

Chapter 25

EQUITY SECURITIES

ISSUERS INCORPORATED IN THE PEOPLE'S REPUBLIC OF CHINA

Preliminary

- 25.01 (1) Overseas issuers incorporated in the common law jurisdictions of Bermuda and Cayman Islands may list on GEM provided that certain additional requirements set out or referred to in Chapter 24 are fulfilled. The legal system in the PRC is not based on a common law system. Furthermore, existing PRC law imposes various restrictions affecting the use of foreign exchange in the PRC and its remittance out of the PRC. Under current PRC law, only PRC citizens and legal persons are permitted to own the domestic shares (內資股) of a PRC issuer (which pay dividends in Renminbi), and only foreign investors and investors from the regions of Hong Kong, Macau and Taiwan are permitted to own the overseas listed foreign shares (境外上市外資股) of a PRC issuer (which pay dividends in a foreign currency). As a result, although under PRC law such domestic shares and foreign shares are all shares of a PRC issuer, the two kinds of shares in effect operate in separate markets subject to different investor demands.
- (2) To deal with the different markets in which a PRC issuer's shares may be traded as well as with the non-common law basis of the PRC legal system, certain additional requirements, modifications and exceptions to the GEM Listing Rules are necessary in order for a PRC issuer to obtain and to maintain a listing of its securities on GEM.
- (3) The purpose of this Chapter is to clarify that the GEM Listing Rules apply as much to PRC issuers as they do to Hong Kong and other overseas issuers, subject to the additional requirements, modifications and exceptions set out or referred to in this Chapter. Among such requirements are that the articles of association of PRC issuers must contain provisions which reflect the different nature of domestic shares and overseas listed foreign shares (including H shares) and the different rights of their respective holders; and disputes involving holders of H shares and arising from a PRC issuer's articles of association, or from any rights or obligations conferred or imposed by the Company Law and any other relevant laws and regulations concerning the affairs of the PRC issuer, are to be settled by arbitration in either Hong Kong or the PRC at the election of the claimant.
- (4) However, if changes in PRC law or market practices materially alter the validity or accuracy of any of the foregoing statements, then the Exchange may impose additional requirements or make listing of the equity securities of a PRC issuer subject to special conditions as the Exchange considers appropriate. Whether or not any such changes in PRC law or market practices occur, the Exchange retains its general power to impose additional requirements and make special conditions under rule 2.07.
- 25.02 In circumstances where the PRC 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 and exceptions 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 a PRC 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.

25.03 The Exchange will consider an application by a PRC issuer for listing on GEM under this Chapter only if:—

- (1) it is duly incorporated in the PRC as a joint stock limited company (股份有限公司);
- (2) the Exchange is satisfied that there are adequate communication and cooperation arrangements in place between the Exchange and the relevant securities regulatory authorities in the PRC;
- (3) in the case of a PRC issuer having equity securities listed or to be listed on another stock exchange, the Exchange is satisfied that there is adequate communication arrangement in place between the Exchange and such other stock exchange authority; and
- (4) the Exchange is satisfied that applicable PRC law and the articles of association of the PRC issuer provide a sufficient level of shareholder protection to holders of H shares.

Definitions

25.04 In this Chapter

- (1) the term “associate” means:—
 - (a) in relation to any promoter, director, supervisor, chief executive, substantial shareholder or management shareholder (being an individual) of a PRC issuer means:—
 - (i) his spouse and any child or step-child under the age of 18 years of the promoter, director, supervisor, chief executive, substantial shareholder or management shareholder or of his spouse (“family interests”);
 - (ii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is a discretionary object;
 - (iii) any company (including an equity joint venture established under PRC law) in the equity capital of which he and/or his family interests taken together are directly or indirectly interested so as to exercise or control the exercise of 30%. (or such lower amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any other company which is its subsidiary or holding company or a fellow subsidiary of any such holding company; and
 - (iv) any company with which or individual with whom he and/or his family interests taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where he and/or his family interests taken together directly or indirectly have 30%. (or such lower amount as applies under (a)(iii) above) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture; and

(b) in relation to any promoter, substantial shareholder or management shareholder (being a company) of a PRC issuer means:—

- (i) any other company which is its subsidiary or holding company or is a fellow subsidiary of any such holding company or one in the equity capital of which it and/or such other company or companies taken together are directly or indirectly interested so as to exercise or control the exercise of 30%. (or such lower amount as applies under (a)(iii) above) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors; and
- (ii) any company with which or individual with whom it and/or such other companies referred to in (b)(i) above taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where it and/or such other companies directly or indirectly have 30%. (or such lower amount as applies under (a)(iii) above) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture,

Notes: 1 This definition is modified in the case of connected transactions falling within rule 20.10.

