

Chapter 13

EQUITY SECURITIES

RESTRICTIONS ON PURCHASE, DISPOSAL AND SUBSCRIPTION

Restrictions on preferential treatment

13.01 With regard to all securities offered for subscription or sale to the public whether by a new applicant or a listed issuer (excluding, for the avoidance of doubt, securities subject to placing arrangements) no preferential terms or treatment may be afforded to any person subscribing or applying for the securities, whether as to price, the basis of allocation of securities or otherwise.

13.02 With regard to any securities proposed to be placed by a new applicant:—

- (1) no preferential terms or treatment as to price or otherwise may be afforded to any placee (but not to others), save that with adequate disclosure in the listing document, preferential treatment may be given to placees in respect of the allocation of securities. For the purposes of this rule, the disclosure to be made in the listing document issued in connection with the placing must include details of existing shareholders or directors and their respective associates (each identified on an individually-named basis) to whom it is proposed to place shares, indicating, in each case, the number and/or proportion of shares to be so placed. The Exchange reserves the right to reject any such proposed arrangements.
- (2) normally no more than 10 per cent of any securities being marketed for which listing is sought may be offered to employees or past employees of the new applicant or its subsidiaries or associated companies and their respective dependents or any trust, provident fund or pension scheme for the benefit of such persons on a preferential basis. Other than the allocation of securities, no preferential terms or treatment as to price or otherwise may be afforded to such employees. Adequate disclosure in the listing document must be made of any arrangement to place shares to such employees (without any need to identify individuals), and the number and/or proportion of shares to be so placed. Any preferential treatment must be approved by the Exchange prior to the marketing and the new applicant concerned may be called upon to supply particulars of such employees, past-employees and their respective dependants and the objects, beneficiaries or members of any trust, provident fund or pension scheme as well as the results of subscription by employees, past-employees, their respective dependants and any trust, provident fund or pension scheme for the benefit of such persons. The new applicant must maintain records of such particulars for a period of not less than 12 months from the date of approval and make the same available for inspection by the Exchange during such period.

Restrictions and notification requirements on issuers purchasing their own shares on a stock exchange

General

13.03 An issuer may purchase shares on GEM or on another stock exchange recognised for this purpose by the Commission and the Exchange, under the exemption from the general offer rule contained in Rule 2 of the Code on Share Repurchases. All such purchases must be made in accordance with the provisions of rules 13.04 to 13.14. The Code on Share Repurchases must be complied with by an issuer and its directors and any breach thereof by an issuer will be a deemed breach of the issuer's

undertaking to comply with its continuing obligations under the GEM Listing Rules and the Exchange may in its absolute discretion take such action to penalise any breach of this rule as it shall think appropriate. It is for the issuer to satisfy itself that a proposed purchase of shares falls within the exemption provided in Rule 2 of the Code on Share Repurchases.

- 13.04 The Exchange reserves the right to prohibit an issuer from making purchases of shares on GEM if the Exchange considers that the issuer has committed a breach of any of the GEM Listing Rules which apply to that issuer. In the event that the Exchange does so prohibit such purchases no Exchange Participant will carry out any such purchases on behalf of the issuer until such prohibition is lifted.
- 13.05 The Sponsor and/or the authorised representatives of the issuer shall respond promptly to any request for information that the Exchange may address to the issuer concerning the purchase of shares, at any time.
- 13.06 For the purposes of rules 13.03 to 13.14 "shares" shall mean shares of all classes and securities which carry a right to subscribe or purchase shares, of the issuer provided that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.

Procedures to be complied with

- 13.07 An issuer may only purchase shares on GEM, either directly or indirectly, if:—
- (1) the shares proposed to be purchased by the issuer are fully-paid up;
 - (2) the issuer has previously sent to its shareholders an Explanatory Statement complying with the provisions of rule 13.08; and
 - (3) the shareholders of the issuer have given a specific approval or a general mandate to the directors of the issuer to make such purchase(s), by way of an ordinary resolution which complies with the provisions of rule 13.09 and which has been passed at a general meeting of the issuer duly convened and held and the issuer has delivered a copy of such resolution, together with the necessary supporting documentation, to the Exchange in accordance with rule 13.10;
- 13.08 The issuer must send to its shareholders an Explanatory Statement (at the same time as the notice of the relevant shareholders' meeting) containing all the information reasonably necessary to enable those shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the purchase by the issuer of shares including the information set out below:—
- (1) a statement of the total number and description of the shares which the issuer proposes to purchase;
 - (2) a statement by the directors of the reasons for the proposed purchase of shares;
 - (3) a statement by the directors as to the proposed source of funds for making the proposed purchase, which shall be funds legally available for such purposes in accordance with the issuer's constitutive documents and the laws of the jurisdiction in which the issuer is incorporated or otherwise established;

