listed issuer shall publish its preliminary announcement of the audited results for the financial year on the GEM website as required by rule 18.49 to contain:—~~

~~Either (1) the information required by rule 18.50;~~

~~Or (2) the following:~~

- ~~(a) the income statement required by rule 18.50(1)(b) (together with comparative income statement for the immediately preceding financial year) which must contain at least the information set out in rule 18.50A(1) and, to the extent relevant to the income statement, rule 18.50A(3);~~
- ~~(b) the information required by rule 18.50(2) in relation to management discussion and analysis of results;~~
- ~~(c) particulars of any purchase, sale or redemption by the listed issuer, or any of its subsidiaries of its listed securities during the financial year as required by rule 18.50(4);~~
- ~~(d) the information required by rule 18.50(5) in relation to compliance with rules 5.28 to 5.39 during the financial year; and~~
- ~~(e) if applicable, the information required by rule 18.51.~~

*Notes: 1 For accounting periods commencing before 1st January, 2002, rule 18.50B(2)(b) may be fulfilled by providing an explanatory statement relating to the activities of the group and profit (or loss) during the financial year, in place of the items referred to in rule 18.41. The statement must include any significant information enabling investors to make an informed assessment of the trend of the activities and profit (or loss) of the group together with an indication of any special factor which has influenced those activities and the profit (or loss) during the financial year, and enable a comparison to be made with the corresponding period of the preceding financial year. Full compliance with rule 18.50B(2)(b) will be required in respect of preliminary announcements of results for accounting periods commencing on or after 1st January, 2002;*

*2 In relation to rule 18.50B(2)(a), the information required by rules 18.50A(1) and 18.50A(3) may be included in the income statement or in the notes to the financial statements.*

18.50C ~~If the listed issuer adopts the alternative allowed by rule 18.50B(2) above, it will~~ Listed issuer must submit a copy of its annual report to the Exchange for publication on the GEM website as soon as reasonably practicable after the approval by or on behalf of the board of its audited financial statements and in any event not more than 3 months after the date upon which the financial year ended.

18.51 In connection with the audit of the issuer's annual accounts:—

- (1) where the auditors' report ~~has been or is~~ likely to be qualified, the preliminary announcement of results must include details of such qualification; and
- (2) where the auditors' report ~~has been or is~~ likely to be modified, whether or not it is also likely to be qualified, details of such modification, together with a full explanation of the circumstances leading to the modification, must be included in the preliminary announcement of results. Where the modifications in the auditors' report refer to specific notes to the financial statements, the information in the financial statements should also be included in the preliminary announcement.

### **Half-year reports**

#### *Obligation to prepare and publish*

18.53 The listed issuer shall prepare, in respect of each of the first 6 months of each financial year of the listed issuer, either (i) a half-year report, or (ii) a summary half-year report containing at least the information required by rules 18.55 and 18.82, respectively and publish the same (in accordance with the requirements of Chapter 16) not later than 45 days after the end of such period. The listed issuer may send a copy of its summary half-year report to a member and a holder of its listed securities in place of a copy of its half-year report, provided that such summary half-year report complies with the relevant provisions of the Companies (Summary Financial Reports of Listed Companies) Regulation governing summary financial reports.

Notes: 1 Newly listed issuers will be required to prepare and publish the relevant half-year report or summary half-year report (irrespective of whether the period in question ends on a date before or after the date on which dealings in the securities of the listed issuer commenced) where the 45-day deadline for publishing the report falls after the date on which dealings in the securities of the listed issuer commenced. In the event that the results for the period in question (whether audited or not) have been included in the prospectus for the purpose of applying for a listing on the Exchange, there will be no obligation separately to publish the results.

2 The figures in each half-year report and summary half-year report are the sole responsibility of the directors and they must ensure that the accounting policies applied to the figures are consistent with those applied to annual accounts. If a change in the financial year is proposed, the Exchange should be consulted as to the period or periods to be covered by the half-year reports or summary half-year reports.

18.54 As soon as reasonably practicable after publishing any half-year report and, where applicable, summary half-year report, the listed issuer shall send a copy of the same to the persons specified in rule 18.03.

Note: The issuer must send 25 copies of each of the English language version and the Chinese language version of the relevant half-year report and, where applicable, summary half-year report to the Exchange at the same time as it is sent to the holders of its listed securities with registered addresses in Hong Kong (see rule 17.57).

#### *Content of half-year reports*

18.55 Each half-year report shall contain at least the following information in respect of the group:—

- (1) interim financial statements, which shall include, at a minimum, the following components:
  - (a) balance sheet as of the end of the current interim period and a comparative balance sheet as of the end of the immediately preceding financial year;
  - (b) income statements for the current interim period and cumulatively for the current financial year to date, with comparative income statements for the comparable interim periods (current and year-to-date) of the immediately preceding financial year;
  - (c) cash flow statement cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year;
  - (d) statement showing changes in equity cumulatively for the current financial year to date, with a comparative statement for the comparable year-to-date period of the immediately preceding financial year; and
  - (e) accounting policies and explanatory notes.
- (2) where the listed issuer is regarded as a financial conglomerate (as defined in rule 18.37B), the information set out in rule 18.37A;
- (3) particulars of any purchase, sale or redemption by the listed issuer or any of its subsidiaries, of its listed securities during the relevant period, or an appropriate negative statement;

- (4) a statement as to whether or not the listed issuer has complied with rules 5.3428 to 5.4539 concerning board practices and procedures throughout the accounting period covered by the half-year report. A listed issuer that has not complied with rules 5.3428 to 5.4539, or complied with only part of rules 5.3428 to 5.4539 or (in the case of requirements of a continuing nature) complied for only part of such period, must specify the rules with which it has not complied and (where relevant) for what part of the period of such non-compliance continued, and give reasons for any non-compliance. Insofar as the listed issuer's statement of compliance relates to rule 5.360, such statement must be reviewed by the auditors;
- (5) in respect of the required standard of dealings set out in rules 5.48 to 5.67, a statement in relation to the accounting period covered by the half-year report as to:
- (a) whether the listed issuer has adopted a code of conduct regarding directors' securities transactions on terms no less exacting than the required standard of dealings;
- (b) 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 directors' securities transactions; and
- (c) 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 listed issuer to address such non-compliance;
- (6) details of non-compliance (if any) with rules 5.05(1) and 5.05(2) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to appointment of a sufficient number of independent non-executive directors and an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise, respectively; and
- (7) details of non-compliance with rule 5.28 (if any) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to establishment of an audit committee.
- (58) the information set out in rule 18.50BA; and
- (69) the further information set out in rules 18.56 to 18.64below.

Notes: 1 *An issuer that prepares its annual financial statements in accordance with ~~standard accounting practices in~~ Hong Kong Financial Reporting Standards should comply with Statement of Standard Accounting Practice 25 "Interim Financial Reporting" in respect of its half-year reports. An issuer that prepares its annual financial statements in accordance with International ~~Accounting~~ Financial Reporting Standards should comply with International Accounting Standard 34 "Interim Financial Reporting" in respect of its half-year reports.*

2 *Each half-year report must be reviewed by the issuer's audit committee in accordance with rule 5.3025. In the event that the audit committee disagreed with an accounting treatment which had been adopted in the preparation of the group's half-year report, full details of such disagreement should be disclosed together with a quantification of the financial effect arising from the disagreement. Where it is not possible to quantify the effect of the disagreement, or the effect is not significant, a statement to this effect should be made.*

- 3 *If a change in the financial year is proposed, the Exchange should be consulted as to the period or periods to be covered by the half-year reports.*
- 4 *In the case of the first cash flow statement to be included in the half-year reports relating to accounting periods commencing before 1st January, 2002, a comparative cash flow statement for the comparable year-to-date period of the immediately preceding financial year may be omitted. The requirement for disclosure of comparative cash flow statement in half-year reports shall be obligatory in respect of accounting periods commencing on or after 1st January, 2002.*
- 5 *A listed issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements except where the change in accounting policy is required by an accounting standard which came into effect during the interim period. Accounting policies which have been consistently applied and which were disclosed in the listed issuer's most recent published audited financial statements or for a newly listed issuer in its recent prospectus may be omitted from the half-year reports. Any significant changes in the accounting policies, including those required by an accounting standard, should be disclosed together with the reason for changing in the accounting policy.*
- 6 *Where the items of information specified in this rule are unsuited to the listed issuer's activities, appropriate adaptations should be made. Where the requirements of this rule are unsuited to the listed issuer's activities or circumstances, the Exchange may require suitable adaptations to be made.*
- 7 *The Exchange may authorise the omission from an interim report of specified items of information if it considers:—*
  - (a) *such omission to be necessary or appropriate; or*
  - (b) *disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer,*

*provided that such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.*
- 8 *The issuer or its representatives will be responsible for the correctness and relevance of the facts on which any application for an exemption under Note 7 above is based.*
- 9 *Each half-year report must contain, at a prominent position, and in bold type, a statement about the characteristics of GEM, in the form set out in rule 2.20.*

- 18.56 (1) Subject to rule 18.56(2), a statement as at the end of the relevant period showing the interests and short positions of each director and chief executive of the listed issuer in the shares, underlying shares and debentures of the listed issuer or any associated corporation (within the meaning of Part XV of the Securities and Futures Ordinance):
- (a) as recorded in the register required to be kept under section 352 of the Securities and Futures Ordinance; or
  - (b) as otherwise notified to the listed issuer and the Exchange pursuant to the ~~required minimum~~ standards of dealings by directors of listed issuer as referred to in rule 5.460; or



(c) if there is no such interests and short positions, a statement of that fact,

provided that the Exchange may agree, in its sole discretion, that compliance with this sub-paragraph may be modified or waived in respect of any associated corporation if, in the opinion of the Exchange, the number of associated corporations in respect of which each director and chief executive is taken or deemed to have an interest under Part XV of the Securities and Futures Ordinance is such that compliance with this sub-paragraph would result in particulars being given which are not material in the context of the group and are of excessive length.

(2) The information required to be included by virtue of rule 18.56(1) must specify the company in which interests or short positions are held, the class to which those securities belong and the number of such securities held, but need not disclose:

(a) the interests of a director or a chief executive officer in the shares of the listed issuer or any of its subsidiaries if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares; or

(b) the non-beneficial interests of directors or chief executive officers in the shares of any subsidiary of the listed issuer in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the parent company of that subsidiary or the listed issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member.

*Note: Where interests in securities arising from the holding of such securities as qualifying shares are not disclosed pursuant to the exception provided in this paragraph, a general statement should nevertheless be made to indicate that the directors hold qualifying shares.*

18.64 Each half-year report must state whether or not the information provided therein has been audited (and if so, must set out a copy of the auditors' report thereon). In the event that any auditors' report thereon (if any) has been qualified or modified (whether or not it is also qualified), details of such qualification or modification must be set out in the half-year report.

#### *Content of quarterly reports*

18.68 Subject to rule 18.80 relating to banking companies, each quarterly report shall contain at least the following information in respect of the group:—

(1) the information set out in rule 18.79; and

(2) the further information set out in rules 18.69 to 18.76 below.

*Notes: 1 Where the items of information specified in this rule are unsuited to the listed issuer's activities, appropriate adjustments should be made. Where the requirements of this Note are unsuited to the listed issuer's activities or circumstances, the Exchange may require suitable adaptations to be made.*

*2 The Exchange may authorise the omission from a quarterly report of specified items of information if it considers:—*

*(a) such omission to be necessary or appropriate; or*

(b) *disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer,*

*provided that such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question.*

3 *The issuer or its representatives will be responsible for the correctness and relevance of the facts on which any application for an exemption under Note 2 above is based.*

4 *Each quarterly report must contain, at a prominent position, and in bold type, a statement about the characteristics of GEM, in the form set out in rule 2.20.*

5 *Each quarterly report must be reviewed by the issuer's audit committee in accordance with rule 5.3025.*

18.69 (1) Subject to rule 18.69(2), a statement as at the end of the relevant period showing the interests and short positions of each director and chief executive of the listed issuer in the shares, underlying shares and debentures of the listed issuer or any associated corporation (within the meaning of Part XV of the Securities and Futures Ordinance):

(a) as recorded in the register required to be kept under section 352 of the Securities and Futures Ordinance; or

(b) as otherwise notified to the listed issuer and the Exchange pursuant to the ~~required minimum~~ standards of dealings by directors of listed issuer as referred to in rule 5.460; or

(c) if there is no such interests or short positions, a statement of that fact,

provided that the Exchange may agree, in its sole discretion, that compliance with this subparagraph may be modified or waived in respect of any associated corporation if, in the opinion of the Exchange, the number of associated corporations in respect of which each director and chief executive is taken or deemed to have an interest under Part XV of the Securities and Futures Ordinance is such that compliance with this sub-paragraph would result in particulars being given which are not material in the context of the group and are of excessive length.

(2) The information required to be included by virtue of rule 18.69(1) must specify the company in which interests or short positions are held, the class to which those securities belong and the number of such securities held, but need not disclose:

(a) the interests of a director or a chief executive officer in the shares of the listed issuer or any of its subsidiaries if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares; or

(b) the non-beneficial interests of directors or chief executive officers in the shares of any subsidiary of the listed issuer in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the parent company of that subsidiary or the listed issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member.

*Note: Where interests in securities arising from the holding of such securities as qualifying shares are not disclosed pursuant to the exception provided in this paragraph, a general statement should nevertheless be made to indicate that the directors hold qualifying shares.*

### **Preliminary announcement of results for each of the first 6 month of each financial year**

18.78 A listed issuer must publish (in accordance with the requirements of Chapter 16) a preliminary announcement of the results for the first 6 month of each financial year, containing at least the information set out below, on the GEM website on the next business day after approval by or on behalf of the board of the results and in any event not later than 45 days after the end of such period:

- (1) ~~except where the listed issuer is a banking company,~~ the income statements as referred to in rule 18.55(1)(b) which must contain at least the information specified in rule 18.50B(1) and ~~balance sheet as referred to in rule 18.55(1)(a) which must contain at least the information specified in rule 18.50B(2),~~ to the extent relevant to the income statements ~~and balance sheet, rule 18.50A(3), together with accounting policies and explanatory notes.~~ The listed issuer must include the notes relating to turnover, taxation, earnings per share, dividends and any other notes that the directors consider necessary for a reasonable appreciation of the results for the financial period. The income statements and balance sheet shall be as they appear in the listed issuer's full half-year report;

*Note: Banking companies shall comply with rule 18.80 as regards the disclosure requirements for the balance sheet and the income statement.*

- ~~(2) the information required by rule 18.59 in relation to management discussion and analysis of results;~~

- ~~(3) particulars of any purchase, sale or redemption by the listed issuer, or any of its subsidiaries of its listed securities during the relevant period as required by rule 18.55(3), or an appropriate negative statement;~~

- ~~(3) a business review covering the following:~~

~~(a) a fair review of the development of the business of the listed issuer and its subsidiaries during the financial period and of their financial position at the end of the period;~~

~~(b) details of important events affecting the listed issuer and its subsidiaries which have occurred since the end of the financial period; and~~

~~(c) an indication of likely future developments in the business of the listed issuer and its subsidiaries, including the listed issuer's prospects for the current financial year; or~~

~~where there are no material changes in respect of such matters since the publication of the latest annual report, an appropriate negative statement in that regard;~~

- ~~(4) a statement as to compliance with rules 5.3428 to 5.4539 concerning board practices and procedures during the relevant period as required by rule 18.55(4); ~~and~~~~

- ~~(5) the information required by rules 18.61 and, if applicable, rules 18.63 and 18.64;:-~~

- (6) a statement as to whether or not the half-year results have been reviewed by external auditors or the audit committee of the listed issuer;
- (7) full details of any disagreement by the auditors or the audit committee with the accounting treatment adopted by the listed issuer; and
- (8) where there are any significant changes in accounting policies, a statement to that fact must be made.

*Note: A listed issuer should apply the same accounting policies in its half-year financial statements as are applied in its annual financial statements, except where the change in accounting policy is required by an accounting standard which came into effect during the half-year period.*

*Notes: 1 For accounting periods commencing before 1st January, 2002, rule 18.78(2) may be fulfilled by providing an explanatory statement relating to the activities of the group and profit (or loss) during the relevant period, in place of the items referred to in rule 18.59. The statement must include any significant information enabling investors to make an informed assessment of the trend of the activities and profit (or loss) of the group together with an indication of any special factor which has influenced those activities and the profit (or loss) during the financial year, and enable a comparison to be made with the corresponding period of the preceding financial year and must also, as far as possible, refer to the prospects of the group in the current financial year. Full compliance with rule 18.78(2) will be required in respect of preliminary announcements of results for accounting periods commencing on or after 1st January, 2002,*

*2 In relation to disclosure of accounting policies specified in rule 18.78(1), listed issuers' attention is drawn to note 5 to rule 18.55, or if there are no such changes in the accounting policies, a statement to that fact may be made:*

### **Preliminary announcement of results for each of the first 3 and 9 month periods of each financial year**

#### *Banking companies*

18.80 This rule sets out the minimum level of information to be included in half-year reports, quarterly reports and preliminary announcements of issuers that are banking companies (meaning banks, restricted licence banks and deposit taking companies as defined in the Banking Ordinance.)

- (1) As regards income statement
  - (a) Interest income;
  - (b) Interest expense;
  - (c) Other operating income;
  - (d) Operating expenses;
  - (e) Charge for bad and doubtful debts;
  - (f) Gains less losses on trading securities or other investments in securities;

- (g) Gains less losses from disposal of investment securities or non-trading securities;
  - (h) Provisions on held-to-maturity securities and investment securities or provisions on held-to-maturity securities and non-trading securities;
  - (i) Taxation on profits (Hong Kong and overseas) in each case indicating the basis of computation with separate disclosure of the taxation on share of profits of affiliated companies' profits;
  - (k) As appropriations:—
    - (i) transfers to or from inner reserves;
    - (ii) all movements to or from other reserves;
  - (l) Rates of dividend paid or proposed on each class of shares (with particulars of each such class) and amounts absorbed thereby (or an appropriate negative statement);
  - (m) Earnings per share;
  - (n) Comparative figures of the matters specified in (a) to (m) inclusive for the corresponding previous period;
- (2) As regards statement of assets and liabilities
- (a) cash and short-term funds;
  - (b) trading securities or other investments in securities;
  - (c) advances and other accounts;
  - (d) held-to-maturity securities and investment securities or held-to-maturity securities and non-trading securities;
  - (e) issued debt securities;
  - (f) other accounts and provisions; and
  - (g) comparative figures of the matters specified in (a) to (f) inclusive for the corresponding previous period.
- (3) As regards segment information

The income statement and balance sheet of a listed issuer shall, in addition to that information required by rules 18.80(1) and (2), include the information required by:—

- (a) Statement of Standard Accounting Practice 26 segment reporting if it prepares its annual financial statements in accordance with ~~standard accounting practices in~~ Hong Kong Financial Reporting Standards; or
- (b) International Accounting Standard 14 reporting financial information by segment if it prepares its annual financial statements in accordance with International Accounting Financial Reporting Standards; or

- (c) the relevant accounting standards dealing with segment reporting in Generally Accepted Accounting Principles in the United States of America (US GAAP) if it prepares its annual financial statements in accordance with US GAAP.
- (4) As regards off-balance sheet exposure
  - (a) contingent liabilities and commitments; and
  - (b) derivatives
- (5) Those matters set out in rule 18.51 (in the case of preliminary announcements of results for the financial year) or rule 18.64 (in the case of preliminary results for the half-year period) or rule 18.76 (in the case of preliminary results for the quarterly period); and
- (6) In the case of half-year and quarterly reports:
  - (a) those matters set out in rules 18.55 (in the case of half-year reports) or rule 18.68 (in the case of quarterly reports); and
  - (b) ~~those matters set out in the Recommendations On Interim Financial Disclosure by Authorized Institutions Incorporated in Hong Kong as issued~~ other information required by the Hong Kong Monetary Authority in relation to half-year and quarterly reports, where applicable.

- Notes: 1 The information required by rules 18.80(1) to (4) may be provided on the face of the income statement or the balance sheet, as appropriate, or in the notes to the financial statements.*
- 2. Rules 18.80(2) to (4) (with the exception of those segment disclosures concerning results as specified in rule 18.80(3)) are not applicable to the quarterly reports of an issuer.*

#### *Summary financial reports*

- 18.81 Summary financial reports of listed issuers shall comply with the disclosure requirements set out in the Companies (Summary Financial Reports of Listed Companies) Regulation. A listed issuer shall also disclose the following information in its summary financial report:
- (1) particulars of any purchase, sale or redemption by the listed issuer, or any of its subsidiaries, of its listed securities during the financial year or an appropriate negative statement;
  - (2) a statement as to compliance with rules 5.34 to 5.45 concerning board practices and procedures during the financial year;
  - (3) details of non-compliance (if any) with rules 5.05(1) and 5.05(2) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to appointment of a sufficient number of independent non-executive directors and an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise, respectively; and
  - (4) details of non-compliance with rule 5.28 (if any) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to establishment of an audit committee.

### Summary half-year reports

18.82 Summary half-year reports shall include, as a minimum, the following information in respect of the listed issuer:—

- (1) information as set out in rules 18.78(1) to (8);
- (2) details of non-compliance (if any) with rules 5.05(1) and 5.05(2) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to appointment of a sufficient number of independent non-executive directors and an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise, respectively;
- (3) details of non-compliance with rule 5.28 (if any) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to establishment of an audit committee;
- (4) where the accounting information contained in a summary half-year report has been audited by the listed issuer's auditors, an opinion from the auditors as to whether the summary half-year report is consistent with the full half-year report from which it is derived;
- (5) names of the director(s) who have signed the full half-year report on behalf of the board of directors of the listed issuer;
- (6) a statement to the effect that the summary half-year report only gives a summary of the information and particulars contained in the listed issuer's full half-year report;
- (7) a statement as to how an entitled person may obtain free of charge a copy of the listed issuer's full half-year report from which the summary half-year report is derived; and
- (8) a statement as to the manner in which an entitled person may in future notify the listed issuer of his wishes to receive a copy of a summary half-year report in place of a copy of the full half-year report from which it is derived.

### **Recommended additional disclosure**

18.83 Listed issuers are encouraged to disclose the following additional commentary on management discussion and analysis in their half-year and annual reports:—

- (1) efficiency indicators (e.g. return on equity, working capital ratios) for the last 5 financial years indicating the bases of computation;
- (2) industry specific ratios, if any, for the last 5 financial years indicating the bases of computation;
- (3) a discussion of the listed issuer's purpose, corporate strategy and principal drivers of performance;
- (4) an overview of trends in the listed issuer's industry and business;
- (5) a discussion on business risks (including known events, uncertainties and other factors which may substantially affect future performance) and risks management policy;

- (6) a discussion on the listed issuer's environmental policies and performance, including compliance with the relevant laws and regulations;
- (7) a discussion on the listed issuer's policies and performance on community, social, ethical and reputational issues;
- (8) an account of the listed issuer's key relationships with employees, customers, suppliers and others, on which its success depends; and
- (9) receipts from, and returns to, shareholders.



# Chapter 19

## EQUITY SECURITIES

### NOTIFIABLE TRANSACTIONS

#### Preliminary

19.01 This Chapter deals with certain transactions, principally acquisitions and disposals, by a listed issuer. It describes how they are classified, the details that are required to be disclosed in respect of them and whether a circular and shareholders' approval are required. It also considers additional requirements in respect of takeovers and mergers.

*Note: Listed issuers should note that even if a transaction is not required to be disclosed pursuant to the provisions of this Chapter, it may nevertheless be required to be disclosed under the listed issuer's general obligation to keep the market informed of all price-sensitive information (see rule 17.10).*

19.02 If any transaction for the purposes of this Chapter is also a connected transaction for the purposes of Chapter 20, the listed issuer will, in addition to complying with the provisions of this Chapter, have to comply with the provisions of Chapter 20.

#### Definitions

19.04 For the purposes of this Chapter:—

- (1) ~~any references to a "transaction" by a listed issuer are interpreted by the Exchange in the broadest possible sense and include:~~
  - (a) ~~includes~~ the acquisition or disposal of assets, including deemed disposals as ~~referred to set out~~ in rule 19.2927;
  - (b) ~~includes~~ any transaction involving a listed issuer writing, accepting, transferring, or exercising ~~or terminating (in the manner described in rule 19.73)~~ an option (as defined in rule 19.7259) to acquire or dispose of assets or to subscribe for securities;
  - (c) ~~includes~~ entering into or terminating finance leases where the financial effects of such leases have an impact on the balance sheet and/or profit and loss account of the listed issuer, ~~respectively~~;
  - (d) ~~includes~~ entering into or terminating operating leases ~~which, by virtue of their size, nature or number, have a significant where the financial effects of such leases have an impact on the profit and loss account~~ operations of the listed issuer. ~~The Exchange will normally consider an operating lease or a transaction involving multiple operating leases to have a "significant impact" if such lease(s), by virtue of its/their total monetary value or the number of leases involved, represent(s) a 200% or more increase in the scale of the listed issuer's existing operations conducted through lease arrangements of such kind;~~
  - (e) ~~includes~~ granting an indemnity, or a guarantee or providing financial assistance ~~by a listed issuer, other than by a listed issuer which:~~
    - (i) ~~is a banking company (as defined in rule 20.10(1)) and provides the financial assistance (as defined in rule 20.10(4)) in its ordinary and usual course of business (as referred to in rule 19.04(8)); or~~

(ii) grants an indemnity or a guarantee, or provides financial assistance to its subsidiaries;

*Note: Such a transaction may nevertheless in some cases constitute a connected transaction under Chapter 20. In such cases, the listed issuer will have to comply with the provisions of Chapter 20.*

(f) includes entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement; and

~~(g)~~ issuing new securities;

~~(g)~~ to the extent not expressly provided in rules 19.04(1)(a) to (f), excludes any transaction of a revenue nature in the ordinary and usual course of business (as referred to in rule 19.04(8)) of the listed issuer;

*Notes: 1 To the extent not expressly provided in rules 19.04(1)(a) to (f), any transaction of a revenue nature in the ordinary and usual course of business of a listed issuer will be exempt from the requirements of this Chapter. However, listed issuers should note that any such transaction may nevertheless be required to be disclosed under the listed issuer's general obligation to keep the market informed of all price-sensitive information (see rule 17.10).*

*2 Any transaction involving the acquisition and disposal of properties will generally not be considered to be of a revenue nature unless such transactions are carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer.*

*3 Where a listed issuer, for the financial reporting purpose, has transferred an asset from the fixed asset account to the current asset account, a subsequent disposal of the asset by the listed issuer will not be exempt under rule 19.04(1)(g).*

*4 In considering whether or not a transaction is of a revenue nature, a listed issuer must take into account the following factors:*

*(a) whether previous transactions or recurring transactions that were of the same nature were treated as notifiable transactions;*

*(b) the historical accounting treatment of its previous transactions that were of the same nature;*

*(c) whether the accounting treatment is in accordance with generally acceptable accounting standards; and*

*(d) whether the transaction is a revenue or capital transaction for tax purposes.*

*These factors are included for guidance only and are not intended to be exhaustive. The Exchange may take into account other factors relevant to a particular transaction in assessing whether or not it is of a revenue nature. In cases of doubt, the listed issuer must consult the Exchange at an early stage.*

- (2) "accounts" means:—
- (a) in respect of a listed issuer, and for the purpose of determining its total assets, profits or revenue figures pursuant to rule 19.07, a listed the listed issuer's latest published audited accounts or, where consolidated accounts have been prepared, the listed issuer's latest published audited consolidated accounts; and
  - (b) in the case of any other company, legal person, partnership, trust or business unit, its latest audited accounts or, where consolidated accounts have been prepared, its latest audited consolidated accounts or, where no audited accounts have been prepared, such other accounts as may be permitted by the Exchange in its discretion;
- (3) an "aircraft company" means a company or other entity whose non-cash assets consist solely or mainly of aircraft or interests in aircraft or interests in companies or entities whose non-cash assets consist solely or mainly of aircraft and whose income is mainly derived from those aircraft;
- (43) "assets" means both tangible and intangible assets and includes businesses, companies and securities, whether listed or not (unless otherwise stated);
- (5) "de minimis ratio" means the ratio determined in accordance with rules 20.31(2), 20.32, 20.33(3), 20.34, 20.65(2), 20.65(3)(a), 20.65(3)(b)(ii), 20.66(1) or 20.66(2) (as the case may be);
- (46) a "listed issuer" means a company or other legal person whose securities are already listed on GEM and, unless the context otherwise requires, includes its subsidiaries, ~~unless the context otherwise specifies;~~
- (5) ~~"net tangible assets" means the aggregate of the share capital and reserves, excluding minority interests and intangibles~~
- (67) a "notifiable transaction" means a transaction classified as a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover under rule 19.06;
- (8) "ordinary and usual course of business" of an entity means the existing principal activities of the entity or an activity wholly necessary for the principal activities of the entity. In the context of financial assistance provided in the ordinary and usual course of business, this means financial assistance provided by a banking company only and, in the context of financial assistance not provided in the ordinary and usual course of business, it means financial assistance not provided by a banking company;
- (9) "percentage ratios" means the percentage ratios set out in rule 19.07, and "assets ratio", "profits ratio", "revenue ratio", "consideration ratio" and "equity capital ratio" shall bear the respective meanings set out in rule 19.07;
- (710) a "property company" means a company or other entity whose non-cash assets consist solely or mainly of properties or interests in properties or interests in companies or entities whose non-cash assets consist solely or mainly of properties and whose income is mainly derived from those properties; ~~and~~
- (811) a "shipping company" means a company or other entity whose non-cash assets consist solely or mainly of vessels or interests in vessels or interests in companies or entities whose non-cash assets consist solely or mainly of vessels and whose income is mainly derived from those vessels; and

(12) “total assets” means:—

- (a) in respect of a listed issuer, the total fixed assets, including intangible assets, plus the total current and non-current assets, as shown in its accounts or latest published half-year, quarterly or other interim reports (whichever is more recent), subject to any adjustments or modifications arising by virtue of the provisions of rules 19.16, 19.18 and 19.19; and
- (b) in the case of any other company, legal person, partnership, trust or business unit, the total fixed assets, including intangible assets, plus the total current and non-current assets, as shown in its accounts, subject to any adjustments or modifications arising from any significant changes to its assets subsequent to the date of the balance sheet in the accounts.

