

CONSULTATION PAPER
ON PROPOSED CHANGES TO
REQUIREMENTS FOR CIRCULARS AND
LISTING DOCUMENTS OF LISTED ISSUERS

September 2009



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

How to Respond to this Consultation Paper

We invite interested parties to submit written comments on this paper no later than **18 November 2009**. Responses should, if possible, be made by completing and returning the questionnaire (Questionnaire) which is available at:

http://www.hkex.com.hk/consul/paper/cp200909crq_e.doc by one of the following methods:

By mail or hand delivery to: Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on
Proposed Changes to Requirements for Circulars and
Listing Documents of Listed Issuers**

By fax to: (852) 2524-0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

**“Re: Consultation Paper on
Proposed Changes to Requirements for Circulars
and Listing Documents of Listed Issuers”**

Our submission enquiry number is (852) 2840-3844.

In the Questionnaire, we invite interested parties to give views on the proposed changes, and where appropriate support the answers with reasons. Respondents should reply to the questions against the backdrop of this Consultation Paper. For the purpose of the public consultation, respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions. Please refer to the Questionnaire on how to complete it.

Our policy on handling personal data is set out in Appendix II of this paper and the Questionnaire.

Next Steps

We will carefully consider and analyse all the responses received, and if appropriate, develop (or further progress) rule amendments to implement the final agreed conclusions. As usual we will develop the consultation conclusions and work with the Securities and Futures Commission for any relevant rule amendments.

EXECUTIVE SUMMARY

This Consultation Paper seeks comments on our proposals to revise certain requirements regarding notifiable transaction and/or connected transaction circulars, and listing documents issued by listed issuers.

In **Chapter 2**, we identify issues with the current requirements under the Main Board Rules in response to market comments in the following areas:

- Disclosure of financial information in circular or listing document (section A)
 - . Accountants' report in very substantial disposal circular
 - . Reporting period of accountants' report in major acquisition or very substantial acquisition circular
 - . Indebtedness statement in notifiable transaction circular
 - . Reproducing published financial information in circular or listing document
 - . Minor Rule changes regarding working capital statement and combined financial information
- Other disclosure requirements for circular or listing document (section B)
 - . Directors' statement confirming the accuracy and completeness of information in notifiable or connected transaction circular and listing document
 - . Information in board minutes of connected transaction
 - . Circular content requirements for a notifiable transaction involving an acquisition and a disposal
 - . Disclosure requirements applicable only to listing documents issued by listed overseas and/or PRC issuers
- Timing requirements for despatch of notifiable transaction or connected transaction circulars and supplementary circulars (section C)

In each section of Chapter 2, we set out our proposals followed by consultation questions.

The relevant requirements for the GEM Board are substantially similar to that of the Main Board. We therefore propose to make corresponding changes to the GEM Listing Rules to be consistent with the Main Board Listing Rules. All Rule references in this Consultation Paper are to the Main Board Listing Rules.

The draft Main Board Rule amendments are in **Appendix I**, which may need further discussion with the Securities and Futures Commissions for fine-tuning.

CHAPTER 1 INTRODUCTION

Purpose

1. The Stock Exchange of Hong Kong Limited, a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, reviews the Rules from time to time to (i) ensure that they address developments in the market and international practice; and (ii) represent acceptable standards which help ensure that investors have and maintain confidence in the market.

Background and reasons for review

2. Under Chapters 14 and 14A of the Rules, issuers must send circulars to shareholders for major (or larger) transactions and connected transactions that require shareholders' approval. The Rules set out specific disclosure requirements for notifiable and connected transactions circulars, including accountants' report (for notifiable transactions only) and information required in Appendix 1B to the Rules. The Rules also contain timing requirements for despatch of circulars and documentary requirements like submission of board minutes for connected transactions.
3. Under Chapter 11, issuers must issue a listing document for:
 - (a) offers for subscription or offers for sale;
 - (b) placings of a new class of securities for listing;
 - (c) introductions;
 - (d) rights issues or open offers;
 - (e) capitalisation issues;
 - (f) an exchange or a substitution of securities; and
 - (g) any deemed new listing.
4. Listing documents must contain all of the specific information in Appendix 1B to the Rules unless exempt under Rule 11.09. There are special disclosure requirements for documents issued by overseas and PRC issuers and investment companies, in Chapters 19, 19A and 21.
5. We have undertaken this review in response to issuers' and practitioners' comments on certain requirements regarding notifiable transaction and/or connected transaction circulars and listing documents. We strive to:
 - (a) make the contents of circulars and listing documents relevant for shareholders;
 - (b) codify existing practices; and
 - (c) for transparency, require information to be disclosed to shareholders and not only to us.

CHAPTER 2 ISSUES AND PROPOSALS

A. Financial information in circular or listing document

(1) Accountants' report on the listed group for very substantial disposals

Issues with the current position

6. A very substantial disposal (**VSD**) is a new type of notifiable transaction introduced in March 2004 as part of the Rule amendments about corporate governance following a market consultation in 2002. It covers disposals of assets, a business or a company if any of the percentage ratios for transaction classification is 75% or more.
7. Under Rules 4.06A and 14.68(2)(a)(i), if a VSD involves a disposal of a company or business, the circular must contain:
 - (1) an accountants' report on the issuer's group with the company or business being disposed of (the **Disposal Target**) shown separately as a discontinuing operation (as a note to the financial statements) for the latest three financial years and, if the latest financial year ended more than 6 months from the circular date, a stub period; and
 - (2) pro forma financial information on the remaining group (i.e. the issuer group excluding the Disposal Target) for the current or most recently completed financial period.
8. A VSD normally involves a substantial reduction in the assets and operations of the issuer's group. Generally shareholders would require financial information on the Disposal Target and on the remaining group to assess the proposed disposal. The Rules require an accountants' report on the issuer's group (with separate note disclosure on the Disposal Target). This is because if the Disposal Target is very substantial to the issuer, it would likely be less onerous to prepare an accountants' report on the issuer as it had previously been subject to audit and financial reporting. To facilitate assessment of the impact of the transaction on the issuer's group, the current Rules also require pro forma financial information on the remaining group.
9. The market has commented that an accountants' report on the issuer's group is costly and lengthy to prepare without added benefit to shareholders. The issuer is already required to publish periodic financial reports (including audited accounts) and the Disposal Target is part of the issuer's group. This can be distinguished from an acquisition where the accounts of the target to be acquired are not prepared by the issuer and it needs to perform due diligence, including an audit on the target's financial information. In a disposal, the Disposal Target's financial information is prepared mainly for shareholders' consideration. The requirement to prepare an accountants' report on the issuer's group is particularly onerous where it needs to cover a stub period

after the end of the issuer's financial year, in which case the work would equate to an audit on the results of the issuer's group.

10. There are market views that the Disposal Target's financial information together with the pro forma financial information on the remaining group should be sufficient for shareholders' consideration. It is not necessary to include three-year financial information on the issuer group in the VSD circular.
11. The accountants' report requirement for a VSD circular in our Rules is more stringent than in other markets:
 - Under the UK listing rules, if a class 1 disposal¹ will result in the Disposal Target's assets and liabilities no longer being consolidated, the circular must contain the following financial information (instead of an accountants' opinion):
 - (a) the audited accounts of the Disposal Target for the last three years; or
 - (b) if no audited accounts have been prepared,
 - (i) the financial information of the Disposal Target extracted from the consolidation schedules that underlie the listed issuer's audited consolidated accounts; or
 - (ii) if the Disposal Target has not been owned by the listed issuer for the entire reporting period, the information required may be extracted from the target's accounting records.

