

Appendix 11

ADDITIONAL REQUIREMENTS IN RESPECT OF CERTAIN JURISDICTIONS

PART A

BERMUDA

Section 1. Additional requirements for memorandum and bye-laws

Section 2. Modifications and additional requirements

Section 1

ADDITIONAL REQUIREMENTS FOR THE MEMORANDUM AND BYE-LAWS OF ISSUERS INCORPORATED OR OTHERWISE ESTABLISHED IN BERMUDA

(see rule 24.06(1))

In addition to the provisions of Appendix 3, the bye-laws of issuers incorporated or otherwise established in Bermuda must conform with the following provisions:—

1. As regards the memorandum and bye-laws

The memorandum and bye-laws must stipulate that they may not be changed without a special resolution, and the bye-laws shall define “special resolution” to mean a resolution passed by members holding three-fourths of the voting rights of those present and voting in person or by proxy at a meeting of members.

2. As regards class meetings

(1) The bye-laws shall stipulate that for the purposes of section 47 of the Companies Act 1981 of Bermuda the specified proportion of the holders of shares of a particular class required to sanction a resolution passed at a separate meeting of those holders to approve a variation of class rights shall be members holding three-fourths of the voting rights of that class present and voting in person or by proxy at such meeting.

(2) Where the issuer is permitted by Bermudian law so to do, the bye-laws shall provide that a proxy need not be a member of the issuer.

3. As regards notices of general meetings

The bye-laws shall stipulate that any annual general meeting or extraordinary general meeting at which a special resolution is to be proposed shall be convened on at least 21 days notice and that extraordinary general meetings at which an ordinary resolution is to be proposed shall be convened on at least 14 days notice.

4. As to accounts

(1) The bye-laws shall require the issuer to keep proper books of account necessary to give a true and fair view of the issuer's affairs.

- (2) The bye-laws shall provide that accounts shall be laid before members at the annual general meeting which must be held in each year; not more than 15 months (or such longer period as the Exchange may authorise) may elapse between the date of one annual general meeting and the next.

5. As to directors

The bye-laws shall stipulate that the issuer in general meeting must approve the payment to any director or past director of any sum by way of compensation for loss of office or as consideration for or in connection with his retirement from office (not being a payment to which the director is contractually entitled).

6. As to corporate representatives

The bye-laws shall provide that if a recognised clearing house within the meaning of section 2 of the Securities and Futures (Clearing Houses) Ordinance of Hong Kong is a member of the company it may, to the extent permitted by law, authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the company or at any meeting of any class of members of the company provided that, if more than one person is so authorised, the authorisation shall specify the number and class of shares in respect of which each such person is so authorised. A person authorised pursuant to this provision shall be entitled to exercise the same powers on behalf of the recognised clearing house (or its nominee) which he represents as that clearing house (or its nominee) could exercise if it were an individual shareholder of the company, including the right to vote individually on a show of hands.

Section 2

MODIFICATIONS AND ADDITIONAL REQUIREMENTS

(see rules 24.09(2), (3) and (5)(a))

1. In the case of an introduction in the circumstances set out in rule 10.18(3):—
 - (1) the summary of the provisions of the constitutive documents of the overseas issuer, which is required by rule 24.09(2);
 - (2) the summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established, which is required by rule 24.09(3); and
 - (3) the comparison between those constitutive documents and the listed Hong Kong issuer's existing memorandum and articles of association, which is required by rule 24.09(5)(a),may be offered for inspection rather than set out in the listing document.
2. In such cases the details of the articles of association or equivalent document required to be set out in the listing document by paragraph 7 of Part A of Appendix 1 may be limited to a summary of the changes, if any, between the Hong Kong issuer's articles of association and the overseas issuer's proposed constitutive documents, in respect of each of the areas set out in that paragraph, provided that the summary also includes details of any differences or additional provisions in the proposed new constitutive documents which confer on directors of the overseas issuer any special powers, the exercise of which would affect the rights or interests of the shareholders.

