

## Chapter 14

### EQUITY SECURITIES

#### NOTIFIABLE TRANSACTIONS

##### Preliminary

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

*Note: Listed issuers should note that even if a transaction is not required to be disclosed pursuant to the provisions of this Chapter, it may nevertheless be required to be disclosed under the listed issuer's general obligation to keep the market informed of all price-sensitive information (see rule 13.09).*

- 14.02 If any transaction for the purposes of this Chapter is also a connected transaction for the purposes of Chapter 14A, the listed issuer will, in addition to complying with the provisions of this Chapter, have to comply with the provisions of Chapter 14A.
- 14.03 All announcements, circulars and listing documents in relation to transactions under this Chapter must be reviewed by the Exchange and may only be issued after the Exchange has confirmed that it has no further comments thereon.

##### Definitions

- 14.04 For the purposes of this Chapter:—

- (1) any reference to a "transaction" by a listed issuer:
- (a) includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29;
  - (b) includes any transaction involving a listed issuer writing, accepting, transferring, exercising or terminating (in the manner described in rule 14.73) an option (as defined in rule 14.72) to acquire or dispose of assets or to subscribe for securities;
  - (c) includes entering into or terminating finance leases where the financial effects of such leases have an impact on the balance sheet and/or profit and loss account of the listed issuer;
  - (d) includes entering into or terminating operating leases which, by virtue of their size, nature or number, have a significant impact on the operations of the listed issuer. The Exchange will normally consider an operating lease or a transaction involving multiple operating leases to have a "significant impact" if such lease(s), by virtue of its/their total monetary value or the number of leases involved, represent(s) a 200% or more increase in the scale of the listed issuer's existing operations conducted through lease arrangements of such kind;

- (e) includes granting an indemnity or a guarantee or providing financial assistance by a listed issuer, other than by a listed issuer which:
  - (i) is a banking company (as defined in rule 14A.10(1)) and provides the financial assistance (as defined in rule 14A.10(4)) in its ordinary and usual course of business (as referred to in rule 14.04(8)); or
  - (ii) grants an indemnity or a guarantee, or provides financial assistance to its subsidiaries;

*Note: Such a transaction may nevertheless in some cases constitute a connected transaction under Chapter 14A. In such cases, the listed issuer will have to comply with the provisions of Chapter 14A.*

- (f) includes entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement; and
- (g) to the extent not expressly provided in rules 14.04(1)(a) to (f), excludes any transaction of a revenue nature in the ordinary and usual course of business (as referred to in rule 14.04(8)) of the listed issuer;

*Notes: 1 To the extent not expressly provided in rules 14.04(1)(a) to (f), any transaction of a revenue nature in the ordinary and usual course of business of a listed issuer will be exempt from the requirements of this Chapter. However, listed issuers should note that any such transaction may nevertheless be required to be disclosed under the listed issuer's general obligation to keep the market informed of all price-sensitive information (see rule 13.09).*

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

*3 Where a listed issuer, for the financial reporting purpose, has transferred an asset from the fixed asset account to the current asset account, a subsequent disposal of the asset by the listed issuer will not be exempt under rule 14.04(1)(g).*

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

- (a) whether previous transactions or recurring transactions that were of the same nature were treated as notifiable transactions;*
- (b) the historical accounting treatment of its previous transactions that were of the same nature;*
- (c) whether the accounting treatment is in accordance with generally acceptable accounting standards; and*

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

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

- (2) “accounts” means:-
- (a) in respect of a listed issuer, and for the purpose of determining its total assets, profits or revenue figures pursuant to rule 14.07, the listed issuer’s latest published audited accounts or, where consolidated accounts have been prepared, the listed issuer’s latest published audited consolidated accounts; and
  - (b) in the case of any other company, legal person, partnership, trust or business unit, its latest audited accounts or, where consolidated accounts have been prepared, its latest audited consolidated accounts or, where no audited accounts have been prepared, such other accounts as may be permitted by the Exchange in its discretion;
- (3) an “aircraft company” means a company or other entity whose non-cash assets consist solely or mainly of aircraft or interests in aircraft or interests in companies or entities whose non-cash assets consist solely or mainly of aircraft and whose income is mainly derived from those aircraft;
- (4) “assets” means both tangible and intangible assets and includes businesses, companies and securities, whether listed or not (unless otherwise stated);
- (5) “de minimis ratio” means the ratio determined in accordance with rules 14A.31(2), 14A.32, 14A.33(3), 14A.34, 14A.65(2), 14A.65(3)(a), 14A.65(3)(b)(ii), 14A.66(1) or 14A.66(2) (as the case may be);
- (6) a “listed issuer” means a company or other legal person whose securities are already listed on the Main Board and, unless the context otherwise requires, includes its subsidiaries;
- (7) a “notifiable transaction” means a transaction classified as a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover under rule 14.06;
- (8) “ordinary and usual course of business” of an entity means the existing principal activities of the entity or an activity wholly necessary for the principal activities of the entity. In the context of financial assistance provided in the ordinary and usual course of business, this means financial assistance provided by a banking company only and, in the context of financial assistance not provided in the ordinary and usual course of business, it means financial assistance not provided by a banking company;

- (9) “percentage ratios” means the percentage ratios set out in rule 14.07, and “assets ratio”, “profits ratio”, “revenue ratio”, “consideration ratio” and “equity capital ratio” shall bear the respective meanings set out in rule 14.07;
- (10) a “property company” means a company or other entity whose non-cash assets consist solely or mainly of properties or interests in properties or interests in companies or entities whose non-cash assets consist solely or mainly of properties and whose income is mainly derived from those properties;
- (11) a “shipping company” means a company or other entity whose non-cash assets consist solely or mainly of vessels or interests in vessels or interests in companies or entities whose non-cash assets consist solely or mainly of vessels and whose income is mainly derived from those vessels; and
- (12) “total assets” means:-
- (a) in respect of a listed issuer, the total fixed assets, including intangible assets, plus the total current and non-current assets, as shown in its accounts or latest published interim report (whichever is more recent), subject to any adjustments or modifications arising by virtue of the provisions of rules 14.16, 14.18 and 14.19; and
- (b) in the case of any other company, legal person, partnership, trust or business unit, the total fixed assets, including intangible assets, plus the total current and non-current assets, as shown in its accounts, subject to any adjustments or modifications arising from any significant changes to its assets subsequent to the date of the balance sheet in the accounts.

