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# AMENDMENTS TO THE GEM LISTING RULES

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## Chapter 7

### GENERAL

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

##### When required

7.01 This Chapter sets out the detailed requirements for ... . Accountants' reports are required to be included in the following listing documents and circulars: -

...

(3) a circular issued in connection with a major transaction, a very substantial acquisition, an extreme transaction or a reverse takeover (see rules 19.67 and 19.69) unless the company being acquired is itself a company listed on GEM or the Main Board.

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

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## Chapter 9

### GENERAL

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

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9.04 Under rule 9.01, the Exchange may direct a trading halt or suspend dealings in an issuer's securities regardless of whether or not the issuer has requested the same and may do so in any circumstances, including:-

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- (3) where the Exchange considers that the issuer does not carry on a business as required under have a sufficient level of operations or sufficient assets to warrant the continued listing of the issuer's securities (see rule 17.26); or

...

## Chapter 11

### EQUITY SECURITIES

#### QUALIFICATIONS FOR LISTING

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- 11.06 (1) Both the issuer and its business must, in the opinion of the Exchange, be suitable for listing. Without limiting the generality of this rule, an issuer will not be regarded as suitable for listing if its group's whose assets consist wholly or substantially of cash and/or short-term investments (as defined in the notes to rule 19.82) or short-dated securities will not normally be regarded as suitable for listing, except where the issuer or group is solely or mainly engaged in the securities brokerage business. "Short-dated securities" means securities such as bonds, bills or notes which have less than 1 year to maturity.
- (2) Cash and/or 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 (as defined in rule 19.04) or a securities house (as defined in rule 19.04) will normally not be taken into account when applying rule 11.06(1).

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 11.06(1). 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.

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## Chapter 17

### EQUITY SECURITIES

#### CONTINUING OBLIGATIONS

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##### *Sufficient operations*

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

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

- (i) ~~financial difficulties to an extent which seriously impairs an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or~~*
- (ii) ~~issuers which have not liabilities as at their balance sheet date i.e. issuers whose liabilities exceed their assets.~~*

*Rule 17.26(1) is a qualitative test. The Exchange may consider an issuer to have failed to comply with the rule in situations where, for example, the Exchange considers that the issuer does not have a business that has substance and/or that is viable and sustainable.*

*The Exchange will make an assessment based on specific facts and circumstances of individual issuers. For example, when assessing whether a money lending business of a particular issuer is a business of substance, the Exchange may consider, among other factors, the business model, operating scale and history, source of funding, size and diversity of customer base and loan portfolio and internal control systems of the money lending business of that particular issuer, taking into account the norms and standards of the relevant industry.*

*Where the Exchange raises concerns with an issuer about its compliance with the rule, the onus is on the issuer to provide information to address the Exchange's concerns and demonstrate to the satisfaction of the Exchange its compliance with the rule.*

- (2) Proprietary trading and/or investment in securities by an issuer and its subsidiaries are normally excluded when considering whether the issuer can meet rule 17.26(1).

Note: This rule would not normally apply to proprietary securities trading and/or investment activities carried out in the ordinary and usual course of business by a member of an issuer's group that is:

- (a) a banking company (as defined in rule 20.86);
- (b) an insurance company (as defined in rule 19.04); or
- (c) a securities house (as defined in rule 19.04) 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.

...

#### **Financial advisers appointed in relation to extreme transactions**

17.99A A financial adviser appointed by a listed issuer under rule 19.53A(2) in relation to an extreme transaction must conduct reasonable due diligence on the assets acquired and/or to be acquired under the extreme transaction to put itself in a position to be able to make the declaration in Appendix 21. The extent of its work and scope of due diligence shall be referenced to Practice Note 2 to the GEM Listing Rules.

17.99B The financial adviser must be a person licensed or registered under the SFO for Type 6 regulated activity and permitted under its license or certificate of registration to undertake the work of a sponsor. The financial adviser must submit to the Exchange an undertaking in the prescribed form set out in Appendix 22 to:

- (a) comply with the GEM Listing Rules; and
- (b) co-operate in any investigation conducted by the Listing Division and/or the GEM Listing Committee of the Exchange, including answering promptly and openly any questions addressed to the financial adviser, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the financial adviser is requested to appear.

