

# Chapter 13

## EQUITY SECURITIES

### RESTRICTIONS ON PURCHASE, DISPOSAL AND SUBSCRIPTION

#### Restrictions on preferential treatment

- 13.01 With regard to all securities offered for subscription or sale to the public whether by a new applicant or a listed issuer, no preferential terms or treatment may be afforded to any person subscribing or applying for the securities, whether as to price, the basis of allocation of securities or otherwise.
- 13.02 (1) Directors of the issuer and their close associates, and a person who is an existing shareholder of the issuer, may only subscribe for or purchase any securities for which listing is sought which are being marketed by or on behalf of a new applicant, whether in their own names or through nominees, if the following conditions are met:—
- (a) that no securities are offered to them on a preferential basis and no preferential treatment is given to them in the allocation of the securities; and
  - (b) that the minimum prescribed percentages of public shareholders required by rules 11.23(7) and 11.23(9) are achieved.
- (2) Normally no more than 10% of any securities being marketed for which listing is sought may be offered to employees or past employees of the new applicant or its subsidiaries or associated companies and their respective dependents or any trust, provident fund or pension scheme for the benefit of such persons on a preferential basis. Other than the allocation of securities, no preferential terms or treatment as to price or otherwise may be afforded to such employees. Adequate disclosure in the listing document must be made of any arrangement to place shares to such employees (without any need to identify individuals), and the number and/or proportion of shares to be so placed. Any preferential treatment must be approved by the Exchange prior to the marketing and the new applicant concerned may be called upon to supply particulars of such employees, past-employees and their respective dependants and the objects, beneficiaries or members of any trust, provident fund or pension scheme as well as the results of subscription by employees, past-employees, their respective dependants and any trust, provident fund or pension scheme for the benefit of such persons. The new applicant must maintain records of such particulars for a period of not less than 12 months from the date of approval and make the same available for inspection by the Exchange during such period.

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

##### *General*

- 13.03 Subject to the provisions of the Code on Share Buy-backs, an issuer may purchase shares on GEM or on another stock exchange recognised for this purpose by the Commission and the Exchange. All such purchases must be made in accordance with the provisions of rules 13.04 to 13.14. The Code on Share Buy-backs must be complied with by an issuer and its directors and any breach thereof by an issuer will be a deemed breach of the issuer's undertaking to comply with its continuing

obligations under the GEM Listing Rules and the Exchange may in its absolute discretion take such action to penalise any breach of this rule as it shall think appropriate. It is for the issuer to satisfy itself that a proposed purchase of shares does not contravene the Code on Share Buy-backs.

- 13.04 The Exchange reserves the right to prohibit an issuer from making purchases of shares on GEM if the Exchange considers that the issuer has committed a breach of any of the GEM Listing Rules which apply to that issuer. In the event that the Exchange does so prohibit such purchases no Exchange Participant will carry out any such purchases on behalf of the issuer until such prohibition is lifted.
- 13.05 The Sponsor and/or the authorised representatives of the issuer shall respond promptly to any request for information that the Exchange may address to the issuer concerning the purchase of shares, at any time.
- 13.06 For the purposes of rules 13.03 to 13.14 “shares” shall mean shares of all classes and securities which carry a right to subscribe or purchase shares, of the issuer provided that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.

*Procedures to be complied with*

- 13.07 An issuer may only purchase shares on GEM, either directly or indirectly, if:—
- (1) the shares proposed to be purchased by the issuer are fully-paid up;
  - (2) the issuer has previously sent to its shareholders an Explanatory Statement complying with the provisions of rule 13.08; and
  - (3) its shareholders have given a specific approval or a general mandate to its directors to make the purchase(s), by way of an ordinary resolution which complies with rule 13.09 and which has been passed at a general meeting of the issuer duly convened and held;
- 13.08 The issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders’ meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—
- (1) a statement of the total number and description of the shares which the issuer proposes to purchase;
  - (2) a statement by the directors of the reasons for the proposed purchase of shares;
  - (3) a statement by the directors as to the proposed source of funds for making the proposed purchase, which shall be funds legally available for such purposes in accordance with the issuer’s constitutive documents and the laws of the jurisdiction in which the issuer is incorporated or otherwise established;

