

Chapter 19

EQUITY SECURITIES

TRANSACTIONS

Preliminary

19.01 This Chapter deals with certain transactions, principally acquisitions and disposals, by a listed issuer. It describes how they are classified, the details that are required to be disclosed in respect of them and whether a circular and shareholder approval are required. It also considers additional requirements in respect of takeovers and mergers.

Note: Issuers should note that even if a transaction is not required to be disclosed pursuant to the provisions of this Chapter, it may nevertheless be required to be disclosed under the issuer's general obligation to keep the market informed of all price-sensitive information (see rule 17.10).

19.02 If any transaction for the purposes of this Chapter is also a connected transaction for the purposes of Chapter 20, the issuer will, in addition to complying with the provisions of this Chapter, have to comply with the provisions of Chapter 20.

19.03 All announcements, circulars and listing documents in relation to transactions under this Chapter must be reviewed by the Exchange and may only be issued after the Exchange has confirmed that it has no further comments thereon.

Definitions

19.04 For the purposes of this Chapter:—

- (1) references to a "transaction" are interpreted by the Exchange in the broadest possible sense and include:
 - (a) the acquisition or disposal of assets, including deemed disposals as set out in rule 19.27;
 - (b) any transaction involving a listed issuer writing, accepting, transferring or exercising an option (as defined in rule 19.59) to acquire or dispose of assets or to subscribe for securities;
 - (c) entering into or terminating finance leases where the financial effects of such leases have an impact on the balance sheet and/or profit and loss account of the listed issuer, respectively;
 - (d) entering into or terminating operating leases where the financial effects of such leases have an impact on the profit and loss account of the listed issuer;
 - (e) granting an indemnity, or a guarantee or providing financial assistance;
 - (f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company; and
 - (g) issuing new securities;

- (2) “accounts” means a listed issuer’s latest published audited accounts or consolidated accounts;
- (3) “assets” means both tangible and intangible assets and includes businesses, companies and securities;
- (4) a “listed issuer” means a company whose securities are already listed on GEM and its subsidiaries, unless the context otherwise specifies;
- (5) “net tangible assets” means the aggregate of the share capital and reserves, excluding minority interests and intangibles;
- (6) a “notifiable transaction” means a transaction classified as a share transaction, discloseable transaction, major transaction, very substantial acquisition or reverse takeover under rule 19.06;
- (7) a “property company” means a company whose assets consist mainly of properties or interests in companies whose assets consist mainly of properties and whose income is mainly derived from those properties; and
- (8) a “shipping company” means a company whose assets consist mainly of vessels or interests in companies whose assets consist mainly of vessels and whose income is mainly derived from those vessels.

Classification and explanation of terms

- 19.05 A listed issuer considering a transaction must, at an early stage, consider whether the transaction falls into one of the classifications set out in rule 19.06. In this regard, the listed issuer must consult with its Sponsor and/or its financial, legal or other professional advisers. In cases of doubt the issuer, its Sponsor or other advisers should consult with the Exchange at the earliest opportunity.
- 19.06 The transaction classification is made by using the percentage ratios set out in rule 19.07. The classifications are:—
- (1) share transaction — an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and where all percentage ratios are less than 15%;
 - (2) discloseable transaction — a transaction where any percentage ratio is 15% or more;
 - (3) major transaction — a transaction where any percentage ratio is 50% or more; and
 - (4) very substantial acquisition — an acquisition of assets (including business, company or companies), substantially all of which are not listed on the Main Board or on GEM, by a listed issuer where: —
 - (a) any percentage ratio is 200% or more;
 - (b) any percentage ratio is 100% or more and the business, company or companies being acquired is/are different from the current principal activities of the listed issuer; or
 - (c) any percentage ratio is 100% or more and there is an intention to make a major change in the principal activities of the listed issuer; and

- (5) reverse takeover — an acquisition of assets (including business, company or companies), substantially all of which are not listed on the Main Board and on GEM, by a listed issuer where:—
- (a) the acquisition would result in, or is part of a transaction or arrangement or series of transactions or arrangements which would result in, a change in control of the listed issuer; or
 - (b) the Exchange is of the opinion that the acquisition constitutes an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants as set out in Chapter 11.

Percentage ratios

19.07 The percentage ratios are the figures, expressed as percentages resulting from each of the following calculations:—

- (1) Assets ratio — the net tangible assets the subject of the transaction divided by the net tangible assets of the listed issuer (see also rules 19.08 to 19.10, and 19.17 to 19.19);
- (2) Profits ratio — the profits attributable to the net tangible assets the subject of the transaction divided by the profits of the listed issuer (see also rules 19.11 and 19.19);
- (3) Consideration ratio — the consideration divided by the net tangible assets of the listed issuer (see also rules 19.12, 19.18 and 19.19); and
- (4) Capital ratio — the nominal value of the listed issuer's equity capital issued as consideration divided by the nominal value of the listed issuer's issued equity capital immediately before the transaction (see also rules 19.12 and 19.19).

Assets

19.08 Net tangible assets the subject of the transaction:—

- (1) where the asset being acquired is not equity capital, means the consideration paid for the asset (calculated as set out in rule 19.12);

Note: In the case of an acquisition through a non-wholly-owned subsidiary, the net tangible assets shall mean the consideration (and not, for the avoidance of doubt, the listed issuer's proportionate interest in the consideration).

- (2) where the asset being disposed of is not equity capital, means the higher of the consideration received for the asset and the book value of the asset as shown in the accounts of the listed issuer; and
- (3) where the asset being acquired or disposed of constitute equity capital, the issuer must take into account the matters referred to in rules 19.24 to 19.31.

