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**Responsibilities
of Directors of
Companies
listed on the
Growth
Enterprise
Market of the
Stock Exchange
of Hong Kong
Limited**

THE MAJOR SOURCES OF DIRECTORS' OBLIGATIONS

1. common law and applicable legislation, including the Companies Ordinance and the Securities and Futures Ordinance (“**SFO**”);
2. the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (the “**GEM Rules**”);
3. the Code on Takeovers and Mergers and the Code on Share Repurchases (“**Takeovers Code**”);
4. the directors' Declaration and Undertaking to the Exchange; and
5. the Companies Registry's Guide on Directors' Duties.

DIRECTORS' OBLIGATION TO ENSURE ISSUER'S COMPLIANCE WITH LISTING RULES

- ❖ A listed issuer undertakes in its application for listing to comply with the Listing Rules once its securities are listed on the Exchange.
- ❖ Under GEM Rule 17.03, the directors of a listed issuer are collectively and individually responsible for ensuring that the listed issuer complies fully with the requirements of the GEM Rules.

DIRECTORS' DECLARATION AND UNDERTAKING

A director undertakes that he will:

- ❖ comply to the best of his ability with the GEM Rules and use his best endeavours to ensure that the listed issuer complies with the GEM Rules;
- ❖ comply to the best of his abilities with the requirements of the SFO, the Takeovers Code, the Companies Ordinance and all other securities laws and regulations from time to time in force in Hong Kong; and
- ❖ cooperate in any investigation conducted by the Listing Division and/or the GEM Listing Committee of the Exchange.

FIDUCIARY DUTIES OF DIRECTORS

1. Duty to act honestly and in good faith in the interests of the company as a whole
2. Duty to act for a proper purpose
3. Duty in relation to the assets of the listed issuer
4. Duty to avoid actual and potential conflicts of interest and duty
5. Duty to disclose fully and fairly his interests in contracts with the listed issuer
6. Duty to apply such degree of skill, care and diligence as may reasonably be expected of a person with his knowledge and experience and acting as a director of a listed issuer (GEM Rule 5.01)

Duties summarised in the Guide on Directors' Duties (Attachment A)

CONSEQUENCES OF NON-COMPLIANCE WITH THE GEM RULES

If there has been a breach of the GEM Rules, the Exchange may:

- issue a private reprimand;
- issue a public statement which involves criticism;
- issue a public censure;
- report the offender's conduct to a regulatory authority (e.g. the SFC) or to an overseas regulatory authority;
- require a breach to be rectified or other remedial action taken within a stipulated period; and
- take (or refrain from taking) such other action as the Exchange thinks fit. (GEM Rule 3.10)

If the Exchange considers the issuer failed in a material manner to comply with the GEM Rules, it can suspend dealings in, or cancel the listing of, the issuer's securities (GEM Rule 9.01).

CONSEQUENCES OF NON-COMPLIANCE WITH THE GEM RULES

It is a criminal offence to intentionally or recklessly provide information which is false or misleading in a material particular in any public disclosure document filed with the Exchange or SFC (section 384 of the SFO). The maximum penalty is 2 years' imprisonment and a fine of HK\$1 million.

Under section 214 of the SFO, a person can be disqualified from being a director of any corporation for up to 15 years if he is wholly or partly responsible for the misconduct of a company's affairs. Misconduct includes where shareholders are not given all the information re. the company which they might reasonably expect. In 2010, the SFC disqualified two directors for failing to inform the company's shareholders that the company was in a substantially depleted financial position.

DISCLOSURE OF PRICE-SENSITIVE INFORMATION

GEM Rule 17.10 requires a listed issuer to keep the Exchange, its shareholders and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the listed issuer and its group which:

- is necessary to enable them and the public to appraise the position of the listed issuer and its group;
- is necessary to avoid the establishment of a false market in the securities of the listed issuer; or
- might be reasonably expected materially to affect market activity in and the price of the securities of the listed issuer.

The duty of disclosure is normally satisfied by the publication of an announcement on the Exchange's website and on the website of the issuer.

Note 13 to GEM Rule 17.10 additionally provides that the issuer should notify the Exchange, members of the issuer and holders of its listed securities as soon as possible where, to the knowledge of its directors, there is such a change in the issuer's financial condition or in the performance of its business or in the issuer's expectation of its performance that knowledge of the change is likely to lead to substantial movement in the price of its listed securities.

DISCLOSURE OF PRICE-SENSITIVE INFORMATION (Cont'd)

Whether information constitutes price sensitive information (“**PSI**”) is a question of judgment in every case.

Common examples of price sensitive information include*:

- Regularly recurring matters (e.g. financial results and dividends)
- Exceptional matters (e.g. acquisitions, realisation transactions with connected persons)
- Signing an important contract
- Entering into a significant joint venture
- Fund raising exercises
- Comments on the prospects for future earnings or dividends
- Release of any projected profits of the group by issuers or their directors
- Entering into an agreement for the issue of options convertible into securities
- A large foreign exchange loss
- Major market upheaval in the industries, countries or region where the issuer has significant operations or transactions
- Premature removal of auditors before the end of their term of office
- Cancellation of an agreement previously the subject of an announcement
- Resignation of the chief executive
- The issuer being aware that its auditors will issue a qualified report on its results
- Any change of accounting policy that may have a significant impact on the accounts
- Events beyond the control of the issuer and is of material significance to the issuer’s business, operations or financial performance

* Exchange’s Guide on disclosure of Price Sensitive Information (Attachment B)

DISCLOSURE OF PRICE-SENSITIVE INFORMATION (Cont'd)

Timing of Disclosure and Confidentiality

The overriding principle is that information that is expected to be price-sensitive should be announced as soon as it is the subject of a decision. Failure to do so may result in the Exchange imposing a temporary suspension of dealings.

Until an announcement is made, **it is the direct responsibility of the directors to ensure that such information is kept strictly confidential.** To this end the directors must ensure that the strictest security is observed within the listed issuer and its advisers and if at any time it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement should be made as soon as possible.

Directors must not trade in the listed issuer's securities at any time when they are in possession of PSI.

DISCLOSURE OF PRICE-SENSITIVE INFORMATION (Cont'd)

If the issuer's shares are listed on other stock exchange(s), the Exchange must be simultaneously informed of any information released to any other exchanges (GEM Rule 17.12).

If a price-sensitive announcement is made in another market while the Hong Kong market is closed, the issuer should ensure that a corresponding announcement is published in Hong Kong before the Hong Kong market opens for trading, and, if necessary, request a suspension of trading of its securities on the Exchange pending the publication of the announcement in Hong Kong.

DISCLOSURE OF PRICE-SENSITIVE INFORMATION (Cont'd)

GEM Rule 17.13 adds that an issuer must also disclose information disclosed/published by an overseas listed subsidiary to any overseas market or exchange, whether that information is discloseable by the issuer under Chapter 17 or not.

Guidance published by the Exchange in January 2011 clarified that information published by an issuer's overseas listed subsidiary need only be published on the Exchange if such information is discloseable by the issuer under other Listing Rules. Examples include:

- Price sensitive information discloseable under GEM Rule 17.10 (i.e. information which is material to the issuer); and
- Information discloseable under the rules on Notifiable or Connected Transactions.

This guidance revoked the Exchange's 2004 guidance which required issuers to publish *all* information disclosed by their overseas listed subsidiaries to other markets.

DISCLOSURE OF PRICE-SENSITIVE INFORMATION (Cont'd)

Inadvertent Disclosure of PSI

If PSI is inadvertently disclosed to outside parties, the issuer should publish an announcement immediately so that the relevant information is disclosed to the market as a whole.

Disclosure of Information not to Place Recipient(s) in Privileged Dealing Position

- All market users must have simultaneous access to the same information
- PSI must not be selectively disclosed so as to place any person (or class or category of persons) in a privileged dealing position

Making Parties Insiders

- At certain times, issuers may need to give information in confidence to persons with whom they are negotiating e.g. with a view to making a contract or raising finance.
- Before any meeting at which PSI is to be given, parties attending must be told that they must keep the relevant information strictly confidential and that they will not be able to deal in the issuer's securities before the information is made public.
- Parties attending the meeting should consent to being made an "insider" and a record of this should be kept.

DISCLOSURE OF PRICE-SENSITIVE INFORMATION (Cont'd)

The Listing Rules' PSI disclosure regime is to be replaced by a new statutory disclosure regime.

The SFO is to be amended to create a new statutory obligation on listed companies to disclose PSI (to be referred to as “inside information”) as soon as reasonably practicable to the public.

Breach of the new provision may carry civil penalties of a fine of up to HK\$8 million for listed companies and/or a director and disqualification of a director or officer for up to 5 years.

UNUSUAL MOVEMENTS IN THE PRICE OR TRADING VOLUME OF ISSUER'S SHARES

- an issuer is required to respond promptly to enquiries made of the issuer by the Exchange concerning unusual movements in the price or trading volume of its listed securities or any other matters by giving such relevant information as is available to the issuer.
- if an enquiry relates to unusual movements in price or trading volume and the directors are aware of any matter that might be relevant, an announcement clarifying the situation should be issued. If it is not possible to issue an announcement (e.g. because negotiations are at a delicate stage) a temporary suspension may be needed.
- if the directors are not aware of any matter relevant to the unusual movements, an announcement should be published.

(GEM Rule 17.11)

SUSPENSION OF TRADING

Exchange Imposed Suspension

The Exchange may suspend trading or cancel a listing where necessary for the protection of investors or the maintenance of an orderly market. Trading may be suspended where, for example:

- the issuer fails to materially comply with the Listing Rules;
- there is insufficient public float;
- the issuer has insufficient operations to warrant its continued listing; or
- the issuer or its business is no longer suitable for listing (GEM Rule 9.04).

Issuer Request for Suspension

An issuer request for suspension must be supported by specific reasons. The Exchange will only grant a request for suspension where it is necessary in the interests of all parties. It will not be granted if the matter can be adequately dealt with by publication of an announcement.

SUSPENSION OF TRADING (Cont'd)

GEM Rule 9.05 sets out circumstances in which a request for suspension of trading may be granted including where:

- for a reason acceptable to the Exchange price-sensitive information cannot be disclosed at that time;
- the issuer has received a takeover offer, but only where terms have been agreed in principle and require discussion with and agreement by one or more major shareholders. Suspensions will normally only be appropriate where no previous announcement has been made. Otherwise, either details of the offer should be announced or, if not yet possible, a warning announcement should be published to the effect that the issuer is in discussions which could lead to an offer.
- suspension of trading is necessary to maintain an orderly market; and
- there is a substantial change in the nature, control or structure of the issuer, where publication of full details is necessary to permit a realistic valuation to be made of the securities concerned.

ANNOUNCEMENTS

The Listing Rules require listed companies to publish announcements in a wide range of situations. The Exchange's Guide on Pre-vetting Requirements and Selection of Headline Categories for Announcements ("Pre-Vetting Guide")^[1] (attached at Attachment C) sets out the situations in which an announcement is required under the GEM Rules, whether or not the announcement is required to be vetted by the Exchange before publication and the headline categories which will generally apply. The following is a summary of the main situations in which a listed issuer is required to inform the Exchange and publish an announcement.

[1] http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/listpp/eppguid/documents/2011_prevet_guide.xls

ANNOUNCEMENTS (Cont'd)

- **Price-sensitive information** – any price-sensitive information caught under GEM Rule 17.10 must be announced and kept strictly confidential until a formal announcement is made.
- **Notifiable transactions** – any notifiable transaction within Chapter 19 of the GEM Rules.
- **Connected transactions** – any connected transaction (unless an exemption is available) within Chapter 20 of the GEM Rules.

ANNOUNCEMENTS (Cont'd)

Advances and financial assistance to third parties – the listed issuer or any of its subsidiaries makes a “relevant advance to an entity” which:

- exceeds 8% of the total assets of the listed issuer (GEM Rule 17.15); or
- is greater than the previously disclosed relevant advance by 3% or more of the listed issuer’s total assets (GEM Rule 17.16).

The expression “relevant advance to an entity” means the aggregate of amounts due from and all guarantees given on behalf of an entity, its controlling shareholder, its subsidiaries, its affiliated companies and any other entity with the same controlling shareholder as itself. An advance to a subsidiary of the listed issuer, or between subsidiaries of the listed issuer, is not regarded as a relevant advance to an entity.

ANNOUNCEMENTS (Cont'd)

Financial assistance to affiliated companies - financial assistance and guarantees of financial assistance given by the listed issuer or any of its subsidiaries to affiliated companies (being those which are equity accounted for by the issuer) of the listed issuer together exceed 8% of the listed issuer's total assets (GEM Rule 17.18).

Pledge of controlling shareholder's interest - the controlling shareholder of the listed issuer has pledged its interest in shares of the company to secure debts of the company or to secure guarantees or other support of obligations of the company (GEM Rule 17.19).

ANNOUNCEMENTS (Cont'd)

Loan agreements – where:

- the listed issuer (or any of its subsidiaries) enters into a loan agreement that imposes specific performance obligations on any controlling shareholder (e.g. a requirement to maintain a specified minimum holding in the share capital of the listed issuer) and breach of such obligation will cause a default in respect of loans that are significant to the operations of the listed issuer (GEM Rule 17.20); or
- the listed issuer or any of its subsidiaries breaches the terms of a loan that is significant to the operations of the group, such that the lender may demand immediate repayment and the breach has not been waived by the lender (GEM Rule 17.21).

