

Chapter 20

EQUITY SECURITIES

CONNECTED TRANSACTIONS

Preliminary

- 20.01 The connected transactions rules are intended to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when the listed issuer enters into transactions with connected persons. The rules set out in this Chapter also provide certain safeguards against listed issuers' directors, chief executives, management shareholders or substantial shareholders (or their associates) taking advantage of their positions.
- 20.02 This is achieved through the general requirement for connected transactions to be disclosed and subject to independent shareholders' approval. Accordingly, where any transaction is proposed between a listed issuer and a connected person, the transaction must usually be announced publicly and a circular must be sent to shareholders giving information about the transaction. Prior approval of the shareholders in general meeting will usually be required before the transaction can proceed. The connected person will not be permitted to vote at the meeting.
- 20.03 Certain categories of transaction are exempt from the disclosure and shareholders' approval requirements and certain transactions are subject only to disclosure requirements.
- 20.04 Connected transactions may be either one-off transactions or continuing transactions. Different rules apply in each case.
- 20.05 If a listed issuer proposes to enter into a transaction which could be a connected transaction, the listed issuer must consult the Exchange at an early stage to ascertain whether and to what extent the provisions of this Chapter apply. The relevant draft contract must be supplied to the Exchange, if requested.
- 20.06 The Exchange has the specific power to deem a person to be connected (see rule 20.10(4)) and to specify that certain exemptions will not apply to particular transactions (see rule 20.22).
- 20.07 The Exchange may grant a waiver from all or any of the requirements in this Chapter where the Exchange deems it appropriate (see rule 20.31).
- 20.08 A connected transaction may also be a reverse takeover, very substantial acquisition, major transaction, discloseable transaction, or share transaction and listed issuers should also refer to Chapter 19.

General matters concerning definitions and interpretation

- 20.09 In this Chapter:
- (1) "accounts" means a listed issuer's latest published audited accounts or consolidated accounts;
 - (2) "banking company" means banks, restricted licence banks and deposit taking companies as defined in the Banking Ordinance or banks constituted under appropriate overseas legislation or authority;

- (3) "consideration" is calculated as set out in rule 19.12;
- (4) "controller" means a director, chief executive or controlling shareholder of the company whose securities are already listed on GEM;
- (5) "financial assistance" includes granting credit, lending money, providing security for, or guaranteeing a loan;
- (6) "financial assistance provided in the ordinary and usual course of business" means financial assistance as defined in rule 20.09(5) provided by a banking company as defined in rule 20.09(2);
- (7) "financial assistance not provided in the ordinary and usual course of business" means financial assistance as defined in rule 20.09(5) not provided by a banking company as defined in rule 20.09(2);
- (8) "independent shareholder" means any shareholder of the listed issuer other than a connected person interested in the connected transaction;
- (9) "listed issuer" means a company whose securities are already listed on GEM and its subsidiaries, unless the context otherwise specifies;
- (10) "net tangible assets of the listed issuer" means the aggregate of the share capital and reserves, excluding minority interests and intangibles, as shown in the listed issuer's latest published audited accounts or consolidated accounts, subject to any adjustments or modifications arising by virtue of the provisions of rules 19.09 or 19.10;
- (11) "normal commercial terms" are terms which a party could obtain if the transaction were on an arm's length basis or on terms no less favourable to the issuer than terms available to or from independent third parties;
- (12) "ordinary and usual course of business" of an entity means the existing principal activity of the entity or an activity wholly necessary for the principal activities of the entity;
- (13) "recognised stock exchange" means a regulated, regularly operating, open stock market recognised for this purpose by the Exchange;
- (14) "transaction" is interpreted by the Exchange in the broadest possible sense and includes:
 - (a) the acquisition or disposal of assets;
 - (b) any transaction involving a listed issuer writing, accepting, transferring or exercising an option to acquire or dispose of assets or to subscribe for securities;
 - (c) entering into or terminating finance leases where the financial effects of such leases have an impact on the balance sheet and/or profit and loss account of the listed issuer, respectively;
 - (d) entering into or terminating operating leases where the financial effects of such leases have an impact on the profit and loss account of the listed issuer;
 - (e) granting an indemnity or a guarantee or providing financial assistance;
 - (f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company;

- (g) issuing new securities;
 - (h) the lease and sublease of properties;
 - (i) the provision of services;
 - (j) sharing of services; and
 - (k) providing raw materials, intermediate products and finished goods; and
- (15) "turnover of the listed issuer" means the listed issuer's annual turnover as derived from its most recent accounts.

Definition of connected person

20.10 Rule 1.01 contains a general definition of "connected person". For the purpose of rules 20.10 and 20.11, a "listed issuer" means a company whose securities are already listed on GEM and not its subsidiaries. In this Chapter, the definition of "connected person" includes:

- (1) a director, chief executive, substantial shareholder or management shareholder of the listed issuer;
- (2) any person who was a director of the listed issuer within the preceding 12 months;
- (3) a promoter or supervisor of a PRC issuer;
- (4) any associate of a person in (1), (2) or (3) above.

