

Chapter 31

DEBT SECURITIES

CONTINUING OBLIGATIONS

Preliminary

31.01 An issuer of debt securities and its guarantor, in the case of a guaranteed issue, shall comply (and each undertakes pursuant to the issuer's application for listing (Appendix 5C), once any such debt securities have been admitted to listing, to comply), at all times, with all of the requirements of the GEM Listing Rules relevant to issuers of debt securities, save for any that are stated not to apply.

Notes: 1 This Chapter applies equally to issuers and guarantors, in the case of guaranteed issues, of non-selectively marketed and selectively marketed debt securities.

2 References in this Chapter to issuers shall apply equally to guarantors in the case of guaranteed issues.

3 If the issuer or guarantor, in the case of a guaranteed issue, has equity securities listed on GEM, it is also obliged to comply with all of the requirements of the GEM Listing Rules relevant to issuers of equity securities (see Chapter 17).

31.02 The Exchange is available to all issuers to help and advise in the strictest confidence on the interpretation of the requirements of their continuing obligations.

31.03 Unless otherwise stated, the publication requirements contained in Chapter 16 apply to all announcements (including notices) required of an issuer or guarantor under the GEM Listing Rules, all listing documents, annual reports and accounts (including, where applicable, summary financial reports), half-year and quarterly reports and circulars to holders of its listed securities required of an issuer under the GEM Listing Rules and all other documents which are corporate communications required of an issuer under the GEM Listing Rules.

31.03A An issuer of listed debt securities may avail itself of the provisions of rule 16.04A.

31.03B An issuer of listed debt securities may avail itself of the provisions of rule 16.04B.

Continuing disclosure obligations

General obligation of disclosure

31.04. Generally and apart from compliance with all the specific requirements of the GEM Listing Rules, an issuer shall keep the Exchange and holders of its listed debt securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:—

- (1) is necessary to enable them and the public to appraise the position of the group; or
- (2) is necessary to avoid the establishment of a false market in its listed debt securities; or
- (3) might be reasonably expected materially to affect its ability to meet its commitments.

Notes: 1 Information should not be divulged outside the issuer and its advisers in such a way as to place in a privileged dealing position any person or class or category of persons. Information should not be released in such a way that Exchange transactions may be entered into at prices which do not reflect the latest available

information. Without in any way derogating from this principle, issuers may, in appropriate circumstances, give advance information in strict confidence to persons with whom negotiations are taking place with a view to the making of a contract or the raising of finance, e.g. to prospective underwriters of an issue of debt securities or providers of funds on loan. In any such case the persons receiving such information will be expected not to deal in the issuer's debt securities until the information has been released.

- 2 When developments are on hand which are likely to have a significant effect on the ability of the issuer to meet its commitments **it is the direct responsibility of the directors to ensure that such information is kept strictly confidential** until a formal announcement is made. To this end the directors must ensure that the strictest security is observed within the issuer and its advisers and if at any time it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement should be made. The lack of an announcement in some situations may lead to the establishment of a false market.
- 3 The issuer may be obliged (by statute or otherwise) to impart information to a third party. If such information thereby enters the public domain and is of a price-sensitive nature, it should be simultaneously released to the market.
- 4 The question of timing of the release of an announcement to the market is crucial, having regard to its possible effect on the market price of the issuer's listed debt securities. The overriding principle is that information which is expected to be price-sensitive should be announced immediately it is the subject of a decision. Failure to follow this principle may result in the Exchange imposing a temporary suspension of dealings.
- 5 The issuer must endeavour to avoid any suspension of its securities having regard to the provisions of rule 9.03 and the Notes thereto.
- 6 Rule 31.20 sets out general principles as to the presentation of information in all announcements, listing documents and circulars required to be published under the GEM Listing Rules.
- 7 Any obligation to inform holders of the issuer's debt securities or the public will be satisfied by the information being announced in accordance with rule 31.03.
- 8 Where it is proposed to announce at any meeting of holders of listed debt securities information which might affect the market price of the issuer's debt securities, arrangements should be made for the release of that information to the market simultaneously or immediately after the meeting in accordance with Chapter 16.
- 9 If the directors consider that disclosure of information to the public might prejudice the issuer's business interests, the Exchange must be consulted as soon as practicable.
- 10 Information should be released before the stage when it needs to be made available outside the directors, employees and advisers necessarily concerned. The date of the requisite board meeting should be fixed with this consideration in mind; if a suitable date cannot be fixed, it may be necessary for the board to delegate its power of approval to a committee so that the appropriate announcement can be made at the proper time.
- 11 If, during the period of any profit forecast made by the issuer:—
 - (a) an event occurs which, had it been known at the time the profit forecast was made, would have caused any of the assumptions upon which the forecast is based to have been materially different; or

