

▶ Amendments to the Main Board and GEM Listing Rules



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**CHANGES TO MAIN BOARD LISTING RULES ONLY
RELATING TO INITIAL LISTING CRITERIA AND
CONTINUING OBLIGATIONS
EFFECTIVE MARCH 31 2004**

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Initial Listing Criteria

Trading Record Period and Management and Ownership Continuity

Generally an applicant must have :

- (i) a trading record of not less than 3 financial years
- (ii) management continuity for the 3 financial year trading track period; and
- (iii) ownership continuity and control for at least the most recent audited financial year.

Financial Standards

The previous profit requirement has been maintained as one of the quantitative tests.

2 alternative tests have been introduced.

Initial Listing Criteria (Cont'd)

Market Capitalization/Revenue Test (Rule 8.05(3))

Requirements are:

- (1) a market capitalization of at least HK\$4 billion at the time of listing;
- (2) revenue of at least HK\$500 million for the most recent audited financial year;
- (3) at least 1,000 shareholders at the time of listing;
- (4) a trading record of not less than 3 financial years;
- (5) management continuity for at least the 3 preceding financial years; and
- (6) ownership continuity and control for at least the most recent audited financial year.

Initial Listing Criteria (Cont'd)

Waiver of 3 financial year Trading Track Record

The Exchange will grant a waiver of the 3 financial year trading record requirement under substantially the same management (required under (4) and (5) above) if applicant can satisfy the Exchange:

- (1) as to management continuity for the most recent audited financial year; and
- (2) that its directors and management have sufficient and satisfactory experience of at least 3 years in the applicant's line of business and industry.

Initial Listing Criteria (Cont'd)

Market Capitalization/Revenue/Cash Flow Test (Rule 8.05(2))

Requirements are:

- (1) a market capitalization of at least HK\$2 billion at the time of listing;
- (2) revenue of at least HK\$500 million for the most recent audited financial year;
- (3) positive cash flow from operating activities of the new applicant or its group of at least HK\$100 million in aggregate for the 3 preceding financial years;
- (4) a trading record of not less than 3 financial years;
- (5) management continuity for at least the 3 preceding financial years; and
- (6) ownership continuity and control for at least the most recent audited financial year.

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Initial Listing Criteria (Cont'd)

Calculation of Revenue

For both the Market Capitalization/Revenue Test and the Market Capitalization /Revenue/Cash Flow Test, only revenue arising from the applicant's principal activities and not items of revenue or gains arising incidentally will be recognized.

Revenue from 'book transactions' is disregarded.

Marketing Capitalization

Increase of Minimum Expected Market Capitalization at Time of Listing

Initial minimum expected market capitalization increased to HK\$200 million (from HK\$100 million).

Applicants listing under the market capitalization/revenue test or market capitalization/revenue/cash flow test must meet applicable standards of HK\$4 billion and HK\$2 billion, respectively.

Determination of Market Capitalization

Expected market capitalization at the time of listing is calculated on the basis of all issued share capital of the issuer including:

- (i) the class of securities to be listed;
- (ii) any other class(es) of securities that are unlisted or listed on other regulated markets.

The expected issue price of the securities to be listed is used in determining the market value of other classes of securities that are unlisted or listed on other markets.

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Increase in the Minimum Number of Shareholders at the Time of Listing

The minimum number of shareholders at the time of listing has been increased to 300 (except where issuer chooses the market capitalization/revenue test which requires a minimum of 1,000 shareholders).

Public Float

The Rules require:

- (1) a 25% public float;
- (2) that the expected market capitalization of shares held by the public at the time of listing must be at least HK\$50 million.

Amendments require that where a listing applicant has more than 1 class of securities, the total securities held by the public ***on all regulated market(s) including the Exchange*** must be at least 25% of the issuer's total issued share capital. The Securities to be listed on the Exchange must not be less than 15% of the issuer's total issued share capital, having an expected market capitalization at the time of listing of at least HK\$50 million.

Increase in the Minimum Number of Shareholders at the Time of Listing (Cont')

Exchange's Discretion to Accept Lower Public Float (Rule 8.08(1)(d))

Rules amended so that:

- (1) the minimum percentage of public float which the Exchange may accept is between 15% (instead of 10%) and 25%; and
- (2) the issuer's expected market capitalization at time of listing must exceed HK\$10 billion (instead of HK\$ 4 billion).

