

Appendix 11

ADDITIONAL REQUIREMENTS IN RESPECT OF CERTAIN JURISDICTIONS

PART B

THE CAYMAN ISLANDS

Section 1. Additional requirements for memorandum and articles of association

Section 2. Modifications and additional requirements

Section 1

ADDITIONAL REQUIREMENTS FOR THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF ISSUERS INCORPORATED OR OTHERWISE ESTABLISHED IN THE CAYMAN ISLANDS

(see rule 24.06(1))

In addition to the provisions of Appendix 3, the articles of association of issuers incorporated or otherwise established in the Cayman Islands must conform with the following provisions:—

1. As regards the memorandum and articles of association

To the extent that the same is permissible under Cayman Islands law, the memorandum and articles of association must stipulate that they may not be changed without a special resolution, and the articles of association 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 general meetings

- (1) The articles of association shall stipulate that if at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied only with the consent in writing of the holders of three-fourths in nominal value of the issued shares of the class in question or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of that class by members holding shares representing three-fourths in nominal value of the shares present in person or by proxy and voting at such meeting. The articles of association shall provide that to every such separate general meeting the provisions of the articles of association relating to general meetings shall mutatis mutandis apply, but the articles of association may vary the quorum provisions relevant to any such meeting.
- (2) The articles of association shall provide that every member shall be entitled to appoint a proxy who need not necessarily be a member of the issuer and that every shareholder being a corporation shall be entitled to appoint a representative to attend any general meeting of the issuer and, where a corporation is so represented, it shall be treated as being present at any meeting in person.
- (3) The articles of association shall incorporate provisions permitting 5 members or members holding one tenth of voting rights to demand a poll at any general meeting of the issuer or such lower number or percentage as the issuer may choose.

3. As regards shareholders

- (1) The articles of association shall stipulate that any annual general meeting or any 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. The articles of association shall stipulate that the notice convening a meeting shall contain particulars of the resolutions to be considered at that meeting.
- (2) The articles of association shall provide for the branch register of members in Hong Kong to be open for inspection by members but may permit the company to close the register in terms equivalent to sections 98 and 99 of the Hong Kong Companies Ordinance.
- (3) The articles of association shall require an annual general meeting to be held in each year and shall provide that the audited accounts shall be sent to members at the same time as the notice of annual general meeting.

4. As to accounts

- (1) The articles of association 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 articles of association shall provide that accounts shall be audited and 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

- (1) The articles of association shall provide that directors may be removed at any time by special resolution of the members.
- (2) The articles of association shall restrict the making of loans to directors and their associates and shall import provisions at least equivalent to the provisions of Hong Kong law prevailing at the time of the adoption of the articles of association.
- (3) The articles of association shall contain provisions requiring the directors to declare their material interests in any contracts with the issuer at the earliest meeting of the board of directors of the issuer at which it is practicable for them to do so either specifically or by way of a general notice stating that, by reason of facts specified in the notice, they are to be regarded as interested in any contracts of a specified description which may subsequently be made by the issuer.
- (4) The articles of association 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 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 articles of association 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 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 Cayman Islands 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 the Cayman Islands 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)).