

# Chapter 17

## EQUITY SECURITIES

### CONTINUING OBLIGATIONS

#### Preliminary

- 17.01 An issuer shall comply (and undertakes by its application for listing (Appendix 5A), once any of its securities have been admitted to listing, to comply) with the GEM Listing Rules in force from time to time.
- 17.02 The continuing obligations in this Chapter are primarily to ensure the maintenance of a fair and orderly securities market and that all market users have simultaneous access to the same information. Issuers must keep the holders of their securities (and the public) fully informed of material factors which might affect their interests and treat the holders of their securities in a proper manner.
- 17.03 An issuer's directors are collectively and individually responsible for ensuring the issuer's full compliance with the GEM Listing Rules.
- 17.04 The directors should seek advice and guidance from the issuer's Sponsor (as long as the issuer is obliged to retain, or otherwise retains, the services of a Sponsor) regarding the issuer's obligation to comply with, and the manner and extent of compliance with, the GEM Listing Rules. They should take such advice and guidance into account.
- 17.05 Any announcement an issuer is required to make under the GEM Listing Rules must be made according to the publication requirements in Chapter 16, unless otherwise stated.

#### Continuing disclosure obligations

##### *Introduction*

- 17.06 (1) The Exchange has a duty under section 21 of the Securities and Futures Ordinance to ensure, so far as reasonably practicable, an orderly, informed and fair market.
- (2) The Inside Information Provisions impose statutory obligations on listed issuers and their directors to disclose inside information as soon as reasonably practicable after the information has come to the listed issuers' knowledge, and gives the Commission the responsibility for enforcing those obligations. The Commission has issued Guidelines on Disclosure of Inside Information. The Exchange will not give guidance on the interpretation or operation of the SFO or the Guidelines.
- (3) Where the Exchange becomes aware of a possible breach of the Inside Information Provisions, it will refer it to the Commission. The Exchange will not itself take disciplinary action under the GEM Listing Rules unless the Commission considers it not appropriate to pursue the matter under the SFO and the Exchange considers action under the Rules for a possible breach of the Rules appropriate.
- 17.07 (1) This Chapter identifies circumstances in which an issuer must disclose information to the public. These are not alternatives to, and do not in any way detract from, the statutory disclosure obligation found in the Inside Information Provisions.

- (2) The Exchange may require the issuer to make an announcement or halt trading in its listed securities where it considers it appropriate to preserve or ensure an orderly, informed and fair market.
- (3) The Exchange, in discharge of its duty under section 21 of the SFO, will monitor the market, make enquiries when it considers them appropriate or necessary, and may halt trading in an issuer's securities in accordance with the GEM Listing Rules as required.

17.07A An issuer and its directors must take all reasonable steps to maintain strict confidentiality of inside information until it is announced.

17.07B An issuer must not divulge any information in such a way as to place in a privileged dealing position any person or class or category of persons. It must not release any information in such a way that Exchange transactions may be entered into at prices which do not reflect the latest available information.

17.08 An issuer and its directors must seek to ensure that dealings do not take place between parties one of whom does not have inside information which the other possesses.

17.09 To maintain high standards of disclosure, the Exchange may require an issuer to announce further information, and impose additional requirements on it, where the Exchange considers that circumstances so justify. However, the Exchange will allow the issuer to make representations before imposing any requirements on it which are not imposed on listed issuers generally. The issuer must comply with the additional requirements failing which the Exchange may itself publish the information available to it. Conversely, the Exchange may waive, modify or not require compliance with any specific obligations in this Chapter in a particular case, but may require the issuer to enter into an agreement or undertaking as a condition of any dispensation.

#### *General obligation of disclosure*

17.10 (1) Without prejudice to rule 17.11, where in the view of the Exchange there is or there is likely to be a false market in an issuer's securities, the issuer must, as soon as reasonably practicable after consultation with the Exchange, announce the information necessary to avoid a false market in its securities.

*Notes: 1. This obligation exists whether or not the Exchange makes enquiries under rule 17.11.*

*2. If an issuer believes that there is likely to be a false market in its listed securities, it must contact the Exchange as soon as reasonably practicable.*

- (2) (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.
- (b) An issuer must simultaneously copy to the Exchange any application to the Commission for a waiver from disclosure under the Inside Information Provisions, and promptly upon being notified of the Commission's decision copy the Exchange with the Commission's decision.

#### *Response to enquiries*

17.11 Where the Exchange makes enquiries concerning unusual movements in the price or trading volume of its listed securities, the possible development of a false market in its securities, or any other matters, the issuer must respond promptly as follows:

- (1) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or
- (2) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect (*see note 1 below*).

*Notes: 1 The form of the announcement referred to in rule 17.11(2) is as follows:—*

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

*We have noted [the recent increases/decreases in the price and/or trading volume of the [shares/warrants] of the Company] or [We refer to the subject matter of the Exchange’s enquiry]. Having made such enquiry with respect to the Company as is reasonable in the circumstances, we confirm that we are not aware of [any reasons for these price [or volume] movements] or of any information which must be announced to avoid a false market in the Company’s securities or of any inside information that needs to be disclosed under Part XIVA of the Securities and Futures Ordinance.*

*This announcement is made by the order of the Company. The Board of Directors collectively and individually accepts responsibility for the accuracy of this announcement.”*

2. *An issuer does not need to disclose inside information under the Rules if disclosure of the information is exempted under the Inside Information Provisions.*
3. *The Exchange reserves the right to direct a trading halt of an issuer’s securities if an announcement under rule 17.11(1) or 17.11(2) cannot be made promptly.*

### **Trading halt or trading suspension**

17.11A Without prejudice to the Exchange’s ability to direct the halt, suspension and resumption of trading in an issuer’s listed securities, an issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension in any of the following circumstances where an announcement cannot be made promptly:

- (1) it has information which must be disclosed under rule 17.10; or
- (2) it reasonably believes that there is inside information which must be disclosed under the Inside Information Provisions; or
- (3) circumstances exist where it reasonably believes or it is reasonably likely that confidentiality may have been lost in respect of inside information which:
  - (a) is the subject of an application to the Commission for a waiver; or

- (b) falls within any of the exceptions to the obligation to disclose inside information under the Inside Information Provisions in section 307D(2) of the SFO.

*Note: An issuer does not need to disclose inside information under the Rules if disclosure of the information is exempted under the Inside Information Provisions.*

*Dual listing disclosure obligation*

- 17.12 An issuer must announce any information released to any other stock exchange on which its securities are listed at the same time as the information is released to that other exchange.

*Disclosure of information released by a listed subsidiary*

- 17.13 Where a subsidiary of the issuer listed on another stock exchange or securities market releases information on that stock exchange or in that securities market, the issuer must ensure that such information is announced as soon as practicable thereafter, irrespective of any obligation on the issuer to announce under the GEM Listing Rules or otherwise.

**Specific matters relevant to the issuer's business**

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

- 17.14 Rules 17.15 to 17.21 set out specific instances that give rise to a disclosure obligation on an issuer's part.

*Notes: 1 Transactions and financing arrangements of the sort referred to in rules 17.15 to 17.21 may also be subject to 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:—*

*“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 [Repealed 1 January 2013]*

*Advances to an entity*

- 17.15 Where the relevant advance to an entity from the issuer or any of its subsidiaries exceeds 8% under the assets ratio defined under rule 19.07(1), the issuer must announce the information in rule 17.17 immediately thereafter. 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 Where the relevant advance to an entity increases from that previously disclosed (whether under rule 17.15, 17.16 or 17.22) and the amount of the increase since the previous disclosure is 3% or more under the assets ratio defined under rule 19.07(1), the issuer must announce the information in rule 17.17 immediately thereafter.
- 17.17 Under rule 17.15 or 17.16, an issuer must announce the following information:—
- (1) details of the relevant advance to an entity including details of the balances;
  - (2) the nature of events or transactions giving rise to the amounts;
  - (3) the identity of the debtor group;
  - (4) interest rate; and
  - (5) repayment terms and collateral.
- 17.17A For the purpose of rules 17.15 and 17.16, any trade receivable is not regarded as a relevant advance to an entity if:
- (1) it arose in the issuer's ordinary and usual course of business (other than as a result of the provision of financial assistance); and
  - (2) the transaction from which the trade receivable arose was on normal commercial terms.

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

- 17.18 Where 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 8% under the asset ratio defined under rule 19.07(1), the issuer must immediately thereafter announce the following information:
- (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.

*Pledging of shares by the controlling shareholder*

17.19 Where the issuer's controlling shareholder has pledged all or part of its interest in the issuer's shares to secure the issuer's debts or to secure guarantees or other support of its obligations, the issuer must immediately thereafter announce the following information:—

- (1) the number and class of shares being pledged;
- (2) the amounts of debts, guarantees or other support for which the pledge is made; and
- (3) any other details that are considered necessary for an understanding of the arrangements.

*Note: This disclosure obligation is separate from the disclosure obligation arising from the pledging or charging of securities by controlling shareholders in rule 17.43.*

*Loan agreements with covenants relating to specific performance by the controlling shareholder*

17.20 Where an issuer or any of its subsidiaries enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder (e.g. a requirement to maintain a specified minimum holding in the share capital of the issuer) and breach of such an obligation will cause a default in respect of loans that are significant to the issuer's operations, the issuer must immediately thereafter announce the following information:—

- (1) the aggregate level of the facilities that may be affected by such breach;
- (2) the life of the facility; and
- (3) the specific performance obligation imposed on any controlling shareholder.

*Breach of loan agreement by an issuer*

17.21 If an issuer or any of its subsidiaries breaches the terms of a loan agreement, in respect of any loan that is significant to the group's operations, such that the lender may demand its immediate repayment and where the lender has not waived the breach, the issuer must announce such information.

*Continuing disclosure requirements*

17.22 Where the circumstances giving rise to a disclosure obligation under rule 17.15 continue to exist at the issuer's half yearly or quarterly period end or annual financial year end, the information specified under rule 17.17, as at such period end or year end, shall be included in the half-year, quarterly or annual report as applicable.

17.23 Where an obligation arises under rules 17.19, 17.20, 17.21 or 17.43, the disclosures required by these rules should be included in subsequent half-year, quarterly and annual reports for so long as the circumstances giving rise to the obligation continue to exist.