This public float waiver is only available on initial listing. It cannot be applied for after listing if an issuer later satisfies HK\$10 billion market capitalization.

This does not affect issuers that have been granted a waiver before March 31 2004.

Increase in the Minimum Number of Shareholders at the Time of Listing (Cont')

Other amendments are:

- (1) Not more than 50% of the public float can be beneficially owned by the 3 largest public shareholders; and
- (2) The guideline of at least 3 holders for each HK\$1 million of the issue has been deleted.

Working Capital Sufficiency

New requirement for a working capital statement in the listing document. The applicant must be satisfied after due and careful enquiry that it and its subsidiary undertakings have sufficient working capital for the group's present requirements (ie. for at least the next 12 months).

The applicant's sponsor must provide written confirmation to the Exchange that:

- (1) it has obtained written confirmation from the listing applicant as to the sufficiency of the working capital (as above); and
- (2) it is satisfied that the confirmation has been given after due and careful enquiry by the applicant and that the persons or institutions providing finance have stated in writing that the financing facilities exist.

The Rules also expressly prohibit the issue of pre-deal research by the sponsor and/or underwriters unless the profit forecast is also included in the initial listing document. This applies equally to any forward looking statements.

Continuing Obligations

The Rules make the continuing obligations requirements in the Listing Agreement part of the Rules.

Timeliness of Accounts

The trading of securities of Main Board issuers who fail to publish their financial results on the due date will be immediately suspended. Trading will only be resumed on publication of the requisite financial statements.

Continuing Obligations (Cont'd)

Public Float

Amendments provide that:

- (1) Issuers must maintain the minimum public float specified in Rule 8.08 (ie 25%) at all times;
- (2) The Exchange will normally require suspension of trading if an issuer's public float falls below 15% (rather than 10% previously);
- (3) Where a public float waiver is granted at the time of initial listing under Rule 8.08(1)(d) :
 - (i) the % fixed at the time of listing (between 15% and 25%) will apply to the issuer throughout its listing; and
 - (ii) suspension of trading will be required where its public float falls below 10%.

Continuing Obligations (Cont'd)

Temporary Waiver

The Exchange may grant a temporary waiver of the minimum public float requirement where an issuer is the subject of a general offer under the Takeovers Code (including a privatization offer). The waiver will be for a reasonable period (normally 3 months) after the close of the general offer.

Exchange's Discretion not to Suspend Trading (Rule 13.32(4))

The Exchange retains its discretion not to suspend trading if satisfied that there remains an open market in the securities and the % shortfall arises purely from an increased or new holding by a person or entity (which the Exchange expects to be institutional investors with a wide spread of investments) that becomes a connected person only because he is a substantial shareholder of the issuer or any of its subsidiaries after such acquisition and is otherwise independent of the issuer. He must not be the controlling or single largest shareholder.

The amended Rules also require confirmation of the sufficiency of the public float in an issuer's annual reports.

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Continuing Obligations (Cont'd)

Spread of Shareholders

If the Exchange has reason to believe that the issuer's securities lack a genuine open market, or may be concentrated in the hands of a few shareholders to the detriment or without the knowledge of the investing public, the issuer may be required to:

- (a) publish an announcement to that effect and reminding the public to exercise caution when dealing in its securities; and
- (b) conduct an investigation under Section 329 Securities and Futures Ordinance and publish the results of the investigation.

Disclosure Requirements at the Time of Listing

Protection of Shareholders' Rights – Over-Allotment Option and Price Stabilizing Activities

Rules require disclosure of an over-allotment option or proposed price stabilizing activities.

Information to be disclosed includes:

- (1) confirmation that price stabilizing activities will be conducted in accordance with relevant Hong Kong laws;
- (2) reason for entering the price stabilising activities;
- (3) number of shares subject to the over-allotment option, the option price, whether the issue or sale of shares under the over-allotment option will be on the same terms and conditions as the shares of the main offering;
- (4) any other terms of the option; and
- (5) the purpose for which the option is granted.

Disclosure Requirements at the Time of Listing (Cont'd)

Corporate Reporting and Disclosure of Information

Information about persons in control of the Listing Applicant

New requirement that listing document includes a description of the matters relied on by the issuer in making the statement that it is capable of carrying on its business independently of its controlling shareholder.

Information about the Issuer's Management

Amended Rules require:

- (1) disclosure of the management expertise and experience of the issuer's directors and senior management;
- (2) for issuers listing under the market capitalization/ revenue test and applicants who are mining companies or infrastructure companies seeking a waiver under Rule 8.05B, disclosure of the management expertise and experience of the issuer's directors and senior management for at least 3 years in the issuer's industry and line of business.