In any event, under the UK listing rules a listed issuer must:

- (a) present all financial information in a class 1 circular in a form that is consistent with the accounting policies adopted in its own latest annual consolidated accounts; and
 - (b) cite the source of all financial information in a class 1 circular.
- Under the Singapore (Main Board) rules, disposal transactions are classified as discloseable or major transactions; they do not have a very substantial disposal classification. Nor do the rules require a major transaction circular to contain the accountants' report of the disposal target.
12. In the last three years (2006 to 2008), 123 VSDs were conducted by issuers. 52 (42%) of them were classified as VSDs because the consideration ratios (based on the issuer's market capitalization) were 75% or more. In some of these transactions, the size of the Disposal Target in terms of its assets, revenue or profit was not very substantial when

¹ Under the UK listing rules, disposal transactions are classified as a Class 1, Class 2 or Class 3 transaction. A Class 1 transaction refers to a transaction where any percentage ratio is 25% or more and is subject to shareholders' approval. A Class 1 transaction is therefore equivalent to a major transaction, a very substantial acquisition or a very substantial disposal under Chapter 14 of the Rules.

compared to that of the issuer. Of the 52 transactions, 29 (24%) would not be classified as a VSD based on the results of the other percentage ratios (i.e. all percentage ratios excluding the consideration ratio). In these cases it may be more practicable for issuers to prepare financial information on the Disposal Target, instead of the issuer's group.

Proposal

13. For a VSD, we consider that financial information on the Disposal Target and the remaining group is relevant for shareholders' consideration. This purpose can be achieved when the circular contains:
 - the Disposal Target's financial information, either shown as a note in the issuer's group financial statements (as in the current Rules), or separately (as suggested in some market comments); and
 - pro forma information on the remaining group (as in the current Rules).
14. We also agree that it is not necessary or cost-effective for an issuer to prepare an accountants' report on the issuer's group or the Disposal Target. Nevertheless, there should be some assurance on the financial information provided in a VSD circular for shareholders' consideration. We believe that, at a minimum, the financial information should be reviewed by the issuer's auditors or reporting accountants (similar to a review of interim financial information).
15. Given the above, we propose to remove the current accountants' report requirement but introduce the following financial disclosure requirements for the VSD circular²:
 - The circular would contain:
 - (a) financial information of the issuer's group with the Disposal Target shown separately as a disposal group or discontinuing operation (equivalent to the current Rules); **OR**
 - (b) financial information of the Disposal Target.
 - For the financial information under (a) or (b),
 - it must be prepared using accounting policies of the listed issuer (as in the current Rules);
 - it must cover three financial years with the latest financial year/ period ended not more than 6 months before the circular date (as in the current Rules);

² The current Rules also require pro forma financial information on the remaining group to be prepared in accordance with Chapter 4 of the Rules. This requirement will continue to apply.

- it must contain information in respect of the balance sheet, income statement and any notes to accounts that the directors consider necessary for a reasonable appreciation of the results for the relevant financial periods (similar to disclosures in results announcements) plus a cash flow statement and a statement of changes in equity; and
 - it must be reviewed by the issuer's auditors or reporting accountants. It is expected that the review would be conducted according to the standards published by HKICPA or IASB on engagements to review financial statements (similar to a review of interim financial information). Alternatively, the issuer may include an accountants' report on the financial statements. We envisage this may be preferred for issuers electing to disclose financial information under (a) above where the reporting period end coincides with the issuer group's financial year end.
- The circular must also contain a statement by the directors to describe any material adverse change in the financial or trading position of the issuer's group since the latest published audited accounts (as currently required for a VSA or major acquisition circular).

Consultation questions

16. *Question 1: Do you agree with our proposal to remove the current accountants' report requirements for VSD? Please provide reasons for your views.*
17. *Question 2: If your answer to question 1 is "Yes", do you agree with our proposal to require a VSD circular to disclose financial information described in paragraph 15 above? Please provide reasons for your views.*
18. *Question 3: If your answers to questions 1 and 2 are "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

(2) Reporting period of accountants' report in major acquisition or very substantial acquisition circular

Issues with the current position

19. Under the current Rules, a circular for a very substantial acquisition or a major transaction involving acquisition of a business or company (the **Target**) must contain an accountants' report on the Target. The reporting period must comply with the following requirements:

- (a) Rule 4.06 – the accountants’ report must include the Target’s results for each of the three financial years immediately before the circular date; and
 - (b) Rule 14.67(6)(a)(i) or 14.69(4)(a)(i) – the latest financial period reported on by the reporting accountants must have ended 6 months or less before the circular date. Therefore, if the Target’s latest financial year ended more than 6 months before the circular date, the accountants’ report must also include the Target’s results for a stub period.
20. The accountants’ report requirements for major acquisitions or very substantial acquisitions are similar to those for new listing applications. In particular, under Rule 4.04 and the Companies Ordinance, a new listing applicant must include in its IPO prospectus an accountants’ report containing its results for each of the three financial years immediately before the issue of the prospectus. The information enables investors to make an informed assessment on the new applicant’s activities and financial position. It is also relevant for assessing whether the new applicant meets the trading record requirement immediately before it is admitted to listing.
21. In a very substantial acquisition or major acquisition, the Target is not subject to any requirement on its trading record immediately before the transaction. The purpose of the accountants’ report is to provide information for shareholders to assess the Target’s performance and financial position and decide how to vote on the transaction. We consider that this purpose is achieved when the accountants’ report contains the Target’s results for three financial years and if necessary, a stub period with the latest financial year/period ended not more than 6 months from the circular date. Nevertheless, currently the reporting period must cover the financial year immediately before the circular date.
22. In our experience, an issuer proposing to issue a very substantial acquisition or major acquisition circular shortly after the end of the Target’s financial year may have difficulty in producing the Target’s audited accounts for the latest financial year. Compliance with Rule 4.06 may delay the despatch of the circular which is not in the interest of the issuer and its shareholders. We have granted waivers to issuers in these circumstances to facilitate timely despatch of circulars. For example, if the Target’s financial year ends on 31 December and the issuer’s transaction circular is scheduled to be issued in January 2009, the issuer may apply for a waiver from providing the accounts for the year ended 31 December 2008. An accountants’ report on the Target would then be prepared for the three years ended 31 December 2005, 2006 and 2007, plus a stub period ended not more than 6 months before the circular date.

Proposal

23. We propose to remove the requirement in Rule 4.06 that the reporting period must cover the financial year immediately before the circular date. Under the proposed Rule, the accountants’ report would need to contain the Target’s results for at least three

financial years (or if less, the period since commencement of the Target or the incorporation or establishment of the Target, as the case may be), with the latest financial year/period ending no more than 6 months from the circular date.