17.99C The issuer must assist the financial adviser to perform its duties. The requirements under rule 17.93 shall apply mutatis mutandis as if all references to "independent financial adviser" were references to "financial adviser".

...

## Chapter 18

### EQUITY SECURITIES

#### FINANCIAL INFORMATION

...

*Information to accompany directors' report and annual financial statements*

- 18.07 The listed issuer shall include the disclosures required under the relevant accounting standards adopted and the information set out in rules 18.07A to 18.47 in its directors' report and annual financial statements. ...

...

- 4 *An annual report shall contain the following information required under other parts of the GEM Listing Rules:*

...

- (h) information required under rule 19.36B and/or rule 20.61 about any of profit guarantee provided by a connected person regarding the financial performance of the a company or business acquired from the connected person under rule 20.61;*

...

- 18.41 A discussion and analysis of the group's performance during the year and the material factors underlying its results and financial position. ... As a minimum the directors of the listed issuer should comment on the following:-

...

- (4) significant investments held, their performance during the year and their future prospects;

- (4A) a breakdown of its significant investments (including any investment in an investee company with a value of 5 per cent. or more of the issuer's total assets as at the year end date):

- (a) details of each investment, including the name and principal businesses of the underlying company, the number and percentage of shares held and the investment costs;

- (b) the fair value of each investment as at the year end date and its size relative to the issuer's total assets;

- (c) the performance of each investment during the year, including any realised and unrealised gain or loss and any dividends received; and

- (d) a discussion of the issuer's investment strategy for these significant investments;

...

## 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 ~~considers~~ additional requirements in respect of takeovers and mergers.

...

##### Definitions

- 19.04 For the purposes of this Chapter:-

- (1) any reference to a "transaction" by a listed issuer:

...

- (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 ~~and~~ or disposal of properties will generally not be considered to be of a revenue nature unless such transactions ~~are~~ carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer.*

- (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 ...

4 ...

...

(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);

...

(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 or reverse takeover under rule 19.06 or a transaction classified as a reverse takeover or extreme transaction under rule 19.06B or 19.06C;

...

- (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;

...

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

- 19.05 A listed issuer considering a transaction must, at an early stage, consider whether the transaction falls into one of the classifications set out in rule 19.06, 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.

...

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

...

- (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, ~~and~~

### **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 ~~(6) — reverse takeover —~~ 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)) assets to be acquired and a means to circumvent the requirements for new applicants as set out in Chapter 11. A “reverse takeover” normally refers to:-

#### 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~~ 24-months of such person or group of persons gaining control (as defined in the Takeovers Code) of the listed issuer (other than at the level of its subsidiaries), where such gaining of control had not been regarded as a reverse takeover, which individually or together constitute(s) a very substantial acquisition. For the purpose of determining whether the acquisition(s) constitute(s) a very substantial acquisition, the lower of:*

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

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

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

*Note:—Rule ~~19.06B~~ 19.06(6)—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 to the satisfaction of the Exchange 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.

...

#### *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 may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and/or apply substitute 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.

...

#### *Aggregation of transactions*

- 19.22 In addition to the aggregation of transactions under rules 19.06B, 19.06C and 19.06E of acquisitions under rule 19.06(6)(b), the Exchange may require listed issuers to aggregate a series of transactions and ...

...

### **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:-

...

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 ...

...

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.

...

### **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 enlarged group or the assets to be acquired acquisition targets must be able to meet the requirements of rule 11.06 and rule 11.12A (or rule 11.14). and In addition, the enlarged group must be able to meet all the other basic conditions 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 Exchange must be satisfied that there will be sufficient public interest in the business of the acquisition targets and the enlarged group and in the securities for which listing is sought (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.

...

### **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 for~~ 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: -

...

- (3) a description of the principal business activities carried on by the listed issuer and the identity and a ~~general~~ description of the principal business activities of the counterparty, ~~if the counterparty is a company or entity;~~

...