2 Under rule 25.14, the Exchange may from time to time determine that certain persons or entities should be treated as connected persons of a PRC issuer for purposes of the connected transaction provisions of Chapter 20.

(2) the term “PRC Governmental Body” means:—

- (a) PRC Central Government, including the State Council of the PRC (中國國務院), State Ministries and Commissions (國家部委), Bureaus and Administrations directly under the State Council (國務院直屬機構), State Council Offices and Institutions (國務院辦事機構及直屬國務院事業單位), Bureaus supervised by State Ministries and Commissions (國家部委代管局);
- (b) PRC Provincial-level Governments, including Provincial Governments (省政府), Municipalities directly under the Central Government (直轄市) and Autonomous Regions (自治區), together with their respective administrative arms, agencies and institutions; or
- (c) PRC Local Governments immediately under the PRC Provincial-level Governments, including prefectures (區), municipalities (市) and counties (縣), together with their respective administrative arms, agencies and institutions that is not engaging in commercial business or operating another commercial entity.

Note: For clarity, entities under the PRC Government that are engaging in commercial business or operating another commercial entity will be excluded from this definition.

Chapter 6 – Sponsors

- 25.05 If the securities of the PRC issuer are or are to be listed on one or more stock exchanges, the Sponsor must make a written submission to the Exchange stating whether in the Sponsor's opinion the PRC issuer's directors appreciate the differences as well as the similarities between H shares and the shares listed on such other stock exchanges and between the rights and obligations of holders of such shares and the basis for such opinion. The Sponsor must also explain how the PRC issuer's directors propose to co-ordinate and comply in a timely manner with their obligations under the requirements of the Exchange and such other stock exchanges.

Chapter 9 – Suspension and Resumption of Trading, Cancellation and Withdrawal of Listing

- 25.06 The references in rules 9.19 and 9.20 to "shareholders" and "shareholders meetings" shall be construed to mean "holders of H shares" and "a separately convened meeting of holders of H shares" respectively.

Chapter 11 – Qualifications for Listing

- 25.07 The following modifications and additional requirements apply:—

- (1) the Exchange reserves the right, in its discretion, to refuse a listing of securities of a PRC issuer if it believes that it is not in the interest of the public in Hong Kong to list them;
- (2) the PRC issuer must appoint, and maintain throughout the period its 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 number;
 - (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; and
- (5) where two or more registers or branch registers of securities are maintained by a PRC issuer, it will not be necessary for the Hong Kong register to contain particulars of the shares registered on any other register or branch register.

25.08 In the case of a PRC issuer, the requirements of rule 11.23 are replaced in their entirety by the following provisions and the provisions of rule 25.09:

- (1) There must be an open market in the securities for which listing is sought. This shall normally mean that:—
 - (a) at least the “minimum prescribed percentage” of any class of listed securities must at all times be held by the public. The minimum prescribed percentage of securities which must be in the hands of the public is set out in (2) below; and
 - (b) in the case of a class of securities new to listing, as at the time of listing, there must be an adequate spread of holders of such securities. The number will depend on the size and nature of the issue but, as a guideline, the securities in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose securities are held through CCASS).
- (2) The “minimum prescribed percentage” of any class of listed securities which the PRC issuer must at all times be in the hands of the public is determined as follows:
 - (a) if at any time there are existing issued securities of the PRC issuer other than H shares, then:—
 - (i) 100% of H shares must be held by the public, except as otherwise permitted by the Exchange in its discretion;
 - (ii) H shares held by the public must normally constitute not less than 10% of the total existing issued share capital of the PRC issuer; and
 - (iii) the aggregate amount of H shares and such other securities which are held by the public must constitute not less than the minimum prescribed percentage of the total issued share capital of the issuer; or
 - (b) if there are no existing issued securities of the PRC issuer other than H shares, then H shares held by the public must constitute not less than the minimum prescribed percentage of the total existing issued share capital of the PRC issuer.