Consultation questions

24. *Question 4: Do you agree with our proposal to remove the requirement in Rule 4.06 that the reporting period of an accountants' report in a major transaction or very substantial acquisition circular must cover the financial year immediately before the circular date? Please provide reasons for your views.*
25. *Question 5: If your answer to question 4 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

(3) Indebtedness statement in a notifiable transaction circular

Issues with the current position

26. Under the current Rules, a circular for a major transaction, a very substantial disposal or a very substantial acquisition must contain certain information about the liquidity and financial resources of an issuer's group to enable shareholders to assess the impact of the transaction on the group. These include:
- (1) a statement as at the most recent practicable date (which must be stated) of the following on a consolidated basis, if material:—
 - (a) the total amount of any debt securities of the group issued and outstanding, and authorised or otherwise created but unissued, and term loans, distinguishing between guaranteed, unguaranteed, secured (whether the security is provided by the issuer or by third parties) and unsecured, or an appropriate negative statement;
 - (b) the total amount of all other borrowings or indebtedness in the nature of borrowing of the group including bank overdrafts and liabilities under acceptances (other than normal trade bills) or acceptance credits or hire purchase commitments, distinguishing between guaranteed, unguaranteed, secured and unsecured borrowings and debt, or an appropriate negative statement;
 - (c) all mortgages and charges of the group, or an appropriate negative statement; and
 - (d) the total amount of any contingent liabilities or guarantees of the group, or an appropriate negative statement;

- (2) a statement by the directors that in their opinion the working capital available to the group is sufficient or, if insufficient, how to provide the additional necessary working capital; and
 - (3) (for a major acquisition or very substantial acquisition) a statement by the directors of any material adverse change in the financial or trading position of the group since the date to which the latest published audited accounts have been made up, or an appropriate negative statement.
27. In the past, some issuers had delayed the despatch of their transaction circulars because they needed additional time to prepare the indebtedness statements. We understand that issuers usually engage professional accountants' to review their indebtedness statements and the process for obtaining bank confirmations takes considerable time, particularly where the issuers maintain accounts and facilities with a large number of banks in other jurisdictions. Nevertheless, this statement only shows the issuer group's latest indebtedness position. This contrasts with the working capital statement and the statement of material adverse change in the issuer's trading and financial position which give shareholders an overall picture of the issuer group's financial position.
28. Further, the issuer's directors should have considered the issuer group's indebtedness position as part of their due diligence work in preparing the working capital statement and the statement on material adverse change. The working capital statement is also subject to confirmation by the issuer's financial adviser or auditors on the existence of facilities provided by third parties to finance the issuer group.
29. Some other jurisdictions do not require indebtedness statements of issuers in their circulars for material transactions. For example, the UK listing rules for a class 1 circular only require a working capital statement and a statement of material adverse change, but not an indebtedness statement³. The Singapore (Main Board) rules do not require a major transaction circular to contain any statement of indebtedness, working capital or material adverse change similar to our rules.
30. Despite this, there are views that the indebtedness statement provides updated quantitative information about the issuer group's indebtedness position. Some shareholders find it useful for their assessment of the issuer group's financial position generally and in conjunction with the proposed acquisition or disposal. In contrast the working capital statement and the statement of material adverse change are qualitative statements and may not provide the same level of information on the issuer group's debt position. Furthermore, the indebtedness statement is generally more current (usually prepared within 8 weeks before the date of the circular), compared to the annual and interim financial statements of the issuer's group.

³ In UK, if the Class 1 Transaction involves issuance of prospectus (e.g. if the consideration for the transaction is to be satisfied by issuance of shares), the listed company will need to comply with the Prospectus Directive Regulation and include a statement of capitalisation and indebtedness in the investment circular.

Proposal

31. We do not have a strong view on relaxing the disclosure requirement for indebtedness statements in notifiable transaction circulars. We wish to seek market views on whether to retain the requirement.

Consultation question

32. *Question 6: Do you consider that the requirement for disclosing an indebtedness statement in a notifiable transaction circular should be retained? Please provide reasons for your views.*

(4) Working capital statement in a notifiable transaction circular

Issues with the current position

33. Under Rule 14.66(10), a circular for a major transaction, a very substantial disposal or a very substantial acquisition must contain a working capital statement by the directors as referred to in paragraph 30 of Appendix 1B to the Rules. The statement must specify that in the directors' opinion the working capital available to the issuer's group is sufficient or, if not, how the issuer proposes to provide the additional necessary working capital.
34. The working capital statement provides shareholders with prospective information on the financial position of the issuer group. When the issuer proposes a material transaction, the working capital statement in the relevant circular should take into account the effect of the proposed transaction. While this is currently market practice, it is not clear from the wording of the existing Rules.

Proposal

35. We propose to amend Rule 14.66(10) to clarify that the working capital statement in a circular for a major transaction, a very substantial disposal or a very substantial acquisition must take into account the effect of the proposed transaction.

Consultation questions

36. *Question 7: Do you agree with our proposal to amend Rule 14.66(10) to clarify that the working capital statement in a notifiable transaction circular must take into account the effect of the proposed transaction? Please provide reasons for your views.*
37. *Question 8: If your answer to question 7 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

(5) Reproducing published financial information in circular or listing document

Issues with the current position

38. Paragraph 31(3) of Appendix 1B to the Rules refers to the disclosure of:

“Information for the last three financial years with respect to the profits and losses, financial record and position, set out as a comparative table and the latest published audited balance sheet together with the notes on the annual accounts for the last financial year: -

(a) for the group; and

(b) for any company acquired since the date of the last published audited accounts of the group in respect of which an accountants’ report has already been submitted to shareholders or which was itself during the last 12 months a listed issuer⁴,” [emphasis added]

39. The information required under paragraph 31(3) must be disclosed in:

(a) a circular for a major acquisition or very substantial acquisition (Rules 14.67(4) and 14.69(2)); and

(b) a listing document issued by an issuer other than in connection with a capitalisation issue or an exchange or substitution of securities (for example, rights issue or open offer).

40. Some issuers consider that strict compliance with the disclosure requirement under paragraph 31(3) is burdensome as it will increase the size of their circulars or listing documents and therefore the printing costs. Given that the information required is extracted from published accounts or an accountants’ report in a published circular, which are now available at both our and the listed issuers’ websites, we consider it acceptable for issuers to refer in their circulars or listing documents to the published financial information (instead of reproducing the same information).

Proposal

41. We propose to amend the Rules to allow issuers to make references in their circulars or listing documents to published documents set out in paragraph 31(3) of Appendix 1B instead of reproducing the same information.

⁴ An accountants’ report is not required in a notifiable transaction circular if the acquisition target is listed on the Exchange.

Consultation questions

42. *Question 9: Do you agree with our proposal to allow issuers to make references in their circulars or listing documents to published documents set out in paragraph 31(3) of Appendix 1B, instead of reproducing the same information? Please provide reasons for your views.*
43. *Question 10: If your answer to question 9 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

(6) Combined financial information of the enlarged group under paragraph 31(3)(b) of Appendix 1B to the Rules

Issues with the current position

44. Paragraph 31(3)(b) of Appendix 1B to the Rules refers to disclosure of a pro forma statement combining the assets and liabilities and profits or losses of the issuer and any companies acquired by it since the date of its last published accounts (together, the **enlarged group**) for the latest financial years (the **combined statement**). As mentioned in paragraph 39, this combined statement must be contained in a major acquisition or very substantial acquisition circular and a listing document issued by the issuer other than in connection with a capitalisation issue or an exchange or substitution of securities.
45. In March 2004, we introduced a new pro forma rule (Rule 4.29) which sets out the disclosure standards for pro forma financial information in issuers’ documents. The combined statement referred in Paragraph 31(3)(b) of Appendix 1B conflicts with Rule 4.29. In particular, the former covers adjustments attributable to any company previously acquired by the issuer (and not only the subject transaction in the issuer’s document required in Rule 4.29(6)(b)).

Proposal

46. We propose to remove the requirement for disclosure of a combined statement from paragraph 31(3)(b) of Appendix 1B to the Rules.

