

Rule Requirements relating to Notifiable Transactions, Connected Transactions and Amendments to Articles of Association

Status of “Frequently Asked Questions”

The following frequently asked questions (FAQs) are designed to help issuers to understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

Part 1 – Notifiable Transactions

| No. | Main Board Rules | GEM Rules | Query | Response |
|---|------------------|-----------|---|--|
| <u>Definition of transaction</u> | | | | |
| 1. | 14.04(1) | 19.04(1) | <p>An issuer proposes to liquidate a subsidiary.</p> <p>Is the proposed voluntary liquidation of the subsidiary subject to the notifiable transaction requirements?</p> | <p>The process of voluntary liquidation does not constitute a “transaction”. However, the liquidation process may involve certain transactions that are subject to notifiable transaction Rules, for example, disposal of the subsidiary’s assets.</p> |
| 2. | 14.04(1) | 19.04(1) | <p>Listco proposes to form a joint venture with an independent third party.</p> <p>According to the joint venture agreement, the transfer of interest in the joint venture by Listco or the joint venture partner to any third parties is subject to a right of first refusal of the other shareholder. Is the grant of the right of first refusal by/to Listco a transaction under the notifiable transaction rules?</p> | <p>In this case, the right of first refusal gives Listco or the joint venture partner (as the case may be) the right to acquire the other’s interest in the joint venture before the other can dispose of it to any third party. Granting the right of first refusal by/to Listco is not a notifiable transaction given that (i) no consideration is payable for the right and (ii) Listco will still have the discretion on whether to acquire or dispose of (as the case may be) the interest in the joint venture when the right is exercised. If Listco or the joint venture partner exercises the right of first refusal, the disposal or acquisition by Listco would be a transaction.</p> |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-------------------------------------|------------------|-------------|--|--|
| 3. | 14.04(1)(a) | 19.04(1)(a) | <p>The court has ordered Listco to sell its property to settle an outstanding loan.</p> <p>Is the forced sale of the property by court order subject to the notifiable transaction requirements?</p> | <p>Since Listco is bound to follow the court order and has no discretion to act in an opposite manner, the sale of the property by the court order is not regarded as a “transaction”. Therefore the notifiable transaction requirements are not applicable in this situation. Nevertheless, if the information is inside information which requires disclosure under the Inside Information Provisions, Listco must also simultaneously announce the information under Main Board Rule 13.09(2)(a)/ GEM Rule 17.10(2)(a)¹.</p> <p><i>Note:</i></p> <p><i>1. Amendment made in light of the Rule changes consequential on the statutory backing to issuers’ continuing obligation to disclose inside information, which became effective on 1 January 2013. (Added in January 2013)</i></p> |
| 4. | 14.04(1)(a) | 19.04(1)(a) | Do the notifiable transaction rules apply to share repurchases by an issuer? | Repurchases by an issuer of its own shares are normally not subject to the notifiable transaction rules. |
| <u>Size test computation</u> | | | | |
| 5. | 14.07 | 19.07 | How should an issuer compute the percentage ratios for providing financial assistance to a third party? | For assets ratio and consideration ratio, the numerator will be the value of the financial assistance plus any “monetary advantage” (see |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-----|------------------|-----------|--|---|
| | | | | <p>Main Board Rule 14.12/ GEM Rule 19.12) accruing to the borrower.</p> <p>The revenue ratio and profits ratio are applicable when there is an identifiable income from providing the financial assistance (e.g. interest income). The annual amount will be used as the numerator for calculating these ratios.</p> |
| 6. | 14.07 | 19.07 | <p>Listco proposes to subscribe for some convertible bonds issued by Company X which is an independent third party. Listco will have the sole discretion on whether to convert the bonds into Company X's new shares according to the terms of the bonds.</p> <p>Is the subscription of the convertible bonds a transaction for Listco under the notifiable transaction rules?</p> <p>If Listco exercises the conversion rights attached to the bonds, the acquisition of Company X's interest would be a major transaction or above. Can Listco seek prior shareholder approval for any exercise of the conversion rights when it subscribes for the bonds?