Notes: 1 For the purposes of the GEM Listing Rules, the “minimum prescribed percentage” for any class of equity securities of a PRC issuer shall be established by reference to the expected market capitalisation of the PRC issuer at the time of listing in accordance with the following table:—

| Market capitalisation of the total existing issued share capital (determined as at the time of listing) | Minimum prescribed percentage of securities to be in public hands |
|--|--|
| <i>Not exceeding HK\$4,000m</i> | <i>25 per cent.</i> |
| <i>Over HK\$4,000m</i> | <i>The higher of: i) the percentage that would result in the market value of the securities to be in public hands equal to HK\$1,000m (determined as at the time of listing); and ii) 20 per cent.</i> |

- 2 PRC issuers which commenced dealings of their securities on GEM before 1 October 2001 should at all times comply with the following “minimum prescribed percentage” requirement:—

| Market capitalisation of the total existing issued share capital (determined as at the time of listing) | Minimum prescribed percentage of securities to be in public hands |
|--|---|
| Not exceeding HK\$1,000m | 20 per cent. |
| Over HK\$1,000m but not exceeding HK\$1,333m | The percentage that would result in the market value of the securities to be in public hands equal to HK\$200m (determined as at the time of listing) |
| Over HK\$1,333m | 15 per cent. |

Exceptionally, the Exchange may accept lower percentages under this rule where it is satisfied that the number of securities concerned and the extent of their distribution would enable the market in Hong Kong to operate properly with a lower percentage.

- Notes: 1 Where a PRC issuer has existing issued securities other than H shares, rule 25.08(2)(a)(i) requires all H shares to be in public hands except as otherwise permitted by the Exchange in its discretion. In exercising such discretion, the Exchange normally will have regard to, among other considerations, the maximum percentage of the total amount of foreign shares (and, if applicable, H shares) permitted under applicable PRC law and the minimum percentage required under the PRC issuer’s articles of association to pass a special resolution of holders of domestic shares or foreign shares (and, if applicable, H shares) at a separate meeting of such holders.
- 2 If at the time of listing a PRC issuer has no existing issued securities other than H shares but proposes at any time thereafter to issue any other securities ranking *pari passu* with its H shares and which are not being listed on GEM, then the PRC issuer must take action to ensure that it will be in compliance with the minimum public percentage requirements of rule 25.08(2)(a) upon issuance of any such securities.
- 3 PRC issuers should note that the minimum prescribed percentage of securities set forth in rule 25.08(2)(a)(iii) and the minimum prescribed percentage of H shares set forth in rules 25.08(2)(a)(i), 25.08(2)(a)(ii) and 25.08(2)(b) must remain in public hands at all times. If any of these percentages falls below their respective prescribed minimum, the Exchange has the right to cancel the listing or suspend trading until appropriate steps have been taken to restore the respective minimum percentage in public hands. If the Exchange is satisfied that, even though any of these percentages has fallen below the minimum, there remains an open market in the securities, the Exchange may refrain from suspension against receipt of an undertaking from the controlling shareholder(s) of the PRC issuer to take appropriate steps to ensure restoration of the respective minimum percentage to public hands within a specified period. At any time when the percentage of securities or H shares in public hands is less than the required minimum, and

the Exchange has permitted trading in the H shares to continue, the Exchange will monitor closely all trading in the H shares to ensure that a false market does not develop and will suspend the H shares promptly if there is any unusual price movement.

4 *The Exchange will not regard:—*

- (a) at any time, any connected person of the PRC issuer;*
- (b) at the time of listing and for the duration of the periods referred to in rule 13.16, any initial management shareholder (as defined in rule 13.15);*
- (c) at the time of listing and for the duration of the 6-month period referred to in rule 13.17, any significant shareholder; or*
- (d) at the time of listing, any employee of the PRC issuer or its subsidiaries or an associate of such employee (for the purposes of this Note, “associate” shall have the same meaning as set out in rule 25.04(1), save that it shall be construed as applying to the employee)*

as a member of “the public” or shares held by any such person (in the case of an initial management shareholder (as defined in rule 13.15) or significant shareholder, being shares held by him during the period referred to in rule 13.16 or rule 13.17 (as the case may be) as being “in public hands.”