*Note: Please refer to rule 17.43 for further details on the continuing disclosure requirements in respect of securities pledged or charged by controlling shareholders.*

17.24 Where the circumstances giving rise to a disclosure under rule 17.18 continue to exist at the issuer's half yearly or quarterly period end or annual financial year end, its half-year, quarterly or annual report must include a combined balance sheet of affiliated companies as at the latest practicable date. The combined balance sheet of affiliated companies should include significant balance sheet classifications and state the issuer's effective economic interest in the affiliated companies. If it is not practicable to prepare the combined balance sheet of affiliated companies, the Exchange, on the issuer's application, may consider accepting, as an alternative, a statement of the indebtedness, contingent liabilities and capital commitments as at the end of the period reported on by affiliated companies.

*Material changes following listing*

17.25 Any proposed fundamental change in the principal business activities of an issuer or its group must be announced immediately after it has been the subject of any decision. Other than with the prior approval of the issuer's independent shareholders in general meeting under rule 19.89, an issuer may not, during the period of 12 months from the date on which dealings in its securities commenced on GEM, implement any such material change.

*Note: See also rules 19.88 to 19.90.*

*Sufficient operations*

17.26 An issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing of the issuer's securities.

*Note: Characteristics of issuers which are unable to comply with rule 17.26 include:*

- (i) *financial difficulties to an extent which seriously impairs an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or*
- (ii) *issuers which have net liabilities as at their balance sheet date i.e. issuers whose liabilities exceed their assets.*

17.26A An issuer must, after trading in its listed securities has been suspended, publish quarterly announcements of its developments.

*Material matters which impact on profit forecasts*

17.26B (1) If, during the period of any forecast made by the issuer:—

- (a) an event occurs which, had it been known when the profit forecast was made, would have caused any of the assumptions upon which the forecast is based to have been materially different; or
- (b) profit or loss is generated by some activity outside the issuer's ordinary and usual course of business (which was not disclosed as anticipated in the document containing the profit forecast) and which materially contributes to or reduces, or is likely to materially contribute to or reduce, the profits for such period,

the issuer must promptly announce the event and relevant details. In the announcement, the issuer must also indicate the likely impact of that event or activity on the profit forecast already made.

- (2) The issuer must announce the information under rule 17.26B(1) as soon as it becomes aware that it is likely that the contribution to or reduction in the profits made or to be made by the profit or loss generated or to be generated as aforesaid will be material.

*Winding-up and liquidation*

17.27 (1) An issuer shall inform the Exchange of and announce the happening of any of the following events, as soon as it comes to its attention:—

- (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 subsidiary falling under rule 17.27(2);
  - (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 subsidiary falling under rule 17.27(2);
  - (c) the passing of any resolution by the issuer, its holding company or any subsidiary falling under rule 17.27(2) 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); or
  - (e) 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 defined under rule 19.04(9).
- (2) Rules 17.27(1)(a), (b) and (c) will apply to a subsidiary of the issuer if the value of that subsidiary's total assets, profits or revenue represents 5% or more under any of the percentage ratios defined under rule 19.04(9).

*Note: 1 For the purposes of rule 17.27(2), 100% of that subsidiary's 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) of that 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 subsidiary.*

*2 [Repealed 1 January 2013]*

*3 [Repealed 1 January 2013]*



## General matters relevant to the issuer's securities

### *Changes in issued shares*

- 17.27A (1) In addition and without prejudice to specific requirements contained elsewhere in the GEM Listing Rules, an issuer must, whenever there is a change in its issued shares as a result of or in connection with any of the events referred to in rule 17.27A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the GEM website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.
- (2) The events referred to in rule 17.27A(1) are as follows:
- (a) any of the following:
    - (i) placing;
    - (ii) consideration issue;
    - (iii) open offer;
    - (iv) rights issue;
    - (v) bonus issue;
    - (vi) scrip dividend;
    - (vii) repurchase of shares or other securities;
    - (viii) exercise of an option under the issuer's share option scheme by any of its directors;
    - (ix) exercise of an option other than under the issuer's share option scheme by any of its directors;
    - (x) capital reorganisation; or
    - (xi) change in issued shares not falling within any of the categories referred to in rule 17.27A(2)(a)(i) to (x) or rule 17.27A(2)(b); and
  - (b) subject to rule 17.27A(3), any of the following:
    - (i) exercise of an option under a share option scheme other than by a director of the issuer;
    - (ii) exercise of an option other than under a share option scheme not by a director of the issuer;
    - (iii) exercise of a warrant;

- (iv) conversion of convertible securities; or
  - (v) redemption of shares or other securities.
- (3) The disclosure obligation for an event in rule 17.27A(2)(b) only arises where:
- (a) the event, either individually or when aggregated with any other events described in that rule which have occurred since the listed issuer published its last monthly return under rule 17.27B or last return under this rule 17.27A (whichever is the later), results in a change of 5% or more of the listed issuer's issued shares; or
  - (b) an event in rule 17.27A(2)(a) has occurred and the event in rule 17.27A(2)(b) has not yet been disclosed in either a monthly return published under rule 17.27B or a return published under this rule 17.27A.
- (4) For the purposes of rule 17.27A(3), the percentage change in the listed issuer's issued shares is to be calculated by reference to the listed issuer's total number of issued shares as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under rule 17.27B or a return published under this rule 17.27A.

#### *Monthly return*

17.27B A listed issuer shall, by no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the fifth business day next following the end of each calendar month, submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the GEM website a monthly return in relation to movements in the listed issuer's equity securities, debt securities and any other securitised instruments, as applicable, during the period to which the monthly return relates, in such form and containing such information as the Exchange may from time to time prescribe (irrespective of whether there has been any change in the information provided in its previous monthly return). Such information includes, among other things, the number as at the close of such period of equity securities, debt securities and any other securitised instruments, as applicable, issued and which may be issued pursuant to options, warrants, convertible securities or any other agreements or arrangements.

#### *Subsequent listing*

17.28 An issuer shall, prior to their issue, apply for the listing of any further securities which are of the same class as securities already listed and shall not issue such securities unless approval for the listing of those securities has been granted by the Exchange.

#### *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 of any agreement to such an issue within 6 months from 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), 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;

- (3) any capitalisation issue, capital reduction or consolidation or sub-division of shares;
- (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
- (5) 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 business 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), (5) and (6) 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 with the following persons abstaining from voting: -
    - (i) any core connected person and its close associates; and
    - (ii) any shareholder who has 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; and
  - (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.

*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(5)(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; and*
- (x) *details of the persons who would receive the new shares or securities and their connection, if any, with any core connected persons of the listed issuer.*
- (xi) *[Repealed 1 October 2013]*

*Notes: 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.*

#### *Announcement of issues of securities*

17.30 Where the directors agree to issue any securities for cash in accordance with rule 17.39 or 17.41, an issuer shall publish an announcement as soon as possible, but in any event not later than 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, containing the following information:—

- (1) the name of the issuer;
- (2) the number, class and aggregate nominal value of the securities agreed to be issued;

*Note: If the issue involves (i) securities convertible into shares of the issuer or (ii) options, warrants or similar rights to subscribe for shares or such convertible securities, the announcement should also contain:*

- (a) *the conversion/subscription price and a summary of the provisions for adjustments of such price and/or number of shares to be issued and all other material terms of the convertible securities or warrants; and*
- (b) *the maximum number of shares that could be issued upon exercise of the conversion/subscription rights.*
- (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;
- (10) where applicable, the name of the underwriter/placing agent and the principal terms of the underwriting/placing arrangements;
- (11) a statement whether the issue is subject to shareholders' approval;
- (12) where the securities are issued under a general mandate granted to the directors by the shareholders in accordance with rule 17.41(2), details of the mandate;
- (13) where the securities are issued by way of a rights issue or an open offer, the information set out in paragraph 18 of Appendix 1, Part B;
- (14) the conditions to which the issue is subject or a negative statement if applicable; and
- (15) 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).

*Notes: (1) This rule does not apply to a grant of options or issue of securities under a share option scheme which complies with Chapter 23. For these, the issuer must follow the announcement requirement under rule 23.06A.*

*(2) For any exercise of these options, the issuer must follow the disclosure obligations under rules 17.27A and 17.27B.*

17.30A Where the securities are issued for cash under the authority of a general mandate granted to the directors by the shareholders in accordance with rule 17.41(2) and at a discount of 20% or more to the benchmarked price set out in rule 17.42B, an issuer shall publish an announcement as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session 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.

#### *Results of offers and rights issues*

17.31 An issuer shall announce, in accordance with the provisions of rules 16.13 to 16.15, the results and other details of any offer for subscription, offer for sale, rights issue or open offer.

*Note: An issuer shall announce any extension of time granted for the currency of temporary documents of title.*

*Changes of rights attaching to securities*

- 17.32 An issuer shall inform the Exchange and make an announcement concerning any changes in the rights attaching to any class of securities issued or to be issued by the issuer, including any changes in the terms of conversion or exercise of any of its convertible securities.

*Issue of new warrants to existing warrantholders and/or altering the terms of existing warrants*

- 17.33 Without prejudice to the generality of rule 17.32, where an issuer proposes to issue new warrants to existing warrantholders and/or alter the terms of existing warrants, the issuer must comply with the provisions of rules 21.06 and 21.07.

*Altering the terms of convertible equity securities*

- 17.34 Without prejudice to the generality of rule 17.32, where an issuer proposes to alter the terms of existing convertible equity securities, the issuer must comply with the provisions of rule 22.03.

*Purchase of securities*

- 17.35 An issuer shall submit to the Exchange for publication a completed return in such form and containing such information as the Exchange may from time to time prescribe, as soon as practicable after any purchase, sale, drawing or redemption by the issuer, or any member of the group, of its listed securities (whether on the Exchange or otherwise) and the Exchange may disseminate such information to such persons and in such manner as the Exchange thinks fit.

*Notes: 1 Purchases by the issuer of its own securities (whether on the Exchange or otherwise) must be notified to the Exchange by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following dealing. The information given should include the number of securities purchased and the purchase price per security or the highest and lowest prices paid, where relevant. In this regard, reference is made to the provisions of rule 13.13.*

*2 Issuers may only purchase their own securities on the Exchange in accordance with the provisions of Chapter 13 of the GEM Listing Rules (amended in the case of a PRC issuer by the provisions of Chapter 25).*

*Minimum prescribed public holding*

- 17.36 An issuer shall inform the Exchange immediately and publish an announcement, if it becomes aware that the number of listed securities which are in the hands of the public has fallen below the minimum percentage prescribed by rule 11.23.