- (b) *income or loss is generated by some activity outside the ordinary and usual course of the business (which income or loss was not disclosed as anticipated in the document in which the profit forecast was made) and which contributes or is likely to contribute materially to the calculation of the profits for such period,*

the issuer shall promptly disclose the occurrence of such event and relevant details to holders of the issuer's debt securities. The issuer should give an indication in the announcement of the likely impact of the event or activity referred to above on the profit forecast.

A disclosure obligation arises under sub-paragraph (b) above as soon as the issuer becomes aware that it is likely that the contribution in the calculation of profits made or to be made by income or loss generated or to be generated as aforesaid will be material.

- 12 *An issuer must consider whether or not it is appropriate or necessary to make any disclosure pursuant to this rule in circumstances where the profits or business developments of the issuer are or are likely to be out of line with any estimate or projection of the issuer or with market expectations of the issuer. If thought appropriate or necessary, an announcement should be made, on a timely basis, revising any estimate or projection and setting out reasons or explanations for the difference.*
- 13 *In circumstances where the issuer is aware that the price or trading volume of its listed debt securities is or may be being influenced by speculation or rumour, the issuer is encouraged to make an announcement by way of clarification in order to avoid the establishment of an uninformed, misinformed or false market in its securities. In the event that the Exchange contacts the issuer concerning unusual movements in the price or trading volume of its securities, rule 31.05 shall apply.*
- 14 *Without limiting the generality of Note 13 above, comments by individuals who:—*
- (a) *are directors or representatives of an issuer or its controlling shareholder; and/or*
or
- (b) *hold positions in entities with authority, administrative control or influence over an individual issuer or its controlling shareholder irrespective of that entity's equity interest in the issuer or controlling shareholder; and/or*
- (c) *hold positions in entities with authority, administrative control, influence or regulatory responsibility over an industry*

may be accorded considerable weight by the news media and investors. They may affect market activity in and the price of an issuer's securities thereby giving rise to an obligation under this rule. If these individuals make public proposed transactions or developments in relation to an issuer, which have not previously been announced or disclosed to shareholders in accordance with the GEM Listing Rules, the issuer affected will generally be required to clarify such comments by way of an announcement. Furthermore, comments by individuals holding positions in entities having authority, administrative control, influence or regulatory responsibility over an industry may give rise to an obligation on issuers operating in that industry to issue a clarification announcement.

- 15 *Any confidentiality undertaking entered into by an issuer shall be made subject to any obligation on the part of the issuer to disclose information pursuant to the GEM Listing Rules.*

- (3) the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound-up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment;
- (4) the entry into possession of or the sale by any mortgagee of a portion of the issuer's assets which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group as shown in the issuer's latest audited consolidated financial statement; or
- (5) the making of any final judgment, declaration or order by any court or tribunal of competent jurisdiction whether on appeal or at first instance which is not subject to any or further appeal, which may adversely affect the issuer's enjoyment of any portion of its assets which in aggregate value represents an amount in excess of 15% of the consolidated net tangible assets of the group as shown in the issuer's latest audited consolidated financial statement.

For the purposes of this rule, a "major subsidiary" means a subsidiary representing 15% or more of the consolidated net tangible assets or pre-tax trading profits of the group as shown in the issuer's latest audited consolidated financial statement.

Note: In the circumstances referred to in Note 9 to rule 31.04, the Exchange may be prepared to give a dispensation from the requirement to make the information public. However, the Exchange must be informed in any event.