- (4) a statement as to any material adverse impact on the working capital or gearing position of the issuer (as compared with the position disclosed in its most recent published audited accounts) in the event that the proposed purchases were to be carried out in full at any time during the proposed purchase period, or an appropriate negative statement;
- (5) a statement of the name of any directors, and to the best of the knowledge of the directors having made all reasonable enquiries, any close associates of the directors, who have a present intention, in the event that the proposal is approved by shareholders, to sell shares to the issuer, or an appropriate negative statement;
- (6) a statement that the directors have undertaken to the Exchange to exercise the power of the issuer to make purchases pursuant to the proposed resolution in accordance with the GEM Listing Rules and the laws of the jurisdiction in which the issuer is incorporated or otherwise established;
- (7) a statement as to the consequences of any purchases which will arise under the Takeovers Code of which the directors are aware, if any;
- (8) a statement giving details of any purchases by the issuer of shares made in the previous 6 months (whether on GEM or otherwise), giving the date of each purchase and the purchase price per share or the highest and lowest prices paid for such purchases, where relevant;
- (9) a statement as to whether or not any core connected persons of the issuer have notified the issuer that they have a present intention to sell shares to the issuer or have undertaken not to sell any of the shares held by them to the issuer, in the event that the issuer is authorised to make purchases of shares;
- (10) a statement giving the highest and lowest prices at which the relevant shares have traded on GEM during each of the previous twelve months; and
- (11) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19.

*Notes: 1 The Explanatory Statement need not contain the statement set out in rule 2.20 concerning the characteristics of GEM nor information on the interests (if any) of the Compliance Adviser (as referred to in rule 6A.31) and all directors, controlling shareholders and their respective close associates (as referred to in rule 11.04).*

*2 At the same time as the Explanatory Statement is sent to shareholders of the issuer, the issuer should submit to the Exchange (a) a confirmation from the issuer that the Explanatory Statement contains the information required under rule 13.08 and that neither the Explanatory Statement nor the proposed share repurchase has unusual features; and (b) the undertaking from its directors to the Exchange according to rule 13.08(6).*

13.09 The ordinary resolution proposed to shareholders to give the directors of the issuer a specific approval or general mandate to purchase shares must include the following:—

- (1) the total number and description of the shares which the issuer is authorised to purchase, provided that the number of shares which the issuer is authorised to purchase on GEM or on another stock exchange recognised for this purpose by the Commission and the Exchange under the Code on Share Buy-backs, may not exceed 10 per cent of the number of issued shares of the issuer and the total number of warrants to subscribe for or purchase shares (or other relevant class of securities) authorised to be so purchased may not exceed

10 per cent of the warrants of the issuer (or such other relevant class of securities, as the case may be), in each case as at the date of the resolution granting the general mandate; and

*Note: If the issuer conducts a share consolidation or subdivision after the repurchase mandate has been approved in general meeting, the maximum number of shares that may be repurchased under the mandate as a percentage of the total number of issued shares at the date immediately before and after such consolidation or subdivision shall be the same.*

- (2) the dates on which the authority conferred by the resolution will commence and determine. Such authority may only continue in force until:—
- (a) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the authority is renewed, either unconditionally or subject to conditions; or
  - (b) revoked or varied by ordinary resolution of the shareholders in general meeting,
- whichever occurs first.

13.10 The issuer must report the outcome of the general meeting called to consider the proposed purchases to the Exchange immediately following the meeting.

#### *Dealing restrictions*

13.11 The following dealing restrictions must be adhered to:—

- (1) an issuer shall not purchase shares on GEM for a consideration other than cash or for settlement otherwise than in accordance with the trading rules of the Exchange from time to time;
- (2) an issuer shall not knowingly purchase shares from a core connected person and a core connected person shall not knowingly sell his shares to the issuer, on GEM;
- (3) an issuer shall procure that any broker appointed by the issuer to effect the purchase of shares shall disclose to the Exchange such information with respect to purchases made on behalf of the issuer as the Exchange may request;
- (4) an issuer shall not purchase its shares on GEM at any time after inside information has come to its knowledge until the information is made publicly available. In particular, during the period of 1 month immediately preceding the earlier of:
  - (i) the date of the board meeting (as such date is first notified to the Exchange in accordance with rule 17.48) for the approval of the issuer's results for any year, half-year or quarter-year period or any other interim period (whether or not required under the GEM Listing Rules); and
  - (ii) the deadline for the issuer to announce its results for any year, half-year or quarter-year period under rules 18.49, 18.78 or 18.79 or any other interim period (whether or not required under the GEM Listing Rules),

and ending on the date of the results announcement, the issuer may not purchase its shares on GEM, unless the circumstances are exceptional;

