

Chapter 24

EQUITY SECURITIES

OVERSEAS ISSUERS

Preliminary

- 24.01 Rule 11.05 provides that an issuer can be incorporated or otherwise established under the laws of the PRC, Bermuda or the Cayman Islands (as an alternative to Hong Kong). Chapter 25 concerns PRC companies. This Chapter concerns companies incorporated or otherwise established in Bermuda, the Cayman Islands or any jurisdiction, other than Hong Kong or the PRC, accepted by the Exchange from time to time as being a suitable jurisdiction for the incorporation or establishment of an issuer proposing to list on GEM.
- 24.02 The GEM Listing Rules apply as much to overseas issuers as they do to Hong Kong issuers, subject to the additional requirements, modifications or exemptions set out or referred to in this Chapter. Overseas issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.
- 24.03 In circumstances where the overseas issuer is or is to be listed on another stock exchange as well as on GEM, the provisions of the GEM Listing Rules, unless otherwise stated, apply in their entirety, save for any additional requirements, modifications or exemptions set out in this Chapter (or elsewhere in the GEM Listing Rules). The Exchange reserves the right, on a case by case basis, to waive or modify any requirement of the GEM Listing Rules relating to an overseas issuer if it is or is to be listed on another regulated, regularly operating, open stock exchange in respect of which the standards of protection for shareholders and investors are at least equivalent to those afforded pursuant to the GEM Listing Rules.
- 24.04 Any references in the GEM Listing Rules to directors of the issuer shall be construed as references to members of the overseas issuer's governing body.

Chapter 11 - Qualifications for Listing

- 24.05 The following requirements apply in addition to those set out in Chapter 11:—
- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if:—
 - (a) it believes that it is not in the public interest to list them; or
 - (b) the Exchange is not satisfied that the overseas issuer is incorporated or otherwise established in a jurisdiction where the standards of protection for shareholders and investors are at least equivalent to those provided in Hong Kong;

Note: Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of protection for shareholders and investors at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents to provide standards of protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents as the Exchange may require.

- (2) the overseas issuer must appoint, and maintain throughout the period the overseas issuer's securities are listed on GEM the appointment of, a person authorised to accept service of process and notices on its behalf in Hong Kong, and must notify the Exchange of his appointment and any termination of his appointment and details of:—
- (a) his address for service of process and notices;
 - (b) if different, his place of business or, if he does not maintain a place of business, his residential address;
 - (c) his business, residential and mobile telephone numbers;
 - (d) his facsimile number and electronic mail address, if any; and
 - (e) any change in the above particulars;

Note: The person appointed under this rule may also be the person authorised to accept service required to be appointed under Part XI of the Companies Ordinance, if applicable.

- (3) provision must be made for a register of holders to be maintained in Hong Kong, or such other place as the Exchange may agree, and for transfers to be registered locally. The Exchange may, however, consider an alternative proposal for registering transfers for Hong Kong holders in exceptional circumstances;
- (4) unless the Exchange otherwise agrees only securities registered on the Hong Kong register may be traded on GEM;
- (5) where two or more share registers are maintained it will not be necessary for the Hong Kong register to contain particulars of the shares registered on any other register;
- (6) where an overseas issuer wishes to obtain its listing on the Exchange by way of an introduction in the circumstances set out in rule 10.18(3):—
- (a) it must comply with the following additional requirements:—
 - (i) provide the Exchange with details of the relevant regulatory provisions (statutory or otherwise) in its place of incorporation or other establishment and demonstrate to the satisfaction of the Exchange that the standards of protection for shareholders and investors provided by that jurisdiction are not lower than those pertaining in Hong Kong; and
 - (ii) with the exception of those overseas issuers which are incorporated or otherwise established in any jurisdiction in respect of which additional requirements are set out in Appendix 11, if requested to do so by the Exchange, appoint an independent financial adviser acceptable to the Exchange to confirm that the proposals are in the interests of the holders of the securities of the existing listed company or companies;
 - (b) in addition the issuer must comply with such other requirements as the Exchange may on a case by case basis impose, in order to ensure that Hong Kong investors will be afforded the same level of protection as exists in Hong Kong in relation to the holding of securities in a Hong Kong issuer. The additional requirements currently imposed by the Exchange in respect of certain jurisdictions are set out in Appendix 11. The Exchange may add to or waive, modify or not require compliance with these requirements on a case by case basis; and

- (c) attention is particularly drawn to the requirement in rule 10.18(3) that any reorganisation by way of scheme of arrangement or by any other means whereby securities are issued by an overseas issuer in exchange for the securities of one or more listed Hong Kong issuers and the listing of the latter issuer or issuers is withdrawn at the same time as the securities of the overseas issuer are listed, must first be approved by a special resolution of the shareholders of the listed Hong Kong issuer or issuers.