- (4) a statement as to any material adverse impact on the working capital or gearing position of the issuer (as compared with the position disclosed in its most recent published audited accounts) in the event that the proposed purchases were to be carried out in full at any time during the proposed purchase period, or an appropriate negative statement;
- (5) a statement of the name of any directors, and to the best of the knowledge of the directors having made all reasonable enquiries, any associates of the directors, who have a present intention, in the event that the proposal is approved by shareholders, to sell shares to the issuer, or an appropriate negative statement;
- (6) a statement that the directors have undertaken to the Exchange to exercise the power of the issuer to make purchases pursuant to the proposed resolution in accordance with the GEM Listing Rules and the laws of the jurisdiction in which the issuer is incorporated or otherwise established;
- (7) a statement as to the consequences of any purchases which will arise under the Takeover Code of which the directors are aware, if any;
- (8) a statement giving details of any purchases by the issuer of shares made in the previous 6 months (whether on GEM or otherwise), giving the date of each purchase and the purchase price per share or the highest and lowest prices paid for such purchases, where relevant;
- (9) a statement as to whether or not any connected persons of the issuer have notified the issuer that they have a present intention to sell shares to the issuer or have undertaken not to sell any of the shares held by them to the issuer, in the event that the issuer is authorised to make purchases of shares;
- (10) a statement giving the highest and lowest prices at which the relevant shares have traded on GEM during each of the previous twelve months; and
- (11) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19.

Notes: 1 The Explanatory Statement need not contain the statement set out in rule 2.20 concerning the characteristics of GEM nor information on the interests (if any) of the Sponsor (as referred to in rule 6.35) and all directors, management shareholders and their respective associates (as referred to in rule 11.04).

2 The Explanatory Statement must be reviewed by the Exchange prior to its dispatch to shareholders of the issuer and must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon.

13.09 The ordinary resolution proposed to shareholders to give the directors of the issuer a specific approval or general mandate to purchase shares must include the following:—

- (1) the total number and description of the shares which the issuer is authorised to purchase, provided that the number of shares which the issuer is authorised to purchase on GEM or on another stock exchange recognised for this purpose by the Commission and the Exchange under the Code on Share Repurchases, may not exceed 10 per cent of the issued share capital of the issuer and the total number of warrants to subscribe for or purchase shares (or other relevant class of securities) authorised to be so purchased may not exceed 10 per cent of the warrants of the issuer (or such other relevant class of securities, as the case may be), in each case as at the date of the resolution granting the general mandate; and

- (2) the dates on which the authority conferred by the resolution will commence and determine. Such authority may only continue in force until:—
- (a) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the authority is renewed, either unconditionally or subject to conditions; or
 - (b) revoked or varied by ordinary resolution of the shareholders in general meeting,
- whichever occurs first.

13.10 The issuer shall report the outcome of the general meeting called to consider the proposed purchases to the Exchange immediately following such meeting taking place. In the event that such resolution is duly passed, the issuer shall furnish a copy of such resolution signed by the Chairman of the meeting to the Exchange within 15 days after the resolution is passed, together with a certified copy of the Explanatory Statement.