Disclosure Requirements at the Time of Listing (Cont'd)

Prospects of the Group

Where a profit forecast is included in the listing document, it must be prepared on a basis consistent with the applicant's normal accounting policies.

Effective Date

New disclosure requirements became effective on March 31 2004.

**AMENDMENTS TO
THE MAIN BOARD AND
GEM LISTING RULES
RELATING TO
CORPORATE GOVERNANCE

EFFECTIVE MARCH 31 2004**

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Notifiable Transactions (Except Connected Transactions)

Alignment of MB and GEM Definition of 'transaction' for purposes of Notifiable Transactions

The new definition:

- (a) includes the grant of an indemnity or a guarantee or the provision of financial assistance by a listed issuer except (i) where the issuer is a 'banking company' acting in its ordinary and usual course of business or (ii) to a subsidiary;
- (b) excludes the issue of new securities for cash;
- (c) excludes revenue transactions in the ordinary and usual course of business, except where a listed issuer enters into or terminates operating leases representing a 200% or more increase in the issuer's operations through such lease arrangements.

Notifiable Transactions (Except Connected Transactions)(Cont'd)

VSA

- Issuers must comply with VSA provisions irrespective of whether the assets acquired are listed or not.
- GEM aligned with MB Rules – No shareholder is required to abstain from voting at a shareholders' meeting approving a VSA unless they have a material interest in the transaction.
- MB Rules amended to follow GEM Rules – written shareholders' approval not acceptable for VSAs

Very Substantial Disposals

- New notifiable transaction where tests produce ratio of 75% or more.
- VSDs will require shareholders' approval.
- No shareholder is required to abstain from voting unless he has a material interest.
- Written shareholders' approval not acceptable.

Reserve Takeovers

The GEM provisions relating to reverse takeovers dealing with back-door listings have been amended and incorporated into the MB Rules. The Exchange will treat a listed issuer proposing a reverse take-over as if it were a new listing applicant.

The amended definition of 'reverse takeover' includes:

- (a) an agreement or arrangement involving an acquisition/series of acquisitions of assets constituting a very substantial acquisition where there is or which will result in a change in control (as defined in the Takeovers Code (currently a holding of 30% or more of the voting rights)) of the listed issuer; or
- (b) the agreement or arrangement involves an acquisition/series of acquisitions of assets from the incoming controlling shareholder(s) within 24 months after the change in control that had not been regarded as a reverse takeover, which individually or together reach the threshold for a VSA.

Reserve Takeovers (Cont'd)

Shareholders' approval of reverse takeovers

Shareholders with a material interest are required to abstain from voting.

Where there is a change in control of the listed issuer and the existing controlling shareholder(s) will dispose of shares to any person, the existing controlling shareholder(s) cannot vote in favour of the acquisition of assets from the incoming controlling shareholder or his associates at the time of the change in control.

Restriction on Disposal

Rules amended to allow a listed issuer to dispose of its existing business within 24 months of a change in control, if the assets acquired from the incoming controlling shareholder(s) or its/their associates and any other assets acquired by the listed issuer after the change in control, can meet the trading record requirement.

New Tests

The following size tests have been adopted for the classification of notifiable transactions:

Total assets test

Profits test (No change)

Revenue test

Consideration test

Equity capital test (No change)

- (a) The **total assets test** - stand-alone test to replace net assets test. 'Total assets' means the fixed assets (including intangible assets) plus current and non-current assets.
- (b) The new **consideration test** is calculated by comparing the consideration for the transaction with the total market capitalization of the listed issuer (ie. the average closing price of the issuer's securities as stated in the Exchange's daily quotations sheets for the 5 business days immediately preceding the date of the transaction) .
- (c) The **revenue test** measures the level of activity of the target against that of the issuer. 'Revenue' means revenue arising from principal activities (not revenue arising incidentally).

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Revised thresholds for classifying transactions

	<u>Revised thresholds (based on new size tests)</u>
Share transaction	less than 5%
Discloseable transaction	5% or more but less than 25%
Major transaction	25% or more, but less than 100% for acquisitions and less than 75% for disposals
Very Substantial Acquisition	100% or more
Very Substantial Disposal	75% or more

Valuation of Properties, Vessels and Aircraft

Where the issuer to assume repayment obligations for outstanding mortgages or loans, the outstanding amounts must be aggregated to the consideration for the numerator of the assets test. Requirement extended to shipping and aircraft companies.