Notes:

- 1 *The definitions of "associate" (in the context of non-PRC issuers and PRC issuers) are contained in rules 1.01 and 25.04, respectively.*
- 2 *A company which is an "associate" of a person in rule 20.10(1), (2) or (3) above only because that person has an indirect interest in the company through its shareholding in the listed issuer is not a connected person.*
- 3 *In this Chapter, an "associate" of a connected person includes the following additional persons:*
 - (a) *any person or entity with whom a person in rule 20.10(1), (2) or (3) above has entered, or proposes to enter, into any agreement, arrangement, understanding or undertaking, whether formal or informal and whether express or implied with respect to the transaction which is such that, in the opinion of the Exchange, that person or entity should be considered a connected person;*
 - (b) *any of the following:*
 - (i) *any person cohabiting as a spouse with a person in rule 20.10(1), (2) or (3) above; and*
 - (ii) *any relative of a person in rule 20.10(1), (2) or (3) above.*

- (5) any non wholly-owned subsidiary of the listed issuer if any shareholder of that subsidiary, other than the listed issuer, is a director, chief executive or substantial shareholder of the listed issuer or an associate of any such person.

20.11 The definition of “connected person” does not include:

- (1) a wholly-owned subsidiary of the listed issuer; and
- (2) a non wholly-owned subsidiary where no shareholder of that subsidiary, other than the listed issuer, is a director, chief executive, substantial shareholder or management shareholder of the listed issuer or an associate of any such person.

Definition of connected transaction

20.12 A connected transaction is:

- (1) any transaction between a listed issuer and:
- (a) a connected person; or
- (b) a person who is not a connected person but the transaction involves:

Acquisition or disposal of interest in a company

- (i) a listed issuer acquiring or disposing of an interest in a company where a substantial shareholder or management shareholder of that company is, or is proposed to be, a controller or is (or will become as a result of the transaction) an associate of a controller; or

Notes: (1) Where 90 per cent or more of such a company’s assets consist of a single asset, the Exchange will treat the acquisition or disposal of the single asset as a connected transaction and an acquisition or disposal of an interest in that company.

(2) A listed issuer itself will not be considered an “associate” of a controller when the listed issuer is acquiring or disposing of an interest in a company of which it is already a substantial shareholder.

(3) The Exchange may aggregate the interests of any person, its associates and its relatives and their respective associates in determining whether together they are a “substantial shareholder” of any company.

(4) A controller whose only interest in a company is through its interest in the listed issuer will not be taken to be a “substantial shareholder” of that company.

- (ii) a listed issuer acquiring an interest in a company (or an option to acquire such interest) of which a controller (or a controller’s associate) is, or will become, a shareholder; or

Note: This rule only applies where the interest being acquired is either:

- (1) of a fixed income nature; or

- (2) shares to be acquired on less favourable terms than those granted to the controller or associate.

Subscription on favourable terms

- (iii) a controller (or an associate of a controller) subscribing on specially favourable terms shares in a company in which the listed issuer is a shareholder;

Indemnity, guarantee or financial assistance

- (2) a listed issuer granting an indemnity or guarantee or providing financial assistance for the benefit of a connected person;

Financing transactions

- (3) the provision of financial assistance:
 - (a) by a listed issuer to:
 - (i) a connected person; or
 - (ii) a company in which both the listed issuer and a connected person are shareholders; or
 - (b) by a connected person to a listed issuer.

Financial assistance transactions are governed by rules 20.50 to 20.53;

Granting of security

- (4) the granting of security over the assets of a listed issuer to a connected person in respect of a loan made to the listed issuer;

Options

- (5) the writing, acceptance, transfer, exercise or non-exercise of an option (as defined in rule 19.59) involving a listed issuer and a connected person. Options are governed by rules 20.54 to 20.58; and

Joint ventures

- (6) the entering into of any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company by a listed issuer and a connected person (see rule 20.09(14) (f)). In this case, the size of a listed issuer's financial commitment will be calculated in the manner set out in rule 19.12(2).

Definition of continuing connected transaction

20.13 Continuing connected transactions are connected transactions involving the provision of goods or services, which are carried out on a continuing or recurring basis and are expected to extend over a period of time. They are usually transactions in the ordinary and usual course of business of the listed issuer.

Continuing connected transactions are governed by rules 20.25 to 20.30.

General rules

Categories

20.14 The categories of connected transactions are:

- (1) connected transactions exempt from reporting, announcement and shareholders' approval requirements (see rule 20.23);
- (2) connected transactions exempt from shareholders' approval requirements (see rule 20.24); and
- (3) continuing connected transactions exempt from reporting, announcement and shareholders' approval requirements (see rule 20.25).

Connected transactions that do not fall under categories (1) to (3) above are subject to the reporting, announcement and shareholders' approval requirements of this Chapter.