- 17.37 Once the issuer becomes aware that the number of listed securities in the hands of the public has fallen below the minimum prescribed percentage, the issuer shall take steps to ensure that compliance is resumed from the earliest practicable opportunity.

*Notes: 1 Pursuant to the provisions of Chapter 9, the Exchange reserves the right to suspend trading in the issuer's securities or cancel the listing of such securities where the Exchange considers that there are insufficient securities in the hands of the public.*

*2 In this regard, issuers should also be aware of the notes to rule 11.23.*

### *Other listings*

17.38 An issuer shall inform the Exchange immediately and publish an announcement, at such time as any of its securities (or the securities of any of its subsidiaries) become listed or dealt in on any other stock exchange or securities market other than GEM, stating which stock exchange or securities market and of any consequences to the holders of securities listed on GEM.

### *Sufficiency of public float*

17.38A An issuer shall include in its annual report a statement of sufficiency of public float. The statement should be based on information that is publicly available to the issuer and within the knowledge of its directors as at the latest practicable date prior to the issue of the annual report.

*Note: GEM listed issuers that have been allowed a lower minimum prescribed percentage of public float (including those which have been granted a waiver under repealed GEM Rule 11.23(5)) have a grace period of three years to comply with the public float requirement under rule 11.23. Accordingly, all GEM issuers must comply with the public float requirement by no later than 30 June 2011.*

### *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 allotting, issuing or granting:—

- (1) shares;
- (2) securities convertible into shares; or
- (3) options, warrants or similar rights to subscribe for any shares or such convertible securities.

*Note: 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.*

17.40 Notwithstanding rule 17.41(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 25.23 apply) shall obtain the consent of the shareholders in general meeting prior to allotting any voting shares if such allotment would effectively alter the control of the issuer.

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 which excludes for that purpose any shareholder that 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 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.*
- 3 *The exemption for the shareholders' approval requirement under rule 17.41(1) does not apply to the allotment, issue or grant of securities under an open offer.*

- (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 (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (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 number of issued shares of the issuer following implementation of the scheme) and (ii) 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 number of issued shares the issuer as at the date of the resolution granting the repurchase mandate), 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.

- Notes: 1 *Other than where independent shareholders' approval has been obtained, an issue of securities 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 20.90.*
- 2 *If the issuer conducts a share consolidation or subdivision after the issue mandate has been approved in general meeting, the maximum number of securities that may be issued under the mandate as a percentage of the total number of issued shares at the date immediately before and after such consolidation or subdivision shall be the same.*

17.42 A general mandate given under rule 17.41(2) shall only continue in force until:—

- (1) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the mandate is renewed, either unconditionally or subject to conditions; or
- (2) revoked or varied by ordinary resolution of the shareholders in general meeting, whichever occurs first.



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(6) and 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 or open offer 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.

17.42C The issuer may not issue securities convertible into new shares of the issuer for cash consideration pursuant to a general mandate given under rule 17.41(2), unless the initial conversion price is not lower than the benchmarked price (as defined in rule 17.42B) of the shares at the time of the placing.

17.42D The issuer may not issue warrants, options or similar rights to subscribe for (a) any new shares of the issuer or (b) any securities convertible into new shares of the issuer, for cash consideration pursuant to a general mandate given under rule 17.41(2).

#### *Information on the pledging of securities in the issuer*

17.43 An issuer shall publish an announcement on being informed of, or on otherwise becoming aware of, any matter referred to in rule 13.19 concerning the pledging or charging of any interests in the securities of the issuer by any controlling shareholder. In these circumstances, the information to be announced is as follows:—

- (1) the number and class of securities being pledged or charged;
- (2) the purpose for which the pledge or charge is made;
- (3) any other relevant details; and
- (4) in the event that the pledgee or chargee has disposed of or intends to dispose of any securities, details of the same, including the number of securities affected or to be affected.

*Note: 1 Pursuant to rule 17.23, where any obligation arises under rule 17.43, the requisite disclosure made pursuant to this rule should also be included in subsequent half-year, quarterly and annual reports of the issuer for so long as the circumstances giving rise to the obligation continue to exist, provided that such disclosure shall not be required after the expiry of the periods referred to in rule 13.16A.*

- 2 *The disclosure obligations set out in this rule are separate from the disclosure obligations arising from the pledging or charging of securities by the controlling shareholder of the issuer to secure debts of the issuer or to secure guarantees or other obligations of the issuer, which are dealt with in rules 17.19 and 17.23.*

## **Meetings**

### *Notices of general meetings*

17.44 An issuer shall ensure that notice of every general meeting is announced (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 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 in accordance with Chapter 16. 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 10 business 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 10 business day 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) 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 10 business 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) [Repealed 1 January 2009]
- (4) Any vote of shareholders at a general meeting must be taken by poll except where the chairman, in good faith, decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands. The issuer must announce the results of the poll in the manner prescribed under rule 17.47(5).

*Note: Procedural and administrative matters are those that:*

- (1) *are not on the agenda of the general meeting or in any supplementary circular to members; and*
- (2) *which relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, whilst allowing all shareholders a reasonable opportunity to express their views.*
- (5) The issuer must announce the results of the poll as soon as possible, but in any event at least 30 minutes before the earlier of either the commencement of the morning trading session or any pre-opening session on the business day after the meeting.

The poll results announcement must include the number of:

- (a) shares entitling the holder to attend and vote on a resolution at the meeting;
- (b) shares entitling the holder to attend and abstain from voting in favour as set out in rule 17.47A;
- (c) shares of holders that are required under the GEM Listing Rules to abstain from voting;
- (d) shares actually voted for a resolution; and
- (e) shares actually voted against a resolution.

The issuer must appoint its auditors, share registrar or external accountants who are qualified to serve as its auditors as scrutineer for the vote-taking and state the identity of the scrutineer in the announcement. The issuer must state 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 that are subject to independent shareholders' approval pursuant to the GEM Listing Rules, any issue of shares or securities convertible into equity securities of an issuer pursuant to rule 17.29(5) or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3(e) of Practice Note 3:

- (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 transactions that are subject to independent shareholders' approval pursuant to the GEM Listing Rules, any issue of shares or securities convertible into equity securities of an issuer pursuant to rule 17.29(5) or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3(e) of Practice Note 3, 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.
- (8) For any connected transactions, the requirements relating to the opinion and recommendation of the independent board committee and the independent financial adviser are set out in Chapter 20.

*Note: "Independent shareholders" under paragraphs (6) and (7) of this rule 17.47 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.*

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 10 business 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 10 business 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.

#### *Board meetings*

17.48 An issuer shall inform the Exchange and publish an announcement at least 7 clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided or at which any announcement of the profits or losses for any year, half-year, quarter-year or other period is to be approved for publication.

#### *Voting of directors at board meeting*

17.48A Subject to the exceptions set out in paragraphs (1), (2), (4) and (5) of 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 close associates has a material interest nor shall he be counted in the quorum present at the meeting.

*Note: The references to "close associate" shall be changed to "associate" where the transaction or arrangement is a connected transaction under Chapter 20.*

#### *Board decisions*

17.49 An issuer shall announce immediately after (and for the purpose of providing details of) the approval by or on behalf of the board of:—

- (1) any decision to declare, recommend or pay any dividend or to make any other distribution on its listed securities, including the rate and amount of the dividend or distribution and the expected payment date;

- (2) any decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;
- (3) any preliminary announcement of profits or losses for any year, or any half-year or quarterly report or results announcements for any or other period; and

*Notes: 1. The timing of board meetings is a matter for the convenience and judgement of individual boards, but an issuer should inform the Exchange of, and announce, decisions on dividends and results as soon as practicable after they have been taken. The directors are reminded that it is their direct responsibility to ensure that such information is kept strictly confidential until it is announced. In the case of a preliminary announcement of results, issuers' attention is drawn to the provisions in Chapter 18 regarding disclosure of quarterly, half-year and annual results announcements.*

*2. Note 1 is also applicable to a preliminary announcement of results for a full year. As soon as possible after draft accounts have been agreed with the auditors, those accounts, adjusted to reflect any dividend decision, should be approved as the basis of a preliminary announcement of results for the full year.*

*3. If there is any change to the expected payment date previously disclosed under rule 17.49(1) or this note, the issuer should announce this fact and the new expected payment date as soon as practicable.*

- (4) any proposed change in the capital structure of the issuer, including any redemption of its listed securities.

*Note: Once a decision has been made to submit any such proposal to the board, no dealings in any of the relevant securities should be effected by or on behalf of the issuer or any of its subsidiaries until the proposal has been announced or abandoned.*

#### *Suspension on Failure to Publish Timely Financial Information*

17.49A Without prejudice to the generality of rules 18.03, 18.49, 18.53, 18.66, 18.78 and 18.79, the Exchange will normally require suspension of trading in an issuer's securities if an issuer fails to publish periodic financial information in accordance with the Rules. The suspension will normally remain in force until the issuer publishes an announcement containing the requisite financial information.

#### **Changes**

17.50 An issuer must publish an announcement as soon as practicable in 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.

The circular for any such amendments proposed by the issuer must contain an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. At the same time as the circular is despatched to shareholders of the issuer, the issuer should submit to the Exchange (a) a letter addressed to the issuer from its legal advisers confirming that the proposed amendments conform with the requirements of the GEM Listing Rules, where applicable, and the laws of the place where it is incorporated or otherwise established; and (b) a confirmation from the issuer that there is nothing unusual about the proposed amendments for a company listed in Hong Kong;



*Note: Changes to the relevant parts of the 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 (and, in the case of a PRC issuer, its supervisory committee), and shall procure that each new director or member of its governing body and, in the case of a PRC issuer, supervisor shall sign and lodge with the Exchange as soon as practicable after the date of his appointment a declaration, undertaking and acknowledgement in the relevant form set out in Appendix 6.