*Note: Listed issuers must demonstrate to the satisfaction of the Exchange that any such adjustments or modifications to the accounts of the relevant company, legal person, partnership, trust or business unit are necessary and appropriate in order to reflect its latest financial position.*

### **Classification and explanation of terms**

- 19.05 A listed issuer considering a transaction must, at an early stage, consider whether the transaction falls into one of the classifications set out in rule 19.06. In this regard, the listed issuer must determine whether or not to consult with its Sponsor and/or its financial, legal or other professional advisers. Listed issuers, Sponsor or advisers which are in any doubt as to the application of the requirements in this Chapter. In cases of doubt, the issuer, its Sponsor or other advisers should consult ~~with~~ the Exchange at an early stage~~the earliest opportunity~~.
- 19.06 The transaction classification is made by using the percentage ratios set out in rule 19.07. The classifications are:—
- (1) share transaction — an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and where all percentage ratios are less than ~~5~~15%;
  - (2) discloseable transaction — a transaction or a series of transactions (aggregated under rules 19.22 and 19.23) by a listed issuer where any percentage ratio is ~~15% or more~~ 5% or more, but less than 25%;
  - (3) major transaction — a transaction or a series of transactions (aggregated under rules 19.22 and 19.23) by a listed issuer where any percentage ratio is ~~50% or more~~ 25% or more, but less than 100% for an acquisition or 75% for a disposal; and
  - (4) very substantial disposal — a disposal or a series of disposals (aggregated under rules 19.22 and 19.23) of assets (including deemed disposals referred to in rule 19.29) by a listed issuer where any percentage ratio is 75% or more;
  - (~~4~~5) very substantial acquisition — an acquisition or a series of acquisitions (aggregated under rules 19.22 and 19.23) of assets (including business, company or companies), substantially all of which are not listed on the Main Board or on GEM, by a listed issuer where any percentage ratio is 100% or more; and
    - (~~a~~) any percentage ratio is 200% or more;
    - (~~b~~) any percentage ratio is 100% or more and the business, company or companies being acquired is/are different from the current principal activities of the listed issuer; or

- (c) ~~any percentage ratio is 100% or more and there is an intention to make a major change in the principal activities of the listed issuer; and~~
- (65) reverse takeover — an acquisition or a series of acquisitions of assets ~~(including business, company or companies), substantially all of which are not listed on the Main Board and on GEM,~~ by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants as set out in Chapter 11. A “reverse takeover” normally refers to where:—

- (a) ~~an the acquisition or a series of acquisitions (aggregated under rules 19.22 and 19.23) of assets constituting a very substantial acquisition would result in, or is part of a transaction or arrangement or series of transactions or arrangements which would result in, where there is or which will result in a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries);~~ or

- (b) acquisition(s) of assets from a person or a group of persons or any of his/their associates pursuant to an agreement, arrangement or understanding entered into by the listed issuer within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition. For the purpose of determining whether the acquisition(s) constitute(s) a very substantial acquisition, the lower of:

(A) the latest published figures of the asset value, revenue and profits as shown in the listed issuer’s accounts and the market value of the listed issuer at the time of the change in control, which must be adjusted in the manner set out in rules 19.16, 19.17, 19.18 and 19.19, as applicable, up to the time of the change in control; and

(B) the latest published figures of the asset value, revenue and profits as shown in the listed issuer’s accounts and the market value of the listed issuer at the time of the acquisition(s), which must be adjusted in the manner set out in rules 19.16, 19.17, 19.18 and 19.19, as applicable.

is to be used as the denominator of the percentage ratios.

Note: Rule 19.06(6) will apply irrespective of whether any general offer obligations under the Takeovers Code have been waived.

- (b) ~~the Exchange is of the opinion that the acquisition constitutes an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants as set out in Chapter 11.~~

#### *Percentage ratios*

19.07 The percentage ratios are the figures, expressed as percentages resulting from each of the following calculations:—

- (1) Assets ratio — the ~~net tangible total~~ assets which are the subject of the transaction divided by the ~~net tangible total~~ assets of the listed issuer (see ~~also in particular~~ rules 19.09~~98~~ to 19.12~~10~~, 19.16, 19.18 and 19.19~~17 to 19.19~~);

- (2) Profits ratio — the profits attributable to the ~~net tangible~~ assets which are the subject of the transaction divided by the profits of the listed issuer (see ~~also in particular~~ rules ~~19.11~~ 19.13 and 19.17);
- (3) Revenue ratio — the revenue attributable to the assets which are the subject of the transaction divided by the revenue of the listed issuer (see in particular rules 19.14 and 19.17);
- (34) Consideration ratio — the consideration divided by ~~the net tangible assets of the listed issuer~~ the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer's securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of the transaction (see ~~in particular also~~ rules ~~19.152, 19.18 and 19.19~~); and
- (54) Equity capital ratio — the nominal value of the listed issuer's equity capital issued as consideration divided by the nominal value of the listed issuer's issued equity capital immediately before the transaction (~~see also rules 19.12 and 19.19~~).

*Note: The value of the listed issuer's debt capital (if any), including any preference shares, shall not be included in the calculation of the equity capital ratio.*

Listed issuers must consider all the percentage ratios to the extent applicable for classifying a transaction. In the case of an acquisition where the target entity uses accounting standards different from those of the listed issuer, the listed issuer must, where applicable, perform an appropriate and meaningful reconciliation of the relevant figures for the purpose of calculating the percentage ratios.

19.08 The table below summarises the classification and percentage ratios resulting from the calculations set out in rule 19.07. However, listed issuers should refer to the relevant rules for the specific requirements.

<b>Transaction type</b>	<b>Assets ratio</b>	<b>Consideration ratio</b>	<b>Profits ratio</b>	<b>Revenue ratio</b>	<b>Equity capital ratio</b>
Share transaction	less than 5%	less than 5%	less than 5%	less than 5%	less than 5%
Discloseable transaction	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%
Major transaction – disposal	25% or more but less than 75%	25% or more but less than 75%	25% or more but less than 75%	25% or more but less than 75%	Not applicable
Major transaction – acquisition	25% or more but less than 100%	25% or more but less than 100%	25% or more but less than 100%	25% or more but less than 100%	25% or more but less than 100%
Very substantial disposal	75% or more	75% or more	75% or more	75% or more	Not applicable
Very substantial acquisition	100% or more	100% or more	100% or more	100% or more	100% or more

*Note: The equity capital ratio relates only to an acquisition (and not a disposal) by a listed issuer issuing new equity capital.*

## Assets

~~19.0908~~ Net tangible assets the subject of the transaction: —

- (1) ~~where the asset being acquired is not equity capital, means the consideration paid for the asset (calculated as set out in rule 19.12);~~

~~Note: In the case of an acquisition through a non-wholly-owned subsidiary, the net tangible assets shall mean the consideration (and not, for the avoidance of doubt, the listed issuer's proportionate interest in the consideration).~~

- (2) ~~where the asset being disposed of is not equity capital, means the higher of the consideration received for the asset and the book value of the asset as shown in the accounts of the listed issuer; and~~

- (3) ~~Where the asset being acquired or disposed of constitutes equity capital, the listed issuer must take into account the matters referred to in rules 19.254 to 19.324 when calculating the amount of total assets which are the subject of the transaction.~~

~~19.1009~~ ~~Where the equity capital to be acquired or disposed of by the listed issuer is listed on the Main Board or GEM, the Net tangible assets total assets which are the subject of the transaction may must be adjusted in the manner as set out in rules 19.163, 19.18 and 19.1914.~~

~~19.110~~ ~~Where a listed issuer which is a property company, or a shipping company or aircraft company acquires or disposes of properties, or vessels or aircraft, respectively, the net tangible assets of the listed issuer means the latest published net book value of its properties or vessels before deducting mortgages. Net tangible assets can also mean the latest published valuation before deducting mortgages if such valuation is published after the accounts of the listed issuer. The aggregate value (on an unencumbered basis) of the properties, vessels or aircraft (as the case may be) being acquired or realised will be compared with the total assets of the listed issuer which must be adjusted in the manner set out in rules 19.16, 19.18 and 19.19 or the latest published valuation (on an unencumbered basis) of the properties, vessels or aircraft (as the case may be) if such valuation is published after the issue of accounts of the listed issuer, where appropriate.~~

~~19.12~~ ~~Where the transaction involves granting an indemnity or a guarantee or providing financial assistance by a listed issuer, the assets ratio will be modified such that the total value of the indemnity, guarantee or financial assistance plus in each case any monetary advantage accruing to the entity benefiting from the transaction shall form the numerator of the assets ratio. The "monetary advantage" includes the difference between the actual value of consideration paid by the entity benefiting from the transaction and the fair value of consideration that would be paid by the entity if the indemnity, guarantee or financial assistance were provided by entities other than the listed issuer.~~

## Profits

~~19.134~~ ~~Profits means net profits after deducting all charges except taxation and before minority interests and extraordinary items (See also rules 19.1713, 19.15 and 19.16). In the case of an acquisition or disposal of assets (other than equity capital) through a non wholly-owned subsidiary, the profits attributable to the assets acquired or disposed of (and not the listed issuer's proportionate interest in such profits) will form the numerator for the purpose of the profits ratio.~~

~~Note: In the case of an acquisition or disposal of assets (other than equity capital) through a non-wholly-owned subsidiary, the profits before taxation, minority interests and extraordinary items attributable to the assets acquired or disposed of (and not, for the avoidance of doubt, the listed issuer's proportionate interest in such profits) will form the numerator for the purpose of the profits ratio set out in rule 19.07.~~

## Revenue

19.14 “Revenue” normally means revenue arising from the principal activities of a company and does not include those items of revenue and gains that arise incidentally. In the case of any acquisition or disposal of assets (other than equity capital) through a non wholly-owned subsidiary, the revenue attributable to the assets being acquired or realised (and not the listed issuer’s proportionate interest in such revenue) will form the numerator for the purpose of the revenue ratio (See also rule 19.17).

## Consideration

19.152 When calculating the consideration ratio ~~set out in rule 19.07~~:—

- (1) the value of the consideration shall be the fair value of the consideration determined at the date of the agreement of the transaction in accordance with applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards. Normally, the fair value of the consideration should be the same as the fair value of the asset which is the subject of the transaction. Where there is a significant disparity between the fair value of the consideration and the fair value of the asset, the listed issuer must use the higher of the fair value of the consideration and the fair value of the asset as the numerator of the consideration ratio;
- (1) ~~where all or part of the consideration is in the form of equity capital, the Exchange may use the higher of the market value of such capital and the book value of the net tangible assets represented by such capital (for which purposes, the market value of such capital shall mean the aggregate market value of an equivalent amount of the relevant listed securities, disregarding any dilution from the allotment of the consideration securities, on the date on which terms of any relevant disposal or acquisition agreement are finalised)~~
- (2) where a transaction involves establishing a joint venture entity or other form of joint arrangement, the Exchange will aggregate:—
  - (a) the listed issuer’s total capital commitment (whether equity, loan or otherwise), including any contractual commitment to subscribe for capital; and
  - (b) any guarantee or indemnity provided in connection with its establishment;

*Note: Where a joint venture entity or other form of joint arrangement is established for a future purpose, for example to develop a property, and the total capital commitment cannot be calculated at the outset, the Exchange will require the listed issuer to recalculate the relevant percentage ratios at the time when that purpose is carried out. The Exchange will look at the purpose of setting up the joint venture entity arrangement in terms of the initial transaction only. For example, the purpose could be the development of the property for which the joint venture arrangement was established. The Exchange will not look at subsequent transactions entered into by under the joint venture arrangement for the purpose of calculating the total capital commitment in relation to the establishment of the joint venture entity arrangement.*

- (3) a listed issuer shall add any liabilities of the vendors, whether actual or contingent, to be discharged or assumed by the purchaser under the terms of the transactions, to the consideration. The Exchange may require that further amounts be included as it considers appropriate (for example, where the purchaser agrees to discharge any liabilities, whether actual or contingent, of the vendors as part of the terms of the transaction);
- (4) if the listed issuer may pay or receive ~~deferred~~ consideration in the future, the consideration is the maximum total consideration payable or receivable under the agreement; and



- (5) ~~in any disposal of an entity whose principal activity would be generally regarded by the Exchange as the holding of property, the Exchange may use the higher of the consideration received and the valuation of the property held by the entity in calculating the consideration ratio set out in rule 19.07; and~~
- (56) in the case of any acquisition or disposal through a non-wholly-owned subsidiary, the consideration (and not, for the avoidance of doubt, the listed issuer's proportionate interest in such consideration) will form the numerator for the purpose of the consideration ratio ~~set out in rule 19.07.~~

*Figures used in ~~net tangible assets~~ total assets, ~~and~~ profits and revenue calculations*

19.163 ~~The net tangible assets and profits figures must be the figures shown in the accounts. A listed issuer should normally must refer to adjust the net tangible assets-total assets figures by the amount of profit or loss attributable to shareholders shown in its accounts or latest published any~~ half-year, quarterly or other interim report (whichever is more recent) and adjust the figures by:

- (1) the amount of published by the listed issuer and any dividend proposed by the listed issuer in such accounts and any dividend declared by the listed issuer since the publication of such accounts or half-year, quarterly or other interim report; and
- (2) where appropriate, the latest published valuation of assets (excluding businesses and intangible assets) of the listed issuer if such valuation is published after the issue of such accounts, its latest published audited accounts.

*Note: Rule 19.16(2) will normally apply to a valuation of assets such as properties, vessels and aircraft.*

19.17 ~~The profits (see rule 19.13) and revenue (see rule 19.14) figures to be used by a listed issuer for the basis of the profits ratio and revenue ratio must be the figures shown in its accounts. Where a listed issuer has discontinued one or more of its operating activities during the previous financial year and has separately disclosed the profits and revenue from the discontinued operations in its accounts in accordance with applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards, the Exchange may be prepared to accept the exclusion of such profits and revenue for the purpose of the profits ratio and revenue ratio respectively.~~

19.184 ~~The value of transactions or issues of securities by the listed issuer in respect of which adequate information has already been published and made available to shareholders in accordance with the GEM Listing Rules and which have been completed should must normally be included in the net tangible assets-total assets of the listed issuer.~~

*Note: ~~In calculating net tangible assets, the Exchange may require the inclusion of further amounts where contingent assets are involved and the exclusion of liabilities which are regarded as part of the consideration.~~*

19.19 ~~In calculating total assets, the Exchange may require the inclusion of further amounts where contingent assets are involved and the exclusion of all liabilities irrespective of whether they are regarded as part of the consideration.~~

*Note: Contingent assets normally refer to assets that will have to be acquired by a listed issuer pursuant to an agreement upon occurrence or non-occurrence of certain event(s) after the listed issuer has entered into the agreement. Such event(s) is/are normally beyond the control of the listed issuer and the parties to the transaction. Contingent assets must be determined in accordance with applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards.*

### *Exceptions to the classification rules*

~~19.20~~<sup>15</sup> The Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant indicators of size, including industry specific tests. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration. ~~Where a transaction falls within any of the classifications only because of the profits ratio, the Exchange may be prepared to disregard that ratio if the listed issuer can clearly demonstrate that the comparison is affected by exceptional factors, without which the profits ratio would not exceed the relevant threshold.~~

~~19.16~~ Where:

- ~~(1) a listed issuer has recorded a loss rather than a profit in its accounts; or~~
- ~~(2) a loss rather than a profit is attributable to the net tangible assets which are the subject of the transaction;~~

~~the Exchange will disregard the profits ratio set out in rule 19.07 for the purpose of classifying the transaction.~~

~~19.17~~ ~~Where the listed issuer has net liabilities instead of net tangible assets, the Exchange will, subject to rules 19.18 and 19.19, classify an acquisition by the listed issuer as a very substantial acquisition and a disposal by the listed issuer as a major transaction.~~

~~19.18~~ ~~Where the assets of the listed issuer include substantial intangible assets, the Exchange may be prepared to take them into account for the purposes of calculating the assets and consideration percentage ratios set out in rule 19.07.~~

~~19.19~~ ~~Where a listed issuer satisfies the Exchange that its balance sheet does not reflect the real value of its business due to the exceptional nature of that business, the Exchange may be prepared to apply other tests or ratios to classify the transaction instead of the four percentage ratios set out in rule 19.07.~~

### *Change in percentage ratios*

~~19.21~~<sup>10</sup> If any of the percentage ratios changes to the extent that the classification of the transaction is altered between the time that any transaction is first discussed with the Exchange (if applicable) and the time of its announcement, the listed issuer must ~~consult~~ inform the Exchange. The listed issuer must comply with the relevant requirements applicable to the transaction at the time of the announcement.

### *Aggregation of transactions*

~~19.22~~<sup>4</sup> In addition to the aggregation of acquisitions under rule 19.06(6)(b), ~~t~~<sup>t</sup>he Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12 month period or are otherwise related. In such cases, the listed issuer must comply with the requirements for the relevant classification of the transaction when aggregated and the figures to be used for determining the percentage ratios are those as shown in its accounts or latest published half-year, quarterly or other interim report (whichever is more recent), subject to any adjustments or modifications arising by virtue of the provisions of rules 19.16, 19.18 and 19.19.

19.232 Factors which the Exchange will ~~normally~~ take into account in determining whether transactions will be aggregated include whether the transactions:—

- (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
- (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
- (3) involve the acquisition or disposal of parts of one asset; ~~or and~~
- (4) together lead to substantial involvement by the listed issuer in a business activity which did not previously form ~~a~~ part of the listed issuer's principal business activities.

*Transaction involving an acquisition and a disposal*

19.243 In the case of a transaction involving both an acquisition and a disposal, the Exchange will ~~normally~~ apply the percentage transaction ratios to both the acquisition and the disposal. The transaction will be ~~classified categorised~~ by reference to the larger of the acquisition or disposal.

*Interpretation of the classification rules in circumstances  
where the listed issuer or a subsidiary acquires or realises equity capital*

19.254 In circumstances where acquisitions or disposals of equity capital are made by a listed issuer ~~or by one of its wholly-owned or non-wholly-owned subsidiaries~~, the provisions set out in rules 19.2625 to 19.2826 shall be applied in determining the classification of the transaction for the purposes of rule 19.06.

~~19.25 In an acquisition or disposal of equity capital, the value of such capital, which will form the numerator for the purposes of the assets ratio in rule 19.07, is to be assessed by reference to the book value of the net tangible assets represented by such capital as disclosed in the latest published audited accounts or consolidated accounts of the entity being acquired or disposed and will normally be multiplied by a percentage being the percentage of the equity interest acquired or disposed. However, if the acquisition of an interest will result in consolidation of the net tangible assets of the entity in which an interest is acquired in the accounts of the issuer or the disposal will result in the assets of the entity no longer being consolidated in the accounts of the issuer, 100% of that entity's net tangible assets will be taken as the value of the assets irrespective of the interest acquired or disposed.~~

*Note: For example:—*

- ~~— if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires equity capital representing 10% of an investee company and has no prior holding in the investee company, the value of the equity acquired, which will form the numerator for the assets ratio set out in rule 19.07, is 10% of the net tangible assets of the investee company; or~~
- ~~— if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a further 10% interest in a subsidiary which is already consolidated in the issuer's accounts the value of the equity acquired, which will form the numerator for the assets ratio set out in rule 19.07, is 10% of the net tangible assets of the investee company; and~~

- ~~— if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a 10% interest in a company which will result in that company being consolidated in the accounts of the issuer, 100% of the investee company's net tangible assets will be taken as the value of assets acquired for the purpose of the assets ratio in rule 19.07.~~

~~19.26 In an acquisition or disposal of equity capital, the value of the profits attributable to such capital, which will form the numerator for the purposes of the profits ratio in rule 19.07, is to be assessed by reference to the net profits (i.e. the profit before taxation, minority interests and extraordinary items) represented by such capital as disclosed in the latest published audited accounts or consolidated accounts of the entity being acquired or disposed and will normally be multiplied by a percentage being the percentage of the equity interest acquired or disposed. However, if the acquisition of an interest will result in consolidation of the net tangible assets of the entity in which an interest is acquired in the accounts of the issuer or the disposal will result in the assets of the entity no longer being consolidated in the accounts of the issuer, 100% of that entity's profits will be taken as the value of the profits irrespective of the interest acquired or disposed.~~

~~Note: For example:—~~

- ~~— if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires equity capital representing 10% of an investee company and has no prior holding in the investee company, the value of the profits attributable to the equity acquired, which will form the numerator for the profits ratio set out in rule 19.07, is 10% of the profit before taxation, minority interests and extraordinary items of the investee company; or~~
- ~~— if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a further 10% interest in a subsidiary which is already consolidated in the issuer's accounts the value of the profits attributable to the equity acquired, which will form the numerator for the profits ratio set out in rule 19.07, is 10% of the profit before taxation, minority interests and extraordinary items of the investee company; and~~
- ~~— if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a 10% interest in a company which will result in that company being consolidated in the accounts of the issuer, 100% of the investee company's profit before taxation, minority interests and extraordinary items will be taken as the numerator for the purposes of the profits ratio set out in rule 19.07.~~

19.26 In an acquisition or disposal of equity capital, the numerators for the purposes of the (a) assets ratio, (b) profits ratio and (c) revenue ratio are to be calculated by reference to the value of the total assets, the profits attributable to such capital and the revenue attributable to such capital, respectively.

19.27 For the purpose of rule 19.26:

- (1) the value of an entity's total assets is the higher of:
  - (a) the book value of the entity's total assets attributable to the entity's capital as disclosed in its accounts; and

- (b) the book value referred to in rule 19.27(1)(a) adjusted for the latest published valuation of the entity's assets if such valuation is published after the issue of its accounts; and

*Note: This will normally apply to a valuation of assets such as properties, vessels and aircraft.*

- (2) the value of an entity's profits and revenue is the profits and revenue attributable to the entity's capital as disclosed in its accounts.

19.28 The value of the entity's total assets, profits and revenue, calculated in accordance with rule 19.27, is to be multiplied by the percentage of the equity interest being acquired or disposed of by the listed issuer. However, 100% of the entity's total assets, profits and revenue will be taken as the value of the total assets, profits and revenue, irrespective of the size of the interest being acquired or disposed of, if:

- (1) the acquisition will result in consolidation of the assets of the entity in the accounts of the listed issuer; or
- (2) the disposal will result in the assets of the entity no longer being consolidated in the accounts of the listed issuer.

*Note: For example:—*

- if a listed issuer (or subsidiary, whether wholly-owned or not) acquires 10% of the equity capital of an entity and has no prior holding in that entity, the relevant numerator will be 10%;*
- if a listed issuer (or subsidiary, whether wholly-owned or not) acquires a further 10% interest in a subsidiary which is already consolidated in the listed issuer's accounts, the relevant numerator will be 10%; and*
- if a listed issuer (or subsidiary, whether wholly-owned or not) acquires a 10% interest in an entity which will result in that entity being consolidated in the accounts of the listed issuer, the relevant numerator will be 100%.*

#### *Deemed disposals*

~~19.2927~~ Allotments of share capital by a subsidiary of a listed issuer, whether or not such subsidiary is consolidated in the accounts of the listed issuer, Subsidiaries which are consolidated and entities which are equity accounted for by an issuer or issuer's group may cause allotments of share capital for cash consideration to be made which may result in a reduction of the percentage equity interest of the listed issuer in such entity subsidiary. Such allotments give rise to deemed disposals. Profits or losses may be recorded on such transactions and such transactions may also fall to be treated as very substantial disposals, major or discloseable or connected transactions. Rules 19.3028 to 19.321 set out how the percentage ratios in rule 19.07 are applied to such transactions.

