

# Chapter 13

## EQUITY SECURITIES

### CONTINUING OBLIGATIONS

#### Preliminary

- 13.01 An issuer shall comply (and undertakes by its application for listing (Form A1 of Appendix 5), once any of its securities have been admitted to listing, to comply) with the Listing Rules in force from time to time.
- 13.02 [Repealed 1 January 2013]
- 13.03 The continuing obligations in this Chapter are primarily to ensure the maintenance of a fair and orderly market in securities and that all users of the market have simultaneous access to the same information. Failure by an issuer to comply with a continuing obligation may result in the Exchange taking disciplinary action in addition to its power to suspend or cancel a listing.
- 13.04 An issuer's directors are collectively and individually responsible for ensuring the issuer's full compliance with the Listing Rules.

### DISCLOSURE

#### Introduction

- 13.05 (1) The Exchange has a duty under section 21 of the Securities and Futures Ordinance to ensure, so far as reasonably practicable, an orderly, informed and fair market.
- (2) The Inside Information Provisions impose statutory obligations on listed issuers and their directors to disclose inside information as soon as reasonably practicable after the information has come to the listed issuers' knowledge, and gives the Commission the responsibility for enforcing those obligations. The Commission has issued Guidelines on Disclosure of Inside Information. The Exchange will not give guidance on the interpretation or operation of the SFO or the Guidelines.
- (3) Where the Exchange becomes aware of a possible breach of the Inside Information Provisions, it will refer it to the Commission. The Exchange will not itself take disciplinary action under the Listing Rules unless the Commission considers it not appropriate to pursue the matter under the SFO and the Exchange considers action under the Rules for a possible breach of the Rules appropriate.

- 13.06 (1) This Chapter identifies circumstances in which an issuer must disclose information to the public. These are not alternatives to, and do not in any way detract from, the statutory disclosure obligation found in the Inside Information Provisions.
- (2) The Exchange may require the issuer to make an announcement or halt trading in its listed securities where it considers it appropriate to preserve or ensure an orderly, informed and fair market.
- (3) The Exchange, in discharge of its duty under section 21 of the SFO, will monitor the market, make enquiries when it considers them appropriate or necessary, and may halt trading in an issuer's securities in accordance with the Listing Rules as required.
- 13.06A An issuer and its directors must take all reasonable steps to maintain strict confidentiality of inside information until it is announced.
- 13.06B An issuer must not divulge any information in such a way as to place in a privileged dealing position any person or class or category of persons. It must not release any information in such a way that Exchange transactions may be entered into at prices which do not reflect the latest available information.
- 13.07 An issuer and its directors must seek to ensure that dealings do not take place between parties one of whom does not have inside information which the other possesses.
- 13.08 To maintain high standards of disclosure, the Exchange may require an issuer to announce further information, and impose additional requirements on it, when the Exchange considers that circumstances so justify. However, the Exchange will allow the issuer to make representations before imposing any requirements on it which are not imposed on issuers generally. The issuer must comply with the additional requirements failing which the Exchange may itself publish the information available to it. Conversely, the Exchange may waive, modify or not require compliance with any specific obligations in this Chapter in a particular case, but may require the issuer to enter into an agreement or undertaking as a condition of any dispensation.

### **General obligation of disclosure**

- 13.09 (1) Without prejudice to rule 13.10, where in the view of the Exchange there is or there is likely to be a false market in an issuer's securities, the issuer must, as soon as reasonably practicable after consultation with the Exchange, announce the information necessary to avoid a false market in its securities.

*Notes: 1. This obligation exists whether or not the Exchange makes enquiries under rule 13.10.*

2. *If an issuer believes that there is likely to be a false market in its listed securities, it must contact the Exchange as soon as reasonably practicable.*
- (2) (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.
  - (b) An issuer must simultaneously copy to the Exchange any application to the Commission for a waiver from disclosure under the Inside Information Provisions, and promptly upon being notified of the Commission's decision copy the Exchange with the Commission's decision.

### **Response to enquiries**

- 13.10 Where the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer's listed securities, the possible development of a false market in its securities, or any other matters, the issuer must respond promptly as follows:
- (1) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or
  - (2) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect (*see note 1 below*).

*Notes: 1. The form of the announcement referred to in rule 13.10(2) is as follows:—*

*"This announcement is made at the request of The Stock Exchange of Hong Kong Limited.*

*We have noted [the recent increases/decreases in the price [or trading volume] of the [shares/ warrants] of the Company] or [We refer to the subject matter of the Exchange's enquiry]. Having made such enquiry with respect to the Company as is reasonable in the circumstances, we confirm that we are not aware of [any reasons for these price [or volume] movements] or of any information which must be announced to avoid a false market in the Company's securities or of any inside information that needs to be disclosed under Part XIVA of the Securities and Futures Ordinance.*

*This announcement is made by the order of the Company. The Company's Board of Directors collectively and individually accepts responsibility for the accuracy of this announcement."*

2. *An issuer does not need to disclose inside information under the Rules if disclosure of the information is exempted under the Inside Information Provisions.*
3. *The Exchange reserves the right to direct a trading halt of an issuer's securities if an announcement under rule 13.10(1) or 13.10(2) cannot be made promptly.*

### **Trading halt or trading suspension**

13.10A Without prejudice to the Exchange's ability to direct the halt, suspension and resumption of trading in an issuer's listed securities, an issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension in any of the following circumstances where an announcement cannot be made promptly:

- (1) it has information which must be disclosed under rule 13.09; or
- (2) it reasonably believes that there is inside information which must be disclosed under the Inside Information Provisions; or
- (3) circumstances exist where it reasonably believes or it is reasonably likely that confidentiality may have been lost in respect of inside information which:
  - (a) is the subject of an application to the Commission for a waiver; or
  - (b) falls within any of the exceptions to the obligation to disclose inside information under the Inside Information Provisions in section 307D(2) of the SFO.

*Note: An issuer does not need to disclose inside information under the Rules if disclosure of the information is exempted under the Inside Information Provisions.*

## **Announce information disclosed to other stock exchanges**

13.10B An issuer must announce any information released to any other stock exchange on which its securities are listed at the same time as the information is released to that other exchange.

*Note: An issuer will need to announce overseas regulatory information released by its overseas listed subsidiary if the information is discloseable by the issuer under other rules.*

## **SPECIFIC MATTERS RELEVANT TO THE ISSUER'S BUSINESS**

13.11 (1) Rules 13.12 to 13.19 set out specific instances that give rise to a disclosure obligation on an issuer's part.

*Note: Transactions and financing arrangements of the sort referred to in rules 13.12 to 13.19 may also be subject to Chapters 14 and/or 14A.*

(2) For the purposes of rules 13.12 to 13.19,

(a) the expression "affiliated company" refers to a company which, in accordance with Hong Kong Financial Reporting Standards, is recorded using the equity method of accounting in an entity's financial statements. This includes associated companies and jointly controlled entities as defined in those standards;

(b) [Repealed 1 March 2006];

(c) the expression "relevant advance to an entity" refers to the aggregate of amounts due from and all guarantees given on behalf of:

(i) an entity;

(ii) the entity's controlling shareholder;

(iii) the entity's subsidiaries; and

(iv) the entity's affiliated companies.

(d) [Repealed 1 January 2013]

(3) [Repealed 1 January 2013]

(4) No disclosure is necessary under rules 13.12 to 13.19 where the indebtedness or financial assistance arises from a transaction which was approved by shareholders provided that information equivalent to that specified in rules 13.15 or 13.16, as applicable, was included in the circular to shareholders of the issuer.

(5) [Repealed 1 January 2013]

### **Situations for disclosure**

13.12 The issues set out in rules 13.13 to 13.19 should be viewed on a group basis, including those arising either from a direct relationship or indirectly through subsidiaries and affiliated companies.

### **Advance to an entity**

13.13 Where the relevant advance to an entity exceeds 8% under the assets ratio defined under rule 14.07(1), the issuer must announce the information in rule 13.15 as soon as reasonably practicable. For the avoidance of doubt, an advance to a subsidiary of the issuer will not be regarded as an advance to an entity.

13.14 Where the relevant advance to an entity increases from that previously disclosed under rule 13.13, 13.14, or 13.20 and the amount of the increase since the previous disclosure is 3% or more under the assets ratio defined under rule 14.07(1), the issuer must announce the information in rule 13.15 as soon as reasonably practicable.

13.15 Under rule 13.13 or 13.14, issuers must announce details of the relevant advance to an entity, including details of the balances, the nature of events or transactions giving rise to the amounts, the identity of the debtor group, interest rate, repayment terms and collateral.

13.15A For the purpose of rules 13.13 and 13.14, any trade receivable is not regarded as a relevant advance to an entity if:

- (1) it arose in the issuer's ordinary and usual course of business (other than as a result of the provision of financial assistance); and
- (2) the transaction from which the trade receivable arose was on normal commercial terms.

### **Financial assistance and guarantees to affiliated companies of an issuer**

- 13.16 Where the financial assistance to affiliated companies of an issuer, and guarantees given for facilities granted to affiliated companies of an issuer, together in aggregate exceeds 8% under the assets ratio defined under rule 14.07(1), the issuer must announce as soon as reasonably practicable the following information:
- (1) analysis by company of the amount of financial assistance given to, committed capital injection to, and guarantees given for facilities granted to, affiliated companies;
  - (2) terms of the financial assistance, including interest rate, method of repayment, maturity date, and the security therefor, if any;
  - (3) source of funding for the committed capital injection; and
  - (4) banking facilities utilised by affiliated companies which are guaranteed by the issuer.

### **Pledging of shares by the controlling shareholder**

- 13.17 Where the issuer's controlling shareholder has pledged all or part of its interest in the issuer's shares to secure the issuer's debts or to secure guarantees or other support of its obligations, the issuer must announce the following information as soon as reasonably practicable:
- (1) the number and class of shares being pledged;
  - (2) the amounts of debts, guarantees or other support for which the pledge is made; and
  - (3) any other details that are considered necessary for an understanding of the arrangements.

### **Loan agreements with covenants relating to specific performance of the controlling shareholder**

- 13.18 Where an issuer (or any of its subsidiaries) enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder (e.g. a requirement to maintain a specified minimum holding in the share capital of the issuer) and breach of such an obligation will cause a default in respect of loans that are significant to the issuer's operations, the issuer must announce the following information as soon as reasonably practicable:
- (1) the aggregate level of the facilities that may be affected by such breach;

- (2) the life of the facility; and
- (3) the specific performance obligation imposed on any controlling shareholder.

### **Breach of loan agreement by an issuer**

- 13.19 When an issuer breaches the terms of its loan agreements for loans that are significant to its operations, such that the lenders may demand their immediate repayment, and where the lenders have not issued a waiver in respect of the breach, the issuer must announce such information as soon as reasonably practicable.

### **Continuing disclosure requirements**

- 13.20 Where the circumstances giving rise to a disclosure under rule 13.13 continue to exist at the issuer's interim period end or annual financial year end, the information specified under rule 13.15, as at the interim period end or year end, shall be included in the interim or annual report.
- 13.21 Where an obligation arises under rules 13.17, 13.18 or 13.19, the disclosures required by these rules should be included in subsequent interim and annual reports for so long as circumstances giving rise to the obligation continue to exist.
- 13.22 Where the circumstances giving rise to a disclosure under rule 13.16 continue to exist at the issuer's interim period end or annual financial year end, its interim or annual report must include a combined balance sheet of affiliated companies as at the latest practicable date. The combined balance sheet of affiliated companies should include significant balance sheet classifications and state the issuer's attributable interest in the affiliated companies. If it is not practicable to prepare the combined balance sheet of affiliated companies, the Exchange on the issuer's application may consider accepting, as an alternative, a statement of the indebtedness, contingent liabilities and capital commitments as at the end of the period reported on by affiliated companies.

### **Notifiable transactions, connected transactions, takeovers and share repurchases**

- 13.23 (1) An issuer must announce details of acquisitions and realisations of assets and other transactions required by Chapters 14 and 14A and, where applicable, must circularise holders of its listed securities with their details and obtain their approval of them.
- (2) The issuer shall comply with the Takeovers Code and the Code on Share Buy-backs.