Where a new director, supervisor or chief executive is appointed or the resignation, re-designation, retirement or removal of a director, a supervisor or chief executive takes effect, the issuer must announce the change as soon as practicable and include the following details of any newly appointed or re-designated director, supervisor or chief executive in the announcement:-

- (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) experience including (i) other directorships held in the last 3 years in public companies the securities of which are listed on any securities market in Hong Kong or overseas, and (ii) other major appointments and professional qualifications;
- (d) length or proposed length of service with the issuer;
- (e) relationships with any directors, senior management, substantial shareholders, or controlling shareholders of the issuer;
- (f) his interests in shares of the issuer within the meaning of Part XV of the Securities and Futures Ordinance;
- (g) amount of the director's or chief executive's emoluments (and, in the case of a PRC issuer, the supervisor's emoluments) and the basis of determining the director's or chief executive's emoluments (and, in the case of a PRC issuer, the supervisor's emoluments) (including any bonus payments, whether fixed or discretionary in nature, irrespective of whether a director, supervisor or chief executive has or does not have a service contract) and how much of these emoluments are covered by a service contract;
- (h) full particulars of any public sanctions made against him by statutory or regulatory authorities;
- (i) where he has at any time been adjudged bankrupt or insolvent, the Court by which he was adjudged bankrupt or insolvent and, if discharged, the date and conditions on which he was granted his discharge;
- (j) where he has at any time been a party to a deed of arrangement or entered into any other form of arrangement or composition with his creditors, full particulars of the deed of arrangement or the arrangement or composition with his creditors;



- (k) full particulars of any unsatisfied judgments or court orders of continuing effect against him;
- (l) where any enterprise, company or unincorporated business enterprise has been dissolved or put into liquidation (otherwise than by a members' voluntary winding up when the company, in the case of a Hong Kong company, was solvent) or bankruptcy or been the object of an analogous proceeding, or entered into any form of arrangement or composition with creditors, or had a receiver, trustee or similar officer appointed over it (i) during the period when he was one of its directors or, in the case of an enterprise, a company or an unincorporated business enterprise established in the PRC, during the period when he was one of its directors, supervisors or managers, or (ii) within 12 months after his ceasing to act as one of its directors, supervisors or managers, as the case may be, full particulars, including the name of the enterprise, company or unincorporated business enterprise, its place of incorporation or establishment, the nature of its business, the nature of the proceeding involved, the date of commencement of the proceeding and the amounts involved together with an indication of the outcome or current position of the proceeding;
- (m) subject to the provisions of the Rehabilitation of Offenders Ordinance or comparable legislation of other jurisdictions, full particulars of any conviction for any offence (including details of each such offence, the court by which he was convicted, the date of conviction and the penalty imposed):
  - (i) involving fraud, dishonesty or corruption;
  - (ii) under the Securities and Futures Ordinance, the Companies Ordinance, Part II of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (insofar as that Part relates, whether directly or indirectly, to the performance of functions by the Commission in relation to prospectuses and purchase by a company of its own shares) and Part XII of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (insofar as that Part relates, whether directly or indirectly, to the performance of functions by the Commission in relation to prospectuses), the Commodity Exchanges (Prohibition) Ordinance, the repealed Protection of Investors Ordinance, the repealed Securities Ordinance, the repealed Securities (Disclosure of Interests) Ordinance, the repealed Securities and Futures Commission Ordinance, the repealed Commodities Trading Ordinance, the repealed Stock Exchanges Unification Ordinance, the repealed Securities and Futures (Clearing Houses) Ordinance, the repealed Exchanges and Clearing Houses (Merger) Ordinance, the repealed Securities (Insider Dealing) Ordinance, the Bankruptcy Ordinance, the Banking Ordinance, the repealed Leveraged Foreign Exchange Trading Ordinance or any Ordinance relating to taxation, or any comparable legislation of other jurisdictions; or
  - (iii) in respect of which he has, within the past 10 years, been sentenced as an adult to a period of imprisonment of six months or more, including suspended or commuted sentences;
- (n) full particulars where:
  - (i) he has been identified as an insider dealer under Parts XIII or XIV of the Securities and Futures Ordinance or the repealed Securities (Insider Dealing) Ordinance at any time;

- (ii) any enterprise, company or unincorporated business enterprise with which he was or is connected (as defined in Parts XIII or XIV of the Securities and Futures Ordinance or the repealed Securities (Insider Dealing) Ordinance) or any enterprise, company or unincorporated business enterprise for which he acts or has acted as an officer, supervisor or manager has been identified as an insider dealer under Parts XIII or XIV of the Securities and Futures Ordinance or the repealed Securities (Insider Dealing) Ordinance at any time during the period when he was connected and/or acted as an officer, supervisor or manager;
- (iii) he has been found guilty of or been involved in insider dealing, or been held by any Court or competent authority to have breached any securities or financial markets laws, rules or regulations including any rules and regulations of any securities regulatory authority, stock exchange or futures exchange at any time;
- (iv) any enterprise, company or unincorporated business enterprise in which he was or is a controlling shareholder (as defined in the GEM Listing Rules) or was or is a supervisor, manager, director or officer or has been found guilty of or been involved in insider dealing, or been held by any Court or competent authority to have breached any securities or financial markets laws, rules or regulations including any rules and regulations of any securities regulatory authority, stock exchange or futures exchange at any time during the period when he was a controlling shareholder, supervisor, manager, director or officer;  
or
- (v) he has been found by the Market Misconduct Tribunal, any Court or competent authority to have breached an obligation under the Inside Information Provisions, or where any issuer of which he was or is a controlling shareholder (as defined in the GEM Listing Rules) or was or is a supervisor, manager, director, chief executive or officer has been found by the Market Misconduct Tribunal, any Court or competent authority to have breached an obligation under the Inside Information Provisions at any time during the period when he was a controlling shareholder, supervisor, manager, director, chief executive or officer;
- (o) where he has been adjudged by a Court or arbitral body civilly liable for any fraud, breach of duty or other misconduct by him involving dishonesty, full particulars of the judgment;
- (p) where any enterprise, company, partnership or unincorporated business enterprise of which he was or is a partner, director, supervisor or manager has had its business registration or licence revoked at any time during the period when he was one of its partners, directors, supervisors or managers, full particulars of such revocation, including the date upon which such registration or licence was revoked, the reasons for the revocation, the outcome and current position;
- (q) where he has at any time been disqualified from holding, or deemed unfit to hold, the position of director, supervisor or manager of an enterprise, a company or an unincorporated business enterprise, or from being involved in the management or conduct of the affairs of any enterprise, company or unincorporated business enterprise, pursuant to any applicable law, rule or regulation or by any competent authority, full particulars of such disqualification or ruling;
- (r) except where such disclosure is prohibited by law, full particulars of any investigation by any judicial, regulatory or governmental authority to which he is subject, including the investigating body, the nature of the investigation and the matters under investigation;

- (s) where he has at any time been refused admission to membership of any professional body or been censured or disciplined by any such body to which he belongs or belonged or been disqualified from membership in any such body or has at any time held a practising certificate or any other form of professional certificate or licence subject to special conditions, full particulars of such refusal, censure, disciplinary action, disqualification or special conditions;
- (t) where he is now or has at any time been a member of a triad or other illegal society, full particulars;
- (u) except where such disclosure is prohibited by law, where he is currently subject to (i) any investigation, hearing or proceeding brought or instituted by any securities regulatory authority, including the Hong Kong Takeovers Panel or any other securities regulatory commission or panel, or (ii) any judicial proceeding in which violation of any securities law, rule or regulation is or was alleged, full particulars of such investigation, hearing or proceeding;
- (v) except where such disclosure is prohibited by law, where he is a defendant in any current criminal proceeding involving an offence which may be material to an evaluation of his character or integrity to be a director or supervisor of the issuer, full particulars of such proceeding;
- (w) any other matters that need to be brought to the attention of holders of securities of the issuer; and
- (x) where there is no information to be disclosed pursuant to any of the requirements of this rule 17.50(2), an appropriate negative statement to that effect.

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

The issuer must notify the Exchange and publish an announcement on any important change in the holding of an executive office, including changes to any important functions or executive responsibilities of a director.

- (3) any change in its share registrar (see rule 11.08) (including any change in overseas branch share registrar), secretary (see rule 5.14), compliance officer (see rule 5.19) or member of the audit committee (see rule 5.28);
- (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);

*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; and
- (6) any revision of interim reports, quarterly reports, annual reports or summary financial reports, the reason leading to the revision of published financial reports, and the financial impacts, if any.

#### **Provision of information in respect of and by directors, supervisors and chief executives**

- 17.50A (1) Where, following implementation of this rule, there is a change in any of the information required to be disclosed pursuant to paragraphs (a) to (e) and (g) of rule 17.50(2) during the course of the director's, supervisor's or chief executive's term of office, the issuer must ensure that the change and the updated information regarding the director, supervisor or chief executive is set out in the next published annual or interim report of the listed issuer (whichever is the earlier).
- (2) Where, following implementation of this rule, there is a change in any of the information required to be disclosed pursuant to paragraphs (h) to (v) of rule 17.50(2) during the course of a director's, supervisor's or chief executive's term of office, the issuer must inform the Exchange and publish an announcement in accordance with Chapter 16 as soon as practicable setting out the updated information regarding the director, supervisor or chief executive and any other information concerning that change that needs to be brought to the attention of holders of the issuer's securities.
- (3) Without prejudice to the issuer's obligation to disclose financial information and biographical details of its directors, supervisors and chief executive(s) under Chapter 18, the disclosures required to be made by an issuer pursuant to paragraphs (1) and (2) are subject to the following exceptions and modifications:
- (a) for rule 17.50(2)(a), an issuer need not disclose the age of the director, supervisor or chief executive in its interim reports;
  - (b) for rule 17.50(2)(d), an issuer need not disclose the length of service of a director, supervisor or chief executive;
  - (c) for rule 17.50(2)(h), an issuer need not disclose any sanction imposed on it by the Exchange; and
  - (d) for rule 17.50(2)(k), an issuer need not disclose the particulars of any unsatisfied judgments or court orders of continuing effect until the relevant judgment or court order becomes final.
- 17.50B Directors, supervisors and chief executive(s) of an issuer must procure and/or assist the issuer to comply with rule 17.50(2) and rule 17.50A including, but not limited to, by immediately informing the issuer of the information referred to in paragraphs (a) to (x) of rule 17.50(2) and any change in the information referred to in paragraphs (a) to (w) of rule 17.50(2) which information concerns the director, supervisor or chief executive. In procuring and/or assisting the issuer in the publication of the information (whether in an announcement in accordance with Chapter 16, or in an annual or interim report, as the case may be), the directors, supervisors and chief executive(s) concerned must accept responsibility for the accuracy of the information.
- 17.50C The issuer must publish the procedures for shareholders to propose a person for election as a director on its website.

### **Appointments outstanding**

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

- (1) there remains outstanding the appointment of any individual(s) to the position of compliance officer 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).