Shareholders' approval

20.15 The Exchange will normally require that connected transactions and continuing connected transactions are made conditional on approval by the shareholders of the listed issuer in general meeting. Any person interested in the transaction must abstain from voting at the meeting and a statement that he will not vote must be included in the relevant circular to shareholders. Any vote at such meeting shall be taken by poll. The listed issuer must comply with the shareholders' approval requirements set out in rules 20.40 to 20.42 and the contents requirements for the announcement and circular set out in rules 20.44 and 20.46 to 20.48 respectively. The circular for the transaction as required in rule 20.37 should be despatched to the shareholders of the listed issuer at the same time or before the listed issuer gives notice of the general meeting to approve the transaction.

Independent financial advice

20.16 Where shareholders' approval is required, the Exchange will require that a separate letter from an independent financial adviser acceptable to the Exchange be published in the circular to shareholders, stating whether or not, in the financial adviser's opinion, the transaction is fair and reasonable and in the interests of the shareholders as a whole.

There must also be a written agreement for all connected and continuing connected transactions. This agreement will be the basis on which the independent financial adviser will give its opinion to independent shareholders. The Exchange will require that both the independent financial adviser and the independent non-executive directors give a recommendation to the shareholders in the circular as to how to vote.

Methods of calculating the consideration or value of a transaction

20.17 The methods of calculating the consideration or value of a transaction as set out in rule 19.12 also apply to connected and continuing connected transactions.

Aggregation of transactions

20.18 The Exchange will normally aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12 month period. In such cases, the listed issuer must comply with the requirements for the relevant classification of the connected transactions when aggregated.

20.19 Factors which the Exchange may take into account in determining whether connected transactions will be aggregated include whether the transactions:

- (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
- (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
- (3) involve the acquisition or disposal of parts of one asset; or
- (4) together lead to substantial involvement in a business activity which did not previously form a part of the listed issuer's principal activities.

20.20 The Exchange may consider aggregating all continuing connected transactions with a single connected person (and its associates) to determine in which category the aggregated transaction falls.

Exceptions

20.21 Certain types of connected transaction, described in rule 20.23, are exempt from all disclosure and shareholders' approval requirements. The categories of connected transactions described in rule 20.24 are not required to be approved by independent shareholders but must in every case be announced publicly and must be reported on in the listed issuer's next published annual report and accounts.

Certain types of continuing connected transaction, described in rule 20.25, are exempt from all disclosure and shareholders' approval requirements.

Exchange discretion

20.22 The Exchange reserves the power to specify that an exemption will not apply to a particular transaction. The Exchange may also require, at its discretion, that any other connected transaction be made conditional on shareholders' approval and that the same requirements as in rules 20.15 and 20.16 will apply.

Connected transaction categories: Connected transactions (other than those involving financial assistance or the granting of options) exempt from the reporting, announcement and shareholders' approval requirements

20.23 The following connected transactions will normally be exempt from all the reporting, announcement and shareholders' approval requirements contained in this Chapter:

Transactions in the ordinary and usual course of business

- (1) a transaction between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries which is on normal commercial terms and in the ordinary and usual course of business of each of the companies concerned and where no connected person(s) or associate(s) is, or are together, a substantial shareholder in any of the subsidiaries concerned; (See also rules 20.10(5) and 20.11(2)).

De minimis transactions

- (2) a connected transaction on normal commercial terms where the total consideration or value is less than the higher of:

- (a) HK\$1,000,000; or
- (b) 0.03% of the net tangible assets of the listed issuer.

Note: This exemption does not apply to the issue of new securities by a listed issuer to a connected person, which is governed by rule 20.23(3).

Issue of new securities

- (3) where a listed issuer issues new securities to a connected person and:
 - (a) the connected person receives a pro rata entitlement to securities in its capacity as shareholder;
 - (b) securities are issued under a share option scheme which complies with Chapter 23;
 - (c) the connected person is acting as underwriter or sub-underwriter of an issue of securities by the listed issuer;

Notes: 1 The entity whose issue of securities is being underwritten or sub-underwritten by a connected person must make full disclosure of the terms and conditions of the underwriting in the listing document and also comply with rule 10.31(2).

2 Excess application and the taking up of pro rata entitlements in respect of a rights issue are not connected transactions. Where securities not subscribed by allottees under provisional letters of allotment or their renounees are to be disposed of by means of excess application forms, such securities must be available for subscription by all shareholders and allocated on a fair basis. An intention to so offer such securities must be fully disclosed prior to the rights issue.

3 If a listed holding company acts as underwriter or sub-underwriter of an issue of securities by its listed subsidiary, such transaction is also connected for the listed holding company if the listed subsidiary is a connected person under rule 20.10(5). In this case, the listed holding company is subject to connected transaction requirements unless exempted under rules 20.23(1) or 20.23(2). The exemption under this rule is applicable to the listed subsidiary but not the listed holding company.

- (d) securities are issued to a connected person within 14 days after such connected person has executed an agreement to reduce its holding in that class of securities by placing securities to a third person who is not its associate;

Notes: 1 The securities must be issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing.