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

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

- 14.05 A listed issuer considering a transaction must, at an early stage, consider whether the transaction falls into one of the classifications set out in rule 14.06. In this regard, the listed issuer must determine whether or not to consult its financial, legal or other professional advisers. Listed issuers or advisers which are in any doubt as to the application of the requirements in this Chapter should consult the Exchange at an early stage.
- 14.06 The transaction classification is made by using the percentage ratios set out in rule 14.07. The classifications are:—
- (1) share transaction — an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and where all percentage ratios are less than 5%;
- (2) discloseable transaction — a transaction or a series of transactions (aggregated under rules 14.22 and 14.23) by a listed issuer where any percentage ratio is 5% or more, but less than 25%;

- (3) major transaction — a transaction or a series of transactions (aggregated under rules 14.22 and 14.23) by a listed issuer where any percentage ratio is 25% or more, but less than 100% for an acquisition or 75% for a disposal;
  - (4) very substantial disposal — a disposal or a series of disposals (aggregated under rules 14.22 and 14.23) of assets (including deemed disposals referred to in rule 14.29) by a listed issuer where any percentage ratio is 75% or more;
  - (5) very substantial acquisition — an acquisition or a series of acquisitions (aggregated under rules 14.22 and 14.23) of assets by a listed issuer where any percentage ratio is 100% or more; and
  - (6) reverse takeover – an acquisition or a series of acquisitions of assets by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Exchange Listing Rules. A “reverse takeover” normally refers to:
    - (a) an acquisition or a series of acquisitions (aggregated under rules 14.22 and 14.23) of assets constituting a very substantial acquisition where there is or which will result in a change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries); or
    - (b) acquisition(s) of assets from a person or a group of persons or any of his/their associates pursuant to an agreement, arrangement or understanding entered into by the listed issuer within 24 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition. For the purpose of determining whether the acquisition(s) constitute(s) a very substantial acquisition, the lower of:
      - (A) the latest published figures of the asset value, revenue and profits as shown in the listed issuer’s accounts and the market value of the listed issuer at the time of the change in control, which must be adjusted in the manner set out in rules 14.16, 14.17, 14.18 and 14.19, as applicable, up to the time of the change in control; and
      - (B) the latest published figures of the asset value, revenue and profits as shown in the listed issuer’s accounts and the market value of the listed issuer at the time of the acquisition(s), which must be adjusted in the manner set out in rules 14.16, 14.17, 14.18 and 14.19, as applicable,
- is to be used as the denominator of the percentage ratios.

*Note: Rule 14.06(6) will apply irrespective of whether any general offer obligations under the Takeovers Code have been waived.*

*Percentage ratios*

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

- (1) Assets ratio —the total assets which are the subject of the transaction divided by the total assets of the listed issuer (see in particular rules 14.09 to 14.12, 14.16, 14.18 and 14.19);
- (2) Profits ratio — the profits attributable to the assets which are the subject of the transaction divided by the profits of the listed issuer (see in particular rules 14.13 and 14.17);
- (3) Revenue ratio — the revenue attributable to the assets which are the subject of the transaction divided by the revenue of the listed issuer (see in particular rules 14.14 and 14.17);
- (4) Consideration ratio — the consideration divided by the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer's securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of the transaction (see in particular rule 14.15); and
- (5) Equity capital ratio — the nominal value of the listed issuer's equity capital issued as consideration divided by the nominal value of the listed issuer's issued equity capital immediately before the transaction.

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

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

14.08 The table below summarises the classification and percentage ratios resulting from the calculations set out in rule 14.07. However, listed issuers should refer to the relevant rules for the specific requirements.

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

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

#### Assets

- 14.09 Where the asset being acquired or disposed of constitutes equity capital, the listed issuer must take into account the matters referred to in rules 14.25 to 14.32 when calculating the amount of total assets which are the subject of the transaction.
- 14.10 Where the equity capital to be acquired or disposed of by the listed issuer is listed on the Main Board or GEM, the total assets which are the subject of the transaction must be adjusted in the manner set out in rules 14.16, 14.18 and 14.19.
- 14.11 Where a listed issuer which is a property company, shipping company or aircraft company acquires or disposes of properties, vessels or aircraft respectively, the aggregate value (on an unencumbered basis) of the properties, vessels or aircraft (as the case may be) being acquired or realised will be compared with the total assets of the listed issuer which must be adjusted in the manner set out in rules 14.16, 14.18 and 14.19 or the latest published valuation (on an unencumbered basis) of the properties, vessels or aircraft (as the case may be) if such valuation is published after the issue of accounts of the listed issuer, where appropriate.

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

*Profits*

- 14.13 Profits mean net profits after deducting all charges except taxation and before minority interests and extraordinary items (See also rule 14.17). In the case of an acquisition or disposal of assets (other than equity capital) through a non wholly-owned subsidiary, the profits attributable to the assets acquired or disposed of (and not the listed issuer’s proportionate interest in such profits) will form the numerator for the purpose of the profits ratio.

*Revenue*

- 14.14 “Revenue” normally means revenue arising from the principal activities of a company and does not include those items of revenue and gains that arise incidentally. In the case of any acquisition or disposal of assets (other than equity capital) through a non wholly-owned subsidiary, the revenue attributable to the assets being acquired or realised (and not the listed issuer’s proportionate interest in such revenue) will form the numerator for the purpose of the revenue ratio (See also rule 14.17).

*Consideration*

- 14.15 When calculating the consideration ratio:—
- (1) the value of the consideration shall be the fair value of the consideration determined at the date of the agreement of the transaction in accordance with applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards. Normally, the fair value of the consideration should be the same as the fair value of the asset which is the subject of the transaction. Where there is a significant disparity between the fair value of the consideration and the fair value of the asset, the listed issuer must use the higher of the fair value of the consideration and the fair value of the asset as the numerator of the consideration ratio;
  - (2) where a transaction involves establishing a joint venture entity or other form of joint arrangement, the Exchange will aggregate:—
    - (a) the listed issuer’s total capital commitment (whether equity, loan or otherwise), including any contractual commitment to subscribe for capital; and
    - (b) any guarantee or indemnity provided in connection with its establishment;

*Note: Where a joint venture entity or other form of joint arrangement is established for a future purpose, for example to develop a property, and the total capital commitment cannot be calculated at the outset, the Exchange will require the listed issuer to recalculate the relevant percentage ratios at the time*

*when that purpose is carried out. The Exchange will look at the purpose of setting up the arrangement in terms of the initial transaction only. For example, the purpose could be the development of the property for which the arrangement was established. The Exchange will not look at subsequent transactions entered into under the arrangement for the purpose of calculating the total capital commitment in relation to the establishment of the arrangement.*

- (3) a listed issuer shall add any liabilities of the vendors, whether actual or contingent, to be discharged or assumed by the purchaser under the terms of the transactions, to the consideration. The Exchange may require that further amounts be included as it considers appropriate;
- (4) if the listed issuer may pay or receive consideration in the future, the consideration is the maximum total consideration payable or receivable under the agreement; and
- (5) in the case of any acquisition or disposal through a non wholly-owned subsidiary, the consideration (and not, for the avoidance of doubt, the listed issuer's proportionate interest in such consideration) will form the numerator for the purpose of the consideration ratio.