- (5) an issuer shall not purchase its shares on GEM if that purchase would result in the number of listed securities which are in the hands of the public falling below the relevant minimum prescribed percentage for that issuer (as determined by the Exchange at the time of listing under rule 11.23);
- (6) an issuer shall not purchase its shares on GEM if the purchase price is higher by 5% or more than the average closing market price for the 5 preceding trading days on which its shares were traded on GEM; and
- (7) the Exchange may waive all or part of the above restrictions if, in the opinion of the Exchange, there are exceptional circumstances (such as, but without limitation, political or economic events having a material adverse effect on the price of shares of the issuer or issuers listed on GEM generally) justifying the waiver of such restrictions. A waiver may be granted either with respect to a fixed amount of securities of an issuer or generally or on such conditions as the Exchange shall specify and may be expressed to continue for a stated period of time or until further notice.

#### *Subsequent issues*

13.12 An issuer may not make a new issue of shares or announce a proposed new issue of shares for a period of 30 days after any purchase by it of shares, whether on GEM or otherwise (other than an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange.

#### *Reporting requirements*

13.13 An issuer shall:—

- (1) submit for publication to the Exchange through HKEx-EPS not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following any day on which the issuer makes a purchase of shares (whether on GEM or otherwise), the total number of shares purchased by the issuer the previous day, the purchase price per share or the highest and lowest prices paid for such purchases, where relevant, and shall confirm that those purchases which were made on GEM were made in accordance with the GEM Listing Rules and that there have been no material changes to the particulars contained in the Explanatory Statement. In respect of purchases made on another stock exchange, the issuer's report must confirm that those purchases were made in accordance with the domestic rules applying to purchases on that other stock exchange. Such reports shall be made on a return in such form and containing such information as the Exchange may from time to time prescribe. In the event that no shares are purchased on any particular day then no return need be made to the Exchange. The issuer should make arrangements with its brokers to ensure that they provide to the issuer in a timely fashion the necessary information to enable the issuer to make the report to the Exchange; and
- (2) include in its annual report and accounts a monthly breakdown of purchases of shares made during the financial year under review showing the number of shares purchased each month (whether on GEM or otherwise) and the purchase price per share or the highest and lowest price paid for all such purchases, where relevant, and the aggregate price paid by the issuer for such purchases. The directors' report shall contain reference to the purchases made during the year and the directors' reasons for making such purchases.

### *Status of purchased shares*

13.14 The listing of all shares which are purchased by an issuer (whether on GEM or otherwise) shall, subject to applicable law, be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares in the normal way. The issuer shall ensure that the documents of title of purchased shares are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase.

*Note: Overseas issuers with a dual listing are referred to rule 24.07 which may be relevant in this regard.*

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

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

- (1) [Repealed 1 July 2008]
- (2) [Repealed 1 July 2008]
- (3) “listing date” means the date on which securities of the new applicant commence trading on GEM;
- (4) [Repealed 1 July 2008]
- (5) references to a “disposal” (of securities) includes the creation of any option, rights or interests (over such securities) but shall exclude the following:
  - (a) any stock lending arrangement with an underwriter of the initial public offering of the new applicant’s securities which satisfies the following conditions:
    - (i) the stock lending arrangement is fully described in the initial listing document and must be for the sole purpose of covering any short position prior to the exercise of the underwriter’s over-allotment option or similar right;
    - (ii) the maximum number of shares to be borrowed from the relevant shareholder is the maximum number of shares that may be issued upon full exercise of the over-allotment option; and
    - (iii) the same number of shares borrowed is returned to the relevant shareholder within 3 business days after the last day on which the over-allotment option may be exercised or, if earlier, the date on which the over-allotment option is exercised in full; and
  - (b) any placing and issue of securities made in the manner described in rule 20.90(4) during the second six month period of the issuer’s listing date where:
    - (i) there is no change in the number of securities held by the relevant shareholder before and after completion of the placing and issue of securities; and
    - (ii) the placing of securities does not result in a controlling shareholder of the issuer ceasing to be a controlling shareholder after completion of the placing and issue of securities.