~~19.28 Where a subsidiary of the issuer (whether wholly-owned or not wholly-owned, whether held directly or indirectly and which, prior to the allotment, is consolidated in the accounts of the issuer) allots shares, the numerators for the purposes of the assets ratio and profits ratio set out in rule 19.07 are calculated as follows:—~~

- ~~(1) If after the allotment the issuer or the group will continue to consolidate the subsidiary, the percentage by which the interest is reduced will be multiplied by the subsidiary's net tangible assets as disclosed in the latest published audited accounts or consolidated accounts of the subsidiary allotting shares and taken as the numerator for the purposes of the assets ratio set out in rule 19.07. The same percentage will be multiplied by the subsidiary's profit before taxation, minority interests and extraordinary items and taken as the numerator for the profits ratio set out in rule 19.07.~~

~~*Note: For example, if the interest reduces from 90% to 80% then 10% of the subsidiary's net tangible assets and profit before taxation, minority interests and extraordinary items will form the numerators for the ratios in rule 19.07.*~~

- ~~(2) If after the allotment the issuer or the group will cease to consolidate the subsidiary, 100% of the subsidiary's net tangible assets and 100% of the subsidiary's profit before taxation, minority interests and extraordinary items will form the numerators for the ratios in rule 19.07.~~

~~19.29 Where an entity (whether held directly or indirectly and which, prior to the allotment, was equity accounted for in the accounts of the issuer) allots shares the numerators for the purposes of the assets ratio and profits ratio set out in rule 19.07 are calculated as follows:~~

- ~~(1) Irrespective of whether after the allotment the issuer or the group will continue to equity account for the entity, the percentage by which the interest is reduced will be multiplied by the entity's net tangible assets as disclosed in the latest published audited accounts or consolidated accounts of the entity allotting shares and taken as the numerator for the purposes of the assets ratio set out in rule 19.07. The same percentage will be multiplied by the entity's profit before taxation, minority interests and extraordinary items and taken as the numerator for the profits ratio set out in rule 19.07.~~

~~*Note: For example, if the interest reduces from 40% to 30% then 10% of the entity's net tangible assets and profits before taxation, minority interests and extraordinary items will form the numerators for the ratios in rule 19.07.*~~

19.30 Where a subsidiary of the listed issuer (whether or not consolidated in the accounts of the listed issuer, whether or not wholly-owned and whether held directly or indirectly):

- (1) allots shares; and
- (2) after the allotment, the subsidiary will continue to be a subsidiary,

the percentage by which the interest is reduced will be multiplied by the subsidiary's total assets, profit and revenue as disclosed in the accounts of the subsidiary allotting shares and that shall be taken as the respective numerators for the purpose of the assets ratio, profits ratio, revenue ratio and de minimis ratio.

*Note: For example, if the interest is reduced from 90% to 80%, then 10% of the subsidiary's total assets, profits and revenue will form the respective numerators for the assets ratio, profits ratio, revenue ratio and de minimis ratio.*

19.31 Where a subsidiary of the listed issuer (whether or not consolidated in the accounts of the listed issuer, whether or not wholly-owned and whether held directly or indirectly) allots shares such that, after the allotment, the subsidiary will cease to be a subsidiary, 100% of the subsidiary's total assets, profits and revenue will form the respective numerators for the assets ratio, profits ratio, revenue ratio and de minimis ratio.

*Note: For example, if the interest is reduced from 60% to 40% and the subsidiary ceases to be a subsidiary, then 100% of the entity's total assets, profits and revenue will form the respective numerators for the assets ratio, profits ratio, revenue ratio and de minimis ratio.*

19.320 Where a subsidiary of the listed issuer (~~whether or not consolidated in the accounts of the listed issuer, whether or not wholly-owned~~ whether or not wholly-owned, ~~and~~ and whether held directly or indirectly ~~and which, prior to the allotment, is consolidated in the accounts of the issuer~~) allots shares ~~for consideration~~, it is necessary to calculate a value for the purpose of the consideration ratio ~~set out in rule 19.07~~. This is taken as the value of the shares issued to allottees (~~whothat~~ who are not part of the ~~issuer's listed~~ issuer's group) and is restricted to only those shares issued which are in excess of those necessary to maintain the allottees' relative percentage interest in the subsidiary.

~~19.31 Where an entity, whether held directly or indirectly, which prior to the allotment is equity accounted for in the accounts of the issuer allots shares for consideration it is necessary to calculate a value for the purposes of the consideration ratio in rule 19.07. This is taken as the value of the shares issued to allottees (who are not part of the issuer's group) and is restricted to only those shares issued which are in excess of those necessary to maintain the allottees' relative percentage interest in the entity.~~

### Notification, publication and shareholders' approval requirements

19.332 The table below ~~highlights summarises~~ the notification, publication and shareholders' approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

	<b>Notification to Exchange</b>	<b>Publication of an Announcement on GEM website</b>	<b>Circular to shareholders</b>	<b>Shareholders' approval</b>	<b>Accountants' report</b>
Share transaction	Yes	Yes	No	No <sup>1</sup>	No
Discloseable transaction	Yes	Yes	Yes	No	No
Major transaction	Yes	Yes	Yes	Yes <sup>2</sup>	Yes <sup>3</sup>
<u>Very substantial disposal</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes<sup>2</sup></u>	<u>Yes<sup>5</sup></u>
Very substantial acquisition	Yes	Yes	Yes	Yes <sup>2-4</sup>	Yes <sup>4</sup>
Reverse takeover	Yes	Yes	Yes	Yes <sup>2, 4, 5-6</sup>	Yes <sup>4</sup>

Notes: 1 *No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to rule 17.41(2), ~~the listed issuer is required~~ to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.*

- 2 ~~Any shareholders and his associates interested in the transaction~~ must abstain from voting ~~if such shareholder has a material interest in the transaction.~~
- 3 For acquisitions ~~of businesses and/or companies~~ only. ~~The accountants' report is for the 3 preceding financial years on the business, company or companies being acquired (see also rule 19.67(4)).~~
- 4 ~~An accountants' report for the 3 preceding financial years on any business, company or companies being acquired is required (see also rule 19.69(4)).~~
- 5 ~~An accountants' report on the listed issuer's group is required (see also rule 19.68(2)).~~
- 4 ~~Controlling shareholders must abstain from voting.~~
- 65 Approval of the Exchange is necessary.

### Requirements for all transactions

#### *Notification and announcement*

19.343 As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover have been agreed finalised, the listed issuer must in each case:—

- (1) inform the Exchange; and

*Note: Under rule 17.10, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.*

- (2) send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must submit the announcement to the Exchange to be published on the GEM website before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day. See also rule 19.3735. ~~Pursuant to rule 17.57, the listed issuer must forward 10 copies, as cleared by the Exchange, at the same time as it is issued.~~

19.3534 For a share transaction, the announcement must contain the information set out in rules 19.5846 and 19.5947. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 19.5846 and 19.6048. In all cases, listed issuers must also include any additional information requested by the Exchange. Pursuant to rule 17.57(2), the listed issuer must forward to the Exchange 10 copies of the announcement, as cleared by the Exchange, at the same time as it is issued.

19.36 Where a transaction previously announced pursuant to this Chapter is terminated or there is any material variation of its terms or material delay in the completion of the agreement, the listed issuer must as soon as practicable announce this fact by means of an announcement. This requirement is without prejudice to the generality of any other provisions of the GEM Listing Rules and the listed issuer must, where applicable, also comply with such provisions.



### Short suspension of dealings

19.3735 Where a listed issuer has signed an agreement in respect of a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover and the required announcement has not been published before trading begins on the next business day, the listed issuer ~~should~~must request a short suspension of dealings in its securities pending the publication of the announcement. In any event, a listed issuer that has signed an agreement in respect of a notifiable transaction that is expected to be price sensitive must immediately request a short suspension of dealings in its securities pending the publication of the required announcement. A listed issuer that has finalised the major terms of an agreement in respect of a notifiable transaction that is expected to be price sensitive must ensure confidentiality of the relevant information until publication of the required announcement. Where the listed issuer considers that the necessary degree of security cannot be maintained or that the security may have been breached, it must publish an announcement or immediately request a short suspension of dealings in its securities pending the publication of the announcement. Directors of listed issuers are reminded of their obligation pursuant to Note 2 to rule 17.10 to keep confidential information that is likely to have a significant effect on market activity in or the price of any listed securities, until such time as a formal announcement is made in accordance with the requirements of Chapter 16. In the case of a reverse takeover, suspension of dealings in the listed issuer's securities should continue until disclosure of sufficient information has been made by the listed issuer by way of an announcement. Whether the amount of information disclosed in the announcement is sufficient or not is determined on a case-by-case basis.

- Notes:*
- ~~1 Directors of listed issuers are reminded of their obligation pursuant to Note 2 of rule 17.10 to keep confidential, information that is likely to have a significant effect on market activity in or the price of any listed securities, until such time as a formal announcement is made in accordance with the requirements of Chapter 16.~~
  - ~~2 In any event, a listed issuer that has signed an agreement in respect of a notifiable transaction that is expected to be price sensitive should immediately request a short suspension of dealings in its securities pending the publication of the required announcement.~~

### Additional requirements for discloseable transactions

#### Circular

19.3836 In addition to the requirements for all transactions set out in rule 19.3433, a listed issuer ~~whi~~ch has entered into a discloseable transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement. The circular must contain the information required under rules 19.5163, 19.5264, ~~(for an acquisition only)~~ 19.5365 ~~(for an acquisition only)~~ and ~~(for a disposal only)~~ 19.7057 ~~(for a disposal only)~~. ~~The circular must (subject to rule 17.59) be in English and Chinese.~~ The Exchange may waive the requirement in this rule to issue a circular where all of the following conditions are satisfied:

- (1) the transaction is an acquisition where new shares will be issued by the listed issuer as consideration;
- (2) the acquisition is a discloseable transaction only because of the consideration ratio;

- (3) the consideration was calculated based on the fair value, being market value, of the equity capital; and
- (4) all the other percentage ratios (i.e. the assets ratio, profits ratio, revenue ratio and equity capital ratio) are less than 5%.

*Note: ~~Where an acquisition is a discloseable transaction only because of the consideration ratio, and the value of the consideration was calculated based on the market value of the equity capital, the Exchange may waive the requirement in this rule to issue a circular where all the other percentage ratios are less than 15%.~~*

19.3937 Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments.

### **Additional requirements for major transactions**

#### *Shareholders' approval*

19.4038 In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 19.343 to 19.3937. In addition, a major transaction must be made conditional on approval by shareholders.

~~19.41 The listed issuer must send a circular for the major transaction to its shareholders and the Exchange and publish it in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement. The circular should must be despatched to the shareholders of the listed issuer at the same time as (or before) the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular. The circular shall contain information required under rules 19.5163, 19.5466, (for an acquisition only) 19.67 (for an acquisition only) and 19.55 and (for a disposal only) 19.7057 (for a disposal only).~~

~~19.42 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement) on the transaction to be considered at a general meeting not less than 14 days before the date of the relevant general meeting.~~

*Note: ~~The listed issuer must assess the scale of revisions or updating required and materiality of the new information, revisions or updating required that has come to its attention after publication of the circular, when deciding whether to issue a revised or supplementary circular or publish an announcement. Where the revisions or updating required are significant, the listed issuer must consider carefully whether it would be better to publish a revised or supplementary circular rather than provide particulars of the changes in an announcement. The listed issuer should not overwhelm or confuse investors with lengthy announcements describing changes to information contained in the original circular.~~*

~~19.43 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 14-day period requirement under rule 19.42 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 17.47B).~~

### *Methods of approval*

19.3944 Shareholders' approval for a major transaction ~~shall may~~ be given ~~either~~ by a majority vote at a general meeting of the shareholders of the listed issuer unless all the following conditions are met, in which case written shareholders' approval may, subject to rule 19.86, be accepted in lieu of holding a general meeting:—

- (1) no shareholder is required to abstain from voting if the listed issuer were to convene a general meeting for the approval of the transaction; and
- (2) the written shareholders' approval has been obtained from or in writing by a shareholder or a closely allied group of shareholders who (together) hold more than 50% in nominal value of the securities giving the right to attend and vote at that general meeting to approve the transaction. Where such approval is given in writing, the listed issuer need not hold a general meeting to consider the transaction. Where a listed issuer discloses unpublished price sensitive information to any shareholder in confidence to solicit the written shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.

19.405 To determine whether a group of shareholders constitutes a "closely allied group of shareholders"; the Exchange will take into account the following factors:—

- (1) the number of persons in the group;
- (2) the nature of their relationship including any past or present business association between two or more of them;
- (3) the length of time each of them has been a shareholder;
- (4) whether they would together be regarded as "acting in concert" for the purposes of the Takeovers Code; and
- (5) the way in which they have voted in the past on shareholders' resolutions other than routine resolutions at an annual general meeting.

It is the listed issuer's responsibility to provide sufficient information to the Exchange to demonstrate that the group of shareholders is a "closely allied group" of shareholders.

19.4146 The Exchange will require any shareholder and his associates who has an interest in the transaction to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction and will not accept written approval for the transaction. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.

19.47 If any vote of shareholders at the general meeting was taken on a poll, the listed issuer shall announce the results of the poll in the manner prescribed under rule 17.47(5).

### **Addition requirements for very substantial disposals and very substantial acquisitions**

19.4248 In the case of a very substantial disposal or a very substantial acquisition, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 19.343 to 19.3937.

19.49 ~~In addition, a very substantial disposal and a~~ very substantial acquisition must be made conditional on approval by shareholders in general meeting ~~by a resolution on which any controlling shareholders shall abstain from voting. Where a listed issuer does not have any controlling shareholders, those shareholders who participate in the management of the listed issuer shall abstain from voting. No written shareholders' approval will be accepted in lieu of holding a general meeting.~~ The Exchange will ~~also~~ require any shareholder ~~and his associates who has an interest in the transaction~~ to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.

19.50 If any vote of shareholders at the general meeting was taken on a poll, the listed issuer shall announce the results of the poll in the manner prescribed under rule 17.47(5).

19.4351 ~~A listed issuer proposing a very substantial acquisition must send a circular to its shareholders and the Exchange within 21 days after the announcement is published in accordance with the requirements of Chapter 16. The circular should~~ must be despatched to the shareholders of the listed issuer at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular. The circular must contain the information required under rules ~~19.5163~~, 19.68 (for a very substantial disposal) and ~~19.5669~~ (for a very substantial acquisition).

19.52 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement) on the transaction to be considered at a general meeting not less than 14 days before the date of the relevant general meeting.

*Note: The listed issuer must assess the scale of revisions or updating required and materiality of the new information, revisions or updating required that has come to its attention after publication of the circular, when deciding whether to issue a revised or supplementary circular or publish an announcement. Where the revisions or updating required are significant, the listed issuer must consider carefully whether it would be better to publish a revised or supplementary circular rather than provide particulars of the changes in an announcement. The listed issuer should not overwhelm or confuse investors with lengthy announcements describing changes to information contained in the original circular.*

19.53 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 14-day period requirement under rule 19.52 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 17.47B).

### **Additional requirements for reverse takeovers**

19.4454 The Exchange will treat a listed issuer proposing a reverse takeover as if it were a new listing applicant. The enlarged group or the assets to be acquired must be able to ~~comply with the requirements for listing~~ meet the requirements of rule 11.12 and the enlarged group must be able to meet all the other basic conditions set out in Chapter 11. The listed issuer must comply with the requirements for all transactions set out in rules ~~19.343~~ to ~~19.3735~~.

19.55 ~~In addition, a~~ reverse takeover must be made conditional on approval by shareholders in general meeting ~~by a resolution on which any controlling shareholders shall abstain from voting. Where a listed issuer does not have any controlling shareholders, those shareholders who participate in the management of the listed issuer shall abstain from voting. No written shareholders' approval will be accepted in lieu of holding a general meeting.~~ The Exchange will ~~also~~ require any shareholder ~~and his associates who has an interest in the transaction~~ to abstain from voting ~~at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction. Furthermore, where there is a change in control of the listed issuer as referred to in rule 19.06(6) and any person or group of persons will cease to be a controlling shareholder (the "outgoing controlling shareholder") by virtue of a disposal of his shares to the person or group of persons gaining control (the "incoming controlling shareholder"), any of the incoming controlling shareholder's associates or an independent third party, the outgoing controlling shareholder and his associates may not vote in favour of any resolution approving an injection of assets by the incoming controlling shareholder or his associates at the time of the change in control. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.~~

*Note: The prohibition against the outgoing controlling shareholder and his associates voting in favour of a resolution approving an injection of assets does not apply where the decrease in the outgoing controlling shareholder's shareholding is solely the result of a dilution through the issue of new shares to the incoming controlling shareholder rather than any disposal of shares by the outgoing controlling shareholder.*

19.56 ~~If any vote of shareholders at the general meeting was taken on a poll, the listed issuer shall announce the results of the poll in the manner prescribed under rule 17.47(5).~~

19.4557 A listed issuer proposing a reverse takeover must comply with the procedures and requirements from new listing applications as set out in Chapter 12. The listed issuer will be required ~~to~~, among other things, to issue a listing document and pay the non-refundable initial listing fee. A listing document relating to a reverse takeover must contain the information required under rules ~~19.5163~~ and ~~19.5669~~. The listing document ~~should~~ must be despatched to the shareholders of the listed issuer at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction. The listed issuer must state in the announcement on the reverse takeover when it expects the listing document to be issued.

## Contents of announcements

### *All transactions*

19.4658 The announcement for a share transactions, discloseable transactions, major transactions, very substantial disposal, very substantial acquisitions ~~and or~~ reverse takeovers must contain at least the following information:—

- (1) a prominent and legible disclaimer at the top of the announcement in the form set out in rule 2.19;
- (2) a statement of responsibility and confirmation on the part of the directors in the form set out in rule 2.18;
- (3) a description of the ~~trade~~ principal business activities carried on by the listed issuer and a general description of the principal business activities of the counterparty, if the counterparty is a company or entity;

- (4) the date of the transaction. The listed issuer must also confirm that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer;
- (45) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued;
- Note: ~~If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued.~~*
- (56) the basis upon which the consideration was determined;
- (67) the value (book value and valuation, if any) of the ~~net tangible~~-assets which are the subject of the transaction;
- (78) where applicable, the net profits (both before and after taxation and extraordinary items) attributable to the ~~net tangible~~-assets which are the subject of the transaction for the two financial years immediately preceding the transaction; ~~and~~
- (89) the reasons for entering into the transaction, the benefits which are expected to accrue to the listed issuer as a result of the transaction and a statement that the directors believe that the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole; ~~and~~
- (10) where appropriate, details of any guarantee and/or other security given or required as part of or in connection with the transaction.

*Share transaction announcements*

19.4759 In addition to the information set out in rule 19.5846, the announcement for a share transaction must contain at least the following information:—

- (1) ~~the date of the transaction and the details of the ultimate beneficial owner of the vendor of the asset(s) or other parties involved in the transaction;~~
- (21) the amount and details of the securities being issued including details of any restrictions which apply to the subsequent sale of such securities;
- (32) brief details of the asset(s) being acquired, including the name of any company or business or the actual assets or properties where relevant and, if the assets include securities, the name and general description of the activities of the company in which the securities are or were held;
- (3) if the transaction involves an issue of securities of a subsidiary of the listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary of the listed issuer following the transaction;

- (5) a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities.

*Discloseable transaction, major transaction, very substantial disposal,  
very substantial acquisition and reverse takeover announcements*

19.4660 In addition to the information set out in rule 19.4658, the announcement for a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover must contain at least brief details of the following:—

- ~~(1) the date of the transaction and the parties to it, including details of the ultimate beneficial owner of the disposing or acquiring party or other parties involved in the transaction;~~
- (21) the general nature of the transaction including, where the transaction involves securities, details of any restrictions which apply to the subsequent sale of such securities;
- (32) brief details of the asset(s) being acquired or disposed of, including the name of any company or business or the actual assets or properties where relevant and, if the assets include securities, the name and general description of the activities of the company in which the securities are or were held;~~particulars of the net tangible assets the subject of the transaction, including the name of any company or business where relevant;~~

*Note: ~~If the assets include shares in a company, this should include the name and general description of the activities of that company.~~*

- (43) in the case of a disposal:—
- (a) details of the gain or loss expected to accrue to the listed issuer and the basis for calculating this gain or loss. Where the listed issuer expects to recognise in its income statement a different gain profit or loss different from the disclosed gain or loss, the reason for the difference should must be explained. The gain or loss is to be calculated by reference to the carrying value of the assets in the accounts; and

*Note: ~~The gain or loss should be calculated by reference to the carrying value of the assets in the latest published audited financial statements.~~*

- (b) the intended application of the sale proceeds; ~~and~~
- (54) if the transaction involves an issue of securities for which listing will be sought, the announcement must also include:
- (a) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and
- (b) a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities;:-

- (5) where the transaction is a major transaction approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to rule 19.44, details of the shareholder or the closely allied group of shareholders (as the case may be), including the name of the shareholder(s), the number of securities held by each such shareholder and the relationship between the shareholders; and

- (6) if the transaction involves a disposal of an interest in a subsidiary by a listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary of the listed issuer following the transaction.

*Profit forecast in an announcement*

- 19.4961 A “profit forecast” means any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been published. Any valuation of assets (other than land and buildings) or businesses acquired by a listed issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.
- 19.5062 Where the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries, the listed issuer must submit the following additional information and documents to the Exchange at the same time as the draft announcement:—
- (1) details of the principal assumptions, including commercial assumptions, upon which the forecast is based;
  - (2) a letter from the listed issuer’s auditors or reporting accountants confirming that they have reviewed the accounting policies and calculations for the forecast and containing their report; and
  - (3) a report from the listed issuer’s financial advisers confirming that they are satisfied that the forecast has been made by the directors after due and careful enquiry. If no financial advisers have been appointed in connection with the transaction, the listed issuer must provide a letter from the board of directors confirming they have made the forecast after due and careful enquiry.

**Contents of circulars**

*General principles*

- 19.5163 A circular for a discloseable transaction, ~~a~~ major transaction, very substantial disposal or ~~a~~ very substantial acquisition and a listing document for a reverse takeover sent by a listed issuer to holders of its listed securities must:—
- (1) provide a clear, concise and adequate explanation of its subject matter having regard to the provisions of rule 17.56; and
  - (2) if voting or shareholders’ approval is required:
    - (a) contain all information necessary to allow the holders of the securities to make a properly informed decision;
    - (b) contain a heading emphasising the importance of the document and advising holders of securities, who are in any doubt as to what action to take, to consult appropriate independent advisers;



- (c) contain a recommendation from the directors as to the voting action that shareholders should take, indicating whether or not the proposed transaction described in the circular is, in the opinion of the directors, fair and reasonable and in the interests of the shareholders as a whole; and
  - (d) contain a statement that any shareholder with an a material interest in the a proposed transaction and his associates will abstain from voting in on resolution(s) approving respect of that transaction; and
- (3) a confirmation that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer.

*Discloseable transaction circulars*

19.5264 All circulars relating to discloseable transactions must contain the following:

- (1) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19;
- (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;
- (3) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
  - 1- name
  - 2- directors' responsibility
  - 5- expert statements
  - 29(2)- requirements if there is a profit forecast
  - 33- litigation statement
  - 35- details of secretary and other officers
  - 36- address of registered office and head office;
  - ~~38- directors' interests;~~
- ~~(4) a clear explanation of the reasons why the listed issuer proposes to enter into the transaction;~~
- (4) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34, 38 and 38A of Appendix 1, Part B;
- (5) ~~the~~ information regarding the assets being acquired or disposed of, which is required to be included in the announcement under rule 19.4860;
- (6) information concerning the effect of the transaction on the earnings and assets and liabilities of the listed issuer;
- (7) where a company either becomes a subsidiary or ceases to be a subsidiary of the listed issuer:—
  - (a) the percentage of the issued share capital (if any) held by the listed issuer in that company after the acquisition or disposal; and

- (b) in the case of a disposal, a statement whether the remaining shares are to be sold or retained;
- (8) details of any existing or proposed service contracts of directors and proposed directors of the listed issuer, or an appropriate negative statement;

*Note: Details of contracts to expire or which may be terminated by the employer within a year without payment of any compensation, ~~(other than statutory compensation),~~ need not be included.*

- (9) information as to the competing interests (if any) of the Sponsor and each of theirs directors, employees and associates (as referred to in rule 6.36) and each of all the directors ~~and management shareholders~~ of the listed issuer and ~~their~~ his/her respective associates (as would be required to be disclosed under referred to in rule 11.04 if each of them were a controlling shareholder); and
- (10) any additional information requested by the Exchange.

19.5365 In addition to the requirements set out in rule 19.5264, a circular issued in relation to an acquisition constituting a discloseable transaction must contain:

- (1) the information required under paragraphs 9 and 10 of Appendix 1, Part B, if the acquisition involves securities for which listing will be sought;
- (2) the information required under paragraph 22(1) of Appendix 1, Part B, if new shares are to be issued as consideration; and
- (3) where the consideration for a transaction includes the listed issuer's shares or securities that are convertible into the listed issuer's shares, a statement whether the transaction will result in a change of control of the listed issuer.

*Major transaction circulars*

19.5466 A circular relating to a major transaction must also contain the following:—

- (1) the information required under rule 19.5264;
- (2) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
  - 8A- procedures for demanding a poll by shareholders
  - 28- indebtedness
  - 29(1)(b)- financial and trading prospects
  - 30- sufficiency of working capital
  - 40- directors' and experts' interests in group assets
  - 41- material contracts
  - 42- documents on display;
- (3) where required by Chapter 8, a valuer's report on the property being acquired or disposed of; ~~and~~

- (4) where the circular contains a statement as to the sufficiency of working capital, the Exchange will require a letter from the listed issuer's financial advisers or auditors confirming that:—
- (a) the statement has been made by the directors after due and careful enquiry; and
  - (b) the persons or institutions providing finance have confirmed in writing that such facilities exist; ~~and:~~

~~(5) where applicable, the information required under rule 2.28.~~

19.5567 In addition to the requirements set out in rule 19.5466, a circular issued in relation to an acquisition constituting a major transaction must contain:—

- (1) information required under rule 19.5365;
- (2) the information regarding the listed issuer required under paragraphs 31 (financial information) and 32 (no material adverse change) of Appendix 1, Part B;
- (3) the information required under paragraph 34 of Appendix 1, Part B, in relation to each new director and member of senior management joining the listed issuer in connection with the transaction;

*Note: The fact that any director or proposed director is a director or employee of a company which has an interest or short position in the shares or underlying shares of the listed issuer which would fall to be disclosed to the listed issuer under the provisions in Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance need not be stated.*

- ~~(4) where the business, company or companies being acquired become(s) a subsidiary of the listed issuer, a proforma statement of the assets and liabilities of the listed issuer's group combined with the assets and liabilities of the business, company or companies being acquired;~~

~~(a) on an acquisition of any business, company or companies:~~

- ~~(i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 7 provided that, where any company in question has not or will not become a subsidiary of the listed issuer, the Exchange may be prepared to relax this requirement. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and~~

~~*Note: Where the accountants can only give a qualified opinion in the accountants' report in respect of the acquisition of the business, company or companies, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction (See rule 19.86). In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.*~~

- ~~(ii) a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets and liabilities of the business, company or~~

companies being acquired on the same accounting basis. The pro forma financial information must comply with Chapter 7; and

(b) on an acquisition of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:

(i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the assets being acquired as contained in the circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and

(ii) a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets being acquired on the same accounting basis. The pro forma financial information must comply with Chapter 7; and

(5) either:—

(a) an accountants' report on the business, company or companies being acquired;

*Notes: 1 The accountants' report must comply with Chapter 7.*

*2 The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued.*

*3 Where the accountants can only give a qualified report on the profits and net tangible assets of the business, company or companies being acquired, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a shareholders' written approval for the transaction, but will require a general meeting to be held to consider the transaction. In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.*

*or:—*

(b) if the business, company or companies being acquired is or are listed on the Main Board or on GEM, the published financial statements for the last 3 years may be included in the circular instead of the accountants' report and the Exchange will require that the last announcement of interim results also be included; and

(56) a management discussion and analysis of results of the business, company or companies being acquired covering all those matters set out in rule 18.41 for the period reported on in the accountants' report.