Takeover offers – an announcement must be made once a takeover offer is made or accepted, as required by the Takeovers Code.

ANNOUNCEMENTS (Cont'd)

Accounts and auditors

Board meeting for approval of results – an issuer must inform the Exchange and publish an announcement at least 7 clear business days in advance of the date fixed for any board meeting at which the profits or losses for any period are to be approved for publication (GEM Rule 17.48).

Annual and half-year results – must be published by way of announcement under Chapter 18 of the GEM Rules.

Change in auditor or financial year end – any change in a listed issuer's auditors or financial year end, the reason(s) for the change and any other matters that need to be brought to the attention of holders of the company's securities. The issuer's announcement must state whether the outgoing auditors have confirmed that there are no matters that need to be brought to the attention of holders of the company's securities (GEM Rule 17.50(4)).

ANNOUNCEMENTS (Cont'd)

Company matters

Change of company name – once the board decides to change the company name (Schedule to Appendix 24 of the GEM Rules).

Memorandum and Articles of Association – any proposed alteration of the memorandum or articles of association of the listed issuer (GEM Rule 17.50(1)).

Registered office – any change in the company's registered address, agent for service of process in Hong Kong or registered office or registered place of business in Hong Kong (GEM Rule 17.50(5)).

Share registrar – any change of the company's share registrar (including any overseas branch share registrar) (GEM Rule 17.50(3)).

ANNOUNCEMENTS (Cont'd)

Company matters (Cont'd)

Dividends – an issuer must inform the Exchange and publish an announcement at least 7 clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided (GEM Rule 17.48). Any decision of the board to declare, recommend or pay a dividend or not to do so must be announced immediately (GEM Rules 17.49(1) and (2)).

Winding-up or Liquidation – the appointment of a receiver or manager, the presentation of any winding-up petition or the passing of any resolution authorising the winding up of the listed issuer, its holding company or any of its major subsidiaries (i.e. a subsidiary representing 5% under any of the percentage ratios (discussed in “Notifiable Transactions” later) or any similar insolvency events (GEM Rule 17.27(1)).

Decision to withdraw listing – a proposed withdrawal of listing must be notified to shareholders by way of publication of an announcement (GEM Rule 9.23).

ANNOUNCEMENTS (Cont'd)

Corporate governance

Audit committee – if the issuer fails to set up an audit committee or does not meet the membership requirements (GEM Rule 5.33).

Directors and officers

Board composition and independent non-executive directors – an announcement must be made if the issuer does not have at least 3 independent non-executive directors (“INEDs”), does not have at least one INED with appropriate professional qualifications or accounting or related financial management expertise or if the INEDs constitute less than one third of the membership of the board (GEM Rule 5.06).

Change in company secretary – an announcement must be made once the board has decided to change the company secretary (GEM Rule 17.50(3)).

Change in compliance officer – an announcement must be made as soon as a compliance officer resigns, and arrangements must be made immediately to appoint a new compliance officer. Once a new compliance officer has been appointed, another announcement must be made (GEM Rules 17.50(3) and 6A.29).

ANNOUNCEMENTS (Cont'd)

Corporate governance (Cont'd)

Change in directors or supervisors – any change of directors, including, in the case of the resignation of a director, the reasons given by the director for his resignation (GEM Rule 17.50(2)). An announcement of the appointment of a new director or re-designation of a director must include the information specified in GEM Rule 17.50(2).

Change in disclosed information about directors – any change to the information specified in paragraphs (h) to (v) of GEM Rule 17.50(2) previously disclosed about a director must be announced (GEM Rule 17.50A). Such information relates mainly to matters which may cast doubt on the integrity of the directors involved and their suitability for continuing to serve as directors. Any change in the information specified in paragraphs (a) to (e) and (g) of GEM Rule 17.50(2) must be set out in the next published annual or interim report. The Rules include an obligation for directors to inform the issuer immediately of any information specified in GEM Rule 17.50(2) and any change to such information (GEM Rule 17.50B).

ANNOUNCEMENTS (Cont'd)

Meetings

Notice of general meetings – notice of an issuer's annual general meeting and other general meetings must be announced (GEM Rules 17.44 and 17.46(2)).

Results of general meetings – the results must be published before commencement of trading on the business day following the meeting.

ANNOUNCEMENTS (Cont'd)

Shares

Issues of securities – an issue of securities (including convertible securities or warrants, options or similar rights) will almost always require an announcement (except an exercise of options under an employee share scheme) either as price sensitive information under GEM Rule 17.10, or under Chapter 19 or 20, or under GEM Rule 17.30.

Changes in issued share capital – certain changes to an issuer's issued share capital must be reported to the Exchange for publication on the Exchange's website on the following business day (GEM Rule 17.27A). Issuers must also submit a monthly return of changes in its equity securities, debt securities and other securitised instruments (GEM Rule 17.27B).

ANNOUNCEMENTS (Cont'd)

Shares (Cont'd)

Share option schemes – an employee share option scheme must be approved by shareholders in general meeting and a listed issuer must publish an announcement of the outcome of the meeting as soon as possible and no later than the business day following the meeting (GEM Rule 23.02(1)(a)). Further announcements must be published on the grant of share options pursuant to a share option scheme specifying the information required by GEM Rule 23.06A.

Basis of allotment of securities – the basis of allotment of any securities offered to the public for subscription or sale or an open offer and of the results of the offer and, if applicable, of the basis of any acceptance of excess applications. The company must notify the Exchange of such matters no later than the morning of the next business day after the allotment letters or other relevant documents of title are posted (GEM Rule 16.13).

ANNOUNCEMENTS (Cont'd)

Shares (Cont'd)

Public float – The company must inform the Exchange immediately if it becomes aware that the number of its listed securities held by the public has fallen below the prescribed minimum percentage (i.e. 25% unless a lower percentage of between 15% and 25% was approved by the Exchange on listing for a company having an expected market capitalisation at the time of listing of more than HK\$10 billion) (GEM Rules 11.23(7), 11.23(10) and 17.36).

Share Repurchases – Listed issuers must submit a completed return after any purchase, sale, drawing or redemption by the company or its group members of its listed securities (whether on the Exchange or not) (GEM Rule 17.35). The company should also be aware of the provisions of the Code on Share Repurchases which sets out detailed rules governing any offer to purchase, redeem or otherwise acquire the shares of a listed issuer made by or on behalf of the listed issuer to any of its shareholders.

ANNOUNCEMENTS (Cont'd)

Announcements which Require Pre-vetting by the Exchange

Announcements of the following matters or transactions must be submitted to the Exchange for review and approval before publication under GEM Rule 17.53(2):

- a. very substantial acquisitions, very substantial disposals or reverse takeovers under GEM Rules 19.34 and 19.35;
- b. transactions or arrangements within 12 months after listing which would result in a fundamental change in principal business activities under GEM Rules 19.88 to 19.90; and
- c. matters relating to cash companies under GEM Rules 19.82 and 19.83.

Announcements other than those specified in GEM Rule 17.53(2) do not need to be pre-vetted by the Exchange, although companies may consult the Exchange regarding rule compliance issues. The Exchange also reserves the right under GEM Rule 17.53A to require listed companies to submit for review any draft announcement, circular or other document in individual cases.

For a summary of the pre-vetting requirements for announcements, reference should be made to the Exchange's Pre-vetting Guide at Attachment C.

MATTERS REQUIRING PRIOR CONSULTATION WITH EXCHANGE PRIOR TO ANNOUNCEMENT

There are a number of Rule compliance issues relating to notifiable transactions or issues of securities which need the Exchange's prior consent or confirmation prior to publication of an announcement. These include, but are not limited to, the following:

- i. whether the Exchange will allow the listed issuer to adopt alternative size test(s) to classify a transaction under GEM Rule 19.20;
- ii. whether the Exchange will deem a party to a transaction to be a connected person of the listed issuer under GEM Rule 20.06 or 20.11(4). GEM Rule 20.11(4)(c) requires a listed issuer to notify the Exchange of any proposed transaction with the parties described in such rules unless the transaction is exempt;

MATTERS REQUIRING PRIOR CONSULTATION WITH EXCHANGE PRIOR TO ANNOUNCEMENT (Cont'd)

- iii. whether the transaction/matter falls under the special or exceptional circumstances described in the Listing Rules, e.g. a proposed issue of securities for cash under general mandate at a price representing a discount of 20% or more to the benchmarked price under GEM Rule 17.42B; or a proposed issue of warrants that would not meet certain specific requirements under GEM Rule 21.02; and

MATTERS REQUIRING PRIOR CONSULTATION WITH EXCHANGE PRIOR TO ANNOUNCEMENT (Cont'd)

- iv. In the case of matters affecting trading arrangements (including suspension or resumption of trading, and cancellation or withdrawal of listing), GEM Rule 17.53B requires that:
 - a. listed issuers must consult the Exchange before issuing the relevant announcement; and
 - b. the announcement must not include any reference to a specific date or timetable which has not been agreed in advance with the Exchange.

ANNOUNCEMENTS (Cont'd)

Publication of Announcements

- Announcements must be published on the website of the Exchange and on the listed issuer's own website.
- Listed companies must submit an electronic copy of the announcement through the Exchange's electronic submission system (HKEx-EPS).
- When doing so, companies must select all appropriate headlines from the list of headline categories which are set out in Appendix 17 to the GEM Rules.
- Unless stated otherwise in the Rules, all announcements must be published in both English and Chinese.

ANNOUNCEMENTS (Cont'd)

Publication of Announcements (Cont'd)

With the exception of certain limited types of announcements that can be published at all times during the operational hours of the e-Submission System, announcements must only be submitted during the designated publications windows which are:

On a normal business day:

- 6.00 a.m. to 8.30 a.m.
- 12.00 p.m. to 12.30 p.m.
- 4.15 p.m. to 11.00 p.m.

On the eves of Christmas, New Year and Lunar New Year when there is no afternoon session:

- 6.00 a.m. to 8.30 a.m.
- 12.00 p.m. to 11.00 p.m.

ANNOUNCEMENTS (Cont'd)

The categories of announcements which can be published during trading hours as well as outside trading hours are:

- i. suspension announcements;
- ii. announcements made in response to unusual movements in share price or trading volume;
- iii. announcements denying the accuracy of news reports or clarifying that only its published information should be relied upon; and
- iv. overseas regulatory announcements.

LISTING DOCUMENTS AND CIRCULARS WHICH REQUIRE PRE-VETTING

GEM Listing Rule 17.53(1) requires the following documents to be submitted to the Exchange for review and approval before publication:

- ❖ listing documents (including prospectuses);
- ❖ circulars relating to cancellation or withdrawal of listing of listed securities;
- ❖ circulars for notifiable transactions which are subject to shareholders' approval;
- ❖ circulars for connected transactions;
- ❖ circulars to the company's shareholders seeking their approval of issues of securities that require specific mandates from the shareholders (under GEM Rule 17.39);
- ❖ circulars to shareholders seeking consent to an allotment of voting shares that will alter the control of the issuer (under GEM Rule 17.40);

LISTING DOCUMENTS AND CIRCULARS WHICH REQUIRE PRE-VETTING (Cont'd)

- ❖ circulars to the issuer's shareholders seeking their approval of transactions or arrangements that require independent shareholders' approval and the inclusion of separate letters from independent financial advisers to be contained in the relevant circulars under GEM Rule 17.47(7), which include:
 - a. spin-off proposals;

LISTING DOCUMENTS AND CIRCULARS WHICH REQUIRE PRE-VETTING (Cont'd)

- b. transactions which the Rules require to be subject to independent shareholders' approval (see GEM Rule 17.47(5)(b)) such as:
 - 1. rights issues under GEM Rule 10.29;
 - 2. open offers under GEM Rule 10.39;
 - 3. refreshments of general mandates before next AGM under GEM Rule 17.42A;
 - 4. withdrawal of listings under GEM Rule 9.20; and
 - 5. transactions or arrangements that would result in a fundamental change in the principal business activities of the listed issuer within 12 months after listing under GEM Rules 19.88 to 19.90;

LISTING DOCUMENTS AND CIRCULARS WHICH REQUIRE PRE-VETTING (Cont'd)

- ❖ circulars to shareholders seeking their approval of any matter in relation to a share option scheme which is required under Chapter 23 of the GEM Listing Rules;
- ❖ circulars to shareholders seeking their approval of warrant proposals involving approvals by shareholders and all warrant holders under GEM Rule 21.07(3); and
- ❖ circulars or offer documents issued by the issuer in connection with takeovers, mergers or offers.

DISCLOSURE OF CHANGES IN ISSUED SHARE CAPITAL

- **Next Day Disclosure Requirements**

The Listing Rules require next day disclosure on the Exchange website of 2 categories of changes in issued share capital

DISCLOSURE OF CHANGES IN ISSUED SHARE CAPITAL (Cont'd)

- ❖ The first category of changes, which always require next day disclosure on the next business day, include those that result from the following:
 - Placings;
 - consideration issues;
 - open offers;
 - rights issues;
 - bonus issues;
 - scrip dividends;
 - repurchases of shares or other securities;
 - exercise of an option (whether under a share option scheme or not) by a director of the listed issuer;
 - capitalisation reorganisation; or
 - change in issued share capital not falling within any of the categories referred to above or in GEM Rule 17.27A(2)(b).