*Note: Where the consideration under an offer includes securities for which listing is being or is to be sought, the offer document(s) will constitute a listing document.*



### **Sufficient operations**

13.24 An issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing of the issuer's securities.

*Note: Characteristics of issuers which are unable to comply with rule 13.24 include:*

- (i) financial difficulties to an extent which seriously impairs an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or*
- (ii) issuers which have net liabilities as at their balance sheet date i.e. issuers whose liabilities exceed their assets.*

13.24A An issuer must, after trading in its listed securities has been suspended, publish quarterly announcements of its developments.

### **Material matters which impact on profit forecasts**

13.24B (1) If, during the profit forecast period, an event occurs which, had it been known when the profit forecast was made, would have caused any of the assumptions upon which the forecast is based to have been materially different, the issuer must promptly announce the event. In the announcement, the issuer must also indicate its view of the likely impact of that event on the profit forecast already made.

- 13.24B (2)
- (a) If profit or loss generated by some activity outside the issuer's ordinary and usual course of business which was not disclosed as anticipated in the document containing the profit forecast, materially contributes to or reduces the profits for the period to which the profit forecast relates, the issuer must announce this information, including an indication of the level to which the unusual activity has contributed to or reduced the profit.
  - (b) The issuer must announce the information under rule 13.24B(2)(a) as soon as it becomes aware that it is likely that the contribution to or reduction in the profits made or to be made by the profit or loss generated or to be generated will be material.

### **Winding-up and liquidation**

13.25 (1) An issuer shall inform the Exchange and publish an announcement of the happening of any of the following events as soon as it comes to its attention:—

- (a) the appointment of a receiver or manager either by any court having jurisdiction or under the terms of a debenture or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer, its holding company or any subsidiary falling under rule 13.25(2);

- (b) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer, its holding company or any subsidiary falling under rule 13.25(2);
  - (c) the passing of any resolution by the issuer, its holding company or any subsidiary falling under rule 13.25(2) that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment;
  - (d) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% under any of the percentage ratios defined under rule 14.04(9) ; or
  - (e) the making of any final judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance which is not subject to any or further appeal, which may adversely affect the issuer's enjoyment of any portion of its assets where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% under any of the percentage ratios defined under rule 14.04(9).
- (2) Rules 13.25(1)(a), (b) and (c) will apply to a subsidiary of the issuer if the value of that subsidiary's total assets, profits or revenue represents 5% or more under any of the percentage ratios defined under rule 14.04(9). For the purpose of this rule 13.25(2), 100% of that subsidiary's total assets, profits or revenue (as the case may be) or, where that subsidiary itself has subsidiaries, the consolidated total assets, profits or revenue (as the case may be) of that subsidiary is to be compared to the total assets, profits or revenue (as the case may be) shown in the issuer's latest published audited consolidated financial statements irrespective of the interest held in the subsidiary.

*Notes:* [Repealed 1 January 2013]

## GENERAL MATTERS RELEVANT TO THE ISSUER'S SECURITIES

### Changes in issued shares – next day disclosure return and monthly return

- 13.25A(1) In addition and without prejudice to specific requirements contained elsewhere in the Exchange Listing Rules, an issuer must, whenever there is a change in its issued shares as a result of or in connection with any of the events referred to in rule 13.25A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.
- (2) The events referred to in rule 13.25A(1) are as follows:
- (a) any of the following:
    - (i) placing;
    - (ii) consideration issue;
    - (iii) open offer;
    - (iv) rights issue;
    - (v) bonus issue;
    - (vi) scrip dividend;
    - (vii) repurchase of shares or other securities;
    - (viii) exercise of an option under the issuer's share option scheme by any of its directors;
    - (ix) exercise of an option other than under the issuer's share option scheme by any of its directors;
    - (x) capital reorganisation; or
    - (xi) change in issued shares not falling within any of the categories referred to in rule 13.25A(2)(a)(i) to (x) or rule 13.25A(2)(b); and

- (b) subject to rule 13.25A(3), any of the following:
  - (i) exercise of an option under a share option scheme other than by a director of the issuer;
  - (ii) exercise of an option other than under a share option scheme not by a director of the issuer;
  - (iii) exercise of a warrant;
  - (iv) conversion of convertible securities; or
  - (v) redemption of shares or other securities.
- (3) The disclosure obligation for an event in rule 13.25A(2)(b) only arises where:
  - (a) the event, either individually or when aggregated with any other events described in that rule which have occurred since the listed issuer published its last monthly return under rule 13.25B or last return under this rule 13.25A (whichever is the later), results in a change of 5% or more of the listed issuer's issued shares; or
  - (b) an event in rule 13.25A(2)(a) has occurred and the event in rule 13.25A(2)(b) has not yet been disclosed in either a monthly return published under rule 13.25B or a return published under this rule 13.25A.
- (4) For the purposes of rule 13.25A(3), the percentage change in the listed issuer's issued shares is to be calculated by reference to the listed issuer's total number of issued shares as it was immediately before the earliest relevant event which has not been disclosed in a monthly return published under rule 13.25B or a return published under this rule 13.25A.

13.25B A listed issuer shall, by no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the fifth business day next following the end of each calendar month, submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a monthly return in relation to movements in the listed issuer's equity securities, debt securities and any other securitised instruments, as applicable, during the period to which the monthly return relates, in such form and containing such information as the Exchange may from time to time prescribe (irrespective of whether there has been any change in the information provided in its previous monthly return). Such information includes, among other things, the number as at the close of such period of equity securities, debt securities and any other securitised instruments, as applicable, issued and which may be issued pursuant to options, warrants, convertible securities or any other agreements or arrangements.

13.25C A listed issuer shall, in relation to each new issue of securities reported in the next day disclosure return under rule 13.25A and the monthly return under rule 13.25B, confirm that (where applicable):

- (1) the issue of securities has been duly authorised by its board of directors;
- (2) all money due to the listed issuer in respect of the issue of securities has been received by it;
- (3) all pre-conditions for listing imposed by the Rules under “Qualification of listing” have been fulfilled;
- (4) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;
- (5) all the securities of each class are in all respects identical;

*Note: “Identical” means in this context:*

- (a) the securities are of the same nominal value with the same amount called up or paid up;*
  - (b) they are entitled to dividend/interest at the same rate and for the same period, so that at the next ensuing distribution, the dividend/interest payable per unit will amount to exactly the same sum (gross and net); and*
  - (c) they carry the same rights as to unrestricted transfer, attendance and voting at meetings and rank pari passu in all other respects.*
- (6) all documents required by the Companies (Winding Up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal requirements;
  - (7) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue;
  - (8) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied; and
  - (9) the trust deed/deed poll relating to the debenture, loan stock, notes or bonds has been completed and executed, and particulars thereof, if so required by law, have been filed with the Registrar of Companies.

### **Subsequent listing**

- 13.26 (1) An issuer shall, prior to their issue, apply for the listing of any further securities which are of the same class as securities already listed and shall not issue such securities unless approval for the listing of those securities has been granted by the Exchange.
- (2) A PRC issuer shall not apply for the listing of any of its foreign shares on a PRC stock exchange unless the Exchange is satisfied that the relative rights of the holders of overseas listed foreign shares are adequately protected.

### **Changes in the terms of convertible securities**

- 13.27 An issuer shall, if the issue of new securities by it or the purchase by it of its listed securities will result in a change in the terms of conversion of any of its convertible securities or in the terms of the exercise of any of its options, warrants or similar rights, publish an announcement in accordance with rule 2.07C as to the effect of any such change wherever practicable, prior to the new issue and, if not so practicable, as soon as possible thereafter.

### **Issue of securities**

- 13.28 Where the directors agree to issue securities for cash in accordance with rule 13.36(1) (a) or 13.36(2), an issuer shall publish an announcement in accordance with rule 2.07C as soon as possible, but in any event not later than 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, containing the following information:—

- (1) the name of the issuer;
- (2) the number, class and aggregate nominal value of the securities agreed to be issued;

*Note: If the issue involves (i) securities convertible into shares of the issuer or (ii) options, warrants or similar rights to subscribe for shares or such convertible securities, the announcement should also contain:*

- (a) *the conversion/subscription price and a summary of the provisions for adjustments of such price and/or number of shares to be issued and all other material terms of the convertible securities or warrants; and*
- (b) *the maximum number of shares that could be issued upon exercise of the conversion/subscription rights.*
- (3) the total funds to be raised and the proposed use of the proceeds;

- (4) the issue price of each security and the basis for determining the same;
- (5) the net price to the issuer of each security;
- (6) the reasons for making the issue;
- (7) the names of the allottees, if less than six in number and, in the case of six or more allottees, a brief generic description of them. The Exchange reserves the right to require submission of such further information (on an electronic spreadsheet or such other format as it may request) on the allottees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership;
- (8) the market price of the securities concerned on a named date, being the date on which the terms of the issue were fixed;
- (9) the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed issue of securities, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount;
- (10) where applicable, the name of the underwriter/placing agent and the principal terms of the underwriting/placing arrangements;
- (11) a statement whether the issue is subject to shareholders' approval;
- (12) where the securities are issued under a general mandate granted to the directors by the shareholders in accordance with rule 13.36(2)(b), details of the mandate;
- (13) where the securities are issued by way of a rights issue or an open offer, the information set out in paragraph 18 of Appendix 1, Part B;
- (14) conditions to which the issue is subject or a negative statement if applicable; and
- (15) any other material information with regard to the issue (including any restrictions on the ability of the issuer to issue further securities or any restrictions on the ability of the allottees to dispose of shares issued to them or any restrictions on the ability of existing shareholders to dispose of their securities arising in connection with the allotment).

*Notes: (1) This rule does not apply to a grant of options or issue of securities under a share option scheme which complies with Chapter 17. For these, the issuer must follow the announcement requirement under rule 17.06A.*

(2) *For any exercise of these options, the issuer must follow the disclosure obligations under rules 13.25A and 13.25B.*

13.29 Where the securities are issued for cash under the authority of a general mandate granted to the directors by the shareholders in accordance with rule 13.36(2)(b) and at a discount of 20% or more to the benchmarked price set out in rule 13.36(5), the issuer shall publish an announcement in accordance with rule 2.07C as soon as possible, but in any event not later than the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day immediately following the day on which the relevant agreement involving the proposed issue of securities is signed. The announcement must disclose, among other things, the following information:

- (1) where there are less than 10 allottees, the name of each allottee (or, if applicable, the name of its beneficial owners) and a confirmation of its independence from the issuer; and
- (2) where there are 10 or more allottees, the name of each allottee (or, if applicable, the name of its beneficial owners) subscribing 5% or more of the securities issued and a generic description of all other allottees, and a confirmation of their independence from the issuer. When calculating the 5% limit, the number of securities subscribed by each allottee, its holding company and any of their subsidiaries must be aggregated.

### **Basis of allotment**

13.30 An issuer shall inform the Exchange of the basis of allotment of securities offered to the public for subscription or sale or an open offer and of the results of any rights issue and, if applicable, of the basis of any acceptance of excess applications, not later than the morning of the business day next after the allotment letters or other relevant documents of title are posted.

*Note: The Exchange should also be informed of any extension of time granted for the currency of temporary documents of title.*

### **Purchase of securities**

- 13.31 (1) An issuer shall inform the Exchange as soon as possible after any purchase, sale, drawing or redemption by the issuer, or any member of the group, of its listed securities (whether on the Exchange or otherwise) and the issuer hereby authorises the Exchange to disseminate such information to such persons and in such manner as the Exchange may think fit.
- (2) A PRC issuer shall not issue any redeemable shares unless the Exchange is satisfied that the relative rights of the holders of overseas listed foreign shares are adequately protected.



- Notes: 1. *Purchases by the issuer of its own securities (whether on the Exchange or otherwise) must be notified to the Exchange by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following dealing. The information given should include the number of securities purchased and the purchase price per security or the highest and lowest prices paid, where relevant.*
2. *Issuers may only purchase their own securities on the Exchange in accordance with the provisions of rule 10.06 (which is, in the case of an overseas issuer, subject to rule 19.43 if the issuer's primary listing is or is to be on another stock exchange; and in the case of a PRC issuer, amended by the provisions of Chapter 19A).*

### **Minimum prescribed public holdings and other listings**

- 13.32 (1) Issuers shall maintain the minimum percentage of listed securities as prescribed by rule 8.08 at all times in public hands. An issuer shall inform the Exchange immediately and publish an announcement:—
- (a) if it becomes aware that the number of listed securities which are in the hands of the public has fallen below the relevant prescribed minimum percentage; and
  - (b) if any part of the securities of the issuer or any of its subsidiaries becomes listed or dealt in on any other stock exchange, stating which stock exchange.
- (2) Once the issuer becomes aware that the number of listed securities in the hands of the public has fallen below the relevant prescribed minimum percentage the issuer shall take steps to ensure compliance at the earliest possible moment.