2 The issue to the connected person must not increase the percentage interest of such person and its associates in the relevant class of securities above that immediately before the placing.

3 Under rule 17.30, the listed issuer is required to make an announcement containing details of the placing and subscription of shares by the connected person.

Stock Exchange dealings

- (4) a transaction, falling within rule 20.12(1)(b)(i), which comprises a dealing in securities listed on the Exchange or a recognised stock exchange by a listed issuer in the ordinary and usual course of its business;

Notes: 1 The dealing must be carried out on the Exchange or a recognised stock exchange. If the transaction is not carried out on the Exchange or a recognised stock exchange, the exemption will still apply if no consideration passes to or from a connected person.

- 2 This exemption will not apply if the purpose is to confer a direct or indirect benefit upon a controller(s) or associate of a controller who is also a substantial shareholder in the relevant company.*

Purchase of own securities

- (5) any purchase by a listed issuer of its own securities from a connected person on the Exchange or a recognised stock exchange or under a general offer made in accordance with the Share Repurchase Code;

Note: Where the purchase is on the Exchange or a recognised stock exchange, the exemption will not apply if the connected person knowingly sells its securities to the issuer.

Directors' service contracts

- (6) the entering into of a service contract by a director of the listed issuer with the listed issuer;

Transactions involving subsidiaries

- (7) transactions between wholly-owned subsidiaries of the listed issuer or between wholly-owned subsidiaries of the listed issuer's non wholly-owned subsidiaries;

Consumer goods or services

- (8) the acquisition or realisation of consumer goods or services by a listed issuer from or to a connected person of the listed issuer on normal commercial terms and in the ordinary and usual course of business of the seller of the consumer goods or services; and

Note: The consumer goods or services must be consumed by the acquiror for its own consumption and not used for further processing and/or resale by the acquiror. Examples include utilities provided by a listed issuer to a connected person, meals consumed by a connected person at a restaurant owned by the listed issuer and the acquisition of groceries for its own use by a connected person from a listed issuer involved in the retailing of groceries.

Sharing of administrative services

- (9) the sharing of administrative services between a listed issuer and a connected person on a cost basis. The cost of the services must be identifiable and allocated to the parties involved on a fair and equitable basis. Examples include company secretarial services, legal services and staff training services.

Connected transactions (other than those involving financial assistance or the granting of options) exempt from the shareholders' approval requirements

20.24 A transaction on normal commercial terms with a connected person where the total consideration or value is less than the higher of:

- (a) HK\$10,000,000; or
- (b) 3% of the net tangible assets of the listed issuer;

is normally only subject to the reporting and announcement requirements set out in rules 20.34 and 20.35 respectively.

Note: This exemption does not apply to the issue of new securities by a listed issuer to a connected person, which is governed by rule 20.23(3).

Continuing connected transaction categories: Exempt continuing connected transactions

20.25 The following continuing connected transactions will normally be exempt from the reporting, announcement and shareholders' approval requirements of this Chapter:

Consumer goods or services

- (1) the provision of consumer goods or services as set out in rule 20.23(8);

Sharing of administrative services

- (2) the sharing of administrative services as set out in rule 20.23(9);

De minimis

- (3) a continuing connected transaction where the annual total consideration or value of the transaction is less than the higher of:
 - (a) HK\$1,000,000; or
 - (b) 0.03% of the net tangible assets of the listed issuer.

Non-exempt continuing connected transactions

20.26 Listed issuers proposing to enter into continuing connected transactions not falling under rule 20.25 must:

- (1) in respect of each connected transaction, enter into agreement(s) with the connected person;

Notes: 1 The agreement must set out the basis of the calculation of the payments to be made. Examples of such bases include the sharing of costs, price per unit for on-going purchases, annual rental for a lease, percentage of total construction cost for a management fee, and similar bases.

2 The period for the agreement must be fixed and reflect normal commercial terms and, except in special circumstances, should not exceed 3 years. Special circumstances are limited to cases where the nature of the transaction requires the contract to be of a longer duration than 3 years. In such cases, the

independent financial adviser will need to explain why a longer period for the agreement is required and to confirm that it is normal business practice for the contracts of this type to be of such duration.

- (2) in respect of each connected transaction, set a maximum aggregate annual value ("cap") which must be acceptable to the Exchange;

Notes: 1 This annual cap should be expressed in terms of monetary value rather than a percentage of the listed issuer's annual turnover. However, reference to annual turnover and other bases may help to determine the monetary value of the cap.

- 2 The cap should be determined by reference to previous transactions. If there are no previous transactions the cap must be made based on assumptions acceptable to the Exchange.*

- (3) comply with the reporting and announcement requirements described in rules 20.34 and 20.35 respectively; and

- (4) comply with the shareholders' approval requirements described in rule 20.36.

If the cap in rule 20.26(2) is exceeded, the listed issuer must re-comply with rules 20.26(3) and (4).

