



香港交易所

THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

NEWS RELEASE

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ANNOUNCEMENT

Implications of the amendments to the mandatory offer provisions of the Hong Kong Code on Takeovers and Mergers on the Exchange's Main Board and GEM Listing Rules

The Stock Exchange of Hong Kong Limited ("The Exchange") wishes to inform the market on the arrangements for issuers in complying with the Exchange's Main Board and GEM Listing Rules which are affected by the amendments to the Hong Kong Code on Takeovers and Mergers as announced by the Securities and Futures Commission on 19 October 2001.

- For restrictions on disposal of shares by controlling shareholders/initial management shareholders following a new listing, the new threshold level of 30% will apply for listing documents issued on or after 19 October 2001. For waivers granted pursuant to the Joint Announcement by the Securities and Futures Commission and the Exchange dated 11 March 2000 to certain GEM issuers, the threshold level of 35% will still apply.
- Issuers with on-going transactions which became connected transactions on 19 October 2001 must, subject to applying for a conditional waiver from the Exchange for a period of 3 years, notify the investing public by way of an announcement within 3 months from the date of this announcement.
- Issuers having a shortfall in their public float after 19 October 2001 must, subject to applying for a conditional waiver from the Exchange, notify the investing public by way of an announcement within 3 months from the date of this announcement.
- Investment companies listed under Chapter 21 of the Main Board Listing Rules who own or control 30% or more but less than 35% of underlying investments and therefore are not in compliance with paragraph 21.04(3)(a) of the Main Board Listing Rules after 19 October 2001 must, subject to applying for a conditional waiver from the Exchange, notify the investing public by way of an announcement within 3 months from the date of this announcement.

Issuers who wish to apply for the applicable waivers from the relevant Listing Rules should submit all relevant supporting information together with their applications.

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Where applicable and unless otherwise specified, arrangements set out in this announcement apply both to Main Board and GEM issuers.

Unless otherwise specified, the terms “controlling shareholder” and “associate” should be interpreted using the threshold level of 30% with effect from 19 October 2001 and issuers must comply with the relevant Listing Rules requirements.

Issuers are encouraged to seek guidance from the Exchange in case of doubt.

Background

The Securities and Futures Commission announced on 19 October 2001 that, among other things, the threshold for triggering a mandatory offer obligation under Rule 26.1 of the Code on Takeovers and Mergers had been reduced from 35% to 30% with immediate effect. As a result, the level of voting power at general meetings relevant to defining “controlling shareholder” and “associate” under the Exchange’s Main Board and Growth Enterprise Market (“GEM”) Listing Rules is reduced from 35% to 30%.

The Exchange wishes to inform the market on the arrangements for issuers in complying with the Exchange's Main Board and GEM Listing Rules as a result of these amendments. The Securities and Futures Commission has granted its consent under Rule 2.04 of the Main Board Listing Rules and Rule 2.07 of the GEM Listing Rules for the relevant arrangements set out below.

The following arrangements will apply to transactions entered into before 19 October 2001 with on-going compliance obligations

Restrictions on disposal of shares by controlling shareholders/initial management shareholders following a new listing

1. For restrictions on disposal of shares by controlling shareholders/initial management shareholders following a new listing, only individuals/entities disclosed as controlling shareholders/initial management shareholders in listing documents issued before 19 October 2001 are subject to such restrictions on disposal of shares. For listing documents issued before 19 October 2001, the old threshold level of 35% will apply. For listing documents issued on or after 19 October 2001, the new threshold level of 30% will apply.

Waivers were granted pursuant to the Joint Announcement by the Securities and Futures Commission and the Exchange dated 11 March 2000 to certain GEM issuers to reduce the lock-up period applicable to initial management shareholders from 2 years to 6 months provided that no controlling shareholders are allowed to dispose of any relevant securities in the second 6 months period after listing if such disposal would result in the controlling shareholder ceasing to have control over 35% of the issuer. For such waivers, the threshold level of 35% will still apply.