- Notes: (1) *The prescribed minimum percentage is determined by the Exchange at the time of listing under rule 8.08(1).*
- (2) *The lower percentage of securities in public hands that the Exchange may at its discretion grant to eligible issuers under rule 8.08(1)(d) may only be granted at the time of listing and will not be open for application post listing notwithstanding an issuer may after listing attain a market capitalisation of over HK\$10,000,000,000.*

- (3) If the percentage falls below the minimum, the Exchange reserves the right to require suspension of trading in an issuer's securities until appropriate steps have been taken to restore the minimum percentage of securities in public hands. In this connection, the Exchange will normally require suspension of trading in an issuer's securities where the percentage of its public float falls below 15% (or 10% in the case of an issuer that has been granted a lower percentage of public float under rule 8.08(1)(d) at the time of listing).
- (4) Where the percentage has fallen below the minimum, the Exchange may refrain from suspension if it is satisfied that there remains an open market in the securities and either:
  - (a) the shortfall in the prescribed percentage arose purely from an increased or newly acquired holding of the listed securities by a person who is, or after such acquisition becomes, a core connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries. Such substantial shareholder must not be a controlling shareholder or single largest shareholder of the issuer. He must also be independent of the issuer, directors and any other substantial shareholders of the issuer and must not be a director of the issuer. If the substantial shareholder has any representative on the board of directors of the issuer, he must demonstrate that such representation is on a non-executive basis. In general, the Exchange would expect this to apply to holdings of the listed securities by institutional investors with a wide spread of investments other than in the listed securities concerned. Holdings of the listed securities by venture capital funds which have been involved in the management of the issuer before and/or after listing would not qualify. It is the responsibility of the issuer to provide sufficient information to the Exchange to demonstrate the independence of such substantial shareholder and to inform the Exchange of any change in circumstances which would affect his independence as soon as it becomes aware of such change; or
  - (b) the issuer and the controlling shareholder(s) or single largest shareholder undertake to the Exchange to take appropriate steps to ensure restoration of the minimum percentage of securities to public hands within a specified period which is acceptable to the Exchange.
- (5) At any time when the percentage of securities in public hands is less than the required minimum, and the Exchange has permitted trading in the securities to continue, the Exchange will monitor closely all trading in the securities to ensure that a false market does not develop and may suspend the securities if there is any unusual price movement.

- 13.33 Notwithstanding the requirement that the prescribed minimum percentage of securities must at all times remain in public hands, the Exchange may consider granting a temporary waiver to an issuer which is the subject of a general offer under the Takeovers Code (including a privatisation offer), for a reasonable period after the close of the general offer to restore the percentage. The issuer must restore the minimum percentage of securities in public hands immediately after the expiration of the waiver, if granted.
- 13.34 Where the Exchange has reason to believe that there is a lack of genuine open market in the securities of an issuer, or that the securities of an issuer may be concentrated in the hands of a few shareholders to the detriment or without the knowledge of the investing public, the issuer must forthwith upon request by the Exchange:
- (a) publish an announcement in accordance with rule 2.07C to inform the public that its securities may not have a genuine market or its shareholding may have been concentrated in the hands of a few shareholders; and remind the public to exercise caution when dealing in its securities; and
  - (b) conduct an investigation under section 329 of the Securities and Futures Ordinance and publish an announcement in accordance with rule 2.07C containing the findings of the investigation.
- 13.35 An issuer shall include in its annual report a statement of sufficiency of public float. The statement should be based on information that is publicly available to the issuer and within the knowledge of its directors as at the latest practicable date prior to the issue of the annual report.

### **Pre-emptive rights**

- 13.36 (1) (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—
- (i) shares;
  - (ii) securities convertible into shares; or
  - (iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.

*Note: Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 13.36(2) and (3).*

- (b) Notwithstanding rule 13.36(2)(b), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of the shareholders in general meeting prior to allotting any voting shares if such allotment would effectively alter the control of the issuer.
- (2) No such consent as is referred to in rule 13.36(1)(a) shall be required:—
- (a) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer which excludes for that purpose any shareholder that is resident in a place outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings; or

*Notes: 1. The issuer must make enquiry regarding the legal restrictions under the laws of the relevant place and the requirements of the relevant regulatory body or stock exchange and may only exclude such overseas shareholders on the basis that, having made such enquiry, it would be necessary or expedient to do so.*

2. *If any shareholders that are resident outside Hong Kong are excluded from an offer of securities pursuant to rule 13.36(2)(a), the issuer shall include an explanation for the exclusion in the relevant circular or document containing the offer of securities. Issuers shall ensure that the circular or offer document is delivered to such shareholders for their information subject to compliance with the relevant local laws, regulations and requirements.*
  3. *The exemption for the shareholders' approval requirement under rule 13.36(2)(a) does not apply to the allotment, issue or grant of securities under an open offer.*
- (b) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares of an overseas issuer following the implementation of such scheme) and (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate.

- Notes:
1. *Other than where independent shareholders' approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 13.36(2)(b) is only permitted in the circumstances set out in rule 14A.92.*
  2. *An overseas issuer does not have to comply with rule 13.36 if its primary listing is or is to be on another stock exchange and it is not subject to any other statutory or other requirement giving pre-emptive rights to shareholders over further issues of share capital.*

3. *If the issuer conducts a share consolidation or subdivision after the issue mandate has been approved in general meeting, the maximum number of securities that may be issued under the mandate as a percentage of the total number of issued shares at the date immediately before and after such consolidation or subdivision shall be the same.*

- (3) A general mandate given under rule 13.36(2) shall only continue in force until:—
- (a) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the mandate is renewed, either unconditionally or subject to conditions; or
  - (b) revoked or varied by ordinary resolution of the shareholders in general meeting,

whichever occurs first.

- (4) Where the issuer has obtained a general mandate from its shareholders pursuant to rule 13.36(2)(b), any refreshments of the general mandate before the next annual general meeting shall be subject to the following provisions:
- (a) any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour;
  - (b) the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:
    - (i) any parties who were controlling shareholders of the issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their associates; or
    - (ii) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their respective associates;
  - (c) the issuer must comply with the requirements set out in rules 13.39(6) and (7), 13.40, 13.41 and 13.42;

- (d) the relevant circular to shareholders must contain information relating to the issuer's history of refreshments of mandate since the last annual general meeting, the amount of proceeds raised from the utilisation of such mandate, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount. The circular must also contain information required under rule 2.17; and
  - (e) where the issuer offers or issues securities to its shareholders pro rata to their existing holdings (including where overseas shareholders are excluded for legal or regulatory reasons), it will not be necessary for the issuer to comply with rules 13.36(4)(a), (b) or (c) in order for it to refresh its general mandate immediately thereafter such that the amount in percentage terms of the unused part of the general mandate upon refreshment is the same as the unused part of the general mandate immediately before the issue of securities. In such cases, it need only obtain approval from its shareholders and comply with rule 13.36(4)(d).
- (5) In the case of a placing or open offer of securities for cash consideration, the issuer may not issue any securities pursuant to a general mandate given under rule 13.36 (2)(b) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:
- (a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
  - (b) the average closing price in the 5 trading days immediately prior to the earlier of:
    - (i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
    - (ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
    - (iii) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

- (6) The issuer may not issue securities convertible into new shares of the issuer for cash consideration pursuant to a general mandate given under rule 13.36(2)(b), unless the initial conversion price is not lower than the benchmarked price (as defined in rule 13.36(5)) of the shares at the time of the placing.
- (7) The issuer may not issue warrants, options or similar rights to subscribe for (i) any new shares of the issuer or (ii) any securities convertible into new shares of the issuer, for cash consideration pursuant to a general mandate given under rule 13.36(2)(b).

## **MEETINGS**

### **Notice of AGM**

13.37 An issuer shall ensure that notice of every annual general meeting is published in accordance with rule 2.07C (see also rules 13.71 to 13.73). Where it is published in the newspapers, whether pursuant to rule 2.07C or otherwise, such notice must be of a size of not less than 8 centimetres by 10 centimetres (three inches by four inches approximately).

### **Proxy forms**

13.38 An issuer shall send with the notice convening a meeting of holders of listed securities to all persons entitled to vote at the meeting proxy forms, with provision for two-way voting on all resolutions intended to be proposed thereat.

- Notes:*
1. *The object of the requirement relating to proxy forms is to ensure that holders have adequate opportunity to express their views on all resolutions intended to be proposed such as the adoption of the annual accounts and re-election of directors (and, in the case of a PRC issuer, supervisors).*
  2. *Provided two-way proxy forms are made available, the printing and postal arrangements are matters entirely at the discretion of the issuer. The proxy form must state that if it is returned without an indication as to how the proxy shall vote on any particular matter the proxy will exercise his discretion as to whether he votes and if so how. The proxy form must state that a shareholder is entitled to appoint a proxy of his own choice and must provide a space for the name of such proxy.*
  3. *The proxy form must be submitted for publication on the Exchange's website in accordance with rule 2.07C.*



## Meetings of Shareholders

- 13.39 (1) An issuer proposing to solicit proxies or votes in connection with any general meeting of the issuer may only use for such purpose previously published information which remains accurate and is not misleading at the time it is quoted.
- (2) Shareholders must not be put under pressure to vote or abstain from voting at any general meeting and, where their votes are solicited, must be encouraged to consult their professional advisers.
- (3) [Repealed 1 January 2009]
- (4) Any vote of shareholders at a general meeting must be taken by poll except where the chairman, in good faith, decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands. The issuer must announce the results of the poll in the manner prescribed under rule 13.39(5).

*Note: Procedural and administrative matters are those that:*

- (1) are not on the agenda of the general meeting or in any supplementary circular to members; and*
  - (2) which relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, whilst allowing all shareholders a reasonable opportunity to express their views.*
- (5) The issuer must announce the meeting's poll results as soon as possible, but in any event at least 30 minutes before the earlier of either the commencement of the morning trading session or any pre-opening session on the business day after the meeting.

The poll results announcement must include the number of:

- (a) shares entitling the holder to attend and vote on a resolution at the meeting;
- (b) shares entitling the holder to attend and abstain from voting in favour as set out in rule 13.40;
- (c) shares of holders that are required under the Listing Rules to abstain from voting;
- (d) shares actually voted for a resolution; and
- (e) shares actually voted against a resolution.

The issuer must appoint its auditors, share registrar or external accountants who are qualified to serve as its auditors as scrutineer for the vote-taking and state the identity of the scrutineer in the announcement. The issuer must state in the announcement whether or not any parties that have stated their intention in the circular to vote against the relevant resolution or to abstain have done so at the general meeting.

- (6) In relation to any transactions that are subject to independent shareholders' approval pursuant to the Exchange Listing Rules or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3 (e) of Practice Note 15 of the Exchange Listing Rules,
- (a) the issuer shall establish an independent board committee (which shall consist only of independent non-executive directors) to advise shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote, taking into account the recommendations of the independent financial adviser appointed under rule 13.39(6)(b);
  - (b) the issuer shall appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee and the shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote; and
  - (c) the independent board committee shall not consist of any independent non-executive directors who have a material interest in the relevant transaction or arrangement. The independent board committee may consist of only one independent non-executive director if all other independent non-executive directors have a material interest in the relevant transaction or arrangement. If all the independent non-executive directors have a material interest in the relevant transaction or arrangement, no independent board committee can be formed. In that event, the independent financial adviser shall make its recommendation to the shareholders only in the manner prescribed under rule 13.39(7)(b).
- (7) In relation to any transactions that are subject to independent shareholders' approval pursuant to the Exchange Listing Rules or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3 (e) of Practice Note 15 of the Exchange Listing Rules, the circular to shareholders must contain at least:

- (a) if applicable, a separate letter from the independent board committee advising shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and advising shareholders on how to vote, taking into account the recommendations of the independent financial adviser; and
  - (b) a separate letter from the independent financial adviser containing its recommendation to the independent board committee and shareholders (or, if applicable, to the shareholders only) as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and advising shareholders on how to vote. Such letter must set out the reasons for and the key assumptions made and factors taken into consideration in forming that opinion.
- (8) For any connected transactions, the requirements relating to the opinion and recommendation of the independent board committee and the independent financial adviser are set out in Chapter 14A.