DISCLOSURE OF CHANGES IN ISSUED SHARE CAPITAL (Cont'd)

- ❖ Categories of Changes Requiring Next Day Disclosure in Specified Circumstances
 - exercise of an option under a share option scheme other than by a director of the listed;
 - Exercise of an option other than under a share option scheme not by a director of the listed issuer;
 - exercise of a warrant;
 - conversion of convertible securities; or
 - redemption of shares or other securities.
- ❖ The specified circumstances include:
 - where the event results in a change of 5% or more of the listed issuer's existing issued share capital; or
 - where the listed issuer is required to make disclosure of a first category change and an event has occurred but not been disclosed (either as a second category change or in a monthly return (because the 5% *de minimis* threshold has not been reached)).

DISCLOSURE OF CHANGES IN ISSUED SHARE CAPITAL (Cont'd)

❖ Monthly Return

- in relation to movements in the listed issuer's equity securities, debt securities and any other securitised instruments during the period to which the monthly return relates
- the return must be submitted no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the fifth business day next following the end of each calendar month
- the monthly return must be submitted irrespective of whether there has been any change in the information provided in the previous monthly return.

DISCLOSURE OF FINANCIAL INFORMATION

Annual Report and Accounts

A listed issuer must send a copy of its annual report including its annual accounts (and, if the company prepares group accounts, its group accounts) together with a copy of the auditors' report to every shareholder of the company and every holder of the company's listed securities not less than **21 days** before the date of the company's AGM and not later than **3 months** after the end of the financial year.

The annual accounts, directors' report and auditors' report must be prepared in both English and Chinese and must be laid before the AGM.

In the case of overseas shareholders, the company may mail the English version only provided that a statement (in English and Chinese) is included that a Chinese language version is available from the company on request.

DISCLOSURE OF FINANCIAL INFORMATION (Cont'd)

❖ Annual Report and Accounts

- Chapter 18 of the GEM Rules sets out the minimum disclosure requirements for annual reports.
- Annual accounts must comprise (at minimum) a balance sheet, income statement, cash flow statement, statement of changes in equity, comparative figures and accounting policies and explanatory notes.
- Annual accounts must be prepared in accordance with Hong Kong Financial Reporting Standards or International Financial Reporting Standards.

DISCLOSURE OF FINANCIAL INFORMATION (Cont'd)

Half-year reports

- Listed companies are also required to prepare either half-year reports or summary half-year reports and must send them to the company's shareholders and holders of the company's listed securities within 45 days of the end of the first 6 months of each financial year.
- Half-year reports must be reviewed by the Audit Committee.

DISCLOSURE OF FINANCIAL INFORMATION (Cont'd)

Quarterly Reporting

- Quarterly reporting is a Recommended Best Practice under the Code on Corporate Governance Practices as well as a mandatory obligation under GEM Rule 18.66.
- An issuer listed on the GEM must publish quarterly results and send them to the company's shareholders and holders of their listed securities within 45 days of the end of the first and third quarters.

DISCLOSURE OF FINANCIAL INFORMATION (Cont'd)

Preliminary Announcements of Results

A preliminary announcement of the company's annual, half-year and quarterly results must be published on the business day after their approval by the board and:

For Annual Results

- within 3 months of the financial year end.

For Half-year and Quarterly Results

- within 45 days of the relevant period.

The announcement must be published on the websites of the Exchange and the issuer.

The Exchange does not require trading in a listed issuer's shares to be suspended if it fails to publish its financial information on time. However, it may be interpreted as a breach of the general obligation of disclosure (GEM Rule 17.10).

Financial Reporting for Mineral Companies

- ❖ Mineral Companies must include in their half-yearly and annual reports details of exploration, development and mining production activities and a summary of expenditure incurred during the relevant period (if there has been no such activities, this must be stated) (GEM Rule 18A.14)
- ❖ Note however that companies must update shareholders immediately of material changes in funding requirements or exploration activity under the general disclosure requirements.
- ❖ Mineral companies must provide an annual update of their resources and/or reserves in annual reports (GEM Rule 18A.16). Updates must be prepared in accordance with the accepted reporting standard under which they were previously disclosed or, if none, in accordance with one of the recognised reporting standards. Annual updates need not be supported by a Competent Person's Report and may take the form of a no material change statement.

VOTING AT GENERAL MEETINGS

Mandatory Voting by Poll on all Resolutions at General Meetings

Voting by poll is mandatory on all resolutions at all general meetings under GEM Rule 17.47(4).

Listed issuers must therefore comply with the requirements under GEM 17.47(5) relating to:

- i. the appointment of a scrutineer (who may be the issuer's auditors or share registrar or external accountants who are qualified to serve as auditors) to oversee the voting procedures;
- ii. the submission of an announcement of the results of the poll for publication on the Exchange website at least 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following the general meeting.

VOTING AT GENERAL MEETINGS (Cont'd)

The chairman of a shareholders' general meeting should ensure that the detailed procedures for conducting a poll are explained at the beginning of the meeting (Code Provision E.2.1).

Code Provision Specifies Minimum Notice Periods for General Meetings

Code Provision E.1.3 in the Code on Corporate Governance Practices requires:

- i. at least 20 clear business days' notice for AGMs; and
- ii. at least 10 clear business days' notice for all other general meetings.

Under the “comply or explain” principle underlying the Code, issuers must explain any failure to comply with these requirements in their interim and annual reports.

PRE-EMPTION RIGHTS

Except for a pro rata offer to existing shareholders, the directors of a listed issuer are required to obtain the consent of shareholders in general meeting prior to the allotment, issue or grant of shares, securities convertible into shares or options, warrants or similar rights to subscribe for shares or such convertible securities.

A general mandate may however be obtained from shareholders at a general meeting of shareholders to issue up to 20% of the issued share capital of the company and, if separately authorised by the shareholders in general meeting, shares equivalent to the number of shares repurchased (up to 10% of the issued share capital).

The restrictions under GEM Rules 17.39 to 17.42B do not apply to *pro rata* offers made to all existing shareholders **excluding** those resident in a place outside Hong Kong if the directors consider such exclusion necessary or expedient due to legal restrictions or requirements of any relevant regulatory authority or stock exchange in the relevant place. Directors must make enquiry as to relevant restrictions.

An EGM may be called to approve a share issue for a specific purpose.

RESTRICTIONS ON ISSUES OF SECURITIES IN 6 MONTHS AFTER LISTING

A listed issuer is prohibited from issuing (or entering into any agreement to issue) any further shares or securities convertible into its equity securities within 6 months of the commencement of dealing in its securities on the Exchange (whether or not the issue will be completed within 6 months from commencement of dealing) except for:

- i. The issue of shares, the listing of which has been approved by the Exchange, under a Ch. 23 share option scheme;
- ii. The exercise of conversion rights attaching to warrants issued as part of the IPO;
- iii. Any capitalisation issue, capital reduction or consolidation or sub-division of shares;
- iv. The issue of shares or securities under an agreement entered into before the commencement of dealing, the material terms of which were disclosed in the IPO prospectus; and

RESTRICTIONS ON ISSUES OF SECURITIES IN 6 MONTHS AFTER LISTING (cont'd)

- v. The issue of any shares or securities convertible into equity securities which:
 - a) is for the purpose of acquiring assets that would complement the issuer's business;
 - b) does not result in any controlling shareholder ceasing to be a controlling shareholder or result in a change of control of the issuer;
 - c) is subject to approval from shareholders that do not have a material interest in the related transaction and are not connected persons (or their associates);
 - d) is set out in a circular that meets the requirements of Chapter 19 of the GEM Rules and contains sufficient information for independent shareholders to make an informed judgement on the issue and related transaction (GEM Rule 17.29).

ISSUES OF SECURITIES FOR CASH

- ❖ An announcement containing the information required by GEM Rule 17.30 must be published on the next business day of the directors' decision to issue securities for cash.
- ❖ In the case of a placing of securities for cash, securities cannot be issued under the general mandate if the price is at a discount of 20% or more to the benchmarked price of the securities (i.e. the higher of the closing price on the date of the agreement and the average closing price for the 5 trading days immediately before the earlier of:
 - i. the date of announcement of the transaction;
 - ii. the date of the agreement; and
 - iii. the date on which the price is fixed).

An exception applies where the issuer can satisfy the Exchange that it is in a serious financial position and can only be saved by an urgent rescue operation involving the issue of new securities at a discount of 20% or more, or that other exceptional circumstances exist (GEM Rule 17.42B).

ISSUES OF SECURITIES FOR CASH (Cont'd)

Where securities are issued for cash under a general mandate at a discount of $\geq 20\%$ to the securities' benchmarked price, the issuer must publish an announcement no later than 30 minutes before the opening of the morning trading session on the business day following the signing of the relevant agreement, disclosing (among others):

- If there are < 10 allottees, the name of each allottee (or its beneficial owner) and confirmation of its independence from the issuer; and
- If there are > 10 allottees, the name of each allottee (or its beneficial owner) subscribing 5% or more of the issued securities and a generic description of all other allottees, and a confirmation of their independence from the issuer. In calculating the 5% limit, the number of securities subscribed by the allottee, its holding company and their subsidiaries must be aggregated.

NOTIFIABLE TRANSACTIONS

Chapter 19 of the GEM Listing Rules specifies certain transactions (principally acquisitions and disposals), particulars of which have to be disclosed to the shareholders, the Exchange and the general public. In some cases, shareholders' approval is also required. The term "listed issuer" means the listed issuer itself **or** its subsidiaries. Where a transaction is both "notifiable" and "connected", the issuer must comply with both Ch. 19 and Ch.20.

A transaction is widely defined and includes:

- an acquisition or disposal of assets, including a deemed disposal
- certain transactions in relation to options to acquire or dispose of assets or to subscribe for securities
- entering into or terminating finance leases where their financial effects have an impact on the listed issuer's balance sheet and/or profit and loss account
- entering into or terminating operating leases which, by virtue of their size, nature or number, have a significant impact on the listed issuer's operations
- granting an indemnity or a guarantee or providing financial assistance other than to the listed issuer's subsidiaries
- any arrangement or agreement involving the formation of a joint venture entity in any form

The definition excludes (to the extent not specifically referred to above) transactions of a revenue nature in the ordinary and usual course of business and also the issue of new securities for cash (but these are within the definition of transaction which applies for connected transactions under Ch.20).

NOTIFIABLE TRANSACTIONS (Cont'd)

Transactions of a “Revenue Nature”

- ❖ Relevant non-exhaustive factors include:
 - whether previous transactions of same nature treated as notifiable transactions
 - historical accounting treatment of previous transactions of same nature
 - whether accounting treatment is in accordance with generally accepted accounting standards
 - whether transaction is a revenue or capital transaction for tax purposes (Note 4 of GEM Rule 19.04(1)(g))
- ❖ Transactions involving the acquisition and disposal of properties are generally not considered to be of a revenue nature unless carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer (Note 2 to GEM Rule 19.04(1)(g))

Transactions in the “Ordinary and Usual Course of Business”

- ❖ “Ordinary and usual course of business” = the existing principal activities of the listed issuer or an activity wholly necessary for its principal activities. Financial assistance is only provided “in the ordinary and usual course of business” of (i) a “banking company” (i.e. an authorized financial institution under the Banking Ordinance) or (ii) a licensed securities house providing financial assistance on normal commercial terms for a purpose specified in GEM Rule 19.04(1)(e)(iii) (GEM Rule 19.04(8))

NOTIFIABLE TRANSACTIONS (Cont'd)

Classification of Notifiable Transactions

Notifiable transactions are classified using the percentage ratios calculations set out in GEM Rule 19.06.

Transaction Type	Assets ratio	Consideration ratio	Profits ratio	Revenue ratio	Equity capital ratio
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.

NOTIFIABLE TRANSACTIONS (Cont'd)

Chapter 19 sets out six categories of notifiable transactions:

1. A **share transaction** is 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. A **discloseable transaction** is a transaction or a series of transactions by a listed issuer where any percentage ratio is 5% or more, but less than 25%;
3. A **major transaction** is a transaction or a series of transactions by a listed issuer where any percentage ratio is 25% or more, but less than 100% for an acquisition or 75% for a disposal;

NOTIFIABLE TRANSACTIONS (Cont'd)

4. A **very substantial disposal** is a disposal or a series of disposals of assets by a listed issuer where any percentage ratio is 75% or more;
5. A **very substantial acquisition** is an acquisition or a series of acquisitions of assets by a listed issuer where any percentage ratio is 100% or more; and
6. A **reverse takeover** is “**an acquisition or a series of acquisitions** which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which **constitute, an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants** set out in Chapter 11 of the GEM Listing Rules and normally refers to:
 - (a) an acquisition/series of acquisitions of assets **constituting a very substantial acquisition** where there is or which will result in a **change in control** (i.e. 30% or more of the voting rights) of the listed issuer; or
 - (b) an acquisition/series of acquisitions of assets **from the incoming controlling shareholder(s) or his/their associates within 24 months after the change in control** that had not been regarded as a reverse takeover, which individually or together **reach the threshold for a very substantial acquisition**.