19.09 Net tangible assets may be adjusted as set out in rules 19.13 and 19.14;

19.10 Where a listed issuer which is a property company or a shipping company acquires or disposes of properties or vessels, respectively, the net tangible assets of the listed issuer means the latest published net book value of its properties or vessels before deducting mortgages. Net tangible assets can also mean the latest published valuation before deducting mortgages if such valuation is published after the accounts of the listed issuer.

Profits

- 19.11 Profits means net profit after deducting all charges except taxation and before minority interests and extraordinary items (See also rules 19.13, 19.15 and 19.16).

Note: In the case of an acquisition or disposal of assets (other than equity capital) through a non-wholly-owned subsidiary, the profits before taxation, minority interests and extraordinary items attributable to the assets acquired or disposed of (and not, for the avoidance of doubt, the listed issuer's proportionate interest in such profits) will form the numerator for the purpose of the profits ratio set out in rule 19.07.

Consideration

- 19.12 When calculating the consideration ratio set out in rule 19.07:—

- (1) where all or part of the consideration is in the form of equity capital, the Exchange may use the higher of the market value of such capital and the book value of the net tangible assets represented by such capital (for which purposes, the market value of such capital shall mean the aggregate market value of an equivalent amount of the relevant listed securities, disregarding any dilution from the allotment of the consideration securities, on the date on which terms of any relevant disposal or acquisition agreement are finalised)
- (2) where a transaction involves establishing a joint venture entity, the Exchange will aggregate:—
 - (a) the listed issuer's total capital commitment (whether equity, loan or otherwise), including any contractual commitment to subscribe for capital; and
 - (b) any guarantee or indemnity provided in connection with its establishment;

Note: Where a joint venture is established for a future purpose, for example to develop a property, and the total capital commitment cannot be calculated at the outset, the Exchange will require the listed issuer to recalculate the relevant percentage ratios at the time when that purpose is carried out. The Exchange will look at the purpose of setting up the joint venture entity in terms of the initial transaction only. For example, the purpose could be the development of the property for which the joint venture was established. The Exchange will not look at subsequent transactions entered into by the joint venture for the purpose of calculating the total capital commitment in relation to the establishment of the joint venture entity.

- (3) the Exchange may require that further amounts be included (for example, where the purchaser agrees to discharge any liabilities, whether actual or contingent, of the vendors as part of the terms of the transaction)
- (4) if the listed issuer may pay or receive deferred consideration in the future, the consideration is the maximum total consideration payable or receivable under the agreement;
- (5) in any disposal of an entity whose principal activity would be generally regarded by the Exchange as the holding of property, the Exchange may use the higher of the consideration received and the valuation of the property held by the entity in calculating the consideration ratio set out in rule 19.07; and
- (6) in the case of any acquisition or disposal through a non-wholly-owned subsidiary, the consideration (and not, for the avoidance of doubt, the listed issuer's proportionate interest in such consideration) will form the numerator for the purpose of the consideration ratio set out in rule 19.07.

Figures used in net tangible assets and profits calculations

- 19.13 The net tangible assets and profits figures must be the figures shown in the accounts. A listed issuer should normally adjust the net tangible assets figure by the amount of profit or loss attributable to shareholders shown in any half-year, quarterly or other interim report published by the listed issuer and any dividend declared by the listed issuer since its latest published audited accounts.
- 19.14 The value of transactions in respect of which information has already been published and made available to shareholders in accordance with the GEM Listing Rules should normally be included in the net tangible assets of the listed issuer.

Note: In calculating net tangible assets, the Exchange may require the inclusion of further amounts where contingent assets are involved and the exclusion of liabilities which are regarded as part of the consideration.

Exceptions to the classification rules

- 19.15 Where a transaction falls within any of the classifications only because of the profits ratio, the Exchange may be prepared to disregard that ratio if the listed issuer can clearly demonstrate that the comparison is affected by exceptional factors, without which the profits ratio would not exceed the relevant threshold.
- 19.16 Where:
- (1) a listed issuer has recorded a loss rather than a profit in its accounts; or
 - (2) a loss rather than a profit is attributable to the net tangible assets which are the subject of the transaction,
- the Exchange will disregard the profits ratio set out in rule 19.07 for the purpose of classifying the transaction.
- 19.17 Where the listed issuer has net liabilities instead of net tangible assets, the Exchange will, subject to rules 19.18 and 19.19, classify an acquisition by the listed issuer as a very substantial acquisition and a disposal by the listed issuer as a major transaction.
- 19.18 Where the assets of the listed issuer include substantial intangible assets, the Exchange may be prepared to take them into account for the purposes of calculating the assets and consideration percentage ratios set out in rule 19.07.
- 19.19 Where a listed issuer satisfies the Exchange that its balance sheet does not reflect the real value of its business due to the exceptional nature of that business, the Exchange may be prepared to apply other tests or ratios to classify the transaction instead of the four percentage ratios set out in rule 19.07.

Change in percentage ratios

- 19.20 If any of the percentage ratios changes to the extent that the classification of the transaction is altered between the time that any transaction is first discussed with the Exchange (if applicable) and the time of its announcement, the listed issuer must consult the Exchange.

Aggregation of transactions

- 19.21 The Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12 month period. In such cases, the listed issuer must comply with the requirements for the relevant classification of the transaction when aggregated.
- 19.22 Factors which the Exchange will normally take into account in determining whether transactions will be aggregated include whether the transactions:—
- (1) are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;
 - (2) involve the acquisition or disposal of securities or an interest in one particular company or group of companies;
 - (3) involve the acquisition or disposal of parts of one asset; and
 - (4) together lead to substantial involvement in a business activity which did not previously form a part of the listed issuer's principal activities.