Connected transactions

2. For on-going transactions with a company owned as to 30% or more but less than 35% by a connected person and which became connected transactions on 19 October 2001 (because the company became an “associate”), issuers should apply for a waiver from strict compliance with the relevant Listing Rules requirements for a period of 3 years subject to the issuer notifying the investing public by way of an announcement within 3 months from the date of this announcement. The following will result in termination of this arrangement and issuers will need to comply in full with the requirements under the relevant Listing Rules:-
- any increase in the current shareholding to 35% or above, or any subsequent increase back to 30% or above after a decrease to below 30%, in the relevant company by the connected person concerned; or
 - if the relevant agreement for the on-going connected transaction expires within the 3-year grace period.

Public float

3. Where a connected person holds shares in an issuer through a company in which he owns 30% or more but less than 35% and which will no longer be regarded as being “in public hands” under the new threshold level of 30% (because the company becomes an “associate”), it will not be necessary for the connected person to reduce his or its holdings in the company concerned to below 30% or for the company to reduce its holdings in the issuer. To take advantage of this arrangement, issuers should apply for a waiver from strict compliance with the relevant Listing Rules requirements subject to the issuer notifying the investing public by way of an announcement within 3 months from the date of this announcement. The following will result in termination of the waiver and issuers will need to comply in full with the requirements under the relevant Listing Rules:-
- any increase in the current shareholding to 35% or above, or any subsequent increase back to 30% or above after a decrease to below 30%, in the relevant company by the connected person concerned; or
 - the relevant company increases its shareholding in the issuer.

Investment companies listed under Chapter 21 of the Main Board Listing Rules

4. For investment companies listed under Chapter 21 of the Main Board Listing Rules who either on their own or with any connected person own or control 30% or more but less than 35% of underlying investments and therefore are not in compliance with paragraph 21.04(3)(a) of the Main Board Listing Rules after 19 October 2001, it will not be necessary for them to reduce their ownership in the investment concerned to below 30% so long as its ownership or control is 30% or more but less than 35%. If their ownership or control drops to below 30%, the threshold level of 30% will apply from then on. To take advantage of this arrangement, issuers should apply for a waiver from strict compliance with the relevant Listing Rules requirements subject to the issuers notifying the investing public by way of an announcement within 3 months from the date of this announcement.

The following arrangements will apply to transactions entered into before 19 October 2001 conditional on shareholders' approval

5. For transactions entered into before 19 October 2001 but which are conditional on shareholders' approval, the old threshold level of 35% will apply in defining "controlling shareholder" or "associate". In other words, only those persons who, according to the old threshold level of 35% at the time the transactions were entered into are controlling shareholders or associates, are required to abstain from voting.

The following arrangements will apply to advance booking forms (Form A1 for Main Board applicants and Form 5A for GEM applicants) for new listings submitted before 19 October 2001

6. For new listing applications under advance booking forms (other than those lodged under Chapter 21 of the Main Board Listing Rules) submitted before 19 October 2001 that have been approved in principle by the Listing Committee and the new listing applicants are to be listed before the expiry of the booking form period, where there are significant practical difficulties in applying the new control threshold level of 30%, the old control threshold level of 35% may be used for the purpose of ascertaining who is a controlling shareholder, public float compliance and on-going connected transactions. Upon listing, these issuers will be required to follow the arrangements outlined in 1-3 above.
7. For new listing applications under advance booking forms submitted by applicants to be listed under Chapter 21 of the Main Board Listing Rules before 19 October 2001 that have been approved in principle by the Listing Committee and the new listing applicants are to be listed before the expiry of the booking form period, where there are significant practical difficulties in applying the new control threshold level of 30%, the old control threshold level of 35% may be used for the purposes of paragraphs 21.04(3)(a) and 21.04(4) of the Main Board Listing Rules in ascertaining who is a controlling shareholder, public float compliance and on-going connected transactions. Upon listing, these listing applicants are required to follow the arrangements outlined in 1-4 above.