NOTIFIABLE TRANSACTIONS (Cont'd)

❖ *Reverse Takeovers (Cont'd)*

In determining whether an acquisition(s) constitute(s) a very substantial acquisition, the lower of:

- i. the latest published figures of the asset value, revenue and profits shown in the listed issuer's accounts and the market value of the listed issuer at the time of the change in control; and
- ii. the latest published figures of the asset value, revenue and profits shown in the listed issuer's accounts and the market value of the listed issuer at the time of the acquisition(s),

is used as the denominator of the percentage ratios (GEM Rule 19.06(6)(b))

NOTIFIABLE TRANSACTIONS (Cont'd)

Percentage Ratios

To determine the category into which a transaction falls, the listed issuer must calculate the following ratios:

$$(i) \text{ Assets ratio} = \frac{\text{Total assets of the subject of the transaction}}{\text{Total assets of the listed issuer}}$$

Total assets = current assets + non-current assets + fixed assets + intangible assets (**GEM Rule 19.04(12)**)

Intangible assets include goodwill (whether positive or negative)

$$(ii) \text{ Profits ratio} = \frac{\text{Profits attributable to the assets of the subject of the transaction}}{\text{Profits of the listed issuer}}$$

Profits = net profits after deducting all charges except taxation and before minority interests and extraordinary items

$$(iii) \text{ Revenue ratio} = \frac{\text{Revenue attributable to the assets of the subject of the transaction}}{\text{Total revenue of the listed issuer}}$$

Revenue = Revenue arising from the principal activities of a company, excluding revenue and gains that arise incidentally

NOTIFIABLE TRANSACTIONS (Cont'd)

Percentage Ratios (Cont'd)

(iv) Consideration ratio =
$$\frac{\text{Fair value of the consideration}^*}{\text{Total market capitalization of listed issuer}^{**}}$$

*Determined at the date of the agreement according to Hong Kong Financial Reporting Standards or International Financial Reporting Standards (**GEM Rule 19.15(1)**)

Total market capitalization = average closing price of the listed issuer's securities for the 5 business days preceding the transaction (GEM Rule 19.07(4)**)

(v) Equity capital ratio =
$$\frac{\text{Nominal value of the listed issuer's equity capital issued as consideration}}{\text{Nominal value of the listed issuer's issued equity capital immediately before the transaction}}$$

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

If any size test produces an anomalous result or is inappropriate to the issuer's sphere of activity, HKEx may substitute other relevant size indicators or industry specific tests (GEM Rule 19.20).

NOTIFIABLE TRANSACTIONS (Cont'd)

❖ Classification of Transactions

Transactions involving acquisition and disposal

- ❖ Where a transaction involves 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 based on the larger of the acquisition or disposal, and subject to the requirements applicable to that classification.
- ❖ Where a shareholders' circular is required, each of the acquisition and disposal will be subject to the content requirements applicable to their respective transaction classification (GEM Rule 19.24).

NOTIFIABLE TRANSACTIONS (Cont'd)

Aggregation of Transactions

- ❖ HKEx may require a listed issuer to aggregate a series of transactions and treat as one if they were all completed within 12 months or are otherwise related (GEM Rule 19.22).
- ❖ Relevant factors include:
 - are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
 - involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
 - involve the acquisition or disposal of parts of one asset; or
 - 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.

(GEM Rule 19.22)

NOTIFIABLE TRANSACTIONS (Cont'd)

Requirements: Summary of requirements for different categories of notifiable transactions

	Notification to Exchange	Short suspension of dealings	Publication of an Announcement	Circular to shareholders	Shareholder approval	Accountants' report
Share transaction	Yes	Yes	Yes	No	No ¹	No
Discloseable transaction	Yes	No, unless there is PSI	Yes	No	No	No
Major transaction	Yes	Yes	Yes	Yes	Yes ²	Yes ³
Very substantial disposal	Yes	Yes	Yes	Yes	Yes ²	No ⁵
Very substantial acquisition	Yes	Yes	Yes	Yes	Yes ²	Yes ⁴
Reverse takeover	Yes	Yes	Yes	Yes	Yes ^{2, 6}	Yes ⁴

- Notes:
1. Shareholder approval is not required if the consideration shares are issued under a general mandate.
 2. Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction.
 3. For acquisitions of businesses and/or companies only. The accountants' report is for the 3 preceding years.
 4. An accountants' report for the preceding 3 financial years is required.
 5. An accountants' report on may be provided instead of a review by the listed issuer's auditors or reporting accountants.
 6. Approval of the Exchange is also necessary.

NOTIFIABLE TRANSACTIONS (Cont'd)

Requirements for Notifiable Transactions

❖ Announcement

- As soon as possible after the terms of the notifiable transaction have been finalised, the issuer must:
 - inform the Exchange; and
 - publish an announcement on the Exchange's website and issuer's own website (GEM Rule 19.34)
- Where a listed issuer has signed an agreement for a notifiable transaction and an announcement has not been published on a business day, the issuer must request a short suspension of dealings pending publication of the announcement.
- Where a listed issuer has signed an agreement for a notifiable transaction which is expected to be price sensitive, the issuer must immediately request a short suspension of dealings pending publication of an announcement. Once an issuer has finalised the major terms of a notifiable transaction which is expected to be price sensitive, it must ensure confidentiality of relevant information until publication of an announcement (GEM Rule 19.37).

NOTIFIABLE TRANSACTIONS (Cont'd)

Announcement Requirements

- ❖ GEM Rule 19.58 requires all notifiable transaction announcements to include:
 - a prominent disclaimer of the liability of Hong Kong Exchanges and Clearing Limited and the Stock Exchange of Hong Kong Limited
 - a statement of responsibility and confirmation from the directors
 - a description of the principal business activities of the issuer and the counterparty
 - date of the transaction
 - confirmation that the counterparty and its ultimate beneficial owner are third parties independent of the listed issuer and its connected persons
 - aggregate consideration, how it will be satisfied and any arrangements for deferred payment
 - basis for determination of consideration
 - value (book value and valuation, if any) of assets the subject of the transaction
 - where applicable, the net profits (before and after tax and extraordinary items) attributable to the assets the subject of the transaction for 2 preceding financial years
 - reasons for entering into the transaction, benefits expected to accrue to issuer and statement that directors believe that the terms of the transaction are fair and reasonable and in the interests of shareholders as a whole
 - details of any guarantee and/or other security given or required

NOTIFIABLE TRANSACTIONS (Cont'd)

Additional Requirements for Share Transaction Announcements

Announcements of Share Transactions must include the following additional information:

- ❖ The amount and details of the securities being issued and details of any restrictions on the subsequent sale of such securities
- ❖ Brief details of the assets being acquired, including the name of any company or business or the assets or properties and, if the assets include securities, the name and general description of the activities of the company in which the securities are held
- ❖ If the transaction involves an issue of securities by a subsidiary of the listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary after the transaction
- ❖ 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
- ❖ A statement that application has been or will be made to HKEx for listing and permission to deal in the securities

(GEM Rule 19.59)

NOTIFIABLE TRANSACTIONS (Cont'd)

Announcement Requirements (Cont'd)

- ❖ Additional Requirements for announcements of notifiable transactions (other than share transactions) are:
 - the general nature of the transaction including, if securities are involved, details of any restrictions applicable to subsequent sale of the securities
 - brief details of the assets being acquired or disposed of, including the name of the company/business or assets/properties and if the assets include securities, the name and general activities of the company in which the securities are held
 - in the case of a disposal:
 - details of the gain or loss expected and the basis of its calculation (the gain or loss should be calculated by reference to the carrying value of the assets); and
 - the intended application of the sale proceeds

NOTIFIABLE TRANSACTIONS (Cont'd)

Announcement Requirements (Cont'd)

- Announcements for transactions that involve an issue of securities for which listing is sought must include:
 - 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
 - a statement that application has been or will be made to the Exchange for the listing of and permission to deal in the securities
- for a major transaction approved or to be approved by written shareholders' approval of a shareholder or a closely allied group of shareholders, the name of the shareholder(s), the number of securities held by each and the relationship between the shareholders
- if the transaction involves the disposal of an interest in a subsidiary, a declaration as to whether the subsidiary will continue to be a subsidiary after the transaction
- (except for discloseable transactions) the expected date of despatch of the circular to shareholders and, if this is more than 15 days after the announcement date, the reasons why this is so

NOTIFIABLE TRANSACTIONS (Cont'd)

Shareholders' Approval Requirement

- Major Transactions, Very Substantial Disposals, Very Substantial Acquisitions and Reverse Takeovers must be made conditional on shareholders' approval.
- All voting at general meetings must be taken by poll (GEM Rule 17.47(4)) and the results of the poll must be announced on the next business day following the meeting.
- The issuer must appoint its auditor, share registrar or external accountants to act as scrutineer for the vote taking.
- Any shareholder that has a material interest in the transaction must abstain from voting.
- Factors relevant to determining whether a shareholder has a "material interest" include:
 - whether the shareholder is a party to the transaction or an associate of such a party
 - whether the transaction confers upon the shareholder or his associate a benefit not available to other shareholders of the issuer (GEM Rule 2.27)
- On a reverse takeover where there is a change in control of the listed issuer, and any person/group of persons will cease to be a controlling shareholder ("outgoing controlling shareholder") by virtue of a disposal of shares to a person/group of persons gaining control ("incoming controlling shareholder"), any of the incoming controlling shareholder's associates or an independent third party, the outgoing controlling shareholder and his associates are prohibited from voting in favour of a resolution approving an injection of assets from the incoming controlling shareholder or his associates at the time of the change in control. The prohibition does not apply if the decrease in the outgoing controlling shareholder's holding results solely from dilution through a new issue of shares to the incoming controlling shareholder.

NOTIFIABLE TRANSACTIONS (Cont'd)

Written Shareholders' Approval and Requirements for Circular to Shareholders

Written Shareholders' Approval

Written shareholders' approval is allowed for Major Transactions only if:

- no shareholder would be required to abstain from voting;
- a "closely allied group of shareholders" holding more than 50% voting interest approves the transaction; and
- the reporting accountants' opinion given in the accountants' report is unqualified

Circular to Shareholders

- Required for Major Transactions, VSDs, VSAs and RTOs and must:
 - provide clear, concise and adequate explanation of subject matter;
 - contain all information necessary to allow shareholders to make an informed decision;
 - contain a recommendation from directors as to the voting action shareholders should take and stating whether, in the opinion of the directors, the transaction is fair and reasonable and in the interests of shareholders as a whole;
 - state that any shareholder with a material interest in the transaction should abstain from voting;
 - 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 issuer and its connected persons.
 - A Circular for a Major Transaction to be approved by written shareholders' approval must be sent to shareholders within 15 business days after publication of the announcement (GEM Rule 19.41(a))
 - Circulars for Major Transactions to be approved at general meeting, VSAs and VSDs must be sent to shareholders at the same time as or before the issuer gives notice of the general meeting (GEM Rules 19.41(b) and 19.51)

NOTIFIABLE TRANSACTIONS (Cont'd)

Requirements for Circular to Shareholders (Cont'd)

The issuer must send to shareholders any revised or supplementary circular and/or provide any material information that has come to the directors' attention after the issue of the circular (by way of announcement) not less than 10 business days before the date of the general meeting (GEM Rules 19.42 and 19.52).

❖ Additional Requirements for Circulars for Major Transactions involving an acquisition of any business or company(ies)

- an accountants' report on the business or company(ies) being acquired (although HKEx may relax this requirement if the company will not become a subsidiary of the issuer)
- a pro forma statement of the assets and liabilities of the listed issuer's group combined with those of the business or company(ies) being acquired on the same accounting basis (GEM Rule 19.67(6))
- a management discussion and analysis of the results of the business or company(ies) being acquired (GEM Rule 19.67(7))

❖ Additional Requirements for Circulars for Major Transactions involving an acquisition of any revenue generating assets (other than a business or company)

- a profit and loss statement and valuation for the 3 preceding financial years (or less if 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, reviewed by the auditors or reporting accountants
- 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 (GEM Rule 19.67(6)(b))
- a management discussion and analysis of the results of the business or company(ies) being acquired (GEM Rule 19.67(7))

NOTIFIABLE TRANSACTIONS (Cont'd)

Requirements for Circular to Shareholders (Cont'd)

- ❖ Additional Requirements for Circulars for VSAs and Reverse Takeovers involving an acquisition of any business or company(ies)
 - an accountants' report on the business or company(ies) being acquired
 - a pro forma income statement, balance sheet and cash flow statement of the enlarged group on the same accounting basis (GEM Rule 19.69(4)(a))
 - in relation to a VSA, a separate discussion and analysis of the performance of each of the group and any business or company(ies) being acquired for the period referred to in GEM Rule 7.05(1)(a) (GEM Rule 19.69(8))

NOTIFIABLE TRANSACTIONS (Cont'd)

Requirements for Circular to Shareholders (Cont'd)

- ❖ Additional Requirements for Circulars for VSAs and Reverse Takeovers involving an acquisition of any revenue generating assets (other than a business or company)
 - a profit and loss statement and valuation for the 3 preceding financial years (or less if, other than in the case of an RTO, 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, reviewed by the auditors or reporting accountants
 - a pro forma profit and loss statement and net assets statement on the enlarged group on the same accounting basis (GEM Rule 19.69(4)(b))
 - in relation to a VSA, a separate discussion and analysis of the performance of each of the group and any business or company acquired for the period referred to in GEM Rule 7.05(1)(a) (GEM Rule 19.69(8))