Valuation of Assets

Any valuation of assets (other than land and buildings) or businesses based on discounted cash flows or projections of profits, earnings or cash flows will be regarded as a profit forecast subject to the Rules' requirements for profit forecasts.

Options

GEM – Amended to reduce the premium threshold from 15% to 10% for computing the size tests for notifiable transactions and de minimis thresholds for connected transactions where options are exercisable at the discretion of issuers.

Main Board – Amended to follow the GEM on the grant, acquisition, transfer or exercise of an option by an issuer (ie. as amended above).

Dilution of interest in subsidiaries resulting in deemed disposals

The requirements relating to deemed disposal of interests in subsidiaries apply to allotments of share capital for any consideration – not just ‘cash consideration’.

General Information in all Announcements of Notifiable Transactions

Rule amendments require disclosure of further information including:

- (1) the book value and valuation (if any) of assets the subject of the transaction;
- (2) confirmation that to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counter-party and its ultimate beneficial owner are 3rd parties independent of the issuer and its connected persons;
- (3) details of any guarantee or security given;
- (4) reasons for entering into the transaction and statement that the directors believe the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole;
- (5) the original acquisition cost of assets to be sold to connected persons where the issuer has held the assets for 12 months or less;
- (6) if the transaction involves the disposal of an interest in a subsidiary by the issuer, a declaration whether the subsidiary will still be a subsidiary after the transaction.

Disclosure of Financial Information in Circular on Notifiable Transactions

- (a) For a VSA, reverse takeover or major acquisition involving acquisition of a company or business, listed issuer must prepare accountants' report on target for last 3 financial years. Must also include in circular to shareholders a comparative table of audited financial statements taken from listed issuer's annual reports for last 3 financial years.
- (b) If the target asset of a VSA, reverse takeover or major acquisition is a revenue generating asset (other than a company or business) with a net income stream or valuation, circular must include information for last 3 financial years on the net revenue and valuation (if available) for the asset.
- (c) Financial information on a target contained in a shareholders circular on major acquisitions, VSAs and reverse takeovers must be prepared using accounting policies materially consistent with those of the listed issuer.
- (d) For VSDs involving disposal of a company or business, listed issuer must prepare an accountants' report on the existing group for last 3 financial years with the business/company being disposed of shown separately as a discontinuing operation. If a revenue generating asset with an identifiable net income stream or valuation is being disposed of, the circular must include information for the last 3 financial years on the net revenue and valuation.

Disclosure of Financial Information in Circular on Notifiable Transactions (Cont'd)

- (e) Listed issuer must also include a management discussion and analysis in the circular:
- on the target for a major acquisition;
 - on the enlarged group for a VSA; and
 - on the remaining group for a VSD.
- (f) Circulars for VSAs, reverse takeovers, major acquisitions & VSDs must contain pro-forma financial information on the listed group after the transaction.
- (g) For VSAs, major acquisitions or reverse takeovers involving acquisition of a company or business, circular must include pro-forma financial information on enlarged group for latest financial year.

Disclosure of Financial Information in Circular on Notifiable Transactions (Cont'd)

- (h) If target of a VSA or reverse takeover is revenue-generating asset with identifiable net income stream or valuation, the circular must include pro-forma P&L statement and net assets statement on the enlarged group for the latest financial year.

- (i) For a VSD involving disposal of a co. or business, circular must include pro-forma financial info on remaining group for latest financial year. If revenue generating asset with identifiable income stream being disposed of, circular must include pro-forma P&L statement and net assets statement on remaining group for latest financial year.

Connected Transactions

Definition of Connected Person – GEM Rules are amended in line with MB Rules to include a director, chief executive or substantial shareholder of any subsidiary within the listed group (ie. not only of the listed issuer) or its associates.

Definition of Associate – Amended to include:

- (a) a company controlled by trustees of a trust of which a director, chief executive or substantial shareholder or any of his family interests or a relevant company is a beneficiary; and
- (b) a subsidiary or holding company of a trustee-controlled company and fellow subsidiaries of such holding company.

Relatives of a connected person as deemed associates

Main Board and GEM Rules aligned as to which relatives are deemed to be ‘associates’ of a connected person.