Dealing restrictions

13.11 The following dealing restrictions must be adhered to:—

- (1) an issuer shall not purchase shares on GEM for a consideration other than cash or for settlement otherwise than in accordance with the trading rules of the Exchange from time to time;
- (2) an issuer shall not knowingly purchase shares from a connected person and a connected person shall not knowingly sell his shares to the issuer, on GEM;
- (3) an issuer shall procure that any broker appointed by the issuer to effect the purchase of shares shall disclose to the Exchange such information with respect to purchases made on behalf of the issuer as the Exchange may request;
- (4) an issuer shall not purchase shares on GEM at any time after a price sensitive development has occurred or has been the subject of a decision until such time as the price sensitive information is made publicly available. In particular, during the period of 1 month immediately preceding either the preliminary announcement of the issuer's annual results or the publication of the issuer's half-year report or a quarterly report, the issuer may not purchase shares on GEM, unless the circumstances are exceptional;
- (5) an issuer shall not purchase shares on GEM if that purchase would result in the number of listed securities which are in the hands of the public falling below the relevant minimum prescribed percentage for that issuer (as determined by the Exchange at the time of listing under rule 11.23);
- (6) an issuer may only purchase shares on GEM if the following restrictions as to price and timing are adhered to:—
 - (a) the purchase price should not be higher than the latest (or current) independent bid price or the last independent sale (contract) price quoted or reported on the system (as defined in the Rules of the Exchange), whichever is higher; and
 - (b) the issuer shall not make the opening bid nor any bid in the last 30 minutes before the close of normal trading hours as stipulated in the Rules of the Exchange; and

- (7) the Exchange may waive all or part of the above restrictions if, in the opinion of the Exchange, there are exceptional circumstances (such as, but without limitation, political or economic events having a material adverse effect on the price of shares of the issuer or issuers listed on GEM generally) justifying the waiver of such restrictions. A waiver may be granted either with respect to a fixed amount of securities of an issuer or generally or on such conditions as the Exchange shall specify and may be expressed to continue for a stated period of time or until further notice.

Subsequent issues

- 13.12 An issuer may not make a new issue of shares or announce a proposed new issue of shares for a period of 30 days after any purchase by it of shares, whether on GEM or otherwise (other than an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange.

Reporting requirements

- 13.13 An issuer shall:—

- (1) report to the Exchange not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following any day on which the issuer makes a purchase of shares (whether on GEM or otherwise), the total number of shares purchased by the issuer the previous day, the purchase price per share or the highest and lowest prices paid for such purchases, where relevant, and shall confirm that those purchases which were made on GEM were made in accordance with the GEM Listing Rules and that there have been no material changes to the particulars contained in the Explanatory Statement. In respect of purchases made on another stock exchange, the issuer's report must confirm that those purchases were made in accordance with the domestic rules applying to purchases on that other stock exchange. Such reports shall be made in the form set out in Appendix 8 and must be submitted to the Exchange in both hard copy and electronic format in the manner determined by the Exchange from time to time. In the event that no shares are purchased on any particular day then no return need be made to the Exchange. The issuer should make arrangements with its brokers to ensure that they provide to the issuer in a timely fashion the necessary information to enable the issuer to make the report to the Exchange; and
- (2) include in its annual report and accounts a monthly breakdown of purchases of shares made during the financial year under review showing the number of shares purchased each month (whether on GEM or otherwise) and the purchase price per share or the highest and lowest price paid for all such purchases, where relevant, and the aggregate price paid by the issuer for such purchases. The directors' report shall contain reference to the purchases made during the year and the directors' reasons for making such purchases.

Status of purchased shares

- 13.14 The listing of all shares which are purchased by an issuer (whether on GEM or otherwise) shall, subject to applicable law, be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares in the normal way. The issuer shall ensure that the documents of title of purchased shares are cancelled and destroyed as soon as reasonably practicable following settlement of any such purchase.

Note: Overseas issuers with a dual listing are referred to rule 24.07 which may be relevant in this regard.

Restrictions on disposal of shares following the listing of a new applicant

13.15 For the purposes of rules 13.15 to 13.20, the following terms have the following meanings:—

- (1) “excluded securities” means securities of the new applicant allotted or sold pursuant to the initial public offering (including any placing) conducted in conjunction with the application for listing;
- (2) “initial management shareholder” means any management shareholder of the issuer immediately prior to the date of the issuer’s initial listing document and any person referred to in Note 1 below.

Notes: 1 The Exchange will normally regard the following persons, if they are shareholders of the issuer immediately prior to the listing date, to be initial management shareholders:—

- (i) a member of the senior management of the issuer, including but not limited to any person identified as senior management in the issuer’s initial listing document;*
- (ii) a director of the issuer; or*
- (iii) a shareholder of the issuer who is represented on the board of directors of the issuer, including but not limited to an investment fund.*

2 The Exchange reserves a power to deem any party to be an initial management shareholder in circumstances where, prior to the date of the issue of the listing document, that party has been a management shareholder and on or after the listing date, that party again becomes a management shareholder.