*Note: "Independent shareholders" under paragraphs (6) and (7) of this rule 13.39 means any shareholders other than controlling shareholders of the issuer and their associates or, where there are no controlling shareholders, any shareholders other than directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates.*

13.40 Parties that are required to abstain from voting in favour at the general meeting pursuant to rules 6.12(1), 6.13, 7.19(6)(a), 7.19(7), 7.19(8), 7.24(5)(a), 7.24(6), 7.24(7), 13.36(4)(a), 13.36(4)(b), 14.90(2), 14.91(1) and 17.04(1) may vote against the resolution at the general meeting of the issuer provided that their intention to do so has been stated in the relevant listing document or circular to shareholders. Any such party may change his mind as to whether to abstain or vote against the resolution, in which case the issuer must, if it becomes aware of the change before the date of the general meeting, immediately despatch a circular to its shareholders or publish an announcement in accordance with rule 2.07C notifying its shareholders of the change and, if known, the reason for such change. Where the circular is despatched or the announcement is published less than 10 business days before the date originally scheduled for the general meeting, the meeting must be adjourned before considering the relevant resolution to a date that is at least 10 business days from the date of despatch or publication by the chairman or, if that is not permitted by the issuer's constitutional documents, by resolution to that effect.

- 13.41 Where under rules 13.40 or 13.73, a meeting is required to be adjourned by resolution, all shareholders are permitted to vote on that resolution. Any shareholders who would have been required to abstain from voting on any resolution that was to be proposed shall vote in favour of the resolution to adjourn the meeting.
- 13.42 The issuer must have an appropriate procedure in place to record that any parties that must abstain or have stated their intention to vote against the relevant resolution in the listing document, circular or announcement have done so at the general meeting.

### **Board meetings**

- 13.43 An issuer shall publish an announcement in accordance with rule 2.07C at least seven clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided or at which any announcement of the profits or losses for any year, half-year or other period is to be approved for publication.

### **Voting of directors at board meetings**

- 13.44 Subject to the exceptions set out in paragraphs (1), (2), (4) and (5) of Note 1 to Appendix 3, a director of the issuer shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his close associates has a material interest nor shall he be counted in the quorum present at the meeting.

*Note: The references to “close associate” shall be changed to “associate” where the transaction or arrangement is a connected transaction under Chapter 14A.*

### **After board meetings**

- 13.45 An issuer shall announce immediately after approval by or on behalf of the board of:—
- (1) any decision to declare, recommend or pay any dividend or to make any other distribution on its listed securities, including the rate and amount of the dividend or distribution and the expected payment date;
  - (2) any decision not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in due course;
  - (3) any preliminary announcement of profits or losses for any year, half-year or other period;

*Notes: 1. The timing of board meetings is a matter for the convenience and judgement of individual boards, but decisions on dividends and results should be announced either between 12:00 noon and 12:30 p.m. or*

*after the market closes at 4:30 p.m. on a normal business day. On the eves of Christmas, New Year and the Lunar New Year when there is no afternoon trading session, the announcements should be published after the market closes at 12:30 p.m.. The directors are reminded that it is their direct responsibility to ensure that such information is kept strictly confidential until it is announced.*

2. *Note 1 above is also applicable to a preliminary announcement of results for a full year. As soon as possible after draft accounts have been agreed with the auditors, those accounts, adjusted to reflect any dividend decision, should be approved as the basis of a preliminary announcement of results for the full year.*
  3. *If there is any change to the expected payment date previously disclosed under rule 13.45(1) or this note, the issuer should announce this fact and the new expected payment date as soon as practicable.*
- (4) any proposed change in the capital structure, including any redemption of its listed securities; and

*Note: Once a decision has been made to submit any such proposal to the board, no dealings in any of the relevant securities should be effected by or on behalf of the issuer or any of its subsidiaries until the proposal has been announced or abandoned.*

- (5) any decision to change the general character or nature of the business of the issuer or group.

*Note: In discharging the obligations in rule 13.45, regard should be had to rule 13.79, and in particular to the Exchange's requirements from time to time in respect of the communication of information of an urgent nature.*

## **DISCLOSURE OF FINANCIAL INFORMATION**

### **Distribution of annual report and accounts**

- 13.46 (1) In the case of an issuer (other than an overseas issuer and a PRC issuer):—
- (a) Such issuer shall send to
    - (i) every member of the issuer; and
    - (ii) every other holder of its listed securities (not being bearer securities),

a copy of either (A) its annual report including its annual accounts and, where the issuer prepares consolidated financial statements referred to in section 379(2) of the Companies Ordinance, the consolidated financial statements, together with a copy of the auditors' report thereon, or (B) its summary financial report not less than 21 days before the date of the issuer's annual general meeting and in any event not more than four months after the end of the financial year to which they relate. The issuer may send a copy of its summary financial report to a member and a holder of its listed securities in place of a copy of its annual report and accounts, provided that it complies with the relevant provisions set out in sections 437 to 446 of the Companies Ordinance and in the Companies (Summary Financial Reports) Regulation.

- (b) Nothing in rule 13.46(1)(a) shall require an issuer to send any of the documents referred to therein to:—
- (i) a person of whose address the issuer is unaware; or
  - (ii) more than one of the joint holders of any of its listed securities.

*Notes: 1. The directors' report, auditors' report, annual accounts and, where applicable, summary financial report must be in the English language and must be accompanied by a Chinese translation. In respect of overseas members, it shall be sufficient for the issuer to mail an English language version of either (i) its directors' report, auditors' report and annual accounts or (ii) its summary financial report if such documents contain a prominent statement in both English and Chinese to the effect that a Chinese translation is available from the issuer, on request.*

*2. Sections 429 and 431 of the Companies Ordinance require the directors of a Hong Kong issuer to lay the issuer's annual financial statements before its members at its annual general meeting within the period of 6 months after the end of the financial year or accounting reference period to which the annual financial statements relate.*

*3. If an issuer has significant interests outside Hong Kong it may apply for an extension of the six-month period. However, attention is drawn to section 431 of the Companies Ordinance which requires any extension of the time limit to be approved by the Court of First Instance.*

*4. [Repealed 1 January 2011]*

(2) In the case of an overseas issuer or a PRC issuer:—

(a) Such issuer shall send to:—

(i) every member of the issuer; and

(ii) every other holder of its listed securities (not being bearer securities),

a copy of either (A) its annual report including its annual accounts and, where the issuer prepares group accounts, its group accounts, together with a copy of the auditors' report thereon or (B) its summary financial report, not less than 21 days before the date of the issuer's annual general meeting and in any event not more than four months after the end of the financial year to which they relate. The issuer may send a copy of its summary financial report to a member and a holder of its listed securities in place of a copy of its annual report and accounts, provided that it complies with provisions no less onerous than the relevant provisions set out in sections 437 to 446 of the Companies Ordinance and in the Companies (Summary Financial Reports) Regulation for listed issuers incorporated in Hong Kong.

(b) An issuer should lay its annual financial statements before its members at its annual general meeting within the period of 6 months after the end of the financial year or accounting reference period to which the annual financial statements relate.

(c) Nothing in rule 13.46(2)(a) shall require an issuer to send any of the documents referred to therein to:—

(i) a person of whose address the issuer is unaware; or

(ii) more than one of the joint holders of any of its listed securities.

*Notes: 1. If an issuer's primary listing is or is to be on the Exchange the annual report, annual accounts, auditors' report and, where applicable, summary financial report must be in the English language and must be accompanied by a Chinese translation. In respect of overseas members, it shall be sufficient for the issuer to mail an English language version of its annual report, annual accounts, auditors' report and, where applicable, summary financial report if such documents contain a prominent statement in both English and Chinese to the effect that a Chinese translation is available from the issuer, on request. If the issuer's primary listing is or is to be on another stock exchange such documents must be in the English language or be accompanied by a certified English translation.*

2. *If an issuer has significant interests outside Hong Kong it may apply for an extension of the six month period.*
3. *[Repealed 1 January 2011]*

### **Annual Reports**

13.47 An issuer's annual report must comply with the provisions set out in Appendix 16 in relation to annual reports. The issuer's summary financial report must comply with the provisions set out in the Companies (Summary Financial Reports) Regulation.

*Note: Issuers' attention is drawn to paragraphs 6 to 34A and 50 inclusive of Appendix 16.*

### **Interim Reports**

- 13.48 (1) In respect of the first six months of each financial year of an issuer unless that financial year is of six months or less, the issuer shall send to the persons listed in rule 13.46(1), either (i) an interim report, or (ii) a summary interim report not later than three months after the end of that period of six months. The issuer may send a copy of its summary interim report to a member and a holder of its listed securities in place of a copy of its interim report, provided that such summary interim report complies with the relevant provisions of the Companies (Summary Financial Reports) Regulation governing summary financial reports.
- (2) The interim report must comply with the provisions set out in Appendix 16 in relation to interim reports. The summary interim report must comply with the provisions set out in Appendix 16 in relation to summary interim reports.

*Note: Issuers' attention is drawn to paragraphs 37 to 44 and 51 inclusive of Appendix 16.*

- (3) *[Repealed 1 January 2011]*



## **Preliminary Announcements of Results – Full Financial Year**

- 13.49 (1) An issuer shall publish in accordance with rule 2.07C its preliminary results in respect of each financial year as soon as possible, but in any event not later than 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 after approval by or on behalf of the board. The issuer must publish such results not later than three months after the end of the financial year.
- (2) The preliminary announcement shall be based on the issuer's financial statements for the financial year which shall have been agreed with the auditors.
- (3) (i) Where an issuer is unable to make an announcement of its preliminary results based on its financial statements in accordance with rules 13.49(1) and 13.49(2), it must make an announcement not later than three months after the end of the financial year.

The announcement must contain at least the following information:—

- (a) a full explanation for its inability to make an announcement based on financial statements which have been agreed with the auditors. Where there are uncertainties arising from the lack of supporting evidence or relating to the valuation of assets or liabilities, sufficient information to allow investors to determine the significance of the assets or liabilities;
- (b) the expected date of announcement of the financial results for the financial year which shall have been agreed with the auditors; and
- (c) so far as the information is available, results for the financial year based on financial results which have yet to be agreed with the auditors. Where possible, those results must have been reviewed by the issuer's audit committee. In the event that the audit committee disagreed with an accounting treatment which had been adopted or the particulars published in accordance with rule 13.49(3)(i)(a), full details of such disagreement.
- (ii) Where an issuer makes an announcement in accordance with rule 13.49(3)(i), then:
- (a) the issuer will be required to comply with the requirements set out in rule 13.49(2), as soon as the financial results for the financial year have been agreed with the auditors; and

- (b) where the financial results for the financial year which have been agreed by the auditors differ materially from the financial results published by the issuer in accordance with rule 13.49(3)(i)(c), full particulars of, and reasons for, the difference must be set out in the preliminary announcement of such agreed results.
- (4) The preliminary announcement of results (made in accordance with rule 13.49(2) or 13.49(3)) must comply with the provisions set out in Appendix 16 in relation to preliminary announcements of results for the full financial year.

*Note: Issuers' attention is drawn to paragraphs 45 and 45A of Appendix 16.*

- (5) [Repealed 25 June 2007]

### **Preliminary Announcements of Results – First Half of The Financial Year**

- (6) The issuer shall publish in accordance with rule 2.07C a preliminary announcement in respect of its results for the first six months of each financial year, unless that financial year is of six months or less, as soon as possible, but in any event not later than 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 after approval by or on behalf of the board. The issuer must publish such results not later than two months after the end of that period of six months.

In circumstances where the issuer is unable to make such an announcement, the issuer must make an announcement within the required time referred to above. The announcement must contain:—

- (i) a full explanation for its inability to make an announcement based on unaudited financial statements; and
  - (ii) the expected date of announcement of the unaudited results for the first half of the financial year.
- (7) The preliminary announcement of interim results must comply with the provisions set out in Appendix 16 in relation to preliminary announcements of interim results.

*Note: Issuers' attention is drawn to paragraph 46 of Appendix 16.*

- (8) [Repealed 25 June 2007]

## **Suspension on Failure to Publish Timely Financial Information**

13.50 Without prejudice to the generality of rules 13.46, 13.47, 13.48 and 13.49, the Exchange will normally require suspension of trading in an issuer's securities if an issuer fails to publish periodic financial information in accordance with the Exchange Listing Rules. The suspension will normally remain in force until the issuer publishes an announcement in accordance with rule 2.07C containing the requisite financial information.