5 *The Exchange will also not recognise as a member of “the public”:—*

- (a) any person whose acquisition of securities has been financed directly or indirectly by a connected person; or*
- (b) any person who is accustomed to take instructions from a connected person in relation to the acquisition, disposal, voting or other disposition of securities of the PRC issuer registered in that person’s name or otherwise held by that person.*

6 *With regard to Note 4(d) above, it is the PRC issuer’s responsibility to ensure that sufficient information is obtained in relation to securities held by such employee or its associate in determining whether the PRC issuer meets the requirements for minimum prescribed percentage/market capitalisation of equity securities in public hands.*

25.09 Regarding securities for which listing is sought, a PRC issuer which is a new applicant must have such securities held by the public (in accordance with rule 25.08) which have an expected market value of not less than the higher of:

- (1) HK\$30,000,000; or
- (2) the expected initial market capitalisation of the applicable minimum prescribed percentage under rule 25.08 of the class of listed securities,

at the time of listing, or such other amount, in either case, as the Exchange may from time to time prescribe. In the case of options, warrants or similar rights to subscribe or purchase shares or other securities for which listing is sought, the expected initial market capitalisation must, in the case of both new applicants and listed issuers, be at least HK\$6,000,000. Further issues of securities of a class already listed are not subject to these limits. In exceptional cases, a lower expected initial market capitalisation may be acceptable where the Exchange is satisfied as to marketability.

Note: The fact that an applicant is able to satisfy the minimum market capitalisation criterion does not of itself mean that the applicant will be acceptable as suitable for listing.

- 25.10 Under rule 11.04, the Exchange requires a new applicant to make disclosure where it has a director, management shareholder and, in relation only to the initial listing document, substantial shareholder (including the respective associates of each) with a business or interest which competes or may compete with the business of the group. For the purpose of the GEM Listing Rules, a controlling shareholder will, in all cases, be deemed to be a management shareholder. In this connection, in the case of a new applicant which is a PRC issuer, "controlling shareholder" means any shareholder or other person or group of persons together entitled to exercise, or control the exercise of 30%. (or such lower amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings of the new applicant or who is in a position to control the composition of the majority of the board of directors of the new applicant. For the purposes of this rule, the Exchange will normally not consider a PRC Governmental Body (as defined in rule 25.04) as a controlling shareholder of a PRC issuer.
- 25.11 Where the secretary of a PRC issuer does not possess a qualification as required by rule 5.09(1), the PRC issuer will have to satisfy the Exchange as regards the requirement under rule 5.09(2). In assessing the "relevant experience" of the person under rule 5.09(2), the Exchange will normally have regard to, among other considerations, the period of his employment with the PRC issuer and his familiarity with the GEM Listing Rules. The Exchange would expect a submission from the Sponsor (or, in circumstances where the PRC issuer is not required to have (or does not otherwise retain) a Sponsor, from the PRC issuer) demonstrating that:—
- (1) sufficient time and efforts have been spent on training the appointee by way of induction courses or other means which are satisfactory to the Exchange; and
 - (2) the Sponsor (or the PRC issuer) is satisfied that the appointee will be able to discharge a secretary's duties.
- 25.12 Rules 11.02 and 11.30(1) do not apply to domestic shares or foreign shares other than H shares of a PRC issuer.
- 25.13 (1) In addition to the requirements of Chapter 5, the independent non-executive directors of a PRC issuer must also be able to demonstrate an acceptable standard of competence and adequate commercial or professional experience to ensure that the interests of the general body of shareholders will be adequately represented.

- (2) Supervisors of a PRC issuer must have the character, experience and integrity and be able to demonstrate a standard of competence commensurate with their position as supervisors. The Exchange may request further information regarding the background, experience, other business interests or character of any supervisor or proposed supervisor.

25.14 In addition to the requirement of rule 25.10, the Exchange may from time to time determine that certain persons or entities should be treated as connected persons of a PRC issuer for the purposes of the connected transaction provisions of Chapter 20. However, the Exchange will normally not treat a PRC Governmental Body as a connected person of a PRC issuer. If requested by the Exchange, a PRC issuer must make written representations to the Exchange explaining its legal, commercial or other relationships with various associates or other persons or entities and must satisfy the Exchange that such persons or entities should not be treated as connected persons of the PRC issuer for the above purposes, or if the Exchange determines that such persons or entities should be treated as connected persons, then the PRC issuer must agree to comply with any additional obligations arising from such treatment as may be requested by the Exchange.

Chapter 12 – Application Procedures and Requirements

25.15 (1) The articles of association of a PRC issuer lodged with the Exchange pursuant to rule 12.22(2) must be marked in the margin to indicate where the relevant provisions of this Chapter and Appendix 11 have been met.