NOTIFIABLE TRANSACTIONS (Cont'd)

Additional Requirements for Very Substantial Disposal Circulars

- ❖ Additional Requirements for VSD Circulars on a disposal of a business or company are:
 - financial information on either (a) the business or company(ies) being disposed of; or (b) the issuer's group with the business or company(ies) being disposed of shown separately as a disposal group(s) or a discontinuing operation(s) for the relevant period described in GEM Rule 7.05(1)(a)
 - the financial information must include at least the income statement, balance sheet, cash flow statement and statement of changes in equity and must be reviewed by the issuer's auditors or reporting accountants
 - a pro forma income statement, balance sheet and cash flow statement of the remaining group on the same accounting basis (GEM Rule 19.68(2)(a))

- ❖ Additional Requirements for VSD Circulars on a disposal of revenue-generating assets (other than a business or company(ies)) are:
 - a profit and loss statement and valuation for the 3 preceding financial years (or less where the asset has been held by the issuer for a shorter period) on the identifiable net income stream and valuation in relation to such assets reviewed by the auditors or reporting accountants
 - a pro forma profit and loss statement and net assets statement on the remaining group on the same accounting basis (GEM Rule 19.68(2)(b))

NOTIFIABLE TRANSACTIONS (Cont'd)

Summary of historical financial information requirements applicable to acquisitions of any business, company, companies or revenue-generating asset with an identifiable income stream or asset valuation

	Where the target is a business/ company	Where the target is a revenue- generating asset with an identifiable income stream or asset valuation
Major disposal	Not required	Not required
Major acquisition	Accountants' report on the <u>target</u>	Profit/ loss statement and (where available) valuation of the target
Very substantial disposal	Financial information of either the <u>target</u> or <u>the listed issuer group</u> <u>with the target shown separately</u>	Profit/ loss statement and (where available) valuation of the target
Very substantial acquisition or reverse takeover	Accountants' report on the <u>target</u>	Profit/ loss statement and (where available) valuation of the target

Source: the Hong Kong Stock
Exchange

NOTIFIABLE TRANSACTIONS (Cont'd)

Summary of pro forma financial information requirements applicable to acquisitions of any business, company, companies or revenue-generating asset with an identifiable income stream or asset valuation

	Where the target is a business/ company	Where the target is a revenue- generating asset with an identifiable income stream or asset valuation
Major disposal	Not required	Not required
Major acquisition	Pro forma statement of assets and liabilities of the <u>enlarged group</u>	Pro forma statement of assets and liabilities of the <u>enlarged group</u>
Very substantial disposal	Pro forma income statement, balance sheet and cash flow statement of the <u>remaining group</u>	Pro forma profit and loss statement and net assets statement on the <u>remaining group</u>
Very substantial acquisition or reverse takeover	Pro forma income statement, balance sheet and cash flow statement of the <u>enlarged group</u>	Pro forma profit and loss statement and net assets statement on the <u>enlarged group</u>

NOTIFIABLE TRANSACTIONS (Cont'd)

Additional Requirements for Reverse Takeovers

- ❖ Exchange will treat an issuer proposing an RTO as a new listing applicant (GEM Rule 19.54)
- ❖ Enlarged group or assets to be acquired must be able to meet the financial tests in GEM Rule 11.12A and all other basic listing requirements
- ❖ Listed issuer must issue a prospectus and pay an initial listing fee
- ❖ Listing Committee Report 2010: The Application Of The RTO Rules To “Extreme Cases”

Listing Committee’s 2010 Report considered the handling of backdoor listings, inactive companies and cash shells. Overall conclusion was that RTO Rules should be applied to “extreme cases”.

In evaluating whether a backdoor listing is an extreme case, the following factors are taken into account:

- the size of the acquisition relative to the size of the issuer;
- the quality of the acquired business – whether it can meet the trading record requirements for new listings, or whether it is unsuitable for listing (the example given here by the Committee is an early stage exploration mining company);
- the size and type of business that the issuer was engaged in prior to the acquisition (a key question here is whether it is merely a listed shell or not);

NOTIFIABLE TRANSACTIONS (Cont'd)

Additional Requirements for Reverse Takeovers

- ❖ Listing Committee Report 2010: The Application Of The RTO Rules To “Extreme Cases” (Cont'd)
 - any fundamental alteration to the issuer’s principal business (e.g. the existing business would be discontinued or very immaterial to the enlarged group’s operations post acquisition); and
 - any other events and transactions, whether they be historical, proposed or intended, which, when considered alongside the acquisition, constitute a sequence of arrangements designed to circumvent the RTO Rules (e.g. a disposal of the issuer’s original business simultaneous with a very substantial acquisition).
- ❖ Non-extreme cases

Where the acquired business is able to meet the track record requirements for new listing applicants, the acquisition is not generally treated as a new listing, as circumvention of the regulatory obligations on new listings is not considered a material concern. Instead, the Listing Division will require enhanced disclosure in the issuer’s transaction circular and adopt a more stringent vetting approach.
- ❖ Acquisition of new business

Acquisitions of new businesses or assets cases are more likely to be regarded as new listings as enhanced disclosure is of limited use where the business/assets acquired have little in the way of operating history or track record.

NOTIFIABLE TRANSACTIONS (Cont'd)

- ❖ **Reverse Takeovers: Listing Committee Report 2008/09 - Reverse Takeovers and restriction on disposals after a change of control (GEM Rules 19.91 and 19.92)**
 - The Listing Rules prohibit a listed issuer from disposing of its existing business within 24 months after a change in control unless assets acquired by the listed issuer after the change in control can meet the trading record requirement of GEM Rule 11.12A. If not, on a disposal by a listed issuer of its existing business within 24 months of a change in control, the issuer will be treated as a new listing applicant.
 - Aim of GEM Rules 19.91/19.92 – prevent circumvention of reverse takeover rules by new controlling shareholder deferring sale of existing business until after asset injection, thereby avoiding classification as VSA.
 - A waiver of GEM Rule 19.91 can be sought for a legitimate sale of an existing business within 24 months of a change of control provided that:
 - the incoming controlling shareholder has not injected assets into the listed issuer; or
 - after factoring in the disposal(s) of the issuer's existing business, the asset injection(s) before and after the change in control would not have constituted a VSA.
- ❖ *See Listing Committee's Annual Reports of 2008 and 2009 and Listing Decision HKEx-LD7-2011.*

NOTIFIABLE TRANSACTIONS (Cont'd)

Additional Requirements for Transactions involving Mineral Assets

A Mineral Company which proposes to acquire or dispose of assets which are solely or mainly mineral or petroleum assets as part of a major transaction (25% or more of existing activities) or above (a Relevant Notifiable Transaction) must:

- Comply with requirements for notifiable transactions of GEM Ch. 19 and requirements for connected transactions of GEM Ch. 20;
- Prepare a Competent Person's Report, which must form part of the circular to shareholders, on the resources and/or reserves being acquired or disposed of as part of the Relevant Notifiable Transaction;
- For a major (or above) acquisition (but not disposal) - produce a Valuation Report, which must form part of the circular to shareholders, on the mineral or petroleum assets being acquired (GEM Rule 18A.09(3));
- The Valuation Report must be prepared by a Competent Evaluator - i.e. someone who: (i) meets the independence test under GEM Rule 18A.22; (ii) has at least 10 years' relevant and recent general mining/petroleum experience; (iii) has at least 5 years' relevant and recent experience in the assessment and/or valuation of mineral or petroleum assets; and (iv) has all necessary licences (GEM Rule 18A.23); and
- Valuation Reports must be prepared under the VALMIN Code, SAMVAL Code, or CIMVAL (GEM Rule 18A.34(1)).

NOTIFIABLE TRANSACTIONS (Cont'd)

Additional Requirements for Transactions involving Mineral Assets (Cont'd)

- Mineral companies must comply with the requirements of GEM Rules 18A.05(2) to 18A.05(6) in relation to the assets being acquired (GEM Rule 18A.09(4)). These require a statement of no material change since the effective date of the Competent Person's report; a description of exploration/exploitation/land use and mining rights and relevant properties; statement of legal claims/proceedings potentially affecting exploration/mining rights; and risk disclosure.
- HKEx may dispense with the requirement to produce a new Competent Person's Report or a Valuation Report (GEM Rules 18A.05(1), 18A.09(2) or 18A.09(3), if the issuer already has a Competent Person's Report or Valuation Report (or equivalent) that complies with GEM Rules 18A.18 to 18A.34 (where applicable) and is not more than six months old (GEM Rule 18A.12).
- Prior written consent must be obtained from the Competent Person(s) or Competent Evaluator before an issuer may include their reports in the listing document or circular for a Relevant Notifiable Transaction, regardless of whether the person or firm is retained by the listing applicant or issuer (GEM Rule 18A.13).

NOTIFIABLE TRANSACTIONS (Cont'd) Pre-vetting Requirements for Notifiable Transaction Circulars

Circulars or listing documents in respect of notifiable transactions must be pre-vetted (that is, reviewed and approved by the Exchange) before publication, including listing documents and prospectuses (e.g. for reverse takeovers that are treated as new listings). (GEM Rule 17.53(1))

CONNECTED TRANSACTIONS

Introduction

The rules on connected transactions are set out in Chapter 20 of the GEM Listing Rules. Their objectives are:

- a) to ensure that a listed issuer takes into account the interests of shareholders as a whole when it enters into connected transactions;
- b) to provide safeguards against the directors, chief executive and substantial shareholders (or their associates) taking advantage of their positions. This is achieved by the general requirement of independent shareholders' approval for connected transactions.

CONNECTED TRANSACTIONS (Cont'd)

Generally, a connected transaction is any transaction between a listed issuer and a **connected person**.

For classification purposes, the Exchange may aggregate a series of transactions that are completed over a 12-month period or are otherwise related (GEM Rule 20.25).

Factors which the Exchange takes into account in determining whether connected transactions should be aggregated are whether they:

- i. are entered into by the listed issuer with the same party or parties connected/associated with one another;
- ii. involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
- iii. involve the acquisition or disposal of parts of one asset; or
- iv. together lead to substantial involvement by the listed issuer in a business activity not previously part of its principal business activities (GEM Rule 20.26).

The Exchange may consider aggregating continuing connected transactions with a single connected person (GEM Rule 20.27).

CONNECTED TRANSACTIONS (Cont'd)

❖ Definitions

Transaction

The term “transaction”, **whether or not** it is of a revenue nature in the ordinary and usual course of business, includes:

- a) the acquisition or disposal of assets (including deemed disposals under GEM Rule 19.29)
- b) any transaction involving an option to acquire or dispose of assets or to subscribe for securities;
- c) entering into or terminating finance or operating leases;
- d) granting an indemnity or a guarantee or providing financial assistance;
- e) entering into a joint venture;
- f) issuing new securities;
- g) provision or receipt of services;
- h) sharing of services;
- i) providing or acquiring raw materials, intermediate products and finished goods; and
- j) a qualified property acquisition.

(GEM Rule 20.10(13))

CONNECTED TRANSACTIONS (Cont'd)

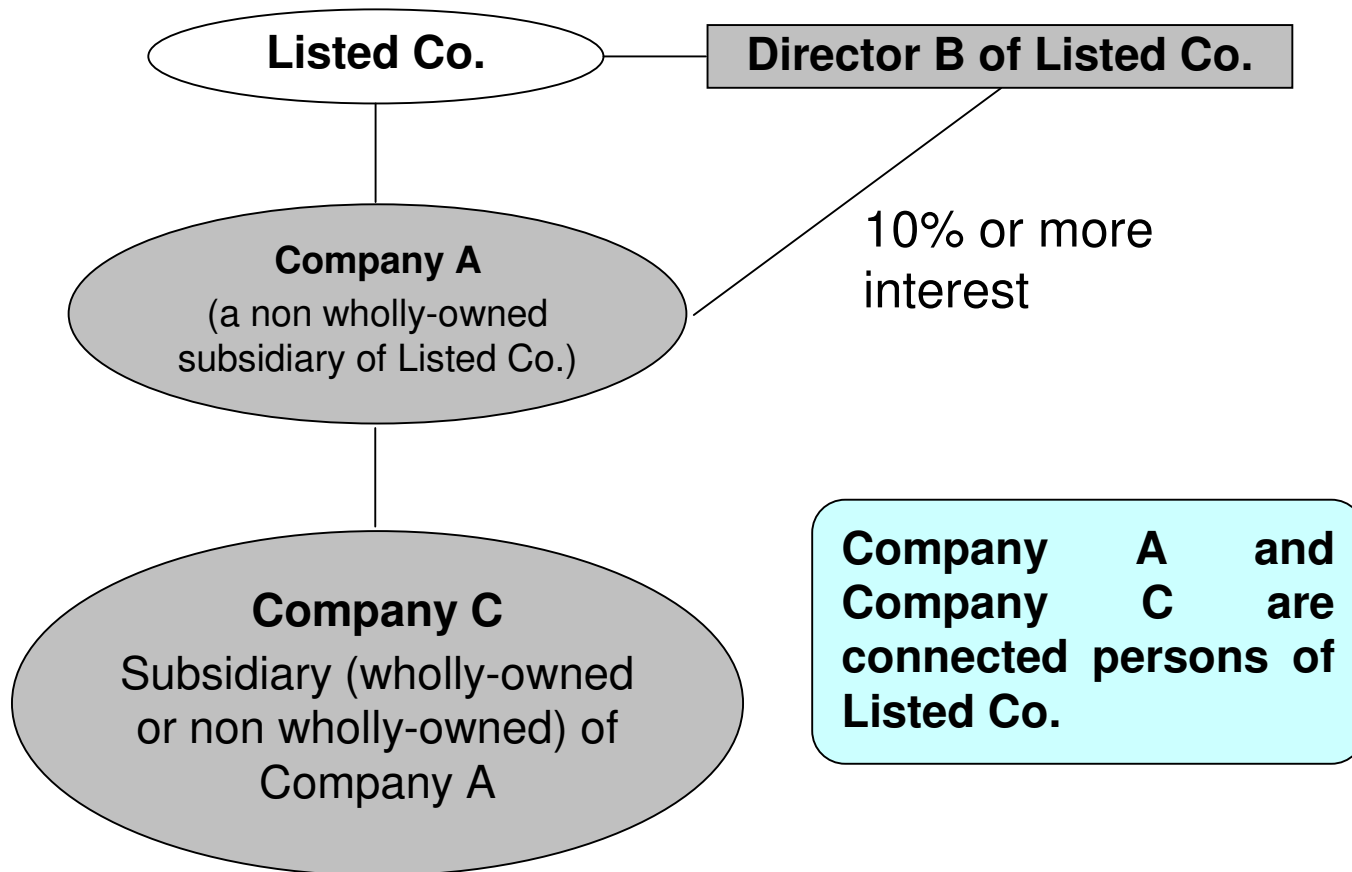
❖ Definitions (Cont'd)