### **Amendments to company information sheet**

17.52 An issuer shall submit to the Exchange (in the electronic format specified by the Exchange from time to time) for publication on the GEM website a revised company information sheet, in the prescribed form set out in Appendix 5F, together with a hard copy duly signed by or on behalf of each of the directors of the issuer, as soon as reasonably practicable after any particulars on the form previously published cease to be accurate.

### **Inclusion of stock code in documents**

17.52A An issuer shall set out its stock code in a prominent position on the cover page or, where there is no cover page, the first page of all announcements, circulars and other documents published by it pursuant to these GEM Listing Rules.

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

#### *Review of documents*

17.53 Subject to rule 17.53A, where an issuer is obliged to publish any announcements, circulars or other documents for the purposes of the GEM Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 17.53(1) or (2).

- (1) The issuer shall submit to the Exchange copies of drafts of the following documents for review before they are issued:
  - (a) listing document (including prospectus);
  - (b) circular relating to cancellation or withdrawal of listing of listed securities;
  - (c) circular relating to transaction or matter required under Chapter 19 of the GEM Listing Rules;
  - (d) circular relating to connected transaction (including continuing connected transaction) required under Chapter 20 of the GEM Listing Rules;

- (e) circular to the issuer's shareholders seeking their approval of:
  - (i) any transaction or arrangement under rule 17.39, 17.40 or 17.47(7);
  - (ii) any matter relating to share option scheme required under Chapter 23 of the GEM Listing Rules; or
  - (iii) any warrant proposal under rule 21.07(3); or
- (f) circulars or offer documents issued by the issuer in connection with takeovers, mergers or offers.

The issuer shall not issue such documents until the Exchange has confirmed that it has no further comments thereon.

- (2) The following transitional provisions apply to announcements set out in this rule and shall cease to have effect on such date as the Exchange may determine and promulgate.

An issuer shall submit to the Exchange copies of drafts of the following announcements for review before they are issued:

- (a) announcement for any very substantial disposal, very substantial acquisition or reverse takeover under rules 19.34 and 19.35;
- (b) announcement for any transaction or arrangement under rules 19.88 to 19.90; or
- (c) announcement for any matter relating to a cash company under rules 19.82 and 19.83.

The issuer shall not issue such announcements until the Exchange has confirmed 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 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 documents directly to the issuer and will at the same time provide a copy of such comments to the Commission.*

*4 The Exchange reserves the right to require an issuer to issue a further announcement or document and/or take other remedial action if the original document does not comply with the requirements of the GEM Listing Rules.*

17.53A In addition to the specified requirements set out in rule 17.53, the Exchange has the right to request to review any announcements, circulars or other documents prior to publication in individual cases. In any such case, the Exchange will communicate to the issuer its direction to review the document prior to publication and the reasons for its decision. The issuer shall accordingly submit to the Exchange copies of drafts for review and shall not issue the document until the Exchange has confirmed that it has no further comments thereon.

17.53B An issuer proposing to publish an announcement, circular or other document pursuant to the GEM Listing Rules shall observe the following provisions:

- (1) Where the subject matter of the document may involve a change in or relate to or affect arrangements regarding trading in the issuer's listed securities (including a suspension or resumption of dealings, and a cancellation or withdrawal of listing), the issuer must consult the Exchange before the document is issued. The document must not include any reference to a specific date or specific timetable in respect of such matter which has not been agreed in advance with the Exchange.
- (2) If the issuer wishes to:
  - (a) ascertain whether or to what extent any provisions in the GEM Listing Rules apply to the document, or the transaction or matter to which it relates; or
  - (b) request a modification or dispensation with any requirements of the GEM Listing Rules in respect of the document, or the transaction or matter to which it relates,

relevant details, including the reasons and circumstances that give rise to the issues concerned, must be submitted to the Exchange in sufficient time for its determination.

17.53C The Exchange shall be authorised by the issuer to file "applications" (as defined in section 2 of the Statutory Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the Statutory Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the 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.

- 17.54
- (1) Any listing document, circular or announcement issued by an issuer pursuant to the GEM Listing Rules is required to contain the statement of responsibility and confirmation set out in rule 2.18.
  - (2) Any listing document, circular, announcement or notice issued by an issuer pursuant to the GEM Listing Rules must contain on its front cover or inside front cover, or as a heading, a prominent and legible disclaimer statement in the form set out in rule 2.19.
  - (3) Any listing document or circular and every annual report and accounts, half-year 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 about the characteristics of GEM, in the form set out in rule 2.20.
  - (4) Any listing document issued by an issuer must contain a statement to the effect that dealings in securities of the issuer may be settled through CCASS and that investors should seek the advice of their stock broker or other professional adviser for details of those settlement arrangements and how such arrangements will affect their rights and interests.



17.55 Where an announcement, advertisement or any other document contains a profit forecast, the provisions of rules 14.28 to 14.31 will apply.

*Information Gathering*

17.55A An issuer must provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange:

- (1) any information that the Exchange reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and
- (2) any other information or explanation that the Exchange may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the GEM Listing Rules.

*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, or corporation communication required pursuant to the GEM Listing Rules must be prepared having regard to the following general principles:—

- (1) the information contained in the document must be clearly presented and 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 must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not, among other things:—
  - (a) omit material facts of an unfavourable nature or fail to accord them with appropriate significance;
  - (b) present favourable possibilities as certain or as more probable than is likely to be the case;
  - (c) present projections without sufficient qualification or explanation; or
  - (d) present risk factors in a misleading way.

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 must, upon request by the Exchange, provide the requested number of certified copies of all resolutions of the issuer including resolutions concerning any of the matters in rules 17.39 to 17.41, except resolutions concerning any other routine business at an annual general meeting, within 15 days after they are passed.



*Circulars to holders of securities*

17.58 In the event of a circular being issued to the holders of any of the issuer's securities, the issuer shall issue a copy or summary of such circular to the holders of all its other securities unless the contents of such circular are of no material concern to such other holders.

17.59 All circulars sent to holders of the issuer's securities must be in the English language and be accompanied by a Chinese translation or be in the Chinese language and be accompanied by an English translation. In respect of overseas members, it shall be sufficient for the issuer to mail an English language version of the circular if it contains a prominent statement in both English and Chinese to the effect that a Chinese language version of the circular is available from the issuer, on request.

17.59A [Repealed 1 January 2009]

*Corporate communications to non registered holders of securities*

17.60 An issuer shall:—

- (1) as soon as practicable following a request to HKSCC, and at the expense of the issuer, send to any non registered holder (by means permitted by the GEM Listing Rules) copies of any corporate communications; and
- (2) forward to each participant regardless of whether the participant is a member of the issuer, one copy of each of the corporate communications of the issuer that relate to the relevant Eligible Security, at the same time as they are despatched to the holders of those securities with registered addresses in Hong Kong. Whenever practicable, an issuer should provide a participant with such reasonable number of additional copies of these documents as the participant requests in advance and undertakes to forward to its bona fide clients who have beneficial interests in those Eligible Security.

*Notes: 1 For the purpose of this rule, the following terms have the following meanings:—*

*“non registered holder”* such a person or company whose listed securities are held in CCASS, directly or through a participant, and who has notified the issuer from time to time, through HKSCC, that such person or company wishes to receive corporate communications; and

*“participant”* a person or company admitted for the time being by HKSCC as a participant of CCASS.

*2 HKSCC will provide listed issuers with up to date lists of participants.*

*Increases in authorised capital*

17.61 Where an increase in authorised capital is proposed, the directors must state in the explanatory circular or other document accompanying the notice of meeting whether they have any present intention of issuing any part of that capital.

## Trading and Settlement

### *Standard transfer form*

17.62 In relation to the transfer of equity securities, an issuer must adopt the standard form of transfer as prescribed by the Exchange from time to time.

### *Certification of transfers*

17.63 An issuer shall:—

- (1) certify transfers against certificates or temporary documents and return them by the seventh day after the date of receipt; and
- (2) split and return renounceable documents by the third business day after the date of receipt.

*Note: Documents of title lodged for registration of probate should be returned with minimum delay, and, if possible, on the next business day following receipt.*

### *Registration services*

17.64 An issuer (or its registrar) must provide a standard securities registration service in accordance with rule 17.68. An issuer (or its registrar) may, but shall not be obliged to, provide an optional securities registration service in accordance with rule 17.69 and/or an expedited securities registration service in accordance with rule 17.70. An issuer (or its registrar) must also provide a bulk securities registration service in accordance with rule 17.71 and a certificate replacement service in accordance with rule 17.72. Subject to rule 17.65 below, the issuer shall ensure that where the issuer (or its registrar) charges a fee for registering transfers or cancelling, splitting, consolidating or issuing definitive certificates relating to the issuer's listed securities, such fee must not exceed, in total, the applicable amounts prescribed in rules 17.68 to 17.72.

17.65 An issuer shall ensure that where it (or its registrar) charges a fee for registering other documents relating to or affecting the title to the issuer's listed securities (e.g. probate, letters of administration, certificates of death or marriage, powers of attorney or other instruments or memorandum and articles of association in respect of a new corporate holder) or for marking or noting documents, such fee must not exceed HK\$5 per item per register.

*Note: "Per item" shall be defined to mean each of such other documents submitted for registration.*

17.66 It is the responsibility of an issuer whose registrar is in breach of any of rules 17.63 to 17.74 to report such breach to the Exchange as soon as it becomes aware of the breach and the Exchange reserves the right to communicate such information to the Commission.

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 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.

*Issue of certificates, registration and other fees*

- 17.68 (1) Standard securities registration service: An issuer shall (or shall procure that its registrar shall) issue definitive certificates arising out of a registration of transfer or the cancelling, splitting, consolidating or issuing (otherwise than pursuant to rule 17.72) of certificates within:—
- (a) 10 business days of the date of expiration of any right of renunciation; or
  - (b) 10 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the standard securities registration service shall not exceed, in total, the higher of the following:—
- (a) HK\$2.50 multiplied by the number of certificates issued; or
  - (b) HK\$2.50 multiplied by the number of certificates cancelled.
- 17.69 (1) Optional securities registration service: An issuer (or its registrar) may, but shall not be obliged to, provide an optional securities registration service under which definitive certificates are required to be issued within:—
- (a) 6 business days of the date of expiration of any right of renunciation; or
  - (b) 6 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the optional securities registration service shall not exceed, in total, the higher of the following:—
- (a) HK\$3.00 multiplied by the number of certificates issued; or
  - (b) HK\$3.00 multiplied by the number of certificates cancelled.
- (3) If the issuer (or its registrar) fails to effect any registration within the period of 6 business days specified in rule 17.69(1), the fee for such registration shall be that determined in accordance with rule 17.68(2).
- 17.70 (1) Expedited securities registration service: An issuer (or its registrar) may, but shall not be obliged to, provide an expedited securities registration service under which definitive certificates are required to be issued within:—
- (a) 3 business days of the date of expiration of any right of renunciation; or
  - (b) 3 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the expedited securities registration service shall not exceed, in total, the higher of the following:
- (a) HK\$20.00 multiplied by the number of certificates issued; or
  - (b) HK\$20.00 multiplied by the number of certificates cancelled.