Consultation questions

47. *Question 11: Do you agree with our proposal to remove the requirement for disclosure of a combined statement from paragraph 31(3)(b) of Appendix 1B to the Rules? Please provide reasons for your views.*

48. *Question 12: If your answer to question 11 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

B. Other disclosure requirements for circular or listing document

(1) Directors’ statement on the accuracy and completeness of information in notifiable or connected transaction circular and listing document

Issues with the current position

49. Under the Rules, issuers must contain in their notifiable or connection transaction circular or listing document a directors’ responsibility statement specified in paragraph 2 of Appendix 1B to the Rules. The current responsibility statement was introduced in December 1989. It states that:

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”

50. Rule 2.13 was introduced in 2004 and sets out the general principles as to content or responsibility for documents required under the Rules. In particular, the information contained in an issuer’s document must be accurate and complete in all material respects and not be misleading or deceptive. We believe it appropriate to align the responsibility statement with the disclosure principle in Rule 2.13.

Proposal

51. We propose to modify the content of the directors’ responsibility statement in paragraph 2 of Appendix 1B to the Rules as follows:

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.”

52. We intend to make similar changes to the form of the responsibility statements set out in paragraph 2 of Appendices 1 A, C, E and F and paragraph 1(b) of Appendix 1 D. For debt issues, the current Rules which allow the statement to be omitted from the listing documents or provided on a corporate basis in the listing documents will remain unchanged⁵. For structured product issues, the statement must continue to be given on a corporate basis rather than personal basis.

Consultation questions

53. *Question 13: Do you agree with our proposal to modify the directors' responsibility statement to include a confirmation that the information in the document is accurate and complete in all material respects and not misleading or deceptive? Please provide reasons for your views.*
54. *Question 14: If your answer to question 13 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

(2) Information in board minutes for connected transactions

Issues with the current position

55. Under Rule 14A.55, a listed issuer must submit to the Exchange a copy of the minutes of the board meeting approving a non-exempt connected transaction as soon as possible after the meeting. The board minutes must state: (1) whether or not the directors consider the transaction to be on normal commercial terms and in the ordinary and usual course of business of the issuer; (2) the views of the independent non-executive directors; and (3) whether any directors have a material interest in the transaction and have abstained from voting.
56. For a connected transaction, there are already disclosure requirements for the views of directors and independent non-executive directors on the terms of the transaction in the issuer's announcement. As to the information under Rule 14A.55(3), we believe that it is also relevant for shareholders' consideration and should be disclosed to the shareholders and not only to us. This is in line with the disclosure requirements for related party transactions under the UK listing rules⁶.

⁵ See Rules 31.05, 32.05, 37.29(1), 37.41 and 37.44

⁶ Under the UK listing rules (LR 13.6), a circular for a related party transaction must contain a statement by the board that the transaction is fair and reasonable as far as the security holders of the company are concerned and that the directors have been so advised by an independent financial adviser. For this purpose, any director who is, or an associate of whom is, the related party, or who is a director of the related party should not have taken part in the board's consideration of the matter. The statement by the board should specify that such persons have not taken part in the board's consideration of the matter.

Proposal

57. We propose to remove the filing requirement for the board minutes approving connected transactions and instead, require issuers to disclose in their connected transaction circulars (or if no circular is required under the Rules, their announcements) whether any directors have a material interest in the transaction and have abstained from voting.

Consultation questions

58. *Question 15: Do you agree with our proposal to remove the filing requirement for the board minutes approving connected transactions and instead, require issuers to disclose information contained therein (i.e. whether any directors have a material interest in the transaction and have abstained from voting) in their connected transaction circulars (or if no circular is required under the Rules, their announcements)? Please provide reasons for your views.*
59. *Question 16: If your answer to question 15 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

(3) Circular content requirements for a notifiable transaction involving an acquisition and a disposal

Issues with the current position

60. Under Rule 14.24, where a transaction involves both an acquisition and a disposal, the Exchange will apply the percentage ratios to both the acquisition and the disposal. The transaction will be classified by reference to the larger of the acquisition or disposal.
61. The Rule provides guidance on how a transaction is classified when a transaction involves both acquisition and disposal of assets. For example, an issuer may enter into an agreement to dispose of its interests in a target company to a third party purchaser where the consideration is to be settled by cash together with some consideration shares in the purchaser. If the disposal of interest in the target company constitutes a major transaction while the acquisition of equity interest in the purchaser (being the issue of consideration shares by the purchase to the issuer) does not constitute a notifiable transaction, the transaction will as a whole be classified as a major transaction and is subject to shareholders' approval.

62. Nevertheless, when considering the content of the notifiable transaction circular, there are views that it is unduly burdensome to require both the acquisition and the disposal to comply with the more stringent disclosure requirements by reference to the larger of the acquisition or disposal. In the above example, the issuer's circular will need to comply with the disclosure requirements for a major disposal as well as a major acquisition which include an accountants' report on the company being acquired (i.e. the purchaser) although this acquisition is in itself immaterial to the issuer.

Proposal

63. We propose to clarify that the circular content requirements for each of the acquisition and the disposal under a transaction should be determined by their respective transaction classification.

Consultation questions

64. *Question 17: Do you agree with our proposal that the circular content requirements for each of the acquisition and the disposal under a transaction should be determined by their respective transaction classification? Please provide reasons for your views.*
65. *Question 18: If you answer to question 17 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is "No", please provide reasons and alternative views.*

(4) Disclosure in listing documents of listed overseas or PRC issuer regarding provisions in constitutional document and regulatory provisions in the relevant jurisdiction

Issues with the current position

66. Under the Rules, an overseas or PRC issuer must include in its listing documents:
- (a) a summary of all provisions of its constitutive documents in so far as they may affect shareholders' rights and protections and directors' powers (Rules 19.10(2) and 19A.27(2));
 - (b) a summary of the relevant statutory/regulatory provisions of its place of incorporation or establishment in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion (Rules 19.10(3) and 19A.27(3)); and
 - (c) for PRC issuers, a description of applicable company law including material differences between the requirements of the PRC and Hong Kong (paragraph 50 of Appendix 1B to the Rules as specified under Rule 19A.44).

67. Further, Rules 19.10(6) and 19A.27(4) require that these issuers must offer for inspection a copy of any statutes or regulations which are relevant to the summary required under Rules 19.10(3) and 19A.27(3).
68. These requirements apply to issuers incorporated or otherwise established outside Hong Kong. They aim to highlight to shareholders and investors provisions in the constitutive documents of the overseas or PRC issuer and the statutes/regulations in the relevant jurisdiction that may have a material impact on shareholders' rights/privileges and/or activities of the issuer.
69. There are comments from some overseas issuers and PRC issuers that it is unduly burdensome for them to disclose the information in their listing documents for subsequent issues of securities. We consider it appropriate to disapply these requirements for listing documents for subsequent issues of securities by listed issuers because:
- (a) the information is publicly available. In particular, the information relating to the standard of shareholders' protection adopted in the issuers' constitutive documents and in the statutes/regulations has already been disclosed in the issuer's IPO prospectus. Any subsequent changes to issuers' constitutive documents are also subject to the disclosure requirements in Rule 13.51(1). In the case of statutory / regulatory provisions relevant to overseas and PRC issuers, they are obliged under Rule 13.09(1) to disclose any material change in the statutes/ regulations that may have a significant impact on their operation;
 - (b) the information is not related to the subject matter of the documents and has little relevance to shareholders' and investors' assessment of the merits of the subject matter; and
 - (c) the Hong Kong Companies Ordinance does not require a prospectus issued by these issuers to disclose the same or similar information.

Proposal

70. We propose to remove the disclosure and document inspection requirements regarding provisions in constitutional documents and regulatory provisions for listing documents for subsequent issue of securities by PRC issuers and overseas issuers (other than in connection with an introduction or a deemed new listing under the Rules).