### **NOTIFICATION**

#### **Changes**

13.51 An issuer must publish an announcement as soon as practicable in regard to:—

- (1) any proposed alteration of the issuer's memorandum or articles of association or equivalent documents, and in the case of a PRC issuer, any proposed request by the PRC issuer to a PRC competent authority to waive or otherwise modify any provision of the Regulations.

The circular for any such amendments proposed by the issuer must contain an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. At the same time as the circular is despatched to shareholders of the issuer, the issuer should submit to the Exchange (a) a letter addressed to the issuer from its legal advisers confirming that the proposed amendments conform with the requirements of the Exchange Listing Rules, where applicable, and the laws of the place where it is incorporated or otherwise established; and (b) a confirmation from the issuer that there is nothing unusual about the proposed amendments for a company listed in Hong Kong;

*Notes: 1. Changes to the relevant parts of the articles of association or equivalent documents must conform with the requirements of Appendix 3 and, if relevant, Appendix 13.*

2. *An issuer shall not at any time permit or cause any amendment to be made to its memorandum or articles of association or bye-laws which would cause the same to cease to comply with the provisions of Appendix 3 or Section 1 of Part A or Part B (where appropriate) of Appendix 13.*

- (2) any changes in its directorate or supervisory committee, and shall procure that each new director or supervisor or member of its governing body shall lodge with the Exchange as soon as practicable after the appointment a declaration and undertaking in the form set out in Form B, H or I, where applicable in Appendix 5 and the contact information required under rule 3.20(1) or 19A.07A (in the manner prescribed by the Exchange from time to time).

Where a new director, supervisor or chief executive is appointed or the resignation, re-designation, retirement or removal of a director, supervisor or chief executive takes effect, the issuer must announce the change as soon as practicable and include the following details of any newly appointed or re-designated director, supervisor or chief executive in the announcement:—

- (a) the full name (including any former name(s) and alias(es)), which should normally be the same as that stated in the declaration and undertaking of the director or supervisor in the form set out in Form B, H or I in Appendix 5 and age;
- (b) positions held with the issuer and other members of the issuer's group;
- (c) experience including (i) other directorships held in the last three years in public companies the securities of which are listed on any securities market in Hong Kong or overseas, and (ii) other major appointments and professional qualifications;
- (d) length or proposed length of service with the issuer;
- (e) relationships with any directors, senior management or substantial or controlling shareholders of the issuer;
- (f) his interests in shares of the issuer within the meaning of Part XV of the Securities and Futures Ordinance;
- (g) amount of the director's, supervisor's or chief executive's emoluments and the basis of determining the director's, supervisor's or chief executive's emoluments (including any bonus payments, whether fixed or discretionary in nature, irrespective of whether the director, supervisor or chief executive has or does not have a service contract) and how much of these emoluments are covered by a service contract;
- (h) full particulars of any public sanctions made against him by statutory or regulatory authorities;
- (i) where he has at any time been adjudged bankrupt or insolvent, the Court by which he was adjudged bankrupt or insolvent and, if discharged, the date and conditions on which he was granted his discharge;

- (j) where he has at any time been a party to a deed of arrangement or entered into any other form of arrangement or composition with his creditors, full particulars of the deed of arrangement or the arrangement or composition with his creditors;
- (k) full particulars of any unsatisfied judgments or court orders of continuing effect against him;
- (l) where any enterprise, company or unincorporated business enterprise has been dissolved or put into liquidation (otherwise than by a members' voluntary winding up when the company, in the case of a Hong Kong company, was solvent) or bankruptcy or been the object of an analogous proceeding, or entered into any form of arrangement or composition with creditors, or had a receiver, trustee or similar officer appointed over it (i) during the period when he was one of its directors or, in the case of an enterprise, a company or an unincorporated business enterprise established in the PRC, during the period when he was one of its directors, supervisors or managers, or (ii) within 12 months after his ceasing to act as one of its directors, supervisors or managers, as the case may be, full particulars, including the name of the enterprise, company or unincorporated business enterprise, its place of incorporation or establishment, the nature of its business, the nature of the proceeding involved, the date of commencement of the proceeding and the amounts involved together with an indication of the outcome or current position of the proceeding;
- (m) subject to the provisions of the Rehabilitation of Offenders Ordinance or comparable legislation of other jurisdictions, full particulars of any conviction for any offence (including details of each such offence, the court by which he was convicted, the date of conviction and the penalty imposed):
  - (i) involving fraud, dishonesty or corruption;
  - (ii) under the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the Bankruptcy Ordinance, the Banking Ordinance, the Securities and Futures Ordinance, the repealed Protection of Investors Ordinance, the repealed Securities Ordinance, the repealed Securities (Disclosure of Interests) Ordinance, the Commodity Exchanges (Prohibition) Ordinance, the repealed Securities and Futures Commission Ordinance, the repealed Commodities Trading Ordinance, the repealed Stock Exchanges Unification Ordinance, the repealed Securities and Futures (Clearing Houses) Ordinance, the repealed Exchanges and Clearing Houses (Merger) Ordinance, the repealed Securities (Insider Dealing) Ordinance, the repealed Leveraged Foreign Exchange Trading Ordinance or any Ordinance relating to taxation, and any comparable legislation of other jurisdictions; or

- (iii) in respect of which he has, within the past 10 years, been sentenced as an adult to a period of imprisonment of six months or more, including suspended or commuted sentences;
- (n) full particulars where:
  - (i) he has been identified as an insider dealer under Parts XIII or XIV of the Securities and Futures Ordinance or the repealed Securities (Insider Dealing) Ordinance at any time;
  - (ii) any enterprise, company or unincorporated business enterprise with which he was or is connected (as defined in Parts XIII or XIV of the Securities and Futures Ordinance or the repealed Securities (Insider Dealing) Ordinance) or any enterprise, company or unincorporated business enterprise for which he acts or has acted as an officer, supervisor or manager has been identified as an insider dealer under Parts XIII or XIV of the Securities and Futures Ordinance or the repealed Securities (Insider Dealing) Ordinance at any time during the period when he was connected and/or acted as an officer, supervisor or manager;
  - (iii) he has been found guilty of or been involved in insider dealing, or been held by any Court or competent authority to have breached any securities or financial markets laws, rules or regulations including any rules and regulations of any securities regulatory authority, stock exchange or futures exchange at any time;
  - (iv) any enterprise, company or unincorporated business enterprise in which he was or is a controlling shareholder (as defined in the Listing Rules) or was or is a supervisor, manager, director or officer or has been found guilty of or been involved in insider dealing, or been held by any Court or competent authority to have breached any securities or financial markets laws, rules or regulations including any rules and regulations of any securities regulatory authority, stock exchange or futures exchange at any time during the period when he was a controlling shareholder, supervisor, manager, director or officer; or
  - (v) he has been found by the Market Misconduct Tribunal, any Court or competent authority to have breached an obligation under the Inside Information Provisions, or where any issuer of which he was or is a controlling shareholder (as defined in the Listing Rules) or was or is a supervisor, manager, director, chief executive or officer has been found by the Market Misconduct Tribunal, any Court or competent authority to have breached an obligation under the Inside Information Provisions at any time during the period when he was a controlling shareholder, supervisor, manager, director, chief executive or officer;

- (o) where he has been adjudged by a Court or arbitral body civilly liable for any fraud, breach of duty or other misconduct by him involving dishonesty, full particulars of the judgement;
- (p) where any enterprise, company, partnership or unincorporated business enterprise of which he was or is a partner, director, supervisor or manager has had its business registration or licence revoked at any time during the period when he was one of its partners, directors, supervisors or managers, full particulars of such revocation, including the date upon which such registration or licence was revoked, the reasons for the revocation, the outcome and current position;
- (q) where he has at any time been disqualified from holding, or deemed unfit to hold, the position of director, supervisor or manager of an enterprise, a company or an unincorporated business enterprise, or from being involved in the management or conduct of the affairs of any enterprise, company or unincorporated business enterprise, pursuant to any applicable law, rule or regulation or by any competent authority, full particulars of such disqualification or ruling;
- (r) except where such disclosure is prohibited by law, full particulars of any investigation by any judicial, regulatory or governmental authority to which he is subject, including the investigating body, the nature of the investigation and the matters under investigation;
- (s) where he has at any time been refused admission to membership of any professional body or been censured or disciplined by any such body to which he belongs or belonged or been disqualified from membership in any such body or has at any time held a practising certificate or any other form of professional certificate or licence subject to special conditions, full particulars of such refusal, censure, disciplinary action, disqualification or special conditions;
- (t) where he is now or has at any time been a member of a triad or other illegal society, full particulars;
- (u) except where such disclosure is prohibited by law, where he is currently subject to (i) any investigation, hearing or proceeding brought or instituted by any securities regulatory authority, including the Hong Kong Takeovers Panel or any other securities regulatory commission or panel, or (ii) any judicial proceeding in which violation of any securities law, rule or regulation is or was alleged, full particulars of such investigation, hearing or proceeding;

- (v) except where such disclosure is prohibited by law, where he is a defendant in any current criminal proceeding involving an offence which may be material to an evaluation of his character or integrity to be a director or supervisor of the issuer, full particulars of such proceeding;
- (w) any other matters that need to be brought to the attention of holders of securities of the issuer; and
- (x) where there is no information to be disclosed pursuant to any of the requirements of this rule 13.51(2), an appropriate negative statement to that effect.

The issuer must also disclose in the announcement of resignation or removal of director, supervisor or chief executive the reasons given by or to the director, supervisor or chief executive for the resignation or removal (including, but not limited to, any information relating to his disagreement with the board and a statement whether or not there are any matters that need to be brought to the attention of holders of securities of the issuer).

The issuer must publish an announcement on any important change in the holding of an executive office, including changes to any important functions or executive responsibilities of a director.

- (3) any change in the rights attaching to any class of listed securities and any change in the rights attaching to any shares into which any listed debt securities are convertible or exchangeable;
- (4) any change in its auditors or financial year end, the reason(s) for the change and any other matters that need to be brought to the attention of holders of securities of the issuer (including, but not limited to, information set out in the outgoing auditors' confirmation in relation to the change in auditors);

*Note: The issuer must state in the announcement whether the outgoing auditors have provided a confirmation that there are no matters that need to be brought to the attention of holders of securities of the issuer. If no such confirmation has been provided, the announcement must state the reason for this.*

- (5) any change in its secretary, share registrar (including any change in overseas branch share registrar) or registered address or where applicable, agent for the service of process in Hong Kong or registered office or registered place of business in Hong Kong;

*Note: The new secretary must fulfil the requirements of rule 8.17.*



- (6) any change in its Compliance Adviser;

*Note: Refer to rule 3A.29.*

- (7) any revision of interim reports, annual reports or summary financial reports, the reason leading to the revision of published financial reports, and the financial impacts, if any; and
- (8) any change in its website address.

### **Inclusion of stock code in documents**

13.51A An issuer shall set out its stock code in a prominent position on the cover page or, where there is no cover page, the first page of all announcements, circulars and other documents published by it pursuant to these Exchange Listing Rules.

### **Provision of information in respect of and by directors, supervisors and chief executives**

- 13.51B (1) Where, following implementation of this rule, there is a change in any of the information required to be disclosed pursuant to paragraphs (a) to (e) and (g) of rule 13.51(2) during the course of the director's, supervisor's or chief executive's term of office, the issuer must ensure that the change and the updated information regarding the director, supervisor or chief executive is set out in the next published annual or interim report of the listed issuer (whichever is the earlier).
- (2) Where, following implementation of this rule, there is a change in any of the information required to be disclosed pursuant to paragraphs (h) to (v) of rule 13.51(2) during the course of a director's, supervisor's or chief executive's term of office, the issuer must publish an announcement in accordance with rule 2.07C as soon as practicable setting out the updated information regarding the director, supervisor or chief executive and any other information concerning that change that needs to be brought to the attention of holders of the issuer's securities.
  - (3) Without prejudice to the issuer's obligation to disclose financial information and biographical details of its directors, supervisors and chief executive(s) under Appendix 16, the disclosures required to be made by an issuer pursuant to paragraphs (1) and (2) are subject to the following exceptions and modifications:
    - (a) for rule 13.51(2)(a), an issuer need not disclose the age of the director, supervisor or chief executive in its interim reports;
    - (b) for rule 13.51(2)(d), an issuer need not disclose the length of service of a director, supervisor or chief executive;
    - (c) for rule 13.51(2)(h), an issuer need not disclose any sanction imposed on it by the Exchange; and

- (d) for rule 13.51(2)(k), an issuer need not disclose the particulars of any unsatisfied judgments or court orders of continuing effect until the relevant judgment or court order becomes final.