- (3) If the issuer (or its registrar) fails to effect any registration within the period of 3 business days specified in rule 17.70(1), the registration shall be performed free of charge.

17.71 (1) Bulk securities registration service: An issuer shall (or shall procure that its registrar shall) provide a bulk securities registration service, for transfers of listed securities representing 2,000 or more board lots of the issuer's listed securities where the securities are being transferred from the name of a single holder into the name of another or the same single holder. Certificates shall be issued pursuant to the bulk securities registration service within 6 business days of the receipt of properly executed transfers or other relevant documents or the relevant certificates.

- (2) The fee for registration pursuant to the bulk securities registration service shall not exceed, in total, the higher of the following:—

- (a) HK\$2.00 multiplied by the number of certificates issued; or
- (b) HK\$2.00 multiplied by the number of certificates cancelled.

17.72 Certificate replacement service: An issuer shall (or shall procure that its registrar shall) provide a certificate replacement service. The fee for replacing certificates:

- (1) representing securities with a market value of HK\$200,000 or less (at the time the request for replacement is made) for a person named on the register shall not exceed HK\$200.00, plus the costs incurred by the issuer (or its registrar) in publishing the required public notice; or

- (2) either:

- (a) representing securities with a market value of more than HK\$200,000 (at the time the request for replacement is made); or
- (b) for a person not named on the register (irrespective of the market value of the securities concerned);

shall not exceed HK\$400.00, plus the costs incurred by the issuer (or its registrar) in publishing the required public notice.

17.73 For the purposes of rules 17.68 to 17.72,

- (1) the expression "business day" shall exclude Saturdays, Sundays and public holidays in Hong Kong; and
- (2) in computing any period of business days, such period shall be inclusive of the business day on which the relevant transfers, certificates or other documents were received (or, if such documents were not received on a business day, the business day next following their receipt) and of the business day on which the relevant certificates were delivered or otherwise made available.

17.74 References in rules 17.64 to 17.72 to the issuer's registrar providing a service, or to the issuer procuring that its registrar shall provide a service, shall not relieve the issuer of any obligations in respect of any acts or omissions of its registrar.

### *Registration arrangements*

- 17.75 In connection with rules 17.63 to 17.74 if the issuer does not maintain its own registration department, appropriate arrangements must be made with the registrars to ensure compliance with the provisions of such rules.

### *Trading limits*

- 17.76 Where the market price of the securities of the issuer approaches the extremities of HK\$0.01 or HK\$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.
- 17.76A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK\$1 based on the lowest daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

### *Change in board lot size*

- 17.77 In the event of any amendment to the capital structure (such as a consolidation of shares) or any amendment to the board lot size, the Exchange reserves the right to request that adequate arrangements are made to enable resulting odd lot holders either to dispose of their odd lots or to round them up to a board lot. It may be appropriate for the issuer to appoint a broker as its agent to match the sales and purchases of odd lots or for the major shareholder itself or by its agent to stand in the market to buy or sell odd lot securities. The particular circumstances of an issuer may dictate the method by which odd lot holders are to be accommodated and issuers are urged to consult the Exchange at the earliest opportunity to agree on the appropriate trading method.

### *Closure of books and record date*

- 17.78 (1) An issuer must announce any closure of its transfer books or register of members in respect of securities listed in Hong Kong at least six business days before the closure for a rights issue, or 10 business days before the closure in other cases. In cases where there is an alteration of book closing dates, a further notice shall be given at least five business days before the announced closure or the new closure, whichever is earlier, unless exceptional circumstances render the giving of such notice impossible, in which case, a further notice (by way of an announcement) should be given as soon as practicable, save that no further notice need be given in the circumstances referred to in rules 17.79 to 17.80. Where the issuer decides on a record date without book closure, these requirements apply to the record date.
- (2) An issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting, if the entitlements require the approval of shareholders in the general meeting or are contingent on a transaction that is subject to the approval of shareholders in the general meeting. This rule shall not apply where the issuer announces the timetable of an entitlement on or before 19 June 2011.

#### *Notes:*

1. *For a rights issue, the issuer must provide at least two trading days for trading in the securities with entitlements (i.e. before the ex-date) after publication of the book closure. If trading on the Exchange is interrupted due to a typhoon and/or a black rainstorm warning, the book-close date will be automatically postponed, where necessary, to provide at least two trading days (during neither of which trading is interrupted) for trading of the securities with entitlements during the notice period. In these circumstances the issuer must publish an announcement on the revised timetable.*

2. *For the purposes of rule 17.78(2),*

- *the record date (when there is no book closure) or the last registration date (when there is a book closure) must be at least three business days after the general meeting; and*
- *if the issuer fails to publish the result of the poll conducted in the general meeting in the manner prescribed under rule 17.47(5), it must ensure there is at least one trading day for trading in the securities with entitlements after publication of the results of the poll. The issuer must publish an announcement on any revised timetable.*

*Emergency share registration arrangement during a typhoon*

17.79 Under the T+2 settlement system, securities trade ex-entitlement (an “ex-date”) for two trading days prior to the advertised date on which a listed issuer’s transfer books or register of members is to be closed (the “book-close date”) preceding a record date; the 2 trading days prior to the book-close date being referred to in this rule (and rule 17.80) as the first and second ex-date, respectively. A typhoon occurring on either of the two ex-dates may affect the ability of the purchaser to effect registration in time. Accordingly, in the event of a typhoon, the following arrangements will apply:—

- (1) Where the No. 8 signal or above is hoisted or remains hoisted between 9 am and 12 noon on either the first or second ex-date and is not lowered at or before 12 noon on the relevant ex-date:—
  - (a) the last time for accepting shares for registration shall be deferred to the next business day during normal business hours for each ex-date affected; and
  - (b) the book-close date shall be automatically postponed by the number of ex-dates affected;
- (2) Where the No. 8 signal or above is hoisted or remains hoisted between 12 noon and 3 pm on either the first or second ex-date:—
  - (a) the last time for accepting shares for registration shall be deferred to the next business day during normal business hours for each ex-date affected; and
  - (b) the book-close date shall be automatically postponed by the number of ex-dates affected;
- (3) Where the No. 8 signal or above is hoisted between 3 pm and 4 pm on the first ex-date, no changes will be made to the timetable for accepting shares for registration in respect of the reduced business hours on such ex-date;
- (4) Where the No. 8 signal or above is hoisted between 3 pm and 4 pm on the second ex-date but lowered at or before 9 am on the next business day:—
  - (a) the last time for accepting shares for registration shall be deferred to 12 noon on the next business day; and
  - (b) if the original book-close date is not a business day, the book-close date shall be automatically postponed to the next business day;
- (5) Where the No. 8 signal or above is hoisted between 3 pm and 4 pm on the second ex-date but lowered after 9 am but at or before 12 noon on the next business day:—
  - (a) the last time for accepting shares for registration shall be deferred to 5 pm on the next business day; and

- (b) if the original book-close date is not a business day, the book-close date shall be automatically postponed to the next business day;
- (6) Where the No. 8 signal or above is hoisted between 3 pm and 4 pm on the second ex-date but not lowered until after 12 noon on the next business day:—
  - (a) the last time for accepting shares for registration shall be deferred to 12 noon on the following business day; and
  - (b) the book-close date shall be automatically postponed to such date;
- (7) Where the No. 8 signal is lowered at or before 12 noon on the first ex-date, no changes will be made in respect of the time for accepting shares for registration or the book-close date in respect of the reduced business hours on such ex-date. On the other hand, where the No. 8 signal is lowered at or before 12 noon on the second ex-date, the time for accepting shares for registration shall be deferred to at least 5 pm on the same day but no change will automatically be made to the book-close date;
- (8) In each of the circumstances referred to in sub-paragraphs (1) to (7) above, listed issuers may alter the stated book-closure period in accordance with any delays made to the book-close date so that the book-closure period remains the same;
- (9) Listed issuers shall not be required to make any announcements with respect to changes made to the ex-dates or the book-close date in accordance with this rule. All investors and practitioners should be aware of these emergency share registration arrangements as any subsequent announcement given of date changes after a typhoon is not likely to assist them. On the other hand, if the deferrals referred to above affect the dividend payment date or the end of the book-closure period, a listed issuer must give notice (by way of an announcement) of the new dividend payment date and any extension in the book-closure period as soon as practicable;
- (10) Where any of the circumstances referred to in sub-paragraphs (1) to (7) above occur on any deferred ex-dates or on a postponed book-close date, the same arrangements will apply mutatis mutandis;
- (11) Listed issuers are required to ensure that where a book-close date is automatically altered by virtue of these arrangements any reference to such date in a resolution, listing document, announcement or circular to shareholders will include such altered date.