Connected Person

- a) a **director, chief executive or substantial shareholder** (holding 10% or more of the voting rights) of the listed issuer or any of its subsidiaries, or an **associate** of any such persons;
- b) a **person who was a director** of the listed issuer or any of its subsidiaries in the past 12 months, or an **associate** of such a person; or
- c) a **non-wholly owned subsidiary** of the listed issuer where any connected person(s) of the listed issuer (other than at the level of its subsidiaries) are entitled to exercise, or control the exercise of, **10% or more of the voting power** at general meetings of the non-wholly owned subsidiary or a **subsidiary of such a non-wholly owned subsidiary**.

CONNECTED TRANSACTIONS (Cont'd)

❖ Definitions (Cont'd)



CONNECTED TRANSACTIONS (Cont'd)

❖ Definitions (Cont'd)

Associate of an individual

- a) spouse or person cohabiting as a spouse with the connected person;
- b) a child, step-child, parent, step-parent, sibling, or step-sibling of the connected person;
- c) a company controlled by any of the people in (a) and (b) taken together;
- d) a parent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, nephew, niece or cousin of the connected person (or a company controlled by any of those people taken together) whose association with the connected person is such that, in the opinion of the Exchange, the proposed transaction should be subject to the connected transaction requirements;

CONNECTED TRANSACTIONS (Cont'd)

❖ Definitions (Cont'd)

Associate of an individual (Cont'd)

- e) a **trustee** of any trust of which the **connected person, his spouse, child under 18 or step-child under 18** is a beneficiary or discretionary object;
- f) a **company** in which the people/entities in (e) above, taken together, can:
 - a) exercise or control the exercise of **30% or more of the voting power** at general meetings; or
 - b) **control the composition** of a majority of the board of directors.
- g) a **subsidiary** of a company in (f); or
- h) a person/entity who has entered, or proposes to enter, into an **arrangement** with the connected person with respect to the transaction which is such that, in the opinion of the Exchange, that person/entity should be considered a connected person.

CONNECTED TRANSACTIONS (Cont'd)

❖ Definitions (Cont'd)

Associate of a company

- a) a **subsidiary, holding company, or fellow subsidiary** of such a holding company;
- b) a **trustee** of any trust of which the company is a beneficiary or discretionary object;
- c) a **company** in which the entities in (a) and (b) above, taken together, can:
 - a) exercise or control the exercise of **30% or more of the voting power** at general meetings; or
 - b) **control the composition** of a majority of the board of directors; and
- d) a **subsidiary** of a company in (c).

CONNECTED TRANSACTIONS WHERE THERE IS NO TRANSACTION WITH A CONNECTED PERSON

The following transactions with non-connected persons are also connected transactions.

Acquisition or disposal of interest in a company in which a Controller has an interest

- a) acquisition or disposal of an interest in a company where a substantial shareholder of that company is, or is proposed to be a controller (i.e. a director, chief executive or controlling shareholder of the listed issuer) or an associate of a controller;
- b) acquisition of an interest (or option to acquire such interest) in a company of which a controller (or its associate) is, or will become, a shareholder where the interest is:
 - i. of a fixed income nature;
 - ii. shares to be acquired on less favourable terms than those granted to the controller or its associate; or
 - iii. shares which are of a different class from those held by, or to be granted to, the controller or its associate.

CONNECTED TRANSACTIONS WHERE THERE IS NO TRANSACTION WITH A CONNECTED PERSON

Controller's subscription on favourable terms

- c) a transaction between a listed issuer and a non-connected person involving a controller (or its associate) subscribing on specially favourable terms shares in a company in which the listed issuer is a shareholder; or

Controller's subscription of different class of shares

- d) a transaction between a listed issuer and a non-connected person involving a controller (or its associate) subscribing shares in a company in which the listed issuer is a shareholder but which are of a different class from those held by the listed issuer.

CONNECTED TRANSACTIONS (Cont'd)

❖ Financial assistance

Financial assistance includes granting credit, lending money, providing security for, or guaranteeing a loan (GEM Rule 20.10(4)).

Commonly Held Entity

A company in which both the listed issuer and a connected person are shareholders and where any connected person(s) of the listed issuer at the issuer level (or above) can (individually or together) exercise or control the exercise of 10% or more of the voting power at a general meeting (GEM Rule 20.13(2)(a)(ii)) (“Commonly Held Entity”).

CONNECTED TRANSACTIONS (Cont'd)

❖ Financial assistance (Cont'd)

Financial assistance provided by a listed issuer

- a) to a connected person; or
- b) to a Commonly Held Entity.

Financial assistance provided to a listed issuer

- a) by a connected person; or
- b) by a Commonly Held Entity.

GEM Rule 20.13(2)

CONNECTED TRANSACTIONS (Cont'd)

❖ Financial assistance (Cont'd)

Financial assistance for the benefit of connected interests

An indemnity or guarantee granted, or financial assistance provided, by the listed issuer to and/or for the benefit of a connected person or a Commonly Held Entity (GEM Rule 20.13(3))

Granting security to connected interests

Security granted by a listed issuer over its assets in respect of any financial assistance made to the listed issuer by a connected person or Commonly Held Entity (GEM Rule 20.13(4))

CONNECTED TRANSACTIONS (Cont'd)

❖ Options involving connected persons

The grant, acquisition, transfer or exercise of an option involving a listed issuer and its connected person is a connected transaction and is classified by reference to the percentage ratios (except the profits ratio) (GEM Rule 20.68)

Termination of an option by a listed issuer is a “transaction” unless it is in accordance with the terms of the original agreement and there is no payment of any penalty, damages or other compensation.

If exercise of the option is **not** at the listed issuer’s discretion:

- on grant of the option, transaction is classified as if the option had been exercised – for the purposes of calculating the percentage ratios, consideration includes both the premium and exercise price
- the exercise or transfer of the option must be announced as soon as reasonably practicable if the grant of the option has previously been announced
- if the grant of the option has previously been announced, the issuer must announce the expiry of the option, notification from the option holder that the option will not be exercised or the transfer of the option to a third party, whichever is the earliest. (GEM Rule 20.69)

CONNECTED TRANSACTIONS (Cont'd)

❖ Options involving connected persons (Cont'd)

Where an option is exercisable at the discretion of the listed issuer:

- on acquisition by, or grant of the option to, the listed issuer, only the premium is taken for the purpose of calculating the percentage ratios. Where the premium represents 10% or more of the sum of the premium and the exercise price, the value of the underlying assets and the revenue attributable to such assets together with the premium and the exercise price are used for the purpose of calculating the percentage ratios.
- on exercise of the option by the listed issuer, the exercise price, value of the underlying assets and the revenue attributable to such assets are used for the purpose of calculating the percentage ratios.
- non-exercise of the option or transfer of the option to a 3rd party are treated as if the option was exercised. The exercise price, value of the underlying assets, the revenue attributable to such assets and (if applicable) the premium for transferring the option are used for the purpose of calculating the percentage ratios.

(GEM Rule 20.70)

CONNECTED TRANSACTIONS (Cont'd)

❖ **Joint venture arrangements involving connected persons**

Entering into any agreement or arrangement 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 by a listed issuer and a connected person constitutes a connected transaction (GEM Rule 20.10(13)(f)).

❖ **Continuing Connected Transactions**

Continuing connected transactions are connected transactions that:

- i. involve the provision of goods, services or financial assistance;
- ii. are carried out on a continuing or recurring basis; and
- iii. are expected to extend over a period of time.

Continuing connected transactions are governed by GEM Rules 20.33 to 20.41.

CONNECTED TRANSACTIONS (CONT'D)

❖ Classification of Connected and Continuing Connected Transactions

Connected and continuing connected transactions fall into 3 categories:

- 1) Non-exempt transactions
- 2) Transactions exempt from the reporting, announcement and independent shareholders' approval requirements ("**wholly exempt**" transactions)
- 3) Transactions exempt from the independent shareholders' approval requirement only (but subject to the reporting and announcement requirements) ("**partially exempt**" transactions)

CONNECTED TRANSACTIONS (Cont'd)

❖ Connected Transaction Requirements

Written agreement requirement

The listed issuer must enter into a written agreement with all relevant parties in respect of the connected transaction.

Reporting requirements

The listed issuer's next published annual report and accounts must include the details of the connected transaction specified in GEM Rule 20.45:

- the transaction date;
- the transaction parties and a description of their connected relationship;
- a brief description of the transaction and its purpose;
- the total consideration and terms; and
- the nature and extent of the connected person's interest.

CONNECTED TRANSACTIONS (Cont'd)

❖ Connected Transaction Requirements (Cont'd)

Notification and Announcement requirement

The listed issuer must **notify the Exchange** as soon as possible after the terms of the connected transaction have been agreed upon and **publish an announcement** as soon as possible (GEM Rule 20.47).

Independent shareholders' approval requirement

Connected transactions and continuing connected transactions must be approved by the issuer's independent shareholders. Voting on the resolution approving the connected transaction must be **by way of poll**.

Any connected person or person falling within GEM Rules 20.13(1)(b)(i) to (iv) with a material interest in the transaction(s) must **abstain from voting** (GEM Rule 20.18).

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CONNECTED TRANSACTIONS (Cont'd)

❖ Connected Transaction Requirements (Cont'd)

Independent board committee and financial adviser requirements

An **independent board committee** (consisting only of INEDs) must be established to advise shareholders as to:

- whether the terms of the connected transaction are **fair and reasonable**;
- whether the transaction is **in the interests of the listed issuer and the shareholders** as a whole; and
- how to vote, taking into consideration the views of the independent financial adviser (GEM Rule 17.47(6)(a)).

An **independent financial adviser** must be appointed to advise the independent board committee and the shareholders on the matters set out above (GEM Rule 17.47(6)(b)).

CONNECTED TRANSACTIONS (Cont'd)

❖ Connected Transaction Requirements (Cont'd)

Written Independent Shareholders' Approval

Written independent shareholders' approval is acceptable (in lieu of a general meeting) if:

- i. no shareholder would be required to abstain from voting if a general meeting were held; and
- ii. the written independent shareholders' approval is obtained from a shareholder or closely allied group of shareholders who (together) hold >50% in nominal value of securities giving the right to attend and vote at that general meeting to approve the connected transaction. (GEM Rule 20.43)

Shareholders' Circular Requirement

The listed issuer must send a circular to shareholders:

- at the same time as or before it gives notice of the general meeting to approve the transaction; or
- if the transaction is to be approved by way of written shareholders' approval from a shareholder or closely allied group of shareholders, within 15 business days after the publication of the announcement (GEM Rule 20.49).

The shareholders' circular must comply with the contents requirements of GEM Rules 20.58 and 20.59 and must include the letter from the independent board committee and the independent financial adviser's opinion.

CONNECTED TRANSACTIONS (Cont'd)

❖ Continuing Connected Transaction Requirements

Additional requirements for continuing connected transactions

The written agreement governing the transaction must be on **normal commercial terms** and be for a **fixed period**, usually not exceeding 3 years.

The reporting requirements must be followed for **each subsequent financial year** during which the listed issuer undertakes the continuing connected transaction.

CONNECTED TRANSACTIONS (Cont'd)

❖ Continuing Connected Transaction Requirements (Cont'd)

Annual cap requirement for continuing connected transactions

The listed issuer must set a **maximum aggregate annual cap** expressed in **monetary terms**, the basis of which must be disclosed.

The annual cap must be determined by reference to **previous transactions and figures** or be based on **reasonable assumptions** if no previous transaction exists.

If the annual cap is exceeded, or if the relevant agreement is renewed or its terms are changed materially, the listed issuer must re-comply with the reporting, announcement and independent shareholders' approval requirements.