- (2) The forms of declaration, undertaking and acknowledgement to be lodged under rule 25.16(4) may require additional adjustment by virtue of the laws to which the PRC issuer is subject.

25.16 In addition to the documentary requirements of rule 12.22, the following documents must be lodged with the Exchange, for initial review, at time of submitting a listing application:—

Note: The application form referred to in rule 12.22(6), the temporary document of title referred to in rule 12.22(11) and the definitive certificate or other document of title referred to in rule 12.22(12), including the form of instrument of transfer relating to the equity securities which are the subject of the PRC issuer's application for listing, all must contain the statements, to be appropriately highlighted to the satisfaction of the Exchange, required by and referred to in rule 25.39 prescribed for a PRC issuer.

- (1) 3 copies of the Sponsor's submission referred to in rule 25.05, where applicable;
- (2) 3 copies of each anticipated final draft contract between the PRC issuer and every director and officer, each of which must contain the undertakings and arbitration clause required by and referred to in rule 25.41 and which must be marked in the margin to indicate where such provisions appear;
- (3) 3 copies of each anticipated final draft contract between the PRC issuer and every supervisor, each of which must contain the undertakings and arbitration clause required by and referred to in rule 25.42 and which must be marked in the margin to indicate where such provisions appear;
- (4) a formal declaration, undertaking and acknowledgement in the form set out in Appendix 6B, duly signed by each director and proposed director, and in the form set out in Appendix 6C, duly signed by each supervisor and proposed supervisor (or promptly after any supervisor is elected); and

- (5) 3 copies of the anticipated final draft legal opinion by the PRC issuer's Hong Kong legal advisers, citing and attaching the legal opinion by PRC lawyers authorised by the relevant authorities in the PRC to advise on securities laws, confirming the due incorporation and legal person status of the PRC issuer as a joint stock limited company (股份有限公司) under PRC law and the obtaining of all relevant regulatory approvals in the PRC required for the issue and listing contemplated by the PRC issuer's listing application.

25.17 Rule 12.24 is amended by adding the following new provisions:

- (1) an execution copy of the contracts referred to in rules 25.16(2) and (3); and
- (2) an execution copy of the legal opinion referred to in rule 25.16(5).

Chapter 13 – Restrictions on Purchase, Disposal and Subscription

25.18 A PRC issuer may purchase its own shares on GEM in accordance with the provisions of this rule and rules 13.03 to 13.14. Although such provisions normally apply to a PRC issuer's equity securities which are listed on GEM and which are or are proposed to be purchased on GEM, when seeking shareholders' approval to make purchases of such securities on GEM or when reporting such purchases, a PRC issuer should provide information on the proposed or actual purchases of any or all of its equity securities, whether or not listed or traded on GEM. Therefore, in the case of a PRC issuer, rule 13.06 is amended and restated in its entirety to read as follows:

"For the purposes of rules 13.03 to 13.14, "shares" shall mean shares of all classes listed on GEM and securities listed on GEM which carry a right to subscribe or purchase shares of the PRC issuer, provided that references to "shares" in rules 13.08 and 13.13 shall also include shares of all classes listed on any stock exchange and securities that are listed on any stock exchange which carry a right to subscribe or purchase shares of such PRC issuer, and provided further 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 PRC issuer or subsidiary of the PRC issuer, as the case may be."

25.19 (1) References to "ordinary resolution" in rules 13.07 to 13.09 shall mean, for a PRC issuer, the special resolutions of shareholders in general meetings and of holders of domestic shares and foreign shares (and, if applicable, H shares) at separate meetings of such holders conducted in accordance with such issuer's articles of association for approving share repurchases.

(2) For a PRC issuer, rule 13.08(7) is restated in its entirety as follows:—

"a statement as to the consequences of any purchases which shall arise under either or both of the Takeover Code and/or any similar applicable law of which the directors are aware, if any."

(3) For a PRC issuer, the reference to "10% of the existing issued share capital of the PRC issuer" in rule 13.09(1) is amended to mean "10% of the total amount of existing issued H shares of the PRC issuer".