General matters relevant to the issuer's debt securities

Changes of rights attaching to securities

- 31.08 An issuer shall inform the Exchange and make an announcement concerning any changes in the rights attaching to any class of listed debt securities (including any change in the rate of interest carried) and any change in the rights attaching to any shares into which any listed debt securities are convertible or exchangeable.

Altering the terms of the existing warrants

- 31.09 Without prejudice to the generality of rule 31.08, where an issuer proposes to alter the terms of existing options or warrants to subscribe debt securities, the issuer must comply with the provisions of rule 33.04.

Altering the terms of convertible debt securities

- 31.10 Without prejudice to the generality of rule 31.08, where an issuer proposes to alter the terms of existing convertible debt securities, the issuer must comply with the provisions of rule 34.05.

Decisions to pass interest payments

- 31.11 An issuer shall announce details of any decision to pass any interest payment on listed debt securities as soon as reasonably practicable after the decision has been made.

Purchase, redemption or cancellation

- 31.12 An issuer shall announce as soon as practicable after any purchase, redemption or cancellation by the issuer, or any member of the group, of its listed debt securities. The announcement should also state the amount of the relevant debt securities outstanding after such operations.

Note: Purchases of debt securities may be aggregated and an announcement should be made when 5% of the outstanding amount of a debt security has been acquired. If the issuer or the group purchases further amounts of that security an announcement should be made whenever an additional 1% has been acquired.

Other listings

- 31.13 An issuer shall inform the Exchange immediately and publish an announcement, at such time as any of its debt securities (or the debt securities of any of its subsidiaries) become listed or dealt in on any other stock exchange or securities market other than GEM, stating which stock exchange or securities market and of any consequences to the holders of its listed debt securities.

Notification

After board meetings

- 31.14 The issuer shall inform the Exchange and publish an announcement immediately after approval by or on behalf of the board of directors or other governing body of:—

- (1) any decision to pass any interest payment on listed debt securities;
- (2) any proposed change in the capital structure;

Note: Once a decision has been made to submit any such proposal to the board, no dealings in any of the relevant debt securities should be effected by or on behalf of the issuer or any of its subsidiaries until the proposal has been announced or abandoned.

- (3) any new issues of debt securities and, in particular, any guarantee or security in respect thereof;

Note: The notification of a new issue may be delayed while a marketing or underwriting is in progress (see also Note 1 to rule 31.04).

- (4) any drawing, cancellation or redemption of listed debt securities; and
- (5) any decision to change the general character or nature of the business of the issuer or group.

Note: In discharging the obligations as set out in this rule, regard should be had to the provisions of rules 2.21 and 2.22, in particular as regards the Exchange's requirements in respect of the communication of information of an urgent nature.

Changes

- 31.15 The issuer shall inform the Exchange and publish an announcement immediately after (and for the purpose of providing details of) any decision made with regard to:—

- (1) any proposed material alteration of the issuer's memorandum or articles of association or equivalent documents which would affect the rights of holders of its listed debt securities;
- (2) any changes in its directorate, and shall procure that each new director or member of its governing body shall sign and lodge with the Exchange no later than 14 business days prior to the proposed date of his appointment a declaration, undertaking and acknowledgement in the relevant form set out in Appendix 6;

- (3) any change in the rights attaching to any class of listed debt securities (including any change in the rate of interest carried by a debt security) and any change in the rights attaching to any shares into which any listed debt securities are convertible or exchangeable; and
- (4) any change in its secretary, auditors or registered office or registered place of business in Hong Kong.

Information relating to rights involving the share capital of another company

- 31.16 Where listed debt securities carry rights of conversion or exchange into or subscription for the share capital of another company, or are guaranteed by another company, the issuer must ensure that adequate information is at all times available about the other company and about any changes in the rights attaching to the shares to which such rights of conversion, exchange or subscription relate. This must include the availability of the annual report and accounts of the other company together with its half-yearly, quarterly or other interim reports and any other information necessary for a realistic valuation of such listed debt securities to be made.

Proposed drawings and closure of books

- 31.17 The issuer shall inform the Exchange in advance of all proposed drawings to effect partial redemptions, and, in the case of registered debt securities, the date on which it is proposed to close the books for the purpose of making a drawing. The Exchange must be informed immediately of the amount of the debt securities outstanding after any such drawing has been made.