Transaction involving an acquisition and a disposal

- 19.23 In the case of a transaction involving both an acquisition and a disposal, the Exchange will normally apply the transaction ratios to both the acquisition and the disposal. The transaction will be categorised by reference to the larger of the acquisition or disposal.

Interpretation of the classification rules in circumstances where the listed issuer or a subsidiary acquires or realises equity capital

- 19.24 In circumstances where acquisitions or disposals of equity capital are made by a listed issuer or by one of its wholly-owned or non-wholly-owned subsidiaries, the provisions set out in rules 19.25 to 19.26 shall be applied in determining the classification of the transaction for the purposes of rule 19.06.
- 19.25 In an acquisition or disposal of equity capital, the value of such capital, which will form the numerator for the purposes of the assets ratio in rule 19.07, is to be assessed by reference to the book value of the net tangible assets represented by such capital as disclosed in the latest published audited accounts or consolidated accounts of the entity being acquired or disposed and will normally be multiplied by a percentage being the percentage of the equity interest acquired or disposed. However, if the acquisition of an interest will result in consolidation of the net tangible assets of the entity in which an interest is acquired in the accounts of the issuer or the disposal will result in the assets of the entity no longer being consolidated in the accounts of the issuer, 100% of that entity's net tangible assets will be taken as the value of the assets irrespective of the interest acquired or disposed.

Note: For example:—

- *if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires equity capital representing 10% of an investee company and has no prior holding in the investee company, the value of the equity acquired, which will form the numerator for the assets ratio set out in rule 19.07, is 10% of the net tangible assets of the investee company; or*

- *if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a further 10% interest in a subsidiary which is already consolidated in the issuer's accounts the value of the equity acquired, which will form the numerator for the assets ratio set out in rule 19.07, is 10% of the net tangible assets of the investee company; and*
- *if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a 10% interest in a company which will result in that company being consolidated in the accounts of the issuer, 100% of the investee company's net tangible assets will be taken as the value of assets acquired for the purpose of the assets ratio in rule 19.07.*

19.26 In an acquisition or disposal of equity capital, the value of the profits attributable to such capital, which will form the numerator for the purposes of the profits ratio in rule 19.07, is to be assessed by reference to the net profits (i.e. the profit before taxation, minority interests and extraordinary items) represented by such capital as disclosed in the latest published audited accounts or consolidated accounts of the entity being acquired or disposed and will normally be multiplied by a percentage being the percentage of the equity interest acquired or disposed. However, if the acquisition of an interest will result in consolidation of the net tangible assets of the entity in which an interest is acquired in the accounts of the issuer or the disposal will result in the assets of the entity no longer being consolidated in the accounts of the issuer, 100% of that entity's profits will be taken as the value of the profits irrespective of the interest acquired or disposed.

Note: For example:—

- *if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires equity capital representing 10% of an investee company and has no prior holding in the investee company, the value of the profits attributable to the equity acquired, which will form the numerator for the profits ratio set out in rule 19.07, is 10% of the profit before taxation, minority interests and extraordinary items of the investee company; or*
- *if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a further 10% interest in a subsidiary which is already consolidated in the issuer's accounts the value of the profits attributable to the equity acquired, which will form the numerator for the profits ratio set out in rule 19.07, is 10% of the profit before taxation, minority interests and extraordinary items of the investee company; and*
- *if an issuer (or subsidiary, whether wholly-owned or not wholly-owned) acquires a 10% interest in a company which will result in that company being consolidated in the accounts of the issuer, 100% of the investee company's profit before taxation, minority interests and extraordinary items will be taken as the numerator for the purposes of the profits ratio set out in rule 19.07.*

Deemed disposals

19.27 Subsidiaries which are consolidated and entities which are equity accounted for by an issuer or issuer's group may cause allotments of share capital for cash consideration to be made which result in a reduction of the percentage equity interest of the issuer in such entity. Such allotments give rise to deemed disposals, profits or losses may be recorded on such transactions and such transactions may also fall to be treated as major or discloseable transactions. Rules 19.28 to 19.31 set out how the percentage ratios in rule 19.07 are applied to such transactions.

19.28 Where a subsidiary of the issuer (whether wholly-owned or not wholly-owned, whether held directly or indirectly and which, prior to the allotment, is consolidated in the accounts of the issuer) allots shares, the numerators for the purposes of the assets ratio and profits ratio set out in rule 19.07 are calculated as follows:—

- (1) If after the allotment the issuer or the group will continue to consolidate the subsidiary, the percentage by which the interest is reduced will be multiplied by the subsidiary's net tangible assets as disclosed in the latest published audited accounts or consolidated accounts of the subsidiary allotting shares and taken as the numerator for the purposes of the assets ratio set out in rule 19.07. The same percentage will be multiplied by the subsidiary's profit before taxation, minority interests and extraordinary items and taken as the numerator for the profits ratio set out in rule 19.07.

Note: For example, if the interest reduces from 90% to 80% then 10% of the subsidiary's net tangible assets and profit before taxation, minority interests and extraordinary items will form the numerators for the ratios in rule 19.07.

- (2) If after the allotment the issuer or the group will cease to consolidate the subsidiary, 100% of the subsidiary's net tangible assets and 100% of the subsidiary's profit before taxation, minority interests and extraordinary items will form the numerators for the ratios in rule 19.07.

