

# Chapter 19

## EQUITY SECURITIES

### NOTIFIABLE TRANSACTIONS

#### Preliminary

- 19.01 This Chapter deals with certain transactions, principally acquisitions and disposals, by a listed issuer. It describes how they are classified, the details that are required to be disclosed in respect of them and whether a circular and shareholders' approval are required. It also sets out provisions to deter circumvention of new listing requirements and additional requirements in respect of takeovers and mergers.
- 19.02 If any transaction for the purposes of this Chapter is also a connected transaction for the purposes of Chapter 20, the listed issuer will, in addition to complying with the provisions of this Chapter, have to comply with the provisions of Chapter 20.
- 19.03 [Repealed 1 January 2009]

#### Definitions

19.04 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 19.29;
  - (b) includes any transaction involving a listed issuer writing, accepting, transferring, exercising or terminating (in the manner described in rule 19.73) an option (as defined in rule 19.72) 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 20.06(3)) and provides the financial assistance (as defined in rule 20.06(17)) in its ordinary and usual course of business (as referred to in rule 19.04(8));
- (ii) grants an indemnity or a guarantee, or provides financial assistance to its subsidiaries; or
- (iii) is a securities house and provides the financial assistance (as defined in rule 20.06(17)) in its ordinary and usual course of business (as referred to in rule 19.04(8)) and upon normal commercial terms, either:
  - (A) by way of securities margin financing (which means providing a financial accommodation in order to facilitate:
    - (aa) the acquisition of securities listed on any stock market, whether a recognized stock market (as defined in Schedule 1 to the Securities and Futures Ordinance) or any other stock market outside Hong Kong; and
    - (bb) (where applicable) the continued holding of those securities, whether or not those or other securities are pledged as security for the accommodation); or
  - (B) for the purpose of a proposed acquisition of securities in accordance with the terms of a prospectus which is registered in Hong Kong and issued in respect of an initial public offering of equity securities to be listed in Hong Kong.

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

- (f) includes entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement, other than a joint venture where:
  - (i) the joint venture is engaging in a single purpose project/transaction which is of a revenue nature in the ordinary and usual course of business of the issuer (see rule 19.04(1)(g));
  - (ii) the joint venture arrangement is on an arm's length basis and on normal commercial terms; and
  - (iii) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners' unanimous consent:
    - (A) change the nature or scope of its business; or
    - (B) enter into any transactions which are not on an arm's length basis; and

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

*Notes: 1 To the extent not expressly provided in rules 19.04(1)(a) to (f), any transaction of a revenue nature in the ordinary and usual course of business of a listed issuer will be exempt from the requirements of this Chapter.*

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

(b) *Any transaction involving the acquisition or disposal of securities will generally not be considered to be of a revenue nature unless it is carried out in the ordinary and usual course of business by a member of the listed issuer's group that is:*

*(i) a banking company (as defined in rule 20.86);*

*(ii) an insurance company; or*

*(iii) a securities house that is mainly engaged in regulated activities under the SFO. It should be noted that proprietary securities trading and/or investment is not a regulated activity under the SFO and accordingly, this exemption is not available where proprietary securities trading and/or investment constitutes a significant part of the business of the securities house.*

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

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

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

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

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

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

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

- (2) "accounts" means:—
- (a) in respect of a listed issuer, and for the purpose of determining its total assets, profits or revenue figures pursuant to rule 19.07, 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;
- (2A) "acquisition targets" in rules 19.06B, 19.06C, 19.53A, 19.54 and 19.57A mean the assets to be acquired, or in the context of a series of transactions and/or arrangements, the assets acquired and/or to be acquired. In other words, a series of transactions and/or arrangements may include completed acquisition(s);
- (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 20.74, 20.85(2) and 20.85(3) (as the case may be);
- (5A) an "insurance company" means a company which is authorized to carry out insurance business under the Insurance Ordinance or appropriate overseas legislation or authority. For the avoidance of doubt, an "insurance company" does not include an insurance broker or insurance agent;
- (6) a "listed issuer" means a company or other legal person whose securities are already listed on GEM and, unless the context otherwise requires, includes its subsidiaries;
- (7) a "notifiable transaction" means a transaction classified as a share transaction, discloseable transaction, major transaction, very substantial disposal or very substantial acquisition under rule 19.06 or a transaction classified as a reverse takeover or extreme transaction under rule 19.06B or 19.06C;
- (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 or by a securities house pursuant to rule 19.04(1)(e)(iii) 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 or by a securities house under rule 19.04(1)(e)(iii);

- (9) “percentage ratios” means the percentage ratios set out in rule 19.07, and “assets ratio”, “profits ratio”, “revenue ratio”, “consideration ratio” and “equity capital ratio” shall bear the respective meanings set out in rule 19.07;
- (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;
- (10A) [Repealed 1 February 2011]
- (10B) “Qualified Issuer” means an issuer actively engaged in property development as a principal business activity. For determining whether property development is a principal activity of an issuer, consideration will be given to the following factors:
- (a) clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of its latest published annual financial statements;
  - (b) property development activity is reported as a separate and continuing segment (if not the only segment) in its latest published financial statements; and
  - (c) its format for reporting segmental information and its latest published annual financial statements have fully complied with the requirements of relevant accounting standards adopted for the preparation of its annual financial statements on reporting of segment revenue and segment expense.
- (10C) “Qualified Property Acquisition” means an acquisition of land or property development project in Hong Kong from Government or Government-controlled entities through a public auction or tender; or an acquisition of governmental land in the Mainland from a PRC Governmental Body (as defined in rule 25.04) through a tender (招標), auction (拍賣), or listing-for-sale (掛牌) governed by the PRC law (as defined in rule 25.04);

*Note: The Exchange may relax this requirement to accept land acquired in other jurisdictions from governmental bodies through public auctions or tenders. Factors which the Exchange will consider include:*

- (i) whether the government land is acquired through a competitive bidding process regulated by legislation and/or requirements in the relevant jurisdiction;*
- (ii) whether the bidding process is fairly structured and established, and bidders have no discretion to change pre-established terms;*
- (iii) whether acquiring government land through a bidding process is a common practice in that jurisdiction; and*
- (iv) the problems faced by the issuer in complying with the notifiable transaction Rules for the land acquisition.*

(10D) "Qualified Aircraft Leasing Activity" means:

- (a) an acquisition of aircraft;
- (b) a finance lease in respect of the leasing of aircraft to an aircraft operator (i.e. an entity which carries on a business of operating aircraft as an owner or charterer for providing services for the carriage by air of passengers, cargo or mail), including financing arrangements in a sale and leaseback transaction;
- (c) an operating lease in respect of leasing of aircraft to an aircraft operator; or
- (d) a disposal of aircraft.

For the purpose of this rule and rule 19.04(10E), "aircraft leasing with an aircraft operator" include leases of aircraft to the aircraft operator directly or indirectly through an intermediate lessor related to the aircraft operator.

(10E) "Qualified Aircraft Lessor" means a listed issuer actively engaged in aircraft leasing with aircraft operators (as defined in rule 19.04(10D)) as a principal business in its ordinary and usual course of business. In making this determination, consideration will also be given to the following factors:

- (a) there is clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer's latest published annual report and financial statements (or in the case of a newly listed issuer, its listing document);
- (b) aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the issuer's latest published financial statements. The format for reporting segmental information and its latest published annual financial statements have fully complied with the relevant accounting standards adopted for the preparation of its annual financial statements; and
- (c) the lessor's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry. Individuals relied on must have a minimum of five years' relevant industry experience.