Amendments to company information sheet

- 31.18 An issuer (but not for the avoidance of doubt a guarantor in the case of a guaranteed issue) shall submit to the Exchange (in the electronic format specified by the Exchange from time to time) for publication on the GEM website a revised company information sheet, in the prescribed form set out in Appendix 5F, together with a hard copy duly signed by or on behalf of each of the directors of the issuer, as soon as reasonably practicable after any particulars on the form previously published cease to be accurate.

Announcements, circulars and other documents

General

- 31.19 In addition to the specific requirements set out in the GEM Listing Rules, the issuer shall:—
- (1) submit to the Exchange copies of drafts, for review before they are issued, of any announcements or advertisements relating to the issue of new or further debt securities or any announcements or advertisements the subject matter of which may involve a change in or relate to or affect arrangements regarding trading in its listed debt securities (including a suspension of dealings);
 - (2) submit to the Exchange copies of drafts, for review before they are issued, of any proposed amendment to its memorandum or articles of association or equivalent document which would affect the rights of the holders of its listed debt securities; and
 - (3) not issue any of such documents until the Exchange has confirmed to the issuer that it has no further comments thereon.

Notes: 1 4 copies of each document are required, which should be submitted in sufficient time for review and, if necessary, re-submission prior to dissemination or final printing.

- 2 *Every announcement or advertisement which has been reviewed by the Exchange in accordance with the provisions of rule 31.19(1) must contain on the front cover or on the top of the announcement or advertisement a prominent and legible disclaimer statement in the form set out in rule 2.19.*

Presentation of information

31.20 Without prejudice to any specific requirements of the GEM Listing Rules as to content or responsibility for the document in question, any announcement, listing document or circular required pursuant to the GEM Listing Rules should be prepared having regard to the following general principles:—

- (1) the information contained in the document should be clearly presented and should be in plain language; and
- (2) the information contained in the document should not be misleading or deceptive, in which regard the issuer should avoid:—
 - (a) omitting material facts of an unfavourable nature or failing to accord them with appropriate significance;
 - (b) presenting favourable possibilities as certain or as more probable than is likely to be the case;
 - (c) presenting projections without sufficient qualification or explanation; or
 - (d) presenting risk factors in such a way as to create a positive implication.

Forwarding of documents, circulars, etc.

31.21 The issuer shall forward to the Exchange:—

- (1) 25 copies of each of the English language version and the Chinese language version of:—
 - (a) all circulars to holders of its listed debt securities at the same time as they are issued;
 - (b) the annual report and accounts and, where applicable, the summary financial report at the same time as they are despatched to the holders of its listed debt securities with registered addresses in Hong Kong; and
 - (c) any half-year or quarterly report prepared by the issuer as soon as possible after it has been approved by the board of directors of the issuer;

Note: Wherever practicable the issuer should provide the Exchange with such reasonable number of additional copies of these documents as the Exchange may request.

- (2) 7 copies of notices of meetings, forms of proxy, notices by advertisement to holders of its bearer debt securities, reports, announcements or other similar documents at the same time as they are issued; and
- (3) 7 certified copies of all resolutions of the holders of listed debt securities, within 15 days after they are passed.

- 31.22 (1) In the event of a circular being issued to the holders of any of the issuer's listed debt securities, the issuer shall issue a copy or summary of such circular to the holders of all its other debt securities listed on the Exchange (not being bearer debt securities) unless the contents of such circular are of no material concern to such other holders.

Note: Where there is a class of listed debt securities in bearer form, it will be sufficient to publish in the newspapers an advertisement referring to the circular and giving an address or addresses from which copies can be obtained.

- (2) The issuer must ensure that all necessary facilities and information are available to enable holders of its listed debt securities to exercise their rights. In particular, it must inform holders of the holding of meetings which they are entitled to attend, enable them to exercise their right to vote, where applicable, and publish in the newspapers notices or distribute circulars giving details of the allocation and payment of interest in respect of such securities, the issue of new debt securities (including arrangements for the allotment, subscription, renunciation, conversion or exchange of such debt securities) and repayment of debt securities.