Chapter 12- Application Procedures and Requirements

24.06 The following modifications apply to the requirements of Chapter 12:—

- (1) the memorandum and articles of association or equivalent documents lodged with the Exchange pursuant to rule 12.22(2) must also comply with the relevant additional requirements set out in Appendix 11 and must also be marked in the margin to indicate where the relevant provisions of Appendix 11, if any, have been met; and
- (2) the declaration, undertaking and acknowledgement to be lodged under rule 12.23(2) may require adjustment by virtue of the laws to which the overseas issuer is subject.

Chapter 13 - Restrictions on Purchase

24.07 An overseas issuer may purchase its own shares (as defined in rule 13.06) on GEM in accordance with rule 13.03. With regard to rule 13.14 concerning the status of shares purchased by an issuer, where the overseas issuer in question has a listing on another stock exchange the rules of (or laws in relation to) which permit treasury stock, the Exchange will be prepared to waive the requirement to cancel and destroy the documents of title of purchased shares, provided that the overseas issuer must apply for the relisting of any such shares which are re-issued, as if it were a new issue of those shares.

Chapter 14 - Listing Documents

24.08 The Exchange may be prepared to permit the omission from the listing document of information where it considers it appropriate. In considering requests for any such omissions, the Exchange will have regard to:—

- (1) whether the overseas issuer is or is to be listed on a regulated, regularly operating, open stock market recognised for this purpose by the Exchange and conducts its business and makes disclosure according to the accepted standards in Hong Kong; and
- (2) the nature and extent of the regulatory standards and controls to which the overseas issuer is subject in its country of incorporation or other establishment.

Overseas issuers who want to omit any of the prescribed information should therefore consult the Exchange at the earliest possible opportunity.

24.09 The following modifications and additional requirements apply:—

- (1) some of the items of information specified in Parts A and B of Appendix 1 may be inappropriate. In such a case, the item should be appropriately adapted so that equivalent information is given;

- (2) the listing document must contain a summary of all provisions of the constitutive documents of the overseas issuer in so far as they may affect shareholders' rights and protections and directors' powers (using the same subject headings as is required by Section 2 of Appendix 11 in respect of certain named jurisdictions). In the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11 and which is applying for listing by way of an introduction in the circumstances set out in rule 10.18(3), the summary need only be included in the documents offered for inspection (see Appendix 11);
- (3) the listing document must contain a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion. In the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11 and which is applying for listing by way of an introduction in the circumstances set out in rule 10.18(3), the summary need only be included in the documents offered for inspection (see Appendix 11);
- (4) if the overseas issuer does not have a board of directors, the statement of responsibility required under paragraph 2 of Parts A and B of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately;
- (5) in the case of an introduction in the circumstances set out in rule 10.18(3), the following modifications, exceptions and additional requirements apply:—
 - (a) the listing document must contain (but without in any way limiting the scope of the summary required by rule 24.09(2)) a comparison between the provisions of the listed Hong Kong issuer's existing memorandum and articles of association and the proposed content of the constitutive documents of the overseas issuer (in the same format as is set out in Section 2 of Appendix 11 in respect of certain named jurisdictions). In the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 11, the summary need only be included in the documents offered for inspection (see Appendix 11);
 - (b) the details of the rights of shareholders required by paragraph 25 of Part A of Appendix 1 may be limited to a summary of any changes which will occur, if any, as a result of the exchange of securities;
 - (c) the particulars of any alterations in the capital of any member of the group which is required to be included by paragraph 26 of Part A of Appendix 1 may be limited to particulars of any alterations since the date to which the latest published audited accounts of the Hong Kong listed issuer were made up;
 - (d) where the consolidated assets and liabilities of the issuer are substantially the same as the consolidated assets and liabilities of the listed issuer or issuers whose securities have been exchanged, the requirement for a valuation of all the issuer's interests in land or buildings (see paragraph 39 of Part A of Appendix 1 and rule 8.01) will normally only be required by the Exchange if:—
 - (i) the Hong Kong listed issuer does not have a policy of revaluing its properties (or a large part of its property portfolio) on an annual basis;

- (ii) the Hong Kong listed issuer has not published a revaluation of its property interests in the last 12 months; and
- (iii) the overseas issuer is unwilling to revalue its property interests in its next annual report and accounts.

In determining whether property valuations are required in such cases the Exchange will have regard to the following factors:—

- (A) the percentage of the book value of the net tangible assets of the Hong Kong listed issuer (as disclosed in the latest published audited accounts or consolidated accounts, as appropriate) represented by the properties;
 - (B) the date on which the properties were last valued; and
 - (C) whether the properties are held for the Hong Kong listed issuer's own use or purely for investment purposes; and
- (e) any valuations required to be included by paragraph 39 of Part A of Appendix 1 and rule 8.01 (as modified by rule 24.09(5)(d)) need only be summarised in the listing document, provided that a copy of the full valuation report is offered for inspection;
- (6) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 52 of Part A and paragraph 42 of Part B of Appendix 1. Where any of such documents are not in English or Chinese, a certified English or Chinese translation thereof must be available for inspection. In addition, the overseas issuer must offer for inspection a copy of any statutes or regulations which are relevant to the summary of the regulatory provisions of the jurisdiction in which the overseas issuer is incorporated or otherwise established (see rule 24.09(3)). In particular cases, the Exchange may require other additional documents to be offered for inspection; and
- (7) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be accompanied, as necessary, by a certified English translation and a certified Chinese translation. The Exchange should be consulted in any such case.