*Notes: 1 For clarity, the proposed arrangements have been summarised in Table 1 set out at the end of this Chapter.*

*2 For the purposes of this rule and Table 1 set out at the end of this Chapter:—*

- (a) references to “normal business hours” in respect of a share registrar means at least 9 am to 4 pm; and*
- (b) references to a “trading day” shall have the same meaning as in the Rules of the Exchange.*

*Emergency share registration arrangements during a black rainstorm warning*

17.80 A black rainstorm warning occurring on either of the 2 ex-dates (as defined in rule 17.79) may affect the ability of the purchaser to effect registration in time. Accordingly, in the event of a black rainstorm warning, the following arrangements will apply:-

- (1) Where a black rainstorm warning is issued before 9 am and remains in effect at 12 noon:—
  - (a) the last time for accepting shares for registration shall be deferred to the next business day during normal business hours for each ex-date affected; and
  - (b) the book-close date shall be automatically postponed by the number of ex-dates affected;
- (2) Where a black rainstorm warning issued before 9 am is cancelled at or before 12 noon on either the first or second ex-date, the time for accepting shares for registration shall be deferred to 5 pm on the same day but no change will automatically be made to the book-close date;
- (3) Where a black rainstorm warning is issued at or after 9 am, no changes will be made in respect of the time for accepting shares for registration or the book-close date as the share registrar will open to the public as normal;
- (4) In each of the circumstances referred to sub-paragraph (1) to (3) above, listed issuers may alter the stated book-closure period in accordance with any delays made to the book-close date so that the book-closure period remains the same;
- (5) Listed issuers shall not be required to make any announcements with respect to changes made to the ex-dates or the book-close date in accordance with this rule. All investors and practitioners should be aware of these emergency share registration arrangements as any subsequent announcement given of date changes after a black rainstorm warning is not likely to assist them. On the other hand, if the deferrals referred to above affect the dividend payment date or the end of the book-closure period, a listed issuer must give notice (by way of an announcement) of the new dividend payment date and any extension in the book-closure period as soon as practicable;
- (6) Where any of the circumstances referred to in sub-paragraphs (1) to (3) above occur on any deferred ex-dates or on a postponed book-close date, the same arrangements will apply mutatis mutandis;
- (7) Listed issuers are required to ensure that where a book-close date is automatically altered by virtue of these arrangements any reference to such date in a resolution, listing document, announcement or circular to shareholders will include such altered date.

*Notes:* 1 *For clarity, the proposed arrangements have been summarised in Table 2 set out in the end of this Chapter.*

2 *For the purposes of this rule and Table 2 set out at the end of this Chapter:—*

- (a) *references to “normal business hours” in respect of a share registrar means at least 9 am to 4 pm; and*
- (b) *references to a “trading day” shall have the same meaning as in the Rules of the Exchange.*



## Miscellaneous obligations

17.81 [Repealed 1 January 2005]

17.82 [Repealed 1 January 2005]

17.83 [Repealed 1 January 2005]

17.84 [Repealed 1 January 2005]

17.85 [Repealed 1 January 2005]

17.86 [Repealed 1 January 2005]

17.87 [Repealed 1 January 2005]

### *Equality of treatment*

17.88 An issuer shall ensure equality of treatment for all holders of securities of the same class who are in the same position.

### *Takeovers and share repurchases*

17.89 An issuer must comply with the Takeovers Code and the Code on Share Buy-backs.

*Note: 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.*

### *Directors' service contracts*

17.90 An issuer shall obtain the prior approval of its shareholders in a general meeting (at which the relevant director and his associates shall 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.

*Independent financial advisers*

17.92 An independent financial adviser appointed under rule 17.47(6)(b), rule 20.42 or rule 24.05(6)(a)(ii) must take all reasonable steps to satisfy itself that:

- (1) it has a reasonable basis for making the statements required by rule 20.43; and
- (2) without limiting the generality of paragraph (1) above, there is no reason to believe any of the following information is not true or omits a material fact:
  - (a) any information relied on by the independent financial adviser in forming its opinion; or
  - (b) any information relied on by any third party expert on whose opinion or advice the independent financial adviser relies in forming its opinion.

*Notes:* 1. *For the purposes of this rule, the Exchange expects that the reasonable steps an independent financial adviser will typically perform will include the following:*

- (a) obtaining all information and documents of the issuer relevant to an assessment of the fairness and reasonableness of the terms of the transaction, for example, if the transaction involves the purchase or sale of products or services, information and documents showing the prices at which the issuer buys and sells such products and services to independent third parties;*
- (b) researching the relevant market and other conditions and trends relevant to the pricing of the transaction;*
- (c) reviewing the fairness, reasonableness and completeness of any assumptions or projections relevant to the transaction;*
- (d) without limiting the generality of paragraph (c) above, in relation to any third party expert providing an opinion or valuation relevant to the transaction:*
  - (i) interviewing the expert including as to its expertise and any current or prior relationships with the issuer, other parties to the transaction, and core connected persons of either the issuer or another party to the transaction;*
  - (ii) reviewing the terms of engagement (having particular regard to the scope of work, whether the scope of work is appropriate to the opinion required to be given and any limitations on the scope of work which might adversely impact on the degree of assurance given by the expert's report, opinion or statement); and*

- (iii) *where the independent financial adviser is aware the issuer or another party to the transaction has made formal or informal representations to the expert, assessing whether the representations are in accordance with the independent financial adviser's knowledge; and*
  - (e) *if there have been any relevant alternative offers made (for example, offers made recently for the same asset), then reviewing and assessing such alternative offers and the reasons given, if any, by the management for rejecting these offers.*
2. *The Exchange expects the independent financial adviser will ensure the letter referred to at rule 20.43 takes account of the following principles:*
- (a) *the source for any fact which is material to an argument should be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the fact has been included in a document recently sent to shareholders, an appropriate cross reference may instead be made;*
  - (b) *a quotation (for example, from a newspaper or a stockbroker circular) should not be used out of context and details of the origin should be included. Since quotations will necessarily carry the implication that they are endorsed by the independent financial adviser, quotations should not be used unless the independent financial adviser has corroborated or substantiated them;*
  - (c) *pictorial representations, charts, graphs and diagrams should be presented without distortion and, when relevant, should be to scale; and*
  - (d) *any comparables referred to in a document must be a fair and representative sample. The bases for compiling such comparables must be clearly stated in the document.*

17.93 The issuer must:

- (1) afford any independent financial adviser it appoints pursuant to rule 17.47(6)(b) or rule 24.05(6)(a)(ii) full access at all times to all persons, premises and documents relevant to the independent financial adviser's performance of its duties as set out in the GEM Listing Rules. In particular, terms of engagement with experts retained to perform services related to the transaction should contain clauses entitling the independent financial adviser access to:
  - (a) any such expert;
  - (b) the expert's reports, draft reports (both written and oral), and terms of engagement;
  - (c) information provided to or relied on by the expert;
  - (d) information provided by the expert to the Exchange or Commission; and
  - (e) all other correspondence exchanged between the issuer or its agents and the expert or between the expert, the issuer and the Exchange or Commission;

*Note: The Exchange expects that access to documents for the purposes of this rule would include the right to take copies of the documents without charge.*

- (2) keep the independent financial adviser it appoints informed of any material change to any information previously given to or accessed by the independent financial adviser pursuant to paragraph (1) above; and
- (3) provide to or procure for the independent financial adviser all necessary consents to the provision of the information referred to in paragraphs (1) and (2) above to the independent financial adviser.

17.94 An independent financial adviser must be appropriately licensed by the Commission and must discharge its responsibilities with due care and skill.

17.95 An independent financial adviser must perform its duties with impartiality.

17.96 An independent financial adviser must be independent from any issuer for whom it acts. An independent financial adviser is not independent if any of the following circumstances exist as at the time of making the declaration required by rule 17.97(1):

- (1) the IFA group and any director or close associate of a director of the independent financial adviser holds, directly or indirectly, in aggregate more than 5% of the number of issued shares of the issuer, another party to the transaction, or a close associate or core connected person of the issuer or another party to the transaction;
- (1A) in the case of a connected transaction, the independent financial adviser holds more than 5% of the number of issued shares of an associate of another party to the transaction;
- (2) any member of the IFA group or any director or close associate of a director of the independent financial adviser is a close associate or core connected person of the issuer or another party to the transaction;
- (2A) in the case of a connected transaction, the independent financial adviser is an associate of another party to the transaction;
- (3) any of the following exceeds 10% of the total assets shown in the latest consolidated financial statements of the independent financial adviser's ultimate holding company or, where there is no ultimate holding company, the independent financial adviser:
  - (a) the aggregate of:
    - (i) amounts due to the IFA group from:
      - (A) the issuer;
      - (B) its subsidiaries;
      - (C) its controlling shareholder; and
      - (D) any close associates of its controlling shareholder; and
    - (ii) all guarantees given by the IFA group on behalf of:
      - (A) the issuer;
      - (B) its subsidiaries;
      - (C) its controlling shareholder; and

- (D) any close associates of its controlling shareholder;
- (b) the aggregate of:
- (i) amounts due from the IFA group to:
    - (A) the issuer;
    - (B) its subsidiaries; and
    - (C) its controlling shareholder; and
  - (ii) all guarantees given on behalf of the IFA group by:
    - (A) the issuer;
    - (B) its subsidiaries; and
    - (C) its controlling shareholder;
- (c) the aggregate of:
- (i) amounts due from the IFA group to any of the following (referred to in this rule as “the Other Parties”):
    - (A) another party to the transaction;
    - (B) any holding company of another party to the transaction;
    - (C) any subsidiary of any holding company of another party to the transaction;
    - (D) any controlling shareholder of:
      - (1) another party to the transaction; or
      - (2) any holding company of another party to the transaction; and
    - (E) any close associate of any controlling shareholder referred to in paragraph (D) above; and
  - (ii) all guarantees given by any of the Other Parties on behalf of the IFA group; and
- (d) the aggregate of:
- (i) amounts due to the IFA group from any of the Other Parties; and
  - (ii) all guarantees given by the IFA group on behalf of any of the Other Parties;
- (4) any of the following has a current business relationship with the issuer or another party to the transaction, or a director, subsidiary, holding company or substantial shareholder of the issuer or another party to the transaction, which would be reasonably considered to affect the independent financial adviser’s independence in performing its duties as set out in the GEM Listing Rules, or might reasonably give rise to a perception that the independent financial adviser’s independence would be so affected, except where that relationship arises under the independent financial adviser’s appointment to provide the advice:
- (a) any member of the IFA group;
  - (b) an employee of the independent financial adviser who is directly engaged in providing the advice to the issuer;

- (c) a close associate of an employee of the independent financial adviser who is directly engaged in providing the advice to the issuer;
  - (d) a director of any member of the IFA group; or
  - (e) a close associate of a director of any member of the IFA group;
- (5) within 2 years prior to making the declaration pursuant to rule 17.97(1):
- (a) a member of the IFA group has served as a financial adviser to:
    - (i) the issuer or its subsidiaries;
    - (ii) another party to the transaction or its subsidiaries; or
    - (iii) a core connected person of the issuer or another party to the transaction; or
  - (b) without limiting paragraph (a), an employee or a director of the independent financial adviser who is directly engaged in providing the subject advice to the issuer:
    - (i) was employed by or was a director of another firm that served as a financial adviser to any of the entities referred to at paragraphs (a)(i) to (a)(iii) above; and
    - (ii) in that capacity, was directly engaged in the provision of financial advice to the issuer or another party to the transaction;
- (6) the independent financial adviser or a member of the IFA group is the issuer's auditor or reporting accountant.