Trading and settlement

Registration services, issue of certificates, registration and other fees

- 31.23 The issuer (or its paying agent or registrar) must provide a standard securities registration service in relation to its listed securities in accordance with rule 31.27. The issuer (or its paying agent or registrar) may, but shall not be obliged to, provide an optional securities registration service in accordance with rule 31.28 and/or an expedited securities registration service in accordance with rule 31.29. The issuer (or its paying agent or registrar) must also provide a bulk securities registration service in accordance with rule 31.30 and a certificate replacement service in accordance with rule 31.31. The issuer shall ensure that where the issuer (or its paying agent or registrar) charges a fee for registering transfers or cancelling, splitting, consolidating or issuing definitive certificates relating to the issuer's listed securities, such fee must not exceed, in total, the applicable amounts prescribed in rules 31.24 to 31.31.

- 31.24 The issuer shall ensure that where the issuer (or its paying agent or registrar) charges a fee for registering other documents relating to or affecting the title to the issuer's listed securities (e.g. probate, letters of administration, certificates of death or marriage, powers of attorney or other instruments or memoranda and articles of association in respect of a new corporate holder) or for marking or noting documents, such fee must not exceed HK\$5 per item per register.

Note: "per item" shall be defined to mean each of such other documents submitted for registration.

- 31.25 It is the responsibility of an issuer whose paying agent or registrar is in breach of any of rules 31.23 to 31.33 to report such breach to the Exchange as soon as it becomes aware of the breach and the Exchange reserves the right to communicate such information to the Commission.

- 31.26 Save as provided above the issuer shall ensure that neither it nor its paying agent or registrar or other agents will charge holders or transferee any other fees for any dealings with them in connection with the transfer or transmission of its listed securities.

- 31.27 (1) Standard securities registration service: The issuer shall (or shall procure that its paying agent or registrar shall) issue definitive certificates arising out of a registration of transfer or the cancelling, splitting, consolidating or issuing (otherwise than pursuant to rule 31.31 of certificates within:—
- (a) 10 business days of the date of expiration of any right of renunciation; or
 - (b) 10 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the standard securities registration service shall not exceed, in total, the higher of the following:—
- (a) HK\$2.50 multiplied by the number of certificates issued; or
 - (b) HK\$2.50 multiplied by the number of certificates cancelled.
- 31.28 (1) Optional securities registration service: The issuer (or its paying agent or registrar) may, but shall not be obliged to, provide an optional securities registration service under which definitive certificates are required to be issued within:—
- (a) 6 business days of the date of expiration of any right of renunciation; or
 - (b) 6 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the optional securities registration service shall not exceed, in total, the higher of the following:—
- (a) HK\$3.00 multiplied by the number of certificates issued; or
 - (b) HK\$3.00 multiplied by the number of certificates cancelled.
- (3) If the issuer (or its paying agent or registrar) fails to effect any registration within the period of 6 business days specified in rule 31.28(1), the fee for such registration shall be that determined in accordance with rule 31.27(2).
- 31.29 (1) Expedited securities registration service: The issuer (or its paying agent or registrar) may, but shall not be obliged to, provide an expedited securities registration service under which definitive certificates are required to be issued within:—
- (a) 3 business days of the date of expiration of any right of renunciation; or
 - (b) 3 business days of the receipt of properly executed transfer or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the expedited securities registration service shall not exceed, in total, the higher of the following:—
- (a) HK\$20.00 multiplied by the number of certificates issued; or
 - (b) HK\$20.00 multiplied by the number of certificates cancelled.
- (3) If the issuer (or its paying agent or registrar) fails to effect any registration within the period of 3 business days specified in rule 31.29(1), the registration shall be performed free of charge.

- 31.30 (1) Bulk securities registration service: The issuer shall (or shall procure that its paying agent or registrar shall) provide a bulk securities registration service, for transfers of listed securities representing 2,000 or more board lots of the issuer's listed securities where the securities are being transferred from the name of a single holder into the name of another or the same single holder. Certificates shall be issued pursuant to the bulk securities registration service within 6 business days of the receipt of properly execute transfers or other relevant documents or the relevant certificates.
- (2) The fee for registration pursuant to the bulk securities registration service shall not exceed, in total, the higher of the following:—
- (a) HK\$2.00 multiplied by the number of certificates issued; or
 - (b) HK\$2.00 multiplied by the number of certificates cancelled.

