

Chapter 19B

EQUITY SECURITIES

DEPOSITARY RECEIPTS

Preliminary

19B.01 The Exchange Listing Rules, including Chapters 19 and 19A, apply to the listing of depositary receipts subject to the additional requirements, modifications, exceptions and interpretations set out in this Chapter. The primary principle underlying the Exchange Listing Rules dealing with depositary receipts is that the holders of depositary receipts are to be treated as generally having equivalent rights and obligations as those afforded to shareholders in an issuer under:

- (a) the issuer's constitution;
- (b) the law governing the rights and liabilities as between shareholders and the issuer;
- (c) the Exchange Listing Rules; and
- (d) the Securities and Futures Ordinance and subsidiary legislation (including but not limited to the provisions relating to market misconduct and disclosure of inside information and of interests).

19B.02 References in the Exchange Listing Rules to:

- (a) "holder of depositary receipts" means the holder of one or more depositary receipt certificates as evidenced by the register of depositary receipts maintained by the depositary in Hong Kong;
- (b) "shares" or "securities" shall include depositary receipts; and
- (c) "shareholder" or "member of the issuer" shall include the holder of depositary receipt(s).

19B.03 For the purpose of the Exchange Listing Rules, a depositary shall not be:

- (a) an "associate" or "close associate";
- (b) a "controlling shareholder";
- (c) a "substantial shareholder"; or

(d) excluded from being treated as a member of the public under rule 8.24,

merely by reason of the fact that it is holding shares of an issuer as depositary for the benefit of depositary receipt holders.

19B.04 If an application is made for the listing of depositary receipts, which are instruments which evidence the interests and rights in shares, the issuer of the shares which the depositary receipts represent is the issuer for the purposes of the Exchange Listing Rules and the application will be dealt with as if it were an application for the admission of the shares which they represent. Prospective issuers should consult the Exchange at the earliest opportunity to seek confidential guidance as to their suitability and the suitability of the depositary.

19B.05 A depositary issues depositary receipts as agent of the issuer. The depositary holds the shares represented by the depositary receipts for the benefit of the holders of the depositary receipts. The issuer must ensure that the depositary performs the depositary's obligations under the deposit agreement and the Exchange Listing Rules, and that the rights of depositary receipt holders are fully recognised and are generally equivalent to the rights of shareholders of the issuer.

19B.06 Depositary receipts may be issued in respect of newly issued shares and/or in respect of shares placed with a depositary by existing shareholders provided that the issuer applies to be the issuer of such depositary receipts and assumes the obligations and duties imposed on an issuer by the Exchange Listing Rules. An application for the listing of depositary receipts will not be allowed if the shares which the depositary receipts would represent are already listed on the Exchange and vice versa.

19B.07 (1) Subject to (2) below, rule 8.19 is not applicable to any application for listing in respect of depositary receipts.

(2) An application for the listing of depositary receipts should allow free conversion between the depositary receipts and the issuer's shares from time to time placed with the depositary up to the entire class of the issued shares which the depositary receipts represent or such lower amount as the issuer may prescribe. For the avoidance of doubt, where approval for the listing of the depositary receipts has been granted, the creation or cancellation of depositary receipts resulting from the conversion of any issued shares into depositary receipts or vice versa up to the prescribed amount of the issued shares which the depositary receipt represent for which listing has been sought will not require a further application to the Exchange.

(3) Listing must be sought for all further issues of depositary receipts in excess of those depositary receipts already listed. For the avoidance of doubt, nothing in rule 8.20 shall be construed as requiring listing to be sought for any further issues of shares which the depositary receipts represent.

19B.08 For the purpose of determining the total number of issued shares of the issuer under rule 8.08, the Exchange will take account of the issuer's underlying shares which will be treated as the same class as the depositary receipts representing those shares provided that there is no restriction on the conversion of those shares into depositary receipts.

Depository receipts

19B.09 The following requirements must be satisfied as conditions to the listing of depositary receipts:–

- (a) the depositary receipts must be freely transferable; and
- (b) the securities which the depositary receipts represent must be fully paid and free from all liens and any restriction on the right of transfer to the depositary.