#### Very substantial disposal circulars

19.68 A circular issued in relation to a very substantial disposal must contain:—

(1) the information required under rules 19.66 and 19.70;

- (2) (a) on a disposal of a business, company or companies:
- (i) an accountants' report on the listed issuer's group in accordance with Chapter 7. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued; and
  - (ii) pro forma income statement, balance sheet and cash flow statement of the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 7;
- (b) on a disposal of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:
- (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the listed issuer for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued; and
  - (ii) a pro forma profit and loss statement and net assets statement on the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 7; and
- (3) the information required under rule 18.41 on the remaining group.

*Very substantial acquisition circulars and reverse takeover listing documents*

19.5669 A circular issued in relation to a very substantial acquisition or a listing document issued in relation to a reverse takeover must contain:—

- (1) in respect of a listing document issued in relation to a reverse takeover,
- (a) the information required under rule 19.5264 (save for the information required under rule 19.5264(3) and 19.64(4)) and under rules 19.5365(3), and 19.5466(4);
  - (b) the information required under Appendix 1, Part A, if applicable, except paragraphs 8 and 15(3) (in respect of the 12 months preceding the issue of the circular or listing document) and 20(1); and
  - (c) the information required under rule 2.28;
- (2) the information required under Appendix 1, Part A, if applicable, except paragraphs 8 and 15(3) in respect of the 12 months preceding the issue of the circular/listing document, and 20(1); in respect of a circular issued in relation to a very substantial acquisition, the information required under rules 19.66 to 19.67 (save for the information required under rules 19.66(3) and 19.67(4)) and rule 2.28;
- (3) a valuation report on the enlarged group's interests in land or buildings in accordance with Chapter 8;

- (4) (a) on an acquisition of any business, company or companies:
- (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 7. The accounts on which the report is based must relate to a financial period ended 6 months or less before the listing document or circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) pro forma income statement, balance sheet and cash flow statement of the enlarged group on the same accounting basis. The pro forma financial information must comply with Chapter 7;
- (b) on an acquisition of any revenue-generating assets (other than a business or a company) with an identifiable income stream or assets valuation:
- (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where, other than in the case of a reverse takeover, the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the listing document or circular is issued. The financial information on the assets being acquired as contained in the listing document or circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) a pro forma profit and loss statement and net assets statement on the enlarged group on the same accounting basis. The pro forma financial information must comply with Chapter 7;

~~an accountants' report on the enlarged group in accordance with Chapter 7. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular/listing document is issued;~~

- (5) ~~a statement that any controlling shareholder will not vote. Where the listed issuer has no controlling shareholder, those shareholders who participate in the management of the listed issuer will not vote;~~
- (56) ~~where the transaction also involves a disposal by the listed issuer, the information required under rule 19.577Q(2); where the transaction also involves a disposal by the listed issuer; and~~
- (67) ~~(a) in the case of a circular issued in relation to a very substantial acquisition, general information on the trend of the business of the group since the date to which the latest audited latest audited accounts of the listed issuer were made up; and a statement as to the financial and trading prospects of the group for at least the current financial year (together with any material information which may be relevant); thereto); or~~

- (7b) in the case of a listing document issued in relation to a reverse takeover, a statement of active business pursuits (in respect of the period of 24 months immediately preceding the date of the listing document, or for listed issuers satisfying the conditions of rule 11.12(3), at least the 12 month period set out in rule 11.12(2)(b)) (see rules 14.15 to 14.18); and a statement of business objectives (in respect of the current financial year and the 2 financial years thereafter) (see rules 14.19 to 14.21); and
- (8) in the case of a circular issued in relation to a very substantial acquisition, a **management** discussion and analysis of results the performance of the enlarged group for the 3 preceding financial years, covering all those matters set out in rule 18.41 ~~for the period reported on in the accountants' report.~~

*Additional requirements for circulars in respect of disposals*

19.5770 In addition to the requirements set out in rules 19.5264 and 19.5466, a circular issued in relation to a disposal constituting a discloseable transaction or a major transaction must contain:—

- (1) the intended application of the sale proceeds (including whether such proceeds will be used to invest in any assets) and, if the sale proceeds include securities, whether they are to be listed or not; and
- (2) the excess or deficit of the consideration over or under the net book value of the asset(s).

*Circulars for specific types of companies*

19.5871 Where ~~the a major~~ transaction, very substantial acquisition, very substantial disposal or reverse takeover involves acquiring or disposing of an interest in an infrastructure project or an infrastructure or project company, ~~the Exchange may require~~ the listed issuer shall incorporate in the circular or listing document to include a business valuation report on the business or company being acquired or disposed of and/or traffic study report ~~in the circular in respect of the infrastructure project or an infrastructure or project company.~~ Such report(s) must clearly set out:

- (1) all fundamental underlying assumptions including discount rate or growth rate used; and
- (2) a sensitivity analysis based on the various discount rates and growth rates.

Where any business valuation is based on a profit forecast, the accounting policies and calculations for the underlying forecasts must be examined and reported on by the auditors or reporting accountants. Any financial adviser mentioned in the circular or listing document must also report on the underlying forecasts.

Note: On profit forecasts, see also rules 19.61 and 19.62.

## **Options**

### *Definitions*

19.5972 In this Chapter and Chapter 20:—

- (1) “option” means the right, but not the obligation, to buy or sell something;

*Notes: The term “option” for the purposes of this Chapter and Chapter 20 does not refer to:—*

- ~~(1.)~~ *options, warrants and similar rights to subscribe for or purchase equity securities of a listed issuer under Chapter 21;*

- ~~{2.}~~ convertible equity securities under Chapter 22;
- ~~{3.}~~ options granted pursuant to a share option scheme under Chapter 23;
- ~~{4.}~~ options, warrants and similar rights to subscribe for ~~or a~~ purchase debt securities of a listed issuer under Chapter 33;
- ~~{5.}~~ convertible debt securities under Chapter 34; or
- ~~{6.}~~ Options Contracts traded through the Options System as defined in the Options Trading Rules of the Exchange and the Options Clearing Rules of The SEHK Options Clearing House Limited.

- (2) “exercise price” means the price at which the option holder is entitled to buy or sell the subject matter of the options~~something~~;
- (3) “premium” is the price paid and/or payable by an option holder to acquire an option; and
- (4) “expiration” is the time at which the option can no longer be exercised.

~~19.6073~~ The grant, acquisition, transfer or exercise of an option by a listed issuer will be treated as a transaction and classified ~~by reference pursuant~~ to the percentage ratios ~~set out in rule 19.06~~. ~~The termination of an option by a listed issuer will be treated as a transaction and classified by reference to the percentage ratio, unless the termination is in accordance with the terms of the original agreement entered into by the listed issuer and does not involve payment of any amounts by way of penalty, damages or other compensation.~~ The listed issuer must comply with the requirements of the relevant classification and other specific requirements of rules ~~19.6174~~ to ~~19.7764~~.

~~19.6174~~ The following ~~applies apply~~ to an option involving a listed issuer, the exercise of which is not at the listed issuer’s discretion:—

- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. ~~For the purpose of the percentage ratios, t~~The consideration ~~(including includes~~ the premium and the exercise price ~~of the option)~~, ~~the value of the underlying assets and the profits attributable to such assets will be used for the purpose of classification~~; and
- (2) on the exercise ~~or transfer~~ of ~~such the~~ option, such exercise ~~or transfer~~ must be announced pursuant to the requirements of Chapter 16 as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter.

~~19.6275~~ The following ~~applies apply~~ to an option involving a listed issuer, the exercise of which is at the listed issuer’s discretion:—

- (1) on the ~~acquisition by, or~~ grant of the option ~~to, the listed issuer~~, only the premium will be taken into consideration for the purpose of classification ~~of notifiable transactions. Where the premium represents 10% or more of the sum of the premium and the exercise price, the value of the underlying assets, the profits and revenue attributable to such assets, and the sum of the premium and the exercise price will be used for the purpose of the percentage ratios; and~~

~~Note: Where the premium represents 15% or more of the sum of the premium and the exercise price, the value of the underlying assets, the profits attributable to such assets, and the sum of the premium and the exercise price will be used for the purpose of classification.~~



- (2) on the exercise of ~~such the~~ option by the listed issuer, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets will be used for the purpose of the percentage ratios classification. Where an option is exercised in stages, the Exchange may at any stage as the Exchange may consider appropriate require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction (see rules 19.22 and 19.23).

*Note: ~~Where an option is exercised in stages, the Exchange may at such stage as the Exchange may consider appropriate require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction.~~*

- 19.6376 (1) For the purpose of rules 19.6474(1) and 19.6275(1), where, on the grant of the option, the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets has not been determined, the listed issuer must demonstrate to the satisfaction of the Exchange the highest possible monetary value, which value will then be used for the purpose of classification of notifiable transaction. Failure to do so will result in the transaction being classified as at least a major transaction. The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification of notifiable transaction, the listed issuer must announce this fact in accordance with the requirements of Chapter 16 as soon as reasonably practicable and comply with the additional requirements of such higher classification.

*Note: ~~The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification, the listed issuer must announce this fact in accordance with the requirements of Chapter 16 as soon as reasonably practicable and comply with the additional requirements of such higher classification.~~*

- (2) The listed issuer may, at the time of entering into the option, seek any shareholders' approval necessary for the exercise of the option (in addition to seeking any shareholders' approval necessary for the entering into of the option). Such approval, if obtained, will be sufficient for satisfying the shareholders' approval requirement of this Chapter, provided that the actual monetary value of the total consideration payable upon exercise and all other relevant information are known and disclosed to the shareholders at the time such approval is obtained and there has been no change in any relevant facts at the time of exercise.

- 19.6477 If the grant or acquisition of an option has previously been announced pursuant to the requirements of this Chapter, the listed issuer must, as soon as reasonably practicable, upon:—

- (1) the expiry of the option;
- (2) the option holder notifying the grantor that the option will not be exercised; or
- (3) the transfer by the option holder of the option to a third party

(whichever is the earliest) announce such fact in accordance with the requirements of Chapter 16. If the listed issuer is the option holder, the transfer of the option will also be treated as a transaction and classified for the purpose of the percentage ratios. The consideration for the transfer of the option will be used for the purpose of classification.

*Note: If the listed issuer is the option holder, the transfer of the option will also be treated as a transaction and classified. The consideration for the transfer of the option will be used for the purpose of classification.*

## Takeovers and mergers

### *Takeovers Code*

19.6578 Listed issuers and their directors must comply with the Takeovers Code. Any breach of the Takeovers Code will be deemed to be a breach of the GEM Listing Rules. The Exchange may penalise the listed issuer and/or its directors for breaches at its discretion in accordance with the disciplinary powers contained in Chapter 3.

19.6679 If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. 10 copies of the final documents issued must be supplied to the Exchange at the time of issue.

*Note: The Exchange will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Takeovers Code and Code on Share Repurchase directly to the party that submits the draft document (or its advisers). The Exchange will at the same time provide a copy of such comments to the Commission.*

### *Listing document*

19.6780 If the consideration under the takeover offer includes securities for which listing is being or is to be sought, the offer document(s) will constitute a listing document. Provided that the offer document complies with the Takeovers Code, it need not comply with rule 14.09, save for the provisions of 14.09(1) and (3).

### *Contents of offer document*

19.6881 The offer document must normally contain:—

- (1) a statement whether or not the offeror intends to continue the listing of the listed issuer;
- (2) details of any agreement reached with the Exchange to ensure that the basic condition for listing set out in rule 11.23 will be complied with in respect of the listed issuer there continues to be an open market in the listed issuer's securities;
- (3) a prominent and legible statement in the following form:

"The Stock Exchange of Hong Kong Limited (the "Exchange") has stated said that it will closely monitor trading in the [listed issuer]'s shares if, at the close of the offer, less than the minimum prescribed percentage applicable to the listed issuer, being [ ]% per cent of the issued shares, are held by the public, or ~~if~~ if the Exchange believes that:—

- a false market exists or may exist in the trading of the shares; or
- that there are insufficient too few shares in public hands to maintain an orderly market;

it will consider exercising its discretion to suspend dealings trading in the shares.

~~[[The Offeror] intends [the listed issuer] to remain listed on the Exchange. The directors of [the Offeror] and the new directors to be appointed to the Board of [the listed issuer] will jointly and severally undertake to the Exchange to take appropriate steps to ensure that sufficient public float exists in [the listed issuer]'s shares.]”~~

~~If the [listed issuer] remains a listed company, the Exchange has the discretion to require [the listed issuer] to issue a circular to its shareholders irrespective of the size of the proposed transaction, particularly when such proposed transaction represents a departure from [the listed issuer]'s principal activities. The Exchange also has the power to aggregate a series of transactions and any such transaction may result in [the listed issuer] being treated as if it were a new listing applicant.”~~

- (4) any other requirements imposed by the Exchange which are not inconsistent with the Takeovers Code.

#### *Cash companies*

~~19.6982 The Exchange will normally suspend the listing of Where for any reason (including immediately after completion of a notifiable transaction or connected transaction) the assets of a listed issuer if its assets consist wholly or substantially of cash or short-dated securities, as it will not normally be regarded as suitable for listing and trading in its securities will be suspended. The Exchange may cancel the listing if the suspension continues for more than 6 months or if it considers cancellation necessary.” “Short-dated securities” means securities such as bonds, bills or notes which have less than 1 year to maturity.~~

~~19.83 A listed issuer which is solely or mainly engaged in the securities brokerage business will not be subject to rule 19.82.~~

~~19.7084 The listed issuer may apply to the Exchange to lift the suspension once it has a business suitable for listing. The Exchange will treat its application for lifting of the suspension as if it were an application for listing from a new applicant. The listed issuer will be required, among other things, to appoint a Sponsor and issue a listing document containing the specific information required by Appendix I Part A and pay the non-refundable initial listing fee. The Exchange reserves the right to cancel the listing if such suspension continues for more than 6 months or in any other case where it considers it necessary. It is therefore advisable to consult the Exchange at the earliest possible opportunity in each case.~~

#### **General**

~~19.85 Listed issuers must complete and submit any checklist(s) in such form as may be prescribed by the Exchange from time to time in respect of any notifiable transaction.~~

~~19.86 Shareholders’ approval is required for an acquisition that requires an accountants’ report under this Chapter where the reporting accountants can only give a qualified opinion in the accountants’ report in respect of the acquisition of the businesses or companies, for example, because of the absence of adequate records in relation to stock and work-in-progress. In such cases, the Exchange will not accept a written shareholders’ approval for the transaction, but will require a general meeting to be held to consider the transaction.~~

~~19.87 A listed issuer may send to any shareholder the English language version only or the Chinese language version only of any circular required under this Chapter subject to compliance with rule 16.04B.~~

## Material changes

~~19.7188~~ ~~Other than with the prior approval of independent shareholders of the issuer in general meeting, anA listed issuer shall may-not, during the financial year in which dealings in its securities commenced on GEM or the 2 financial years thereafter, enter into any acquisition, disposal or other transaction or arrangement, or a series of acquisitions, disposals or other transactions or arrangements, which would result in a fundamental change in the principal business activities of the listed issuer material change to the general character or nature of the business of the issuer or its group as described in the listing document issued when it first applied for listing.~~

~~Notes: 1 For this purpose, transactions subsequent to the listing will beare aggregated as prescribed set out in rules 19.221 and 19.232.~~

~~2 Directors, chief executives, management shareholders and their respective associates and any shareholders who have an interest in the transaction shall not be eligible to vote at a general meeting called for the purpose of this rule.~~

~~19.89 The Exchange may grant a listed issuer a waiver of the requirements of rule 19.88:—~~

- ~~(1) if it is satisfied that the circumstances surrounding the proposed fundamental change are exceptional; and~~
- ~~(2) subject to the acquisition, disposal or other transaction or arrangement, or series of acquisitions, disposals or other transactions or arrangements, being approved by shareholders in general meeting by a resolution on which any controlling shareholder (or, where there are no controlling shareholders, any chief executive or directors (excluding independent non-executive directors) of the listed issuer) and their respective associates shall abstain from voting in favour. Any shareholders with a material interest in the transaction and their associates shall abstain from voting on resolution(s) approving such transaction at a general meeting called for the purpose of this rule. The listed issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

~~19.90 In respect of the shareholders' approval required under rule 19.89(2):~~

- ~~(1) the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolutions at the general meeting:~~
  - ~~(a) any parties who were controlling shareholders at the time the decision for the transaction or arrangement was made or approved by the board, and their associates; or~~
  - ~~(b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the listed issuer at the time the decision for the transaction or arrangement was made or approved by the board, and their respective associates.~~

~~The listed issuer must disclose the information required under rule 2.28 in the circular to shareholders; and~~

- ~~(2) the listed issuer must comply with rules 17.47(4), (5), (6) and (7) and rules 17.47A, 17.47B and 17.47C.~~

### **Restriction on disposal**

- 19.91 A listed issuer may not dispose of its existing business for a period of 24 months after a change in control (as defined in the Takeovers Code) unless the assets acquired from the person or group of persons gaining such control or his/their associates and any other assets acquired by the listed issuer after such change in control can meet the requirement of rule 11.12.
- 19.92 A disposal by a listed issuer which does not meet the requirement under rule 19.91 will result in the listed issuer being treated as a new listing applicant.

# Chapter 20

## EQUITY SECURITIES

### CONNECTED TRANSACTIONS

#### Preliminary

- 20.01 The connected transactions rules are intended to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when the listed issuer enters into connected transactions ~~with connected persons~~. The rules set out in this Chapter also provide certain safeguards against listed issuers' directors, chief executives, management shareholders or substantial shareholders (or their associates) taking advantage of their positions.
- 20.02 This is achieved through the general requirement for connected transactions to be disclosed and subject to independent shareholders' approval. Accordingly, where any connected transaction is proposed ~~between a listed issuer and a connected person~~, the transaction must ~~usually~~ be announced publicly and a circular must be sent to shareholders giving information about the transaction. Prior approval of the shareholders in general meeting will ~~usually~~ be required before the transaction can proceed. The connected person with a material interest in the transaction will not be permitted to vote at the meeting on the resolution approving the transaction.
- 20.03 Certain categories of transaction are exempt from the disclosure and independent shareholders' approval requirements and certain transactions are subject only to disclosure requirements.
- 20.04 Connected transactions may be either one-off transactions (in the case of listed issuers) or continuing transactions (in the case of both listed issuers and new applicants). Different rules apply in each case. A listed issuer must, in respect of all connected transactions, enter into a written agreement with the relevant parties.
- 20.05 If a listed issuer proposes to enter into a transaction which could be a connected transaction, it is essential that the listed issuer ~~must~~ consult the Exchange at an early stage so that, in cases of doubt, the listed issuer can to ascertain whether and to what extent the provisions of this Chapter apply. The relevant contract(s) or, if applicable, draft contract(s) must be supplied to the Exchange, if requested.
- 20.06 The Exchange has the specific power to deem a person to be connected (see rule 20.110(4)) and to specify that certain exemptions will not apply to particular transactions (see rule 20.3022).
- 20.07 The Exchange may grant a waiver from all or any of the requirements in this Chapter where the Exchange deems it appropriate on such terms and conditions as the Exchange may determine (see rule 20.4234).
- 20.08 A connected transaction may also be a reverse takeover, very substantial acquisition, very substantial disposal, major transaction, discloseable transaction, or share transaction and listed issuers should also refer to Chapter 19.
- 20.09 Listed issuers must complete and submit any checklist(s) in such form as may be prescribed by the Exchange from time to time in respect of any connected transactions or continuing connected transactions.

## General matters concerning definitions and interpretation

20.1009 In this Chapter:

- (1) ~~“accounts” means a listed issuer’s latest published audited accounts or consolidated accounts;~~
- (12) ~~a “banking company” means a banks, a restricted licence banks or a and~~ deposit taking companies as defined in the Banking Ordinance or ~~a banks~~ constituted under appropriate overseas legislation or authority;
- (23) “consideration” is calculated as set out in rule 19.152;
- (34) “controller” means a director, chief executive or controlling shareholder of the listed issuer~~company whose securities are already listed on GEM;~~
- (45) “financial assistance” includes granting credit, lending money, providing security for, or guaranteeing a loan;

*Note: see also the definition of “ordinary and usual course of business” in rule 20.10(9).*

- (6) ~~“financial assistance provided in the ordinary and usual course of business” means financial assistance as defined in rule 20.09(5) provided by a banking company as defined in rule 20.09(2);~~
- (7) ~~“financial assistance not provided in the ordinary and usual course of business” means financial assistance as defined in rule 20.09(5) not provided by a banking company as defined in rule 20.09(2);~~
- (58) “independent shareholder” means any shareholder of the listed issuer ~~other than a connected person interested that is not required to abstain from voting at a general meeting to approve a in the~~ connected transaction;
- (6) an “issuer” means a listed issuer or company or other legal person whose securities are the subject of an application for listing on GEM and its subsidiaries;
- (79) a “listed issuer” shall have the meaning set out in rule 19.04(6);~~means a company whose securities are already listed on GEM and its subsidiaries, unless the context otherwise specifies;~~
- (10) ~~“net tangible assets of the listed issuer” means the aggregate of the share capital and reserves, excluding minority interests and intangibles, as shown in the listed issuer’s latest published audited accounts or consolidated accounts, subject to any adjustments or modifications arising by virtue of the provisions of rules 19.09 or 19.10;~~
- (118) “normal commercial terms” are terms which a party could obtain if the transaction were on an arm’s length basis or on terms no less favourable to the listed issuer than terms available to or from independent third parties;
- (912) “ordinary and usual course of business” of an entity shall have the meaning set out in rule 19.04(8) ~~means the existing principal activities of the entity or an activity wholly necessary for the principal activities of the entity;~~

- (10) “percentage ratios” shall have the meaning set out in rule 19.04(9);
- (131) “recognised stock exchange” means a regulated, regularly operating, open stock market recognised for this purpose by the Exchange;
- (12) “total assets” shall have the meaning set out in rule 19.04(12); and
- (134) a “transaction” by an issuer, whether or not it is of a revenue nature in the ordinary and usual course of business as defined in rule 19.04(1)(g), is interpreted by the Exchange in the broadest possible sense and includes:
- (a) the acquisition or disposal of assets; including deemed disposals set out in rule 19.29;
  - (b) any transaction involving a listed issuer writing, accepting, transferring, ~~or~~ exercising or terminating (in the manner described in rule 20.68) an option to acquire or dispose of assets or to subscribe for securities;
  - (c) entering into or terminating finance leases ~~where the financial effects of such leases have an impact on the balance sheet and/or profit and loss account of the listed issuer, respectively;~~
  - (d) entering into or terminating operating leases or sub-leases, including those of properties where the financial effects of such leases have an impact on the profit and loss account of the listed issuer;
  - (e) granting an indemnity or a guarantee or providing financial assistance;
  - (f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement;
  - (g) issuing new securities;
  - ~~(h) the lease and sublease of properties;~~
  - ~~(ih)~~ the provision of or receipt of services;
  - ~~(ji)~~ sharing of services; and
  - ~~(kj)~~ providing or acquiring raw materials, intermediate products and finished goods, ~~and~~
- (15) ~~“turnover of the listed issuer” means the listed issuer’s annual turnover as derived from its most recent accounts.~~

#### **Definition of connected person**

20.110 Rule 1.01 contains a general definition of “connected person.” ~~For the purpose of rules 20.10 and 20.11, a “listed issuer” means a company whose securities are already listed on GEM and not its subsidiaries.~~ In this Chapter, the definition of “connected person” includes:

- (1) a director, chief executive, substantial shareholder or management shareholder of the listed issuer;



- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a promoter or supervisor of a PRC issuer;
- (4) any associate of a person referred to in rules 20.11 (1), (2) or (3) above. The definitions of "associate" (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 25.04, respectively. In this Chapter, an "associate" of a person referred to in rules 20.11(1), (2) or (3) includes the following additional persons:
  - (a) any person or entity with whom a person referred to in rules 20.11(1), (2) or (3) has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied, with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person;
  - (b) any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of, a person referred to in rules 20.11(1), (2) or (3); and
  - (c) 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 person referred to in rules 20.11(1), (2) or (3) whose association with the person referred to in rules 20.11(1), (2) or (3) is such that, in the opinion of the Exchange, the proposed transaction should be subject to the requirements of this Chapter. Listed issuers must notify the Exchange of any proposed transaction with these parties unless the transaction is exempt under rules 20.31 or 20.33. Listed issuers must also provide information to the Exchange to demonstrate whether or not these parties should be regarded as associates of the person referred to in rules 20.11(1), (2) or (3);

*Notes:*

*1 The definitions of "associate" (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 25.04, respectively.*

*Note:2 A company which is an "associate" of a person referred to in rules 20.11(1), (2) or (3) above only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.*

*3 In this Chapter, an "associate" of a connected person includes the following additional persons:*

*(a) any person or entity with whom a person in rule 20.11(1), (2) or (3) above has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person;*

*(b) any of the following:*

*(i) any person cohabiting as a spouse with a person in rules 20.11(1), (2) or (3) above; and*

*(ii) any relative of a person in rule 20.11(1), (2) or (3) above.*

- (5) any non-wholly-owned subsidiary of the listed issuer ~~where if~~ any connected person(s) shareholder of that subsidiary, other than the listed issuer, is a director, chief executive or substantial shareholder of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and/or an associate of any such person:

*Notes: 1 It follows that a non wholly-owned subsidiary is not a connected person where:*

*(a) no connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary; and*

*(b) the non wholly-owned subsidiary is not an associate of a person referred to in rules 20.11(1), (2) or (3).*

*2 An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the subsidiary which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

(6) any subsidiaries of a non wholly-owned subsidiaries referred to in rule 20.11(5).

20.124 The definition of "connected person" does not include: ~~(1) a wholly-owned subsidiary of the listed issuer; and~~

~~(2) a non-wholly-owned subsidiary where no shareholder of that subsidiary, other than the listed issuer, is a director, chief executive, substantial shareholder or management shareholder of the listed issuer or an associate of any such person~~

### **Definition of connected transaction**

20.132 A connected transaction is:

~~(1) any transaction between a listed issuer and:~~

(1) (a) any transaction between a listed issuer and a connected person; or

~~(b) a person who is not a connected person but the transaction involves:~~

*Acquisition or disposal of interest in a company*

(b) (i) any transaction between a listed issuer and a person who is not a connected person and the transaction involves a the listed issuer acquiring or disposing of an interest in a company where a substantial shareholder or management shareholder of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller. The Exchange may aggregate the interests of any person and his associates (as defined in rule 20.11(4)) in determining whether together they are a "substantial shareholder" of any company. Where assets (as opposed to businesses) account for 90% or more of such a company's net assets or total assets, the Exchange will treat the acquisition or disposal of such assets as a connected transaction and an acquisition or disposal of an interest in that company; or

Notes: ~~(1)~~ ~~Where 90 per cent or more of such a company's assets consist of a single asset, the Exchange will treat the acquisition or disposal of the single assets as a connected transaction and an acquisition or disposal of an interest in that company.~~

~~(12)~~ ~~A listed issuer itself will not be considered an "associate" of a controller when the listed issuer is acquiring or disposing of an interest in a company of which it is already a substantial shareholder.~~

~~(3)~~ ~~The Exchange may aggregate the interests of any person, its associates and its relatives and their respective associates in determining whether together they are a "substantial shareholder" of any company.~~

~~(42)~~ ~~A controller whose only interest in a company is through its interest in the listed issuer will not be taken to be a "substantial shareholder" of that company.~~

~~(3)~~ ~~This rule does not apply where all the following conditions are met:~~

~~(i) the listed issuer acquires an interest in a company;~~

~~(ii) the substantial shareholder of the company being acquired is a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder) immediately prior to the acquisition;~~

~~(iii) it is proposed that the substantial shareholder will remain a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder) following the acquisition; and~~

~~(iv) following the acquisition, the only reason why he is still a controller is that he remains a director, chief executive or controlling shareholder of the company being acquired (or an associate of such director, chief executive or controlling shareholder), as the case may be. Where he remains a controlling shareholder, there must not be any increase in his interest in such company as a result of the acquisition.~~

(ii) ~~any transaction between a listed issuer and a person who is not a connected person and the transaction involves the~~ a-listed issuer acquiring an interest in a company (or an option to acquire such interest) of which a controller (or ~~an~~ a controller's-associate ~~of a controller~~) is, or will become, a shareholder ~~where the interest being acquired is;~~ ~~or~~

~~Note: This rule only applies where the interest being acquired is either:~~

~~(1A) of a fixed income nature; or~~

~~(2B)~~ shares to be acquired on less favourable terms than those granted to the controller or ~~its~~ associate; ~~or~~

~~(C)~~ shares which are of a different class from those held by, or to be granted to, the controller or its associate.