Annual review of continuing connected transactions

20.27 Each year the independent non-executive directors of the listed issuer must review the continuing connected transactions and confirm in the annual report and accounts that the transactions have been entered into:

- (1) in the ordinary and usual course of business of the listed issuer;
- (2) either on normal commercial terms or, if there are not sufficient comparable transactions to judge whether they are on normal commercial terms, on terms no less favourable to the listed issuer than terms available to or from (as appropriate) independent third parties; and
- (3) in accordance with the relevant agreement governing them on terms that are fair and reasonable and in the interests of the shareholders of the listed issuer as a whole.

20.28 Each year the auditors must provide a letter to the listed issuer's board of directors (with a copy to the Exchange), confirming that the continuing connected transactions:

- (1) have received the approval of the listed issuer's board of directors;
- (2) are in accordance with the pricing policies of the listed issuer if the transactions involve provision of goods or services by the listed issuer;
- (3) have been entered into in accordance with the relevant agreement governing the transactions; and
- (4) have not exceeded the cap agreed with the Exchange.

Note: This letter must be provided to the Exchange at least 10 business days prior to the bulk printing of the listed issuer's annual report.

The listed issuer and the counterparty to the continuing connected transactions must undertake to the Exchange to allow the auditors sufficient access to their records for the purpose of reporting on the transactions as set out this rule.

20.29 A listed issuer shall promptly notify the Exchange if it knows or has reason to believe that the independent non-executive directors and/or the auditors will not be able to confirm the matters set out in rules 20.27 and/or 20.28 respectively. The listed issuer may have to re-comply with rules 20.26(3) and (4) and any other conditions the Exchange considers appropriate.

Subject to shareholders' approval every year

20.30 In addition to complying with rules 20.26 to 20.28, where the cap in any year is to be greater than the higher of HK\$10,000,000 or 3% of the net tangible assets of the listed issuer, the transaction(s) and the cap are subject to review and re-approval by independent shareholders at the annual general meeting following the initial approval and at each subsequent annual general meeting so long as the transaction(s) continue(s). The independent non-executive directors will be required to opine in the annual report whether or not the listed issuer should continue with the agreement(s) for the transaction(s).

Waivers

Exchange discretion

20.31 The Exchange may consider granting waivers from all or any of the requirements of this Chapter. In particular, the Exchange will consider granting waivers for the following transactions:

- (1) a transaction which is connected only because of the interest of a non-executive director of the listed issuer where the Exchange is satisfied that:
 - (a) such director does not control the listed issuer; and
 - (b) his principal business interest is not the listed issuer;
- (2) where the listed issuer guarantees (or gives an indemnity in respect of) the obligations of (i) a non wholly-owned subsidiary described in rule 20.10(5) or (ii) a company in which both the listed issuer and a connected person are shareholders, to a third party creditor and the guarantee or indemnity is joint and several, if:
 - (a) the guarantee is required in connection with a government or public sector contract awarded by tender;
 - (b) each of the shareholders of the non wholly-owned subsidiary or company has given a similar joint and several guarantee or indemnity to the third party; and
 - (c) each of the other shareholders of the non wholly-owned subsidiary or company has agreed to indemnify the listed issuer for a percentage of the liability guaranteed or indemnified at least in proportion to its percentage equity interest in the subsidiary or company and the Exchange is satisfied that such shareholder indemnity is of sufficient substance; or
- (3) the Exchange may grant a new listing applicant a waiver from the announcement and shareholders' approval requirements of this Chapter upon listing. Such waivers shall be in respect of specific continuing connected transactions only. General waivers shall not be granted. The applicant's Sponsor is required to state in the listing document whether the continuing connected transactions for which the waivers are sought are in the ordinary and usual course of business, on normal commercial terms, are fair and reasonable and in the interests of the shareholders as a whole. In addition, the listed issuer is required to comply with rules 20.26(1), 20.26(2), 20.27, 20.28, 20.29 and 20.30.

Shareholders' meeting waiver

20.32 Where independent shareholders' approval of a connected transaction is required, the Exchange will consider waiving the requirement to hold a shareholders' meeting if:

- (1) all shareholders of the listed issuer have the right to attend and vote at a general meeting to consider the connected transaction; and
- (2) such approval can be given in writing by a shareholder or closely allied group of shareholders who (together) hold more than 50% in nominal value of the securities giving the right to attend and vote at a general meeting.

Note: The Exchange will take into account the factors set out in rule 19.40 in determining whether a group of shareholders constitutes a "closely allied group of shareholders."

Waiver conditions

20.33 In granting any waiver, the Exchange may impose conditions whenever it considers appropriate.

Reporting requirements

20.34 The following details of the transaction must be included in the listed issuer's next published annual report and accounts:

- (1) the transaction date;
- (2) the parties to the transaction and a description of their connected relationship;
- (3) a brief description of the transaction and its purpose;
- (4) the total consideration and terms (including, where relevant, interest rates, length of repayment and security); and
- (5) the nature and extent of the connected person's interest in the transaction.