*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~~ for 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:-

...

### **Contents of circulars**

#### *General principles*

- 19.63 A circular ~~of~~ for a major transaction, very substantial disposal, ~~or~~ 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: -

...

#### *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 ... ; 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;

...

*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 ...

...

*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 or short dated securities and/or short-term investments~~, it will not be regarded as suitable for listing and trading in its securities will be suspended. ~~“Short-dated securities” means securities such as bonds, bills or notes which have less than 1 year to maturity.~~

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 A listed issuer which is solely or mainly engaged in the securities brokerage business will normally not be taken into account when applying subject to 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.

...

#### **Restriction on disposal**

- 19.91 ~~[Repealed [●]]A listed issuer may not dispose of its existing business for a period of 24 months after a change in control (as defined in the Takeovers Code) unless the assets acquired from the person or group of persons gaining such control or his/their associates and any other assets acquired by the listed issuer after such change in control can meet the requirement of rule 11.12A.~~
- 19.92 ~~[Repealed [●]]A disposal by a listed issuer which does not meet the requirement under rule 19.91 will result in the listed issuer being treated as a new listing applicant.~~

#### **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.

## Chapter 20

### EQUITY SECURITIES

#### CONNECTED TRANSACTIONS

...

*Guaranteed profits or net ~~tangible~~-assets*

- 20.60 The following apply if the listed issuer's group acquires a company or business from a connected person, and the connected person guarantees the profits or net ~~tangible~~-assets or other matters regarding the financial performance of the company or business.
- 20.61 (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 independent non-executive directors consider 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 ~~in~~ an announcement ~~and in its next annual report~~:
- (~~1~~a) the shortfall, and any adjustment in the consideration for the transaction or other consequence under the guarantee;
  - (~~2~~b) whether the connected person has fulfilled its obligations under the guarantee;
  - (~~3~~c) whether the listed issuer's group has exercised any option to sell the company or business back to the connected person or other rights it held under the terms of the guarantee, and the reasons for its decision; and
  - (~~4~~d) the independent non-executive directors' opinion on:

- (ai) whether the connected person has fulfilled its obligations; and
- (bii) whether the decision of the listed issuer's group to exercise or not to exercise any options or rights set out in rule 20.61(3)(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.

...

### **Announcements**

20.66 An announcement ~~of~~ for a connected transaction must contain at least:

- (1) the information set out in rules 19.58 to 19.60 (contents of announcements for notifiable transactions);
- (1A) the identities and a description of the principal business activities of the parties to the transaction and of their ultimate beneficial owner(s);
- (2) the connected relationship between the parties to the transaction, and the connected person's interests in the transaction;

...

20.68 The circular must contain at least:

...

- (3) ~~the identity and activities~~ identities and a description of the principal business activities of the parties to the transaction and of their ultimate beneficial owner(s);

...

### *Exception to percentage ratio calculations*

20.78 If 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 ~~may~~ disregard the calculation ratio and consider alternative test(s) provided by the listed issuer, 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.

...

**Appendix 21**

**FINANCIAL ADVISER'S DECLARATION**  
**(FOR EXTREME TRANSACTION)**

To: The Listing Division  
The Stock Exchange of Hong Kong Limited

...../...../.....

We, ....., are the financial adviser appointed by ..... (the "Company") on [Date] to perform due diligence on [a description of the proposed transaction] (the "Transaction") as required under rules 17.99A and 19.53A(2) of the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (the "GEM Listing Rules") and have offices located at .....