Connected Transactions (Cont'd)

Transactions with non wholly-owned subsidiaries

Non wholly-owned subsidiaries will not be treated as 'connected persons' if no connected persons of the issuer (other than at the level of its subsidiaries) are together a substantial shareholder (ie. holding >10% of the voting rights) in the non wholly-owned subsidiaries.

Classification of connected transactions

Connected transactions subject to the same size tests (except for profits test) as notifiable transactions. The relevant tests are:

- total assets test
- consideration test
- revenue test
- equity capital test

Connected Transactions (Cont'd)

Revised percentage thresholds for classification of connected transactions

De minimis threshold for exemption from reporting, announcement and independent shareholders' approval requirements

Each of the size tests (except profits) is less than 0.1%;or
Each size test (except profits) is equal to or more than 0.1% but less than 2.5% and the consideration is less than HK\$1million

De minimis threshold for exemption from independent shareholders' approval requirement

Each size test (except profits) is less than 2.5%;or
Each size test (except profits) is equal to or more than 2.5% but less than 25% and the consideration is less than HK\$10 million

Connected Transactions (Cont'd)

Continuing Connected Transactions

MB Rules amended to include a new category of “continuing connected transaction”.

Independent shareholders’ approval required for a continuing connected transaction when an issuer first enters into the transaction, when the agreement is renewed or there is a material change to the terms of the agreement and when the maximum aggregate annual value set in respect of the transaction is exceeded.

Connected Transactions (Cont'd)

GEM and MB require issuers proposing to enter a CCT which is not exempt from reporting, announcement and independent shareholders' approval to:

- (i) enter a written agreement with the connected person for a fixed period not exceeding 3 years on normal commercial terms;
- (ii) set a maximum aggregate annual value (cap), the basis of which must be disclosed;
- (iii) comply with the relevant reporting and announcement requirements; and
- (iv) comply with the independent shareholders' approval requirements unless exempt.

Continuing transactions become continuing connected transactions

If a continuing transaction becomes a continuing *connected* transaction, the issuer must comply with all applicable reporting and disclosure requirements.

Any variation or renewal of the agreement requires compliance with applicable reporting, disclosure and independent shareholders' approval requirements.

Connected Transactions (Cont'd)

Financial Assistance as a Connected Transaction

Provision of Financial Assistance by a Listed Issuer

The provision of financial assistance by a listed issuer will only be regarded as a connected transaction if it is made:

- (i) to a connected person; or
- (ii) to a company in which both the listed issuer and a connected person (at the listed issuer's level) are shareholders and the connected person(s) of the listed issuer (at the level of the listed issuer) is/are, individually or together, entitled to exercise, or control the exercise of, 10% or more of the voting power at general meetings.

Connected Transactions (Cont'd)

Exemption from Reporting, Announcement and Independent Shareholders' Approval Requirement

Where the listed issuer (other than a “banking company”) provides financial assistance to a company within (ii) above, the financial assistance will be exempt from the reporting, announcement and independent shareholders' approval requirements if it is on normal commercial terms; and

- (i) it is in proportion to the listed issuer's equity interest in the company; and
- (ii) any guarantees given by the listed issuer are on a several (not joint and several) basis.

Otherwise, the financial assistance will be subject to the reporting, announcement and, if applicable, independent shareholders' approval requirements unless exempt under the de minimis exception rules.

Connected Transactions (Cont'd)

Provision of Financial Assistance to a Listed Issuer

The provision of financial assistance to a listed issuer will be regarded as a connected transaction if provided by:

- (i) a connected person; or
- (ii) a company in which both the listed issuer and a connected person (at the level of the listed issuer) are shareholders and the connected person(s) of the listed issuer (at the level of the listed issuer) is/are, individually or together, entitled to exercise, or control the exercise of, 10% or more of the voting power at general meetings.

Connected Transactions (Cont'd)

Exemption from Reporting, Announcement and Independent Shareholders' Approval Requirements

Financial assistance provided *to* a listed issuer by a connected person or a company within (ii) above is exempt from the reporting, announcement and independent shareholders' approval requirements if:

- (i) it is on normal commercial terms (or better to the listed issuer); and
- (ii) no security over the assets of the listed issuer is given.

Connected Transactions (Cont'd)

Meaning of Subsidiary

Definition of “subsidiary” expanded to include:

- (a) any entity which is accounted for and consolidated in the audited consolidated accounts of an issuer as a subsidiary under the applicable Hong Kong Financial Reporting Standards (“HKFRS”) or International Financial Reporting Standards (“IFRS”); and
- (b) any entity which will, as a result of acquisition of its equity interest by the issuer, be accounted for and consolidated in the next audited consolidated accounts of the issuer under the applicable HKFRS or IFRS.