31.31 Certificate replacement service: The issuer shall (or shall procure that its paying agent or registrar shall) provide a certificate replacement service. The fee for replacing certificates:—

- (1) representing securities with a market value of HK\$20,000 or less (at the time the request for replacement is made) for a person named on the register shall not exceed HK\$200.00, plus the costs incurred by the issuer (or its paying agent or registrar) in publishing the required public notice; or

(2) either:—

- (a) representing securities with a market value of more than HK\$20,000 (at the time the request for replacement is made); or
- (b) for a person not named on the register (irrespective of the market value of the securities concerned);

shall not exceed HK\$400.00, plus the costs incurred by the issuer (or its paying agent or registrar) in publishing the required public notice.

31.32 For the purposes of rules 31.23 to 31.31:—

- (1) the expression "business day" shall exclude Saturdays, Sundays and public holidays in Hong Kong; and
- (2) in computing any period of business days, such period shall be inclusive of the business day on which the relevant transfers, certificates or other documents were received (or, if such documents were not received on a business day, the business day next following their receipt) and of the business day on which the relevant certificates were delivered or otherwise made available.

31.33 References in rules 31.23 to 31.32 to the issuer's registrar or paying agent providing a service, or to the issuer procuring that its registrar or paying agent shall provide a service, shall not relieve the issuer of any obligations in respect of any acts or omissions of its registrar or paying agent.

Trading limits

31.34 Where the market price of the debt securities of the issuer approaches the extremities of HK\$0.01 or HK\$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

Miscellaneous obligations

Paying agent

- 31.35 An issuer or its guarantor must appoint and maintain a paying agent and/or, where appropriate, a registrar in Hong Kong until the date on which no listed debt security is outstanding, unless the issuer itself performs these functions. Such paying agent must provide facilities for obtaining new debt securities, in accordance with the terms and conditions of the debt securities, to replace those debt securities which have been damaged, lost, stolen or destroyed and for all other purposes provided for in the terms and conditions of the debt securities.

Equality of treatment

- 31.36 An issuer shall ensure equality of treatment for all holders of its listed debt securities of the same class in respect of all rights attaching to such securities.

Note: In the case of overseas issuers, the Exchange may, in exceptional circumstances, permit early repayment contrary to this rule, provided that such repayment is in accordance with national law.

Financial information

Availability of annual report and accounts

- 31.37 If the documents of title to any listed debt securities are in bearer form, the time and place in Hong Kong at which copies of the accounts of the issuer and auditors' report and directors' report thereon may be obtained without charge must be published in the newspapers. Where another company provides a guarantee for the debt security or where the debt security is convertible, exchangeable or carries subscription rights which are exercisable into the securities of another company, copies of the accounts of that other company and of the auditors' report and directors' report thereon must also be so available and the advertisement must also state this.

Distribution of annual report and accounts

- 31.38 (1) If the issuer is incorporated or otherwise established in Hong Kong it shall send to:—
- (a) the trustee or fiscal agent in respect of its listed debt securities; and
 - (b) every holder of its listed debt securities not being bearer debt securities),

a copy of either (i) its annual report including its annual accounts and, where the issuer prepares group accounts within the meaning of section 124(1) of the Companies Ordinance, the group accounts or (ii) its summary financial report, not less than 21 days before the date of the issuer's annual general meeting. The Issuer may send a copy of its summary financial report to a member and a holder of its listed securities in place of a copy of its annual report and accounts, provided that it complies with the relevant provisions set out in section 141 of the Companies Ordinance and in the Companies (Summary Financial Reports of Listed Companies) Regulation or, in the case of overseas issuers, with provisions no less onerous than the above provisions for listed issuers incorporated in Hong Kong. An issuer, whose equity securities are not listed, may not distribute a summary financial report in place of its annual report.

- (2) Nothing in rule 31.38(1) shall require the issuer to send any of the documents referred to therein to:—
- (a) a person of whose address the issuer is unaware; or
 - (b) more than one of the joint holders of any of its listed debt securities.