19.29 Where an entity (whether held directly or indirectly and which, prior to the allotment, was equity accounted for in the accounts of the issuer) allots shares the numerators for the purposes of the assets ratio and profits ratio set out in rule 19.07 are calculated as follows:

- (1) Irrespective of whether after the allotment the issuer or the group will continue to equity account for the entity, the percentage by which the interest is reduced will be multiplied by the entity's net tangible assets as disclosed in the latest published audited accounts or consolidated accounts of the entity allotting shares and taken as the numerator for the purposes of the assets ratio set out in rule 19.07. The same percentage will be multiplied by the entity's profit before taxation, minority interests and extraordinary items and taken as the numerator for the profits ratio set out in rule 19.07.

Note: For example, if the interest reduces from 40% to 30% then 10% of the entity's net tangible assets and profits before taxation, minority interests and extraordinary items will form the numerators for the ratios in rule 19.07.

19.30 Where a subsidiary of the issuer (whether wholly-owned or not wholly-owned, whether held directly or indirectly and which, prior to the allotment, is consolidated in the accounts of the issuer) allots shares for consideration it is necessary to calculate a value for the purposes of the consideration ratio set out in rule 19.07. This is taken as the value of the shares issued to allottees (who are not part of the issuer's group) and is restricted to only those shares issued which are in excess of those necessary to maintain the allottees' relative percentage interest in the subsidiary.

19.31 Where an entity, whether held directly or indirectly, which prior to the allotment is equity accounted for in the accounts of the issuer allots shares for consideration it is necessary to calculate a value for the purposes of the consideration ratio in rule 19.07. This is taken as the value of the shares issued to allottees (who are not part of the issuer's group) and is restricted to only those shares issued which are in excess of those necessary to maintain the allottees' relative percentage interest in the entity.

Notification, publication and shareholder approval requirements

19.32 The table below highlights the notification, publication and shareholder approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

	Notification to Exchange	Announcement on GEM website	Circular to shareholders	Shareholder approval	Accountants' report
Share transaction	Yes	Yes	No	No ¹	No
Discloseable transaction	Yes	Yes	Yes	No	No
Major transaction	Yes	Yes	Yes	Yes ²	Yes ³
Very substantial acquisition	Yes	Yes	Yes	Yes ^{2, 4}	Yes
Reverse takeover	Yes	Yes	Yes	Yes ^{2, 4, 5}	Yes

Notes: 1 No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, pursuant to rule 17.41(2), the listed issuer is required to obtain shareholder approval in general meeting prior to the issue of the consideration shares.

2 Shareholders interested in the transaction must abstain from voting.

3 For acquisitions only.

4 Controlling shareholders must abstain from voting.

5 Approval of the Exchange is necessary.

Requirements for all transactions

Notification and announcement

19.33 As soon as the terms of a share transaction, discloseable transaction, major transaction, very substantial acquisition or reverse takeover have been agreed, the listed issuer must in each case:—

- (1) inform the Exchange; and

Note: Under rule 17.10, a listed issuer's notification obligations in respect of information expected to be price-sensitive arise as soon as that information is the subject of a decision.

- (2) send to the Exchange a draft announcement. Once the announcement has been amended to take account of the Exchange's comments, the listed issuer must submit the announcement to the Exchange to be published on the GEM website before the time that is 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the next business day. See also rule 19.35. Pursuant to rule 17.57, the listed issuer must forward 10 copies, as cleared by the Exchange, at the same time as it is issued.

- 19.34 For a share transaction, the announcement must contain the information set out in rules 19.46 and 19.47. For a discloseable transaction, major transaction, very substantial acquisition or reverse takeover, the announcement must contain at least the information set out in rules 19.46 and 19.48. In all cases, listed issuers must also include any additional information requested by the Exchange.

Short suspension of dealings

- 19.35 Where a listed issuer has signed an agreement in respect of a share transaction, major transaction, very substantial acquisition or reverse takeover and the required announcement has not been published before trading begins on the next business day, the listed issuer should request a short suspension of dealings in its securities pending the publication of the announcement.

Notes: 1 Directors of listed issuers are reminded of their obligation pursuant to Note 2 of rule 17.10 to keep confidential, information that is likely to have a significant effect on market activity in or the price of any listed securities, until such time as a formal announcement is made in accordance with the requirements of Chapter 16.

- 2 In any event, a listed issuer that has signed an agreement in respect of a notifiable transaction that is expected to be price sensitive should immediately request a short suspension of dealings in its securities pending the publication of the required announcement.*

Additional requirements for discloseable transactions

Circular

- 19.36 In addition to the requirements for all transactions set out in rule 19.33 a listed issuer who has entered into a discloseable transaction must send a circular to its shareholders and the Exchange and arrange for its publication in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement. The circular must contain the information required under rules 19.51, 19.52, (for an acquisition only) 19.53 and (for a disposal only) 19.57. The circular must (subject to rule 17.59) be in English and Chinese.

Note: Where an acquisition is a discloseable transaction only because of the consideration ratio, and the value of the consideration was calculated based on the market value of the equity capital, the Exchange may waive the requirement in this rule to issue a circular where all the other percentage ratios are less than 15%.

- 19.37 Drafts of the circular, in anticipated final form, must be submitted to the Exchange for review as soon as practicable after publication of the announcement. The listed issuer may not issue the circular until the Exchange confirms that it has no further comments.

Additional requirements for major transactions

Shareholder approval

- 19.38 In the case of a major transaction, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 19.33 to 19.37. In addition, a major transaction must be made conditional on approval by shareholders. The listed issuer must send a circular for the major transaction to its shareholders and the Exchange and publish it in accordance with the provisions of Chapter 16 within 21 days after publication of the announcement. The circular should 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. The circular shall contain information required under rules 19.51, 19.54, (for an acquisition only) 19.55 and (for a disposal only) 19.57.