*Note: This rule does not apply where the acquisition is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of this Chapter.*

*Subscription on favourable terms*

~~(iii)~~ any transaction between a listed issuer and a person who is not a connected person and the transaction involves a controller (or an associate of a controller) subscribing on specially favourable terms shares in a company in which the listed issuer is a shareholder; ~~or~~

*Note: This rule does not apply where the subscription is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of this Chapter.*

*Subscription of different class of shares*

~~(iv)~~ any transaction between a listed issuer and a person who is not a connected person and the transaction involves a controller (or an associate of a controller) subscribing shares in a company in which the listed issuer is a shareholder but which are of a different class from those held by the listed issuer.

*Note: This rule does not apply where the subscription is pursuant to the terms of a subscription of shares in the company by the listed issuer and the controller (or its associate) and the subscription upon such terms has previously been approved by shareholders in accordance with the requirements of this Chapter.*

*~~Indemnity, guarantee or financial assistance~~*

~~(2)~~ a listed issuer granting an indemnity or guarantee or providing financial assistance for the benefit of a connected person;

*~~Financing transactions~~Financial assistance*

~~(23)~~ the provision of financial assistance:

(a) by a listed issuer to:

(i) a connected person; or

- (ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company; or
- (ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company; or

*Note: An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the company which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

(b) to a listed issuer by:

- (i) a connected person ~~to a listed issuer;~~ or
- (ii) a company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(1) to (4) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of such company.

*Note: An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the company which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

~~Financial assistance transactions are governed by rules 20.50 to 20.53;~~

- (3) a listed issuer granting an indemnity or guarantee or providing financial assistance to and/or for the benefit of a connected person or any company falling under rule 20.13(2)(a)(ii).

#### *Granting of security*

- (4) the granting of security over the assets of a listed issuer ~~to a connected person~~ in respect of ~~a loan any financial assistance~~ made to the listed issuer by a connected person or any company falling under rule 20.13(2)(b)(ii);

Financial assistance transactions are governed by rules 20.63 to 20.66;

#### *Options*

- (5) the writing, acceptance, transfer, exercise or non-exercise of an option (as defined in rule 19.~~7259~~) involving a listed issuer and a connected person. Options are governed by rules 20.~~6754~~ to 20.~~7158~~; and

#### *Joint ventures*

- (6) the entering into of any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement by a listed issuer and a connected person (see rule 20.~~109(134)~~(f)). In this case, the size of a listed issuer's financial commitment will be calculated in the manner set out in rule 19.~~152~~(2).

## Definition of continuing connected transaction

20.143 Continuing connected transactions are connected transactions involving the provision of goods or services, which are carried out on a continuing or recurring basis and are expected to extend over a period of time. They are usually transactions in the ordinary and usual course of business of the ~~listed~~ issuer.

20.15 Continuing connected transactions are governed by rules 20.3325 to 20.4130.

### General rules

#### *Categories*

20.146 The categories of connected transactions are:

- (1) connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements (see rule 20.2331);
- (2) connected transactions exempt from the independent shareholders' approval requirements (see rule 20.2432); ~~and~~
- (3) continuing connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements (see rule 20.2533);-
- (4) continuing connected transactions exempt from the independent shareholders' approval requirements (see rule 20.34); and
- (5) connected transactions, including continuing connected transactions, not falling under any of the categories set out in rules 20.16 (1) to (4).

20.17 ~~Connected transactions that do not fall under categories (1) to (3)~~ Transactions falling under rule 20.16(5) above are subject to the reporting, announcement and independent shareholders' approval requirements of this Chapter.

#### *Independent ~~S~~shareholders' approval*

20.185 The Exchange will ~~normally~~ require that connected transactions and continuing connected transactions are made conditional on prior approval by the shareholders of the listed issuer in general meeting. The listed issuer must ensure that the following parties abstain from voting at the relevant meeting on resolution(s) approving the relevant transactions:

- (1) aAny connected person with a material interest in the transaction; and
- (2) any person falling within rules 20.13(1)(b)(i) to (iv) that has a material interest~~ed~~ in the transaction and its associates, must abstain from voting at the meeting

and a statement that he-such persons will not vote must be included in the relevant circular to shareholders. Pursuant to rule 20.52, Any vote at such meeting must ~~shall~~ be taken by poll.

20.19 The listed issuer must comply with the independent shareholders' approval requirements set out in rules 20.4052 to 20.4254 and the contents requirements for the announcement and circular set out in rules 20.4456 and 20.4658 to 20.4860 respectively.

20.20 The circular for the transaction as required in rule 20.3749 ~~should~~ must be despatched to the shareholders of the listed issuer at the same time or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular.

#### *Independent financial advice*

20.21~~16~~ In relation to a connected transaction that is subject to independent shareholders' approval under this Chapter, the listed issuer must comply with the requirements set out in rules 17.47(6) and (7). Where shareholders' approval is required, the Exchange will require that a separate letter from an independent financial adviser acceptable to the Exchange be published in the circular to shareholders, stating whether or not, in the financial adviser's opinion, the transaction is fair and reasonable and in the interests of the shareholders as a whole.

20.22 The separate letter from the independent financial adviser required under rule 17.47(7)(b) must set out:

- (1) the reasons for the opinion;
- (2) the key assumptions made;
- (3) the factors taken into consideration in forming that opinion;
- (4) a statement as to whether the transaction is on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the listed issuer and its shareholders as a whole; and
- (5) advice from the independent financial adviser to the independent board committee and independent shareholders (or, if applicable, to the independent shareholders only) on whether independent shareholders should vote in favour of the transaction.

20.23 The agreement referred to in rule 20.04 will be the basis on which the independent financial adviser will give its opinion to independent shareholders. There must also be a written agreement for all connected and continuing connected transactions. This agreement will be the basis on which the independent financial adviser will give its opinion to independent shareholders. The Exchange will require that both the independent financial adviser and the independent non-executive directors give a recommendation to the shareholders in the circular as to how to vote.

#### *Methods of calculating the consideration ~~or value of a transaction~~*

20.24~~17~~ The methods of calculating the consideration ~~or value of a transaction~~ as set out in rule 19.4215 also apply to connected and continuing connected transactions.

#### *Aggregation of transactions*

20.25~~18~~ The Exchange will ~~normally~~ aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12-month period or are otherwise related. In such cases, the listed issuer must comply with the requirements for the relevant classification of the connected transactions when aggregated. Where a series of acquisitions of assets over a longer period is being aggregated under rule 19.06(6)(b) (i.e. they constitute a reverse takeover), the aggregation period under this rule 20.25 for such acquisitions shall cover 24 rather than 12 months.

20.1926 Factors which the Exchange may take into account in determining whether connected transactions will be aggregated include whether the transactions:

- (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
- (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
- (3) involve the acquisition or disposal of parts of one asset; or
- (4) together lead to substantial involvement by the listed issuer in a business activity which did not previously form a part of the listed issuer's principal business activities.

20.2027 The Exchange may consider aggregating all continuing connected transactions with a single connected person ~~(and its associates)~~ to determine in which category the aggregated transaction falls.

#### *Exceptions*

20.2128 Certain types of connected transactions, described in rule 20.2331, are exempt from all disclosure and independent shareholders' approval requirements. The ~~categories of~~ connected transactions described in rule 20.2432 are not required to be approved by independent shareholders but must in every case be disclosed by way of an announcement announced publicly and must be reported on in the listed issuer's next published annual report and accounts.

20.29 Certain types of continuing connected transactions, described in rule 20.2533, are exempt from all disclosure and independent shareholders' approval requirements. The continuing connected transactions described in rule 20.34 are not required to be approved by independent shareholders but must in every case be disclosed by way of an announcement when the listed issuer enters into the transaction. The transaction must also be reported on in the listed issuer's subsequent published annual report and accounts for the financial years during which the listed issuer undertakes the transaction pursuant to the relevant written agreement.

#### *Exchange discretion*

20.2230 The Exchange reserves the power to specify that an exemption will not apply to a particular transaction. The Exchange may also require, at its discretion, that any other connected transaction be made conditional on independent shareholders' approval and that the same requirements as in rules 20.1518 ~~and to~~ 20.1623 will apply.

**~~Connected transaction categories:~~ Connected transactions  
(other than those involving financial assistance or the granting of options)  
exempt from the reporting, announcement and  
independent shareholders' approval requirements**

20.2331 The following connected transactions will ~~normally~~ be exempt from all the reporting, announcement and independent shareholders' approval requirements contained in this Chapter:

*Intra-group transactions in the ordinary and usual course of business*



- (1) a transaction between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries ~~which is on normal commercial terms and in the ordinary and usual course of business of each of the companies concerned and~~ where no connected person(s) ~~or associate(s) of the listed issuer (other than at the level of its subsidiaries) as defined under rules 20.11(1) to (4), is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of is, or are together, a substantial shareholder in~~ any of the subsidiaries concerned; ~~(See also rules 20.11(5) and 20.11(6));~~

*Note: An interest of a connected person of the listed issuer (other than at the level of its subsidiaries) in the subsidiary which is held through the listed issuer is to be excluded from the 10% referred to in this rule.*

*De minimis transactions*

- (2) a connected transaction on normal commercial terms where ~~the total consideration or value is less than the higher of:~~
- (a) ~~each of the percentage ratios (other than the profits ratio) is less than 0.1%; HK\$1,000,000; or~~
  - (b) ~~each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total consideration is less than HK\$1,000,000; 0.03% of the net tangible assets of the listed issuer.~~

*Note: This exemption does not apply to the issue of new securities by a listed issuer to a connected person, which is governed by rule 20.2331(3).*

*Issue of new securities*

- (3) where a listed issuer issues new securities to a connected person and:
- (a) the connected person receives a pro rata entitlement to securities in its capacity as shareholder; or
  - (b) securities are issued under a share option scheme which complies with Chapter 23 or securities that are issued under a share option scheme in existence before the securities of the listed issuer first commenced dealing on the Exchange for which approval for listing was granted at the time such dealing first commenced; or
  - (c) the connected person is acting as underwriter or sub-underwriter of an issue of securities by the listed issuer, provided that rules 10.31(2) and 10.42(2) have been complied with; or

*Notes: 1 The entity whose issue of securities is being underwritten or sub-underwritten by a connected person must make full disclosure of the terms and conditions of the underwriting in the listing document ~~and also comply with rule 10.31(2).~~*

- 2 *Excess application and the taking up of pro rata entitlements in respect of a rights issue or open offer are not connected transactions. Rules 10.31(1) and 10.42(1) provide that, where securities not subscribed by allottees ~~under provisional letters of allotment or their renounees~~ are to be disposed of by means of excess application forms, such securities must be available for subscription by all shareholders and allocated on a fair basis. An intention to so offer such securities must be fully disclosed ~~prior to~~ in the rights issue or open offer announcement, listing document and any circular.*
- 3 *If a listed issuer which is a holding company acts as underwriter or sub-underwriter of an issue of securities by its ~~listed~~ subsidiary that is also a listed issuer, such transaction is also connected for the listed holding company if the listed subsidiary is a connected person under ~~rules 20.11(5) or 20.11(6)~~. In this case, the listed issuer which is a holding company is subject to connected transaction requirements unless exempted under ~~rules 20.2331(1) or 20.2331(2)~~. The exemption under this rule is applicable to the listed subsidiary but not the listed holding company.*
- (d) securities are issued to a connected person within 14 days after such connected person has executed an agreement to reduce its holding in that class of securities by placing securities to a third person who is not its associate. The securities must be issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing. The number of securities issued to the connected person must not exceed the number of securities placed by it;

- Notes: 1 ~~The securities must be issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing.~~
- 2 ~~The number of securities issued to the connected person must not exceed the number of securities placed by it increase the percentage interest of such person and its associates in the relevant class of securities above that immediately before the placing.~~
- 3 ~~Under rule 17.30, the listed issuer is required to make an announcement containing details of the placing and subscription of shares by the connected person.~~

#### Stock Exchange dealings

- (4) a transaction, falling within rule 20.132(1)(b)(i), which comprises a dealing in securities listed on the Exchange or a recognised stock exchange by a listed issuer in the ordinary and usual course of its business. If the transaction is not carried out on the Exchange or a recognised stock exchange, this exemption will still apply if no consideration passes to or from a connected person. This exemption will not apply if the purpose is to confer a direct or indirect benefit upon a controller(s) or associate of a controller who is also a substantial shareholder in the relevant company;

- Notes: 1 ~~The dealing must be carried out on the Exchange or a recognised stock exchange. If the transaction is not carried out on the Exchange or a recognized stock exchange, the exemption will still apply if no consideration passes to or from a connected person.~~

- 2 ~~This exemption will not apply if the purpose is to confer a direct or indirect benefit upon a controller(s) or associate of a controller who is also a substantial shareholder in the relevant company.~~

*Purchase of own securities*

- (5) any purchase by a listed issuer of its own securities from a connected person on the Exchange or a recognised stock exchange or under a general offer made in accordance with the ~~Share Repurchase Code on Share Repurchases. Where the purchase is on the Exchange or a recognised stock exchange, this exemption will not apply if the connected person knowingly sells its securities to the listed issuer;~~

~~Note: Where the purchase is on the Exchange or a recognised stock exchange, the exemption will not apply if the connected person sells its securities to the issuer.~~

*Directors' service contracts*

- (6) the entering into of a service contract by a director of the listed issuer with the listed issuer;

~~Note: A director's service contract to which rule 17.90 applies is subject to independent shareholders' approval under that provision;~~

~~Transactions involving subsidiaries~~

- ~~(7) transactions between wholly-owned subsidiaries of the listed issuer or between wholly-owned subsidiaries of the listed issuer's non-wholly-owned subsidiaries;~~

*Consumer goods or consumer services*

- ~~(78) the acquisition as consumer or realisation in the ordinary and usual course of business of consumer goods or consumer services by a listed issuer from or to a connected person of the listed issuer on normal commercial terms, and in the ordinary and usual course of business of the seller of the consumer Such goods and/or services; and~~

~~(a) must be of a type ordinarily supplied for private use or consumption;~~

~~(b) must be for the acquirer's own consumption or use, and not be processed into products of the acquirer or for resale or otherwise for the purpose of or in connection with any business or contemplated business of the acquirer (whether for consideration or otherwise);~~

~~Note: The consumer goods or services must be consumed by the acquirer for its own consumption and not used for further processing and/or resale by the acquirer. Examples include utilities provided by a listed issuer to a connected person, meals consumed by a connected person at a restaurant owned by the listed issuer and the acquisition of groceries for its own use by a connected person from a listed issuer involved in the retailing of groceries.~~

~~(c) must be consumed or used by the acquirer in the same state as when they were acquired;~~

- (d) must be of a total consideration or value that is or represents less than 1% of the total revenue or total purchases, as the case may be, of the listed issuer as shown in its latest published audited accounts or, where consolidated accounts have been prepared, its latest published audited consolidated accounts; and
- (e) the transactions concerned must be on terms no more favourable to the connected person than those available to independent third parties or no less favourable to the listed issuer than those available from independent third parties (as the case may be); and

Note: Listed issuers are encouraged to consult with the Exchange at an early stage to determine whether a transaction falls within the scope of this rule.

#### *Sharing of administrative services*

- (89) the sharing of administrative services between a listed issuer and a connected person on a cost basis. The cost of the services must be identifiable and allocated to the parties involved on a fair and equitable basis. Examples include company secretarial services, legal services and staff training services.

#### **Connected transactions (other than those involving financial assistance or the granting of options) exempt from the **independent** shareholders' approval requirements**

20.2432 A connected transaction on normal commercial terms ~~where with a connected person where the total consideration or value is less than the higher of:~~

- (1a) each of the percentage ratios (other than the profits ratio) is less than 2.5% HK\$10,000,000;  
or
- (2b) each of the percentage ratios (other than the profits ratio) is equal to or more than 2.5% but less than 25% and the total consideration is less than HK\$10,000,000~~3% of the net tangible assets of the listed issuer;~~

is ~~normally~~ only subject to the reporting and announcement requirements set out in rules 20.3445 to 20.47 and 20.35 respectively ~~and is exempt from the independent shareholders' approval requirements of this Chapter.~~

*Note: This exemption does not apply to the issue of new securities by a listed issuer to a connected person, which is governed by rule 20.2331(3).*

#### **Continuing connected transactions categories: Exempt continuing connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements**

20.2533 The following continuing connected transactions will ~~normally~~ be exempt from the reporting, announcement and independent shareholders' approval requirements of this Chapter:

#### *Consumer goods or consumer services*

- (1) the provision of consumer goods or consumer services as set out in rule 20.2331(78);

### Sharing of administrative services

- (2) the sharing of administrative services as set out in rule 20.2331(89); and

### De minimis transactions

- (3) a continuing connected transaction on normal commercial terms where ~~the annual total consideration or value of the transaction is less than the higher of:~~
- (a) each of the percentage ratios (other than the profits ratio) is on an annual basis less than 0.1% HK\$1,000,000; or
  - (b) each of the percentage ratios (other than the profits ratio) is on an annual basis equal to or more than 0.1% but less than 2.5% and the annual consideration is less than HK\$1,000,000.0.03% of the net tangible assets of the listed issuer.

### **Continuing connected transactions exempt from independent shareholders' approval requirements**

20.34 A continuing connected transaction on normal commercial terms where:

- (1) each of the percentage ratios (other than the profits ratio) is on an annual basis less than 2.5%; or
- (2) each of the percentage ratios (other than the profits ratio) is on an annual basis equal to or more than 2.5% but less than 25% and the annual consideration is less than HK\$10,000,000

is only subject to the reporting and announcement requirements set out in rules 20.45 to 20.47 and is exempt from the independent shareholders' approval requirements of this Chapter.

### **Non-exempt continuing connected transactions**

20.2635 ~~Listed~~ When an issuer is proposing to enter into a continuing connected transactions not falling under rule 20.2533, it must:

- (1) in respect of each connected transaction, enter into written agreement(s) with the connected person. The agreement must set out the basis of the calculation of the payments to be made. The period for the agreement must be fixed and reflect normal commercial terms and, except in special circumstances, must not exceed 3 years. Special circumstances are limited to cases where the nature of the transaction requires the contract to be of a duration longer than 3 years. In such cases, the independent financial adviser will need to explain why a longer period for the agreement is required and to confirm that it is normal business practice for contracts of this type to be of such duration;

Note: Examples of bases of calculation of the payments to be made include the sharing of costs, price per unit for on-going purchases, annual rental for a lease, and percentage of total construction cost for a management fee.

Notes: 1 The agreement must set out the basis of the calculation of the payments to be made. Examples of such bases include the sharing of costs, price per unit for on-going purchases, annual rental for a lease, percentage of total construction cost for a management fee, and similar bases.

~~2 The period for the agreement must be fixed and reflect normal commercial terms and, except in special circumstances, should not exceed 3 years. Special circumstances are limited to cases where the nature of the transaction requires the contract to be of a longer duration than 3 years. In such cases, the independent financial adviser will need to explain why a longer period for the agreement is required and to confirm that it is normal business practice for the contracts of this type to be of such duration.~~

- (2) in respect of each connected transaction, set a maximum aggregate annual value ("cap"), the basis of which must be disclosed. This annual cap must be expressed in terms of monetary value rather than a percentage of the issuer's annual revenue as derived from its latest published audited accounts or, where consolidated accounts have been prepared, its latest published audited consolidated accounts. The cap must be determined by reference to previous transactions and figures which are readily ascertainable from published information of the issuer. If there are no previous transactions, the cap must be made based on reasonable assumptions, details of which must be disclosed;

Note: Reference to annual revenue and other bases may help to determine the monetary value of the cap.

~~which must be acceptable to the Exchange;~~

~~Notes: 1 This annual cap should be expressed in terms of monetary value rather than a percentage of the listed issuer's annual turnover. However, reference to annual turnover and other bases may help to determine the monetary value of the cap.~~

~~2 The cap should be determined by reference to previous transactions. If there are no previous transactions the cap must be made based on assumptions acceptable to the Exchange.~~

- (3) comply with the reporting and announcement requirements described in rules ~~20.3445 to 20.47 and 20.35 respectively~~; and
- (4) comply with the independent shareholders' approval requirements described in rule ~~20.3648 for transactions not falling under rule 20.34~~.

~~20.36 If the cap in rule 20.26(2) is exceeded, the listed issuer must re-comply with rules 20.2635(3) and (4) in the following circumstances:—~~

- ~~(1) if the cap in rule 20.35(2) is exceeded; or~~
- ~~(2) when the relevant agreement is renewed or there is a material change to the terms of the agreement.~~

#### *Annual review of continuing connected transactions*

~~20.2737~~ Each year the independent non-executive directors of the listed issuer must review the continuing connected transactions and confirm in the annual report and accounts that the transactions have been entered into:

- (1) in the ordinary and usual course of business of the listed issuer;

- (2) either on normal commercial terms or, if there are not sufficient comparable transactions to judge whether they are on normal commercial terms, on terms no less favourable to the listed issuer than terms available to or from (as appropriate) independent third parties; and
- (3) in accordance with the relevant agreement governing them on terms that are fair and reasonable and in the interests of the shareholders of the listed issuer as a whole.

~~20.2838~~ Each year the auditors must provide a letter to the listed issuer's board of directors (with a copy provided to the Exchange at least 10 business days prior to bulk printing of the listed issuer's annual report), confirming that the continuing connected transactions:

- (1) have received the approval of the listed issuer's board of directors;
- (2) are in accordance with the pricing policies of the listed issuer if the transactions involve provision of goods or services by the listed issuer;
- (3) have been entered into in accordance with the relevant agreement governing the transactions; and
- (4) have not exceeded the cap ~~agreed with the Exchange~~disclosed in previous announcement(s).

*Note: This letter must be provided to the Exchange at least 10 business days prior to the bulk printing of the listed issuer's annual report.*

~~20.39~~ The listed issuer shall allow, and shall procure that and the counterparty to the continuing connected transactions ~~must undertake to the Exchange to shall~~ allow, the auditors sufficient access to their records for the purpose of reporting on the transactions as set out in this rule. The listed issuer's board of directors must state in the annual report whether its auditors have confirmed the matters stated in rule 20.38.

~~20.2940~~ A listed issuer shall promptly notify the Exchange and publish an announcement if it knows or has reason to believe that the independent non-executive directors and/or the auditors will not be able to confirm the matters set out in rules ~~20.2737~~ and/or ~~20.2838~~ respectively. The listed issuer may have to re-comply with rules ~~20.2635~~(3) and (4) and any other conditions the Exchange considers appropriate.

~~20.41~~ Where a listed issuer has entered into an agreement involving continuing transactions and such transactions subsequently become continuing connected transactions for whatever reason (e.g. due to a party becoming a director of the listed issuer), the listed issuer must, immediately upon it becoming aware of this fact, comply with all applicable reporting and disclosure requirements of this Chapter in respect of all such continuing connected transactions. Upon any variation or renewal of the agreement, the listed issuer must comply in full with all applicable reporting, disclosure and independent shareholders' approval requirements of this Chapter in respect of all continuing connected transactions effected after such variation or renewal.

#### **Subject to shareholders' approval every year**

~~20.30~~ In addition to complying with rules ~~20.26 to 20.28~~, where the cap in any year is to be greater than the higher of HK\$10,000,000 or 3% of the net tangible assets of the listed issuer, the transaction(s) and the cap are subject to review and re-approval by independent shareholders at the annual general meeting following the initial approval and at each subsequent annual general meeting so long as the transaction(s) continue(s). The independent non-executive directors will be required to opine in the annual report whether or not the listed issuer should continue with the agreement(s) for the transaction(s).

## Waivers

### *Exchange discretion*

20.342 The Exchange may consider granting waivers from all or any of the requirements of this Chapter. In particular, the Exchange will consider granting waivers for the following transactions:

- (1) a transaction which is connected only because of the interest of a non-executive director of the listed issuer where the Exchange is satisfied that:
  - (a) such director does not control the listed issuer; and
  - (b) his principal business interest is not the listed issuer;

Where a waiver is given from the requirement to obtain independent shareholders' approval pursuant to this rule 20.42(1), the Exchange may require a letter from the listed issuer's auditor or a financial adviser acceptable to the Exchange stating that in their opinion the transaction is fair and reasonable so far as the shareholders of the listed issuer are concerned. The Exchange will normally also require that:

- (i) an announcement containing brief details of the transaction be published as soon as possible thereafter; and
    - (ii) details of the transaction be included in the listed issuer's next published annual report and accounts;
- (2) where the listed issuer guarantees (or gives an indemnity in respect of) the obligations of (i) a non wholly-owned subsidiary described in rule 20.11(5) or any of its subsidiaries described in rule 20.11(6) or (ii) a company falling under rule 20.13(2)(a)(ii) in which both the listed issuer and a connected person are shareholders, to a third party creditor and the guarantee or indemnity is joint and several, if:
  - (a) the guarantee is required in connection with a government or public sector contract awarded by tender;
  - (b) each of the shareholders of the non wholly-owned subsidiary or company has given a similar joint and several guarantee or indemnity to the third party; and
  - (c) each of the other shareholders of the non wholly-owned subsidiary or company has agreed to indemnify the listed issuer for a percentage of the liability guaranteed or indemnified at least in proportion to its percentage equity interest in the subsidiary or company and the Exchange is satisfied that such shareholder indemnity is of sufficient substance; or
- (3) upon an application by a new applicant, specific continuing connected transactions. Such waivers will be from the announcement and independent shareholders' approval requirements of this Chapter. the Exchange may grant a new listing applicant a waiver from the announcement and shareholders' approval requirements of this Chapter upon listing. Such waivers shall be in respect of specific continuing connected transactions only. General waivers shall will not be granted. The applicant's Sponsor is required to state in the listing document whether the continuing connected transactions for which the waivers are sought are in the ordinary and usual course of business of the listed issuer, on normal commercial terms, are fair and reasonable and in the interests of the shareholders as a whole. In addition, the listed issuer is required to comply with rules 20.2635(1), 20.2635(2), 20.2736, 20.2837, 20.2938, 20.39 and 20.3040.



### Shareholders' meeting waiver

20.3243 Where independent shareholders' approval of a connected transaction is required, such approval shall be given by a majority vote at a general meeting of shareholders of the listed issuer unless the following conditions are met, in which case a written shareholders' approval may be accepted in lieu of holding a general meeting ~~the Exchange will consider waiving the requirement to hold a shareholders' meeting if:—~~

- (1) ~~no all~~ shareholders of the listed issuer ~~is required to abstain from voting if the listed issuer were to convene~~ have the right to attend and vote at a general meeting for the approval of ~~to consider~~ the connected transaction; and
- (2) ~~the written shareholders' such~~ approval ~~has been obtained from~~ can be given in writing by a shareholder or closely allied group of shareholders who (together) hold more than 50% in nominal value of the securities giving the right to attend and vote at ~~that a~~ general meeting to approve the connected transaction.