(11) a "securities house" means a corporation which is licensed or registered under the Securities and Futures Ordinance for Type 1 (dealing in securities) or Type 8 (securities margin financing) regulated activity;

(11A) a "shipping company" means a company or other entity whose non-cash assets consist solely or mainly of vessels or interests in vessels or interests in companies or entities whose non-cash assets consist solely or mainly of vessels and whose income is mainly derived from those vessels; and

(12) “total assets” means:—

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

*Note: Listed issuers must demonstrate 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**

19.05 A listed issuer considering a transaction must, at an early stage, consider whether the transaction falls into one of the classifications set out in rule 19.06, 19.06B or 19.06C. In this regard, the listed issuer must determine whether or not to consult with its Compliance Adviser and/or its financial, legal or other professional advisers. Listed issuers, Compliance Advisers or other advisers which are in any doubt as to the application of the requirements in this Chapter should consult the Exchange at an early stage.

*Note: Refer to rule 6A.23 regarding when a listed issuer is required to consult with and, if necessary, seek advice from its Compliance Adviser.*

19.06 The transaction classification is made by using the percentage ratios set out in rule 19.07. The classifications are:—

- (1) share transaction — an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and where all percentage ratios are less than 5%;
- (2) discloseable transaction — a transaction or a series of transactions (aggregated under rules 19.22 and 19.23) by a listed issuer where any percentage ratio is 5% or more, but less than 25%;
- (3) major transaction — a transaction or a series of transactions (aggregated under rules 19.22 and 19.23) by a listed issuer where any percentage ratio is 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 19.22 and 19.23) of assets (including deemed disposals referred to in rule 19.29) by a listed issuer where any percentage ratio is 75% or more;
- (5) very substantial acquisition — an acquisition or a series of acquisitions (aggregated under rules 19.22 and 19.23) of assets by a listed issuer where any percentage ratio is 100% or more.

## Provisions to deter circumvention of new listing requirements

19.06A The Exchange may impose additional requirements where it considers the arrangements of a listed issuer represent an attempt to circumvent the new listing requirements under the GEM Listing Rules. These arrangements include circumstances set out below:

### *Reverse takeovers*

19.06B A reverse takeover is 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 and/or arrangement or series of transactions and/or arrangements which constitute, an attempt to achieve a listing of the acquisition targets (as defined in rule 19.04(2A)) and a means to circumvent the requirements for new applicants as set out in Chapter 11.

#### *Notes:*

1. *Rule 19.06B is aimed at preventing acquisitions that represent an attempt to circumvent the new listing requirements. In applying this principle based test, the Exchange will normally take into account the following factors:*

- (a) the size of the acquisition or series of acquisitions relative to the size of the issuer;*
- (b) a fundamental change in the issuer's principal business;*
- (c) the nature and scale of the issuer's business before the acquisition or series of acquisitions;*
- (d) the quality of the acquisition targets;*
- (e) a change in control (as defined in the Takeovers Code) or de facto control of the listed issuer (other than at the level of its subsidiaries);*

*In assessing whether there has been a change in control or de facto control of the issuer, the Exchange will consider (i) any change in the controlling shareholder of the issuer; or (ii) any change in the single largest substantial shareholder who is able to exercise effective control over the issuer, as indicated by factors such as a substantial change to its board of directors and/or senior management.*

*In circumstances involving an issue of convertible securities with a conversion restriction mechanism to avoid triggering a change in control under the Takeovers Code (i.e. restricted convertible securities) to a vendor as the consideration for an acquisition, the Exchange will consider whether the issuance is a means to allow the vendor to effectively control the issuer;*

- (f) other transactions or arrangements which, together with the acquisition or series of acquisitions, form a series of transactions or arrangements to list the acquisition targets.*

*These transactions or arrangements may include changes in control/de facto control, acquisitions and/or disposals. The Exchange may regard acquisitions and other transactions or arrangements as a series if they take place in a reasonable proximity to each other (which normally refers to a period of 36 months or less) or are otherwise related.*

*The Exchange will consider whether, taking the factors together, an issuer's acquisition or series of acquisitions constitute an attempt to list the acquisition targets and circumvent the new listing requirements.*

2. *Without limiting the generality of rule 19.06B, the following transactions are normally reverse takeovers (the bright line tests):*

(a) *an acquisition or a series of acquisitions (aggregated under rules 19.22 and 19.23) 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 36 months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition. For the purpose of determining whether the acquisition(s) constitute(s) a very substantial acquisition, the lower of:*

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

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

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

*Rule 19.06B will apply irrespective of whether any general offer obligations under the Takeovers Code have been waived.*

#### *Extreme transactions*

19.06C An "extreme transaction" is an acquisition or a series of acquisitions of assets by a listed issuer, which individually or together with other transactions or arrangements, may, by reference to the factors set out in Note 1 to rule 19.06B, have the effect of achieving a listing of the acquisition targets, but where the issuer can demonstrate that it is not an attempt to circumvent the requirements for new applicants set out in Chapter 11 of the GEM Listing Rules and that:

(1) (a) *the issuer (other than at the level of its subsidiaries) has been under the control or de facto control (by reference to the factors set out in Note 1(e) to rule 19.06B) of a person or group of persons for a long period (normally not less than 36 months), and the transaction would not result in a change in control or de facto control of the issuer; or*

- (b) the issuer has been operating a principal business of a substantial size, which will continue after the transaction; and
- (2) the acquisition targets meet the requirements of rule 11.06 and rule 11.12A (or rule 11.14) and the enlarged group meets all the new listing requirements in Chapter 11 of the GEM Listing Rules (except rule 11.12A).

*Note: Where the extreme transaction involves a series of transactions and/or arrangements and the acquisition targets cannot meet rules 11.12A(2) and/or (3) due to a change in their ownership and management solely as a result of the acquisition by the issuer, the Exchange may grant a waiver from strict compliance with these rules based on the facts and circumstances of the case. In considering a waiver of rule 11.12A(3), the Exchange will consider, among others, whether the issuer has the expertise and experience in the relevant business/industry of the acquisition targets to ensure the effective management and operation of the acquisition targets.*

#### *Large scale issue of securities*

19.06D Where a listed issuer proposes a large scale issue of new securities (including any shares, warrants, options or convertible securities) for cash to acquire and/or develop a new business, which, in the opinion of the Exchange, is a means to circumvent the new listing requirements and to achieve a listing of that new business, the Exchange may refuse to grant listing approval for the shares to be issued.

*Note: This rule is an anti-avoidance provision to prevent circumvention of the new listing requirements. It is intended to apply to a large scale issue of securities for cash proposed by a listed issuer where there is, or which will result in, a change in control or de facto control of the issuer (by reference to the factors set out in Note 1(e) to rule 19.06B), and the proceeds are to be used to acquire and/or develop a new business that is expected to be substantially larger than the issuer's existing principal business. The effect of the proposal is to achieve a listing of the new business that would not have otherwise met the new listing requirements.*

#### *Restriction on disposals*

19.06E (1) A listed issuer may not carry out a disposal or distribution in specie (or a series of disposals and/or distributions in specie) of all or a material part of its existing business:-

- (a) where there is a proposed change in control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries); or
- (b) for a period of 36 months from a change in control (as defined in the Takeovers Code),

unless the remaining group, or 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 requirements of rule 11.12A (or rule 11.14).

- (2) A disposal or distribution in specie (or a series of disposals and/or distributions in specie) by a listed issuer which does not meet the above requirement will result in the listed issuer being treated as a new listing applicant.