13.51C Directors, supervisors and chief executive(s) of an issuer must procure and/or assist the issuer to comply with rule 13.51(2) and rule 13.51B including, but not limited to, by immediately informing the issuer of the information referred to in paragraphs (a) to (x) of rule 13.51(2) and any change in the information referred to in paragraphs (a) to (w) of rule 13.51(2) which information concerns the director, supervisor or chief executive. In procuring and/or assisting the issuer in the publication of the information (whether in an announcement in accordance with rule 2.07C, or in an annual or interim report, as the case may be), the directors, supervisors and chief executive(s) concerned must accept responsibility for the accuracy of the information.

13.51D The issuer must publish the procedures for shareholders to propose a person for election as a director on its website.

## **ANNOUNCEMENTS, CIRCULARS AND OTHER DOCUMENTS**

### **Review of documents**

13.52 Subject to rule 13.52A, where an issuer is obliged to publish any announcements, circulars or other documents for the purposes of the Exchange Listing Rules, the documents need not be submitted to the Exchange for review before they are issued unless the documents fall within rule 13.52(1) or (2).

- (1) The issuer shall submit to the Exchange copies of drafts of the following documents for review before they are issued:
  - (a) listing document (including prospectus);
  - (b) circular relating to cancellation or withdrawal of listing of listed securities;
  - (c) circular relating to transaction or matter required under Chapter 14 of the Exchange Listing Rules;
  - (d) circular relating to connected transaction (including continuing connected transaction) required under Chapter 14A of the Exchange Listing Rules;
  - (e) circular to the issuer's shareholders seeking their approval of:
    - (i) any transaction or arrangement under rule 13.36(1) or 13.39(7);
    - (ii) any matter relating to share option scheme required under Chapter 17 of the Exchange Listing Rules; or

(iii) [Repealed 1 October 2013]

(iv) any warrant proposal under paragraph 4(c) of Practice Note 4 to the Exchange Listing Rules; or

(f) circulars or offer documents issued by the issuer in connection with takeovers, mergers or offers.

The issuer shall not issue such documents until the Exchange has confirmed that it has no further comments thereon.

A document should be resubmitted to the Exchange for further comment prior to issue if any material change is made to the document after the Exchange has issued the “no further comment” confirmation (other than changes made to address the comments attached to the “no further comment” confirmation). If there is any doubt as to whether or not a change is material the Exchange must be consulted as soon as possible.

(2) The following transitional provisions apply to announcements set out in this rule and shall cease to have effect on such date as the Exchange may determine and promulgate.

An issuer shall submit to the Exchange copies of drafts of the following announcements for review before they are issued:

(a) announcement for any very substantial disposal, very substantial acquisition or reverse takeover under rules 14.34 and 14.35;

(b) announcement for any transaction or arrangement under rules 14.89 to 14.91; or

(c) announcement for any matter relating to a cash company under rules 14.82 and 14.83.

The issuer shall not issue such announcements until the Exchange has confirmed that it has no further comments thereon.

*Notes: 1. Four copies of each document are required, which should be submitted in sufficient time for review and, if necessary, re-submission prior to final printing.*

*2. In the case of documents issued in connection with takeovers, mergers or offers covered by the Takeovers Code, the Exchange will pass its comments on the documents directly to the issuer and will at the same time provide a copy of such comments to the Commission.*

3. *The Exchange reserves the right to require an issuer to issue a further announcement or document and/or take other remedial action, if the original document does not comply with the requirements of the Exchange Listing Rules.*
4. *Where an announcement or advertisement of a new or further issue of securities contains a profit forecast, the provisions of rules 14.61 and 14.62 will apply.*
5. *Any listing document, circular, announcement or notice issued by a listed issuer pursuant to the Exchange Listing Rules must contain on its front cover or inside front cover, or as a heading, a prominent and legible disclaimer statement as follows:—*

*“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”*

13.52A In addition to the specified requirements set out in rule 13.52, the Exchange has the right to request to review any announcements, circulars or other documents prior to publication in individual cases. In any such case, the Exchange will communicate to the issuer its direction to review the document prior to publication and the reasons for its decision. The issuer shall accordingly submit to the Exchange copies of drafts for review and shall not issue the document until the Exchange has confirmed that it has no further comments thereon.

13.52B An issuer proposing to publish an announcement, circular or other document pursuant to the Exchange Listing Rules shall observe the following provisions:

- (1) Where the subject matter of the document may involve a change in or relate to or affect arrangements regarding trading in the issuer’s listed securities (including a suspension or resumption of dealings, and a cancellation or withdrawal of listing), the issuer must consult the Exchange before the document is issued. The document must not include any reference to a specific date or specific timetable in respect of such matter which has not been agreed in advance with the Exchange.
- (2) If the issuer wishes to:
  - (a) ascertain whether or to what extent any provisions in the Exchange Listing Rules apply to the document, or the transaction or matter to which it relates;  
or

- (b) request a modification or dispensation with any requirements of the Exchange Listing Rules in respect of the document, or the transaction or matter to which it relates,

relevant details, including the reasons and circumstances that give rise to the issues concerned, must be submitted to the Exchange in sufficient time for its determination.

- 13.53 The issuer hereby authorises the Exchange to file “applications” (as defined in section 2 of the Statutory Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the Statutory Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the Statutory Rules respectively. Applications and relevant corporate disclosure materials shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe. The authorisation aforementioned shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant such approval. In addition, the issuer undertakes to execute such documents in favour of the Exchange perfecting the above authorisation as the Exchange may require.

#### **Forwarding of documents, circulars, etc.**

- 13.54 An issuer (other than authorised Collective Investment Schemes) must, upon request by the Exchange, provide the requested number of certified copies of all resolutions of the issuer including resolutions concerning any of the matters in rule 13.36, except resolutions concerning any other routine business at an annual general meeting, within 15 days after they are passed.

#### **Circulars to holders of securities**

- 13.55 (1) In the event of a circular being issued to the holders of any of the issuer’s securities, the issuer shall issue a copy or summary of such circular to the holders of all its other securities (not being bearer securities) unless the contents of such circular are of no material concern to such other holders.

*Note: Where there is a class of listed securities in bearer form, it may be sufficient to publish an announcement in accordance with rule 2.07C referring to the circular and giving an address or addresses from which copies can be obtained.*

- (2) All circulars sent to holders of the issuer’s securities (and where an issuer’s primary listing is or is to be on the Exchange, all circulars sent to holders of the issuer’s securities on the Hong Kong register) must be in the English language and be accompanied by a Chinese translation. In respect of overseas members, it shall be

sufficient for the issuer to mail an English language version of the circular if it contains a prominent statement in both English and Chinese to the effect that a Chinese translation of the circular is available from the issuer, on request. If the issuer's primary listing is or is to be on another stock exchange all circulars sent to holders of the issuer's securities must be in the English language or be accompanied by a certified translation.

(3) [Repealed 1 January 2009]

### **Corporate Communications to Non Registered Holders of Securities**

13.56 An issuer shall, as soon as practicable following a request to HKSCC and at the expense of the issuer send to any Non Registered Holder (by means permitted by the Exchange Listing Rules) copies of any corporate communications.

For the purposes of this rule, "Non Registered Holder" shall mean:—

- (i) such person or company whose listed securities are held in CCASS; and
- (ii) who has notified the issuer from time to time through HKSCC that such person or company wishes to receive corporate communications.

### **Increases in capital**

13.57 Where an increase in authorised capital is proposed, the directors must state in the explanatory circular or other document accompanying the notice of meeting whether they have any present intention of issuing any part of that capital.

## **TRADING AND SETTLEMENT**

### **Certification of transfers**

13.58 An issuer shall:—

- (1) certify transfers against certificates or temporary documents and return them by the seventh day after the date of receipt; and
- (2) split and return renounceable documents by the third business day after the date of receipt.

*Note: Documents of title lodged for registration of probate should be returned with the minimum of delay, and, if possible, on the next business day following receipt.*

## Registration services

- 13.59 (1) An issuer (or its registrar) must provide a standard securities registration service in accordance with rule 13.60(1). The issuer (or its registrar) may, but shall not be obliged to, provide an optional securities registration service in accordance with rule 13.60(2) and/or an expedited securities registration service in accordance with rule 13.60(3). The issuer (or its registrar) must also provide a bulk securities registration service in accordance with rule 13.60(4) and a certificate replacement service in accordance with rule 13.60(5). Subject to rule 13.59(2), the issuer shall ensure that where the issuer (or its registrar) charges a fee for registering transfers or cancelling, splitting, consolidating or issuing definitive certificates relating to the issuer's listed securities, such fee must not exceed, in total, the applicable amounts prescribed in rule 13.60.
- (2) The issuer shall ensure that where the issuer (or its registrar) charges a fee for registering other documents relating to or affecting the title to the issuer's listed securities (e.g. probate, letters of administration, certificates of death or marriage, powers of attorney or other instruments or memoranda and articles of association in respect of a new corporate holder) or for marking or noting documents, such fee must not exceed HK\$5 per item per register:

*Note: "per item" shall be defined to mean each of such other documents submitted for registration.*

- (3) It is the responsibility of an issuer whose registrar is in breach of any of the above provisions or the provisions of rules 13.58, 13.60 or 13.61 to report such breach to the Exchange as soon as it becomes aware of the breach and the Exchange reserves the right to communicate such information to the Commission.
- (4) Save as provided above or in rule 13.60 the issuer shall not and shall use all reasonable endeavour to ensure that neither its registrar nor other agents will charge holders or transferees any other fees for any dealings with them in connection with the transfer or transmission of its listed securities.

*Note: In the case of a PRC issuer, the requirements of rule 13.59 shall apply only to registration of its securities listed on the Exchange.*

## Issue of certificates, registration and other fees

- 13.60 (1) (a) Standard securities registration service: An issuer shall (or shall procure that its registrar shall) issue definitive certificates arising out of a registration of transfer or the cancelling, splitting, consolidating or issuing (otherwise than pursuant to rule 13.60(5)) of certificates within:—
- (i) 10 business days of the date of expiration of any right of renunciation; or

- (ii) 10 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
  - (b) The fee for registration pursuant to the standard securities registration service shall not exceed, in total, the higher of the following:—
    - (i) HK\$2.50 multiplied by the number of certificates issued; or
    - (ii) HK\$2.50 multiplied by the number of certificates cancelled.
- (2) (a) Optional securities registration service: The issuer (or its registrar) may, but shall not be obliged to, provide an optional securities registration service under which definitive certificates are required to be issued within:—
  - (i) 6 business days of the date of expiration of any right of renunciation; or
  - (ii) 6 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (b) The fee for registration pursuant to the optional securities registration service shall not exceed, in total, the higher of the following:—
  - (i) HK\$3.00 multiplied by the number of certificates issued; or
  - (ii) HK\$3.00 multiplied by the number of certificates cancelled.
- (c) If the issuer (or its registrar) fails to effect any registration within the period of 6 business days specified in rule 13.60(2)(a), the fee for such registration shall be that determined in accordance with rule 13.60(1)(b).
- (3) (a) Expedited securities registration service: The issuer (or its registrar) may, but shall not be obliged to, provide an expedited securities registration service under which definitive certificates are required to be issued within:—
  - (i) 3 business days of the date of expiration of any right of renunciation; or
  - (ii) 3 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (b) The fee for registration pursuant to the expedited securities registration service shall not exceed, in total, the higher of the following:
  - (i) HK\$20.00 multiplied by the number of certificates issued; or
  - (ii) HK\$20.00 multiplied by the number of certificates cancelled.