</p> | <p>Subscription of the convertible bonds is a form of financial assistance provided by Listco to Company X. Listco should compute the percentage ratios for classifying the subscription under the notifiable transaction rules.</p> <p>When Listco proposes to exercise any conversion rights attached to the bonds, it will have to comply with the applicable notifiable transaction requirements for the acquisition of an interest in Company X.</p> <p>Under the notifiable transaction rules, it is acceptable for Listco to obtain prior shareholder approval for the exercise of the conversion rights at the time of subscription of the convertible bonds provided that it can provide sufficient information to its shareholders to assess the transaction.</p> |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-----|-----------------------------------|-----------------------------------|--|---|
| 7. | 14.07(2) and (3) | 19.07(2) and (3) | Do profits ratio and revenue ratio apply to an acquisition of fixed assets (e.g. equipment and machinery) by an issuer for its own use in its ordinary and usual course of business? | The revenue and profits ratios are not applicable if these assets do not have an identifiable income stream. |
| 8. | 14.07(2) and (3), 14.17, 14.20 | 19.07(2) and (3), 19.17, 19.20 | <p>The latest audited accounts of Listco cover a period of 18 months due to the change in financial year end date.</p> <p>Should Listco use the annualised profits and revenue for computing the profits ratio and the revenue ratio?</p> | While the Listing Rules require an issuer to calculate the revenue and profits ratios based on figures in its latest audited accounts, these calculations may produce anomalous results in the circumstances described and alternative size tests using annualised figures may be acceptable. Listco should consult the Exchange if it proposes to adopt the alternative size tests. |
| 9. | 14.07(3), 14.14, 14.20 | 19.07(3), 19.14, 19.20 | <p>Listco's principal businesses are securities trading and brokerage. In its latest audited accounts, Listco changed the presentation of "turnover" using the gains or losses from sale of investments on a net basis, rather than presenting the sale proceeds (as turnover) and the carrying value of the investments (as costs of sale) separately as in its previous accounts.</p> <p>Listco proposes to acquire a target company. If the revenue ratio calculated based on the "turnover" presented in Listco's latest accounts (i.e. the net gain/loss from sale of investments) produces an anomalous result, can Listco submit an alternative size test using the proceeds from sale of investments under</p> | <p>For revenue ratio calculation, "revenue" normally means revenue arising from the principal activities of a company.</p> <p>Since securities trading is a principal activity of Listco, it is normally acceptable for Listco to adopt an alternative size test using the proceeds from sale of investments as the denominator if the relevant information is also available from its accounts. Listco must consult the Exchange if it proposes to adopt an alternative size test.</p> |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-----------|---|-----------|--|---|
| | | | its securities trading business as the denominator? | |
| <u>9.</u> | <u>(FAQ withdrawn on 1 October 2019)</u> | | | |
| 10. | 14.07(5) | 19.07(5) | <p>An issuer proposes to enter into an acquisition. Its subsidiary will issue new shares to the vendor to satisfy part of the consideration.</p> <p>Is the issuer required to calculate the equity capital ratio for classifying the proposed acquisition?</p> | <p>The equity capital ratio is intended to apply to a transaction involving issue of equity capital of the listed issuer itself as consideration, including any securities convertible into the issuer's equity capital.</p> <p>In this case, the equity capital ratio is not applicable as the proposed acquisition involves issue of the securities of a subsidiary but not the issuer.</p> |
| | <u>Aggregation of transactions</u> | | | |
| 11. | 14.22 | 19.22 | <p>The Listing Rules provide that the Exchange may require an issuer to aggregate a series of transactions if they are all completed within a 12 month period or are otherwise related.</p> <p>How is the "12 month period" determined – with reference to the date of completion of the transactions or to their agreement dates?</p> | <p>The "12 month period" should be calculated by reference to the completion date of the previous transaction(s).</p> |
| 12. | 14.23A | 19.23A | <p>Main Board Rule 14.23A provides that the Exchange will not aggregate a series of transactions carried out by an issuer in the course of construction, development or refurbishment of an asset for the issuer's own</p> | <p>(1) Given that the property is constructed for Listco's own use in its ordinary and usual course of business, the Rule will apply in the circumstances described.</p> |