3. The summary and, where relevant, comparison of the constitutive documents required by rules 24.09(2) and 24.09(5)(a), must be set out under the following headings and where any item is not applicable the words “not applicable” should be inserted under the relevant heading:—

- (1) directors
 - (a) power to allot and issue shares
 - (i) summary
 - (ii) differences
 - (b) power to dispose of the overseas issuer’s or any of its subsidiaries’ assets
 - (i) summary
 - (ii) differences
 - (c) compensation or payments for loss of office
 - (i) summary
 - (ii) differences
 - (d) loans to directors
 - (i) summary
 - (ii) differences
 - (e) giving of financial assistance to purchase the overseas issuer’s or any of its subsidiaries’ shares
 - (i) summary
 - (ii) differences
 - (f) disclosure of interests in contracts with the overseas issuer or any of its subsidiaries
 - (i) summary
 - (ii) differences
 - (g) remuneration
 - (i) summary
 - (ii) differences
 - (h) retirement, appointment, removal
 - (i) summary
 - (ii) differences
 - (i) borrowing powers
 - (i) summary
 - (ii) differences
- (2) alterations to constitutional documents
 - (i) summary
 - (ii) differences
- (3) variation of rights of existing shares or classes of shares
 - (i) summary
 - (ii) differences
- (4) special resolutions - majority required
 - (i) summary
 - (ii) differences

- (5) voting rights (generally, on a poll and right to demand a poll)
 - (i) summary
 - (ii) differences

- (6) requirements for annual general meetings
 - (i) summary
 - (ii) differences

- (7) accounts and audit
 - (i) summary
 - (ii) differences

- (8) notice of meetings and business to be conducted thereat
 - (i) summary
 - (ii) differences

- (9) transfer of shares
 - (i) summary
 - (ii) differences

- (10) power of overseas issuer to purchase its own shares
 - (i) summary
 - (ii) differences

- (11) power for any subsidiary of the overseas issuer to own shares in its parent
 - (i) summary
 - (ii) differences

- (12) dividends and other methods of distribution
 - (i) summary
 - (ii) differences

- (13) proxies
 - (i) summary
 - (ii) differences

- (14) calls on shares and forfeiture of shares
 - (i) summary
 - (ii) differences

- (15) inspection of register of members
 - (i) summary
 - (ii) differences

- (16) quorum for meetings and separate class meetings
 - (i) summary
 - (ii) differences

- (17) rights of the minorities in relation to fraud or oppression thereof
 - (i) summary
 - (ii) differences

- (18) procedures on liquidation
 - (i) summary
 - (ii) differences

(19) any other provisions material to the overseas issuer or the shareholders thereof.

4. The Exchange will require the formal application for listing to be accompanied by a copy of a letter to the overseas issuer from the overseas issuer's Hong Kong legal advisers confirming that they have reviewed the summaries of the relevant laws and the constitutive documents and that in their opinion, on the basis of the legal advice received from Bermudian lawyers, the listing document sets out or, in the case of an introduction in the circumstances set out in rule 10.18(3), the listing document and the documents offered for inspection together set out the material differences between Hong Kong law and the law of Bermuda and the provisions of the existing memorandum and articles of the listed Hong Kong issuer and the proposed constitutive documents of the overseas issuer. The letter should also confirm that the constitutive documents contain provisions complying with the provisions of the GEM Listing Rules.

Additional Documents on Display

5. The requirements of Chapter 24 and this Appendix mean that in the case of an introduction in the circumstances set out in rule 10.18(3) the following additional documents must be offered for inspection:—
- (1) a summary of the relevant regulatory provisions (statutory or otherwise) of the country where the overseas issuer is incorporated or otherwise established together with a copy of all relevant statutes and/or regulations;
 - (2) a summary of the provisions of the proposed new constitutive documents of the overseas issuer and a comparison between the overseas issuer's constitutive documents and the constitutive documents of the listed Hong Kong issuer or issuers whose securities have been exchanged; and
 - (3) copies of the full valuation report in respect of any property valuations which are only summarised in the listing document (see rule 24.09(5)(e)).