*Note: The Exchange may apply this rule to a disposal or distribution in specie (or a series of disposals and/or distributions in specie) by a listed issuer of all or a material part of its existing business where (a) there is a proposed change in de facto control of the issuer (by reference to the factors set out in Note 1(e) to rule 19.06B); or (b) for a period of 36 months from such change, if the Exchange considers that the disposal(s) and/or distribution(s) in specie may form part of a series of arrangements to circumvent the new listing requirements.*

#### *Percentage ratios*

19.07 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 19.09 to 19.12, 19.16, 19.18 and 19.19);
- (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 19.13 and 19.17);
- (3) Revenue ratio — the revenue attributable to the assets which are the subject of the transaction divided by the revenue of the listed issuer (see in particular rules 19.14 and 19.17);
- (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 19.15); and
- (5) Equity capital ratio — the number of shares to be issued by the listed issuer as consideration divided by the total number of the listed issuer's issued shares immediately before the transaction.

*Notes: 1. The numerator includes shares that may be issued upon conversion or exercise of any convertible securities or subscription rights to be issued or granted by the listed issuer as consideration.*

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

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

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

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

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

#### *Assets*

19.09 Where the asset being acquired or disposed of constitutes equity capital, the listed issuer must take into account the matters referred to in rules 19.25 to 19.32 when calculating the amount of total assets which are the subject of the transaction.

19.10 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 19.16, 19.18 and 19.19.

19.11 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 19.16, 19.18 and 19.19 or the latest published valuation (on an unencumbered basis) of the properties, vessels or aircraft (as the case may be) if such valuation is published after the issue of accounts of the listed issuer, where appropriate.

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

### *Profits*

- 19.13 Profits mean net profits after deducting all charges except taxation and before non-controlling interests (See also rule 19.17). 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*

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

### *Consideration*

- 19.15 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 accounting standards adopted for the preparation of the listed issuer's annual financial statements. 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*

- 19.16 A listed issuer must refer to the total assets shown in its accounts or latest published half-year, quarterly or other 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 half-year, quarterly or other interim report; and
  - (2) where appropriate, the latest published valuation of assets (excluding businesses and intangible assets) of the listed issuer if such valuation is published after the issue of such accounts.

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

- 19.17 The profits (see rule 19.13) and revenue (see rule 19.14) figures to be used by a listed issuer for the basis of the profits ratio and revenue ratio must be the figures shown in its accounts. Where a listed issuer has discontinued one or more of its operating activities during the previous financial year and has separately disclosed the profits and revenue from the discontinued operations in its accounts in accordance with applicable accounting standards adopted for the preparation of its annual financial statements, the Exchange may be prepared to accept the exclusion of such profits and revenue for the purpose of the profits ratio and revenue ratio respectively.
- 19.18 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 GEM Listing Rules and which have been completed must be included in the total assets of the listed issuer.
- 19.19 In calculating total assets, the Exchange may require the inclusion of further amounts where contingent assets are involved.

*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 accounting standards adopted for the preparation of the listed issuer's annual financial statements.*

*Exceptions to the classification rules*

- 19.20 Where any calculation of the percentage ratio produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, the listed issuer may apply to the Exchange to disregard the calculation and/or apply other relevant indicators of size, including industry specific tests. The listed issuer must seek prior consent of the Exchange if it wishes to apply this rule and must provide alternative test(s) which it considers appropriate to the Exchange for consideration. The Exchange may also require the listed issuer to apply other size test(s) that the Exchange considers appropriate.

*Change in percentage ratios*

- 19.21 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 the announcement.

*Aggregation of transactions*

- 19.22 In addition to the aggregation of transactions under rules 19.06B, 19.06C and 19.06E, 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 half-year, quarterly or other interim report (whichever is more recent), subject to any adjustments or modifications arising by virtue of the provisions of rules 19.16, 19.18 and 19.19.

- 19.23 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.

- 19.23A Where an asset is being constructed, developed or refurbished by or on behalf of a listed issuer for its own use in its ordinary and usual course of business (as referred to in rule 19.04(8)), the Exchange will not normally aggregate a series of transactions carried out by the listed issuer in the course of the construction, development or refurbishment of such asset as if they were one transaction where the sole basis for aggregation is rule 19.23(3). In cases of doubt, the listed issuer should consult the Exchange at an early stage.

- 19.23B For the purposes of aggregating transactions under note 2 to rule 19.06B and/or rule 19.22, a listed issuer must consult the Exchange before it enters into any proposed transaction(s) if

- (1) any circumstances described in rule 19.23 exist in respect of such proposed transaction(s) and any other transaction(s) entered into by the listed issuer in the preceding 12-month period (except for the situation described in rule 19.23A); or
- (2) the proposed transaction(s) and any other transaction(s) entered into by the listed issuer involve acquisitions of assets from a person or group of persons or any of his/their associates within 36 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).

The listed issuer must provide details of the transactions to the Exchange to enable it to determine whether the transactions will be aggregated.

*Note: This rule serves to set out certain specific circumstances where the listed issuer must seek guidance from the Exchange before it enters into any proposed transaction(s). The Exchange may nevertheless aggregate transactions pursuant to rule 19.22 and/or note 2 to rule 19.06B where no prior consultation was made by the listed issuer under rule 19.23B.*

*Transaction involving an acquisition and a disposal*

- 19.24 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, and subject to the reporting, disclosure and/or shareholder approval requirements applicable to that classification. Where a circular is required, each of the acquisition and the disposal will be subject to the content requirements applicable to their respective transaction classification.

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

- 19.25 In circumstances where acquisitions or disposals of equity capital are made by a listed issuer, the provisions set out in rules 19.26 to 19.28 shall be applied in determining the classification of the transaction for the purposes of rule 19.06.

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

- 19.27 For the purpose of rule 19.26:

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

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

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

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

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

*Note: For example:—*

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

#### *Deemed disposals*

19.29 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 19.30 to 19.32 set out how the percentage ratios are applied to such transactions.

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

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

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

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

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

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

19.32 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

19.33 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.

	<b>Notification to Exchange</b>	<b>Publication of an announcement on Exchange's website</b>	<b>Circular to shareholders</b>	<b>Shareholders' approval</b>	<b>Accountants' report</b>
Share transaction	Yes	Yes	No	No <sup>1</sup>	No
Discloseable transaction	Yes	Yes	No	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>	No <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 17.41(2), to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.*

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

3 *An accountants' report on the business, company or companies being acquired is required (see also rules 7.05 and 19.67(6)).*

4 *An accountants' report on any business, company or companies being acquired is required (see also rules 7.05 and 19.69(4)).*

5 *A listed issuer may at its option include an accountants' report (see note 1 to rule 19.68(2)(a)(i)).*

6 *Approval of the Exchange is necessary.*

*Exemptions for Qualified Property Acquisitions  
which constitute major transactions or very substantial acquisitions*

- 19.33A A Qualified Property Acquisition which constitutes a major transaction or very substantial acquisition is exempt from shareholders' approval if:
- (1) it is undertaken on a sole basis by a Qualified Issuer in its ordinary and usual course of business; or
  - (2) it is undertaken by a Qualified Issuer and other party or parties on a joint basis and:
    - (a) the project will be single purpose, relating to the acquisition and/or development of a specific property and consistent with the purpose specified in the auction or tender document;
    - (b) each joint venture arrangement must be on an arm's length basis and on normal commercial terms;
    - (c) the joint venture agreement contains clause(s) to the effect that the joint venture may not, without its partners' unanimous consent:
      - (i) change the nature or scope of its business, and if there are changes then they must still be consistent with the scope or purpose specified in the auction or tender document; or
      - (ii) enter into any transactions which are not on an arm's length basis; and
    - (d) the Qualified Issuer's board has confirmed that the Qualified Property Acquisition is in the Qualified Issuer's ordinary and usual course of business; and that the Qualified Property Acquisition and the joint venture, including its financing and profit distribution arrangements, are on normal commercial terms, fair and reasonable and in the interests of the Qualified Issuer and its shareholders as a whole.
- 19.33B (1) The Qualified Issuer must publish an announcement as soon as possible after notification of the success of a bid by it or the joint venture for a Qualified Property Acquisition falling under rule 19.33A and send a circular to its shareholders.
- (2) The announcement and circular must contain:
- (a) details of the acquisition;
  - (b) details of the joint venture, if any, including
    - (i) the joint venture's terms and status;
    - (ii) its dividend and distribution policy; and
    - (iii) the joint venture's financial and capital commitment and the Qualified Issuer's share in it; and
  - (c) information to demonstrate that the conditions in rule 19.33A(1) or (2) were met.