*Figures used in total assets, profits and revenue calculations*

14.16 A listed issuer must refer to the total assets shown in its accounts or latest published interim report (whichever is more recent) and adjust the figures by:

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

*Note: Rule 14.16(2) will normally apply to a valuation of assets such as properties, vessels and aircraft.*

14.17 The profits (see rule 14.13) and revenue (see rule 14.14) figures to be used by a listed issuer for the basis of the profits ratio and revenue ratio must be the figures shown in its accounts. Where a listed issuer has discontinued one or more of its operating activities during the previous financial year and has separately disclosed the profits and revenue from the discontinued operations in its accounts in accordance with applicable Hong Kong Financial Reporting Standards or International Financial Reporting Standards, the Exchange may be prepared to accept the exclusion of such profits and revenue for the purpose of the profits ratio and revenue ratio respectively.

14.18 The value of transactions or issues of securities by the listed issuer in respect of which adequate information has already been published and made available to shareholders in accordance with the Exchange Listing Rules and which have been completed must be included in the total assets of the listed issuer.

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

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

*Exceptions to the classification rules*

- 14.20 The Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant indicators of size, including industry specific tests. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration.

*Change in percentage ratios*

- 14.21 If any of the percentage ratios changes to the extent that the classification of the transaction is altered between the time that any transaction is first discussed with the Exchange (if applicable) and the time of its announcement, the listed issuer must inform the Exchange. The listed issuer must comply with the relevant requirements applicable to the transaction at the time of its announcement.

*Aggregation of transactions*

- 14.22 In addition to the aggregation of acquisitions under rule 14.06(6)(b), the Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12 month period or are otherwise related. In such cases, the listed issuer must comply with the requirements for the relevant classification of the transaction when aggregated and the figures to be used for determining the percentage ratios are those as shown in its accounts or latest published interim report (whichever is more recent), subject to any adjustments or modifications arising by virtue of the provisions of rules 14.16, 14.18 and 14.19.
- 14.23 Factors which the Exchange will take into account in determining whether transactions will be aggregated include whether the transactions:—
- (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
  - (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
  - (3) involve the acquisition or disposal of parts of one asset; or
  - (4) together lead to substantial involvement by the listed issuer in a business activity which did not previously form part of the listed issuer's principal business activities.

*Transaction involving an acquisition and a disposal*

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

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

14.25 In circumstances where acquisitions or disposals of equity capital are made by a listed issuer, the provisions set out in rules 14.26 to 14.28 shall be applied in determining the classification of the transaction for the purposes of rule 14.06.

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

14.27 For the purpose of rule 14.26:

- (1) the value of an entity's total assets is the higher of:
  - (a) the book value of the entity's total assets attributable to the entity's capital as disclosed in its accounts; and
  - (b) the book value referred to in rule 14.27(1)(a) adjusted for the latest published valuation of the entity's assets if such valuation is published after the issue of its accounts; and

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

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

14.28 The value of the entity's total assets, profits and revenue, calculated in accordance with rule 14.27, is to be multiplied by the percentage of the equity interest being acquired or disposed of by the listed issuer. However, 100% of the entity's total assets, profits and revenue will be taken as the value of the total assets, profits and revenue, irrespective of the size of the interest being acquired or disposed of, if:

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

*Note: For example: -*

— *if a listed issuer (or subsidiary, whether wholly-owned or not) acquires 10% of the equity capital of an entity and has no prior holding in that entity, the relevant numerator will be 10%;*

— *if a listed issuer (or subsidiary, whether wholly-owned or not) acquires a further 10% interest in a subsidiary which is already consolidated in the listed issuer's accounts, the relevant numerator will be 10%; and*

- *if a listed issuer (or subsidiary, whether wholly-owned or not) acquires a 10% interest in an entity which will result in that entity being consolidated in the accounts of the listed issuer, the relevant numerator will be 100%.*

*Deemed disposals*

14.29 Allotments of share capital by a subsidiary of a listed issuer, whether or not such subsidiary is consolidated in the accounts of the listed issuer, may result in a reduction of the percentage equity interest of the listed issuer in such subsidiary. Such allotments give rise to deemed disposals. Profits or losses may be recorded on such transactions and such transactions may also fall to be treated as very substantial disposals, major or discloseable or connected transactions. Rules 14.30 to 14.32 set out how the percentage ratios are applied to such transactions.

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

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

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

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

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

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

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

### Notification, publication and shareholders' approval requirements

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

	Notification to Exchange	Publication of an announcement in the newspapers	Circular to shareholders	Shareholders' approval	Accountants' report
Share transaction	Yes	Yes	No	No <sup>1</sup>	No
Discloseable transaction	Yes	Yes	Yes	No	No
Major transaction	Yes	Yes	Yes	Yes <sup>2</sup>	Yes <sup>3</sup>
Very substantial disposal	Yes	Yes	Yes	Yes <sup>2</sup>	Yes <sup>5</sup>
Very substantial acquisition	Yes	Yes	Yes	Yes <sup>2</sup>	Yes <sup>4</sup>
Reverse takeover	Yes	Yes	Yes	Yes <sup>2, 6</sup>	Yes <sup>4</sup>

Notes: 1 *No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to rule 13.36(2)(b) or rule 19A.38, to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.*

2 *Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction.*

3 *For acquisitions of businesses and/or companies only. The accountants' report is for the 3 preceding financial years on the business, company or companies being acquired (see also rule 14.67(4)).*

4 *An accountants' report for the 3 preceding financial years on any business, company or companies being acquired is required (see also rule 14.69(4)).*

5 *An accountants' report on the listed issuer's group is required (see also rule 14.68(2)).*

6 *Approval of the Exchange is necessary.*

## Requirements for all transactions

### *Notification and announcement*

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

- (1) inform the Exchange; and

*Note: Under rule 13.09, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.*

- (2) send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must cause such announcement to be published in the newspapers on the next business day. See also rule 14.37.