| No. | Main Board Rules | GEM Rules | Query | Response |
|---|------------------|-----------|--|---|
| | | | <p>use in its ordinary and usual course of business if the sole basis for aggregation is that the transactions form parts of one asset.</p> <p>Does the Rule apply to the transactions carried out by Listco in the course of construction of a property for (1) its own use as an office; or (2) rental purpose as an investment property?</p> | <p>(2) The Rule will apply if property investment is an ordinary and usual course of business of Listco.</p> <p>In the above situations, Listco should note that each individual contract or agreement with a third party vendor is itself a transaction and subject to the notifiable transaction requirements if it exceeds the threshold(s) triggering the notifiable transaction rules.</p> |
| <u>Announcement requirements</u> | | | | |
| 13. | 14.58(5) | 19.58(6) | <p>The Listing Rules require an issuer to disclose in the announcement the basis for determining the consideration for the transaction. How much detail should be provided by the issuer?</p> | <p>The disclosure is intended to help shareholders understand how the issuer's directors determined the consideration. The level of detail will depend on the circumstances of each case. Nevertheless, the directors are normally expected to describe the key factors that they have taken into account when making the determination.</p> |
| 14. | 14.58(7) | 19.58(8) | <p>The Listing Rules require an issuer to disclose in the announcement "<i>where applicable, the net profits (both before and after taxation and extraordinary items) attributable to the assets which are the subject of the transaction for the two financial years immediately preceding the transaction</i>".</p> <p>Is the requirement applicable if the target</p> | <p>Yes. The disclosure requirement applies to the net profits or losses attributable to the target company for the two financial years immediately preceding the transaction, or if less, the period since its incorporation or establishment.</p> |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-----|---|------------------------|---|---|
| | | | company recorded net losses for the last 2 years or it has a trading record of less than 2 years? | |
| 15. | 14.60(3)(a) | 19.60(3)(a) | <p>Listco proposes to dispose of its interest in a subsidiary.</p> <p>The gain or loss on the disposal can only be ascertained at the completion of the disposal. Is Listco required to disclose this gain or loss in its announcement when it enters into the agreement for the proposed disposal?</p> | Although the actual gain or loss on the disposal is yet to be determined, Listco should disclose the expected gain or loss and its basis in the announcement under the rule. If Listco expects that there will be a difference between the actual gain or loss on the disposal and the disclosed amount, it should explain in the announcement the reason for the difference. |
| 16. | 14.60(5) | 19.60(5) | <p>The Rule requires an issuer to disclose in the announcement information on the shareholders who have approved or will approve the major transaction by way of a written certificate.</p> <p>After issuing an announcement for a major transaction, Listco decides to obtain a written shareholder approval of the major transaction. Is it required to issue a further announcement to disclose this fact?</p> | Yes. Listco should issue a further announcement to disclose the information required under Main Board Rule 14.60(5). |
| | <u>Shareholder approval requirements</u> | | | |
| 17. | 14.44, 14A.06(5), 14A.37 | 19.44, 20.06(5), 20.35 | An issuer proposes to obtain written shareholder approval of a major transaction and make relevant disclosure in the | The Listing Rules do not specifically require an issuer to seek the Exchange's prior consent for the written shareholder approval of a major |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-------------------------------------|------------------|---------------|---|---|
| | | | <p>announcement. Does the issuer need to obtain the Exchange's prior approval of this arrangement before it publishes the announcement?</p> | <p>transaction. Nevertheless, if the written approval is to be given by a group of shareholders, the Rules require the issuer to provide sufficient information to the Exchange to demonstrate that the shareholders are a "closely allied group of shareholders".</p> <p>If the major transaction is also a connected transaction, a waiver from convening the general meeting is required under the connected transaction rules.</p> <p><i>Note: Rule reference updated in July 2014.</i></p> |
| 18. | 14.44, 14.86 | 19.44, 19.86 | <p>Listco proposes a major transaction involving acquisition of a target company. Listco's controlling shareholder holds 60% of Listco and has given written approval for the acquisition.</p> <p>If Listco subsequently becomes aware that the reporting accountants would issue a modified opinion in the accountants' report of the target company, is Listco required to convene a general meeting to seek shareholder approval of the major transaction?</p> | <p>Under Main Board Rule 14.86, the Exchange will not accept a written shareholder approval of a major transaction if the reporting accountants give a modified opinion in the accountants' report. Listco should convene a general meeting to seek shareholder approval of the major transaction.</p> <p><i>(Updated on 1 March 2019)</i></p> |
| <u>Circular requirements</u> | | | | |
| 19. | 14.66(10) and | 19.66(11) and | Listco's circular for a major acquisition will | (1) We will normally consider it acceptable |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-----|------------------|-----------|--|---|
| | (12) | (13) | <p>contain an accountants' report on the target being acquired, a statement on sufficiency of working capital and an indebtedness statement.</p> <p>(1) The Listing Rules require Listco to provide a letter from its financial advisers or auditors confirming that the working capital statement has been made by the directors after due and careful enquiry and persons or institutions providing finance have confirmed in writing that such facilities exist. Is it acceptable for Listco to provide a confirmation letter from the reporting accountants instead of its financial advisers or auditors?</p> <p>(2) Does the indebtedness statement need to be reviewed by professional accountants or advisers?</p> | <p>for the reporting accountants to issue the confirmation letter in respect of the working capital statement contained in the circular.</p> <p>(2) The Listing Rules do not specifically require a review of the indebtedness statement by professional accountants or advisers. It is up to Listco to decide whether the review is necessary.</p> |