*Note: If any of these details are not available when the issuer publishes the initial announcement, it must publish subsequent announcement(s) to disclose the details as soon as possible after they have been agreed or finalised,*

- (3) The announcement and circular requirements under chapter 19 apply to the acquisition and the joint venture, if any, according to the transaction classification, except that the information circular need not contain a valuation report on the property under the Qualified Property Acquisition.

*Exemptions for Qualified Aircraft Leasing Activities  
which constitute notifiable transactions*

19.33C A Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements for notifiable transactions provided that:

- (1) it is undertaken by a Qualified Aircraft Lessor in its ordinary and usual course of business;
- (2) the Qualified Aircraft Lessor's board has confirmed that:
  - (a) the transaction is entered into by the lessor in its ordinary and usual course of business and on normal commercial terms; and
  - (b) the terms of transaction are fair and reasonable and in the interests of the lessor and its shareholders as a whole; and
- (3) the Qualified Aircraft Lessor complies with the disclosure requirements under rule 19.33D.

19.33D Where a Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements for notifiable transactions under rule 19.33C:

- (1) the Qualified Aircraft Lessor must publish an announcement as soon as possible after the terms of the transaction have been finalised. The announcement must contain:
  - (a) the date of the transaction;
  - (b) the identities and a description of the principal business activities of the parties to the transaction. The lessor must also confirm that the parties to the transaction and their ultimate beneficial owners are third parties independent of the lessor and its connected persons;
  - (c) a description of the transaction and the aircraft which is the subject of the transaction (including the expected year of delivery of the aircraft in the case of an acquisition); and
  - (d) a confirmation by the lessor's board of directors that the lessor has fulfilled (i) the criteria set out in rule 19.04(10E) and (ii) the conditions set out in rule 19.33C(2); and

- (2) the Qualified Aircraft Lessor must also disclose the following information in its next interim report (where applicable) and annual report:
- (a) the aggregate number of aircraft owned by the lessor as at the end of the reporting period with a breakdown by aircraft model, and the aggregate net book value of the aircraft;
  - (b) the aggregate number of aircraft committed to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments;
  - (c) the aggregate number of aircraft sold for the reporting period;
  - (d) the aggregate net book value and the aggregate net gain or loss on disposal of aircraft for the reporting period; and
  - (e) the average lease rental yield of each of (i) the operating lease business and (ii) the finance lease business in relation to aircraft leasing for the reporting period.

### **Requirements for all transactions**

#### *Notification and announcement*

- 19.34 As soon as possible after the terms of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction or reverse takeover have been finalised, the listed issuer must in each case:—
- (1) [Repealed 1 March 2019]
  - (2) submit an announcement to the Exchange to be published on the Exchange’s website as soon as possible. See also rule 19.37.
- 19.35 For a share transaction, the announcement must contain the information set out in rules 19.58 and 19.59. For a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction or reverse takeover, the announcement must contain at least the information set out in rules 19.58 and 19.60. In all cases, listed issuers must also include any additional information requested by the Exchange.
- 19.36 Where a transaction previously announced pursuant to this Chapter is terminated or there is any material variation of its terms or material delay in the completion of the agreement, the listed issuer must as soon as practicable announce this fact by means of an announcement. This requirement is without prejudice to the generality of any other provisions of the GEM Listing Rules and the listed issuer must, where applicable, also comply with such provisions.
- 19.36A Where there is expected to be delay in despatch of the circular by the date previously announced under rule 19.60(7) or this rule, the listed issuer must as soon as practicable disclose this fact by way of an announcement stating the reason for the delay and the new expected date of despatch of the circular.

*Guaranteed profits or net assets*

19.36B This rule applies to any notifiable transaction where the listed issuer acquires a company or business from a person and that person guarantees the profits or net assets or other matters regarding the financial performance of the company or business.

- (1) The listed issuer must disclose by way of an announcement any subsequent change to the terms of the guarantee and the reason therefor, and whether the issuer's board of directors considers that such change is fair and reasonable and in the interests of the shareholders as a whole.
- (2) If the actual performance fails to meet the guarantee (or where applicable, the guarantee as amended), the listed issuer must disclose the following by way of an announcement:
  - (a) the shortfall, and any adjustment in the consideration for the transaction or other consequence under the guarantee;
  - (b) whether the person has fulfilled its obligations under the guarantee;
  - (c) whether the listed issuer has exercised any option to sell the company or business back to the person or other rights it held under the terms of the guarantee, and the reasons for its decision; and
  - (d) the board of directors' opinion on:
    - (i) whether the person has fulfilled its obligations; and
    - (ii) whether the decision of the listed issuer to exercise or not to exercise any options or rights set out in rule 19.36B(2)(c) is fair and reasonable and in the interests of the shareholders as a whole.
- (3) The listed issuer must disclose whether the actual performance of the company or business acquired meets the guarantee in its next annual report.

*Trading halt and suspension of dealings*

- 19.37 (1) [Repealed 1 August 2018]
- (2) [Repealed 1 August 2018]
- (3) An issuer that has finalised the major terms of an agreement in respect of a notifiable transaction which it reasonably believes would require disclosure under the Inside Information Provisions must ensure confidentiality of the relevant information until making the required announcement. Where the issuer considers that the necessary degree of security cannot be maintained or that the security may have been breached, it must make an announcement or immediately apply for a trading halt or a trading suspension pending the announcement.
  - (4) Directors of issuers must, under rule 17.07A, maintain confidentiality of information that is likely to be inside information, until it is announced.
  - (5) In the case of a reverse takeover, suspension of dealings in the issuer's securities must continue until the issuer has announced sufficient information. Whether the amount of information disclosed in the announcement is sufficient or not is determined on a case-by-case basis.

## **Additional requirements for major transactions**

### *Circular*

- 19.38 In addition to the requirements for all transactions set out in rule 19.34 to 19.37, a listed issuer which has entered into a major transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 16.
- 19.39 [Repealed 1 January 2009]

### *Shareholders' approval*

- 19.40 A major transaction must be made conditional on approval by shareholders.
- 19.41 The circular must be despatched to the shareholders of the listed issuer:
- (a) if the transaction is approved or is to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders under rule 19.44, within 15 business days after publication of the announcement; or
  - (b) if the transaction is to be approved by shareholders at a general meeting, at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction.

The circular shall contain information required under rules 19.63, 19.66, 19.67 (for an acquisition only) and 19.70 (for a disposal only).