Methods of approval

- 19.39 Shareholder approval for a major transaction may be given either by a majority vote at a general meeting of the shareholders or in writing by a shareholder or closely allied group of shareholders who (together) hold more than 50% in nominal value of the securities giving the right to attend and vote at a general meeting. Where such approval is given in writing, the listed issuer need not hold a general meeting to consider the transaction.
- 19.40 To determine whether a group of shareholders constitutes a “closely allied group of shareholders”, the Exchange will take into account the following factors:—
- (1) the number of persons in the group;
 - (2) the nature of their relationship including any past or present business association between two or more of them;
 - (3) the length of time each of them has been a shareholder;
 - (4) whether they would together be regarded as “acting in concert” for the purposes of the Takeover Code; and
 - (5) the way in which they have voted in the past on shareholders’ resolutions other than routine resolutions at an annual general meeting.

It is the listed issuer’s responsibility to provide sufficient information to the Exchange to demonstrate that the group of shareholders is a “closely allied group” of shareholders.

- 19.41 The Exchange will require any shareholder who has an interest in the transaction to abstain from voting and will not accept written approval for the transaction.

Addition requirements for very substantial acquisitions

- 19.42 In the case of a very substantial acquisition, the listed issuer must comply with the requirements for all transactions and for discloseable transactions set out in rules 19.33 to 19.37. In addition, a very substantial acquisition must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders shall abstain from voting. Where a listed issuer does not have any controlling shareholders, those shareholders who participate in the management of the listed issuer shall abstain from voting. The Exchange will also require any shareholder who has an interest in the transaction to abstain from voting.
- 19.43 A listed issuer proposing a very substantial acquisition must send a circular to its shareholders and the Exchange within 21 days after the announcement is published in accordance with the requirements of Chapter 16. The circular should 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. The circular must contain the information required under rules 19.51 and 19.56.

Additional requirements for reverse takeovers

- 19.44 The Exchange will treat a listed issuer proposing a reverse takeover as if it were a new listing applicant. The enlarged group or the assets to be acquired must be able to comply with the requirements for listing set out in Chapter 11. The listed issuer must comply with the requirements for all transactions set out in rules 19.33 to 19.35. In addition, a reverse takeover must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders shall abstain from voting. Where a listed issuer does not have any controlling shareholders, those shareholders who participate in the management of the listed issuer shall abstain from voting. The Exchange will also require any shareholder who has an interest in the transaction to abstain from voting.
- 19.45 A listed issuer proposing a reverse takeover must comply with the procedures and requirements from new listing applications as set out in Chapter 12. The listed issuer will be required to, among other things, issue a listing document and pay the non-refundable initial listing fee. A listing document relating to a reverse takeover must contain the information required under rules 19.51 and 19.56. The listing document should 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.

Contents of announcements

All transactions

- 19.46 The announcement for share transactions, discloseable transactions, major transactions, very substantial acquisitions and reverse takeovers must contain at least the following information:—
- (1) a prominent and legible disclaimer at the top of the announcement in the form set out in rule 2.19;
 - (2) a statement of responsibility and confirmation on the part of the directors in the form set out in rule 2.18;
 - (3) a description of the trade carried on by the listed issuer and a general description of the activities of the counterparty, if the counterparty is a company;
 - (4) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis;
- Note: If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued.*
- (5) the basis upon which the consideration was determined;
 - (6) the value of the net tangible assets the subject of the transaction;
 - (7) where applicable, the net profits (both before and after taxation and extraordinary items) attributable to the net tangible assets the subject of the transaction for the two financial years immediately preceding the transaction; and
 - (8) the benefits which are expected to accrue to the listed issuer as a result of the transaction and a statement that the directors believe that the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole.

Share transaction announcements

19.47 In addition to the information set out in rule 19.46, the announcement for a share transaction must contain at least the following information:—

- (1) the date of the transaction and the parties to it including details of the ultimate beneficial owner of the vendor of the asset(s) or other parties involved in the transaction;
- (2) the amount and details of the securities being issued including details of any restrictions which apply to the subsequent sale of such securities;
- (3) brief details of the asset(s) being acquired;
- (4) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and
- (5) a statement that application has been made to the Exchange for the listing of and permission to deal in the securities.

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

19.48 In addition to the information set out in rule 19.46, the announcement for a discloseable transaction, major transaction, very substantial acquisition or reverse takeover must contain at least brief details of the following:—

- (1) the date of the transaction and the parties to it, including details of the ultimate beneficial owner of the disposing or acquiring party or other parties involved in the transaction;
- (2) the general nature of the transaction including, where the transaction involves securities, details of any restrictions which apply to the subsequent sale of such securities;
- (3) particulars of the net tangible assets the subject of the transaction, including the name of any company or business where relevant;

Note: If the assets include shares in a company, this should include the name and general description of the activities of that company.

- (4) in the case of a disposal:—
 - (a) details of the gain or loss expected to accrue to the listed issuer and the basis for calculating this gain or loss. Where the listed issuer expects to recognise in its income statement a different profit or loss from the disclosed gain or loss, the reason for the difference should be explained; and

Note: The gain or loss should be calculated by reference to the carrying value of the assets in the latest published audited financial statements.

- (b) the intended application of the sale proceeds; and
- (5) if the transaction involves an issue of securities for which listing will be sought, the announcement must also include:
 - (a) a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities; and

- (b) a statement that application has been made to the Exchange for the listing of and permission to deal in the securities.