Consultation questions

71. *Question 19: Do you agree with our proposal to remove the disclosure and document inspection requirements regarding provisions in constitutional documents and regulatory provisions for listing documents for subsequent issue of securities by PRC issuers and overseas issuers (other than in connection with an introduction or a deemed new listing under the Rules)? Please provide reasons for your views.*

72. *Question 20: If your answer to question 19 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

(5) Additional disclosure requirements for listing documents of PRC issuers

Issues with the current position

73. For the purposes of listing documents where listing is sought for equity securities of a PRC issuer, Rule 19A.44 expands the disclosure requirements in Appendix 1B to the Rules to include:
- (a) The quorum and voting requirements for shareholders meetings (paragraph 45 of Appendix 1B).
 - (b) A statement of sufficiency of foreign exchange to pay dividend on H shares and to meet foreign exchange liabilities (paragraph 46 of Appendix 1B).
 - (c) Risk factors relating to investments in PRC-incorporated business and the differences in the legal, economic and financial systems between the PRC and Hong Kong and a warning statement thereof (paragraphs 48 and 49 of Appendix 1B).
74. The current disclosure requirements under Rule 19A.44 were introduced in November 1993 and November 1994. They aim to highlight the different regime and environment faced by PRC issuers. We have received comments from some listed PRC issuers that it is unduly burdensome for them to disclose the information in their listing documents for subsequent issues of securities. They consider that the information required is widely available and should not be required in the listing documents for each subsequent issue of securities. The reasons stated in paragraph 69 also apply.

Proposal

75. We propose to remove the disclosure requirements under paragraphs 45, 46, 48 and 49 of Appendix 1B to the Rules for listing documents for subsequent issue of securities by PRC issuers. For the avoidance of doubt, a listing document issued by an issuer in connection with an introduction or a deemed new listing still needs to comply with the disclosure requirements under Appendix 1A to the Rules and Rule 19A.42.

Consultation questions

76. *Question 21: Do you agree with our proposal to remove the disclosure requirements under paragraphs 45, 46, 48 and 49 of Appendix 1B to the Rules for listing documents for subsequent issue of securities by PRC issuers? If your answer is “No”, please set*

out the disclosure requirement(s) that you think should be retained. Please provide reasons for your views.

77. *Question 22: If your answer to question 21 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*

C. Timing for despatch of circulars

(1) Timing for despatch of notifiable or connected transaction circulars

Issues with the current position

78. The following Rules set out the timing requirements for the despatch of notifiable and/or connected transaction circulars:
- (a) Rules 14.38A and 14A.49 - an issuer which has entered into a notifiable transaction (major or above) or connected transaction must publish and send to its shareholders a circular within 21 days after the publication of the relevant announcement. This ensures timely despatch of circulars by issuers.
 - (b) Rules 13.73 and 14.41 - the circular must be sent on or before the issuer gives notice of the general meeting to approve the transaction. This allows sufficient time for shareholders to consider the information provided in the circular before the general meeting.
79. The circular requirements are designed to provide information reasonably required for shareholders to vote on an informed basis. Adequate time should be given to shareholders to consider the information. We believe that Rules 13.73 and 14.41 already serve this objective.
80. On the other hand, it is common for issuers to require more than 21 days to prepare their circulars, particularly when an accountants' report or other expert report is required. In practice, the issuer will apply for a waiver from the 21-day requirement and announce to the market a delay in despatch of the circular with reasons for the delay.
81. The driver for the timing of despatch is the issuer's timetable for seeking shareholders' approval to complete the transaction. Instead of imposing a deadline with reference to the date of announcement of a transaction, we consider that the issuer should plan its timetable and disclose the expected timing for despatch of circular. Where there is a delay the issuer should publish an announcement setting out the new timetable and the reasons for the delay.

82. For information circular (where the issuer has obtained written shareholders' approval for the transaction), we consider it appropriate to retain the 21-day (which is equivalent to 15 business days assuming no public holiday during the period) requirement to safeguard against any unnecessary delay.

Proposal

83. We propose to remove the 21-day requirement for despatch of a notifiable or connected transaction circular (other than information circular). Instead, an issuer must (i) disclose the expected despatch date of the circular in the initial announcement of the transaction and if it is more than 15 business days from the initial announcement, the basis for its determination, and (ii) publish further announcement(s) when there is any delay in despatch of the circular with the reasons for the delay. For the avoidance of doubt, the issuer still needs to despatch the circulars on or before it gives notice of the general meeting to approve the transaction.
84. We propose a housekeeping change to the timing requirement for despatch of information circular from 21 calendar days to 15 business days, after publication of the relevant announcement.

Consultation questions

85. *Question 23: Do you agree with our proposal to remove the 21-day requirement for publication of a notifiable or connected transaction circular (other than information circular) and instead, require disclosure of the expected timing for despatch of circular and the reasons for any delay? Please provide reasons for your views.*
86. *Question 24: Do you agree with our proposal to amend the timing requirement for despatch of information circular from 21 calendar days to 15 business days? Please provide reasons for your views.*
87. *Question 25: If your answers to questions 23 and 24 are "Yes", do you agree that the proposed draft Rule amendments in Appendix I will implement our proposals? If your answer is "No", please provide reasons and alternative views.*

(2) Timing for despatch of supplementary circulars

Issues with the current position

88. The current Rules⁷ require an issuer to despatch to its shareholders any supplementary circular or announcement after the issue of the circular on the transaction to be considered at a general meeting not less than 14 days before the date of the relevant general meeting. This is equivalent to 10 business days assuming no public holiday during the 14-day period.
89. We propose housekeeping amendments to the Rules such that issuers must despatch any supplementary circular by not less than 10 business days before the date of the relevant general meeting. This will align with the notice period requirement under Code Provision E.1.3 of Appendix 14⁸, which is based on business days, rather than calendar days.

Proposal

90. We propose to amend the Rules to require any supplementary circular to be despatched at least 10 business days before the relevant general meeting.

Consultation questions

91. *Question 26: Do you agree with our proposal to amend the timing for despatch of supplementary circulars from 14 calendar days to 10 business days? Please provide reasons for your views.*
92. *Question 27: If you answer to question 26 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I will implement our proposal? If your answer is “No”, please provide reasons and alternative views.*
93. *Question 28: Are there any other comments you would like to make? If your answer is “Yes”, please elaborate your views.*

⁷ See Rules 13.40, 13.70, 13.73, 14.42, 14.52 and 14A.49

⁸ Under Code Provision E.1.3. of Appendix 14, an issuer should arrange for the notice to shareholders to be sent at least 10 clear business days before the general meeting (other than annual general meeting).

APPENDIX I DRAFT RULE AMENDMENTS

The marked-up parts represent the proposed amendments to Main Board Rules

Chapter 4

GENERAL

ACCOUNTANTS' REPORTS AND PRO FORMA FINANCIAL INFORMATION

When Required

4.01 This Chapter sets out the detailed requirements for accountants' reports on the profits and losses, assets and liabilities of, and other financial information on, an issuer and/or business or company, to be acquired or disposed of (as the case may be) by an issuer for inclusion in listing documents or circulars. Accountants' reports are required to be included in the following listing documents and circulars:—

...

(2) ...; and

(3) a circular issued in connection with a reverse takeover (see rule 14.69), a very substantial acquisition (see rule 14.69) or a major transaction (see rule 14.67) (unless the company being acquired is itself a listed company on the Main Board or GEM); and

(4) ~~a circular issued in connection with a very substantial disposal (see rule 14.68).~~

Issue A1

...