14.35 For a share transaction, the announcement must contain the information set out in rules 14.58 and 14.59. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 14.58 and 14.60. In all cases, listed issuers must also include any additional information requested by the Exchange. Pursuant to rule 13.54, the listed issuer must forward to the Exchange seven copies of the announcement, as cleared by the Exchange, at the same time as it is issued.

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

### *Short suspension of dealings*

14.37 Where a listed issuer has signed an agreement in respect of a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover and the required announcement has not been published before trading begins on the next business day, the listed issuer must request a short suspension of dealings in its securities pending the publication of the announcement in the newspapers. In any event, a listed issuer that has signed an agreement in respect of a notifiable transaction that is expected to be price sensitive must immediately request a short suspension of dealings in its securities pending the publication of the required announcement. A listed issuer that has finalised the major terms of an agreement in respect of a notifiable transaction that is expected to be price sensitive must ensure confidentiality of the relevant information until publication of the required announcement in the newspapers. Where the listed issuer considers that the necessary degree of security cannot be maintained or that the security may have been breached, it must publish an announcement in the newspapers or immediately request a short suspension of dealings in its securities pending the publication of the announcement. Directors of listed issuers are reminded of their obligation pursuant to note 2 to rule 13.09(1) to keep confidential information that is likely to have a significant effect on market activity in or the price of any listed securities, until such time as a formal announcement is made in accordance with the requirements of note 5 to rule 13.09(1). In the case of a reverse takeover,

suspension of dealings in the listed issuer's securities should continue until disclosure of sufficient information has been made by the listed issuer by way of an announcement which is published in the newspapers. Whether the amount of information disclosed in the announcement is sufficient or not is determined on a case-by-case basis.

### **Additional requirements for discloseable transactions**

#### *Circular*

- 14.38 In addition to the requirements for all transactions set out in rule 14.34, a listed issuer which has entered into a discloseable transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules within 21 days after publication of the announcement. The circular must contain the information required under rules 14.63, 14.64, 14.65 (for an acquisition only) and 14.70 (for a disposal only). The Exchange may waive the requirement in this rule to issue a circular where all of the following conditions are satisfied:
- (1) the transaction is an acquisition where new shares will be issued by the listed issuer as consideration;
  - (2) the acquisition is a discloseable transaction only because of the consideration ratio;
  - (3) the consideration was calculated based on the fair value, being market value, of the equity capital; and
  - (4) all the other percentage ratios (i.e. the assets ratio, profits ratio, revenue ratio and equity capital ratio) are less than 5%.
- 14.39 Drafts of the circular in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments.

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

#### *Shareholders' approval*

- 14.40 In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 14.34 to 14.39. In addition, a major transaction must be made conditional on approval by shareholders.
- 14.41 The circular must be despatched to the shareholders of the listed issuer at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular. The circular shall contain information required under rules 14.63, 14.66, 14.67 (for an acquisition only) and 14.70 (for a disposal only).
- 14.42 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of circular (by way of announcement published in the newspapers) on the transaction to be considered at a general meeting not less than 14 days before the date of the relevant general meeting.

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

- 14.43 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 14-day period requirement under rule 14.42 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 13.41).

#### *Methods of approval*

- 14.44 Shareholders' approval for a major transaction shall be given by a majority vote at a general meeting of the shareholders of the listed issuer unless all the following conditions are met, in which case written shareholders' approval may, subject to rule 14.86, be accepted in lieu of holding a general meeting: —
- (1) no shareholder is required to abstain from voting if the listed issuer were to convene a general meeting for the approval of the transaction; and
  - (2) the written shareholders' approval has been obtained from a shareholder or a closely allied group of shareholders who together hold more than 50% in nominal value of the securities giving the right to attend and vote at that general meeting to approve the transaction. Where a listed issuer discloses unpublished price sensitive information to any shareholder in confidence to solicit the written shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.
- 14.45 To determine whether a group of shareholders constitutes a "closely allied group of shareholders", the Exchange will take into account the following factors:—
- (1) the number of persons in the group;
  - (2) the nature of their relationship including any past or present business association between two or more of them;
  - (3) the length of time each of them has been a shareholder;
  - (4) whether they would together be regarded as "acting in concert" for the purposes of the Takeovers Code; and
  - (5) the way in which they have voted in the past on shareholders' resolutions other than routine resolutions at an annual general meeting.

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

- 14.46 The Exchange will require any shareholder and his associates to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction and will not accept written approval for the transaction. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.
- 14.47 If any vote of shareholders at the general meeting was taken on a poll, the listed issuer shall announce the results of the poll in the manner prescribed under rule 13.39(5).

**Additional requirements for very substantial disposals and very substantial acquisitions**

- 14.48 In the case of a very substantial disposal or a very substantial acquisition, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 14.34 to 14.39.
- 14.49 A very substantial disposal and a very substantial acquisition must be made conditional on approval by shareholders in general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting. The Exchange will require any shareholder and his associates to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.
- 14.50 If any vote of shareholders at the general meeting was taken on a poll, the listed issuer shall announce the results of the poll in the manner prescribed under rule 13.39(5).
- 14.51 The circular must be despatched to the shareholders of the listed issuer at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular. The circular must contain the information required under rules 14.63, 14.68 (for a very substantial disposal) and 14.69 (for a very substantial acquisition).
- 14.52 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement published in the newspapers) on the transaction to be considered at a general meeting not less than 14 days before the date of the relevant general meeting.

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

- 14.53 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 14-day period requirement under rule 14.52 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 13.41).