Announcement requirements

20.35 Listed issuers proposing to enter into a transaction which is subject to announcement requirements or a continuing connected transaction must:—

- (1) inform the Exchange at an early stage;

Note: Under rule 17.10, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.

- (2) deliver to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must submit the announcement to the Exchange to be published on the GEM website before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day; and

Notes: 1 Pursuant to rule 17.57, the listed issuer must forward to the Exchange 10 copies of such announcement as cleared by the Exchange at the same time as it is issued.

- 2 Where the connected transaction is also a share transaction, major transaction, very substantial acquisition, or a reverse takeover, rule 19.35 (requirement for short suspension of dealings) also applies where the required announcement has not been published before trading begins on the next business day,

- (3) comply with rule 20.34 (the reporting requirements).

Shareholders' approval requirements

20.36 Listed issuers proposing to enter into a transaction which is subject to shareholders' approval must:

- (1) comply with rules 20.34 (the reporting requirements) and 20.35 (the announcement requirements); and
- (2) comply with the requirements set out in rules 20.37 to 20.42, (the circular and shareholders' approval requirements).

Shareholders' circular

20.37 The listed issuer must also send a circular, which complies with rules 20.46 to 20.49, to the holders of its listed securities and arrange for its publication in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement, unless the Exchange directs otherwise.

20.38 Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments.

20.39 The circular must (subject to rule 17.59) be in English and Chinese.

Shareholders' approval

20.40 The transaction and, in the case of a continuing connected transaction, the cap, must be made conditional on approval by independent shareholders. Any vote taken at a meeting held to seek approval of a continuing connected transaction or associated cap must be taken by poll.

20.41 The Exchange will consider waiving the requirement to hold a shareholders' meeting and permitting shareholders' approval to be given in writing in the circumstances set out in rule 20.32.

20.42 The Exchange will require any shareholder and its associate(s) who has/have an interest in the transaction to abstain from voting. Any vote at a shareholder meeting held to approve a connected transaction shall be taken by poll.

Board minutes

20.43 Listed issuers must provide the Exchange with a copy of the minutes of the board meeting approving the transaction and, in the case of a continuing connected transaction, the cap as soon as possible after the meeting. The minutes should note clearly:

- (1) whether or not the transaction is on normal commercial terms and in the ordinary and usual course of business of the listed issuer; and
- (2) the views of the independent non executive directors.

Contents of announcements

20.44 The announcement for connected transactions and continuing connected transactions must contain at least the following:

- (1) the information set out in rule 19.48 (contents of announcements – discloseable transaction, major transaction, very substantial acquisition and reverse takeover) and the views of the independent non-executive directors on the transaction if no voting is required to approve the transaction;
- (2) details of the relevant connection and a statement that the transaction is subject to shareholders' approval, if applicable;
- (3) in the case of continuing connected transactions, the amount of the cap; and
- (4) where the transaction involves the purchase of assets by the listed issuer, the original purchase cost of the asset to the connected person.

Guaranteed profits or net tangible assets

20.45 Where a listed issuer acquires a company or business from a connected person, and the profits or net tangible assets of that company or business are guaranteed by the connected person, the listed issuer must (unless expressly exempted by the Exchange) make an announcement if the profits or net tangible assets are less than the amount guaranteed. Any such announcement must include details of:

- (1) the shortfall and the adjustment, if any, of the consideration for the transaction;
- (2) whether the connected person fulfilled its obligations under the guarantee;
- (3) whether or not the listed issuer exercised any option it held under the terms of the guarantee, and the reasons for its decision; and
- (4) the opinion of the independent non-executive directors as to whether:
 - (a) the connected person fulfilled its obligations; and
 - (b) the decision to exercise or not to exercise any option under the guarantee is fair and reasonable and in the interests of the shareholders as a whole.

Note: An option under the terms of the guarantee is also subject to the requirements of rules 20.54 to 20.58.

Contents of circular

General principles

20.46 All circulars sent by a listed issuer to holders of its listed securities must:

- (1) provide a clear and adequate explanation of its subject matter and demonstrate the advantages and disadvantages of the transaction for the listed issuer;
- (2) where practicable, include an arithmetical evaluation in the circular; and

- (3) if voting is required, contain:
- (a) all information necessary to allow the holders of securities to make a properly informed decision;
 - (b) a heading drawing attention to the importance of the document and advising holders of securities who are in any doubt as to what action to take to consult appropriate independent advisers;
 - (c) a statement as to whether, in the independent non-executive directors' opinion, the transaction is fair and reasonable and in the interests of the shareholders as a whole; and
 - (d) a recommendation from the independent non-executive directors to the independent shareholders as to how to vote; and

Note: If there are no independent non-executive directors who can advise the independent shareholders on the voting action required, the independent financial adviser should so advise the independent shareholders.

- (4) must contain a separate letter from an independent financial adviser acceptable to the Exchange stating whether, in the financial adviser's opinion, the transaction is fair and reasonable and in the interests of the shareholders as a whole. If voting is required, the independent financial adviser must make a recommendation to the independent non-executive directors as to how the independent shareholders should vote.