CONNECTED TRANSACTIONS (Cont'd)

❖ Continuing Connected Transaction Requirements (Cont'd)

Annual review requirements for continuing connected transactions

Each year, the listed issuer's INEDs must confirm that the transaction has been entered into:

- a) in the **ordinary and usual course of business** of the listed issuer;
- b) either on **normal commercial terms** or terms **no less favourable** to the listed issuer than those available to/from independent third parties; and
- c) in accordance with the governing agreement on terms that are fair, reasonable and in the interests of the shareholders and the company as a whole.

CONNECTED TRANSACTIONS (Cont'd)

❖ Continuing Connected Transaction Requirements (Cont'd)

Annual review requirements for continuing connected transactions (Cont'd)

Each year, the auditors must provide a letter to the board of directors confirming that each non-exempt transaction:

- a) has received the **approval of the board**;
- b) is in accordance with the **pricing policies of the listed issuer** if the listed issuer is providing goods or services as part of the transaction;
- c) has been entered into **in accordance with the relevant agreement**; and
- d) has not exceeded the **annual cap**.

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from connected transaction requirements

Wholly exempt connected transactions

Connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements include, but are not limited to:

- intra-group transactions
- *de minimis* transactions
- purchase of own securities
- directors' service contracts
- sharing of administrative services
- transactions with persons connected with an "insignificant" subsidiary

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from connected transaction requirements (Cont'd)

Intra-group transactions

Transactions between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries where:

- a) none of the subsidiaries concerned is itself a connected person; and
- b) no connected persons at the issuer level exercise or control the exercise of 10% or more of the voting power at any general meeting of any of the subsidiaries concerned (GEM Rule 20.31(1)).

Transactions between the issuer's non wholly-owned subsidiary of which a connected person of the issuer (at the issuer level) controls 10% or more of the voting power at any general meeting of such subsidiary and any of its subsidiaries which are connected persons only by virtue of being the subsidiaries of such non wholly-owned subsidiary or where the transaction is between any of these subsidiaries (GEM Rule 20.31(1A)).

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from connected transaction requirements (Cont'd)

De minimis transactions

Transactions on normal commercial terms where each or all of the percentage ratios except the profits ratio is/are:

- i. less than 0.1%;
- ii. less than 1% and the transaction is a connected transaction only because the connected person is connected by virtue of its relationship(s) with one or more of the listed issuer's subsidiaries; or
- iii. less than 5% and the total consideration is less than HK\$1 million.

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from connected transaction requirements (Cont'd)

Purchase of own securities

Share repurchases from a connected person on a recognised stock exchange (unless the connected person knowingly sells shares to the listed issuer) or under a general offer.

Directors' service contracts

Entering into of a service contract by a director of the listed issuer with the listed issuer.

Sharing of administrative services

Sharing of administrative services between a listed issuer and a connected person on a cost basis.

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from connected transaction requirements (Cont'd)

Transactions with persons connected with an “insignificant” subsidiary

Connected transactions on normal commercial terms where:

- i. the transaction is connected only because it involves a person connected at the level of the issuer's subsidiaries;
- ii. the value of the relevant subsidiary's total assets, profits or revenue (or the aggregate value of those of the relevant subsidiaries) is:
 - a) < 10% under the percentage ratios for each of the 3 preceding financial years (or if less, the period since incorporation); or
 - b) < 5% under the percentage ratios for the latest financial year.

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from connected transaction requirements (Cont'd)

Partially exempt connected transactions

Connected transactions are exempt from the independent shareholders' approval requirement (but subject to the reporting and announcement requirements) where each or all of the percentage ratios except the profits ratio is/are:

- a. less than 5%; or
- b. less than 25% and the total consideration is less than HK\$10 million.

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from continuing connected transaction requirements (Cont'd)

Wholly exempt continuing connected transactions

Continuing connected transactions exempt from the reporting, announcement, independent shareholders' approval and annual review requirements under GEM Rule 20.33 include, but are not limited to:

- sharing of administrative services
- *de minimis* transactions

The rules in respect of the two exemptions above are similar to those for connected transactions. In the case of the *de minimis* exemption, the percentage ratios are calculated on an annual basis.

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions from continuing connected transaction requirements (Cont'd)

Partially exempt continuing connected transactions

Continuing connected transactions are exempt from the independent shareholders' approval requirement only where each or all of the percentage ratios except the profits ratio is/are on an annual basis:

- a) less than 5%; or
- b) less than 25% and the annual consideration is less than HK\$10 million.

(GEM Rule 20.34)

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions for Financial Assistance

Wholly exempt financial assistance provided by a listed issuer which is **not** a bank

Financial assistance provided by a listed issuer for the benefit of a connected person or Commonly Held Entity is wholly exempt if:

- a) it is provided **on normal commercial terms** (or better to the listed issuer); and
- b) each or all of the percentage ratios (except the profits ratio) is/are: (i) <0.1%; (ii) <1% and the transaction is connected only because it involves a person connected at the level of the issuer's subsidiaries; or (iii) <5% and the total value of the assistance to the connected person or Commonly Held Entity is <HK\$1 million (GEM Rule 20.65(2)(b)).

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions for Financial Assistance (Cont'd)

Wholly exempt financial assistance provided by a listed issuer which is **not** a bank (Cont'd)

Financial assistance provided by a listed issuer for the benefit of a connected person (in which it is a shareholder) or a Commonly Held Entity is fully exempt if it is:

- a) provided on **normal commercial terms** (or better to the listed issuer); and
- b) the assistance provided is proportional to the issuer's equity interest in the connected person/ Commonly Held Entity and all guarantees are given on a several basis (GEM Rule 20.65(3)).

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions for Financial Assistance

Wholly exempt financial assistance provided to a listed issuer

Financial assistance provided **to a listed issuer** by a connected person or commonly held entity is wholly exempt if it is provided on normal commercial terms (or better to the listed issuer) and no security is granted over the listed issuer's assets in respect of the financial assistance (GEM Rule 20.65(4)).

CONNECTED TRANSACTIONS (Cont'd)

❖ Exemptions for Financial Assistance (Cont'd)

Partially exempt financial assistance provided by a listed issuer which is not a bank

Financial assistance provided by a listed issuer for the benefit of a connected person or Commonly Held Entity is exempt only from the independent shareholders' approval requirement if each or all of the percentage ratios (except the profit ratio) is/are (i) <5%; or (ii) <25% and the total value of the assistance to connected person or Commonly Held Entity is <HK\$10 million.

For Commonly Held Entities, the assistance must be provided on normal commercial terms but must not be proportional to the issuer's equity interest in the relevant company or guarantees given by the issuer are not several

CONNECTED TRANSACTIONS (Cont'd)

❖ Exchange's Discretion

In any situation, the Exchange reserves the right to specify that an exemption will not apply to a particular transaction.

The Exchange may also require that any connected transaction be subject to the independent shareholders' approval requirements.

(GEM Rule 20.30)

CORPORATE GOVERNANCE REQUIREMENTS

a) Requirement for Independent Non-Executive Directors (INEDs)

- A listed issuer must have at least 3 INEDs, at least one of whom must have appropriate professional qualifications or accounting or related financial management expertise.
- Independence tests are set out in GEM Rule 5.09.
- If a listed issuer fails to meet the requirements as to the minimum numbers of INEDs or the qualification of INEDs, it must inform the Exchange immediately and publish an announcement on the websites of the Exchange and the issuer.

CORPORATE GOVERNANCE REQUIREMENTS (Cont'd)

b) Audit Committee

Every listed issuer is required to establish an audit committee comprising non-executive directors only. It must comprise a minimum of 3 members, at least one of whom must be an INED with appropriate professional qualifications or accounting or related financial management expertise.

The majority of audit committee members must be INEDs and it must be chaired by an INED (GEM Rule 5.28). The duties of the audit committee are Code provisions under the Code on Corporate Governance Practices.

c) Directors' Service Contracts

Shareholders' prior consent is required before the grant of a service contract to a director of the listed issuer or any of its subsidiaries, if the contract:

- i. may last for 3 years or more; or
- ii. requires the listed issuer to give more than one year's notice or pay the equivalent of more than one year's remuneration on termination (GEM Rule 17.90)

CORPORATE GOVERNANCE REQUIREMENTS (Cont'd)

d) Directors' Remuneration

Directors' fees and any other reimbursement or emolument payable to a director must be disclosed in full in the annual reports and accounts of an issuer on an individual and named basis.

e) Remuneration Committee

It is a Code provision under the Code on Corporate Governance Practices that a listed issuer should establish a remuneration committee, a majority of whose members should be INEDs.

f) Compliance Adviser

An issuer must appoint a compliance adviser (licensed by the SFC to conduct sponsor work) from the date of listing until the publication date of its financial results for the first full financial year commencing after listing.

CORPORATE GOVERNANCE REQUIREMENTS (Cont'd)

f) Compliance Adviser (Cont'd)

An issuer is required to consult and, if necessary, seek advice from its Compliance Adviser in the following situations:

- i. before publication of any regulatory announcement, circular or financial report;
- ii. where a transaction which might be a notifiable or connected transaction is contemplated (including share issues and repurchases);
- iii. where the listed issuer proposes to use the IPO proceeds in a manner different from that set out in the listing document;
- iv. where the business activities, developments or results of the issuer deviate from any forecast, estimate or other information in the listing document; and
- v. where the Exchange makes an inquiry of the issuer under GEM Rule 17.11.

(GEM Rule 6A.23)

CORPORATE GOVERNANCE REQUIREMENTS (Cont'd)

(g) Authorised Representatives

- ❖ Listed issuer must appoint 2 authorised representatives to act as principal channel of communication with the Exchange
- ❖ Must be 2 directors or a director and the company secretary
- ❖ Authorised representatives must appoint suitable alternates whenever they are outside Hong Kong and provide Exchange with alternates' contact details
- ❖ Exchange must be given prior notification of an authorised representative's proposed termination of his role and the reasons for it

THE CODE ON CORPORATE GOVERNANCE PRACTICES

- The Code on Corporate Governance Practices (the “Code”) is set out in Appendix 15 of the GEM Listing Rules.
- Two tiers of recommended practices.
- The first tier contains the “Code Provisions” which are the minimum standards with which listed companies are expected to comply.
- Companies must state in their half-year and annual reports whether they have complied with the Code Provisions. If they have chosen to deviate from the Code Provisions, considered reasons for each deviation must be stated.
- The second tier of recommended practices consists of recommended best practices which listed companies are encouraged to adopt. Listed companies are encouraged, but are not required, to include a statement as to compliance with the recommended best practices and considered reasons for any deviations from them in their financial reports.
- The Code covers 20 principal areas, including: Directors; Remuneration of Directors and Senior Management; Accountability and Audit; Delegation by the Board and Communication with Shareholders.

SECURITIES TRANSACTIONS BY DIRECTORS OF LISTED COMPANIES

Absolute Prohibition

A director of a listed issuer must not deal in the securities of the company:

- at any time when he is in possession of unpublished price-sensitive information in relation to those securities or if clearance to deal has not been given;
- on the publication date of the company's financial results;
- during the 60 days preceding the publication of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results; and
- during the 30 days preceding the publication date of the quarterly or half-year results or, if shorter, the period from the end of the relevant quarter or half-year up to the publication date of the results.

SECURITIES TRANSACTIONS BY DIRECTORS OF LISTED COMPANIES (Cont'd)

A director of a listed issuer is also prohibited from dealing in the securities of a listed issuer if he is in possession of price-sensitive information in relation to those securities by virtue of his position as a director of another listed issuer.

The restrictions on dealings apply equally to dealings by directors' spouses and children under the age of 18 and to any dealings in which they are deemed to be interested for the purposes of Part XV of the SFO.

SECURITIES TRANSACTIONS BY DIRECTORS OF LISTED COMPANIES (Cont'd)

Duty of Notification

Listed companies must establish a procedure requiring directors to provide written notification to the chairman or a director designated by the board and receive a dated written acknowledgement before dealing in any securities of the listed issuer.

A response to a request for clearance to deal must be given to the relevant director within 5 business days of the request being made and the clearance must not be valid for more than 5 business days of clearance being received.

The company must maintain a written record of notifications given by directors and acknowledgements of such notifications and the written responses given.

DISCLOSURE OF INTERESTS UNDER PART XV SFO

The directors and chief executive of a listed issuer are required to disclose:

- their interests and short positions in any shares of the listed issuer or its associated corporations;
- their interests in any debentures of the listed issuer or its associated corporations; and
- any change in or cessation of any such interest.

DISCLOSURE OF INTERESTS UNDER PART XV SFO (Cont'd)

An “associated corporation” is defined to include the holding companies and subsidiaries of the listed issuer, subsidiaries of any holding company and any company in which the listed issuer holds more than 20% of any class of its issued shares.

In calculating the number of shares in which a director is interested, he/she must include any interests held by a spouse, children under the age of 18, a company controlled by the director and a trust.

DISCLOSURE OF INTERESTS UNDER PART XV SFO (Cont'd)

Directors must also disclose their interests in the underlying shares of equity derivatives.

The term “equity derivative” is defined to include any contract which gives a person rights, options or interests in respect of the underlying shares.

Directors must therefore disclose their interests under any options or warrants giving them rights to acquire shares in the company.

DISCLOSURE OF INTERESTS UNDER PART XV SFO (Cont'd)

On the listing of a company, directors have 10 business days (including Saturdays) in which to disclose their interests to the Exchange and the company.