Dilution of Shareholders' Interests

Refreshment of general mandate

Upper limit on number of shares which may be issued under a general mandate (ie. 20% of existing issued share capital) retained.

Amendments:

- (1) allow companies to refresh general mandate once a year subject to shareholders' approval (normally at the AGM);
- (2) subsequent refreshments require independent shareholders' approval subject to an exemption for a top-up of the unused portion of a previous general mandate after a pre-emptive issue of shares to existing shareholders. Such top-ups only require shareholders' approval.

New Price Restriction on the Issue of Shares under the General Mandate

Placing price or subscription price under top-up arrangements must not represent a discount of 20% or more to the bench-marked price of the securities, unless issuer is in severe financial difficulties or there are other exceptional circumstances.

Where securities are issued under the general mandate at a discount of 20% or more, the issuer must publish a separate announcement disclosing:

- (i) if less than 10 allottees, the name of each allottee and confirmation of its independence from the issuer; and
- (ii) if more than 10 allottees, the name of each allottee subscribing 5% or more and a generic description of all other allottees, and confirmation of their independence from the issuer.

Placing and Top-up Subscription

On a placing and top-up by a connected person to an independent third party, the exemption from independent shareholders' approval applies only if the **number** of new shares subscribed by connected person does not exceed the **number** of shares placed by him (ie. he can no longer maintain % interest before and after placing).

MB Rules also amended to follow GEM Rules – the exemption applies only where the new shares are issued within 14 days of the connected person signing an agreement to reduce his shareholding.

Rights issues and open offers

The requirement for independent shareholders' approval for any rights issue or open offer which would increase either the issued share capital or market capitalization of the issuer by more than 50% is retained.

Amendments clarify determination of 50% threshold. The latest rights issue or open offer is aggregated with:

- (i) any other rights issues or open offers announced by the issuer (a) within the 12 month period immediately preceding the announcement of the proposed rights issue or offer or (b) prior to such 12 month period where dealing in the shares issued under the rights issue or open offer started within such 12 month period; and
- (ii) any bonus securities, warrants or other convertible securities (assuming full conversion) granted to shareholders as part of such rights issues or open offers.

Rights issues and open offers (Cont'd)

The Rules on open offers follow rules on rights issues in providing for issuers to make arrangements to dispose of securities not validly applied for by shareholders provided the securities are made available for subscription by all shareholders and allocated on a fair basis.

Rules clarify that where an open offer is underwritten or sub-underwritten by a connected person, it is exempt from shareholders' approval provided arrangements are made as above.

Where an open offer which is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder fails to make such arrangements or makes other arrangements, shareholders' approval is required.

Share Repurchases

MB 25% monthly share repurchase restriction removed.

New restriction on price of repurchases

No more than 5% of the average closing market price for the previous 5 days on which the shares are traded on the Exchange/GEM.

Dealing Restriction Period

Rules amended to take into account issuers' delay in publication of their results announcements.

Withdrawal of primary listing on the Exchange

In line with proposed changes to the Takeovers Code, any withdrawal of primary listing will be subject to:

- (a) the approval of at least 75% of the votes of independent shareholders;
- (b) the number of votes cast against the resolution must not be more than 10% of the votes attaching to shares held by independent shareholders; and
- (c) shareholders being offered a reasonable cash or other alternative.

Issuers can withdraw secondary listing status on the Main Board if:

- (a) they have complied with all relevant laws, regulations and listing rules of the jurisdiction of their primary listing and of their jurisdiction of incorporation; and
- (b) shareholders given at least 3 months' prior notice.

Disposal of Controlling Shareholders' Interest

Commencement of Lock-up Period

The lock-up periods for the disposal of interests by controlling shareholders of MB issuers/significant shareholders and initial management shareholders of GEM issuers will commence on the date **by reference to which disclosure of the shareholding is made in the listing document.**

Any offer for sale disclosed in a listing document is not subject to the restriction.

Controlling Shareholders: Agreement for Disposal of Shares

MB Rules amended in line with GEM Rules to expressly prohibit controlling shareholders from *entering into any agreement* to dispose of their shares or creating any options, rights, interests or encumbrances in respect of their shares during the restriction periods.