Notes: 1 *The directors' report, auditors' report, annual accounts and, where applicable, summary financial report must be in the English language and must be accompanied by a Chinese translation or be in the Chinese language accompanied by an English translation.*

2 *Section 122 of the Companies Ordinance requires the annual accounts of a Hong Kong issuer which are laid before the issuer at its annual general meeting to be made up to a date falling not more than 6 months before the date of the meeting.*

3 *The Exchange may at its discretion suspend dealings in or cancel the listing of the debt securities of companies which fall into arrears in the issue of its directors' report and accounts. If the listed issuer has significant interests outside Hong Kong it may apply for an extension of the 6 month period. However, attention of a Hong Kong listed issuer is drawn to section 122(1B) of the Companies Ordinance which requires any extension of the time limit to be approved by the High Court.*

4 *The issuer must send 25 copies of each of the English language version and the Chinese language version of the directors' report and annual accounts and, where applicable, the summary financial report to the Exchange at the same time as they are sent to the holders of the issuer's listed debt securities with registered addresses in Hong Kong (see rule 31.21).*

31.39 (1) If the issuer is incorporated or otherwise established outside Hong Kong it shall send to:—

- (a) the trustee or fiscal agent in respect of its listed debt securities; and
- (b) every holder of its listed debt securities (not being bearer securities),

a copy of either (i) the annual report and accounts and, where the issuer prepares group accounts, its group accounts, together with a copy of the auditors' report or (ii) the summary financial report not less than 21 days before the date of the issuer's annual general meeting nor more than 6 months after the end of the financial year to which they relate.

(2) The issuer shall make up its annual accounts to a date falling not more than 6 months before the date of its annual general meeting.

(3) Nothing in rule 31.39(1) shall require the issuer to send any of the documents referred to therein to:—

- (a) a person of whose address the issuer is unaware; or
- (b) more than one of the joint holders of any of its listed debt securities.

Note: The annual report and accounts and, where applicable, the summary financial report must be in the English language and must be accompanied by a Chinese translation or be in the Chinese language accompanied by an English translation.

Accounting standards

31.40 Annual accounts of a listed issuer are required, subject to rule 18.05, to conform with either accounting standards approved by the Hong Kong Society of Accountants and laid down in the Statements of Standard Accounting Practice issued from time to time by that Society or the International Accounting Standards as promulgated from time to time by the International Accounting Standards Committee.

Note: The issuer must apply one of these standards consistently and shall not change from one standard to the other unless there are reasonable grounds to justify such change. All reasons for any such change must be disclosed in the annual accounts.

- 31.41 Where the Exchange, in exceptional circumstances, allows the annual accounts of any overseas issuer to be drawn up otherwise than in conformity with either accounting standards approved by the Hong Kong Society of Accountants or the International Accounting Standards Committee, the Exchange will normally require the annual accounts to contain a statement of the financial effect of the material differences (if any) and a summary of any material differences in disclosure (if any) from either of those standards.

Annual report and accounts and auditors' report

- 31.42 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.

- 31.43 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.

- 31.44 The report of the auditors must be annexed to all copies of the annual accounts required to be sent by the 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.

- 31.45 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.

- 31.46 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.

- 31.47 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 directors' report and annual accounts

- 31.48 The listed issuer shall include the information set out in rules 31.49 to 31.60 in its director's report and annual accounts.

Note: The annual report and accounts must contain, at a prominent position, and in bold type, a statement about the characteristics of GEM, in the form set out in rule 2.20.

31.49 A description of the principal activities of the group and, where 2 or more such activities are so described, a statement giving in respect of each such activity the turnover and contribution to trading results attributable to it.

Note: For these purposes, a “principal activity” is one which achieved profits and losses numerically equivalent to 10% or more of the consolidated profit or loss of the group.

31.50 Except where the listed issuer is a banking company, a geographical analysis of consolidated turnover and, if the contribution to profit or loss from a specific area is abnormal in nature, of contribution to trading results of those trading operations carried on by the issuer and/or its subsidiaries outside the country in which the main place of business of the listed issuer (or the group of which the listed issuer is a member) is situated, unless such operations comprise less than 10% of the consolidated turnover and 10% of the consolidated trading results of the group.