### **Additional requirements for reverse takeovers**

- 14.54 The Exchange will treat a listed issuer proposing a reverse takeover as if it were a new listing applicant. The enlarged group or the assets to be acquired must be able to meet the requirements of rule 8.05 and the enlarged group must be able to meet all the other basic conditions set out in Chapter 8 of the Exchange Listing Rules. The listed issuer must comply with the requirements for all transactions set out in rules 14.34 to 14.37.
- 14.55 A reverse takeover must be made conditional on approval by shareholders in general meeting. No written shareholders' approval will be accepted in lieu of holding a general meeting. The Exchange will require any shareholder and his associates to abstain from voting at the relevant general meeting on the relevant resolution(s) if such shareholder has a material interest in the transaction. Furthermore, where there is a change in control of the listed issuer as referred to in rule 14.06(6) and any person or group of persons will cease to be a controlling shareholder (the "outgoing controlling shareholder") by virtue of a disposal of his shares to the person or group of persons gaining control (the "incoming controlling shareholder"), any of the incoming controlling shareholder's associates or an independent third party, the outgoing controlling shareholder and his associates may not vote in favour of any resolution approving an injection of assets by the incoming controlling shareholder or his associates at the time of the change in control. Where any shareholder is required to abstain from voting, any vote of shareholders taken at the general meeting on the relevant resolution(s) must be taken on a poll.

*Note: The prohibition against the outgoing controlling shareholder and his associates voting in favour of a resolution approving an injection of assets does not apply where the decrease in the outgoing controlling shareholder's shareholding is solely the result of a dilution through the issue of new shares to the incoming controlling shareholder rather than any disposal of shares by the outgoing controlling shareholder.*

- 14.56 If any vote of shareholders at the general meeting was taken on a poll, the listed issuer shall announce the results of the poll in the manner prescribed under rule 13.39(5).
- 14.57 A listed issuer proposing a reverse takeover must comply with the procedures and requirements for new listing applications as set out in Chapter 9 of the Exchange Listing Rules. The listed issuer will be required, among other things, to issue a listing document and pay the non-refundable initial listing fee. A listing document relating to a reverse takeover must contain the information required under rules 14.63 and 14.69. The listing document must be despatched to the shareholders of the listed issuer at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction. The listed issuer must state in the announcement on the reverse takeover when it expects the listing document to be issued.

### **Contents of announcements**

#### *All transactions*

- 14.58 The announcement for a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover must contain at least the following information:—
- (1) a prominent and legible disclaimer at the top of the announcement in the form set out in rule 14.88;

- (2) a description of the principal business activities carried on by the listed issuer and a general description of the principal business activities of the counterparty, if the counterparty is a company or entity;
- (3) the date of the transaction. The listed issuer must also confirm that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer;
- (4) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued;
- (5) the basis upon which the consideration was determined;
- (6) the value (book value and valuation, if any) of the assets which are the subject of the transaction;
- (7) where applicable, the net profits (both before and after taxation and extraordinary items) attributable to the assets which are the subject of the transaction for the two financial years immediately preceding the transaction;
- (8) the reasons for entering into the transaction, the benefits which are expected to accrue to the listed issuer as a result of the transaction and a statement that the directors believe that the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole; and
- (9) where appropriate, details of any guarantee and/or other security given or required as part of or in connection with the transaction.

*Share transaction announcements*

14.59 In addition to the information set out in rule 14.58, the announcement for a share transaction must contain at least the following information:—

- (1) the amount and details of the securities being issued including details of any restrictions which apply to the subsequent sale of such securities;
- (2) brief details of the asset(s) being acquired, including the name of any company or business or the actual assets or properties where relevant and, if the assets include securities, the name and general description of the activities of the company in which the securities are or were held;
- (3) if the transaction involves an issue of securities of a subsidiary of the listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary of the listed issuer following the transaction;
- (4) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and
- (5) a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities.

*Discloseable transaction, major transaction, very substantial disposal,  
very substantial acquisition and reverse takeover announcements*

14.60 In addition to the information set out in rule 14.58, the announcement for a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover must contain at least brief details of the following:—

- (1) the general nature of the transaction including, where the transaction involves securities, details of any restrictions which apply to the subsequent sale of such securities;
- (2) brief details of the asset(s) being acquired or disposed of, including the name of any company or business or the actual assets or properties where relevant and, if the assets include securities, the name and general description of the activities of the company in which the securities are or were held;
- (3) in the case of a disposal:—
  - (a) details of the gain or loss expected to accrue to the listed issuer and the basis for calculating this gain or loss. Where the listed issuer expects to recognise in its income statement a gain or loss different from the disclosed gain or loss, the reason for the difference must be explained. The gain or loss is to be calculated by reference to the carrying value of the assets in the accounts; and
  - (b) the intended application of the sale proceeds;
- (4) if the transaction involves an issue of securities for which listing will be sought, the announcement must also include:
  - (a) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and
  - (b) a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities;
- (5) where the transaction is a major transaction approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to rule 14.44, details of the shareholder or the closely allied group of shareholders (as the case may be), including the name of the shareholder(s), the number of securities held by each such shareholder and the relationship between the shareholders; and
- (6) if the transaction involves a disposal of an interest in a subsidiary by a listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary of the listed issuer following the transaction.

*Profit forecast in an announcement*

14.61 A "profit forecast" means any forecast of profits or losses, however worded, and includes any statement which explicitly or implicitly quantifies the anticipated level of future profits or losses, either expressly or by reference to previous profits or losses or any other benchmark or point of reference. It also includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have

not yet been published. Any valuation of assets (other than land and buildings) or businesses acquired by a listed issuer based on discounted cash flows or projections of profits, earnings or cash flows will also be regarded as a profit forecast.

14.62 Where the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries, the listed issuer must submit the following additional information and documents to the Exchange at the same time as the draft announcement:—

- (1) details of the principal assumptions, including commercial assumptions, upon which the forecast is based;
- (2) a letter from the listed issuer's auditors or reporting accountants confirming that they have reviewed the accounting policies and calculations for the forecast and containing their report; and
- (3) a report from the listed issuer's financial advisers confirming that they are satisfied that the forecast has been made by the directors after due and careful enquiry. If no financial advisers have been appointed in connection with the transaction, the listed issuer must provide a letter from the board of directors confirming they have made the forecast after due and careful enquiry.

### **Contents of circulars**

#### *General principles*

14.63 A circular for a discloseable transaction, major transaction, very substantial disposal or very substantial acquisition and a listing document for a reverse takeover sent by a listed issuer to holders of its listed securities must:—

- (1) provide a clear, concise and adequate explanation of its subject matter having regard to the provisions of rule 2.13; and
- (2) if voting or shareholders' approval is required:
  - (a) contain all information necessary to allow the holders of the securities to make a properly informed decision;
  - (b) contain a heading emphasising the importance of the document and advising holders of securities, who are in any doubt as to what action to take, to consult appropriate independent advisers;
  - (c) contain a recommendation from the directors as to the voting action that shareholders should take, indicating whether or not the proposed transaction described in the circular is, in the opinion of the directors, fair and reasonable and in the interests of the shareholders as a whole; and
  - (d) contain a statement that any shareholder with a material interest in a proposed transaction and his associates will abstain from voting on resolution(s) approving that transaction; and
- (3) a confirmation that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer.