Notes: 1 *The Exchange will take into account the factors set out in rule 19.450 in determining whether a group of shareholders constitutes a "closely allied group of shareholders."*

2 *Where a listed issuer discloses price sensitive information to any shareholder in confidence to solicit the written independent shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.*

### Waiver conditions

20.4433 In granting any waiver, the Exchange may impose conditions whenever it considers appropriate.

### Reporting requirements

20.4534 The following details of the connected transaction must be included in the listed issuer's next published annual report and accounts:

- (1) the transaction date;
- (2) the parties to the transaction and a description of their connected relationship;
- (3) a brief description of the transaction and its purpose;
- (4) the total consideration and terms (including, where relevant, interest rates, length of repayment and security); and
- (5) the nature and extent of the connected person's interest in the transaction.

20.46 An issuer which has entered into a continuing connected transaction not falling under rule 20.33, must disclose the information set out in rule 20.45 in its subsequent published annual report and accounts for the financial years during which the issuer undertakes the transaction under the written agreement entered into pursuant to rule 20.35(1).

## Announcement requirements

20.3547 ~~Listed i~~ssuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to announcement requirements ~~or a continuing connected transaction~~ must:—

- (1) ~~notify inform~~ the Exchange ~~at an early stage as soon as possible after the terms of the transaction have been agreed~~;

*Note: Under rule 17.10, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.*

- (2) ~~deliver send~~ to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must submit the announcement to the Exchange to be published on the GEM website before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day; and

*Notes: 1 Pursuant to rule 17.57, the listed issuer must forward to the Exchange 10 copies of such announcement as cleared by the Exchange at the same time as it is issued.*

*2 Where the connected transaction is also a share transaction, major transaction, very substantial disposal, very substantial acquisition, or a reverse takeover, rule 19.3537 (requirement for short suspension of dealings) also applies where the required announcement has not been published before trading begins on the next business day.*

- (3) comply with rules ~~20.3445 or 20.46~~ (the reporting requirements).

### **Independent sShareholders' approval requirements**

20.3648 Listed issuers proposing to enter into a connected transaction or a continuing connected transaction which is subject to independent shareholders' approval must:

- (1) comply with rules ~~20.3445 or 20.46~~ (the reporting requirements) and 20.3547 (the announcement requirements); and
- (2) comply with the requirements set out in rules 20.3749 to 20.4254, (the circular and independent shareholders' approval requirements).

#### *Shareholders' circular*

20.3749 The listed issuer must also send a circular, which complies with rules 20.4658 to 20.4962, to the shareholders of its listed securities and arrange for its publication ~~it~~ in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement, unless the Exchange directs otherwise. A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement) on the transaction to be considered at a general meeting not less than 14 days before the date of the relevant general meeting. The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 14-day period requirement under this rule by the chairman or, if that is not permitted by the issuer's constitutional documents, by resolution to that effect (see also 17.47B).

*Note: The listed issuer must assess the scale of revisions or updating required and materiality of the new information, revisions or updating required that has come to its attention after publication of the circular, when deciding whether to issue a revised or supplementary circular or publish an announcement. Where the revisions or updating required are significant, the listed issuer must consider carefully whether it would be better to publish a revised or supplementary circular rather than provide particulars of the changes in an announcement. The listed issuer should not overwhelm or confuse investors with lengthy announcements describing changes to information contained in the original circular.*

20.3850 Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments.

20.3951 The circular must (subject to rule 17.59) be in English and Chinese.

#### *Independent sShareholders' approval*

20.4052 The transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders at the time when the listed issuer enters into the transaction. Any vote taken at a meeting held to seek approval of a connected transaction or a continuing connected transaction or associated cap must be taken by poll. The listed issuer shall announce the results of the poll in the manner prescribed under rule 17.47(5).

20.4153 The Exchange will consider waiving the requirement to hold a shareholders' meeting and permitting shareholders' approval to be given in writing in the circumstances set out in rule 20.3243.

20.4254 The Exchange will require any connected person with a material interest in a proposed transaction, and any shareholder with a material interest in such transaction and its associate(s), who has/have an interest in the transaction to abstain from voting at the relevant general meeting on the relevant resolution(s). ~~Any vote at a shareholder meeting held to approve a connected transaction shall be taken by poll.~~

#### **Board minutes**

20.4355 For a connected transaction not falling under rule 20.31 or a continuing connected transaction not falling under rule 20.33, listed issuers must provide the Exchange with a copy of the minutes of the board meeting approving the transaction and, in the case of a continuing connected transaction, the cap as soon as possible after the meeting. The minutes ~~must should note~~ clearly reflect:

- (1) whether or not the directors consider the transaction to be is-on normal commercial terms and in the ordinary and usual course of business of the listed issuer; ~~and~~
- (2) the views of the independent non-executive directors; ~~and~~
- (3) whether any directors have a material interest in the transaction and have abstained from voting at the board meeting.

## Contents of announcements

20.4456 The announcement for connected transactions and continuing connected transactions must contain at least the following:

- (1) the information set out in rules 19.58 to 19.6048 (contents of announcements – share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition and reverse takeover) and the views of the independent non-executive directors on the transaction if no independent shareholders' approval voting is required to approve for the transaction;
- (2) a description of the connected relationship between the parties to the transaction and the nature and extent of the connected person's interest in the transaction~~details of the relevant connection and~~;
- (3) a statement that the transaction is subject to independent shareholders' approval, if applicable;
- (43) in the case of continuing connected transactions, the amount of the cap for the purpose of rule 20.35(2); and
- (54) where the transaction involves the purchase of assets by the listed issuer, the original purchase cost of the asset to the connected person;-
- (6) where appropriate, the original acquisition cost of the assets which will be sold to connected persons where the listed issuer has held such assets for a period of 12 months or less;
- (7) where the transaction is a connected transaction approved or to be approved by way of written independent shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to rule 20.43, details of the shareholder or the closely allied group of shareholders (as the case may be), including the name of the shareholder(s), the number of securities held by each such shareholder and the relationship between the shareholders; and
- (8) where applicable, the information required in rule 19.62 if the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries.

## Guaranteed profits or net tangible assets

20.4557 Where a listed issuer acquires a company or business from a connected person, and the profits or net tangible assets or other matters regarding the financial performance of that company or business are guaranteed by the connected person, the listed issuer must (unless expressly exempted by the Exchange) make an announcement if the profits or net tangible assets or other matters regarding the financial performance are less than the amount guaranteed. Any such announcement must include details of:

- (1) the shortfall and the adjustment, if any, of the consideration for the transaction;
- (2) whether the connected person has fulfilled its obligations under the guarantee;

- (3) whether or not the listed issuer has exercised any option to sell the company or business back to the connected person or other rights it held under the terms of the guarantee, and the reasons for its decision; and
- (4) the opinion of the independent non-executive directors as to whether:
  - (a) the connected person fulfilled its obligations; and
  - (b) the decision to exercise or not to exercise any option to sell the company or business back to the connected person or other rights under the guarantee is fair and reasonable and in the interests of the shareholders as a whole.

*Note: An option under the terms of the guarantee is also subject to the requirements of rules 20.5467 to 20.5871.*

### **Contents of circular**

#### *General principles*

20.4658 All circulars sent by a listed issuer to holders of its listed securities must:

- (1) provide a clear and adequate explanation of its subject matter and demonstrate the advantages and disadvantages of the transaction for the listed issuer;
- (2) where practicable, include an arithmetical evaluation in the circular; and
- (3) if where independent shareholders' approval voting is required, contain:
  - (a) all information necessary to allow the holders of securities to make a properly informed decision;
  - (b) a heading drawing attention to the importance of the document and advising holders of securities, who are in any doubt as to what action to take to consult appropriate independent advisers;
  - (c) a separate letter from the independent board committee, if applicable (see rule 20.21)~~a statement as to whether, in the independent non-executive directors' opinion, the transaction is fair and reasonable and in the interests of the shareholders as a whole;~~ and
  - (d) a separate letter from the independent financial adviser (see rule 20.22),~~a recommendation from the independent non-executive directors to the independent shareholders as to how to vote;~~ and

*Note: ~~If all the independent non-executive directors have a material interest in the relevant transactions or arrangements, no independent board committee can be formed. In that event, the independent financial adviser shall make its recommendation to the independent shareholders only in its letter set out in the circular to shareholders. If there are no independent non-executive directors who can advise the independent shareholders on the voting action required, the independent financial adviser should so advise the independent shareholders.~~*

- (4) ~~must contain a separate letter from an independent financial adviser acceptable to the Exchange stating whether, in the financial adviser's opinion, the transaction is fair and reasonable and in the interests of the shareholders as a whole. If voting is required, the independent financial adviser must make a recommendation to the independent non-executive directors as to how the independent shareholders should vote.~~

*Specific disclosure in circular*

20.4759 The circular must contain at least:

- (1) a prominent and legible disclaimer on the front cover in the form set out in rule 2.19;
- (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;
- (3) full details of the transaction including:
  - (a) the date of the transaction and the identity and activities of the parties to it the transaction including the identity and activities of the ultimate beneficial owner of the disposing or acquiring party;
  - (b) a general description of the nature and the value (being the book value and valuation, if any) of any assets concerned. If any of the assets are securities, the circular ~~should~~ must include the name of the company in which the shares are or were held and a general description of its activities;
  - (c) a description of the terms and conditions of the consideration and a statement of the total consideration, explaining how this is being or is to be satisfied;
  - (d) the name of the connected person concerned ~~(and associate, if applicable);~~
  - (e) a statement of the nature of the connected person an associate's relationship with any controller and the name and office held by that controller; and
  - (f) the nature and extent of the interest of the connected person in the transaction;
- (4) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:
  - 1 — name
  - 2 — directors' responsibility
  - 5 — expert statements
  - 8A — procedures for demanding a poll by shareholders
  - 10 — securities to be issued (if applicable)
  - 29(2) — requirements if there is a profit forecast (see rule 19.61 for the definition of "profit forecast")
  - 32 — no material adverse change
  - ~~38 — directors' interests~~
  - 39 — directors' service contracts
  - 40 — directors' interests in assets
  - 42(2)(a) & (c) — documents on display
- (5) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34, 38 and 38A of Appendix 1, Part B;

- (65) where independent shareholders' approval is required, a statement that ~~the any~~ connected person with a material interest in the transaction, and any shareholder with a material interest in the transaction and its associates, will not vote and the information required under rule 2.28;
- (76) an independent valuation if the primary significance of the asset being acquired or disposed of is its capital value (for example, real property);
- (87) where independent shareholders' approval is required, a letter from the independent board committee as required under rule 20.58(3)(c) and its recommendation to the independent shareholders from the independent non-executive directors as to how to vote as required under rule 20.21;
- (98) a copy of the independent financial adviser's opinion letter referred to in rule 20.4622;- ~~which must contain:~~
- (a) ~~the reasons for the opinion;~~
  - (b) ~~the key assumptions made;~~
  - (c) ~~the factors taken into consideration in forming the opinion;~~
  - (d) ~~a statement as to whether the transaction is on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the shareholders; and~~
  - (e) ~~where independent shareholders' approval is required, advice from the independent financial adviser to the independent non-executive directors on whether they should recommend that independent shareholders vote in favour of the transaction;~~
- (109) in the case of a continuing connected transaction, details of the cap for the purpose of rule 20.35(2) and an explanation of how and the basis upon which it was calculated;
- (110) where a listed issuer acquires a company or business from a connected person who provides a guarantee of the profits or net tangible assets or other matters regarding the financial performance of that company or business,
- (a) statements that:
    - (i) the listed issuer will ~~make-publish~~ an announcement if the profits or net tangible assets or other matters regarding the financial performance are less than the amount guaranteed and will include details in its next published annual report and accounts; and
    - (ii) the independent non-executive directors of the listed issuer will provide an opinion in the listed issuer's next published annual report and accounts as to whether the connected person has fulfilled its obligations under the guarantee; and
  - (b) details of any option granted to the listed issuer to sell the company or business back to the connected person and/or other rights granted to the listed issuer;

*Note: An option under the terms of the guarantee is also subject to the requirements of rules 20.5467 to 20.5871.*

- (12~~4~~) information as to the competing interests (if any) of the Sponsor and its directors, employees and associates (as referred to in rule 6.36) and all directors ~~and management shareholders~~ of the issuer and their respective associates (as ~~referred to in~~ would be required to be disclosed under rule 11.04 ~~if each of them were a controlling shareholder~~);
- (13) where appropriate, details of any guarantee and/or other security given and required as part of the transaction;
- (14) reasons for entering into the transaction and the benefits which are expected to accrue to the listed issuer as a result of the transaction;
- (15) where the transaction involves the purchase of assets by the listed issuer, the original purchase cost of the asset to the connected person;
- (16) where appropriate, the original acquisition cost of the assets which will be sold to connected persons where the listed issuer has held such assets for a period of 12 months or less;
- (17) if the transaction involves a disposal of an interest in a subsidiary by a listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary of the listed issuer following the transaction;
- (18) (a) where appropriate, the business valuation report on a business or company being acquired or disposed of and/or traffic study report in respect of any infrastructure project or infrastructure or project company. Such report(s) must clearly set out:
- (i) all fundamental underlying assumptions including discount rate or growth rate used; and
  - (ii) a sensitivity analysis based on the various discount rates and growth rates;
- (b) where any business valuation is based on a profit forecast, the accounting policies and calculations for the underlying forecasts must be examined and reported on by the auditors or reporting accountants. Any financial adviser mentioned in the circular must also report on the underlying forecasts; and
- (12~~19~~) any additional information requested by the Exchange.

**Additional information to be included in circular  
where connected transaction is also a Chapter 19 transaction**

- 20.4860 Where a connected transaction is also a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the circular must also contain the information required by Chapter 19 for that type of transaction.
- 20.4961 Where a notice of meeting to approve any proposed transaction has been sent to shareholders and subsequently the transaction becomes a connected transaction, the issuer shall publish a further announcement. The issuer must ensure that the Exchange will require the following parties abstain from voting at that meeting on resolution(s) approving the transaction:
- (1) any~~the~~ connected person with a material interest in the transaction; and
  - (2) any shareholder with a material interest in the transaction and its associates to abstain from voting at that meeting.



~~20.62~~ The listed issuer shall ~~A further announcement and~~ also send a supplementary circular ~~to its shareholders should be made to inform shareholders that the connected person will not vote. The Exchange reserves the right to require~~ Both the announcement and the circular shall state that the transaction has become a connected transaction and identify the parties that are required to abstain from voting. The listed issuer must also include in the circular ~~to include~~ the opinion of the independent ~~board committee non-executive directors~~ and an independent ~~financial adviser~~ financial adviser (in the form of a separate letter) on the transaction and ~~any the~~ other information ~~set out mentioned~~ in rules 20.4658 and 20.4759.

## Financial assistance

### General

~~20.5063~~ Any transaction involving a connected person, ~~or any company falling under rule 20.13(2)(a)(ii) or 20.13(2)(b)(ii),~~ and financial assistance which is not exempted under rules 20.5265 or 20.5366 is subject to the reporting, announcement and independent shareholders' approval requirements of this Chapter. ~~Such transactions include, but are not limited to, the grant of financial assistance by a listed issuer which is not in the ordinary and usual course of business and not on normal commercial terms (or better to the listed issuer):~~

#### *Treatment of attributable interest in calculating proportionate financial assistance*

~~20.5164~~ In calculating proportionate financial assistance to ~~any company falling under rule 20.13(2)(a)(ii) a company in which both the listed issuer and a connected person are shareholders,~~ the Exchange will not consider the listed issuer's attributable interest in the company receiving the financial assistance. For example, where a principal purpose or effect of the transaction is for ~~the granting by~~ a non-wholly-owned subsidiary of the listed issuer ~~of to grant~~ financial assistance on normal commercial terms (or better to the listed issuer) to a company ~~falling under rule 20.13(2)(a)(ii) in which another non-wholly-owned subsidiary of the listed issuer and a connected person are both shareholders,~~ the Exchange will calculate the proportionate financial assistance from the listed issuer's point of view by reference to the equity interest of the group company which directly holds the interest in the company receiving the financial assistance.

#### *Exempt from reporting, announcement and independent shareholders' approval requirements*

~~20.5265~~ The following connected transactions are exempt from the reporting, announcement and independent shareholders' approval requirements of this Chapter:

- ~~(1) financial assistance provided by a listed issuer in its ordinary and usual course of business for the benefit of a connected person, or any company falling under rule 20.13(2)(a)(ii), on normal commercial terms (or better to the listed issuer) a company in which both the listed issuer and a connected person are shareholders;~~
- ~~(2) financial assistance provided by a listed issuer for the benefit of a connected person:
  - ~~(a) in the ordinary and usual course of business of the listed issuer but not on normal commercial terms (or better to the listed issuer); or~~
    - ~~(i) on normal commercial terms (or better to the listed issuer); or~~
    - ~~(iii) not on normal commercial terms (or better to the listed issuer) but where the total value of the assistance plus any preferential benefit to the connected person or the company is less than the higher of either HK\$1,000,000 or 0.03% of the listed issuer's net tangible asset; or~~~~

- (b) not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer),

~~and where (i) each of the percentage ratios (other than the profits ratio) is less than 0.1% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total value of the assistance plus any preferential benefit to the connected person is less than HK\$1,000,000; the total value of the assistance plus any preferential benefit to the connected person or the company is less than the higher of either HK\$1,000,000 or 0.03% of the listed issuer's net tangible asset value; or~~

- (3) ~~financial assistance provided by a listed issuer for the benefit of any company falling under rule 20.13(2)(a)(ii):~~

~~(a) in the ordinary and usual course of business of the listed issuer but not on normal commercial terms and where (i) each of the percentage ratios (other than the profits ratio) is less than 0.1% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total value of the assistance plus any preferential benefit to the relevant company is less than HK\$1,000,000; or~~

~~(b) not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer), provided that:~~

~~(i) the assistance being provided is in proportion to the listed issuer's equity interest in the company. In addition, any guarantees given by the listed issuer must be on a several (and not a joint and several) basis; or~~

~~(ii) the assistance being provided is not in proportion to the listed issuer's equity interest in the company or the guarantees given by the listed issuer are not on a several basis (whether on a joint and several basis, or otherwise), and (A) each of the percentage ratios (other than the profits ratio) is less than 0.1% or (B) each of the percentage ratios (other than the profits ratio) is equal to or more than 0.1% but less than 2.5% and the total value of the assistance plus any preferential benefit to the relevant company is less than HK\$1,000,000; or~~

- ~~(42) financial assistance provided by a connected person, or any company falling under rule 20.13(2)(b)(ii), for the benefit of a listed issuer on normal commercial terms (or better to the listed issuer) where no security over the assets of the listed issuer is granted to the connected person in respect of the financial assistance.~~

*Exempt from independent shareholders' approval requirements*

20.5366 The following connected transactions are normally only subject to the reporting and announcement requirements set out in rules 20.3445 and 20.46 and rule 20.3547 respectively:

- (1) financial assistance provided by the listed issuer in the ordinary and usual course of business ~~to for the benefit of~~ a connected person, or ~~any company falling under rule 20.13(2)(a)(ii)~~ a company in which both the listed issuer and a connected person are ~~shareholders~~, not on normal commercial terms (or better to the listed issuer), where ~~(i) each of the percentage ratios (other than the profits ratio) is less than 2.5% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 2.5% but less than 25% and the total value of the assistance plus any preferential benefit to the connected person or the relevant company is less than HK\$10,000,000~~ the total value of the assistance plus any preferential benefit to the connected person or the relevant company is less than the higher of either ~~HK\$10,000,000 or 3%~~ of the value of the net tangible assets of the listed issuer; or

(2) financial assistance provided by the listed issuer not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer) ~~to~~for the benefit of:

(a) a connected person ~~where the total value of the assistance plus any preferential benefit to the connected person is less than the higher of either HK\$10,000,000 or 3% of the value of the net tangible assets of the listed issuer~~; or

(b) ~~any company falling under rule 20.13(2)(a)(ii) if the assistance being provided is not in proportion to the listed issuer's equity interest in the relevant company or any guarantees given by the listed issuer are not on a several basis, a company in which both the listed issuer and a connected person are shareholders, provided that:~~

~~(i) the assistance being provided is in proportion to the listed issuer's equity interest in the company. In addition, any guarantees given by the listed issuer must be on a several (and not a joint and several) basis; or~~

~~*Note: Where the total value of the assistance plus any preferential benefit to the company is less than 15% of the value of the net tangible assets of the listed issuer, the transaction is only subject to the reporting requirements prescribed in rule 20.34.*~~

~~(iii) if the assistance being provided is not in proportion to the listed issuer's equity interest in the company or the guarantees given by the listed issuer are not on a several basis,~~

~~and (i) each of the percentage ratios (other than the profits ratio) is less than 2.5% or (ii) each of the percentage ratios (other than the profits ratio) is equal to or more than 2.5% but less than 25% and the total value of the assistance plus any preferential benefit to the connected person or the relevant company is less than HK\$10,000,000. the total value of the assistance plus any preferential benefit to the company is less than the higher of either HK\$10,000,000 or 3% of the value of the net tangible assets of the listed issuer.~~

## Options

### *Definitions*

~~20.5467~~ The definitions set out in rule ~~19.7259~~ also apply to this Chapter.

~~20.5568~~ The grant, acquisition, transfer, or exercise of an option involving a listed issuer and its connected person will be treated as a connected transaction and classified by reference to the percentage ratios (other than the profits ratio). The termination of an option by a listed issuer will be treated as a transaction and classified by reference to the percentage ratio (other than the profits ratio), unless the termination is in accordance with the terms of the original agreement entered into by the listed issuer and does not involve payment of any amounts by way of penalty, damages or other compensation. The ~~connected transaction will be classified pursuant to the de minimis ratios under rules 20.2331(2) or and 20.2432 apply to such connected transactions.~~ The listed issuer must comply with the connected transaction requirements of the relevant classification and other specific requirements of rules ~~20.5669~~ to ~~20.5871~~.

20.5669 The following ~~applies-apply~~ to an option involving a listed issuer and a connected person, the exercise of which is not at the listed issuer's discretion:

- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. ~~For the purpose of the percentage ratios, the consideration (including includes the premium and the exercise price of the option) and the value of the underlying assets will be used for the purpose of classification;~~
- (2) on the exercise ~~or transfer of the~~such option, such exercise ~~or transfer~~ must be announced pursuant to the requirements of Chapter 16 as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter; and
- (3) if the grant of the option has previously been announced pursuant to the requirements of this Chapter, the listed issuer must as soon as reasonably practicable upon:
  - (a) the expiry of the option;
  - (b) the option holder notifying the grantor that the option will not be exercised; or
  - (c) the transfer by the option holder of the option to a third party

(whichever is the earliest) announce such fact in accordance with the requirements of Chapter 16.

20.5770 The following ~~applies-apply~~ to an option involving a listed issuer and a connected person, the exercise of which is at the listed issuer's discretion:

- (1) on the ~~acquisition by, or~~ grant of the option ~~to, the listed issuer,~~ only the premium will be taken into consideration for the purpose of classification ~~of the transaction. Where the premium represents 10% or more of the sum of the premium and the exercise price, the value of the underlying assets, the revenue attributable to such assets and the sum of the premium and the exercise price will be used for the purpose of the percentage ratios;~~ and

~~Note: Where the premium represents 105% or more of the sum of the premium and the exercise price, the value of the underlying assets and the sum of the premium and the exercise price will be used for the purpose of classification.~~

- (2) on the exercise of ~~such the~~ option ~~by the listed issuer,~~ the exercise price, ~~and~~ the value of the underlying assets ~~and the revenue attributable to such assets~~ will be used for the purpose of ~~classification-the percentage ratios. Where an option is exercised in stages, the Exchange may at any stage require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction;~~ and

~~Note: Where an option is exercised in stages, the Exchange may at such stage require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction.~~

- (3) non-exercise of the option or transfer of the option to a third party will be treated as if the option was exercised. The exercise price, the value of the underlying assets, ~~the revenue attributable to such assets~~ and (if applicable) the premium for transferring the option will be used for the purpose of ~~classification-the percentage ratios.~~

20.5871 For the purpose of rules 20.5669(1) and 20.5770(1), where, on the grant of the option, the actual monetary value of the premium, the exercise price, ~~and~~ the value of the underlying assets and the revenue attributable to such assets have not been determined, the listed issuer must demonstrate to the satisfaction of the Exchange the highest possible monetary value, which will then be used for the purpose of classification of the transaction. Failure to do so may result in the transaction being subject to all connected transaction requirements under this Chapter. ~~Note:~~The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, ~~and~~ the value of the underlying assets and the revenue attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification of the transaction as a result, the listed issuer must publish an announcement stating this fact ~~announce this fact in accordance with the requirements of Chapter 16~~ as soon as reasonably practicable and comply with the additional requirements of such higher classification.

# Chapter 23

## EQUITY SECURITIES

### SHARE OPTION SCHEMES

#### Terms of the scheme

23.03 The scheme document must include the following provisions and/or provisions as to the following (as the case may be):—

- (1) the purpose of the scheme;
- (2) the participants of the scheme and the basis of determining the eligibility of participants;

*Note: Listed issuers are reminded to seek legal advice on the prospectus requirements of the Companies Ordinance, particularly where participation in the scheme is not restricted to executives and employees.*

- (3) the total number of securities which may be issued upon exercise of all options to be granted under the scheme, together with the percentage of the issued share capital that it represents at the date of approval of the scheme;

*Notes: 1 The total number of securities which may be issued upon exercise of all options to be granted under the scheme and any other schemes must not in aggregate exceed 10 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue as at the date of approval of the scheme. Options lapsed in accordance with the terms of the scheme will not be counted for the purpose of calculating the 10% limit.*

*The listed issuer may seek approval by its shareholders in general meeting for “refreshing” the 10 per cent limit under the scheme. However, the total number of securities which may be issued upon exercise of all options to be granted under all of the schemes of the listed issuer (or the subsidiary) under the limit as “refreshed” must not exceed 10 per cent of the relevant class of securities in issue as at the date of approval of the limit. Options previously granted under the schemes (including those outstanding, cancelled, lapsed in accordance with the scheme or exercised options) will not be counted for the purpose of calculating the limit as “refreshed”. The listed issuer must send a circular to its shareholders containing the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4).*

*A listed issuer may seek separate approval by its shareholders in general meeting for granting options beyond the 10 per cent limit provided the options in excess of the limit are granted only to participants specifically identified by the listed issuer before such approval is sought. The listed issuer must send a circular to the shareholders containing a generic description of the specified participants who may be granted such options, the number and terms of the options to be granted, the purpose of granting options to the specified participants with an explanation as to how the terms of the options serve such purpose, the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4).*

2 The limit on the number of securities which may be issued upon exercise of all outstanding options granted and yet to be exercised under the scheme and any other schemes must not exceed 30 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue from time to time. No options may be granted under any schemes of the listed issuer (or the subsidiary) if this will result in the limit being exceeded.