13.16 [Repealed 1 July 2008]

13.16A (1) A person or group of persons shown by the listing document issued at the time of the issuer's application for listing to be controlling shareholders of the issuer shall not and shall procure that the relevant registered holder(s) shall not:—

- (a) in the period commencing on the date by reference to which disclosure of the shareholding of the controlling shareholders is made in the listing document and ending on the date which is 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, dispose of, nor enter into any agreement to dispose of or otherwise create any options, rights, interests or encumbrances in respect of, any of those securities of the issuer in respect of which he is or they are shown by that listing document to be the beneficial owner(s); or
- (b) in the period of 12 months commencing on the date on which the period referred to in rule 13.16A(1)(a) expires, dispose of, nor enter into any agreement to dispose of or otherwise create any options, rights, interests or encumbrances in respect of, any of the securities referred to in rule 13.16A(1)(a) if, immediately following such disposal or upon the exercise or enforcement of such options, rights, interests or encumbrances, that person or group of persons would cease to be a controlling shareholder.

Any offer for sale contained in a listing document shall not be subject to such restrictions.

- (2) For the purpose of this rule, a person is treated as the beneficial owner of securities if he has the ultimate beneficial ownership or control of the securities, whether through a chain of companies or otherwise.

*Note: Controlling shareholder(s) is/are free to purchase additional securities and dispose of securities thus purchased in the relevant period, subject to compliance with the requirements of rule 11.23 to maintain an open market in the securities and a sufficient public float.*

13.17 [Repealed 1 July 2008]

13.18 Nothing in rule 13.16A shall prevent the disposal of any interest of a controlling shareholder in the securities referred to in Rule 13.16A (1)(a) in the following circumstances:—

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

13.19 A new applicant shall procure that every controlling shareholder undertakes to the new applicant and the Exchange to comply with the following requirements:—

- (1) in the event that the controlling shareholder pledges or charges any direct or indirect interest in relevant securities under rule 13.18(1) or pursuant to any right or waiver granted by the Exchange pursuant to rule 13.18(4), at any time during the relevant periods specified in rule 13.16A, he must inform the issuer immediately thereafter, disclosing the details specified in rule 17.43(1) to (4); and

- (2) having pledged or charged any interest in securities under sub-paragraph (1) above, he must inform the issuer immediately in the event that he becomes aware that the pledgee or chargee has disposed of or intends to dispose of such interest and of the number of securities affected.

13.20 An issuer that has been informed of any matter under rule 13.19 must forthwith publish an announcement giving details of the same in accordance with the requirements of rule 17.43.

### **Restrictions on multiple applications**

13.21 Where securities are offered to the public for subscription or purchase, the issuer, its directors, Sponsor and, if applicable, underwriters must take reasonable steps to ensure that multiple or suspected multiple applications are identified and rejected.

*Note: Having taken reasonable steps as required by this rule, the issuer, its directors, Sponsor and, if applicable, underwriters will be entitled to rely on the declaration/representations made by an applicant.*

13.22 In this rule “multiple applications” means circumstances where more than one application is made by the same person; where a person applies for more than 100% of the securities on offer or where a person applies for more than 100% of the shares available in any pool into which the securities on offer are divided in accordance with Practice Note 6. For the purpose of these rules the shares available in any pool is the initial allocation of shares into the pool prior to the operation of any clawback mechanism required by Practice Note 6.

13.23 An issuer, its directors, Sponsor and, if applicable, underwriters must ensure that it is a term and condition of the offer of the securities (disclosed as such in the listing document and the relevant application form) that by making an application, each applicant warrants that:—

- (1) (if the application is made for his own benefit) no other application is being made for his benefit by him or by anyone applying as his agent or by any other person;
- (2) (if the application is made by him as agent for the benefit of another person) no other application is being made by him as agent for or for the benefit of that person or by that person or by any other person as agent for that person;
- (3) if he signs the application form as agent for someone else, he has due authority to do so on behalf of that other person.

13.24 The application form shall include a warning as follows:—

“Warning:—

*Only one application may be made for the benefit of any person.”*

*and a declaration and representation as follows:—*

*“I/we hereby declare that this is the only application made and the only application intended by me/us to be made, to benefit me/us or the person for whose benefit I am/we are applying. I/ we understand that this declaration/representation will be relied upon by the issuer in deciding whether or not to make any allotment of shares in response to this application.”*

13.25 The application form shall also contain a stipulation to the effect that an application made by an unlisted company which does not carry on any business other than dealing in shares and in respect of which a person exercises statutory control shall be deemed to be an application made for the benefit of that person.