*Notes: 1. In addition to it being a breach of the GEM Listing Rules, if it comes to the Exchange's attention that an independent financial adviser is not independent, the Exchange will not accept documents produced by that independent financial adviser for any purpose required under the GEM Listing Rules in relation to the subject transaction.*

*2. In calculating the percentage figure of shares that it holds or will hold for the purposes of sub-paragraphs (1), (2) and (4), an entity is not required to include an interest:*

- (a) held by an investment entity on behalf of its discretionary clients;*
- (b) held by a fund manager on a non-discretionary basis such as a managed account or managed fund;*
- (c) held in a market-making capacity;*
- (d) held in a custodial capacity;*
- (e) in shares that would be disregarded for the purposes of Divisions 2 to 4 of Part XV of the Securities and Futures Ordinance under section 323 of that Ordinance; or*
- (f) in shares held by a member of the entity's group that is an investment manager whose interest would not be aggregated with its holding company under section 316(2) of the Securities and Futures Ordinance by reason of the operation of section 316(5) of that Ordinance.*

*For these purposes “investment manager” has the meaning given to it in section 316(7) of the Securities and Futures Ordinance.*

3. *For the purposes of this rule, ultimate holding company means a holding company that itself does not have a holding company.*

17.97 No later than the earlier of the independent financial adviser agreeing its terms of engagement with the issuer and the independent financial adviser commencing work as independent financial adviser to the issuer, the independent financial adviser must submit to the Exchange:

- (1) a declaration in the prescribed form set out in Appendix 13 to the effect that the independent financial adviser is independent, including a statement addressing each of the circumstances set out in rule 17.96; and
- (2) an undertaking, in the terms set out in Appendix 14 to:
  - (a) comply with the GEM Listing Rules; and
  - (b) co-operate in any investigation conducted by the Listing Division and/or the GEM Listing Committee of the Exchange, including answering promptly and openly any questions addressed to the independent financial adviser, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the independent financial adviser is requested to appear.

17.98 Where an independent financial adviser or issuer becomes aware of a change in the circumstances set out in the declaration required by rule 17.97(1) during the period the independent financial adviser is engaged by the issuer, the independent financial adviser or issuer must notify the Exchange as soon as possible upon that change occurring.

17.99 Insofar as the GEM Listing Rules impose a higher standard of conduct on independent financial advisers than that set out in the Commission’s Corporate Finance Adviser Code of Conduct, the Code of Conduct, the Takeovers Code, the Share Buy-backs Code and all other relevant codes and guidelines applicable to them, the GEM Listing Rules will prevail.

*Note: The Exchange also reminds independent financial advisers of their other statutory obligations including but not limited to those under the Securities and Futures Ordinance.*

### **Appointment and removal of auditor prior to expiration of his term of office**

17.100 The issuer must at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting until the next annual general meeting. The issuer must not remove its auditor before the end of the auditor’s term of office without first obtaining shareholders’ approval at a general meeting. An issuer must send a circular proposing the removal of the auditor to shareholders with any written representations from the auditor, not less than 10 business days before the general meeting. An issuer must allow the auditor to attend the general meeting and make written and/or verbal representations to shareholders at the general meeting.

### **Corporate Governance Code**

17.101 (1) The Corporate Governance Code in Appendix 15 sets out the principles of good corporate governance and two levels of recommendations: (a) code provisions; and (b) recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

*Note: Issuers may also devise their own code on corporate governance practices on such terms as they may consider appropriate.*



- (2) Issuers must state whether they have complied with the code provisions set out in the Corporate Governance Code for the relevant accounting period in their half-year reports (and summary half-year reports, if any) and annual reports (and summary financial reports, if any).

*Note: For the requirements governing preliminary results announcements, see rules 18.50 and 18.78.*

- (3) Where the issuer deviates from the code provisions, it must give considered reasons:
- (a) for annual reports (and summary financial reports), in the Corporate Governance Report under Appendix 15; and
  - (b) for half-year reports (and summary half-year reports), either:
    - (i) by giving considered reasons for each deviation; or
    - (ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the immediately preceding annual report, and providing details of any changes together with considered reasons for any deviation not reported in that annual report. The references must be clear and unambiguous and the half-year report (or summary half-year report) must not contain only a cross-reference without any discussion of the matter.
- (4) For the recommended best practices, issuers are encouraged, but are not required, to state whether they have complied with them and give considered reasons for any deviation.

#### **Publication of issuers' constitutional documents**

17.102 An issuer must publish on its own website and on the GEM website, an up to date consolidated version of its memorandum and articles of association or equivalent constitutional document.

#### **Environmental and Social Matters**

- 17.103(1) The Environmental, Social and Governance ("ESG") Reporting Guide in Appendix 20 comprises two levels of disclosure obligations: (a) "comply or explain" provisions; and (b) recommended disclosures.
- (2) Issuers must state whether they have complied with the "comply or explain" provisions set out in the ESG Reporting Guide for the relevant financial year in their annual reports or in separate ESG reports.
- (3) Where the issuer deviates from the "comply or explain" provisions, it must give considered reasons in its ESG report.
- (4) Issuers are encouraged, but not required, to report on the recommended disclosures of the ESG Reporting Guide.
- (5) Issuers must publish their ESG reports on an annual basis and regarding the same period covered in their annual reports.

*Notes:*

- (1) *An ESG report may be presented as information in the issuer's annual report, in a separate report, or on the issuer's website. Where not presented in the issuer's annual report, the issuer should publish this information as close as possible to, and in any event no later than three months after, the publication of the issuer's annual report.*
- (2) *As regards "Subject Area A. Environmental" of the ESG Reporting Guide, the upgrade of the Key Performance Indicators to "comply or explain" will come into effect for issuers' financial years beginning on or after 1 January 2017.*

17.104 The nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report.

*Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.*

**TABLE 1 (CHAPTER 17)  
EMERGENCY SHARE REGISTRATION ARRANGEMENTS FOR T + 2  
SETTLEMENT SYSTEM**

Event	Ex-entitlement Day (Ex-Date)	Typhoon Approach/Retreat		Registrar	Book-Close Date	Closed Period for Transfer Books or Register of Members	Announcements Required
		Time	Status of Signal				
1	First	9 am - 12 noon	No. 8 Signal or above is hoisted or remains hoisted and is not lowered at or before 12 noon	For each ex-date affected defer to the next business day (normal business hours)	Automatically postponed by number of ex-dates affected	The book-closure period may be extended in accordance with the delay to the book-close date so that the book-closure period remains the same	No announcement required unless:- (i) the payment date is also deferred, in which case an announcement of the new payment date must be made by the listed issuer; or (ii) the book-closure period is extended,  in both cases the listed issuer must publish a notice of such changes as soon as possible.
	Second						
3	First	12 noon - 3 pm	No. 8 Signal or above is hoisted or remains hoisted during this period	No deferment on first ex-date	No change	No change	No announcement required
	Second						
5	First	3 pm - 4 pm	No. 8 Signal or above is hoisted	Defer to 12 noon or the next business day	If the original book-close date is a business day - no change. Otherwise postponed to the next business day	The book-closure period may be extended in accordance with the delay to the book-close date so that the book-closure period remains the same	No announcement required unless:- (i) the payment date is also deferred, in which case an announcement of the new payment date must be made by the listed issuer; or (ii) the book-closure period is extended,  in both cases the listed issuer must publish a notice of such changes as soon as practicable.
6	Second	3 pm - 4 pm	No. 8 Signal or above is hoisted but lowered at or before 9 am on the next business day	Defer to 12 noon or the next business day	If the original book-close date is a business day - no change. Otherwise postponed to the next business day	The book-closure period may be extended in accordance with the delay to the book-close date so that the book-closure period remains the same	No announcement required unless:- (i) the payment date is also deferred, in which case an announcement of the new payment date must be made by the listed issuer; or (ii) the book-closure period is extended,  in both cases the listed issuer must publish a notice of such changes as soon as practicable.

Event	Ex-entitlement Day (Ex-Date)	Typhoon Approach/Retreat		Registrar	Book-Close Date	Closed Period for Transfer Books or Register of Members	Announcements Required
		Time	Status of Signal				
7	Second	3 pm - 4 pm	No. 8 Signal or above is hoisted but lowered after 9 am but at or before 12 noon on the next business day	Defer to 5 pm on the next business day	If the original book-close date is a business day – no change. Otherwise postponed to the next business day		
8	Second	3 pm - 4 pm	No. 8 Signal or above is hoisted but not lowered until after 12 noon on the next business day	Defer to 12 noon on the business day following the next business day ("B day")	Automatically postponed to B day		
9	First	At or before 12 noon	No. 8 Signal is lowered	No deferment	No change	No change	No announcement required
10	Second	At or before 12 noon	No. 8 Signal is lowered	Extension to 5 pm			

**NB:** Where any of the above events happen on deferred ex-dates or on a postponed book-close date the relevant arrangements set out above will apply mutatis mutandis.

**TABLE 2 (CHAPTER 17)  
EMERGENCY SHARE REGISTRATION ARRANGEMENTS DURING A BLACK RAINSTORM WARNING**

Event	Ex-entitlement Day (Ex-Date)	Issue/cancellation of a Black Rainstorm Warning		Registrar Time for Accepting Shares for Registration	Book-Close Date	Closed Period for Transfer Books or Register of Members	Announcements Required
		Time	Status of Signal				
1	First	Before 9 am	A Black Rainstorm Warning is issued and remains in effect at 12 noon	For each ex-date affected defer to the next business day (normal business hours)	Automatically postponed by number of ex-dates affected	The book-closure period may be extended in accordance with the delay to the book-close date so that the book-closure period remains the same	No announcement required unless:– (i) the payment date is also deferred, in which case an announcement of the new payment date must be made by the listed issuer, or (ii) the book-closure period is extended,  in both cases the listed issuer must publish a notice of such changes as soon as possible.
	Second						
3	First	Before 9 am	A Black Rainstorm Warning is issued before 9 am but cancelled at or prior to 12 noon	Extension to 5 pm on the same day	No change	No change	No announcement required
	Second						
5	First	At or after 9 am	A Black Rainstorm Warning issued at or after 9 am	No change	No change	No change	No announcement required
	Second						

**NB:** Where any of the above events happen on deferred ex-dates or on a postponed book-close date the relevant arrangements set out above will apply mutatis mutandis.