Under GEM Listing Rules 17.99A and 19.53A(2), we declare to The Stock Exchange of Hong Kong Limited (the "Exchange") that:

- (a) having made reasonable due diligence inquiries, we have reasonable grounds to believe and do believe that:
  - (i) the acquisition targets (as defined in GEM Listing Rule 19.04(2A)) are able to meet the requirements under GEM Listing Rule 11.06 and GEM Listing Rule 11.12A (or GEM Listing Rule 11.14). In addition, the enlarged group is able to meet all the new listing requirements in Chapter 11 of the GEM Listing Rules (except for GEM Listing Rule 11.12A and those rules agreed with the Exchange);
  - (ii) the Company's circular contains sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the Transaction and the financial condition and profitability of the acquisition targets at the time of the issue of the circular;
  - (iii) the information in the non-expert sections of the circular:
    - (A) contains all information required by relevant legislation and rules;
    - (B) is true, accurate and complete in all material respects and not misleading or deceptive in any material respect, or, to the extent it consists of opinions or forward looking statements by the Company's directors or any other person, such opinions or forward looking statements have been made after due and careful consideration and on bases and assumptions that are fair and reasonable; and
    - (C) does not omit any matters or facts the omission of which would make any information in the non-expert sections of a circular or any other part of the circular misleading in a material respect; and

- (iv) there are no other material issues relating to the Transaction which, in our opinion, should be disclosed to the Exchange;
- (b) in relation to each expert section in the circular, having made reasonable due diligence inquiries, we have reasonable grounds to believe and do believe (to the standard reasonably expected of a financial adviser which is not itself expert in the matters dealt with in the relevant expert section) that:
- (i) where the expert does not conduct its own verification of any material factual information on which the expert is relying for the purposes of any part of the expert section, such factual information is true in all material respects and does not omit any material information. Factual information includes:
- (A) factual information that the expert states it is relying on;
- (B) factual information we believe the expert is relying on; and
- (C) any supporting or supplementary information given by the expert or the Company to the Exchange relating to an expert section;
- (ii) all material bases and assumptions on which the expert sections of the circular are founded are fair, reasonable and complete;
- (iii) the expert is appropriately qualified, experienced and sufficiently resourced to give the relevant opinion;
- (iv) the expert's scope of work is appropriate to the opinion given and the opinion required to be given in the circumstances (where the scope of work is not set by a relevant professional body);
- (v) the expert is independent from (1) the Company and its directors and controlling shareholder(s); (2) the counterparty to the Transaction and the acquisition targets; and (3) the directors and controlling shareholder(s) of the counterparty to the Transaction; and
- (vi) the circular fairly represents the views of the expert and contains a fair copy of or extract from the expert's report; and
- (c) in relation to the information in the expert reports, we, as a non-expert, after performing reasonable due diligence inquiries, have no reasonable grounds to believe and do not believe that the information in the expert reports is untrue, misleading or contains any material omissions.

Signed: .....

Name: .....

For and on behalf of: ..... *[insert the name of financial adviser]*

Dated: .....

**Note:** Each and every director of the financial adviser, and any officer or representative of the financial adviser supplying information sought in this form, should note that this form constitutes a record or document which is to be

provided to the Exchange in connection with the performance of its functions under “relevant provisions” (as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571) as amended from time to time) and is likely to be relied upon by the Exchange. Therefore, you should be aware that giving to the Exchange any record or document which is false or misleading in a material particular will render relevant persons liable for prosecution for an offence under subsection 384(3) of the Securities and Futures Ordinance (Cap 571) as amended from time to time. If you have any queries you should consult the Exchange or your professional adviser immediately.

## **Appendix 22**

### **FINANCIAL ADVISER’S UNDERTAKING (FOR EXTREME TRANSACTION)**

To: The Listing Division  
The Stock Exchange of Hong Kong Limited

...../...../.....

We, ..... are the financial adviser (the “Firm”) appointed by ..... (the “Company”) on [Date] to perform due diligence on [a description of the proposed transaction] (the “Transaction”) as required under rules 17.99A and 19.53A(2) of the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (the “GEM Listing Rules”) and have offices located at .....

Pursuant to GEM Listing Rule 17.99B, we undertake to The Stock Exchange of Hong Kong Limited (the “Exchange”) that we shall:

- (a) comply with the GEM Listing Rules from time to time in force; and
- (b) cooperate in any investigation conducted by the Listing Division and/or the GEM Listing Committee of the Exchange, including answering promptly and openly any questions addressed to us, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which we are requested to appear.

Signed: .....  
Name: .....  
For and on behalf of: ..... [insert the name of financial adviser]  
Dated: .....