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8. For new listing applications under advance booking forms submitted before 19 October 2001 that have not yet been approved in principle by the Listing Committee and for those submitted after 19 October 2001, the new control threshold level of 30% is to be used.

General

Issuers who wish to apply for the applicable waivers from the relevant Listing Rules should submit all relevant supporting information together with their applications. Where announcements are required, they must be reviewed by the Exchange prior to their issue and must not be issued until the Exchange has confirmed that it has no further comments thereon.

Where applicable and unless otherwise specified, the arrangements set out in this announcement apply both to Main Board and GEM issuers.

In addition, arrangements for other paragraphs in the relevant Listing Rules affected by the amendments to the Code on Takeovers and Mergers are available on HKEx website at <http://www.hkex.com.hk> and GEM website at <http://www.hkgem.com>.

For any requirements/obligations under the Listing Rules not referred to in this announcement and where applicable, the terms “controlling shareholder” and “associate” should be interpreted using the threshold level of 30% with effect from 19 October 2001 and issuers must comply with the relevant Listing Rules requirements.

Issuers are encouraged to seek guidance from the Exchange in case of doubt.

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Main Board

Other paragraphs in the Listing Rules affected by changes in the control trigger threshold

Rule 6.12(2) – Withdrawal of listing without an alternative listing

Requirement in summary

If an issuer has no alternative listing, the issuer may not voluntarily withdraw its listing on the Exchange unless it has obtained the prior approval of its shareholders in a meeting at which the directors, chief executive and any controlling shareholder or their respective associates shall abstain from voting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder” and “associates”.

Rule 7.19(6)(a)/7.19(7)/7.24(5)(a)/7.24(6) – Rights issue/open offer

Requirement in summary

If the proposed rights issue/open offer would increase either the issued share capital or the market capitalisation of an issuer by more than 50%, the rights issue/open offer must be approved by shareholders at which any controlling shareholders shall abstain from voting in the general meeting.

An issuer shall not effect any rights issue/open offer in the period of 12 months after listing unless it is approved by shareholders at which any controlling shareholders shall abstain from voting in the general meeting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

Rule 14.06 – Very substantial acquisition

Requirement in summary

A very substantial acquisition is an acquisition which would result in a change in control through the introduction of a majority holder or group of holders. If a very substantial acquisition would result in, among other things, a change in control of an issuer, the issuer’s application for a lifting of the suspension will be treated as if it were a new listing application.

Arrangement

For very substantial acquisitions entered into after 19 October 2001, “control” in general refers to the threshold level of 30%.

Rule 14.41 to 14.42 – Major changes

Requirement in summary

An issuer shall not effect any transaction which would result in a fundamental change in its main undertaking as described in the listing document within 12 months of listing unless, among other things, the transaction is approved by shareholders at which any controlling shareholders shall abstain from voting in the general meeting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

Rule 17.04 – Granting of share options to connected persons

Requirement in summary

Share options issued to certain connected persons of an issuer exceeding certain quantitative limits must normally be approved by shareholders of the issuer at which all connected persons shall abstain from voting in the general meeting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “associate” for the purpose of defining “connected person”.

Practice Note 15 3(e) – Shareholders approval for spin-off

Requirement in summary

Under certain situations, spin-offs are subject to shareholders approval and that the controlling shareholder should abstain from voting if his interest as a shareholder is not in all respects identical with those of the other shareholders as a general body.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

Practice Note 19 – Guidance on disclosure under paragraph 2 of the Listing Agreement

A general disclosure obligation will arise where the relevant advance to an entity, including its controlling shareholder, has exceeded 25% of the issuer’s net assets.

A general disclosure obligation will arise where the controlling shareholder of the issuer has pledged its interest in shares of the issuer to, among other things, secure debts of the issuer.