Chapter 14 – Listing Documents

25.20 The following modifications and additional requirements apply to the contents of listing documents:

- (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 constitutional documents of the PRC issuer in so far as they may affect shareholders' rights and protection and directors' powers (using, and covering at the least, the same subject headings as is required by Section 2 in Part C of Appendix 11 in respect of PRC issuers);
- (3) the listing document must contain a summary of the relevant PRC law; and

Note: In general, the relevant PRC law to be summarised normally would be expected to cover matters such as taxation on the PRC issuer's income and capital, tax (if any) deducted on distributions to shareholders, foreign exchange controls or restrictions, company law, securities regulations or other relevant laws or regulations, and any PRC law which regulates or limits the PRC issuer's major business(es) or the industry in which it mainly operates.

- (4) 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, and where any such documents are not in English or Chinese, a certified English or Chinese translation thereof must be available for inspection. In addition, the PRC issuer must offer for inspection a copy of any statutes or regulations which are relevant to the summary of relevant PRC law (see rule 25.20(3)). In particular cases, the Exchange may require other additional documents to be offered for inspection.

Chapters 17 and 18 – Continuing Obligations and Financial Information

General

25.21 Whilst Chapters 17 and 18 apply equally to PRC issuers, the Exchange may be prepared to agree to such modifications as it considers appropriate in a particular case.

25.22 Conversely, the Exchange may impose further additional requirements in a particular case (see, for example, rule 25.14). The additional requirements currently imposed by the Exchange in respect of PRC issuers are set out in Part C of Appendix 11. The Exchange may add to, waive or not require compliance with, the requirements of Chapters 17 and 18, on a case by case basis in its discretion.

25.23 The requirements of rules 17.39 to 17.41 are replaced in their entirety by the following provision:—

“17.39 Except in the circumstances mentioned in rule 17.41, the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer’s articles of association, prior to:—

- (1) authorising, allotting, issuing or granting:—
 - (a) shares;
 - (b) securities convertible into shares; and
 - (c) options, warrants or similar rights to subscribe for any shares or such convertible securities; and
- (2) any major subsidiary of the PRC issuer making any such authorisation, allotment, issue or grant so as materially to dilute the percentage equity interest of the PRC issuer and its shareholders in such subsidiary.

Notes: 1 Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the PRC issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the PRC issuer entitled to be offered them) pro-rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro-rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rule 17.41.

2 The restriction in rule 17.39(2) does not apply if the subsidiary is itself listed on GEM because it is then, itself, bound by the pre-emptive provisions of the GEM Listing Rules. The PRC issuer should normally ensure that its equity interests in a major subsidiary are not materially diluted through any new issue by such subsidiary of equity capital or securities having an equity element without the consent of the PRC issuer’s shareholders. In the case of a rights issue, if the PRC issuer does not propose to take up its rights, an arrangement may be made for rights to be offered to the PRC issuer’s shareholders so that they can thus avoid a material dilution in their percentage equity interests.

3 For the purposes of rule 17.39(2), a “major subsidiary” has the same meaning as in rule 17.27.

4 Dilution in a subsidiary is taken to be material:

- (a) where, following an allotment of shares, the subsidiary will cease to be consolidated in the accounts of the issuer; or*

(b) where the results of the “assets ratio,” “profits ratio” or “consideration ratio” (calculated in the manner set out in rule 19.07) are 15% or more.

- 5 If the subsidiary is itself a listed issuer and an allotment of shares is made in connection with a scrip dividend scheme where the issuer (or issuer’s group) has elected to receive a cash alternative which results in the issuer (or issuer’s group) ceasing to hold a majority interest in the subsidiary, the Exchange may be prepared to grant a waiver from treating this as a material dilution of interest. For such a waiver to be granted it will be necessary for the issuer to demonstrate that the reduction in interest is unintentional, temporary in nature, and that the issuer will, within a reasonable period of time, restore its majority holding in the subsidiary.

17.40 Notwithstanding rule 17.41, the directors of the PRC issuer shall obtain the approval by special resolution of its shareholders in general meeting, prior to allotting any voting shares if such allotment would effectively alter the control of the PRC issuer.

17.41 No such approval as is referred to in rule 17.39 shall be required in the case of authorising, allotting or issuing shares if, but only to the extent that,

- (1) the shareholders of the PRC issuer have by special resolution of its shareholders in general meeting given approval, either unconditionally or subject to such terms and conditions as may be specified in the resolution, for the PRC issuer to authorise, allot or issue, either separately or concurrently once every twelve months, not more than twenty per cent of each of the existing issued domestic shares and overseas listed foreign shares of the PRC issuer; or
- (2) such shares are part of the PRC issuer’s plan at the time of its establishment to issue domestic shares and overseas listed foreign shares and which plan is implemented within fifteen months from the date of approval by China Securities Regulatory Commission or such other competent state council securities regulatory authority.