- 19.42 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement) on the transaction to be considered at a general meeting not less than 10 business days before the date of the relevant general meeting.

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

- 19.43 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 10 business day requirement under rule 19.42 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 17.47B).

*Methods of approval*

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

- (1) no shareholder is required to abstain from voting if the 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% of the voting rights at that general meeting to approve the transaction. Where a listed issuer discloses inside information to any shareholder in confidence to solicit the written shareholders' approval, the listed issuer must be satisfied that such shareholder is aware that he must not deal in the listed issuer's securities before such information has been made available to the public.

19.45 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.

19.46 The Exchange will require any shareholder and his close 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.

19.47 [Repealed 1 January 2009]

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

- 19.48 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 major transactions set out in rules 19.34 to 19.38 and 19.41.
- 19.49 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 close 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.
- 19.50 [Repealed 1 January 2009]
- 19.51 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 19.63, 19.68 (for a very substantial disposal) and 19.69 (for a very substantial acquisition).
- 19.52 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement) on the transaction to be considered at a general meeting not less than 10 business days before the date of the relevant general meeting.

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

- 19.53 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 10 business day requirement under rule 19.52 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 17.47B).

### **Additional requirements for extreme transactions**

19.53A In the case of an extreme transaction, the listed issuer must:

- (1) comply with the requirements for very substantial acquisitions set out in rules 19.48 to 19.53. The circular must contain the information required under rules 19.63 and 19.69; and

*Note: See also rule 19.57A if the extreme transaction involves a series of transactions and/or arrangements.*

- (2) appoint a financial adviser to perform due diligence on the acquisition targets to put itself in a position to be able to make a declaration in the prescribed form set out in Appendix 21. The financial adviser must submit to the Exchange the declaration before the bulk-printing of the circular for the transaction.

*Note: See also rules 17.99A to 17.99C for the requirements relating to financial advisers.*

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

19.54 The Exchange will treat a listed issuer proposing a reverse takeover as if it were a new listing applicant.

- (1) The acquisition targets must meet the requirements of rule 11.06 and rule 11.12A (or rule 11.14). In addition, the enlarged group must meet all the new listing requirements set out in Chapter 11 of the GEM Listing Rules (except rule 11.12A).
- (2) Where the reverse takeover is proposed by a listed issuer that has failed to comply with rule 17.26, the acquisition targets must also meet the requirement of rule 11.22A (in addition to the requirements for the acquisition targets and the enlarged group set out in rule 19.54(1)).
- (3) The listed issuer must comply with the requirements for all transactions set out in rules 19.34 to 19.37.

*Notes:*

1. *For the purposes of (1) and (2) above, if the Exchange is aware of information suggesting that the reverse takeover is to avoid any new listing requirement, the listed issuer must demonstrate that the acquisition targets meet all the new listing requirements set out in Chapter 11 of the GEM Listing Rules.*
2. *See also rule 19.57A if the reverse takeover involves a series of transactions and/or arrangements.*
3. *Where the reverse takeover involves a series of transactions and/or arrangements and the acquisition targets cannot meet rule 11.12A(2) and/or (3) due to a change in their ownership and management solely as a result of the acquisition by the issuer, the Exchange may grant a waiver from strict compliance with these rules based on the facts and circumstances of the case. In considering a waiver of rule 11.12A(3), the Exchange will consider, among others, whether the issuer has the expertise and experience in the relevant business/industry of the acquisition targets to ensure the effective management and operation of the acquisition targets.*

19.55 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 close 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 19.06(B) 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 close associates or an independent third party, the outgoing controlling shareholder and his close associates may not vote in favour of any resolution approving an injection of assets by the incoming controlling shareholder or his close associates at the time of the change in control.

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

19.56 [Repealed 1 January 2009]

19.57 A listed issuer proposing a reverse takeover must comply with the procedures and requirements from new listing applications as set out in Chapter 12. The listed issuer will be required, among other things, to issue a listing document and pay the non-refundable initial listing fee. A listing document relating to a reverse takeover must contain the information required under rules 19.63 and 19.69. 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.

#### **Additional requirements for extreme transactions and reverse takeovers**

19.57A Where an extreme transaction or reverse takeover involves a series of transactions and/or arrangements:—

- (1) the track record period of the acquisition targets normally covers the two financial years immediately prior to the issue of the circular or listing document for the latest proposed transaction of the series; and
- (2) the listed issuer must provide sufficient information to the Exchange to demonstrate that the acquisition targets can meet the requirements under rule 11.12A (or rule 11.14) (see rule 19.06C(2) or 19.54).

#### **Contents of announcements**

##### *All transactions*

19.58 The announcement of a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction 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 2.19;
- (2) a statement of responsibility and confirmation on the part of the directors in the form set out in rule 2.18;
- (3) a description of the principal business activities carried on by the listed issuer and the identity and a description of the principal business activities of the counterparty;
- (4) the date of the transaction. The listed issuer must also confirm that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer;
- (5) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued;

*Note: Where the transaction involves an acquisition of aircraft from an aircraft manufacturer by a listed issuer principally engaged in airline operations and the acquisition is in the issuer's ordinary and usual course of business, the Exchange may waive the*

*requirement of disclosing the aggregate value of the consideration if there are contractual confidentiality restrictions from disclosing the actual consideration for the aircraft. In this case, the issuer must disclose:*

- (a) the reasons for its waiver application and provide alternative disclosure (including the list price of the aircraft, a description of any price concession received, whether the price concession received is comparable to that obtained in previous purchases and whether the concession has any material impact on the issuer's future operating costs as a whole) in the announcement and, where applicable, the circular for the transaction; and*
  - (b) the following information in its next interim report (where applicable) and annual report:*
    - (i) the aggregate number of aircraft owned as at the end of the reporting period with a breakdown by aircraft model, and the aggregate net book value of the aircraft; and*
    - (ii) the aggregate number of aircraft committed to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments.*
- (6) the basis upon which the consideration was determined;
  - (7) the value (book value and valuation, if any) of the assets which are the subject of the transaction;
  - (8) where applicable, the net profits (both before and after taxation) attributable to the assets which are the subject of the transaction for the two financial years immediately preceding the transaction;
  - (9) the reasons for entering into the transaction, the benefits which are expected to accrue to the listed issuer as a result of the transaction and a statement that the directors believe that the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole; and
  - (10) where appropriate, details of any guarantee and/or other security given or required as part of or in connection with the transaction.

#### *Share transaction announcements*

19.59 In addition to the information set out in rule 19.58, 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, extreme transaction and reverse takeover announcements*

19.60 In addition to the information set out in rule 19.58, the announcement of a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition, extreme transaction 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 19.44, details of the shareholder or the closely allied group of shareholders (as the case may be), including the name of the shareholder(s), the number of securities held by each such shareholder and the relationship between the shareholders;
- (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; and
- (7) in the case of a major transaction, a very substantial disposal, a very substantial acquisition or a reverse takeover, the expected date of despatch of the circular and if this is more than 15 business days after the publication of the announcement, the reasons why this is so.

*Note: If there is expected to be delay in despatch of the circular, the listed issuer must as soon as practicable publish a further announcement in accordance with rule 19.36A.*

19.60A In addition to the information set out in rule 19.60, where the announcement for a discloseable transaction contains a profit forecast as referred to in rule 19.62, the announcement must contain the following information or the issuer must publish a further announcement containing the following information within 15 business days after the publication of the announcement:

- (1) the information specified in paragraph 29(2) of Appendix 1, Part B; and
- (2) information regarding the expert statements contained in the announcement, which is specified in paragraph 5 of Appendix 1, Part B.