(4) the maximum entitlement of each participant under the scheme;

*Note: Unless approved by shareholders in the manner set out in this Note to rule 23.03(4), the total number of securities issued and to be issued upon exercise of the options granted to each participant (including both exercised and outstanding options) in any 12-month period must not exceed 1 per cent of the relevant class of securities of the listed issuer (or the subsidiary) in issue. Where any further grant of options to a participant would result in the securities issued and to be issued upon exercise of all options granted and to be granted to such person (including exercised, cancelled and outstanding options) in the 12-month period up to and including the date of such further grant representing in aggregate over 1 per cent of the relevant class of securities in issue, such further grant must be separately approved by shareholders of the listed issuer in general meeting with such participant and his associates abstaining from voting. The listed issuer must send a circular to the shareholders and the circular must disclose the identity of the participant, the number and terms of the options to be granted (and options previously granted to such participant), the information required under rule 23.02(2)(d) and the disclaimer required under rule 23.02(4). The number and terms (including the exercise price) of options to be granted to such participant must be fixed before shareholders' approval and the date of board meeting for proposing such further grant should be taken as the date of grant for the purpose of calculating the exercise price under Note 1 to rule 23.03(9).*

*"Associate" for this purpose shall have the meaning ascribed to it in rule 1.01 in relation to any director, chief executive, substantial shareholder or management shareholder (being an individual).*

(5) the period within which the securities must be taken up under the option, which must not be more than 10 years from the date of grant of the option;

(6) the minimum period, if any, for which an option must be held before it can be exercised;

(7) the performance targets, if any, that must be achieved before the options can be exercised or, if none, a negative statement to that effect;

(8) the amount, if any, payable on application or acceptance of the option and the period within which payments or calls must or may be made or loans for such purposes must be repaid;

(9) the basis of determination of the exercise price;

*Notes: 1 Subject to Note 2 to rule 23.03(9), the exercise price must be at least the higher of: (i) the closing price of the securities as stated in the Exchange's daily quotations sheet on the date of grant, which must be a business day; and (ii) the average closing price of the securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of grant. For the purpose of calculating the exercise price where an issuer has been listed for less than five business days, the new issue price shall be used as the closing price for any business day falling within the period before listing;*

2 *Note (1) to rule 23.03(9) does not apply to a share option scheme of a subsidiary of the listed issuer if the subsidiary's securities are not listed on the Exchange. However, the scheme must provide that the exercise price of options granted after the listed issuer has ~~contemplated-resolved to seek~~ a separate listing of such subsidiary on the Exchange, the Main Board or an overseas stock exchange and up to the listing date of the subsidiary must be not lower than the new issue price (if any). In particular, any options granted during the period commencing six months before the lodgement of Form 5A (or its equivalent for listing on the Main Board or the overseas stock exchange) up to the listing date of the subsidiary are subject to this requirement. The scheme must therefore provide for any necessary adjustment of the exercise price of options granted during such period to not lower than the new issue price.*

- (10) the voting, dividend, transfer and other rights, including those arising on a liquidation of the listed issuer, attaching to the securities and (if appropriate) any such rights attaching to the options themselves;
- (11) the life of the scheme, which must not be more than 10 years;
- (12) the circumstances under which options will automatically lapse;
- (13) a provision for adjustment of the exercise price or the number of securities subject to options already granted and to the scheme in the event of a capitalisation issue, rights issue, sub-division or consolidation of shares or reduction of capital;

*Note: Any adjustments required under rule 23.03(13) must give a participant the same proportion of the equity capital as that to which that person was previously entitled, but no such adjustments may be made to the extent that a share would be issued at less than its nominal value. The issue of securities as consideration in a transaction may not be regarded as a circumstance requiring adjustment. In respect of any such adjustments, other than any made on a capitalisation issue, an independent financial adviser or the listed issuer's auditors must confirm to the directors in writing that the adjustments satisfy the requirements set out in this note.*

- (14) a provision for the cancellation of options granted but not exercised;

*Note: Where a listed issuer cancels options and issues new ones to the same option holder, the issue of such new options may only be made under a scheme with available unissued options (excluding the cancelled options) within the limit approved by shareholders as mentioned in Note 1 to rule 23.03(3).*

- (15) unless the securities subject to the scheme are identical with other securities, a provision that they must be separately designated;
- (16) where there is a provision for termination of the operation of the scheme before the end of its life, a provision for the treatment of options granted under the scheme but not yet exercised at the time of termination;

*Note: Details of the options granted, including options exercised or outstanding, under the scheme and (if applicable) options that become void or non-exercisable as a result of the termination must be disclosed in the circular to shareholders seeking approval of the first new scheme to be established after such termination.*



- (17) transferability of options; and

*Note: Options granted under the scheme must be personal to the respective grantee. No options may be transferred or assigned.*

- (18) the specific terms of the scheme that can be changed by directors or scheme administrators without the approval of shareholders of the listed issuer in general meeting.

*Notes: 1 The provisions relating to the matters set out in this rule 23.03 cannot be altered to the advantage of participants without the prior approval of shareholders of the listed issuer in general meeting.*

*2 Any alterations to the terms and conditions of a share option scheme of a listed issuer or any of its subsidiaries which are of a material nature or any change to the terms of options granted must be approved by the shareholders of the listed issuer, except where the alterations take effect automatically under the existing terms of the scheme.*

*3 The amended terms of the scheme or the options must still comply with the relevant requirements of this Chapter 23.*

*4 Any change to the authority of the directors or scheme administrators in relation to any alteration to the terms of the scheme must be approved by shareholders of the listed issuer in general meeting.*

#### **Granting options to a director, chief executive, management shareholder or substantial shareholder of a listed issuer, or any of their respective associates**

- 23.04 (1) In addition to the shareholders' approval set out in Note 1 to rule 23.03(3) and the Note to rule 23.03(4), each grant of options to a director, chief executive, management shareholder or substantial shareholder of a listed issuer, or any of their respective associates, under a scheme of the listed issuer or any of its subsidiaries must comply with the requirements of this rule 23.04(1). Each grant of options to any of these persons must be approved by the independent non-executive directors of the listed issuer (excluding independent non-executive director who is the grantee of the options). Where any grant of options to a substantial shareholder or an independent non-executive director of the listed issuer, or any of their respective associates, would result in the securities issued and to be issued upon exercise of all options already granted and to be granted (including options exercised, cancelled and outstanding) to such person in the 12-month period up to and including the date of such grant:

- (a) representing in aggregate over 0.1 ~~%per cent~~ of the relevant class of securities in issue; and
- (b) (where the securities are listed on the Exchange), having an aggregate value, based on the closing price of the securities at the date of each grant, in excess of HK\$5 million,

such further grant of options must be approved by shareholders of the listed issuer. The listed issuer must send a circular to the shareholders. All connected persons of the listed issuer must abstain from voting in favour at such general meeting, ~~except that any connected person may vote against the relevant resolution at the general meeting provided that his intention to do so has been stated in the circular.~~

- (2) Pursuant to rule 17.47(4), ~~a~~Any vote taken at the meeting to approve the grant of such options must be taken on a poll. Listed issuers must comply with the requirements set out in rules 17.47(5), 17.47A, 17.47B and 17.47C.

(3) The circular must contain:

- (a) details of the number and terms (including the exercise price) of the options to be granted to each participant, which must be fixed before the shareholders' meeting and the date of the board meeting for proposing such further grant ~~is to be~~ ~~should be~~ taken as the date of grant for the purpose of calculating the exercise price under Note 1 to rule 23.03(9);
- (b) a recommendation from the independent non-executive directors of the listed issuer (excluding independent non-executive director who is the grantee of the options) to the independent shareholders as to voting; ~~and~~
- (c) the information required under rules 23.02(2)(c) and (d) and the disclaimer required under rule 23.02(4); ~~and~~
- (d) the information required under rule 2.28.

Notes: 1 *Shareholders' approval as required under rule 23.04(1) is also required for any change in the terms of options granted to a participant who is a substantial shareholder or an independent non-executive director of the listed issuer, or any of their respective associates.*

2 *The requirements for the granting of options to a director or chief executive of a listed issuer set out in rules 23.04(1), (2) and (3) do not apply where the participant is only a proposed director or chief executive of the listed issuer.*

### **Restriction on the time of grant of options**

23.05 A grant of options may not be made after a price sensitive event has occurred or a price sensitive matter has been the subject of a decision until such price sensitive information has been announced in accordance with the requirements of Chapter 16. In particular, during the period commencing one month immediately preceding the earlier of:

- (1) the date of the board meeting (as such date is first notified to the Exchange in accordance with rule 17.48) for the approval of the listed issuer's results for any year, half-year or quarter-year period or any other interim period (whether or not required under the GEM Listing Rules); and
- (2) the deadline for the issuer to publish an announcement of its results for any year, half-year or quarter-year period under ~~R~~rules 18.49, 18.78 or 18.79 ~~53~~ or any other interim period (whether or not required under the GEM Listing Rules),

and ending on the date of the results announcement, no option may be granted.

*Note: The period during which no option may be granted will cover any period of delay in the publication of a results announcement.*

### **Disclosure requirements**

23.08 In respect of options granted during the financial year/period over listed securities, the listed issuer is encouraged to disclose in its annual report and half-year report the value of options granted to participants set out in (i) to (v) of ~~R~~rule 23.07 during the financial year/period, and the accounting policy adopted for the share options. Where the listed issuer considers that disclosure of value of options granted during the financial year/period is not appropriate, it must state the reason for such non-disclosure in its annual report or half-year report.

# Chapter 24

## EQUITY SECURITIES

### OVERSEAS ISSUERS

#### Chapter 14 – Listing Documents

24.09 The following modifications and additional requirements apply:—

- (1) some of the items of information specified in Parts A and B of Appendix 1 may be inappropriate. In such a case, the item should be appropriately adapted so that equivalent information is given;
- (2) the listing document must contain a summary of all provisions of the constitutive documents of the overseas issuer in so far as they may affect shareholders' rights and protections and directors' powers (using the same subject headings as is required by Section 2 of Appendix 11 in respect of certain named jurisdictions). In the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11 and which is applying for listing by way of an introduction in the circumstances set out in rule 10.18(3), the summary need only be included in the documents offered for inspection (see Appendix 11);
- (3) the listing document must contain a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion. In the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11 and which is applying for listing by way of an introduction in the circumstances set out in rule 10.18(3), the summary need only be included in the documents offered for inspection (see Appendix 11);
- (4) if the overseas issuer does not have a board of directors, the statement of responsibility required under paragraph 2 of Parts A and B of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately;
- (5) in the case of an introduction in the circumstances set out in rule 10.18(3), the following modifications, exceptions and additional requirements apply:—
  - (a) the listing document must contain (but without in any way limiting the scope of the summary required by rule 24.09(2)) a comparison between the provisions of the listed Hong Kong issuer's existing memorandum and articles of association and the proposed content of the constitutive documents of the overseas issuer (in the same format as is set out in Section 2 of Appendix 11 in respect of certain named jurisdictions). In the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11, the summary need only be included in the documents offered for inspection (see Appendix 11);

- (b) the details of the rights of shareholders required by paragraph 25 of Part A of Appendix 1 may be limited to a summary of any changes which will occur, if any, as a result of the exchange of securities;
- (c) the particulars of any alterations in the capital of any member of the group which is required to be included by paragraph 26 of Part A of Appendix 1 may be limited to particulars of any alterations since the date to which the latest published audited accounts of the Hong Kong listed issuer were made up;
- (d) where the consolidated assets and liabilities of the issuer are substantially the same as the consolidated assets and liabilities of the listed issuer or issuers whose securities have been exchanged, the requirement for a valuation of all the issuer's interests in land or buildings (see paragraph 39 of Part A of Appendix 1 and rule 8.01) will normally only be required by the Exchange if:—
  - (i) the Hong Kong listed issuer does not have a policy of revaluing its properties (or a large part of its property portfolio) on an annual basis;
  - (ii) the Hong Kong listed issuer has not published a revaluation of its property interests in the last 12 months; and
  - (iii) the overseas issuer is unwilling to revalue its property interests in its next annual report and accounts.

In determining whether property valuations are required in such cases the Exchange will have regard to the following factors:—

- (A) the percentage of the book value of the ~~net tangible assets~~ total assets of the Hong Kong listed issuer (as disclosed in the latest published audited accounts or consolidated accounts, as appropriate) represented by the properties;
  - (B) the date on which the properties were last valued; and
  - (C) whether the properties are held for the Hong Kong listed issuer's own use or purely for investment purposes; and
- (e) any valuations required to be included by paragraph 39 of Part A of Appendix 1 and rule 8.01 (as modified by rule 24.09(5)(d)) need only be summarised in the listing document, provided that a copy of the full valuation report is offered for inspection;
- (6) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 52 of Part A and paragraph 42 of Part B of Appendix 1. Where any of such documents are not in English or Chinese, a certified English or Chinese translation thereof must be available for inspection. In addition, the overseas issuer must offer for inspection a copy of any statutes or regulations which are relevant to the summary of the regulatory provisions of the jurisdiction in which the overseas issuer is incorporated or otherwise established (see rule 24.09(3)). In particular cases, the Exchange may require other additional documents to be offered for inspection; and

- (7) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be accompanied, as necessary, by a certified English translation and a certified Chinese translation. The Exchange should be consulted in any such case.

### **Chapters 17 and 18 -Continuing Obligations and Financial Information**

#### *Annual report and accounts and auditors' report*

- 24.14 The accounts must be audited to a standard comparable to that required by the Hong Kong Society of Accountants or by the International Auditing ~~Practices Committee~~ and Assurance Standards Board of the International Federation of Accountants.

# Chapter 25

## EQUITY SECURITIES

### ISSUERS INCORPORATED IN THE PEOPLE'S REPUBLIC OF CHINA

#### Definitions

25.04 In this Chapter

- (1) the term "associate" means:—
- (a) in relation to ~~any promoter, director, supervisor, chief executive, substantial shareholder or management shareholder (being an individual) of a PRC issuer~~ means:—
    - (i) his spouse; ~~and~~
    - (ii) any child or step-child, natural or adopted, under the age of 18 years of such individual the promoter, director, supervisor, chief executive, substantial shareholder or management shareholder or of his spouse (together with (a)(i) above, the "family interests"); ~~and~~
    - (iii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object and any company ("trustee-controlled company") in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the "trustee interests");
    - (iv) a holding company of a trustee-controlled company or a subsidiary of any such holding company;
    - (viii) any company (including an equity joint venture established under PRC law) in the equity capital of which he, ~~and/or~~ his family interests, any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30%: (or such ~~lower other~~ amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and

- (v) any company with which or individual with whom he, ~~and/or~~ his family interests, any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where he, ~~and/or~~ his family interests, any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, and/or any trustee interests taken together directly or indirectly have 30% (or such ~~lower other~~ amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise~~applies under (a)(iii) above~~) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture; and
- (b) in relation to a ~~promoter, substantial shareholder or management shareholder (being a company)~~ means:—
- (i) any other company which is its subsidiary or holding company or is a fellow subsidiary of any such holding company or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such ~~lower other~~ amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise~~applies under (a)(iii) above~~) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors; ~~and~~
- (ii) the trustees, acting in their capacity as such trustees, of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to the company's knowledge) a discretionary object and any company ("trustee-controlled company") in the equity capital of which the trustees, acting in their capacity as such trustees, are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary (together, the "trustee interests");
- (iii) a holding company of a trustee-controlled company or a subsidiary of any such holding company;
- (iv) any other company (including an equity joint venture established under PRC law) in the equity capital of which the company, such other companies referred to in (b)(i) above, any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and

- (vii) any other company with which or any individual with whom the company, it and/or such other companies referred to in (b)(i) above, any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, and/or any trustee interests taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where it, and/or such other companies referred to in (b)(i) above, any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, and/or any trustee interests taken together directly or indirectly have 30% (or such lower amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise~~applies under (a)(iii) above~~) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture,

*Notes: 1 This definition is modified in the ease context of connected transactions, falling within by virtue of rules 20.11 and 20.12.*

*2 Under rule 25.14, the Exchange may from time to time determine that certain persons or entities should be treated as connected persons of a PRC issuer for purposes of the connected transaction provisions of Chapter 20.*

(2) the term “PRC Governmental Body” means:—

- (a) PRC Central Government, including the State Council of the PRC (中國國務院), State Ministries and Commissions (國家部委), Bureaus and Administrations directly under the State Council (國務院直屬機構), State Council Offices and Institutions (國務院辦事機構及直屬國務院事業單位), Bureaus supervised by State Ministries and Commissions (國家部委代管局);
- (b) PRC Provincial-level Governments, including Provincial Governments (省政府), Municipalities directly under the Central Government (直轄市) and Autonomous Regions (自治區), together with their respective administrative arms, agencies and institutions; or
- (c) PRC Local Governments immediately under the PRC Provincial-level Governments, including prefectures (區), municipalities (市) and counties (縣), together with their respective administrative arms, agencies and institutions that is not engaging in commercial business or operating another commercial entity.

*Note: For clarity, entities under the PRC Government that are engaging in commercial business or operating another commercial entity will be excluded from this definition.*

## **Chapter 9 – Suspension and Resumption of Trading, Cancellation and Withdrawal of Listing**

25.06 The references in rules 9.19, ~~and 9.20~~ and 9.23 to “shareholders” shall be construed to mean “holders of H shares”.



## Chapter 11 – Qualifications for Listing

- 25.10 Under rule 11.04, the Exchange requires a new applicant to make disclosure where it has a director, management shareholder and, in relation only to the initial listing document, substantial shareholder (including the respective associates of each) with a business or interest which competes or may compete with the business of the group. For the purpose of the GEM Listing Rules, a controlling shareholder will, in all cases, be deemed to be a management shareholder. In this connection, in the case of a new applicant which is a PRC issuer, “controlling shareholder” means any shareholder or other person or group of persons together entitled to exercise, or control the exercise of 30% (or such ~~lower~~other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings of the new applicant or who is in a position to control the composition of the majority of the board of directors of the new applicant. For the purposes of this rule, the Exchange will normally not consider a PRC Governmental Body (as defined in rule 25.04) as a controlling shareholder of a PRC issuer.
- 25.11 Where the secretary of a PRC issuer does not possess a qualification as required by rule 5.1409(1), the PRC issuer will have to satisfy the Exchange as regards the requirement under rule 5.1409(2). In assessing the “relevant experience” of the person under rule 5.1409(2), the Exchange will normally have regard to, among other considerations, the period of his employment with the PRC issuer and his familiarity with the GEM Listing Rules. The Exchange would expect a submission from the Sponsor (or, in circumstances where the PRC issuer is not required to have (or does not otherwise retain) a Sponsor, from the PRC issuer) demonstrating that:—
- (1) sufficient time and efforts have been spent on training the appointee by way of induction courses or other means which are satisfactory to the Exchange; and
  - (2) the Sponsor (or the PRC issuer) is satisfied that the appointee will be able to discharge a secretary’s duties.

## Chapter 13 – Restrictions on Purchase, Disposal and Subscription

- 25.19 (1) References to “ordinary resolution” in rules 13.07 to 13.09 shall mean, for a PRC issuer, the special resolutions of shareholders in general meetings and of holders of domestic shares and foreign shares (and, if applicable, H shares) at separate meetings of such holders conducted in accordance with such issuer’s articles of association for approving share repurchases.
- (2) For a PRC issuer, rule 13.08(7) is restated in its entirety as follows:—
- “a statement as to the consequences of any purchases which shall arise under either or both of the Takeover Code and/or any similar applicable law of which the directors are aware, if any.”
- (3) For a PRC issuer, the reference to “10% of the existing issued share capital of the PRC issuer” in rule 13.09(1) is amended to mean “10% of the total amount of existing issued H shares of the PRC issuer”.

## Chapters 17 and 18 – Continuing Obligations and Financial Information

### *Pre-emptive rights*

25.23 The requirements of rules 17.39 to 17.41 are replaced in their entirety by the following provision:—

“17.39 Except in the circumstances mentioned in rule 17.41, the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer’s articles of association, prior to:—

- (1) authorising, allotting, issuing or granting:—
  - (a) shares;
  - (b) securities convertible into shares; and
  - (c) options, warrants or similar rights to subscribe for any shares or such convertible securities; and
- (2) any major subsidiary of the PRC issuer making any such authorisation, allotment, issue or grant so as materially to dilute the percentage equity interest of the PRC issuer and its shareholders in such subsidiary.

*Notes: 1 Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the PRC issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the PRC issuer entitled to be offered them) pro-rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro-rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rule 17.41.*

*2 The restriction in rule 17.39(2) does not apply if the subsidiary is itself listed on GEM because it is then, itself, bound by the pre-emptive provisions of the GEM Listing Rules. The PRC issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the PRC issuer’s shareholders. In the case of a rights issue, if the PRC issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the PRC issuer’s shareholders so that they can thus avoid a material dilution in their percentage equity interests.*

*3 For the purposes of rule 17.39(2), a “major subsidiary” has the same meaning as in rule 17.27(2).*

- 4 *Dilution in a subsidiary is taken to be material:*
- (a) *where, following an allotment of shares, the subsidiary will cease to be consolidated in the accounts of the issuer; or*
  - (b) *~~where any of the percentage ratios under rule 19.04(9) is 5% or more, where the results of the "assets ratio," "profits ratio" or "consideration ratio" (calculated in the manner set out in rule 19.07) are 15% or more.~~*
- 5 *If the subsidiary is itself a listed issuer and an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or issuer's group) has elected to receive a cash alternative which results in the issuer (or issuer's group) ceasing to hold a majority interest in the subsidiary, the Exchange may be prepared to grant a waiver from treating this as a material dilution of interest. For such a waiver to be granted it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary.*

17.41 No such approval as is referred to in rule 17.39 shall be required in the case of authorising, allotting or issuing shares if, but only to the extent that,

- (1) the shareholders of the PRC issuer have by special resolution of its shareholders in general meeting given approval, either unconditionally or subject to such terms and conditions as may be specified in the resolution, for the PRC issuer to authorise, allot or issue, either separately or concurrently once every twelve months, not more than twenty per cent of each of the existing issued domestic shares and overseas listed foreign shares of the PRC issuer; or
- (2) such shares are part of the PRC issuer's plan at the time of its establishment to issue domestic shares and overseas listed foreign shares and which plan is implemented within fifteen months from the date of approval by China Securities Regulatory Commission or such other competent state council securities regulatory authority.

Notes: 1 *~~Other than where independent shareholders' approval has been obtained, a~~An issue of securities ~~for cash~~ to a connected person pursuant to a general mandate given under rule 17.41(2) is only permitted in the circumstances set out in rule 20.3123(3).*

- 2 *Notwithstanding any issue of securities pursuant to a general mandate given under rule 17.41, the PRC issuer must at all times comply with the prescribed minimum percentage requirements concerning shares held by the public, as set out in rule 25.08(2)."*

*Annual report and accounts and auditors' report*

25.26 The accounts must be audited to a standard comparable to that required by the Hong Kong Society of Accountants or by the International Auditing and Assurance Standards Board Practices Committee of the International Federation of Accountants.

## Constitutional documents

25.41 A PRC issuer shall enter into a contract in writing with every director and officer containing at least the following provisions:—

- (1) an undertaking by the director or officer to the PRC issuer to observe and comply with the Company Law, the Regulations, the articles of association, the Takeover Code and the Share Repurchase Code and an agreement that the PRC issuer shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment;
- (2) an undertaking by the director or officer to the PRC issuer acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the articles of association; and
- (3) an arbitration clause as follows:—
  - (a) Whenever any disputes or claims arise from this contract, the company's articles of association or any rights or obligations conferred or imposed by the Company Law or other relevant laws and administrative regulations concerning the affairs of the company between (i) the company and its directors or officers; and (ii) a holder of overseas listed foreign shares and a director or officer of the company, the parties concerned shall resolve such disputes and claims through arbitration.
  - (b) Where a dispute or claim described above is referred to arbitration, the entire dispute or claim shall be resolved through arbitration; all persons who have a cause of action based on the same facts giving rise to the dispute or claim or whose participation is necessary for the resolution of such dispute or claim, if they are shareholders, directors, supervisors, manager or other officers of the company or the company, shall submit to arbitration.
  - (c) Disputes over who is a shareholder and over the share register do not have to be resolved through arbitration.
  - (d) The party seeking arbitration may elect to have the dispute or claim arbitrated either by the China International Economic and Trade Arbitration Commission in accordance with its arbitration rules or by the Hong Kong International Arbitration Centre in accordance with its securities arbitration rules. Once the party seeking arbitration submits a dispute or claim to arbitration, the other party must submit to the arbitral body selected by the party seeking the arbitration.
  - (e) If the party seeking arbitration elects to arbitrate the dispute or claim at the Hong Kong International Arbitration Centre, then either party may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of the Hong Kong International Arbitration Centre.
  - (f) The laws of the People's Republic of China shall govern the arbitration of disputes or claims described in clauses (a), (b) and (c) above, unless otherwise provided by law or administrative regulations.
  - (g) The award of the arbitral body is final and shall be binding on the parties thereto.

- (h) This agreement to arbitrate is made by the director or officer with the company on its own behalf and on behalf of each shareholder.
- (i) Any reference to arbitration shall be deemed to authorise the arbitral tribunal to conduct hearings in open session and to publish its award.

### **General**

25.44 References in Chapters 19 ~~and 20~~ to an issuer's "accounts" shall mean, in the case of a PRC issuer, the latest published audited accounts or consolidated accounts of such PRC issuer which have been prepared in accordance with either Hong Kong accounting standards or international accounting standards as provided for in rule 18.04.

# Chapter 30

## DEBT SECURITIES

### SELECTIVELY MARKETED SECURITIES

#### Listing documents

30.32 The listing document must contain the items of information specified in rule 30.30 and those paragraphs of Part C of Appendix 1 listed in rule 30.31, subject to the following modifications and exceptions:—

- (1) the responsibility statement referred to in paragraph 2 of Part C of Appendix 1 may subject to the Exchange's prior approval be given by another person or persons considered appropriate by the Exchange, including the corporate declaration customarily adopted for selective marketings;
- (2) (a) in substitution for the accountants' report required by paragraph 42 of Part C of Appendix 1, a statement (which may be in the form of a comparative table) will normally be permitted setting out the following financial information about the issuer and the guarantor, in the case of a guaranteed issue:—
  - (i) profit and loss accounts in respect of each of the 2 completed financial years immediately preceding the issue of the listing document, or in respect of each of the financial years since incorporation or other establishment of the issuer or guarantor, if this occurred less than 2 years prior to such issue, and if the latest information is in respect of a period ending on a date earlier than 3 months before such issue, a statement that no accounts have been made up since that date;
  - (ii) the latest balance sheet, including any explanatory notes and a statement of accounting principles adopted and comparative figures at the preceding balance sheet date;
  - (iii) the full text of the auditors' report accompanying the last accounts referred to in the statement. If audited accounts have not yet been prepared, the auditors should prepare a report in the format normally adopted for these circumstances for inclusion in the listing document; and
  - (iv) any interim financial statement published since the end of the last financial year which need not be a consolidated statement if the issuer or the guarantor has in the past always published interim statements on another basis;

An issuer which has existing debt securities listed on the Exchange may omit the information required by paragraph 42 of Part C of Appendix 1 and the above information;

- (b) the statement should be prepared on a consolidated basis for the purpose of the listing document unless the issuer or guarantor has in the past always published accounts on another basis. The issuer's or guarantor's own accounts should also be included if they provide significant additional information;

- (c) the Exchange will retain the right to enquire of the issuer and the guarantor, in the case of a guaranteed issue, (in the case of issues proposed to be made by issuers other than banks or international issuers listed on another regulated, regularly operating, open stock market recognised by the Exchange) as to whether internationally recognised accounting principles have been applied and as to the standing of the auditors within the accounting profession of the country where they practice;
  - (d) the issuer's auditors must be independent both of the issuer and of any other company concerned; and
  - (e) where the Exchange, in exceptional circumstances, allows reports to be drawn up otherwise than in conformity with ~~accounting standards approved by the Hong Kong Society of Accountants-Hong Kong Financial Reporting Standards~~ or ~~the International Accounting-Financial Reporting Standards-Committee~~, the Exchange will normally require the report to contain a statement of the financial effect of the material differences (if any) and a summary of any material difference in disclosure (if any) from either of those standards;
- (3) compliance with paragraph 37(1) of Part C of Appendix 1 may take the form of a description of the general nature of the business of the issuer or the group;
  - (4) the capitalisation statement required by paragraph 39 of Part C of Appendix 1 should be made up to the most recent practicable date and need not include an indebtedness statement;
  - (5) in order to comply with paragraph 48 of Part C of Appendix 1 only the registered office need be included;
  - (6) compliance with paragraph 49(1) and (2) of Part C of Appendix 1 may take the form of a statement of the total of the interests of the directors in the share capital, together with any options in respect of such share capital;
  - (7) the particulars of contracts pertaining to the issue required by paragraph 51 of Part C of Appendix 1 may be restricted to those contracts directly concerning the issue; for example, the trust deed, the guarantee and the fiscal or paying agency and subscription or underwriting agreements;
  - (8) in particular cases, the Exchange may require additional documents to be offered for inspection; and
  - (9) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or listing, if different) may be permitted to incorporate in listing documents relevant documents so published.