Subsequent notifications must be given to the listed issuer and the Exchange within 3 business days of the relevant event.

Failure to make proper and timely disclosure as required by Part XV is a criminal offence which carries a maximum penalty of a fine of HK\$100,000 and imprisonment for up to two years.

The listed issuer also has a duty to keep registers of the interests and short positions of its directors, chief executive and substantial shareholders.

The interests and short positions of a listed issuer's directors and chief executive in the shares, underlying shares and debentures of the company and its associated corporations must also be disclosed in the company's annual accounts and half-year reports.

INSIDER DEALING

The SFO sets out 6 types of market misconduct which are prohibited in relation to shares listed on the Exchange.

Insider dealing takes place when:

- (i) a person connected with a listed issuer and having information which he knows is relevant information in relation to that listed issuer:
 - deals, or counsels or procures another to deal, in the company's listed securities or their derivatives or in those of a related corporation; or
 - discloses the information knowing or having reasonable cause to believe that the recipient will use the information to deal, or to counsel or procure another person to deal, in the company's listed securities or their derivatives or in those of a related corporation;

INSIDER DEALING (Cont'd)

- (ii) person who is contemplating or has contemplated making a take-over offer for a listed issuer and who knows that the information that the offer is contemplated or is no longer contemplated is relevant information in relation to the listed issuer:
- deals, or counsels or procures another to deal, in the company's listed securities or their derivatives or in those of a related corporation; or
 - discloses the information knowing or having reasonable cause to believe that the recipient will use the information to deal, or to counsel or procure another person to deal, in the company's listed securities or their derivatives or in those of a related corporation;

INSIDER DEALING (Cont'd)

- (iii) person who has received relevant information from a connected person or a person who is contemplating or has contemplated making a take-over offer for a listed issuer either deals, or counsels or procures another person to deal, in the company's listed securities or their derivatives or those of a related corporation;

INSIDER DEALING (Cont'd)

(iv) person who has information which he knows is relevant information in relation to a listed issuer in any of the circumstances referred in paragraphs (i) to (iii) above:

- counsels or procures another person to deal, knowing or having reasonable cause to believe that the person will deal in the company's listed securities or their derivatives or in those of a related corporation outside Hong Kong on an overseas stock market; or
- discloses the information knowing or having reasonable cause to believe that the recipient will use the information to deal, or to counsel or procure another person to deal, in the company's listed securities or their derivatives or in those of a related corporation outside Hong Kong on an overseas stock market.

INSIDER DEALING (Cont'd)

Key definitions

The term “securities” is defined widely and includes shares, stocks, debentures, loan stocks, bonds and notes as well as any rights, options or interests in respect of any of the foregoing.

“Persons connected with a corporation” or “connected persons” include the directors (including non-executive directors and shadow directors), employees and substantial shareholders (meaning those holding 5% or more of the issued voting share capital) of the listed issuer and its related corporations.

The term also includes persons who have a professional or business relationship with the listed issuer or its related corporation which give them access to inside information.

INSIDER DEALING (Cont'd)

“Related corporations” of a listed issuer include its subsidiaries and holding companies and other subsidiaries of any holding company of the listed issuer. In addition, where two or more companies are controlled by the same individual, each of those companies and their subsidiaries are regarded as “related corporations” of each other.

“Relevant information” in relation to a company (commonly termed “inside information”) means specific information about the company, a shareholder or officer of the company, the listed securities of the company or their derivatives, which is not generally known to the persons who are accustomed or likely to deal in the listed securities of the company but which would, if it were generally known to them, be likely to materially affect the price of the listed securities.

INSIDER DEALING (Cont'd)

The directors of a listed issuer will be “insiders” for the purposes of these provisions. In practical terms, this means that a director should immediately refrain from dealing or procuring another to deal in the listed securities of his own company once he is aware of, or privy to any negotiations, agreements or information which are or may be price-sensitive until a formal announcement of such information has been made.

MARKET MISCONDUCT

OTHER TYPES OF MARKET MISCONDUCT

- **False Trading**
- **Price rigging**
- **Stock Market Manipulation**
- **Disclosure of information about prohibited transactions**
- **Disclosure of false or misleading information inducing transactions**

MARKET MISCONDUCT (Cont'd)

Dual civil and criminal regimes

The 6 forms of market misconduct may either be prosecuted as a criminal offence under Part XIV of the SFO or made the subject of civil proceedings before the Market Misconduct Tribunal.

Criminal penalties

The maximum criminal penalty for an offence of market misconduct is imprisonment for up to 10 years and/or a fine of up to HK\$10 million.

MARKET MISCONDUCT (Cont'd)

Market Misconduct Tribunal Proceedings

The Market Misconduct Tribunal may make a number of orders in respect of a person identified as having engaged in market misconduct including a:

- *Disqualification Order*: an order that the person shall not be involved in the management of any listed corporation or any other specified corporation for a maximum period of 5 years;
- *Disgorgement Order*: an order that the person pay to the Government an amount up to the amount of any profit gained or loss avoided by the person as a result of the market misconduct;

MARKET MISCONDUCT (Cont'd)

Civil Liability

A person who has suffered financial loss as a result of market misconduct can bring a civil action against any person who has committed market misconduct if it is fair, just and reasonable in the circumstances.

Liability of officers of a listed issuer

The officers of a listed issuer are required to take reasonable measures to ensure that proper safeguards exist to prevent the company from acting in a way that results in the company perpetrating any conduct which constitutes market misconduct.

If a company commits an act of market misconduct and that occurred with the “consent or connivance” of one of its officers, the officer may be liable to pay damages to any person who suffers financial loss as a result of the market misconduct.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES

The Code on Takeovers and Mergers (the “Takeovers Code”) and the Code on Share Repurchases apply to takeovers, mergers and share repurchases affecting public companies in Hong Kong and companies with a primary listing of their shares in Hong Kong.

The primary purpose of the Codes is to ensure that all shareholders affected by takeovers, mergers and share repurchases of relevant companies are treated fairly. In order to achieve fair treatment, the Codes require equality of treatment of shareholders and disclosure of timely and adequate information to shareholders. The Takeovers Code in particular has the objective of protecting minority shareholders when control of their company changes.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

THE TAKEOVERS CODE

The Takeovers Code is concerned with:

- (i) offers for, and takeovers and mergers of, all relevant companies; and
- (ii) partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control (as defined) of a company is to be obtained or consolidated.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Mandatory Offer Requirements: Rule 26

Except where a waiver has been granted, Rule 26 of the Takeovers Code requires a mandatory offer to be made to all the shareholders of the company in the following circumstances:

- (i) when any person (or two or more persons acting in concert) acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting shares of a company; or
- (ii) when any person (or two or more persons acting in concert) who holds between 30% and 50% of the voting shares of a company, acquires additional voting shares that increase his or their holding of voting shares by more than 2% from the lowest percentage holding by that person (or the concert group) in the previous 12 month period.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Mandatory Offer Requirement: Rule 26 (Cont'd)

“Persons acting in concert”

A person will be taken to be acting in concert with an offeror if, pursuant to an agreement or understanding, he is actively co-operating through the acquisition of voting rights, to obtain or consolidate control of the offeree. In the absence of proof to the contrary, certain categories of persons are presumed to be acting in concert with others in the same category.

Offers under Rule 26 must be made in cash (or have a cash alternative) at not less than the highest price paid by the offeror (or any person acting in concert with it) for shares of the offeree in the previous 6 months.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Requirements of the Takeovers Code

Any offer of takeover of a listed issuer should be put in the first instance to the board of the listed issuer or its advisers before the offer is announced to the public. The identity of the offeror must also be disclosed. The board of the listed issuer must establish an independent committee of the board to make a recommendation (i) as to whether or not the offer is fair and reasonable and (ii) as to acceptance and voting. The board must also retain an independent financial adviser to advise the independent board committee as to those matters.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

THE CODE ON SHARE REPURCHASES

The Code on Share Repurchases applies to share repurchases of all relevant companies (i.e. Hong Kong public companies and companies with a primary listing of their shares in Hong Kong).

Under Rule 32.1 of the Takeovers Code, a share repurchase is considered to be an **acquisition** by shareholders whose shares are **not** repurchased. This is because their percentage holding of shares increases even though the actual number of shares held does not.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

The Share Repurchase Code distinguishes between 4 types of share repurchase:

1. **On-Market** – this is the most usual method and is normally carried out pursuant to the 10% general mandate normally granted at the AGM.
2. **Off-Market** – Off-market share repurchases must be approved by the Executive Director of the Corporate Finance Division of the Securities and Futures Commission (“SFC”) under Rule 2 of the Share Repurchase Code. Approval is normally conditional on the approval of at least 75% of the votes cast by “disinterested shareholders”.
3. **Exempt** – includes an employee share repurchase; a share repurchase made in accordance with the terms attached to the shares; and a share repurchase that is required by the law of the jurisdiction in which the offeror is incorporated or established.
4. **By General Offer** – this usually takes the form of a tender offer of a certain percentage of all shareholders’ holdings. A share repurchase by General Offer requires approval by at least 50% of shareholders in general meeting. A shareholder with a material interest in the share repurchase will not be allowed to vote. If the repurchase will result in privatisation or de-listing of the issuer, the approval of 75% of shareholders is required.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

On-market repurchase

GEM Rule 13.07 sets out the relevant requirements in relation to on-market repurchases. An issuer whose primary listing is on the Exchange may only purchase shares on the Exchange in the following circumstances:

- the shares proposed to be repurchased are fully-paid up;
- an Explanatory Statement complying with the detailed contents requirements of GEM Rule 13.08 is issued to the shareholders; and
- its shareholders have given specific approval or a general mandate to make the repurchase(s) by way of an ordinary resolution passed at a general meeting of the issuer duly convened.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

The Explanatory Statement must contain all information reasonably necessary to enable the shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the share repurchase. Such information includes, in summary, the following :

- ❖ total number and description of the shares to be repurchased, and reasons for the repurchase;
- ❖ the proposed source of funds for making the proposed repurchase;
- ❖ any directors or any associates of the directors who have an intention to sell shares to the issuer, or an appropriate negative statement;
- ❖ consequences arising under the Takeovers Code of which the directors are aware, if any;
- ❖ details of any purchases by the issuer of shares made in the previous 6 months (whether on the Exchange or not);
- ❖ whether or not any connected persons of the issuer have notified the issuer that they have an intention to sell their shares to the issuer; and
- ❖ the highest and lowest prices at which the relevant shares have traded on the Exchange during each of the previous 12 months.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Dealing restrictions of on-market repurchase

On-market repurchases are subject to the following dealing restrictions:

- ❖ no shares shall be repurchased for non-cash consideration;
- ❖ the issuer shall not knowingly purchase its shares from a connected person;
- ❖ no shares shall be repurchased at any time after a price sensitive event has occurred until such time as the price sensitive information is made public. In particular, repurchases are not allowed during the period of one month immediately preceding the earlier of:
 - i. the date of the board meeting to approve the annual or interim financial results; and
 - ii. the deadline for publishing any such results, and ending on the date of the results announcement; and
- ❖ no shares may be repurchased if that purchase will result in the number of listed shares held by the public falling below the prescribed minimum percentage.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Reporting requirements for repurchases

The issuer must:

- ❖ file a return with the Exchange on the next business day following a share repurchase (on or off Exchange) showing the number of shares repurchased, the purchase price paid per share (or the lowest and highest prices paid); and
- ❖ 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, the purchase price paid per share (or the lowest and highest prices paid) and the aggregate price paid.

Status of purchased shares

The listing of the repurchased shares will be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares.

The issuer must ensure that the documents of title of the repurchased shares are cancelled and destroyed as soon as reasonably practicable.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Off-market share repurchase

Off-market repurchases must be approved by the SFC before a repurchasing company acquires any shares. Such approval will normally be conditional upon :

- ❖ approval being given by at least 75% of votes cast on a poll by disinterested shareholders in attendance in person or by proxy at a general meeting of the issuer;
- ❖ notice of the shareholders' meeting accompanied by a circular containing :
 - i. details of the proposed offeree(s);
 - ii. terms and conditions of the agreement between the issuer and the proposed offeree(s); and
 - iii. advice of an independent financial adviser and the recommendation of an independent committee of the board in relation to the off-market repurchase
- ❖ a certified copy of the shareholders' resolution approving the repurchase filed with the SFC within three days of the general meeting; and
- ❖ a copy of the agreement for the repurchase being available for inspection by the shareholders.

OBLIGATIONS UNDER THE CODES ON TAKEOVERS AND MERGERS AND SHARE REPURCHASES (Cont'd)

Repurchase by general offer

A share repurchase by general offer must be approved by a majority of the votes cast by independent shareholders in attendance in person or by proxy at general meeting.

If the share repurchase will result in delisting and privatisation of the issuer :

- ❖ the directors of the offeror and any persons acting in concert will not be considered to be independent and therefore may not vote at the general meeting; and
- ❖ the share repurchase must be approved by at least 75% of votes attaching to the shares owned by independent shareholders cast in person or by proxy and the number of votes cast against the resolution must not be more than 10% of the votes attaching to the shares owned by independent shareholders.

DISCLAIMER

Disclaimer

This presentation contains a summary only of certain GEM Listing Rule requirements. It is intended for information and educational purposes only and should not be treated as a substitute for legal advice.

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