19B.10 The law of the issuer's place of incorporation, as supplemented by the issuer's constitution, must not be inconsistent with the rights of shareholders or of the holders of depositary receipts under Hong Kong law and the Exchange Listing Rules.

Issuer

19B.11 An issuer must be duly incorporated or otherwise validly established under the laws of the place in which it is incorporated or established, and it must operate in conformity with those laws and its memorandum and articles of association or equivalent constitutional documents.

19B.12 An issuer must obtain all necessary statutory or other consents in relation to the listing of depositary receipts from the relevant authorities in the place of its incorporation or establishment prior to the listing of depositary receipts.

19B.13 The issuer is not required to keep a register in Hong Kong of holders of the shares represented by depositary receipts. However, the issuer must ensure that the depositary maintains through an approved Hong Kong share registrar a register of holders of the depositary receipts and the transfers of the depositary receipts in Hong Kong. Only the depositary receipts registered on the Hong Kong register may be traded on the Exchange.

The depositary

- 19B.14 The depositary must be duly incorporated or otherwise validly established under the laws of the place in which it is incorporated or otherwise established and must operate in conformity with those laws and its memorandum and articles of association or equivalent constitutional documents.
- 19B.15 The depositary, including any replacement depositary, must be a suitably authorised and regulated financial institution acceptable to the Exchange. In assessing suitability, the Exchange will also have regard to the depositary's experience in issuing and managing depositary receipts programmes in Hong Kong or overseas.

The deposit agreement

- 19B.16 The deposit agreement must be in a form acceptable to the Exchange. It must be executed by the depositary and the issuer and must provide that the depositary holds on trust (or equivalent arrangements) for the sole benefit of the holders of depositary receipts the securities to which the depositary receipt certificates relate, all rights relating to the securities and all money and benefits that it may receive in respect of them, subject only to payment of the remuneration and proper expenses of the depositary. It must also provide, without limitation, for:
- (a) The appointment of the depositary by the issuer with authorisation to act on behalf of the issuer in accordance with the deposit agreement.
 - (b) The status of depositary receipts as instruments representing ownership interests in shares of an issuer that have been deposited with the depositary.
 - (c) The status of registered holders of depositary receipts as the legal owners of those depositary receipts, without prejudice to the issuer's right under the Securities and Futures Ordinance to investigate the ownership of its shares.
 - (d) The role of the depositary to issue depositary receipts as agent of the issuer, and to arrange for the deposit of the shares which the depositary receipts represent.
 - (e) The duties of the depositary, including the duty to keep in Hong Kong and make available for inspection a register of holders of depositary receipts and the transfers of the depositary receipts and the duty to keep a record of the deposits of shares which the depositary receipts represent, the issue of depositary receipts, the cancellation of depositary receipts and the withdrawal of shares.

- (f) The role and duties of the custodian appointed by the depositary to hold the deposited shares for the account of the depositary on behalf of the holders of the depositary receipts, segregated from all other property of the custodian.
- (g) The mechanism for the issue and registration of depositary receipts by the depositary upon receipt of shares in the issuer and the form of the depositary receipt.
- (h) The right of depositary receipt holders to transfer their depositary receipts and the mechanism for so doing.
- (i) The right of depositary receipt holders to surrender depositary receipts to be cancelled in exchange for the delivery of the shares which the depositary receipts represent, subject to payment of any applicable charges and taxes and any legal or regulatory restrictions.
- (j) The right of depositary receipt holders to receive distributions made on the shares which the depositary receipts represent except in the circumstances (if any) expressly provided for in the deposit agreement. The deposit agreement should separately address the rights and procedures applying to cash distributions, distributions of shares, rights issues or any other distribution accruing to the shares which the depositary receipts represent, in each case adopting the underlying principle that holders of depositary receipts are to be treated as having generally equivalent rights to holders of the shares which the depositary receipts represent. Any conversion of dividends paid in a foreign currency must occur at the market rates prevailing at the time of conversion.
- (k) The right of depositary receipt holders to exercise the voting rights attached to the shares represented by the depositary receipts and the procedures by which depositary receipt holders will be notified of shareholder meetings or solicitations of proxy votes and be entitled to issue instructions to the depositary as to how to exercise their voting rights.
- (l) The manner in which any consolidation or split-up or change in the par value or other reclassification of the issuer's shares will be represented by and accrue to the depositary receipts, in accordance with the principle that holders of depositary receipts are to be treated as having generally equivalent rights to holders of the shares which the depositary receipts represent.
- (m) The procedures by which the depositary and/or the custodian at the direction of the depositary will, in consultation with the issuer, fix record dates for transactions affecting the depositary receipts including distributions, rights issues and notices of shareholder meetings.