# Chapter 31

## DEBT SECURITIES

### CONTINUING OBLIGATIONS

#### Announcements, circulars and other documents

##### *General*

31.19A The Exchange shall be authorised by the issuer to file “applications” (as defined in section 2 of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the ~~Securities and Futures (Stock Market Listing) Statutory~~ Rules respectively and issuers shall be deemed to have agreed to the above by filing such applications and corporate disclosure materials with the Exchange. The authorisation aforementioned shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant such approval. In addition, the issuer undertakes to execute such documents in favour of the Exchange perfecting the above authorisation as the Exchange may require. Applications and relevant corporate disclosure materials shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe.

##### *Presentation of information*

31.20 Without prejudice to any specific requirements of the GEM Listing Rules as to content or responsibility for the document in question, any announcement, listing document or circular required pursuant to the GEM Listing Rules ~~should~~must be prepared having regard to the following general principles:—

- (1) the information contained in the document ~~should~~must be clearly presented and ~~should be~~ in plain language; and
- (2) the information contained in the document ~~should~~must be accurate and complete in all material respects and not be misleading or deceptive; ~~in which regard~~In complying with this requirement, the issuer should ~~avoid~~must not, among other things:
  - (a) ~~omitting~~ material facts of an unfavourable nature or ~~fail~~ing to accord them with appropriate significance;
  - (b) ~~presenting~~ favourable possibilities as certain or as more probable than is likely to be the case;
  - (c) ~~presenting~~ projections without sufficient qualification or explanation; or
  - (d) ~~presenting~~ risk factors in ~~such a~~ misleading way ~~as to create a positive implication.~~



## Financial information

### *Accounting standards*

- 31.40 Annual accounts of a listed issuer are required, subject to rule 18.05, to conform with either ~~accounting standards approved by the Hong Kong Society of Accountants and laid down in the Statements of Standard Accounting Practice issued from time to time by that Society~~ Hong Kong Financial Reporting Standards or ~~the International Accounting Standards as promulgated from time to time by the International Accounting Standards Committee.~~
- 31.41 Where the Exchange, in exceptional circumstances, allows the annual accounts of any overseas issuer to be drawn up otherwise than in conformity with either ~~accounting standards approved by the Hong Kong Society of Accountants~~ Hong Kong Financial Reporting Standards or ~~the International Accounting Standards Committee~~, the Exchange will normally require the annual accounts to contain a statement of the financial effect of the material differences (if any) and a summary of any material differences in disclosure (if any) from either of those standards.

### *Annual report and accounts and auditors' report*

- 31.43 The accounts must be audited to a standard comparable to that required by the Hong Kong Society of Accountants or by the International Auditing ~~Practices Committee~~ and Assurance Standards Board of the International Federation of Accountants.

### *Information to accompany directors' report and annual accounts*

- 31.56 A statement as to the reasons for any significant departure from ~~accounting standards approved by the Hong Kong Society of Accountants~~ Hong Kong Financial Reporting Standards or ~~the International Accounting Standards Committee.~~

# Appendix 1

## CONTENTS OF LISTING DOCUMENTS

### Part A

#### Equity Securities

##### **In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed**

#### **General information about the issuer, its advisers and the listing document**

13A. The procedure by which the shareholders may demand a poll pursuant to its constitutional documents.

#### **Financial information about the group and the prospects of the group**

33. (1) A statement showing the sales turnover figures or gross trading income of the group during the 2 financial years immediately preceding the issue of the listing document which should contain an explanation of the method used for computation of such turnover or income and a reasonable breakdown between the more important trading activities. In the case of a group, intra-group sales should be excluded.

*Note: A new applicant satisfying the conditions under rule 11.12(3) must also disclose the turnover of the group in the last 12 months reported upon in the accountants' report included in the financial information section of its initial listing document.*

- (2) The following information in respect of directors' emoluments:—
- (a) the aggregate of the directors' fees for each of the 2 financial years immediately preceding the issue of the listing document;
  - (b) the aggregate of the directors' basic salaries, housing allowances, other allowances and benefits in kind for each of the 2 financial years immediately preceding the issue of the listing document;
  - (c) the aggregate of contributions to pension schemes for directors or past directors for each of the 2 financial years immediately preceding the issue of the listing document;
  - (d) the aggregate of bonuses paid to or receivable by the directors which are discretionary or are based on the issuer's, the group's or any member of the group's performance (excluding amounts disclosed in (e) and (f) below) for each of the 2 financial years immediately preceding the issue of the listing document;
  - (e) the aggregate of amounts paid to or receivable by the directors for each of the 2 financial years immediately preceding the issue of the listing document as an inducement to join or upon joining the issuer;

- (f) the aggregate of compensation paid to or receivable by the directors or past directors for each of the 2 financial years immediately preceding the issue of the listing document for the loss of office as a director of any member of the group or of any other office in connection with the management of the affairs of any member of the group distinguishing between contractual and other payments (excluding amounts disclosed in (b) to (e) above); and
- (g) particulars of any arrangement under which a director has waived or agreed to waive any emoluments for each of the 2 financial years immediately preceding the issue of the listing document.

Sub-paragraphs (b) to (f) inclusive require an analysis of the amounts which must be disclosed in the accounts of an issuer incorporated in Hong Kong under the provisions of section 161 and 161A of the Companies Ordinance. The requirements of section 161 and 161A have, for the purposes of the GEM Listing Rules, been applied to issuers incorporated or otherwise established outside Hong Kong.

Where a director is contractually entitled to bonus payments which are fixed in amount such payments are more in the nature of basic salary and accordingly ~~must~~should be disclosed under sub-paragraph (b) above.

~~In addition to discretionary bonus payments, all bonus payments to which~~ Where a director is contractually entitled ~~and are not fixed in amount, together with the basis upon which they are determined to bonus payments which are determined as a percentage of turnover or profits of the issuer or any of its subsidiaries, then such payments should~~must be disclosed under sub-paragraph (d) above.

The information required pursuant to sub-paragraph (2) above must be analysed by individual director or past director and such that it is apparent as to which are the independent non-executive directors (if any) (but without any obligation to disclose any individual by name).  
(Note 9)

- (3) Additional information in respect of those 5 individuals whose emoluments (excluding amounts paid or payable by way of commissions on sales generated by the individual) were the highest in the issuer or the group for the year. Where all 5 of these individuals are directors of the issuer and the information required to be disclosed by this paragraph has been disclosed in directors' ~~remuneration above~~emoluments as required by paragraph 33(2), a statement of this fact shall be made and no additional disclosure is required. Where the details of 1 or more of the individuals whose emoluments were the highest have not been included in directors' ~~remuneration above~~emoluments, the following information shall be disclosed:—
  - (a) the aggregate of basic salaries, housing allowances, other allowances and benefits in kind for each of the 2 financial years immediately preceding the issue of the listing document;
  - (b) the aggregate of contributions to pension schemes for each of the 2 financial years immediately preceding the issue of the listing document;
  - (c) the aggregate of bonuses paid or receivable which are discretionary or are based on the issuer's, the group's or any member of the group's performance (excluding amounts disclosed in (d) and (e) below) for each of the 2 financial years immediately preceding the issue of the listing document;
  - (d) the aggregate of amounts paid or receivable for each of the 2 financial years immediately preceding the issue of the listing document as an inducement to join or upon joining the issuer or the group; and

- (e) the aggregate of compensation or receivable for paid each of the 2 financial years immediately preceding the issue of the listing document for the loss of any office in connection with the management of the affairs of any member of the group distinguishing between contractual and other payments (excluding amounts disclosed in (a) to (d) above).

It is not necessary to disclose the identity of the highest paid individuals.

The purpose of these disclosures is to provide shareholders with an indication of the fixed management costs of groups and accordingly employees who are higher paid by virtue of sales commissions are to be omitted from this disclosure.

- (4) The following information in respect of pension schemes:—
  - (a) the nature of the principal scheme or schemes operated by the group (i.e. whether they are defined benefit plans or defined contribution plans);
  - (b) a brief outline of how contributions are calculated or benefits funded;
  - (c) the employer's pension cost charge to the profit and loss account for the period;
  - (d) in the case of defined contribution schemes, details of whether forfeited contributions (by employers on behalf of employees who leave the scheme prior to vesting fully in such contributions) may be used by the employer to reduce the existing level of contributions and if so, the amounts so utilised in the course of the year and available at the balance sheet date for such use; and
  - (e) in the case of defined benefit plans, an outline of the results of the most recent formal actuarial valuation or later formal review of the scheme on an ongoing basis. This should include disclosure of:—
    - (i) the name and qualifications of the actuary, the actuarial method used and a brief description of the main actuarial assumptions;
    - (ii) the market value of the scheme assets at the date of their valuation or review (unless the assets are administered by an independent trustee in which case this information may be omitted);
    - (iii) the level of funding expressed in percentage terms; and
    - (iv) comments on any material surplus or deficiency (including quantification of the deficiency) indicated by (iii) above.
- (5) Except where the issuer is a banking company, a statement of the reserves available for distribution to shareholders by the issuer as at the end of the period reported on.

34. (1) The issuer must determine in advance with its Sponsor whether to include a profit forecast in a listing document. Where a profit forecast appears in any listing document, it must be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, must be stated. The accounting policies and calculations for the forecast must be examined and reported on by the reporting accountants and their report must be set out. The Sponsor ~~or financial adviser~~ must report in addition that it has satisfied itself that the forecast has been stated by the directors after due and careful enquiry, and such report must be set out.

A "profit forecast" for this purpose means any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been audited or published. Any valuation of assets (other than land and buildings) or businesses acquired by an issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.

- (2) Details (if applicable) of the information set out in rules 17.15 to 17.21 concerning the financial exposure of the issuer to borrowers and other relevant information.

### **Information about the issuer's management**

42. (1) The full names and professional qualifications, if any, of:—
- (a) the secretary of the issuer;
  - (b) the qualified accountant of the issuer appointed pursuant to rule 5.~~1510~~;
  - (c) the compliance officer of the issuer appointed pursuant to rule 5.~~1914~~.
- (2) The names of the individuals appointed to the issuer's audit committee, their background and directorships (and past directorships), if any, of other companies listed on GEM, the Main Board or other exchanges, and a description of the functions of the audit committee.
45. (1) A statement showing the interests or short positions of each director and chief executive of the issuer in the shares, underlying shares and debentures of the issuer or any associated corporation (within the meaning of Part XV of the Securities and Futures Ordinance) which:—
- (a) will have to be notified to the issuer and the Exchange pursuant to Divisions 7 and 8 of Part XV of the Securities and Futures Ordinance (including interests and short positions which he is taken or deemed to have under such provisions of Securities and Futures Ordinance) once the issuer's securities are listed; or
  - (b) will be required, pursuant to section 352 of the Securities and Futures Ordinance, to be entered in the register referred to therein, once the issuer's securities are listed; or
  - (c) will be required, pursuant to rules 5.~~4640~~ to 5.~~6758~~ of the GEM Listing Rules relating to securities transactions by directors to be notified to the issuer and the Exchange once the issuer's securities are listed;
- or an appropriate negative statement. Provided that the Exchange may agree in its sole discretion that compliance with this paragraph may be modified or waived in respect of any associated corporation if, in the opinion of the Exchange, the number of associated corporations in respect of which each director and chief executive is taken or deemed to have an interest or short position under Part XV of the Securities and Futures Ordinance is such that compliance with this paragraph would result in particulars being given which are not material in the context of the group and are excessive in length.
- (2) The information required to be included by virtue of paragraph 45(1) of Appendix 1A must specify the company in which interests or short positions are held, the class to which those securities belong and the number of such securities held, but need not disclose:

- (a) the interests of a director or a chief executive officer in the shares of the listed issuer or any of its subsidiaries if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares; or
- (b) the non-beneficial interests of directors or chief executive officers in the shares of any subsidiary of the listed issuer in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the parent company of that subsidiary or the listed issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member.

*Note: Where interests in securities arising from the holding of such securities as qualifying shares are not disclosed pursuant to the exception provided in this paragraph, a general statement should nevertheless be made to indicate that the directors hold qualifying shares.*

- (3) A statement showing the name, so far as is known to any director or chief executive of the issuer, of each person, other than a director or chief executive of the issuer, who has an interest or short position in the shares or underlying shares of the issuer which would fall to be disclosed to the issuer under the provisions of Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance, or, who is expected, directly or indirectly, to be interested in 10 per cent. or more of the nominal value of any class of share capital carrying rights to vote in all circumstances at general meetings of any other member of the group and the amount of each of such person's interest in such securities, together with particulars of any options in respect of such capital, or, if there are no such interests or short positions, an appropriate negative statement. *(Note 3)*

*(Notes 6 and 9)*

- (4) Statements disclosing interests and short positions in shares, underlying shares and debentures have to separately refer to three categories of persons, namely, directors and chief executives, substantial shareholders and other persons who are required to disclose their interests. Such statements should describe the capacity in which such interests and short positions are held and the nature of such interests and short positions as disclosed in the prescribed forms required to be used, when giving notice pursuant to sections 324 and 347 of Part XV of the Securities and Futures Ordinance. Where interests or short positions are attributable on account of holdings through corporations that are not wholly-owned by the person making disclosure, the percentage interests held by such person in such corporations should be disclosed.

# Appendix 1

## CONTENTS OF LISTING DOCUMENTS

### Part B

#### Equity Securities

##### In the case where listing is sought for equity securities of an issuer some part of whose share capital is already listed

###### General information about the issuer, its advisers and the listing document

8A The procedure by which the shareholders may demand a poll pursuant to its constitutional documents.

###### Information about the securities for which listing is sought and the terms and conditions of their issue and distribution

18. Where the securities for which listing is sought are offered by way of rights or by way of an open offer to the holders of an existing listed security, a statement as to:—
- (1) how securities not taken up will be dealt with and the time, being not less than 14 days, in which the offer may be accepted. In cases where the issuer has a large number of overseas members a longer offer period may be desirable, provided that the Exchange must be consulted if the issuer proposes an offer period of over 21 days; (*Note 4*)
  - (2) the pro rata entitlement (if applicable), the last date on which transfers were accepted for registration for participation in the issue, how the securities rank for dividend, whether the securities rank pari passu with any listed securities, the nature of the document of title and its proposed date of issue, and how fractions (if any) are to be treated;
  - (3) whether the board of directors has received any information from any substantial shareholders of their intention to take up the securities provisionally allotted or offered to them or to be provisionally allotted or offered to them and particulars thereof; and
  - (4) the matters required to be disclosed by rules 10.25, 10.27, 10.28, 10.29, 10.29A and 10.31 (in the case of a rights issue) and 10.36, 10.38, ~~and~~ 10.39, 10.39A and 10.42 (in the case of an open offer) and/or ~~20.31~~23(3)(c), as appropriate.

###### Financial information about the group and the prospects of the group

29. (1) (a) General information on the trend of the business of the group since the date to which the latest published audited accounts of the issuer were made up; and
- (b) a statement as to the financial and trading prospects of the group for at least the current financial year, together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the listing document and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits. (*Note 2*)

- (2) The issuer must determine in advance with its financial adviser whether to include a profit forecast in a listing document. Where a profit forecast appears in any listing document, it must be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, must be stated. The accounting policies and calculations for the forecast must be examined and reported on by the reporting accountants or auditors, as appropriate, and their report must be set out. The financial adviser must report in addition that it has satisfied itself that the forecast has been stated by the directors after due and careful enquiry, and such report must be set out.

A “profit forecast” for this purpose means any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been published. Any valuation of assets (other than land and buildings) or businesses acquired by an issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.

- (3) Details (if applicable) of the information set out in rules 17.15 to 17.21 concerning the financial exposure of the issuer to borrowers and other relevant information.

### **Information about the issuer’s management**

35. (1) The full names and professional qualifications, if any, of:—
- (a) the secretary of the issuer;
  - (b) the qualified accountant of the issuer appointed pursuant to rule 5.1540; and
  - (c) the compliance officer to the issuer appointed pursuant to rule 5.1914.
- (2) The names of the individuals appointed to the issuer’s audit committee, their background and directorships (and past directorships), if any, of other companies listed on GEM, the Main Board or other exchanges, and a description of the functions of the audit committee.
38. (1) A statement showing the interests or short positions of each director and chief executive of the issuer in the shares, underlying shares and debentures of the issuer or any associated corporation (within the meaning of Part XV of the Securities and Futures Ordinance) which:—
- (a) are required to be notified to the issuer and the Exchange pursuant to Divisions 7 and 8 of Part XV of the Securities and Futures Ordinance (including interests or short positions which he is taken or deemed to have under such provisions of the Securities and Futures Ordinance); or
  - (b) are required, pursuant to section 352 of the Securities and Futures Ordinance, to be entered in the register referred to therein; or
  - (c) are required, pursuant to rules 5.4640 to 5.6758 of the GEM Listing Rules relating to securities transactions by directors to be notified to the issuer and the Exchange;



or an appropriate negative statement. Provided that the Exchange may agree in its sole discretion that compliance with this paragraph may be modified or waived in respect of any associated corporation if, in the opinion of the Exchange, the number of associated corporations in respect of which each director and chief executive is taken or deemed to have an interest or short position under Part XV of the Securities and Futures Ordinance is such that compliance with this paragraph would result in particulars being given which are not material in the context of the group and are excessive in length.

- (2) The information required to be included by virtue of paragraph 38(1) of Appendix 1B must specify the company in which interests or short positions are held, the class to which those securities belong and the number of such securities held, but need not disclose:
- (a) the interests of a director or a chief executive officer in the shares of the listed issuer or any of its subsidiaries if such interest is held solely in a non-beneficial capacity and is for the purpose of holding the requisite qualifying shares; or
  - (b) the non-beneficial interests of directors or chief executive officers in the shares of any subsidiary of the listed issuer in so far as that interest comprises the holding of shares subject to the terms of a written, valid and legally enforceable declaration of trust in favour of the parent company of that subsidiary or the listed issuer and such interest is held solely for the purpose of ensuring that the relevant subsidiary has more than one member.

# Appendix 1

## CONTENTS OF LISTING DOCUMENTS

### Part C

#### Debt Securities

##### In the case where listing is sought for debt securities

##### Financial information about the group and prospects of the group

41. (1) General information on the trend of the business of the group since the date to which the latest audited accounts of the issuer were made up. *(Note 5)*
- (2) A statement as to the financial and trading prospects of the group for at least the current financial year, together with any material information which may be relevant thereto, including all special trade factors or risks (if any) which are not mentioned elsewhere in the listing document and which are unlikely to be known or anticipated by the general public, and which could materially affect the profits. *(Note 5)*
- (3) The issuer must determine in advance with its financial adviser whether to include a profit forecast in a listing document. Where a profit forecast appears in any listing document, it must be clear, unambiguous and presented in an explicit manner and the principal assumptions, including commercial assumptions, upon which it is based, must be stated. The accounting policies and calculations for the forecast must be examined and reported on by the reporting accountants and their report must be set out. The financial adviser must report in addition that they have satisfied themselves that the forecast has been stated by the directors after due and careful enquiry, and such report must be set out.
- A “profit forecast” for this purpose means any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been audited or published. Any valuation of assets (other than land and buildings) or businesses acquired by an issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.
- (4) Particulars of the profits cover for interest payments and of the net tangible assets.
- (5) Details (if applicable) of the information set out in rules 17.15 to 17.21 concerning the financial exposure of the issuer to borrowers and other relevant information.

## Appendix 3

### ARTICLES OF ASSOCIATION

The articles of association or equivalent document must conform with the following provisions and, where necessary, a certified copy of a resolution of the board of directors or other governing body undertaking to comply with the appropriate provisions must be lodged with the Exchange.

#### As regards Directors

4. (1) That, subject to such exceptions specified in the articles of association as the Exchange may approve, a director ~~will~~shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.  
(Note ~~15~~)
- (2) That any person appointed by the directors to fill a casual vacancy on or as an addition to the board shall hold office only until the next following annual general meeting of the issuer, and shall then be eligible for re-election.
- (3) That, where not otherwise provided by law, the issuer in general meeting shall have power by special resolution to remove any director (including a managing or other executive director, but without prejudice to any claim for damages under any contract) before the expiration of his term of office.
- (4) That the minimum length of the period, during which notice to the issuer of the intention to propose a person for election as a director, and during which notice to the issuer by such person of his willingness to be elected may be given, will be at least 7 days.
- (5) That the period latest date for lodgment of the notices referred to in sub-paragraph 4(4) will commence no earlier than the day after the despatch of the notice of the meeting appointed for such election and end no later than 7 days prior to the date of the such meeting ~~appointed for such election~~.

#### As regards Voting

14. That, where any shareholder is, under these GEM Listing Rules, required to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.

#### NOTES

5. *Articles of Association will be acceptable to the Exchange if they provide exceptions from the requirements of paragraph 4(1) of this Appendix in respect of the following matters:—*
  - (1) *the giving of any security or indemnity either:—*
    - (a) *to the director or his associate(s) in respect of money lent or obligations incurred or undertaken by him or any of them at the request of or for the benefit of the issuer or any of its subsidiaries; or*

- (b) to a third party in respect of a debt or obligation of the issuer or any of its subsidiaries for which the director or his associate(s) has himself/themselves assumed responsibility in whole or in part and whether alone or jointly under a guarantee or indemnity or by the giving of security;
- (2) any proposal concerning an offer of shares or debentures or other securities of or by the issuer or any other company which the issuer may promote or be interested in for subscription or purchase where the director or his associate(s) is/are or is/are to be interested as a participant in the underwriting or sub-underwriting of the offer;
- (3) any proposal concerning any other company in which the director or his associate(s) is/are interested only, whether directly or indirectly, as an officer or executive or shareholder or in which the director or his associate(s) is/are beneficially interested in shares of that company, provided that ~~the, together with director and~~ any of his associates, ~~is are~~ not in aggregate beneficially interested in ~~5% per cent~~ or more of the issued shares of any class of such company (or of any third company through which his interest or that of any of his associates is derived) or of the voting rights;
- (4) any proposal or arrangement concerning the benefit of employees of the issuer or its subsidiaries including:—
- (a) the adoption, modification or operation of any employees' share scheme or any share incentive or share option scheme under which ~~the~~ director or his associate(s) may benefit; or
- (b) the adoption, modification or operation of a pension fund or retirement, death or disability benefits scheme which relates both to directors, his associates and employees of the issuer or any of its subsidiaries and does not provide in respect of any director, ~~as such or his associate(s), as such~~ any privilege or advantage not generally accorded to the class of persons to which such scheme or fund relates; and
- (5) any contract or arrangement in which the director or his associate(s) is/are interested in the same manner as other holders of shares or debentures or other securities of the issuer by virtue only of his/their interest in shares or debentures or other securities of the issuer.

## Appendix 6

### 附錄六

#### DIRECTOR'S AND SUPERVISOR'S FORMS

#### 董事及監事的表格

##### FORM C

##### C表格

#### Supervisor's declaration and undertaking and acknowledgement in respect of an issuer incorporated in the People's Republic of China ("PRC")

#### 監事的聲明、承諾及確認

(適用於中華人民共和國(「中國」)註冊成立的發行人)

##### Part 2

##### 第二部分

#### UNDERTAKING AND ACKNOWLEDGEMENT

#### 承諾及確認

I, . . . . . [insert Chinese characters, if any], hereby undertake with The Stock Exchange of Hong Kong Limited that in the exercise of my powers and duties as a supervisor of the issuer, I shall: —

本人. . . . . [如有英文姓名，請列明]，向香港聯合交易所有限公司承諾，在行使發行人監事的權力及職責時，本人須：—

- (a) comply to the best of my ability with all applicable laws, rules, regulations and normative statements from time to time in force in the PRC relating to the responsibilities, duties and obligations of a supervisor in connection with the governing, operation, conduct or regulation of public companies in the PRC or elsewhere;  
盡力遵守不時生效的所有關於監事對中國或其他地方的公眾公司的管轄、運作、行為或監管的責任、職責及義務的適用中國法律、規則、規例及規範聲明；
- (b) comply to the best of my ability with the provisions of the issuer's articles of association (including all provisions regarding the duties of supervisors) and cause the issuer and its directors to act at all times in accordance with the issuer's articles of association;  
盡力遵守發行人的公司章程的規定(包括有關監事職責的一切規定)，並促使發行人及其董事在任何時候均按照發行人的公司章程而行事；
- (c) use my best endeavours to cause the issuer and its directors to comply with the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited from time to time in force (the "GEM Listing Rules"), the Code on Takeovers and Mergers, the Code on Share Repurchases and all other relevant securities laws and regulations from time to time in force in Hong Kong;  
盡力促使發行人及其董事遵守不時生效的《香港聯合交易所有限公司創業板證券上市規則》(《創業板上市規則》)、《公司收購及合併守則》、《股份購回守則》及香港所有其他不時生效的有關證券的法例及規例；

- (d) inform The Stock Exchange of Hong Kong Limited forthwith and in writing, at any time while I am a supervisor of the issuer, of the initiation by the issuer's supervisory committee of legal proceedings against any director of the issuer;  
在本人擔任發行人的監事的任何期間，如發行人的監事會對發行人的任何董事提出法律訴訟，立即通知及以書面通知香港聯合交易所有限公司；
- (e) comply to the best of my ability, as if the same applied to me to the same extent as it does to directors of the issuer, with: (a) Part XV of the Securities and Futures Ordinance; (b) rules 5.4046 to 5.5867 of the GEM Listing Rules relating to securities transactions by directors; (c) the Code on Takeovers and Mergers; (d) the Code on Share Repurchases, and (e) all other relevant securities laws and regulations from time to time in force in Hong Kong;  
盡力遵守下列條例及規則，猶如該條例適用於本人，如同其適用於公司董事般：(a)《證券及期貨條例》第XV部；(b)《創業板上市規則》第5.4046至5.5867條有關董事進行證券交易的規定；(c)《公司收購及合併守則》；(d)《股份購回守則》；以及(e)香港所有其他不時生效的有關證券法例與規例；
- (f) use my best endeavours to procure that any alternate of mine shall so comply;  
盡力促使本人的任何替任人遵守上述各項；