Notes: 1 Transactions within the group should be excluded.

2 A broad geographical analysis of net turnover by way of figures or percentages, given by market (not necessarily given country by country), will be acceptable. Where analysis is required, the analysis should be by continent but if 50% of total overseas operations relates to one continent, a further analysis, for example, by country within that continent, will be required. Overseas operations include direct exports from the country in which the main place of business of the listed issuer (or the group of which the issuer is a member) is situated and activities carried out otherwise than in such country.

3 In respect of trading results an appropriate statement should be included where, for a proper appraisal of the business of the listed issuer (or the group of which the issuer is a member), holders of listed debt securities should be aware of significant contributions derived from activities carried out in any one territory. No analysis of the contribution to trading results is required unless the contribution to profit or loss from a specific area is “abnormal” in nature. “Abnormal” is defined as substantially out of line with the normal ratio of profit to turnover. For example, if a 40% profit is earned by the group in relation to turnover in one continent, compared with 10% on turnover elsewhere, this fact should be made apparent.

31.51 A statement showing:—

- (1) the name of every subsidiary, its principal country of operation, its country of incorporation or other establishment and the kind of legal entity it is registered as (for the purpose of relevant jurisdiction); and
- (2) particulars of the issued share capital and debt securities of every subsidiary; and
- (3) the nature of the business of every subsidiary..

provided that if, in the opinion of the directors of the listed issuer, the number of them is such that compliance with this rule would result in particulars of excessive length being given, compliance with this rule shall not be required except in the case of subsidiaries carrying on a business the results of the carrying on of which, in the opinion of the directors, materially affected the amount of the profit or loss of the group or the amount of the assets of the group.

31.52 Details of the classes and numbers of any convertible debt securities, options, warrants or similar rights issued or granted by the listed issuer or any of its subsidiaries during the financial year, together with the consideration received by the listed issuer or any of its subsidiaries therefor.

- 31.53 Particulars of any exercise made during the financial year of any conversion or subscription rights under any convertible debt securities, options, warrants or similar rights issued or granted at any time by the listed issuer or any of its subsidiaries.
- 31.54 Particulars of any redemption or purchase or cancellation by the listed issuer or any of its subsidiaries of its redeemable debt securities and the amount of such debt securities outstanding after any such redemption or purchase or cancellation has been made. Any such statement must distinguish between those listed securities which are purchased by the issuer (and, therefore, cancelled) and those which are purchased by a subsidiary of the issuer.
- 31.55 In the event of trading results shown by the accounts for the period under review differing materially from any published forecast made by the listed issuer, an explanation for the difference.
- 31.56 A statement as to the reasons for any significant departure from accounting standards approved by the Hong Kong Society of Accountants or the International Accounting Standards Committee.
- 31.57 Except where the listed issuer is a banking company, a statement as at the end of the financial year showing as regards, firstly, bank loans and overdrafts and, secondly, other borrowings of the group, the aggregate amounts repayable:—
- (1) on demand or within a period not exceeding 1 year;
 - (2) within a period of more than 1 year but not exceeding 2 years;
 - (3) within a period of more than 2 years but not exceeding 5 years; and
 - (4) within a period of more than 5 years.
- 31.58 In respect of the financial year, a statement of the amount of interest capitalised by the group during the year.
- 31.59 Where the issuer is entitled to avail itself, and has availed itself, of the benefit of any of the provisions of Part III of the Tenth Schedule to the Companies Ordinance, nothing herein shall require any financial information to be included in the directors' report and accounts which need not be disclosed in a balance sheet or profit and loss account of the listed issuer which is drawn up in accordance with that Ordinance by virtue of any of those provisions or as a direct effect or result of any of those provisions.
- 31.60 If the relevant annual accounts do not give a true and fair view of the state of affairs and profit or loss and cash flow of the listed issuer or group, more detailed and/or additional information must be provided.

Note: If listed issuers are in doubt as to what more detailed and/or additional information should be provided, they should apply to the Exchange for guidance.

Summary financial reports

- 31.61 Summary financial reports of listed issuers shall comply with the disclosure requirements set out in the Companies (Summary Financial Reports of Listed Companies) Regulation.