*Profit forecast in an announcement*

19.61 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 (except for property interests (as defined in rule 8.01(3)) or businesses acquired by an issuer based on discounted cash flows or projections of profits, earnings or cash flows is regarded as a profit forecast.

19.62 Where the announcement contains a profit forecast in respect of the issuer or a company which is, or is proposed to become, one of its subsidiaries, the issuer must submit the following additional information and documents to the Exchange no later than the making of such announcement:—

- (1) details of the principal assumptions, including commercial assumptions, upon which the forecast is based;
- (2) a letter from the 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 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 issuer must provide a letter from the board of directors confirming they have made the forecast after due and careful enquiry.

*Note: See rule 17.26B in respect of issuers’ obligation to announce material or significant changes which impact on profit forecasts.*

**Contents of circulars**

*General principles*

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

- (1) provide a clear, concise and adequate explanation of its subject matter having regard to the provisions of rule 17.56; and

- (2) if voting or shareholders' approval is required:
  - (a) contain all information necessary to allow the holders of the securities to make a properly informed decision;
  - (b) contain a heading emphasising the importance of the document and advising holders of securities, who are in any doubt as to what action to take, to consult appropriate independent advisers;
  - (c) contain a recommendation from the directors as to the voting action that shareholders should take, indicating whether or not the proposed transaction described in the circular is, in the opinion of the directors, fair and reasonable and in the interests of the shareholders as a whole; and
  - (d) contain a statement that any shareholder with a material interest in a proposed transaction and his close 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.

19.64 [Repealed 1 January 2009]

19.65 [Repealed 1 January 2009]

*Major transaction circulars*

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

- (1) a prominent and legible disclaimer on the front cover or inside front cover of the circular in the form set out in rule 2.19;
- (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;
- (3) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
  - 1- name
  - 2- directors' responsibility
  - 5- expert statements
  - 29(2)- requirements if there is a profit forecast
  - 33- litigation statement
  - 35- details of secretary and other officers
  - 36- address of registered office and head office;
- (4) information regarding interests of directors and chief executive in the listed issuer required under paragraphs 34, 38 and 38A of Appendix 1, Part B;
- (5) information which is required to be included in the announcement under rule 19.60;

- (6) information concerning the effect of the transaction on the earnings and assets and liabilities of the listed issuer;
- (7) where a company either becomes a subsidiary or ceases to be a subsidiary of the listed issuer:—
  - (a) the percentage of the company's issued shares (if any) held by the listed issuer after the acquisition or disposal; and
  - (b) in the case of a disposal, a statement whether the remaining shares are to be sold or retained;
- (8) details of any existing or proposed service contracts of directors and proposed directors of the listed issuer, or an appropriate negative statement;

*Note: Details of contracts to expire or which may be terminated by the employer within a year without payment of any compensation (other than statutory compensation) need not be included.*

- (9) information as to the competing interests (if any) of the Compliance Adviser and each of the directors, employees and close associates (as referred to in rule 6A.32) and each of the directors and any proposed director of the issuer (excluding its subsidiaries) and his/her respective close associates (as if each of them were treated as a controlling shareholder under rule 11.04);
- (10) any additional information requested by the Exchange;
- (11) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—
  - 28- indebtedness
  - 29(1)(b)- financial and trading prospects
  - 30- sufficiency of working capital, which must take into account the effect of the transaction
  - 40- directors' and experts' interests in group assets
  - 41- material contracts
  - 42(2)(c), (3) and (4)- documents on display;
- (12) where required by Chapter 8, information under that Chapter on the property interest being acquired or disposed of by the listed issuer;
- (13) where the circular contains a statement as to the sufficiency of working capital, the Exchange will require a letter from the listed issuer's financial advisers or auditors confirming that:—
  - (a) the statement has been made by the directors after due and careful enquiry; and
  - (b) the persons or institutions providing finance have confirmed in writing that such facilities exist; and
- (14) where applicable, the information required under rule 2.28.

19.67 In addition to the requirements set out in rule 19.66, a circular issued in relation to an acquisition constituting a major 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;
- (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;
- (4) the information regarding the listed issuer required under paragraphs 31 (financial information) and 32 (no material adverse change) of Appendix 1, Part B;
- (5) 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.*

- (6) (a) on an acquisition of any business, company or companies:
  - (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 7 provided that, where any company in question has not or will not become a subsidiary of the listed issuer, the Exchange may be prepared to relax this requirement. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and

*Note: Where the accountants can only give a modified opinion in the accountants' report in respect of the acquisition of the business, company or companies, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction (See rule 19.86). In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.*

- (ii) a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets and liabilities of the business, company or companies being acquired on the same accounting basis. The pro forma financial information must comply with Chapter 7; and

- (b) on an acquisition of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:
  - (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued. The financial information on the assets being acquired as contained in the circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets being acquired on the same accounting basis. The pro forma financial information must comply with Chapter 7; and
- (7) a discussion and analysis of results of the business, company or companies being acquired covering all those matters set out in rule 18.41 for the period reported on in the accountants' report.

*Inability to access information to compile circulars for major transactions or very substantial acquisitions*

- 19.67A (1) Where a listed issuer has acquired and/or agreed to acquire equity capital in a company and the transaction constitutes a major transaction or a very substantial acquisition, and the listed issuer does not have access or only has limited access to the non-public information on the target company that would be required for the purpose of complying with the disclosure requirements in respect of the target company and the enlarged group under rules 19.66 and 19.67 (for a major transaction) or rule 19.69 (for a very substantial acquisition), then the listed issuer may defer complying with certain of the disclosure requirements in the manner set out in paragraphs (2) and (3) below, provided that the following conditions are demonstrated:
- (a) the unavailability of non-public information is caused by the lack of co-operation of the board of directors in the target company (such as in the case of a hostile takeover) and/or legal or regulatory restrictions in providing non-public information to the listed issuer;
  - (b) the target company is listed on a regulated, regularly operating, open stock exchange recognised by the Exchange (including the Main Board or GEM); and
  - (c) the target company will become a subsidiary of the listed issuer.
- (2) Subject to the conditions in paragraphs (1)(a), (b) and (c) being satisfied, the listed issuer may defer complying with the disclosure requirements for certain non-public information relating to the target company and/or the enlarged group. In such circumstances, the listed issuer must despatch an initial circular in partial compliance with rules 19.66 and 19.67 or rule 19.69 within the time frames stipulated in rules 19.41 and 19.42 or rules 19.48 and 19.52. The initial circular shall include, as a minimum, the following:

- (a) material public information (and other available information of which the listed issuer is aware and is free to disclose) of the target company to enable shareholders to make an informed voting decision with respect to the proposed acquisition. This would include:
    - (i) published audited financial information of the target company for the preceding three years (and the latest published unaudited interim accounts) together with a qualitative explanation of the principal differences, if any, between the target company's accounting standards and those of the listed issuer's which may have a material impact on the financial statements of the target company; and
    - (ii) other information of the target company and its group of companies in the public domain or made available by the target company and which the listed issuer is aware and free to disclose;
  - (b) where information required for the enlarged group is not available, to include the following information regarding the issuer:
    - (i) statement of indebtedness (see rule 19.66(11), paragraph 28 and Note 2 to Appendix 1, Part B);
    - (ii) statement of sufficiency of working capital (see rule 19.66(11), paragraph 30 and Note 2 to Appendix 1, Part B);
    - (iii) [Repealed 1 January 2012];
    - (iv) discussion and analysis of results (this is applicable only to very substantial acquisitions, see rule 19.69(8));
    - (v) statement as to the financial and trading prospects (see rule 19.66(11), paragraph 29(1)(b) and Note 2 to Appendix 1, Part B);
    - (vi) particulars of any litigation or claims of material importance (see rule 19.66(3), paragraph 33 and Note 2 to Appendix 1, Part B);
    - (vii) particulars of directors' or experts' interests in group assets (see rule 19.66(11), paragraph 40 and Note 2 to Appendix 1, Part B);
    - (viii) material contracts and documents on display (see rule 19.66(11), paragraphs 41, 42 and Note 2 to Appendix 1, Part B); and
  - (c) the reasons why access to books and records of the target company has not been granted to the listed issuer.
- (3) Where an initial circular has been despatched by a listed issuer under paragraph (2) above, the listed issuer must despatch a supplemental circular at a later date which contains: (i) all the prescribed information under rules 19.66 and 19.67 or rule 19.69 which has not been previously disclosed in the initial circular; and (ii) any material changes to the information previously disclosed in the initial circular. The supplemental circular must be despatched to shareholders within 45 days of the earlier of: the listed issuer being able to gain access to the target company's books and records for the purpose of complying with the disclosure requirements in respect of the target company and the enlarged group under rules 19.66 and 19.67 or rule 19.69; and the listed issuer being able to exercise control over the target company.

*Very substantial disposal circulars*

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

- (1) the information required under rules 19.66 and 19.70;
- (2) (a) on a disposal of a business, company or companies:
  - (i) financial information of either:
    - (A) the business, company or companies being disposed of; or
    - (B) the listed issuer's group with the business, company or companies being disposed of shown separately as (a) disposal group(s) or (a) discontinuing operation(s),

for the relevant period (as defined in the note to rule 7.05(1)(a)). The financial information must be prepared by the directors of the listed issuer using accounting policies of the listed issuer and must contain at least the income statement, balance sheet, cash flow statement and statement of changes in equity.

The financial information must be reviewed by the listed issuer's auditors or reporting accountants according to the relevant standards published by the Hong Kong Institute of Certified Public Accountants or the International Auditing and Assurance Standards Board of the International Federation of Accountants or the China Auditing Standards Board of the China Ministry of Finance. The circular must contain a statement that the financial information has been reviewed by the issuer's auditors or reporting accountants and details of any modifications in the review report; and

- Notes:*
1. *The listed issuer may include an accountants' report instead of a review by its auditors or reporting accountants. In that case, the accountants' report must comply with Chapter 7.*
  2. *The Exchange may be prepared to relax the requirements in this rule if the assets of the company or companies being disposed of are not consolidated in the issuer's accounts before the disposal.*

- (ii) pro forma income statement, balance sheet and cash flow statement of the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 7;
- (b) on a disposal of any revenue-generating assets (other than a business or company) with an identifiable income stream or assets valuation:
  - (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where the asset has been held by the listed issuer for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the circular is issued; and

- (ii) a pro forma profit and loss statement and net assets statement on the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 7;
- (3) the information required under rule 18.41 on the remaining group; and
- (4) the information regarding the listed issuer required under paragraph 32 (no material adverse change) of Appendix 1, Part B.

*Very substantial acquisition circulars, extreme transaction circulars  
and reverse takeover listing documents*

19.69 A circular issued for a very substantial acquisition or an extreme transaction or a listing document issued for a reverse takeover must contain:—

- (1) for a reverse takeover or an extreme transaction:
  - (a) the information required under rule 19.66 (except for the information required under rules 19.66(3), 19.66(4), 19.66(11) and 19.66(12)) and rule 19.67(3);
  - (b) the information required under Appendix 1, Part A, if it applies, except paragraphs 8 and 15(3) (in respect of the 12 months before the issue of the circular or listing document) and 20(1). For paragraph 36, the statement on sufficiency of working capital must take into account the effect of the transaction; and
  - (c) [Repealed 1 January 2009]
  - (d) (i) for a reverse takeover, information on the enlarged group's property interests under rules 8.01A and 8.01B; and
    - (ii) for an extreme transaction, the information required under Chapter 8 on the property interests acquired and/or to be acquired by the issuer;
- (2) for a very substantial acquisition, the information required under rules 19.66 to 19.67 (except for the information required under rule 19.67(6)) and rule 2.28;
- (3) [Repealed 1 January 2012];
- (4) (a) on an acquisition of any business, company or companies:
  - (i) an accountants' report on the business, company or companies being acquired in accordance with Chapter 7. The accounts on which the report is based must relate to a financial period ended 6 months or less before the listing document or circular is issued. The financial information on the business, company or companies being acquired as contained in the accountants' report must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) pro forma income statement, balance sheet and cash flow statement of the enlarged group on the same accounting basis. The pro forma financial information must comply with Chapter 7;

- (b) on an acquisition of any revenue-generating assets (other than a business or a company) with an identifiable income stream or assets valuation:
  - (i) a profit and loss statement and valuation (where available) for the 3 preceding financial years (or less, where, other than in the case of a reverse takeover, the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants to ensure that such information has been properly compiled and derived from the underlying books and records. The financial information on which the profit and loss statement is based must relate to a financial period ended 6 months or less before the listing document or circular is issued. The financial information on the assets being acquired as contained in the listing document or circular must be prepared using accounting policies which should be materially consistent with those of the listed issuer; and
  - (ii) a pro forma profit and loss statement and net assets statement on the enlarged group on the same accounting basis. The pro forma financial information must comply with Chapter 7;
- (5) where the transaction also involves a disposal by the listed issuer, the information required under rule 19.70(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);
- (7) in the case of a listing document issued in relation to a reverse takeover, a statement of business objectives (in respect of the current financial year and the 2 financial years thereafter) (see rules 14.19 to 14.21); and
- (8) in respect of a circular issued in relation to a very substantial acquisition a separate discussion and analysis of the performance of each of the existing group and any business or company acquired or to be acquired for the relevant period referred to in rule 7.05(1)(a), in both cases covering all those matters set out in rule 18.41.

*Additional requirements for circulars in respect of disposals*

19.70 In addition to the requirements set out in rule 19.66, a circular issued in relation to a disposal constituting a major transaction must contain:—

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

*Circulars for specific types of companies*

19.71 Where a major transaction, very substantial acquisition, very substantial disposal, extreme transaction 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 an infrastructure or project company. Such report(s) must clearly set out:

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

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

*Note: On profit forecasts, see also rules 19.61 and 19.62.*

19.71A Where a discloseable transaction, major transaction or very substantial acquisition involves a Qualified Property Acquisition described in Note to rule 20.99, the Qualified Issuer shall comply with additional announcement and reporting requirements with details as described in chapter 20.

## **Options**

### *Definitions*

19.72 In this Chapter and Chapter 20:—

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

*Notes: The term “option” for the purposes of this Chapter and Chapter 20 does not refer to:—*

1. *options, warrants and similar rights to subscribe for or purchase equity securities of a listed issuer under Chapter 21;*
  2. *convertible equity securities under Chapter 22;*
  3. *options granted pursuant to a share option scheme under Chapter 23;*
  4. *options, warrants and similar rights to subscribe for or purchase debt securities of a listed issuer under Chapter 33;*
  5. *convertible debt securities under Chapter 34; or*
  6. *Options Contracts traded through the Options System as defined in the Options Trading Rules of the Exchange and the Options Clearing Rules of The SEHK Options Clearing House Limited.*
- (2) “exercise price” means the price at which the option holder is entitled to buy or sell the subject matter of the 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.