Notes: 1 An issue of securities for cash to a connected person pursuant to a general mandate given under rule 17.41(2) is only permitted in the circumstances set out in rule 20.23(3).

- 2 Notwithstanding any issue of securities pursuant to a general mandate given under rule 17.41, the PRC issuer must at all times comply with the prescribed minimum percentage requirements concerning shares held by the public, as set out in rule 25.08(2).”*

Annual report and accounts and auditors’ report

25.24 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.

25.25 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 PRC 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 the 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; or
- (3) a firm of accountants acceptable to the Exchange which is a joint venture approved or otherwise permitted by the China Securities Regulatory Commission or other competent authority in the PRC to act as an auditor of a listed company in the PRC and at least one of whose principal joint venture partners is either qualified under (1) or acceptable under (2).

25.26 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.

25.27 The report of the auditors must be annexed to all copies of the annual accounts required to be sent by the PRC 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 in the case of the issuer's cash flow statement, of the cash flows for the financial year; and
- (2) in the case where consolidated accounts are prepared, of the state of affairs, the profit or loss and the cash flows of the issuer and the group of which the issuer is the holding company.

25.28 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.

25.29 If the PRC 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.

25.30 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

25.31 A PRC 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.

25.32 A PRC 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).

25.33 The statement of reserves available for distribution to shareholders required pursuant to rule 18.37 shall be calculated in accordance with any statutory provisions applicable in the PRC or, in the absence of such provisions, with generally accepted accounting principles.

Half-year and quarterly reports

25.34 If the PRC issuer publishes a half-year or quarterly report in the PRC, the Exchange may authorise it to publish that report (if necessary, translated into English and Chinese) instead of the half-year and quarterly reports provided for in Chapter 18, provided that the information given is equivalent to that which would otherwise have been required.

Listing on a PRC stock exchange

25.35 A PRC issuer shall not apply for the listing of any of its foreign shares on a PRC stock exchange unless the Exchange is satisfied that the relative rights of the holders of overseas listed foreign shares are adequately protected.

Constitutional documents

25.36 A PRC issuer shall not at any time permit or cause any amendment to be made to its articles of association which would cause the same to cease to comply with the provisions of Appendix 3 or Section 1 of Part C of Appendix 11 of the GEM Listing Rules.

25.37 A PRC issuer shall make available at a place in Hong Kong for inspection by the public and shareholders free of charge, and for copying by shareholders at reasonable charges, the following:—

- (a) a complete duplicate of the register of shareholders;
- (b) a report showing the state of the issued share capital of the PRC issuer;
- (c) the PRC issuer's latest audited financial statements and the directors', auditors' and supervisors' reports thereon;
- (d) special resolutions of the PRC issuer;
- (e) reports showing the number and nominal value of securities repurchased by the PRC issuer since the end of the last financial year, the aggregate amount paid for such securities and the maximum and minimum prices paid in respect of each class of securities repurchased (with a breakdown between domestic shares and foreign shares (and, if applicable, H shares));

(f) a copy of the latest annual return filed with the Administration for Industry and Commerce or other relevant PRC authority; and

(g) for shareholders only, copies of the minutes of meetings of shareholders.

25.38 A PRC issuer shall appoint one or more receiving agents in Hong Kong and pay to such agents dividends declared and other monies owing in respect of securities listed on GEM to be held, pending payment, in trust for the holders of such securities.

25.39 A PRC issuer shall ensure that all its listing documents include the statements stipulated below and shall instruct and cause each of its share registrars not to register the subscription, purchase or transfer of any of its shares in the name of any particular holder unless and until such holder delivers to such share registrar a signed form in respect of such shares bearing statements to the following effect:—

(1) The acquirer of shares agrees with the PRC issuer and each shareholder of the PRC issuer, and the PRC issuer agrees with each shareholder, to observe and comply with the Company Law, the Regulations and the articles of association of the PRC issuer.

(2) The acquirer of shares agrees with the PRC issuer, each shareholder, director, supervisor, manager and officer of the PRC issuer and the PRC issuer acting for itself and for each director, supervisor, manager and officer agrees with each shareholder to refer all differences and claims arising from the articles of association or any rights or obligations conferred or imposed by the Company Law or other relevant laws and administrative regulations concerning the affairs of the PRC issuer to arbitration in accordance with the articles of association, and any reference to arbitration shall be deemed to authorise the arbitration tribunal to conduct hearing in open session and to publish its award. Such arbitration shall be final and conclusive.