Rules retain the previous exceptions to the restrictions including a pledge or charge to an authorized institution as security for a bona fide commercial loan.

Disposal of Controlling Shareholders' Interest (Cont'd)

Deemed Disposal of Controlling Shareholders' Interests

Issuers are prohibited, for 6 months after their shares commence dealing on the Exchange, from issuing (or agreeing to issue) shares or securities convertible into equity securities. Exceptions for:

- (a) the issue of shares, where listing has been approved by the Exchange, pursuant to a share option scheme;
- (b) the exercise of conversion rights of warrants issued as part of the IPO;
- (c) any capitalization issue, capital reduction or consolidation or sub-division of shares; and
- (d) the issue of shares or securities pursuant to an agreement entered into before the commencement of dealing, the material terms of which have been disclosed in the listing document for the IPO.

Voting by Shareholders

Poll Vote Mandatory

- connected transactions;
- all resolutions requiring independent shareholders' approval;
- granting options to a substantial shareholder, an INED or their associates;
- transactions in which a shareholder has a 'material interest' and is therefore required to abstain from voting; and
- (GEM issuer's only) any issue of shares or equity securities convertible into equity securities of an issuer pursuant to GEM Rule 17.29(5).

Voting by Shareholders (Cont'd)

New explanation of “material interest”

Factors to be taken into account include:

- whether the shareholder or his associate is a party to the transaction or arrangement;
- whether the transaction or arrangement confers upon the shareholder or his associate a benefit (whether economic or otherwise) not available to the issuer’s other shareholders; and

The issuer must publish the results of a poll on the business day following the meeting.

Voting of Interested Shareholders on VSAs, VSDs and Major Transactions

GEM requirement for controlling shareholders to abstain on resolutions approving VSA or reverse takeover removed.

GEM Rules amended to follow MB Rules - shareholders (and associates) required to abstain from voting only if the shareholder has a **material** interest in the transaction.

Where any shareholder is required to abstain from voting, the vote must be taken on a poll.

Voting by Controlling Shareholders

Controlling shareholders required to abstain from voting on:

- (a) rights issues and open offers when either issued share capital or market capitalization of issuer will increase by more than 50%;
- (b) withdrawal of a primary listing on the Exchange (subject to revised voting thresholds);
- (c) on a fundamental change in principal business activities within 12 months of commencement of dealings for MB issuers (during the financial year of commencement of dealings or following 2 financial years for GEM issuers); and
- (d) on 2nd and subsequent refreshments of the general mandate.

Amendments provide that:

- controlling shareholders are only required to abstain from voting *in favour* (ie. they can vote against);
- if no controlling shareholders, the issuer's chief executive and directors (excluding INEDs) and associates must abstain from voting in favour; and

Voting by Controlling Shareholders (Cont'd)

- the Exchange reserves the right to require the following to abstain from voting in favour :
 - (a) parties who were controlling shareholders when the decision for the transaction was made or approved by the board (and who are still shareholders, but not controlling shareholders, at the time of the general meeting), and their associates; and
 - (b) if no controlling shareholders, directors (other than INEDs) and the chief executive of the issuer when the decision for the transaction was made or approved by the board, and their associates.

Waiver of Requirement to hold General Meetings

Major and connected transactions may be approved by written resolutions of shareholders (being independent shareholders for connected transactions) in lieu of an EGM if:

- (i) no shareholder would be required to abstain from voting at an EGM; and
- (ii) the written shareholders'/independent shareholders' approval is obtained from a shareholder or *closely allied group of shareholders* who (together) hold more than 50% in nominal value of the shares giving the right to vote at a general meeting approving the transaction.

Directors and Board Practices

Independent Non Executive Directors

Further guidelines for determination of the independence of INEDs included in the Rules.

Examples of where independence will be questioned are where the director:

- (1) holds more than 1% of the issued share capital;
- (2) has received the issuer's shares as a gift or with financial assistance from the issuer or a connected person;
- (3) is a partner or director of a professional adviser to the issuer within the previous year or an employee involved in giving advice;
- (4) is or was in the previous 2 years a director or executive of the issuer, its group companies or connected persons.

Independent Non Executive Directors

Further amendments require:

- an INED to provide the Exchange with written confirmation of the factors concerning his independence and that there are no other factors affecting his independence;
- INEDs to inform the Exchange of any change of circumstances affecting independence;
- each INED to provide annual confirmation of his independence to the listed issuer;
- the listed issuer to confirm in its annual report whether it has received such confirmation and whether it considers the INED to be independent; and
- where a proposed INED fails to meet any independence guideline(s), the listed issuer must satisfy the Exchange that the person is independent.