Part 2 – Connected Transactions

| No. | Main Board Rules | GEM Rules | Query | Response |
|---|-------------------|-----------------|--|---|
| <u>Definition of connected transaction</u> | | | | |
| 20. | 14A.24(4), 14A.25 | 20.22(4), 20.23 | <p>Company X is Listco’s substantial shareholder.</p> <p>Listco proposes to acquire from an independent third party certain convertible notes issued by Company X. Is this a connected transaction for Listco?</p> | <p>Although the counterparty is an independent third party, the acquisition would result in Listco holding the outstanding convertible notes and in substance providing financial assistance to Company X. The acquisition is a connected transaction for Listco.</p> <p><i>Note: Rule reference updated in July 2014.</i></p> |
| <u>Announcement requirements</u> | | | | |
| (FAQ withdrawn on 1 July 2014) | | | | |
| 22. | 14A.68(6) | 20.66(6) | <p>Under the Listing Rules, when an issuer proposes to sell to a connected person an asset which it has held for 12 months or less, it must disclose the original acquisition cost of the asset in the announcement.</p> <p>Does this disclosure requirement apply if the disposal target is a company set up by the issuer for 12 months or less?</p> | <p>The disclosure requirement is intended to apply to disposals of assets (including companies or businesses) that were acquired by the issuer in the last 12 months.</p> <p>In this case, the requirement would apply if the disposal is in substance a disposal of the underlying assets that were acquired by the issuer in the last 12 months.</p> <p><i>Note: Rule reference updated in July 2014.</i></p> |

Part 3 – Amendments to articles of association

| No. | Main Board Rules | GEM Rules | Query | Response |
|------------|---|--|--|---|
| 23. | 2.07A, 13.51(1), Appendix 3 paragraph 5 | 16.04A, 17.50(1), Appendix 3 paragraph 5 | <p>Listco proposes to send corporate communications to its shareholders using electronic means. For this purpose, Listco will put in place adequate arrangements that comply with Main Board Rule 2.07A and all applicable laws and regulations. It will also seek shareholder approval for amending its articles of association to allow it to use electronic means to communicate with its shareholders.</p> <p>Listco’s proposed amendments to its articles of association will comply with (i) the laws of its place of incorporation and (ii) the Listing Rules except Paragraph 5 of Appendix 3 to the Main Board Rules.</p> <p>Under Paragraph 5 of Appendix 3, an issuer’s articles of association must provide that a copy of its director’s report or the summary financial report must be delivered or sent by post to the registered address of every member.</p> <p>Would the Exchange consider that the proposed amendment of the articles of association by Listco a breach of Paragraph 5 of Appendix 3 to the Main Board Rules?</p> | <p>The purpose of Main Board Rule 2.07A is to facilitate issuers’ greater use of electronic means to communicate with shareholders to the extent permitted under applicable laws and regulations and their own constitutional documents. For this purpose, Paragraph 5 of Appendix 3 should be read in conjunction with Rule 2.07A.</p> <p>Provided that Listco’s proposal has satisfied all the requirements under Rule 2.07A and is permitted under all applicable laws and regulations, the proposed amendments to its articles of association would not be regarded as a breach of Paragraph 5 of Appendix 3.</p> |

| No. | Main Board Rules | GEM Rules | Query | Response |
|-----|---|-----------|---|--|
| 24. | 13.51(1) | 17.50(1) | <p>Under Main Board Rule 13.51(1)/ GEM Rule 17.50(1), an issuer proposing to amend its articles of association must submit to the Exchange a letter to the issuer from its legal advisers confirming that the proposed amendments comply with the Listing Rules and the laws of the place of incorporation of the issuer.</p> <p>Listco will amend its articles of association and proposes the following arrangements:</p> <ul style="list-style-type: none"> - Can Listco appoint one legal adviser to opine on the compliance with Listing Rules and another legal adviser to opine on the compliance with the laws of the place of incorporation of the issuer? - Can the confirmation letter be issued by Listco's in-house legal counsel? | Yes. The arrangements are acceptable as long as Listco considers the persons have the professional qualifications and experience to provide the confirmation letter. |
| 25. | (FAQ relocated to Series 17 No. 14A on 28 December 2018) | | | |
| 26. | (FAQ relocated to Series 17 No. 26B on 28 December 2018) | | | |
| 27. | (FAQ relocated to Series 17 No. 26C on 28 December 2018) | | | |