Specific disclosure in circular

20.47 The circular must contain at least:

- (1) a prominent and legible disclaimer on the front cover in the form set out in rule 2.19;
- (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;
- (3) full details of the transaction including:
 - (a) the date of the transaction and the parties to it;
 - (b) a general description of any assets concerned. If any of the assets are securities, the circular should include the name of the company in which the shares are or were held and a general description of its activities;
 - (c) a description of the terms and conditions of the consideration and a statement of the total consideration;
 - (d) the name of the connected person concerned (and associate, if applicable);
 - (e) a statement of the nature of an associate's relationship with any controller and the name and office held by that controller; and
 - (f) the nature and extent of the interest of the connected person in the transaction;

- (4) the information regarding the listed issuer specified in the following paragraphs of Appendix 1 Part B:
- 1 — name
 - 2 — directors' responsibility
 - 5 — expert statements
 - 10 — securities to be issued (if applicable)
 - 29(2) — requirements if there is a profit forecast
 - 32 — no material adverse change
 - 38 — directors' interests
 - 39 — directors' service contracts
 - 40 — directors' interests in assets
 - 42(2)(a) & (c) — documents on display
- (5) where independent shareholders' approval is required, a statement that the connected person and its associates will not vote;
- (6) an independent valuation if the primary significance of the asset being acquired or disposed of is its capital value (for example, real property);
- (7) where independent shareholders' approval is required, a recommendation from the independent non-executive directors as to how to vote;
- (8) a copy of the independent financial adviser's opinion letter referred to in rule 20.16, which must contain:
- (a) the reasons for the opinion;
 - (b) the key assumptions made;
 - (c) the factors taken into consideration in forming the opinion;
 - (d) a statement as to whether the transaction is on normal commercial terms, in the ordinary and usual course of business, fair and reasonable and in the interests of the shareholders; and
 - (e) where independent shareholders' approval is required, advice from the independent financial adviser to the independent non-executive directors on whether they should recommend that independent shareholders vote in favour of the transaction;
- (9) in the case of a continuing connected transaction, details of the cap and an explanation of how it was calculated;
- (10) where a listed issuer acquires a company or business from a connected person who provides a guarantee of the profits or net tangible assets of that company or business,
- (a) statements that:
 - (i) the listed issuer will make an announcement if the profits or net tangible assets are less than the amount guaranteed and will include details in its next published annual report and accounts;
 - (ii) the independent non-executive directors of the listed issuer will provide an opinion in the listed issuer's next published annual report and accounts as to whether the connected person has fulfilled its obligations under the guarantee; and

- (b) details of any option granted to the listed issuer to sell the company or business back to the connected person;

Note: An option under the terms of the guarantee is also subject to the requirements of rules 20.54 to 20.58.

- (11) information as to the interests (if any) of the Sponsor and its directors, employees and associates (as referred to in rule 6.36) and all directors and management shareholders of the issuer and their respective associates (as referred to in rule 11.04); and
- (12) any additional information requested by the Exchange.

**Additional information to be included in circular
where connected transaction is also a Chapter 19 transaction**

- 20.48 Where a connected transaction is also a share transaction, discloseable transaction, major transaction, very substantial acquisition or reverse takeover, the circular must also contain the information required by Chapter 19 for that type of transaction.
- 20.49 Where a notice of meeting to approve any proposed transaction has been sent to shareholders and subsequently the transaction becomes a connected transaction, the Exchange will require the connected person to abstain from voting at that meeting. A further announcement and circular should be made to inform shareholders that the connected person will not vote. The Exchange reserves the right to require the circular to include the opinion of the independent non-executive directors and an independent financial adviser (in the form of a separate letter) on the transaction and any other information set out in rules 20.46 and 20.47.

Financial assistance

General

- 20.50 Any transaction involving a connected person and financial assistance which is not exempted under rules 20.52 or 20.53 is subject to the reporting, announcement and independent shareholders' approval requirements of this Chapter. Such transactions include, but are not limited to, the grant of financial assistance by a listed issuer which is not in the ordinary and usual course of business and not on normal commercial terms (or better to the listed issuer).

Treatment of attributable interest in calculating proportionate financial assistance

- 20.51 In calculating proportionate financial assistance to a company in which both the listed issuer and a connected person are shareholders, the Exchange will not consider the listed issuer's attributable interest in the company receiving the financial assistance. For example, where a principal purpose or effect of the transaction is for a non wholly-owned subsidiary of the listed issuer to grant financial assistance on normal commercial terms (or better to the listed issuer) to a company in which another non wholly-owned subsidiary of the listed issuer and a connected person are both shareholders, the Exchange will calculate the proportionate financial assistance from the listed issuer's point of view by reference to the equity interest of the group company which directly holds the interest in the company receiving the financial assistance.