Basic Contents of Accountants' Report for Certain Notifiable Transaction Circular

4.06 In the cases referred to in rule 4.01(3) concerning a circular in connection with a reverse takeover, a very substantial acquisition or a major transaction on the acquisition of a business, company or companies, the accountants' report must include:—

History of results

(1) (a) the results, for the relevant period, of the business which, or of the company (or, if that company is itself a holding company, of the company and its subsidiaries) in whose share capital an interest, has been acquired, agreed to be acquired or is proposed to be acquired since the date to which the latest published audited accounts of the issuer have been made up; provided always that where any company in question has not or will not become a subsidiary of the issuer, the Exchange may be prepared to relax this requirement;

Notes 1. For the purposes of this rule In case of a reverse takeover, the “relevant period” comprises each of the three financial years (applicable to such business or company) immediately preceding the issue of the circular (or, if less, the period since commencement of such business or the incorporation or establishment of such company, as the case may be) or such shorter period as may be acceptable to the Exchange, with the latest financial year or period ended 6 months or less before the circular is issued.

2. In case of a very substantial acquisition or a major transaction, the “relevant period” refer to three financial years (applicable to such business or company) (or, if less, the period since commencement of such business or the incorporation or establishment of such company, as the case may be) or such shorter period as may be acceptable to the Exchange, with the latest financial year or period ended 6 months or less before the circular is issued.

Issue A2

...

4.06A ~~[Repealed [Insert date]]In the cases referred to in rule 4.01(4) concerning a circular in connection with a very substantial disposal, the accountants’ report on the listed issuer’s group (i.e. the issuer and its subsidiaries and any business or subsidiary acquired or proposed to be acquired since the date to which the latest audited accounts of the issuer have been made up with the business, company or companies being disposed of shown separately as (a) discontinuing operation(s)) must include all the information referred to in rule 4.06 in respect of such group.~~

Issue A1

...

Chapter 13

EQUITY SECURITIES

CONTINUING OBLIGATIONS

...

Meeting of Shareholders

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 ~~4~~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 ~~4~~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.

Issue C2

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 ~~4~~10 business days to consider the relevant information disclosed in the announcement or supplementary circular.

Issue C2

Notices

...

- 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 ~~4~~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 ~~4~~ 10 business-day period 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).

Issue C2

Note: ...

Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

Transaction involving an acquisition and a disposal

- 14.24 In the case of a transaction involving both an acquisition and a disposal, the Exchange will apply the percentage ratios to both the acquisition and the disposal. The transaction will be classified by reference to the larger of the acquisition or disposal. The circular for the transaction shall contain information set out in the requirements applicable to the respective classification of the acquisition and the disposal.

Issue B3

...

Requirements for all transactions

Notification and announcement

...

- 14.36A Where there is a delay in despatch of the circular to shareholders by the date as previously announced under rule 14.60(7) or this rule, the listed issuer must as soon as practicable disclose this fact by way of an announcement published in accordance with rule 2.07C. The listed issuer must state in the announcement the reason for the delay and the expected date of despatch of the circular.

Issue C1

...

Additional requirements for major transactions

Circular

- 14.38A In addition to the requirements for all transactions set out in rules 14.34 to 14.37, a listed issuer which has entered into a major transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules ~~within 21 days after publication of the announcement.~~

Issue C1

...

Shareholders' approval

...

- 14.41 The circular must be despatched to the shareholders of the listed issuer ~~at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular.~~

Issue C1

- (a) if the transaction is approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to rule

14.44, within 15 business days after publication of the announcement; and

(b) if the transaction is to be approved by shareholders at a general meeting, at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular.

The circular shall contain information required under rules 14.63, 14.66, 14.67 (for an acquisition only) and 14.70 (for a disposal only).

14.42 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/ or provide any material information that has come to the attention of the directors after the issue of circular (by way of announcement published in accordance with rule 2.07C) on the transaction to be considered at a general meeting not less than 410 business days before the date of the relevant general meeting.

Issue C2

Note: ...

14.43 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 410 business-day period requirement under rule 14.42 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 13.41).

Issue C2

...

Additional requirements for very substantial disposals and very substantial acquisitions

...

14.52 A listed issuer shall despatch to its shareholders any revised or supplementary circular and/ or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement published in accordance with rule 2.07C) on the transaction to be considered at a general meeting not less than 410 business days before the date of the relevant general meeting.

Issue C2

Note:...

14.53 The meeting must be adjourned before considering the relevant resolution to ensure compliance with the 410 business-day period requirement under rule 14.52 by the chairman or, if that is not permitted by the listed issuer's constitutional documents, by resolution to that effect (see also rule 13.41).

Issue C2

...

**Discloseable transaction, major transaction, very substantial disposal,
very substantial acquisition and reverse takeover announcements**

14.60 In addition to the information set out in rule 14.58, the announcement for a discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover must contain at least brief details of the following:—

...

(5) ...; and

(6) ...; and

(7) in the case of a major transaction, very substantial disposal, a very substantial acquisition or a reverse takeover, the expected date of despatch of the circular and if it is more than 15 business days after the publication of this announcement, the basis for its determination.

Issue C1

Note: If there is any delay in despatch of the circular, the listed issuer must as soon as practicable publish a further announcement in accordance with rule 14.36A.

...

Major transaction circular

14.66 A circular relating to a major transaction must contain the following:—

...

(10) the information regarding the listed issuer specified in the following paragraphs of Appendix 1, Part B:—

28- indebtedness

29(1)(b)- financial and trading prospects

30- sufficiency of working capital, which must take into account the effect of the transaction

Issue A4

40- directors' and experts' interests in group assets

42- material contracts

43- documents on display;

...

Very substantial disposal circulars

14.68 A circular issued in relation to a very substantial disposal must contain:—

...

(2) (a) on a disposal of a business, company or companies:

(i) ~~an accountants' report on the listed issuer's group in accordance with Chapter 4 of the Exchange Listing Rules. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued~~ financial information of either:

Issue A1

(A) the listed issuer's group with the business, company or companies being disposed of shown separately as (a) disposal group(s) or (a) discontinuing operation(s); or

(B) the business, company or companies being disposed of,

for the three financial years (or such shorter period as may be acceptable to the Exchange) with the latest financial year or period ended 6 months or less before the circular is issued. The financial information must be prepared by the directors of the listed issuer using accounting policies of the listed issuer and reviewed by the auditors or reporting accountants.

The financial information must comprise income statements, balance sheets, cash flow statements and statements of changes in equity of the issuer's group, or the business, company or companies being disposed of (as the case may be), together with any notes that the directors consider necessary for a reasonable appreciation of the results for the financial period; and

Note: Where the listed issuer elects to disclose the financial information in form of an accountants' report, it must comply with Chapter 4 of the Exchange Listing Rules.

(ii) pro forma income statement, balance sheet and cash flow statement of the remaining group on the same accounting basis. The pro forma financial information must comply with Chapter 4 of the Exchange Listing Rules;

(3) ...; and

(4) the information regarding the listed issuer required under paragraph 32 (no material adverse change) of Appendix 1, Part B.

Issue A1

...

Chapter 14A
EQUITY SECURITIES
CONNECTED TRANSACTIONS

...

14A.47A Where there is a delay in despatch of the circular to shareholders by the date as previously announced under rule 14A.56(10) or this rule, the listed issuer must as soon as practicable disclose this fact by way of an announcement published in accordance with rule 2.07C. The listed issuer must state in the announcement the reason for the delay and the expected date of despatch of the circular.

Issue C1

...