Profit forecast in an announcement

- 19.49 A “profit forecast” means any forecast of profits or losses, however worded, and includes any statement which quantifies the anticipated level of future profits or losses either expressly or by reference to previous profits or losses.
- 19.50 Where the announcement contains a profit forecast in respect of the listed issuer or a company which is, or is proposed to become, one of its subsidiaries, the listed issuer must submit the following additional information and documents to the Exchange at the same time as the draft announcement:—
- (1) details of the principal assumptions, including commercial assumptions, upon which the forecast is based;
 - (2) a letter from the listed issuer’s auditors confirming that they have reviewed the accounting policies and calculations for the forecast and containing their report; and
 - (3) a report from the listed issuer’s financial advisers confirming that they are satisfied that the forecast has been made by the directors after due and careful enquiry. If no financial advisers have been appointed in connection with the transaction, the listed issuer must provide a letter from the board of directors confirming they have made the forecast after due and careful enquiry.

Contents of circulars

General principles

- 19.51 A circular for a discloseable transaction, a major transaction or a very substantial acquisition and a listing document for a reverse takeover sent by a listed issuer to holders of its listed securities must:—
- (1) provide a clear, concise and adequate explanation of its subject matter having regard to the provisions of rule 17.56; and
 - (2) if voting or shareholders’ approval is required:
 - (a) contain all information necessary to allow the holders of the securities to make a properly informed decision;
 - (b) contain a heading emphasising the importance of the document and advising holders of securities who are in any doubt as to what action to take, to consult appropriate independent advisers;
 - (c) contain a recommendation from the directors as to the voting action shareholders should take, indicating whether or not the proposed transaction described in the circular is, in the opinion of the directors, fair and reasonable and in the interests of the shareholders as a whole; and
 - (d) contain a statement that any shareholder with an interest in the proposed transaction will abstain from voting in respect of that transaction.

Discloseable transaction circulars

19.52 All circulars relating to discloseable transactions must contain the following:

- (1) a prominent and legible disclaimer on the front cover of the circular in the form set out in rule 2.19;
- (2) a statement, at a prominent position in the document, and in bold type, about the characteristics of GEM, in the form set out in rule 2.20;
- (3) the information regarding the listed issuer specified in the following paragraphs of Appendix 1 Part B:—
 - 1- name
 - 2- directors' responsibility
 - 5- expert statements
 - 29(2)- requirements if there is a profit forecast
 - 33- litigation statement
 - 35- details of secretary and other officers
 - 36- address of registered office and head office
 - 38- directors' interests;
- (4) a clear explanation of the reasons why the listed issuer proposes to enter into the transaction;
- (5) the information regarding the assets being acquired or disposed of, which is required to be included in the announcement under rule 19.48;
- (6) information concerning the effect of the transaction on the earnings and assets and liabilities of the listed issuer;
- (7) where a company either becomes a subsidiary or ceases to be a subsidiary of the listed issuer:—
 - (a) the percentage of the issued share capital (if any) held by the listed issuer in that company after the acquisition or disposal; and
 - (b) in the case of a disposal, a statement whether the remaining shares are to be sold or retained;
- (8) details of any existing or proposed service contracts of directors and proposed directors of the listed issuer;

Note: Details of contracts to expire or which may be terminated by the employer within a year without payment of any compensation, other than statutory compensation, need not be included.
- (9) information as to the interests (if any) of the Sponsor and its directors, employees and associates (as referred to in rule 6.36) and all directors and management shareholders of the issuer and their respective associates (as referred to in rule 11.04); and
- (10) any additional information requested by the Exchange.

19.53 In addition to the requirements set out in rule 19.52 a circular issued in relation to an acquisition constituting a discloseable transaction must contain:

- (1) the information required under paragraphs 9 and 10 of Appendix 1 Part B, if the acquisition involves securities for which listing will be sought;
- (2) the information required under paragraph 22(1) of Appendix 1 Part B, if new shares are to be issued as consideration; and
- (3) where the consideration for a transaction includes the listed issuer's shares, a statement whether the transaction will result in a change of control of the listed issuer.

Major transaction circulars

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

- (1) the information required under rule 19.52;
- (2) 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
 - 40- directors' and experts' interests in group assets
 - 41- material contracts
 - 42- documents on display;
- (3) where required by Chapter 8, a valuer's report on the property being acquired or disposed of; and
- (4) where the circular contains a statement as to the sufficiency of working capital, the Exchange will require a letter from the listed issuer's financial advisers or auditors confirming that:—
 - (a) the statement has been made by the directors after due and careful enquiry; and
 - (b) the persons or institutions providing finance have confirmed in writing that such facilities exist.

19.55 In addition to the requirements set out in rule 19.54, a circular issued in relation to an acquisition constituting a major transaction must contain:—

- (1) information required under rule 19.53;
- (2) the information regarding the listed issuer required under paragraphs 31 (financial information) and 32 (no material adverse change) of Appendix 1 Part B;
- (3) the information required under paragraph 34 of Appendix 1 Part B in relation to each new director and member of senior management joining the listed issuer in connection with the transaction;

Note: The fact that any director or proposed director is a director or employee of a company which has an interest in the share capital of the listed issuer which would fall to be disclosed to the listed issuer under the provisions of Part II of the SDI Ordinance need not be stated.

(4) where the business, company or companies being acquired become(s) a subsidiary of the listed issuer, a proforma statement of the assets and liabilities of the listed issuer's group combined with the assets and liabilities of the business, company or companies being acquired;

(5) either:—

(a) an accountants' report on the business, company or companies being acquired;

Notes: 1 The accountants' report must comply with Chapter 7.