(3) The acquirer of shares agrees with the PRC issuer and each shareholder of the PRC issuer that shares in the PRC issuer are freely transferable by the holder thereof.

(4) The acquirer authorises the PRC issuer to enter into a contract on his behalf with each director and officer whereby such directors and officers undertake to observe and comply with their obligations to shareholders stipulated in the articles of association.

All documents of title for equity securities (including certificates for H shares) of the PRC issuer listed on GEM and listing documents relating thereto should include the statements above, modified as appropriate, to refer to the relevant equity securities, and the PRC issuer shall instruct its registrar for the relevant equity securities to act accordingly.

25.40 A PRC issuer shall observe and comply with the Company Law, the Regulations and the PRC issuer's articles of association.

25.41 A PRC issuer shall enter into a contract in writing with every director and officer containing at least the following provisions:—

(1) an undertaking by the director or officer to the PRC issuer to observe and comply with the Company Law, the Regulations, the articles of association, the Takeover Code and the Share Repurchase Code and an agreement that the PRC issuer shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment;

- (2) an undertaking by the director or officer to the PRC issuer acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the articles of association; and
- (3) an arbitration clause as follows:—
 - (a) Whenever any disputes or claims arise from this contract, the company's articles of association or any rights or obligations conferred or imposed by the Company Law or other relevant laws and administrative regulations concerning the affairs of the company between (i) the company and its directors or officers; and (ii) a holder of overseas listed foreign shares and a director or officer of the company, the parties concerned shall resolve such disputes and claims through arbitration.
 - (b) Where a dispute or claim described above is referred to arbitration, the entire dispute or claim shall be resolved through arbitration; all persons who have a cause of action based on the same facts giving rise to the dispute or claim or whose participation is necessary for the resolution of such dispute or claim, if they are shareholders, directors, supervisors, manager or other officers of the company or the company, shall submit to arbitration.
 - (c) Disputes over who is a shareholder and over the share register do not have to be resolved through arbitration.
 - (d) The party seeking arbitration may elect to have the dispute or claim arbitrated either by the China International Economic and Trade Arbitration Commission in accordance with its arbitration rules or by the Hong Kong International Arbitration Centre in accordance with its securities arbitration rules. Once the party seeking arbitration submits a dispute or claim to arbitration, the other party must submit to the arbitral body selected by the party seeking the arbitration.
 - (e) If the party seeking arbitration elects to arbitrate the dispute or claim at the Hong Kong International Arbitration Centre, then either party may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of the Hong Kong International Arbitration Centre.
 - (f) The laws of the People's Republic of China shall govern the arbitration of disputes or claims described in clauses (a), (b) and (c) above, unless otherwise provided by law or administrative regulations.
 - (g) The award of the arbitral body is final and shall be binding on the parties thereto.
 - (h) This agreement to arbitrate is made by the director or officer with the company on its own behalf and on behalf of each shareholder.
 - (i) Any reference to arbitration shall be deemed to authorise the arbitral tribunal to conduct hearings in open session and to publish its award.

25.42 A PRC issuer shall enter into a contract in writing with every supervisor containing at least the following provisions:—

- (a) an undertaking by the supervisor to the PRC issuer to observe and comply with the Company Law, the Regulations and the articles of association and an agreement that the PRC issuer shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment;

- (b) an undertaking by the supervisor to the PRC issuer acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the articles of association; and
- (c) the arbitration clause set forth in rule 25.41(3), subject to necessary modifications.

25.43 All notices or other documents required under Chapter 17 to be sent by the PRC issuer to the Exchange or to holders of the PRC issuer's securities listed on GEM shall be in English with a Chinese translation or in Chinese with an English translation.

General

25.44 References in Chapters 19 and 20 to an issuer's "accounts" shall mean, in the case of a PRC issuer, the latest published audited accounts or consolidated accounts of such PRC issuer which have been prepared in accordance with either Hong Kong accounting standards or international accounting standards as provided for in rule 18.04.

25.45 All documents furnished by a PRC issuer, 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 PRC issuer's expense by such person or persons as the Exchange shall specify.

25.46 Information to be supplied by PRC 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 PRC issuer under applicable PRC law.