Shareholders' circular

14A.49 The listed issuer must also send a circular, which complies with rules 14A.58 to 14A.62, to the shareholders and arrange for its publication in accordance with the provisions of Chapter 2 of the Exchange Listing Rules ~~within 21 days after publication of the announcement, unless the Exchange directs otherwise;~~

Issue C1

- (a) if the transaction is approved or to be approved by way of written shareholders' approval from a shareholder or a closely allied group of shareholders pursuant to rule 14A.43, within 15 business days after publication of the announcement; and
- (b) if the transaction is to be approved by shareholders at a general meeting, at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction referred to in the circular.

A listed issuer shall despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement published in accordance with rule 2.07C) on the transaction to be considered at a general meeting not less than ~~4~~10 business days before the date of the relevant general meeting. The meeting must be adjourned before considering the relevant resolution to ensure compliance with the ~~4~~10 business-day period requirement under this rule 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).

...

Board minutes

14A.55 ~~[Repealed [Insert date]]For a connected transaction not falling under rule 14A.31 or a continuing connected transaction not falling under rule 14A.33, listed issuers must provide the Exchange with a copy of the minutes of the board meeting approving the transaction and, in the case of a continuing connected transaction, the cap as soon as possible after the meeting. The minutes must clearly reflect:~~

Issue B2

- ~~(1) whether or not the directors consider the transaction to be on normal commercial terms and in the ordinary and usual course of business of the listed issuer;~~
- ~~(2) the views of the independent non-executive directors; and~~
- ~~(3) whether any directors have a material interest in the transaction and have abstained from voting at the board meeting.~~

Contents of announcements

14A.56 The announcement for connected transactions and continuing connected transactions must contain at least the following:

...

(7) ...; ~~and~~

(8) ...;

(9) if no circular is required under this Chapter, a statement on whether any directors have a material interest in the transaction and have abstained from voting at the board meeting; and

Issue B2

(10) where independent shareholders' approval is required, the expected date of despatch of the circular and if it is more than 15 business days after the publication of this announcement, the basis for its determination.

Issue C1

Note: If there is any delay in despatch of the circular, the listed issuer must as soon as practicable publish a further announcement in accordance with rule 14A.47A.

...

Contents of circular

...

Specific disclosure in circular

14A.59 The circular must contain at least:

...

(17) (a) ...

(b) ...; ~~and~~

(18) a statement on whether any directors have a material interest in the transaction and have abstained from voting at the board meeting; and

Issue B2

(18) any additional information requested by the Exchange.

Chapter 19
EQUITY SECURITIES
OVERSEAS ISSUERS

...

Listing Documents

19.08 Attention is particularly drawn to:—

- (1) the requirement to include a statement of responsibility (see rule 11.12);
- (2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 11.11);
- (3) the requirement to include a summary of the provisions of the constitutive documents of the overseas issuer and the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established, in the listing document (see rules 19.10(2) and (3) and 19.10A); and
- (4) the modifications and additional requirements which apply in the case of an introduction in the circumstances set out in rule 7.14(3), where the overseas issuer is incorporated or otherwise established in certain named jurisdictions, and which are set out in Appendix 13.

Issue B4

...

19.10 The following modifications and additional requirements apply:—

- (1) ...
- (2) the listing document must contain a summary of all provisions of the constitutive documents of the overseas issuer in so far as they may affect shareholders' rights and protections and directors' powers (using the same subject headings as is required by Section 2 of Appendix 13 in respect of certain named jurisdictions). This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 and which is applying for listing by way of an introduction in the circumstances set out in rule 7.14(3) (see Appendix 13);
- (3) in the listing document must contain a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion. This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 and which is applying for listing by way of an introduction in the circumstances set out in rule 7.14(3) (see Appendix 13);

...

- (6) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the Companies Ordinance, where any of such documents are not in the English language, certified English translations thereof must be available for inspection. In addition, where rule 19.10(3) applies, the overseas issuer must offer for inspection a copy of any statutes or regulations which are relevant to the summary of the regulatory provisions of the jurisdiction in which the overseas issuer is incorporated or otherwise established ~~(see rule 19.10(3))~~. In particular cases, the Exchange may require other additional documents to be offered for inspection; and

Issue B4

...

19.10A Rules 19.10(2) and (3) do not apply to listing documents issued by listed issuers unless the listing documents are issued in connection with an introduction or a deemed new listing under the Exchange Listing Rules.

Issue B4

...

Chapter 19A
EQUITY SECURITIES
ISSUERS INCORPORATED
IN THE PEOPLE'S REPUBLIC OF CHINA

...

Chapter 11 — Listing Documents

19A.26 Attention is particularly drawn to:

- (1) the requirement to include a statement of responsibility (see rule 11.12);
- (2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 11.11); and
- (3) the requirement to include a summary of the provisions of the constitutive documents of the PRC issuer and the relevant PRC law in the listing document (see rules 19A.27(2) and (3) and 19A.27A).

Issue B4

...

19A.27 The following modifications and additional requirements apply to the contents of listing documents:

- (1) ... ;
- (2) the listing document must contain a summary of all provisions of the constitutive

documents of the PRC issuer in so far as they may affect shareholders' rights and protection and directors' powers (using, and covering at the least, the same subject headings as is required by Section 2 in Part D of Appendix 13 in respect of PRC issuers);

- (3) the listing document must contain a summary of the relevant PRC law in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion; and

Note: In general the relevant PRC law to be summarized normally would be expected to cover matters such as taxation on the PRC issuer's income and capital, tax (if any) deducted on distributions to shareholders, foreign exchange controls or restrictions, company law, securities regulations or other relevant laws or regulations, and any PRC law which regulates or limits the PRC issuer's major business(es) or the industry in which it mainly operates.

- (4) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the Companies Ordinance, where any such documents are not in the English language, certified English translations thereof must be available for inspection. In addition, where rule 19A.27(3) applies, the PRC issuer must offer for inspection a copy of any statutes or regulations which are relevant to the summary of relevant PRC law ~~(see rule 19A.27(3))~~. In particular cases, the Exchange may require other additional documents to be offered for inspection.

Issue B4

19A.27A Rules 19A.27(2) and (3) do not apply to listing documents issued by listed issuers unless the listing documents are issued in connection with an introduction or a deemed new listing under the Exchange Listing Rules.

Issue B4

Appendix 1

Part B — Contents of Listing Documents where listing is sought for equity securities of a PRC issuer some part of whose share capital is already listed on the Exchange

- 19A.44 Part B of Appendix 1 is further supplemented by adding below paragraph 43 thereof, but before the Notes thereto, the following new caption heading and new paragraphs 44 ~~and to~~ 47:

Issue B5

“Additional information on PRC issuers

44. Where a public or private issue or placing of securities of the PRC issuer other than H shares is being made simultaneously with the issue of H shares in Hong Kong or is proposed to be made prior to the end of three months after the issue of the listing document in Hong Kong:—

- (1) information concerning such securities and such issue or placing, including the information described in paragraphs 6,10,11,12,14 and 17;