19.73 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 19.74 to 19.77.

19.74 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 pursuant to the requirements of Chapter 16 as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter.

19.75 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;
- (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 19.22 and 19.23).

19.76 (1) For the purpose of rules 19.74(1) and 19.75(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 the highest possible monetary value, which value will then be used for the purpose of classification of notifiable transaction. Failure to do so will result in the transaction being classified as at least a major transaction. The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits and revenue attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification of notifiable transaction, the listed issuer must announce this fact in accordance with the requirements of Chapter 16 as soon as reasonably practicable and comply with the additional requirements of such higher classification.

- (2) The listed issuer may, at the time of entering into the option, seek any shareholders' approval necessary for the exercise of the option (in addition to seeking any shareholders' approval necessary for the entering into of the option). Such approval, if obtained, will be sufficient for satisfying the shareholders' approval requirement of this Chapter, provided that the actual monetary value of the total consideration payable upon exercise and all other relevant information are known and disclosed to the shareholders at the time such approval is obtained and there has been no change in any relevant facts at the time of exercise.

19.77 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 in accordance with the requirements of Chapter 16. If the listed issuer is the option holder, the transfer of the option will also be treated as a transaction and classified for the purpose of the percentage ratios. The consideration for the transfer of the option will be used for the purpose of classification.

## **Takeovers and mergers**

### *Takeovers Code*

19.78 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 GEM Listing Rules. The Exchange may penalise the listed issuer and/or its directors for breaches in accordance with the disciplinary powers contained in Chapter 3.

19.79 [Repealed 1 January 2011]

### *Listing document*

19.80 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 rule 14.09, save for the provisions of 14.09(1) and (3).

### *Contents of offer document*

19.81 The offer document must normally contain:—

- (1) a statement whether or not the offeror intends to continue the listing of the listed issuer;
- (2) details of any agreement reached with the Exchange to ensure that the basic condition for listing set out in rule 11.23 will be complied with in respect of the listed issuer;

- (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*

- 19.82 Where for any reason (including immediately after completion of a notifiable transaction or connected transaction) the assets of a listed issuer consist wholly or substantially of cash and/or short-term investments, it will not be regarded as suitable for listing and trading in its securities will be suspended.

#### *Notes:*

1. *Rule 19.82 is intended to apply to issuers that hold a very high level of cash and short-term investments. In assessing whether an issuer is a cash company, the Exchange will apply a principle based approach and normally take into account the value of the issuer’s cash and short-term investments relative to its total assets, its level of operations and financial position, and the nature of the issuer’s business and its cash needs in the ordinary and usual course of business.*
2. *Short-term investments include securities that are held by the issuer for investment or trading purposes and are readily realisable or convertible into cash. Examples of short-term investments include (a) bonds, bills or notes which have less than one year to maturity; (b) listed securities (whether on the Exchange or otherwise) that are held for investment or trading purposes; and (c) investments in other financial instruments that are readily realisable or convertible into cash.*

- 19.83 Cash and short-term investments held by a member of an issuer’s group that is a banking company (as defined in rule 20.86), an insurance company or a securities house will normally not be taken into account when applying rule 19.82.

*Note: This exemption will not apply to an issuer that operates a securities house where the Exchange has concerns that the issuer is holding cash and short-term investments through a member to circumvent rule 19.82. For example, an issuer holding excessive cash and/or securities investments cannot circumvent the rule by holding such assets through a*

*member that is a licensed broker with minimal brokerage operations. The Exchange will apply a principle based approach and consider, among others, the cash and/or short-term investments in light of the member's operating model and its cash needs for the purpose of its regulated activities, which should be substantiated by its historical track record.*

- 19.84 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 appoint a Sponsor and issue a listing document containing the specific information required by Appendix I Part A and pay the non-refundable initial listing fee. The Exchange reserves the right to cancel the listing if such suspension continues for more than 6 months or in any other case where it considers it necessary. It is therefore advisable to consult the Exchange at the earliest possible opportunity in each case.

### **General**

- 19.85 Listed issuers must complete and submit any checklist(s) in such form as may be prescribed by the Exchange from time to time in respect of any notifiable transaction.
- 19.86 Shareholders' approval is required for an acquisition that requires an accountants' report under this Chapter where the reporting accountants can only give a modified opinion in the accountants' report in respect of the acquisition of the businesses or companies, for example, because of the absence of adequate records in relation to stock and work-in-progress. In such cases, the Exchange will not accept a written shareholders' approval for the transaction, but will require a general meeting to be held to consider the transaction.
- 19.87 A listed issuer may send to any shareholder the English language version only or the Chinese language version only of any circular required under this Chapter subject to compliance with rule 16.04B.

### **Material changes**

- 19.88 A listed issuer shall not, during the period of 12 months from the date on which dealings in its securities commenced on GEM, enter into any acquisition, disposal or other transaction or arrangement, or a series of acquisitions, disposals or other transactions or arrangements, which would result in a fundamental change in the principal business activities of the listed issuer as described in the listing document issued when it first applied for listing.

*Note: For this purpose, transactions subsequent to the listing will be aggregated as prescribed in rules 19.22 and 19.23.*

- 19.89 The Exchange may grant a listed issuer a waiver of the requirements of rule 19.88:—
- (1) if it is satisfied that the circumstances surrounding the proposed fundamental change are exceptional; and

- (2) subject to the acquisition, disposal or other transaction or arrangement, or series of acquisitions, disposals or other transactions or arrangements, being approved by shareholders in general meeting by a resolution on which any controlling shareholder (or, where there are no controlling shareholders, any chief executive or directors (excluding independent non-executive directors) of the listed issuer) and their respective associates shall abstain from voting in favour. Any shareholders with a material interest in the transaction and their associates shall abstain from voting on resolution(s) approving such transaction at a general meeting called for the purpose of this rule. The listed issuer must disclose the information required under rule 2.28 in the circular to shareholders.

19.90 In respect of the shareholders' approval required under rule 19.89(2):

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

The listed issuer must disclose the information required under rule 2.28 in the circular to shareholders; and

- (2) the listed issuer must comply with rules 17.47(6) and (7) and rules 17.47A, 17.47B and 17.47C.

19.91 [Repealed 1 October 2019]

19.92 [Repealed 1 October 2019]

### **Distribution in specie to shareholders**

19.93 Where a listed issuer proposes a distribution in specie (other than securities listed on the Main Board or GEM) and the size of the assets to be distributed would amount to a very substantial disposal based on the percentage ratio calculations:

- (1) The issuer must obtain prior approval of the distribution by independent shareholders in a general meeting. The issuer's controlling shareholders (or if there is no controlling shareholder, the directors (other than independent non-executive directors) and chief executive of the issuer) and their respective associates must abstain from voting in favour of the resolution. Further, the shareholders' approval for the distribution must be given by at least 75% of the votes attaching to any class of listed securities held by holders voting either in person or by proxy at the meeting, and the number of votes cast against the resolution is not more than 10% of the votes attaching to any class of listed securities held by holders permitted to vote in person or by proxy at the meeting.

- (2) The issuer's shareholders (other than the directors (excluding independent non-executive directors), chief executive and controlling shareholders) should be offered a reasonable cash alternative or other reasonable alternative for the distributed assets.

*Note: Where the assets proposed to be distributed are securities listed in other jurisdictions, the Exchange may waive the requirements in rule 19.93(2) if the issuer can demonstrate that there is a liquid market for the securities, the shareholders may readily dispose of those securities, and where appropriate, the issuer will make arrangements to facilitate the shareholders to hold or dispose of those securities.*