Exempt from reporting, announcement and independent shareholders' approval requirements

20.52 The following connected transactions are exempt from the reporting, announcement and independent shareholders' approval requirements of this Chapter:

- (1) financial assistance provided by a listed issuer for the benefit of a connected person, or a company in which both the listed issuer and a connected person are shareholders:
 - (a) in the ordinary and usual course of business:
 - (i) on normal commercial terms (or better to the listed issuer); or
 - (ii) not on normal commercial terms (or better to the listed issuer) but where the total value of the assistance plus any preferential benefit to the connected person or the company is less than the higher of either HK\$1,000,000 or 0.03% of the listed issuer's net tangible asset value; or
 - (b) not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer), where the total value of the assistance plus any preferential benefit to the connected person or the company is less than the higher of either HK\$1,000,000 or 0.03% of the listed issuer's net tangible asset value; or
- (2) financial assistance provided by a connected person for the benefit of a listed issuer on normal commercial terms (or better to the listed issuer) where no security over the assets of the listed issuer is granted to the connected person in respect of the financial assistance.

Exempt from independent shareholders' approval requirements

20.53 The following connected transactions are normally only subject to the reporting and announcement requirements set out in rules 20.34 and 20.35 respectively:

- (1) financial assistance provided by the listed issuer in the ordinary and usual course of business to a connected person, or a company in which both the listed issuer and a connected person are shareholders, not on normal commercial terms (or better to the listed issuer), where the total value of the assistance plus any preferential benefit to the connected person or the company is less than the higher of either HK\$10,000,000 or 3% of the value of the net tangible assets of the listed issuer; or
- (2) financial assistance provided by the listed issuer not in the ordinary and usual course of business but on normal commercial terms (or better to the listed issuer) to:
 - (a) a connected person where the total value of the assistance plus any preferential benefit to the connected person is less than the higher of either HK\$10,000,000 or 3% of the value of the net tangible assets of the listed issuer; or
 - (b) a company in which both the listed issuer and a connected person are shareholders, provided that:
 - (i) the assistance being provided is in proportion to the listed issuer's equity interest in the company. In addition, any guarantees given by the listed issuer must be on a several (and not a joint and several) basis; or

Note: Where the total value of the assistance plus any preferential benefit to the company is less than 15% of the value of the net tangible assets of the listed issuer, the transaction is only subject to the reporting requirements prescribed in rule 20.34.

- (ii) if the assistance being provided is not in proportion to the listed issuer's equity interest in the company or the guarantees given by the listed issuer are not on a several basis, the total value of the assistance plus any preferential benefit to the company is less than the higher of either HK\$10,000,000 or 3% of the value of the net tangible assets of the listed issuer.

Options

Definitions

- 20.54 The definitions set out in rule 19.59 also apply to this Chapter.
- 20.55 The grant, acquisition, transfer, or exercise of an option involving a listed issuer and its connected person will be treated as a connected transaction. The connected transaction will be classified pursuant to the de minimis criteria under rules 20.23(2) or 20.24. The listed issuer must comply with the connected transaction requirements of the relevant classification and other specific requirements of rules 20.56 to 20.58.
- 20.56 The following applies to an option involving a listed issuer and a connected person, the exercise of which is not at the listed issuer's discretion:
- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. The consideration (including the premium and the exercise price) and the value of the underlying assets will be used for the purpose of classification;
 - (2) on the exercise of the option, such exercise must be announced pursuant to the requirements of Chapter 16 as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter; and
 - (3) if the grant of the option has previously been announced pursuant to the requirements of this Chapter, the listed issuer must as soon as reasonably practicable upon:
 - (a) the expiry of the option;
 - (b) the option holder notifying the grantor that the option will not be exercised; or
 - (c) the transfer by the option holder of the option to a third party(whichever is the earliest) announce such fact in accordance with the requirements of Chapter 16.
- 20.57 The following applies to an option involving a listed issuer and a connected person, the exercise of which is at the listed issuer's discretion:
- (1) on the grant of the option, only the premium will be taken into consideration for the purpose of classification; and
- Note: Where the premium represents 15% or more of the sum of the premium and the exercise price, the value of the underlying assets and the sum of the premium and the exercise price will be used for the purpose of classification.*
- (2) on the exercise of the option, the exercise price and the value of the underlying assets will be used for the purpose of classification; and

Note: Where an option is exercised in stages, the Exchange may at such stage require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction.

- (3) non-exercise of the option or transfer of the option to a third party will be treated as if the option was exercised. The exercise price, the value of the underlying assets and (if applicable) the premium for transferring the option will be used for the purpose of classification.

20.58 For the purpose of rules 20.56(1) and 20.57(1), where on the grant of the option, the actual monetary value of the premium, the exercise price, and the value of the underlying assets have not been determined, the listed issuer must demonstrate to the satisfaction of the Exchange the highest possible monetary value, which will then be used for the purpose of classification. Failure to do so may result in the transaction being subject to all connected transaction requirements under this Chapter.

Note: The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, and the value of the underlying assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification as a result, the listed issuer must announce this fact in accordance with the requirements of Chapter 16 as soon as reasonably practicable and comply with the additional requirements of such higher classification.