Chapters 17 and 18 -Continuing Obligations and Financial Information

General

- 24.10 Whilst Chapters 17 and 18 apply equally to overseas issuers, the Exchange may be prepared to agree to such modifications thereto as it considers appropriate in a particular case.
- 24.11 Conversely, the Exchange may impose additional requirements in a particular case. In particular, the Exchange may impose such additional requirements as it considers necessary to ensure that shareholders and investors have the same protection as that afforded to them in Hong Kong. The additional requirements currently imposed by the Exchange in respect of certain jurisdictions are set out in Appendix 11. The Exchange may add to or waive, modify or not require compliance with, these requirements on a case by case basis in its absolute discretion.

Annual report and accounts and auditors' report

- 24.12 The following modifications and additional requirements apply to Chapter 18 and to the extent such modifications and additional requirements conflict with the provisions of Chapter 18, the following provisions shall apply.

- 24.13 The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing and independent of the issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements on independence issued by the International Federation of Accountants and must be:—
- (1) qualified under the Professional Accountants Ordinance for appointment as an auditor of a company; or
 - (2) a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants.
- 24.14 The accounts must be audited to a standard comparable to that required by the Hong Kong Society of Accountants or by the International Auditing Practices Committee of the International Federation of Accountants.
- 24.15 The report of the auditors must be annexed to all copies of the annual accounts required to be sent by the overseas issuer and indicate whether in the opinion of the auditors the accounts give a true and fair view:
- (1) in the case of the issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the issuer's profit and loss account, of the profit or loss and cash flows for the financial year; and
 - (2) in the case where consolidated accounts are prepared, of the state of affairs and profit or loss of the issuer and cash flows of the group.
- 24.16 The report of the auditors must indicate the act, ordinance or other legislation in accordance with which the annual accounts have been drawn up and the authority or body whose auditing standards have been applied.
- 24.17 If an overseas issuer is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, the Exchange may allow its accounts to be drawn up to that standard. Reference must, however, be made to the Exchange. If an overseas issuer is in doubt as to what more detailed and, or additional information should be provided, it should contact the Exchange for guidance.
- 24.18 An auditors' report in a different form may be applicable in the case of banking and insurance companies. The wording of such an auditors' report should make it clear whether or not profits have been stated before transfers to or from undisclosed reserves.

Information to accompany annual report and accounts

- 24.19 An overseas issuer shall include in its directors' report and accounts the information necessary to enable holders of its securities to obtain any relief from taxation to which they are entitled by reason of their holding of such securities.
- 24.20 An overseas issuer shall, to the extent not otherwise included by virtue of the provisions of Chapter 18, include in its directors' report and accounts those additional disclosures required of Hong Kong incorporated companies under the following provisions of the Companies' Ordinance:—
- (1) The Tenth Schedule;
 - (2) S128 (details of subsidiaries);
 - (3) S129 (details of investments);

- (4) S129A (details of ultimate holding company);
- (5) S129D (contents of the directors' report);
- (6) S161 (directors' remuneration);
- (7) S161A (corresponding figures);
- (8) S161 B (loans to company officers);
- (9) S162 (directors' interests in contracts); and
- (10) S162A (management contracts).

24.21 The statement of reserves available for distribution to shareholders required pursuant to rule 18.36 shall be calculated in accordance with any statutory provisions applicable in the overseas issuer's place of incorporation or, in the absence of such provisions, with generally accepted accounting principles.

Half-year reports and quarterly reports

24.22 If the overseas issuer publishes a half-year or quarterly report in its country of incorporation or other establishment, the Exchange may authorise it to publish that report (as necessary, translated into English and Chinese) instead of the half-year or quarterly report provided for in Chapter 18, provided that the information given is equivalent to that which would otherwise have been required.

General

24.23 All documents furnished by an overseas issuer to the Exchange, including accounts, which are in a language other than English or Chinese must be accompanied by a certified English or Chinese translation. If the Exchange so requires, an additional translation must be prepared in Hong Kong at the overseas issuer's expense by such person or persons as the Exchange shall specify.

24.24 Information to be supplied by overseas issuers in a listing document or accounts notwithstanding any obligation in the GEM Listing Rules, the Statutory Rules or any obligation imposed by the laws of Hong Kong shall not be less than that required to be supplied by the overseas issuer in its place of incorporation or other establishment.