*Discloseable transaction circulars*

14.64 All circulars relating to discloseable transactions must contain the following:

- (1) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 14.88;
- (2) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
  - 1- name
  - 2- directors' responsibility
  - 5- expert statements
  - 29(2)- requirements if there is a profit forecast
  - 33- litigation statement
  - 35- details of secretary and other officers
  - 36- address of registered office and head office
  - 41- additional information on mineral companies (if applicable);
- (3) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34 and 38 of Appendix 1, Part B, and Practice Note 5;
- (4) information regarding the assets being acquired or disposed of, which is required to be included in the announcement under rule 14.60;
- (5) information concerning the effect of the transaction on the earnings and assets and liabilities of the listed issuer;
- (6) where a company either becomes a subsidiary or ceases to be a subsidiary of the listed issuer:—
  - (a) the percentage of the issued share capital (if any) held by the listed issuer in that company after the acquisition or disposal; and
  - (b) in the case of a disposal, a statement whether the remaining shares are to be sold or retained;
- (7) details of any existing or proposed service contracts of directors and proposed directors of the listed issuer, or an appropriate negative statement;

*Note: Details of contracts to expire or which may be terminated by the employer within a year without payment of any compensation (other than statutory compensation) need not be included.*
- (8) information as to the competing interests (if any) of each of the directors of the listed issuer and his/her respective associates (as would be required to be disclosed under rule 8.10 if each of them were a controlling shareholder); and
- (9) any additional information requested by the Exchange.

14.65 In addition to the requirements set out in rule 14.64, a circular issued in relation to an acquisition constituting a discloseable transaction must contain:

- (1) the information required under paragraphs 9 and 10 of Appendix 1, Part B, if the acquisition involves securities for which listing will be sought;

- (2) the information required under paragraph 22(1) of Appendix 1, Part B, if new shares are to be issued as consideration; and
- (3) where the consideration for a transaction includes the listed issuer's shares or securities that are convertible into the listed issuer's shares, a statement whether the transaction will result in a change of control of the listed issuer.

*Major transaction circulars*

14.66 A circular relating to a major transaction must also contain the following:—

- (1) the information required under rule 14.64;
- (2) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
  - 8A- procedures for demanding a poll by shareholders
  - 28- indebtedness
  - 29(1)(b)- financial and trading prospects
  - 30- sufficiency of working capital
  - 40- directors' and experts' interests in group assets
  - 42- material contracts
  - 43- documents on display;
- (3) where required by Chapter 5 of the Exchange Listing Rules, a valuer's report on the property being acquired or disposed of;
- (4) where the circular contains a statement as to the sufficiency of working capital, the Exchange will require a letter from the listed issuer's financial advisers or auditors confirming that:—
  - (a) the statement has been made by the directors after due and careful enquiry; and
  - (b) the persons or institutions providing finance have confirmed in writing that such facilities exist;
- (5) the financial information required under paragraph 48 of Appendix 16; and
- (6) where applicable, the information required under rule 2.17.

14.67 In addition to the requirements set out in rule 14.66, a circular issued in relation to an acquisition constituting a major transaction must contain:—

- (1) information required under rule 14.65;
- (2) the information regarding the listed issuer required under paragraphs 31 (financial information) and 32 (no material adverse change) of Appendix 1, Part B;
- (3) the information required under paragraph 34 of Appendix 1, Part B in relation to each new director and member of senior management joining the listed issuer in connection with the transaction;

*Note: The fact that any director or proposed director is a director or employee of a company which has an interest or short position in the shares or*

*underlying shares of the listed issuer which would fall to be disclosed to the listed issuer under the provisions in Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance need not be stated.*

- (4) (a) on an acquisition of any business, company or companies:
- (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 4 of the Exchange Listing Rules provided that, where any company in question has not or will not become a subsidiary of the listed issuer, the Exchange may be prepared to relax this requirement. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
- Note: Where the accountants can only give a qualified opinion in the accountants' report in respect of the acquisition of the business, company or companies, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction. (See rule 14.86.) In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.*
- (ii) a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets and liabilities of the business, company or companies being acquired on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules; and
- (b) on an acquisition of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:
- (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the assets being acquired as contained in the circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets being acquired on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules.

*Very substantial disposal circulars*

14.68 A circular issued in relation to a very substantial disposal must contain:—

- (1) the information required under rules 14.66 and 14.70;
- (2) (a) on a disposal of a business, company or companies:
  - (i) an accountants' report on the listed issuer's group in accordance with Chapter 4 of the Exchange Listing Rules. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued; and
  - (ii) pro forma income statement, balance sheet and cash flow statement of the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules;
- (b) on a disposal of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:
  - (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the listed issuer for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued; and
  - (ii) a pro forma profit and loss statement and net assets statement on the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules;
- (3) the financial information required under paragraph 32 of Appendix 16 on the remaining group.

*Very substantial acquisition circulars and reverse takeover listing documents*

14.69 A circular issued in relation to a very substantial acquisition or a listing document issued in relation to a reverse takeover must contain:—

- (1) in respect of a listing document issued in relation to a reverse takeover,
  - (a) the information required under rule 14.64 (save for the information required under rules 14.64(2) and 14.64(3)) and under rules 14.65(3), 14.66(4) and 14.66(5);
  - (b) the information required under Appendix 1, Part A, if applicable, except paragraphs 8, 15(2) (in respect of the 12 months preceding the issue of the circular or listing document) and 20(1); and
  - (c) the information required under rule 2.17;

- (2) in respect of a circular issued in relation to a very substantial acquisition, the information required under rules 14.66 to 14.67 (save for the information required under rules 14.66(3) and 14.67(4)) and rule 2.17;
- (3) a valuation report on the enlarged group's interests in land or buildings in accordance with Chapter 5 of the Exchange Listing Rules;
- (4) (a) on an acquisition of any business, company or companies:
  - (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 4 of the Exchange Listing Rules. The accounts on which the report is based must relate to a financial period ended 6 months or less before the listing document or circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) pro forma income statement, balance sheet and cash flow statement of the enlarged group on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules;
- (b) on an acquisition of any revenue-generating assets (other than a business or a company) with an identifiable income stream or assets valuation:
  - (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where, other than in the case of a reverse takeover, the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the listing document or circular is issued. The financial information on the assets being acquired as contained in the listing document or circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) a pro forma profit and loss statement and net assets statement on the enlarged group on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules;
- (5) where the transaction also involves a disposal by the listed issuer, the information required under rule 14.70(2);
- (6) general information on the trend of the business of the group since the date to which the accounts of the listed issuer were made up and a statement as to the financial and trading prospects of the group for at least the current financial year (together with any material information which may be relevant); and

- (7) in respect of a circular issued in relation to a very substantial acquisition, a discussion and analysis of the performance of the enlarged group for the 3 preceding financial years, covering all those matters set out in paragraph 32 of Appendix 16.