- (c) If the issuer (or its registrar) fails to effect any registration within the period of 3 business days specified in rule 13.60(3)(a), the registration shall be performed free of charge.
- (4)
  - (a) Bulk securities registration service: The issuer shall (or shall procure that its registrar shall) provide a bulk securities registration service, for transfers of listed securities representing 2,000 or more board lots of the issuer's listed securities where the securities are being transferred from the name of a single holder into the name of another or the same single holder. Certificates shall be issued pursuant to the bulk securities registration service within 6 business days of the receipt of properly executed transfers or other relevant documents or the relevant certificates.
  - (b) The fee for registration pursuant to the bulk securities registration service shall not exceed, in total, the higher of the following:—
    - (i) HK\$2.00 multiplied by the number of certificates issued; or
    - (ii) HK\$2.00 multiplied by the number of certificates cancelled.
- (5) Certificate replacement service: The issuer shall (or shall procure that its registrar shall) provide a certificate replacement service. The fee for replacing certificates:—
  - (a) representing securities with a market value of HK\$200,000 or less (at the time the request for replacement is made) for a person named on the register shall not exceed HK\$200.00, plus the costs incurred by the issuer (or its registrar) in publishing the required public notice; or
  - (b) either:
    - (i) representing securities with a market value of more than HK\$200,000 (at the time the request for replacement is made); or
    - (ii) for a person not named on the register (irrespective of the market value of the securities concerned);shall not exceed HK\$400.00, plus the costs incurred by the issuer (or its registrar) in publishing the required public notice.
- (6) For the purposes of this rule 13.60 only:—
  - (a) the expression “business day” shall exclude Saturdays, Sundays and public holidays in Hong Kong; and

- (b) in computing any period of business days, such period shall be inclusive of the business day on which the relevant transfers, certificates or other documents were received (or, if such documents were not received on a business day, the business day next following their receipt) and of the business day on which the relevant certificates were delivered or otherwise made available.

*Note: In the case of a PRC issuer, the requirements of rule 13.60 shall apply only to registration of its securities listed on the Exchange.*

- (7) References in rules 13.59 and 13.60 to the issuer's registrar providing a service, or to the issuer procuring that its registrar shall provide a service, shall not relieve the issuer of any obligations in respect of any acts or omissions of its registrar.

### **Designated accounts**

13.61 An issuer shall, if requested by holders of securities, arrange for designated accounts.

### **Registration arrangements**

13.62 In connection with rules 13.58, 13.59, 13.60 and 13.61 if the issuer does not maintain its own registration department, appropriate arrangements must be made with the registrars to ensure compliance with the provisions of such rules.

### **Bearer warrants**

13.63 Where share warrants to bearer have been issued or the articles of association or equivalent documents of the issuer authorise the issue of share warrants to bearer but none have yet been issued, the issuer shall:—

- (1) issue such warrants in exchange for registered share certificates (and vice versa) within 14 days of the deposit of the share certificates (or warrants); and
- (2) certify transfers against the deposit of warrants within 14 days of receipt.

### **Trading limits**

13.64 Where the market price of the securities of the issuer approaches the extremities of HK\$0.01 or HK\$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

13.64A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK\$1 based on the lowest daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

### **Change in Board Lot Size**

- 13.65 In the event of any amendment to an issuer's capital structure (such as a consolidation of shares) or any amendment to the board lot size, the Exchange reserves the right to request that adequate arrangements are made to enable resulting odd lot holders either to dispose of their odd lots or to round them up to a board lot. It may be appropriate for the issuer to appoint a broker as its agent to match the sales and purchases of odd lots or for the major shareholder itself or by its agent to stand in the market to buy or sell odd lot securities. The particular circumstances of an issuer may dictate the method by which odd lot holders are to be accommodated and issuers are urged to consult the Exchange at the earliest opportunity to agree the appropriate trading method.

### **Closure of books and record date**

- 13.66 (1) An issuer must announce any closure of its transfer books or register of members in respect of securities listed in Hong Kong at least six business days before the closure for a rights issue, or 10 business days before the closure in other cases. In cases where there is an alteration of book closing dates, the issuer must, at least five business days before the announced closure or the new closure, whichever is earlier, notify the Exchange in writing and make a further announcement. If, however, there are exceptional circumstances (e.g. a typhoon) that render the giving of the notification to the Exchange and publication of the announcement impossible, the issuer must comply with the requirements as soon as practicable. Where the issuer decides on a record date without book closure, these requirements apply to the record date.
- (2) An issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting, if the entitlements require the approval of shareholders in the general meeting or are contingent on a transaction that is subject to the approval of shareholders in the general meeting. This rule shall not apply where the issuer announces the timetable of an entitlement on or before 19 June 2011.

#### *Notes:*

1. *See Practice Note 8 for emergency share registration arrangements during a typhoon and/or a black rainstorm warning.*
2. *In addition, for a rights issue, the issuer must provide at least two trading days for trading in the securities with entitlements (i.e. before the ex-date) after publication of the book closure. If trading on the Exchange is interrupted due to a typhoon and/or a black rainstorm warning, the book-close date will be automatically postponed, where necessary, to provide at least two trading days (during neither of which trading is interrupted) for trading of the securities with entitlements during the notice period. In these circumstances the issuer must publish an announcement on the revised timetable.*

3. For the purposes of rule 13.66(2),

- the record date (when there is no book closure) or the last registration date (when there is a book closure) must be at least three business days after the general meeting; and
- if the issuer fails to publish the result of the poll conducted in the general meeting in the manner prescribed under rule 13.39(5), it must ensure there is at least one trading day for trading in the securities with entitlements after publication of the results of the poll. The issuer must publish an announcement on any revised timetable.

## **GENERAL**

### **Directors' dealings**

13.67 An issuer shall adopt rules governing dealings by directors in listed securities of the issuer on terms no less exacting than those of the Model Code set out in Appendix 10 issued by the Exchange. The Model Code sets out the standard which the Exchange requires the issuer and its directors to meet and any breach of such required standard will be a breach of the Exchange Listing Rules. The issuer may adopt its own code on terms no less exacting than those set out in the Model Code. Any breach of its own code will not be a breach of the Exchange Listing Rules unless it is also a breach of the required standard under the Model Code.

### **Directors' service contracts**

13.68 An issuer shall obtain the prior approval of its shareholders of the issuer in a general meeting (at which the relevant director and his associates shall not vote on the matter) for any service contract to be granted by the issuer or any of its subsidiaries to any director or proposed director of the issuer or to any director or proposed director of any of its subsidiaries which:

- (a) is for a duration that may exceed three years; or
- (b) in order to entitle the issuer to terminate the contract, expressly requires the issuer to give a period of notice of more than one year or to pay compensation or make other payments equivalent to more than one year's emoluments.

The remuneration committee of the issuer (if any and provided that such committee has a majority of independent non-executive directors) or an independent board committee shall form a view in respect of service contracts that require shareholders' approval and advise shareholders (other than shareholders who are directors with a material interest in the service contracts and their associates) as to whether the terms are fair and reasonable, advise whether such contracts are in the interests of the issuer and its shareholders as

a whole and advise shareholders on how to vote. An independent non-executive director who has a material interest in any such contracts shall not sit on the independent board committee.

*Note: A contract is relevant whether or not reduced to writing. A service contract is relevant whether granted by the issuer or any of its subsidiaries. A service contract not for a fixed period is to be regarded as running at least until the earliest date on which it can lawfully be determined by the employing company without payment of compensation (other than statutory compensation). Where an arrangement exists under which a director can require the issuer or any of its subsidiaries to enter into a further service contract with him, the arrangement will be regarded as a provision for extending the period of his existing service contract and taken into account in determining its duration.*

- 13.69 Directors' service contracts entered into by the issuer or any of its subsidiaries in accordance with the Exchange Listing Rules on or before 31 January, 2004 are exempt from the shareholders' approval requirement under rule 13.68. Upon any variation as to duration or payment on termination or any other material terms of the directors' service contracts or renewal of any such directors' service contracts, the issuer must comply in full with the requirements set out in rule 13.68 in respect of the service contracts effected after such variation or renewal. Pursuant to paragraph 14A of Appendix 16, the issuer must include particulars of any service contracts that are exempt under this rule in its annual reports during the term of any such service contracts.

### **Nomination of directors**

- 13.70 The issuer shall publish an announcement in accordance with rule 2.07C or issue a supplementary circular upon receipt of a notice from a shareholder to propose a person for election as a director at the general meeting where such notice is received by the issuer after publication of the notice of meeting. The issuer shall include particulars of the proposed director in the announcement or supplementary circular.

*Note: The issuer must assess whether or not it is necessary to adjourn the meeting of the election to give shareholders at least 10 business days to consider the relevant information disclosed in the announcement or supplementary circular.*

### **Notices**

- 13.71 An issuer shall send notices to all holders of its listed securities whether or not their registered address is in Hong Kong.
- 13.72 Any notice to be given by an issuer under this Chapter shall be in writing and any notice to the holder of a bearer security may be given by being published in accordance with rule 2.07C.

- 13.73 In addition to any direction of the court, the issuer shall ensure that notice of every meeting of its shareholders or its creditors concerning the issuer (e.g. for winding up petitions, schemes of arrangement or capital reduction) is published in accordance with rule 2.07C. The issuer shall despatch a circular to its shareholders at the same time as (or before) the issuer gives notice of the general meeting to approve the transaction referred to in the circular. The issuer shall provide its shareholders with any material information on the subject matter to be considered at a general meeting that comes to the directors' attention after the circular is issued. The issuer must provide the information either in a supplementary circular or by way of an announcement in accordance with rule 2.07C not less than 10 business days before the date of the relevant general meeting to consider the subject matter. The meeting must be adjourned before considering the relevant resolution to ensure compliance with this 10 business day requirement by the chairman or, if that is not permitted by the issuer's constitutional documents, by resolution to that effect (see also rule 13.41).

*Note: The issuer must assess the scale of revisions or updating required and materiality of the new information, revisions or updating required that has come to its attention since publication of the circular when deciding whether to issue a revised or supplementary circular or to publish an announcement in accordance with rule 2.07C. Where the revisions or updating required are significant, the issuer must consider carefully whether it would be better to publish a revised or supplementary circular rather than provide particulars of the changes in an announcement. The issuer should not overwhelm or confuse investors with lengthy announcements describing changes to information contained in the original circular.*

- 13.74 The issuer shall also disclose the details required under rule 13.51(2) of any directors proposed to be re-elected or proposed new director in the notice or accompanying circular to its shareholders of the relevant general meeting, if such re-election or appointment is subject to shareholders' approval at that relevant general meeting (including, but not limited to, an annual general meeting).

### **Equality of treatment**

- 13.75 An issuer shall ensure equality of treatment for all holders of securities of the same class who are in the same position (except, in the case of a PRC issuer, to the extent otherwise provided in the PRC issuer's articles of association).

### **Use of Airmail**

- 13.76 Where this Chapter requires anything to be sent by any person in Hong Kong to any person outside Hong Kong and vice versa, such thing shall be sent, where practicable, by airmail or an equivalent service that is no slower.

### **Directors' contact information**

- 13.77 An issuer shall inform the Exchange as soon as reasonably practicable of any change(s) in the contact information, including the information set out in rule 3.20(1), of its directors (and, in the case of a PRC issuer, supervisors).
- 13.78 If and when requested by the Exchange, an issuer shall use its best endeavours to assist the Exchange to locate the whereabouts of any director (or, in the case of a PRC issuer, supervisor) who has since resigned from his directorship in the issuer.

### **Communication with the Exchange**

- 13.79 References in this Chapter, Chapter 14 and Chapter 14A to informing the Exchange mean delivery of the relevant information to the Exchange in the manner determined by the Exchange from time to time and promulgated by way of a practice note to the Exchange Listing Rules.

### **Independent financial advisers**

- 13.80 An independent financial adviser appointed under rule 13.39(6)(b), rule 14A.44 or rule 19.05(6)(a)(iii) must take all reasonable steps to satisfy itself that:
- (1) it has a reasonable basis for making the statements required by rule 14A.45; and
  - (2) without limiting the generality of paragraph (1) above, there is no reason to believe any of the following information is not true or omits a material fact:
    - (a) any information relied on by the independent financial adviser in forming its opinion; or
    - (b) any information relied on by any third party expert on whose opinion or advice the independent financial adviser relies in forming its opinion.