- (3) “listing date” means the date on which securities of the new applicant commence trading on GEM;
- (4) “relevant securities”, in relation to an initial management shareholder or significant shareholder, means:—
 - (a) securities of the issuer (other than excluded securities) in issue immediately prior to the listing date;
 - (b) securities of the issuer arising from the exchange, substitution or conversion of securities (other than excluded securities) in issue immediately prior to the listing date;
 - (c) securities of the issuer arising pursuant to the exercise of any options, warrants or similar rights (other than excluded securities) held immediately prior to the listing date;
 - (d) securities of the issuer allotted pursuant to any capitalisation issue effected after the listing date, other than those allotted in respect of excluded securities (and provided always that no securities allotted by way of scrip dividend shall comprise relevant securities);
 - (e) securities of the issuer subscribed by any initial management shareholder pursuant to an issue of securities made in the manner described in rule 13.15(5)(b);

- (f) securities of the issuer issued within 6 months of the listing date pursuant to rule 17.29(1) or rule 17.29(2) and subscribed by or allotted to any such shareholder (or where rule 17.29(2) is applicable, any shareholder described in rule 17.29(2)(e)); and
- (g) securities of the issuer returned to the shareholder as part of the stock lending arrangement described in rule 13.15(5)(a)(iii)

in respect of which he is entitled to exercise or control the exercise of the voting power at general meetings of the issuer; and

- (5) references to a “disposal” (of securities) includes the creation of any option, rights or interests (over such securities) but shall exclude the following:
 - (a) any stock lending arrangement with an underwriter of the initial public offering of the new applicant’s securities which satisfies the following conditions:
 - (i) the stock lending arrangement is fully described in the initial listing document and must be for the sole purpose of covering any short position prior to the exercise of the underwriter’s over-allotment option or similar right;
 - (ii) the maximum number of shares to be borrowed from the relevant shareholder is the maximum number of shares that may be issued upon full exercise of the over-allotment option; and
 - (iii) the same number of shares borrowed is returned to the relevant shareholder and deposited with the escrow agent (see rules 13.16 and 13.17) within 3 business days after the last day on which the over-allotment option may be exercised or, if earlier, the date on which the over-allotment option is exercised in full; and
 - (b) any placing and issue of securities made in the manner described in rule 20.23(3)(d) during the second six month period of the issuer’s listing date where:
 - (i) there is no change in the number of relevant securities held by the relevant shareholder before and after completion of the placing and issue of securities; and
 - (ii) the placing of securities does not result in a controlling shareholder of the issuer ceasing to be a controlling shareholder after completion of the placing and issue of securities.

13.16 A new applicant shall procure that every initial management shareholder who is a shareholder immediately prior to the listing date:

- (1) places in escrow, with an escrow agent and on such terms as are acceptable to the Exchange, all his relevant securities for a period of:
 - (a) 12 months from the listing date; or
 - (b) where that shareholder’s relevant securities represent no more than 1 per cent of the issued share capital of the new applicant as at the listing date, 6 months from the listing date;

- (2) undertakes to the new applicant and the Exchange that, for the periods specified in rule 13.16(1), he will not, save as provided in rule 13.18, dispose of (nor enter into any agreement to dispose of) nor permit the registered holder to dispose of (or to enter into any agreement to dispose of) any of his direct or indirect interest in his relevant securities.

Notes: 1 The duly completed undertakings, including in respect of the further matters set out in rule 13.19, substantially in the form set out in Appendix 5G, must be delivered to the Exchange, at the latest, before dealings in the new applicant's securities commence on GEM (see rule 12.26(9)).

2 Any additional securities of the issuer (or interest therein) acquired by an initial management shareholder following the listing date (except for any relevant securities of the initial management shareholder of the kind described in rules 13.15(4)(e), (f) and (g)) may be disposed of without regard to the restrictions set out in this rule.

3 As a transitional measure for listed issuers who commenced dealing of their securities on GEM before 1 October 2001, reference to a "new applicant" in rule 13.16 shall be construed to mean such listed issuers.

13.17 A new applicant shall procure that every significant shareholder:—

- (1) places in escrow, with an escrow agent and on such terms as are acceptable to the Exchange, all his relevant securities for a period of 6 months from the listing date; and
- (2) undertakes to the new applicant and the Exchange that, for a period of 6 months from the listing date, he will not, save as provided in rule 13.18 dispose of (nor enter into any agreement to dispose of) nor permit the registered holder to dispose of (or to enter any agreement to dispose of) any of his direct or indirect interest in relevant securities.