*Additional requirements for circulars in respect of disposals*

14.70 In addition to the requirements set out in rules 14.64 and 14.66, a circular issued in relation to a disposal constituting a discloseable transaction or a major transaction must contain:—

- (1) the intended application of the sale proceeds (including whether such proceeds will be used to invest in any assets) and, if the sale proceeds include securities, whether they are to be listed or not; and
- (2) the excess or deficit of the consideration over or under the net book value of the asset(s).

*Circulars for specific types of companies*

14.71 Where a major transaction, very substantial acquisition, very substantial disposal or reverse takeover involves acquiring or disposing of an interest in an infrastructure project or an infrastructure or project company, the listed issuer shall incorporate in the circular or listing document a business valuation report on the business or company being acquired or disposed of and/or traffic study report in respect of the infrastructure project or infrastructure or project company. Such report(s) must clearly set out:

- (1) all fundamental underlying assumptions including discount rate or growth rate used; and
- (2) a sensitivity analysis based on the various discount rates and growth rates.

Where any business valuation is based on a profit forecast, the accounting policies and calculations for the underlying forecasts must be examined and reported on by the auditors or reporting accountants. Any financial adviser mentioned in the circular or listing document must also report on the underlying forecasts.

*Note: On profit forecasts, see also rules 14.61 and 14.62.*

## **Options**

14.72 In this Chapter and Chapter 14A:—

- (1) “option” means the right, but not the obligation, to buy or sell something;

*Notes: The term “option” for the purposes of this Chapter and Chapter 14A does not refer to:—*

1. *options, warrants and similar rights to subscribe for or purchase equity securities of a listed issuer under Chapter 15 of the Exchange Listing Rules;*
2. *structured products under Chapter 15A of the Exchange Listing Rules;*
3. *convertible equity securities under Chapter 16 of the Exchange Listing Rules;*

4. *options granted pursuant to a share option scheme under Chapter 17 of the Exchange Listing Rules;*
  5. *options, warrants and similar rights to subscribe for or purchase debt securities of a listed issuer under Chapter 27 of the Exchange Listing Rules;*
  6. *convertible debt securities under Chapter 28 of the Exchange Listing Rules; or*
  7. *Options Contracts traded through the Options System as defined in the Options Trading Rules of the Exchange and the Options Clearing Rules of The SEHK Options Clearing House Limited.*
- (2) *“exercise price” means the price at which the option holder is entitled to buy or sell the subject matter of the option;*
  - (3) *“premium” is the price paid and/or payable by an option holder to acquire an option; and*
  - (4) *“expiration” is the time at which the option can no longer be exercised.*
- 14.73 The grant, acquisition, transfer or exercise of an option by a listed issuer will be treated as a transaction and classified by reference to the percentage ratios. The termination of an option by a listed issuer will be treated as a transaction and classified by reference to the percentage ratio, unless the termination is in accordance with the terms of the original agreement entered into by the listed issuer and does not involve payment of any amounts by way of penalty, damages or other compensation. The listed issuer must comply with the requirements of the relevant classification and other specific requirements of rules 14.74 to 14.77.
- 14.74 The following apply to an option involving a listed issuer, the exercise of which is not at the listed issuer’s discretion:—
- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. For the purpose of the percentage ratios, the consideration includes the premium and the exercise price of the option; and
  - (2) on the exercise or transfer of such option, such exercise or transfer must be announced by the listed issuer by means of an announcement which is published in the newspapers as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter.
- 14.75 The following apply to an option involving a listed issuer, the exercise of which is at the listed issuer’s discretion:—
- (1) on the acquisition by, or grant of the option to, the listed issuer, only the premium will be taken into consideration for the purpose of classification of notifiable transactions. Where the premium represents 10% or more of the sum of the premium and the exercise price, the value of the underlying assets, the profits and revenue attributable to such assets, and the sum of the premium and the exercise price will be used for the purpose of the percentage ratios; and
  - (2) on the exercise of such option by the listed issuer, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets, will be used for the purpose of the percentage ratios. Where an option is

exercised in stages, the Exchange may at any stage as the Exchange may consider appropriate require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction (see rules 14.22 and 14.23).

- 14.76 (1) For the purpose of rules 14.74(1) and 14.75(1), where, on the grant of the option, the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets has not been determined, the listed issuer must demonstrate to the satisfaction of the Exchange the highest possible monetary value, which value will then be used for the purpose of classification of notifiable transaction. Failure to do so will result in the transaction being classified as at least a major transaction. The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification of notifiable transaction, the listed issuer must announce this fact by means of an announcement which is published in the newspapers as soon as reasonably practicable and comply with the additional requirements of such higher classification.
- (2) The listed issuer may, at the time of entering into an option, seek any shareholders' approval necessary for the exercise of the option (in addition to seeking any shareholders' approval necessary for the entering into of the option). Such approval, if obtained, will be sufficient for satisfying the shareholders' approval requirement of this Chapter 14, provided that the actual monetary value of the total consideration payable upon exercise and all other relevant information are known and disclosed to the shareholders at the time such approval is obtained and there has been no change in any relevant facts at the time of exercise.

14.77 If the grant or acquisition of an option has previously been announced pursuant to the requirements of this Chapter, the listed issuer must, as soon as reasonably practicable, upon:—

- (1) the expiry of the option;
- (2) the option holder notifying the grantor that the option will not be exercised; or
- (3) the transfer by the option holder of the option to a third party

(whichever is the earliest) announce such fact by means of an announcement which is published in the newspapers. If the listed issuer is the option holder, the transfer of the option will also be treated as a transaction and classified for the purpose of the percentage ratios. The consideration for the transfer of the option will be used for the purpose of classification.