*Notes: 1. For the purposes of this rule, the Exchange expects that the reasonable steps an independent financial adviser will typically perform will include the following:*

- (a) obtaining all information and documents of the issuer relevant to an assessment of the fairness and reasonableness of the terms of the transaction, for example, if the transaction involves the purchase or sale of products or services, information and documents showing the prices at which the issuer buys and sells such products and services to independent third parties;*

- (b) researching the relevant market and other conditions and trends relevant to the pricing of the transaction;*
  - (c) reviewing the fairness, reasonableness and completeness of any assumptions or projections relevant to the transaction;*
  - (d) without limiting the generality of paragraph (c) above, in relation to any third party expert providing an opinion or valuation relevant to the transaction:
    - (i) interviewing the expert including as to its expertise and any current or prior relationships with the issuer, other parties to the transaction, and core connected persons of either the issuer or another party to the transaction;*
    - (ii) reviewing the terms of engagement (having particular regard to the scope of work, whether the scope of work is appropriate to the opinion required to be given and any limitations on the scope of work which might adversely impact on the degree of assurance given by the expert's report, opinion or statement); and*
    - (iii) where the independent financial adviser is aware the issuer or another party to the transaction has made formal or informal representations to the expert, assessing whether the representations are in accordance with the independent financial adviser's knowledge; and**
  - (e) if there have been any relevant alternative offers made (for example, offers made recently for the same asset), then reviewing and assessing such alternative offers and the reasons given, if any, by the management for rejecting these offers.*
2. *The Exchange expects the independent financial adviser will ensure the letter referred to at rule 14A.45 takes account of the following principles:*
- (a) the source for any fact which is material to an argument should be clearly stated, including sufficient detail to enable the significance of the fact to be assessed; however, if the fact has been included in a document recently sent to shareholders, an appropriate cross reference may instead be made;*



- (b) *a quotation (for example, from a newspaper or a stockbroker circular) should not be used out of context and details of the origin should be included. Since quotations will necessarily carry the implication that they are endorsed by the independent financial adviser, quotations should not be used unless the independent financial adviser has corroborated or substantiated them;*
- (c) *pictorial representations, charts, graphs and diagrams should be presented without distortion and, when relevant, should be to scale; and*
- (d) *any comparables referred to in a document must be a fair and representative sample. The bases for compiling such comparables must be clearly stated in the document.*

13.81 The issuer must:

- (1) afford any independent financial adviser it appoints pursuant to rule 13.39(6)(b), rule 14A.44 or rule 19.05(6)(a)(iii) full access at all times to all persons, premises and documents relevant to the independent financial adviser's performance of its duties as set out in the Exchange Listing Rules. In particular, terms of engagement with experts retained to perform services related to the transaction should contain clauses entitling the independent financial adviser access to:
  - (a) any such expert;
  - (b) the expert's reports, draft reports (both written and oral), and terms of engagement;
  - (c) information provided to or relied on by the expert;
  - (d) information provided by the expert to the Exchange or Commission; and
  - (e) all other correspondence exchanged between the issuer or its agents and the expert or between the expert, the issuer and the Exchange or Commission;

*Note: The Exchange expects that access to documents for the purposes of this rule would include the right to take copies of the documents without charge.*
- (2) keep the independent financial adviser it appoints informed of any material change to any information previously given to or accessed by the independent financial adviser pursuant to paragraph (1) above; and

- (3) provide to or procure for the independent financial adviser all necessary consents to the provision of the information referred to in paragraphs (1) and (2) above to the independent financial adviser.

13.82 An independent financial adviser must be appropriately licensed by the Commission and must discharge its responsibilities with due care and skill.

13.83 An independent financial adviser must perform its duties with impartiality.

13.84 An independent financial adviser must be independent from any issuer for whom it acts. An independent financial adviser is not independent if any of the following circumstances exist as at the time of making the declaration required by rule 13.85(1):

- (1) the IFA group and any director or close associate of a director of the independent financial adviser holds, directly or indirectly, in aggregate more than 5% of the number of issued shares of the issuer, another party to the transaction, or a close associate or core connected person of the issuer or another party to the transaction;

(1A) in the case of a connected transaction, the independent financial adviser holds more than 5% of the number of issued shares of an associate of another party to the transaction;

- (2) any member of the IFA group or any director or close associate of a director of the independent financial adviser is a close associate or core connected person of the issuer or another party to the transaction;

(2A) in the case of a connected transaction, the independent financial adviser is an associate of another party to the transaction;

- (3) any of the following exceeds 10% of the total assets shown in the latest consolidated financial statements of the independent financial adviser's ultimate holding company or, where there is no ultimate holding company, the independent financial adviser:

(a) the aggregate of:

- (i) amounts due to the IFA group from:

(A) the issuer;

(B) its subsidiaries;

(C) its controlling shareholder; and

(D) any close associates of its controlling shareholder; and

- (ii) all guarantees given by the IFA group on behalf of:
  - (A) the issuer;
  - (B) its subsidiaries;
  - (C) its controlling shareholder; and
  - (D) any close associates of its controlling shareholder;
  
- (b) the aggregate of:
  - (i) amounts due from the IFA group to:
    - (A) the issuer;
    - (B) its subsidiaries; and
    - (C) its controlling shareholder; and
  - (ii) all guarantees given on behalf of the IFA group by:
    - (A) the issuer;
    - (B) its subsidiaries; and
    - (C) its controlling shareholder;
  
- (c) the aggregate of:
  - (i) amounts due from the IFA group to any of the following (referred to in this rule as “the Other Parties”):
    - (A) another party to the transaction;
    - (B) any holding company of another party to the transaction;
    - (C) any subsidiary of any holding company of another party to the transaction;
    - (D) any controlling shareholder of:
      - (1) another party to the transaction; or
      - (2) any holding company of another party to the transaction; and

- (E) any close associate of any controlling shareholder referred to in paragraph (D) above; and
    - (ii) all guarantees given by any of the Other Parties on behalf of the IFA group; and
  - (d) the aggregate of:
    - (i) amounts due to the IFA group from any of the Other Parties; and
    - (ii) all guarantees given by the IFA group on behalf of any of the Other Parties;
- (4) any of the following has a current business relationship with the issuer or another party to the transaction, or a director, subsidiary, holding company or substantial shareholder of the issuer or another party to the transaction, which would be reasonably considered to affect the independent financial adviser's independence in performing its duties as set out in the Exchange Listing Rules, or might reasonably give rise to a perception that the independent financial adviser's independence would be so affected, except where that relationship arises under the independent financial adviser's appointment to provide the advice:
- (a) any member of the IFA group;
  - (b) an employee of the independent financial adviser who is directly engaged in providing the advice to the issuer;
  - (c) a close associate of an employee of the independent financial adviser who is directly engaged in providing the advice to the issuer;
  - (d) a director of any member of the IFA group; or
  - (e) a close associate of a director of any member of the IFA group;
- (5) within 2 years prior to making the declaration pursuant to rule 13.85(1):
- (a) a member of the IFA group has served as a financial adviser to:
    - (i) the issuer or its subsidiaries;
    - (ii) another party to the transaction or its subsidiaries; or
    - (iii) a core connected person of the issuer or another party to the transaction; or

- (b) without limiting paragraph (a), an employee or a director of the independent financial adviser who is directly engaged in providing the subject advice to the issuer:
  - (i) was employed by or was a director of another firm that served as a financial adviser to any of the entities referred to at paragraphs (a)(i) to (a)(iii) above; and
  - (ii) in that capacity, was directly engaged in the provision of financial advice to the issuer or another party to the transaction;
- (6) the independent financial adviser or a member of the IFA group is the issuer's auditor or reporting accountant.

- Notes:*
1. *In addition to it being a breach of the Exchange Listing Rules, if it comes to the Exchange's attention that an independent financial adviser is not independent, the Exchange will not accept documents produced by that independent financial adviser for any purpose required under the Exchange Listing Rules in relation to the subject transaction.*
  2. *In calculating the percentage figure of shares that it holds or will hold for the purposes of sub-paragraphs (1), (2) and (4), an entity is not required to include an interest:*
    - (a) *held by an investment entity on behalf of its discretionary clients;*
    - (b) *held by a fund manager on a non-discretionary basis such as a managed account or managed fund;*
    - (c) *held in a market-making capacity;*
    - (d) *held in a custodial capacity;*
    - (e) *in shares that would be disregarded for the purposes of Divisions 2 to 4 of Part XV of the Securities and Futures Ordinance under section 323 of that Ordinance; or*
    - (f) *in shares held by a member of the entity's group that is an investment manager whose interest would not be aggregated with its holding company under section 316(2) of the Securities and Futures Ordinance by reason of the operation of section 316(5) of that Ordinance.*

*For these purposes "investment manager" has the meaning given to it in section 316(7) of the Securities and Futures Ordinance.*

3. *For the purposes of this rule, ultimate holding company means a holding company that itself does not have a holding company.*

13.85 No later than the earlier of the independent financial adviser agreeing its terms of engagement with the issuer and the independent financial adviser commencing work as independent financial adviser to the issuer, the independent financial adviser must submit to the Exchange:

- (1) a declaration in the prescribed form set out in Appendix 21 to the effect that the independent financial adviser is independent, including a statement addressing each of the circumstances set out in rule 13.84; and
- (2) an undertaking, in the terms set out in Appendix 22 to:
  - (a) comply with the Listing Rules; and
  - (b) co-operate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange, including answering promptly and openly any questions addressed to the independent financial adviser, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the independent financial adviser is requested to appear.

13.86 Where an independent financial adviser or issuer becomes aware of a change in the circumstances set out in the declaration required by rule 13.85(1) during the period the independent financial adviser is engaged by the issuer, the independent financial adviser or issuer must notify the Exchange as soon as possible upon that change occurring.

13.87 Insofar as the Exchange Listing Rules impose a higher standard of conduct on independent financial advisers than that set out in the Commission's Corporate Finance Adviser Code of Conduct, the Code of Conduct, the Takeovers Code, the Share Buy-backs Code and all other relevant codes and guidelines applicable to them, the Exchange Listing Rules will prevail.

*Note: The Exchange also reminds independent financial advisers of their other statutory obligations including but not limited to those under the Securities and Futures Ordinance.*

## **Appointment and removal of auditor prior to expiration of his term of office**

- 13.88 The issuer must at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting until the next annual general meeting. The issuer must not remove its auditor before the end of the auditor's term of office without first obtaining shareholders' approval at a general meeting. An issuer must send a circular proposing the removal of the auditor to shareholders with any written representations from the auditor, not less than 10 business days before the general meeting. An issuer must allow the auditor to attend the general meeting and make written and/or verbal representations to shareholders at the general meeting.

## **Corporate Governance Code**

- 13.89 (1) The Corporate Governance Code in Appendix 14 sets out the principles of good corporate governance and two levels of recommendations: (a) code provisions; and (b) recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

*Note: Issuers may also devise their own code on corporate governance practices on such terms as they may consider appropriate.*

- (2) Issuers must state whether they have complied with the code provisions set out in the Corporate Governance Code for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).

*Note: For the requirements governing preliminary results announcements, see paragraphs 45 and 46 of Appendix 16.*

- (3) Where the issuer deviates from the code provisions, it must give considered reasons:
- (a) for annual reports (and summary financial reports), in the Corporate Governance Report under Appendix 14; and
  - (b) for interim reports (and summary interim reports), either:
    - (i) by giving considered reasons for each deviation; or

- (ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the immediately preceding annual report, and providing details of any changes together with considered reasons for any deviation not reported in that annual report. The references must be clear and unambiguous and the interim report (or summary interim report) must not contain only a cross-reference without any discussion of the matter.
- (4) For the recommended best practices, issuers are encouraged, but are not required, to state whether they have complied with them and give considered reasons for any deviation.

### **Publication of issuers' constitutional documents**

13.90 An issuer must publish on its own website and on the Exchange's website, an up to date consolidated version of its memorandum and articles of association or equivalent constitutional document.

### **Environmental and Social Matters**

- 13.91 (1) The Environmental, Social and Governance ("ESG") Reporting Guide in Appendix 27 comprises two levels of disclosure obligations: (a) "comply or explain" provisions; and (b) recommended disclosures.
- (2) Issuers must state whether they have complied with the "comply or explain" provisions set out in the ESG Reporting Guide for the relevant financial year in their annual reports or in separate ESG reports.
- (3) Where the issuer deviates from the "comply or explain" provisions, it must give considered reasons in its ESG report.
- (4) Issuers are encouraged, but not required, to report on the recommended disclosures of the ESG Reporting Guide.
- (5) Issuers must publish their ESG reports on an annual basis and regarding the same period covered in their annual reports.

#### *Notes:*

- (1) *An ESG report may be presented as information in the issuer's annual report, in a separate report, or on the issuer's website. Where not presented in the issuer's annual report, the issuer should publish this information as close as possible to, and in any event no later than three months after, the publication of the issuer's annual report.*
- (2) *As regards "Subject Area A. Environmental" of the ESG Reporting Guide, the upgrade of the Key Performance Indicators to "comply or explain" will come into effect for issuers' financial years beginning on or after 1 January 2017.*



13.92 The nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report.

*Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.*