- (2) a statement of whether or not the issue in Hong Kong is conditional (in whole or in part) on such issue or placing of securities, and if not conditional, a description of the effect on the PRC issuer's future plans, prospects and financial condition (including profit forecast, if any) as a result of such issue or placing of securities not being completed in the manner described in the listing document;
- (3) if such securities are not admitted for listing on any stock exchange, a statement of whether there is (or is proposed to be) trading or dealing in such securities on any other authorised trading facility such as the Securities Trading Automated Quotation System (證券交易自動報價系統) in the PRC;
- (4) a breakdown of the PRC issuer's shares issued or proposed to be issued; and
- (5) information concerning each legal person or individual expected to hold domestic shares or foreign shares other than H shares constituting 10% or more of the existing issued share capital of the PRC issuer upon the completion of such issue or placing of domestic shares or foreign shares other than H shares, and the number of domestic shares or foreign shares other than H shares to be held by each such legal person or individual.
45. ~~[Repealed *[Insert date]*]Particulars of the quorum and voting requirements for general meetings of shareholders and for separate meetings of holders of domestic shares and foreign shares (and, if applicable, H shares).~~
46. ~~[Repealed *[Insert date]*]A statement of whether or not the PRC issuer will have sufficient foreign exchange to pay forecasted or planned dividends on H shares and to meet its foreign exchange liabilities as they become due, with particulars of the anticipated sources of such foreign exchange.~~
47. In an appropriately prominent place and manner in the listing document, the statements by the acquirer of shares required to be in a PRC issuer's listing document pursuant to rule 19A.52.
48. ~~[Repealed *[Insert date]*]A general statement on the front page of the listing document to the following effect:~~
- ~~“The Company is incorporated, and its businesses are located, in the People's Republic of China (“PRC”). Potential investors in the Company should be aware of the differences in the legal, economic and financial systems between the mainland of the PRC and Hong Kong and that there are different risk factors relating to investment in PRC incorporated businesses. Potential investors should also be aware that the regulatory framework in the PRC is different from the regulatory framework in Hong Kong and should take into consideration the different market nature of the shares of the Company. Such differences and risk factors are set out in the sections headed ‘_____’ on pages _____.”~~

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49. ~~[Repealed *[Insert date]*]~~The risk factors section shall include, among other things, a brief summary of:
- ~~(a) — the relevant PRC laws and regulations;~~
 - ~~(b) — the political structure and economic environment of the PRC;~~
 - ~~(c) — foreign exchange controls in the PRC and the exchange rate risk of the Renminbi;~~
 - ~~(d) — the different regulatory framework for PRC issuers listing outside the mainland of the PRC;~~
 - ~~(e) — specific risk factors related to the business of the PRC issuer and/or its products; and~~
 - ~~(f) — the law(s) governing the resolution of disputes arising from the PRC issuer’s articles of association and the transfer of the PRC issuer’s shares.~~
50. ~~[Repealed *[Insert date]*]~~A description of applicable company law matters including material differences between the requirements of the PRC and of Hong Kong. Such description should include the following:
- ~~(a) — the quorum and voting requirements for general meetings of shareholders and for separate meetings of holders of domestic shares and foreign shares (and, if applicable, H shares);~~
 - ~~(b) — the PRC issuer’s ability, by way of a special resolution in a general meeting, to issue, allot or grant up to 20% of its existing share capital in domestic shares and/or foreign shares (and, if applicable, H shares) once every 12 months, without a separate vote by holders of foreign shares;~~
 - ~~(c) — the PRC issuer’s ability to issue domestic shares and foreign shares (and, if applicable, H shares) pursuant to a share issue plan adopted at the inaugural meeting of the PRC issuer without a separate vote by holders of foreign shares;~~
 - ~~(d) — any right of action a shareholder may have against directors of the PRC issuer;~~
 - ~~(e) — the special features of arbitration; and~~
 - ~~(f) — the standard of shareholder protection, which is different from that generally available in Hong Kong.’~~

...

Appendix 1
Contents of Listing Documents
Part A
Equity Securities

**In the case where listing is sought for equity
securities of an issuer no part of
whose share capital is already listed**

General information about the issuer, its advisers and the listing document

...

2. A statement as follows:—

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.” (Note 1)

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...

Appendix 1
Contents of Listing Documents
Part B
Equity Securities

**In the case where listing is sought for equity
securities of an issuer some part of
whose share capital is already listed**

General information about the issuer, its advisers and the listing document

...

2. A statement as follows: -

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not

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misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.” (Note 1)

Financial information about the group and the prospects of the group

...

30. A statement by the directors that in their opinion the working capital available to the group is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary. (Note 2)

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31. (1) ...

(2) ...

(3) Information for the last three financial years with respect to the profits and losses, financial record and position, set out as a comparative table and the latest published audited balance sheet together with the notes on the annual accounts for the last financial year:—

(a) for the group; and

(b) for any company acquired since the date of the last published audited accounts of the group in respect of which an accountants' report has already been submitted to shareholders or which was itself during the last 12 months a listed issuer, ~~together with a pro forma statement combining the assets and liabilities and profits or losses for the latest financial years given in accordance with this sub-paragraph and sub-paragraph (3)(a) above.~~

Issue A6

Issue A5

(Note 46)

...

NOTES

...

Note 6 For the purpose of paragraph 31(3), the information may be incorporated in the listing document or circular of the listed issuer by reference to its other documents published in accordance with rule 2.07C.

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Appendix 1
Contents of Listing Documents
Part C
Debt Securities

In the case where listing is sought for debt securities

General information about the issuer, its advisers and the listing document

...

2. A statement as follows:—

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.” (Note 1)

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Appendix 1
Contents of Listing Documents
Part D
Structured Products

General Information

1. Each base listing document, stand alone listing document, or supplemental listing document shall on the front cover or inside front cover contain the following prominent and legible statements:—

(a) ...;

(b) “This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer [and the guarantor]. The issuer [and the guarantor] accept[s] full responsibility for the accuracy of the information contained in this document and confirm[s], having made all reasonable enquiries, that to the best of [its][their] knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.”;

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Note The above statement shall be modified according to whether the issue is or is not a guaranteed issue.

Appendix 1
Contents of Listing Documents
Part E

Depository receipts

**In the case where listing is sought for depository receipts of an issuer no part of
whose share capital is already listed**

General information about the issuer, its advisers and the listing document

...

2. A statement as follows:-

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.” (Note 1)

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Appendix 1
Contents of Listing Documents
Part F

Depository receipts

**In the case where listing is sought for depository receipts of an issuer where depository
receipts representing some part of its share capital are already listed**

General information about the issuer, its advisers and the listing document

...

2. A statement as follows:-

“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other facts the omission of which would make any statement herein misleading.” (Note 1)

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APPENDIX II PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. "Personal Data" in these statements has the same meaning as "personal data" in the Personal Data (Privacy) Ordinance, Cap 486, which may include your name, identity card number, mailing address, telephone number, email address, login name and/or your opinion.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx's use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:
 - administration, processing and publication of the consultation paper and any responses received;
 - performing or discharging HKEx's functions and those of its subsidiaries under the relevant laws, rules and regulations;
 - research and statistical analysis; and
 - any other purposes permitted or required by law or regulation.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. To ensure that the consultation is conducted in a fair, open and transparent manner, any response together with your name may be published on an "as is" basis, in whole or in part, in document form, on the HKEx website or by other means. In general, HKEx will publish your name only and will not publish your other Personal Data unless specifically required to do so under any applicable law or regulation. If you do not wish your name to be published or your opinion to be published, please state so when responding to this paper.

Access to and Correction of Data

6. You have the right to request access to and/or correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer
 Hong Kong Exchanges and Clearing Limited
 12th Floor, One International Finance Centre
 1 Harbour View Street
 Central
 Hong Kong

**Re: Consultation Paper on
Proposed Changes to Requirements for Circulars and
Listing Documents of Listed Issuers**

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to the Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, identity card numbers, telephone numbers, mailing addresses, e-mail addresses, login names, opinion, etc., which may be used for the stated purposes when your Personal Data are collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law or regulation.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