## **Takeovers and mergers**

### *Takeovers Code*

14.78 Listed issuers and their directors must comply with the Takeovers Code. Any breach of the Takeovers Code will be deemed to be a breach of the Exchange Listing Rules. The Exchange may penalise the listed issuer and/or its directors for breaches in accordance with the disciplinary powers contained in Chapter 2A of the Exchange Listing Rules.

- 14.79 If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. 7 copies of the final documents issued must be supplied to the Exchange at the time of issue.

*Note: The Exchange will pass its comments on any draft document submitted to it for approval that relates to a matter covered by the Takeovers Code directly to the party that submits the draft document (or its advisers). The Exchange will at the same time provide a copy of such comments to the Commission.*

*Listing document*

- 14.80 If the consideration under the takeover offer includes securities for which listing is being or is to be sought, the offer document(s) will constitute a listing document. Provided that the offer document complies with the Takeovers Code, it need not comply with rules 11.06 and 11.07.

*Contents of offer document*

- 14.81 The offer document must contain:—

- (1) a statement whether or not the offeror intends to continue the listing of the listed issuer;
- (2) details of any agreement reached with the Exchange to ensure that the basic condition for listing set out in rule 8.08 will be complied with in respect of the listed issuer;
- (3) a prominent and legible statement in the following form:

“The Stock Exchange of Hong Kong Limited (the “Exchange”) has stated that if, at the close of the offer, less than the minimum prescribed percentage applicable to the listed issuer, being [ ]% of the issued shares, are held by the public, or if the Exchange believes that:—

- a false market exists or may exist in the trading of the shares; or
- that there are insufficient shares in public hands to maintain an orderly market;

it will consider exercising its discretion to suspend dealings in the shares.

[[*The Offeror*] intends [*the listed issuer*] to remain listed on the Exchange. The directors of [*the Offeror*] and the new directors to be appointed to the Board of [*the listed issuer*] will jointly and severally undertake to the Exchange to take appropriate steps to ensure that sufficient public float exists in [*the listed issuer*]’s shares.]”

- (4) any other requirements imposed by the Exchange which are not inconsistent with the Takeovers Code.

**Cash companies**

- 14.82 Where for any reason (including immediately after completion of a notifiable transaction or connected transaction) the assets of a listed issuer (other than an “investment company” as defined in Chapter 21 of the Exchange Listing Rules) consist wholly or substantially of cash or short-dated securities, it will not be regarded as suitable for

listing and trading in its securities will be suspended. "Short-dated securities" means securities such as bonds, bills or notes which have less than 1 year to maturity.

- 14.83 A listed issuer which is solely or mainly engaged in the securities brokerage business will not be subject to rule 14.82.
- 14.84 The listed issuer may apply to the Exchange to lift the suspension once it has a business suitable for listing. The Exchange will treat its application for lifting of the suspension as if it were an application for listing from a new applicant. The listed issuer will be required, among other things, to issue a listing document containing the specific information required by Appendix I Part A, and pay the non-refundable initial listing fee. The Exchange reserves the right to cancel the listing if such suspension continues for more than 12 months or in any other case where it considers it necessary. It is therefore advisable to consult the Exchange at the earliest possible opportunity in each case.

#### **General**

- 14.85 Listed issuers must complete and submit any checklist(s) in such form as may be prescribed by the Exchange from time to time in respect of any notifiable transaction.
- 14.86 Shareholders' approval is required for an acquisition that requires an accountants' report under this Chapter where the reporting accountants can only give a qualified opinion in the accountants' report in respect of the acquisition of the businesses or companies, for example, because of the absence of adequate records in relation to stock and work-in-progress. In such cases, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction.
- 14.87 A listed issuer may send to any shareholder the English language version only or the Chinese language version only of any circular required under this Chapter subject to compliance with rule 2.07B.

#### **Disclaimer**

- 14.88 Any circular or announcement issued by a listed issuer pursuant to this Chapter must contain on its front cover, or as a heading, a prominent and legible disclaimer statement as follows:—

"The Stock Exchange of Hong Kong Limited takes no responsibility for the contents of this [circular]/[announcement], makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this [circular]/[announcement]."

#### **Material changes**

- 14.89 In the period of 12 months from the date on which dealings in the securities of a listed issuer commence on the Exchange, the listed issuer shall not effect any acquisition, disposal or other transaction or arrangement, or a series of acquisitions, disposals or other transactions or arrangements, which would result in a fundamental change in the principal business activities of the listed issuer as described in the listing document issued at the time of its application for listing.

*Note: For this purpose, transactions subsequent to the listing will be aggregated as prescribed in rules 14.22 and 14.23.*

14.90 The Exchange may grant a listed issuer a waiver of the requirements of rule 14.89:—

- (1) if it is satisfied that the circumstances surrounding the proposed fundamental change are exceptional; and
- (2) subject to the acquisition, disposal or other transaction or arrangement, or series of acquisitions, disposals or other transactions or arrangements, being approved by shareholders in general meeting by a resolution on which any controlling shareholder (or, where there are no controlling shareholders, any chief executive or directors (excluding independent non-executive directors) of the listed issuer) and their respective associates shall abstain from voting in favour. Any shareholders with a material interest in the transaction and their associates shall abstain from voting on resolution(s) approving such transaction at a general meeting called for the purpose of this rule. The listed issuer must disclose the information required under rule 2.17 in the circular to shareholders.

14.91 In respect of the shareholders' approval required under rule 14.90(2):

- (1) the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolutions at the general meeting:
  - (a) any parties who were controlling shareholders at the time the decision for the transaction or arrangement was made or approved by the board, and their associates; or
  - (b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the listed issuer at the time the decision for the transaction or arrangement was made or approved by the board, and their respective associates.

The listed issuer must disclose the information required under rule 2.17 in the circular to shareholders; and

- (2) the listed issuer must comply with rules 13.39(4), (5), (6) and (7), 13.40, 13.41 and 13.42.

### **Restriction on Disposal**

14.92 A listed issuer may not dispose of its existing business for a period of 24 months after a change in control (as defined in the Takeovers Code) unless the assets acquired from the person or group of persons gaining such control or his/their associates and any other assets acquired by the listed issuer after such change in control can meet the trading record requirement of rule 8.05.

14.93 A disposal by a listed issuer which does not meet the requirement under rule 14.92 will result in the listed issuer being treated as a new listing applicant.