A general disclosure obligation will arise where an issuer enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder and breach of such obligation will cause a default in respect of loans that are significant to the operations of the issuer.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

Appendix 16 paragraph 16(1) – Disclosure in annual accounts and directors’ report

Disclosure is required to be made in annual accounts and directors’ report of any contract of significance with controlling shareholders.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

GEM

Other paragraphs in the GEM Listing Rules affected by changes in the control trigger threshold

Rule 9.05(4) – Suspension of dealings in an issuer’s securities

Requirement in summary

The Exchange retains a discretion to suspend dealings in an issuer’s securities in respect of transactions involving substantial changes in the nature, control or structure of an issuer, where publication of full details is necessary to permit a realistic valuation to be made of the securities concerned.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “control”.

Rule 9.20 – Withdrawal of listing without an alternative listing

Requirement in summary

If an issuer has no alternative listing, the issuer may not voluntarily withdraw its listing on the Exchange unless it has obtained the prior approval of its shareholders in a meeting at which the directors, chief executive and any controlling shareholder or their respective associates shall abstain from voting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder” and “associates”.

Rule 10.29/10.39 – Rights issue/open offer

Requirement in summary

If the proposed rights issue/open offer would increase either the issued share capital or the market capitalisation of an issuer by more than 50%, the rights issue/open offer must be approved by shareholders at which any controlling shareholders shall abstain from voting in the general meeting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

Rule 17.10(15)/31.04(14) – General obligation of disclosure

Requirement in summary

Comments by controlling shareholder and certain other individuals may be considered price sensitive information and a general obligation of disclosure may arise on the issuer's part.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining "controlling shareholder".

Rule 17.14 to 17.20 – Exposure to borrowers and other specific circumstances that may require disclosure

Requirement in summary

A general disclosure obligation will arise where the relevant advance to an entity, including its controlling shareholder, has exceeded 25% of the issuer's net assets.

A general disclosure obligation will arise where the controlling shareholder of the issuer has pledged its interest in shares of the issuer to, among other things, secure debts of the issuer.

A general disclosure obligation will arise where an issuer enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder and breach of such obligation will cause a default in respect of loans that are significant to the operations of the issuer.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining "controlling shareholder".

Rule 17.25 – Material changes following listing

Requirement in summary

Any proposed material change to the general character or nature of the business of an issuer or its group must be announced immediately after it has been the subject of any decision; and other than with the prior approval of independent shareholders of the issuer in general meeting, an issuer may not, during the financial year in which dealings in its securities commenced on GEM or the 2 financial year thereafter, implement any such material change.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder” and “associate” for the purpose of defining “independent shareholders”.

Rule 17.29 – No further issues of securities within 6 months of listing

Requirement in summary

New shares to be issued for an acquisition during the first 6-month period after listing may proceed subject to, among other conditions, that the issue of new shares does not result in a controlling shareholder ceasing to be a controlling shareholder, and the transaction does not result in a change of control of the issuer.

Arrangement

Only individuals/entities disclosed as controlling shareholders in the listing document issued before 19 October 2001 will be subject to the relevant restrictions. Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder” and “control”.

Rule 18.26/18.27 – Disclosure in annual accounts and directors’ report

Requirement in summary

Disclosure is required to be made in annual accounts and directors’ report of any contract of significance with controlling shareholders.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “controlling shareholder”.

Rule 19.06(5) – Reverse takeover

Requirement in summary

A reverse takeover is an acquisition of assets which would result in a change in control of the issuer. In this case, the issuer’s application for a lifting of the suspension will be treated as if it were a new listing application.

Arrangement

For reverse takeover entered into after 19 October 2001, “control” in general refers to the threshold level of 30%.

Rule 23.04 – Granting of share options to connected persons

Requirement in summary

Share options issued to certain connected persons of an issuer exceeding certain quantitative limit must be approved by shareholders of the issuer at which all connected persons shall abstain from voting in the general meeting.

Arrangement

Effective from 19 October 2001, the threshold level of 30% will be used in defining “associate” for the purpose of defining “connected person”.