2 The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular is issued.

3 Where the accountants can only give a qualified report on the profits and net tangible assets of the business, company or companies being acquired, for example because the records of stock or work-in-progress are inadequate, the Exchange will not accept a shareholders' written approval for the transaction, but will require a general meeting to be held to consider the transaction. In these circumstances, listed issuers are urged to contact the Exchange as soon as possible.

or:—

(b) if the business, company or companies being acquired is or are listed on the Main Board or on GEM, the published financial statements for the last 3 years may be included in the circular instead of the accountants' report and the Exchange will require that the last announcement of interim results also be included; and

(6) a management discussion and analysis of results of the business, company or companies being acquired covering all those matters set out in rule 18.41 for the period reported on in the accountants' report.

Very substantial acquisition circulars and reverse takeover listing documents

19.56 A circular issued in relation to a very substantial acquisition or a listing document issued in relation to a reverse takeover must contain:—

(1) the information required under rule 19.52 (save for the information required under rule 19.52(3)) and under rules 19.53(3) and 19.54(4);

(2) the information required under Appendix 1, Part A, if applicable, except paragraphs 8 and 15(3) in respect of the 12 months preceding the issue of the circular/listing document, and 20(1);

(3) a valuation report on the enlarged group's interests in land or buildings in accordance with Chapter 8;

(4) an accountants' report on the enlarged group in accordance with Chapter 7. The accounts on which the report is based must relate to a financial period ended 6 months or less before the circular/listing document is issued;

(5) a statement that any controlling shareholder will not vote. Where the listed issuer has no controlling shareholder, those shareholders who participate in the management of the listed issuer will not vote;

- (6) the information required under rule 19.57(2) where the transaction also involves a disposal by the listed issuer; and
- (7)
 - (a) in the case of a circular issued in relation to a very substantial acquisition, general information on the trend of the business of the group since the date to which the latest audited accounts of the issuer were made up; and a statement as to the financial and trading prospects of the group for at least the current financial year (together with any material information which may be relevant thereto); or
 - (b) in the case of a listing document issued in relation to a reverse takeover, a statement of active business pursuits (in respect of the period of 24 months immediately preceding the date of the listing document, or for listed issuers satisfying the conditions of rule 11.12(3), at least the 12 month period set out in rule 11.12(2)(b)) (see rules 14.15 to 14.18); and a statement of business objectives (in respect of the current financial year and the 2 financial years thereafter) (see rules 14.19 to 14.21).
- (8) in the case of a circular issued in relation to a very substantial acquisition, a management discussion and analysis of results of the enlarged group covering all those matters set out in rule 18.41 for the period reported on in the accountants' report.

Additional requirements for circulars in respect of disposals

19.57 In addition to the requirements set out in rules 19.52 and 19.54 a circular issued in relation to a disposal constituting a discloseable transaction or a major transaction must contain:—

- (1) the intended application of the sale proceeds and, if the sale proceeds include securities, whether they are to be listed or not; and
- (2) the excess or deficit of the consideration over or under the net book value of the asset(s).

Circulars for specific types of companies

19.58 Where the transaction involves acquiring or disposing of an interest in an infrastructure project or an infrastructure or project company, the Exchange may require the listed issuer to include a business valuation report and/or traffic study report in the circular.

Options

Definitions

19.59 In this Chapter and Chapter 20:—

- (1) “option” means the right, but not the obligation, to buy or sell something;

Notes: The term “option” for the purposes of this Chapter and Chapter 20 does not refer to:—

- (1) *options, warrants and similar rights to subscribe for or purchase equity securities of a listed issuer under Chapter 21;*
- (2) *convertible equity securities under Chapter 22;*
- (3) *options granted pursuant to a share option scheme under Chapter 23;*
- (4) *options, warrants and similar rights to subscribe for a purchase debt securities of a listed issuer under Chapter 33;*
- (5) *convertible debt securities under Chapter 34; or*

(6) *Options Contracts traded through the Options System as defined in the Options Trading Rules of the Exchange and the Options Clearing Rules of The SEHK Options Clearing House Limited.*

- (2) “exercise price” means the price at which the option holder is entitled to buy or sell something;
- (3) “premium” is the price paid and/or payable by an option holder to acquire an option; and
- (4) “expiration” is the time at which the option can no longer be exercised.

19.60 The grant, acquisition, transfer or exercise of an option by a listed issuer will be treated as a transaction and classified pursuant to the percentage ratios set out in rule 19.06. The listed issuer must comply with the requirements of the relevant classification and other specific requirements of rules 19.61 to 19.64.

19.61 The following applies to an option involving a listed issuer, the exercise of which is not at the listed issuer’s discretion:—

- (1) on the grant of the option, the transaction will be classified as if the option had been exercised. The consideration (including the premium and the exercise price), the value of the underlying assets and the profits attributable to such assets will be used for the purpose of classification; and
- (2) on the exercise of the option, such exercise must be announced pursuant to the requirements of Chapter 16 as soon as reasonably practicable if the grant of the option has previously been announced pursuant to the requirements of this Chapter.

19.62 The following applies to an option involving a listed issuer, the exercise of which is at the listed issuer’s discretion:—

- (1) on the grant of the option, only the premium will be taken into consideration for the purpose of classification; and

Note: Where the premium represents 15% or more of the sum of the premium and the exercise price, the value of the underlying assets, the profits attributable to such assets, and the sum of the premium and the exercise price will be used for the purpose of classification.

- (2) on the exercise of the option, the exercise price, the value of the underlying assets and the profits attributable to such assets will be used for the purpose of classification.

Note: Where an option is exercised in stages, the Exchange may at such stage as the Exchange may consider appropriate require the listed issuer to aggregate each partial exercise of the option and treat them as if they were one transaction.