Notes: 1 The duly completed undertakings, including in respect of the further matters set out in rule 13.19, substantially in the form set out in Appendix 5H must be delivered to the Exchange, at the latest, before dealings in the new applicant's securities commence on GEM (see rule 12.26(9)).

2 Any additional securities of the issuer (or interest therein) acquired by a significant shareholder following the listing date (except for any relevant securities of the significant shareholder of the kind described in rules 13.15(4)(f) and (g)) may be disposed of without regard to the restrictions set out in this rule.

3 In the case of a significant shareholder which is a professionally-managed fund owned by multiple investors, the Exchange will normally be prepared to waive the escrow requirement referred to in rule 13.17(1).

13.18 Nothing in rules 13.16 and 13.17 shall prevent the disposal of any interest of an initial management shareholder or significant shareholder in relevant securities in the following circumstances:—

- (1) pursuant to a pledge or charge to an authorised institution under the Banking Ordinance, as security for a bona fide commercial loan;
- (2) pursuant to a power of sale under the pledge or charge (granted pursuant to sub-paragraph (1));
- (3) on the death of the initial management shareholder or significant shareholder; or
- (4) in any other exceptional circumstances to which the Exchange has given its prior approval.

13.19 A new applicant shall procure that every initial management shareholder and significant shareholder undertakes to the new applicant and the Exchange to comply with the following requirements:—

- (1) in the event that the initial management shareholder or significant shareholder pledges or charges any direct or indirect interest in relevant securities under rule 13.18(1) or pursuant to any right or waiver granted by the Exchange pursuant to rule 13.18(4), at any time during the relevant periods specified in rule 13.16 or the period specified in rule 13.17 (as the case may be), he must inform the issuer immediately thereafter, disclosing the details specified in rule 17.43(1) to (4); and
- (2) having pledged or charged any interest in relevant securities under sub-paragraph (1) above, he must inform the issuer immediately in the event that he becomes aware that the pledgee or chargee has disposed of or intends to dispose of such interest and of the number of securities affected.

13.20 An issuer that has been informed of any matter under rule 13.19 must forthwith publish an announcement giving details of the same in accordance with the requirements of rule 17.43.

Restrictions on multiple applications

13.21 Where securities are offered to the public for subscription or purchase, the issuer, its directors, Sponsor and, if applicable, underwriters must take reasonable steps to ensure that multiple or suspected multiple applications are identified and rejected.

Note: Having taken reasonable steps as required by this rule, the issuer, its directors, Sponsor and, if applicable, underwriters will be entitled to rely on the declaration/representations made by an applicant.

13.22 In this rule “multiple applications” means circumstances where more than one application is made by the same person or where a person applies for more than 100 per cent of the securities on offer to the public for subscription (and excluding any shares available for placing). Where an offer contains both a placing and a public subscription tranche, the shares available to the public for subscription are the initial allocation of shares in the public subscription tranche prior to any transfer between the placing tranche and public subscription tranche.

13.23 An issuer, its directors, Sponsor and, if applicable, underwriters must ensure that it is a term and condition of the offer of the securities (disclosed as such in the listing document and the relevant application form) that by completing and delivering an application form, each applicant warrants that:—

- (1) (if the application is made for his own benefit) no other application is being made for his benefit by him or by anyone applying as his agent or by any other person;
- (2) (if the application is made by him as agent for the benefit of another person) no other application is being made by him as agent for or for the benefit of that person or by that person or by any other person as agent for that person;
- (3) if he signs the application form as agent for someone else, he has due authority to do so on behalf of that other person.

13.24 The application form shall include a warning as follows:—

“Warning:—

Only one application may be made for the benefit of any person.”

and a declaration and representation as follows:—

“I/we hereby declare that this is the only application made and the only application intended by me/us to be made, to benefit me/us or the person for whose benefit I am/we are applying. I/we understand that this declaration/representation will be relied upon by the issuer in deciding whether or not to make any allotment of shares in response to this application.”

13.25 The application form shall also contain a stipulation to the effect that an application made by an unlisted company which does not carry on any business other than dealing in shares and in respect of which a person exercises statutory control shall be deemed to be an application made for the benefit of that person.