Independent Non Executive Directors (Cont'd)

Qualification of INEDs

Rules require appointment of at least one INED with appropriate professional qualifications or accounting or related financial management expertise.

Minimum Number of INEDs

Rules require appointment of a minimum of 3 INEDs. Listed issuer to inform the Exchange and publish an announcement immediately if the number of its INEDs falls below the minimum or it does not have one qualified INED.

The Code on Corporate Governance Practices includes as a recommended best practice that a listed issuer should appoint INEDs representing at least one third of the board.

Independent Board Committee

For connected transactions and transactions requiring independent shareholders' approval issuers are required by the Rules to:

- (i) establish an independent board committee (consisting only of INEDs) to advise shareholders on the transaction or arrangement and on how to vote, taking into account the recommendations of the independent financial adviser (see (ii) below); and
- (ii) appoint an independent financial adviser acceptable to the Exchange to recommend to the independent board committee and the shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether the transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote.

These provisions also apply to spin-off proposals requiring shareholders' approval for MB issuers and issues of shares or convertible securities for GEM issuers.

Establishment of Governance Committees

Audit Committee

Establishment of an audit committee is compulsory under the Rules.

Committee to be made up only of non-executive directors, the majority must be INEDs of the issuer. Minimum of 3 members:

one must be an INED with appropriate professional qualifications or accounting or related financial management expertise.

If an issuer fails to establish an audit committee or does not meet the requirements for its constitution, it must immediately inform the Exchange and publish an announcement. It has 3 months to rectify the situation.

Establishment of Governance Committees (Cont'd)

Remuneration Committee

The establishment of a remuneration committee comprising a majority of INEDs is a minimum standard in the draft Code.

Nomination Committee

The establishment of a nomination committee comprising a majority of INEDs is a recommended best practice in the draft Code.

Directors' contracts, remuneration and appointments

Directors' Service Contracts

Prior approval of shareholders required for a service contract which:

- (i) may exceed 3 years; or
- (ii) requires the issuer to give more than one year's notice or pay compensation of more than one year's remuneration, to terminate the contract.

Disclosure of Directors' Remuneration

The Rules require listed issuers to disclose individual directors' and past directors' emoluments on a named basis in its financial statements.

Directors' contracts, remuneration and appointments

Change of Directors

Amendments require:

- (1) MB issuers to publish an announcement of any changes of directors;
- (2) MB and GEM issuers to include reasons for a director's resignation in the announcement;
- (3) Announcements of appointment of new directors to include biographical details.

Despatch of Notice of General Meetings and Circulars

MB Rules amended in line with GEM Rules – issuers must despatch circulars to shareholders *at the same time as, or before* giving notice of the general meeting to approve the transaction.

Any material information coming to the directors' attention after issue of the circular to be given to shareholders in a supplementary circular or newspaper announcement *at least 14 days before* the general meeting. General meetings must be postponed to comply with the 14 day requirement.

Notice of general meetings and meetings of creditors must be published by way of announcement.

**ISSUERS' OBLIGATIONS UNDER
LISTING RULE AMENDMENTS
RELATING TO SPONSORS AND
IFAS EFFECTIVE JANUARY 1 2005**

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Compliance Advisers

All listed issuers must appoint a Compliance Adviser from the date of listing until:

- for **Main Board issuers** – publication of financial results for the **first** full financial year after listing;
- for **GEM issuers** – publication of financial results for the **second** full financial year after listing;

Compliance Advisers (Cont'd)

Issuers must consult their Compliance Adviser:

- before publication of any regulatory announcement or report, circular or financial report;
- where a notifiable or connected transaction is contemplated (including share purchases and share repurchases);
- where the issuer proposes to use IPO proceeds other than as set out in the Listing Document or where its business activities, developments or results differ from information in the Listing Document;
- where the Exchange makes an inquiry as to unusual movements in the price or trading volume of the issuer's securities;

Where an issuer is required to appoint an IFA, the issuer must:

- give the IFA access to all persons, premises and documents relevant to performance of the IFA's duties;
- inform the IFA of material changes to information accessed by the IFA;
- obtain necessary consents for providing information to the IFA;

Experts' terms of engagement should give IFAs access to the expert, its reports, information relied on, correspondence etc.

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