- (n) The procedures by which the depositary will at the direction of the issuer despatch to holders of depositary receipts copies of all notices, reports, voting forms or other communications sent by the issuer to its shareholders, and make available for inspection at its principal office and at the office of the custodian copies of any such notices, reports or communication received from the issuer.
- (o) The conditions and process for the issue of new depositary receipts if any depositary receipt certificate is lost, destroyed, stolen or mutilated.
- (p) The obligations of holders of depositary receipts, including any liabilities for taxes and other charges and the obligation to disclose the beneficial ownership of the depositary receipts on request of the issuer or the depositary or any regulator.
- (q) A clear statement of the fees and charges payable by holders of depositary receipts to the depositary and the custodian.
- (r) Procedures for the replacement or removal of the depositary and/or the custodian by or with the consent of the issuer including an obligation to inform depositary receipt holders by advance announcement of any prospective resignation, removal and replacement of the depositary and/or the custodian, and an obligation to inform depositary receipt holders in advance of and seek their prior consent to any material changes to their existing rights and obligations under the deposit agreement.
- (s) Procedures for the amendment of the deposit agreement, including a requirement to provide prior notice to and seek the consent of depositary receipt holders to any material change affecting their existing rights or obligations.
- (t) The governing law of the deposit agreement should be that of Hong Kong or, if other jurisdiction is chosen, one that is generally used in accordance with international practice. The deposit agreement must not contain provisions that preclude any party from electing to submit to the jurisdiction of the courts of Hong Kong for the resolution of any disputes or claims arising from the deposit agreement.

Continuing obligations

19B.17 The issuer is responsible for ensuring the continued suitability of the depositary. The issuer is responsible for ensuring that prior announcement is given to holders of depositary receipts of any change of depositary which identifies the incoming depositary and seeks the consent of holders of depositary receipts to any material changes to the deposit agreement including changes to the rights and obligations of holders of depositary receipts and any changes to the fees and charges payable to the depositary.

19B.18 The issuer is required to issue a prior announcement of any change of custodian.

Trading and settlement

19B.19 The issuer shall comply, or shall ensure that the depositary complies on behalf of the issuer, with the trading and settlement rules at rules 13.58 to 13.62, 13.64 and 13.66 of Chapter 13 of the Exchange Listing Rules subject to any additional charges provided for by the deposit agreement. References in those rules to “securities” shall be read as references to “depositary receipts”.

19B.20 In the event of any amendment to the capital structure of depositary receipts or any amendment to the board lot size-whether because of amendment to the issuer’s capital structure or otherwise-the Exchange reserves the right to request that adequate arrangements are made to enable resulting odd lot holders either to dispose of odd lots or round them up to a board lot. It may be appropriate for the issuer, through the depositary, to appoint a broker as its agent to match the sales and purchases of odd lots or for any major depositary receipt holder itself or by its agent to stand in the market to buy or sell odd lot depositary receipts. The particular circumstances of an issuer may dictate the method by which odd lot holders are to be accommodated and issuers and depositaries are urged to consult the Exchange at the earliest opportunity to agree the appropriate trading method.

Purchase of depositary receipts by the issuer

19B.21 If depositary receipts are purchased by the issuer, the issuer shall surrender the purchased depositary receipts to the depositary. The depositary shall then cancel the surrendered depositary receipts and shall arrange for the shares which the surrendered depositary receipts represent to be transferred to the issuer and such shares shall be cancelled by the issuer.