19.63 For the purpose of rules 19.61(1) and 19.62(1), where, on the grant of the option, the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits attributable to such assets has not been determined, the listed issuer must demonstrate to the satisfaction of the Exchange the highest possible monetary value, which value will then be used for the purpose of classification. Failure to do so will result in the transaction being classified as at least a major transaction.

Note: The listed issuer must inform the Exchange of the actual monetary value of each of the premium, the exercise price, the value of the underlying assets and the profits attributable to such assets as soon as it has been determined. If the actual monetary value results in the transaction falling within a higher classification, the listed issuer must announce this fact in accordance with the requirements of Chapter 16 as soon as reasonably practicable and comply with the additional requirements of such higher classification.

19.64 If the grant or acquisition of an option has previously been announced pursuant to the requirements of this Chapter, the listed issuer must, as soon as reasonably practicable, upon:—

- (1) the expiry of the option;
- (2) the option holder notifying the grantor that the option will not be exercised; or
- (3) the transfer by the option holder of the option to a third party

(whichever is the earliest) announce such fact in accordance with the requirements of Chapter 16.

Note: If the listed issuer is the option holder, the transfer of the option will also be treated as a transaction and classified. The consideration for the transfer of the option will be used for the purpose of classification.

Takeovers and mergers

Takeover Code

19.65 Listed issuers and their directors must comply with the Takeover Code. Any breach of the Takeover Code will be deemed to be a breach of the GEM Listing Rules. The Exchange may penalise listed issuer for breaches at its discretion.

19.66 If a listed issuer makes or receives a takeover offer, the listed issuer must submit drafts of all documents to be issued in connection with the takeover or merger to the Exchange for review before they are issued. 10 copies of the final documents issued must be supplied to the Exchange at the time of issue.

Note: If the proposed transaction is related to a takeover, merger or a share repurchase the Exchange will normally pass its comments on any documents submitted to it to the Takeovers and Mergers Executive who will relay such comments to the listed issuer or its advisers. If the proposed transaction is a listing related matter, but the transaction also has aspects related to a takeover, merger or share repurchase, the Takeovers and Merger Executive will normally pass its comments on any documents submitted to it to the Exchange, who will relay such comments to the listed issuer or its advisers. In either case, whenever a proposed transaction, or any aspect of it is governed by the Takeovers Code or the Code on Share Repurchases, any announcement, advertisement or document to be issued in relation to the transaction should be filed with the Takeovers and Mergers Executive and the Exchange simultaneously to facilitate the timely processing of the documents consistent with the above clearance procedures.

Listing document

19.67 If the consideration under the takeover offer includes securities for which listing is being or is to be sought, the offer document(s) will constitute a listing document. Provided that the offer document complies with the Takeover Code, it need not comply with rule 14.09, save for the provisions of 14.09(1) and (3).

19.68 The offer document must normally contain:—

- (1) a statement whether or not the offeror intends to continue the listing of the listed issuer;
- (2) details of any agreement reached with the Exchange to ensure that there continues to be an open market in the listed issuer's securities;
- (3) a prominent and legible statement in the following form:

"The Stock Exchange of Hong Kong Limited (the "Exchange") has said that it will closely monitor trading in the [*listed issuer*]'s shares if, at the close of the offer, less than the minimum prescribed percentage applicable to the issuer, being [] per cent of the issued shares, are held by the public.

If the Exchange believes that:—

- a false market exists or may exist in the shares; or
- that there are too few shares in public hands to maintain an orderly market.

it will consider exercising its discretion to suspend trading in the shares.

[*The Offeror*] intends [*the listed issuer*] to remain listed on the Exchange. The directors of [*the Offeror*] and the new directors to be appointed to the Board of [*the listed issuer*] will jointly and severally undertake to the Exchange to take appropriate steps to ensure that sufficient public float exists in [*the listed issuer*]'s shares.

If the [*listed issuer*] remains a listed company, the Exchange has the discretion to require [*the listed issuer*] to issue a circular to its shareholders irrespective of the size of the proposed transaction, particularly when such proposed transaction represents a departure from [*the listed issuer*]'s principal activities. The Exchange also has the power to aggregate a series of transactions and any such transaction may result in [*the listed issuer*] being treated as if it were a new listing applicant."

- (4) any other requirements imposed by the Exchange which are not inconsistent with the Takeovers Code.

Cash companies

19.69 The Exchange will normally suspend the listing of a listed issuer if its assets consist wholly or substantially of cash or short-dated securities, as it will not normally be regarded as suitable for listing. The Exchange may cancel the listing if the suspension continues for more than 6 months or if it considers cancellation necessary.

19.70 The listed issuer may apply to the Exchange to lift the suspension once it has a business suitable for listing. The Exchange will treat its application for lifting of the suspension as if it were an application for listing from a new applicant. The listed issuer will be required, among other things, to appoint a Sponsor and issue a listing document containing the specific information required by Appendix I Part A and pay the non-refundable initial listing fee.

Material changes

19.71 Other than with the prior approval of independent shareholders of the issuer in general meeting, an issuer may not, during the financial year in which dealings in its securities commenced on GEM or the 2 financial years thereafter enter into any transaction which would result in a material change to the general character or nature of the business of the issuer or its group as described in the listing document issued when it first applied for listing.

Notes: 1 For this purpose transactions subsequent to the listing are aggregated as set out in rules 19.21 and 19.22.

2 Directors, chief executives, management shareholders and their respective associates and any shareholders who have an interest in the transaction shall not be eligible to vote at a general meeting called for the purpose of this rule.