RESPONSIBILITIES OF DIRECTORS OF COMPANIES LISTED ON THE MAIN BOARD OF THE STOCK EXCHANGE OF HONG KONG LIMITED

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INTRODUCTION

The purpose of this note is to outline the duties and obligations of the directors of a company listed on the Main Board of the Hong Kong Stock Exchange ("**HKEx**" or the "**Exchange**").

I. THE MAJOR SOURCES OF DIRECTORS' OBLIGATIONS

The continuing duties and obligations of the directors of the Company are derived from Hong Kong laws, the laws of the Company's jurisdiction of incorporation (if it is not a Hong Kong company) and non-statutory regulations and contract, including the following:

(a) common law and applicable Hong Kong legislation, including the Companies Ordinance and the Securities and Futures Ordinance of Hong Kong (the **"SFO"**);

(b) the Rules Governing the Listing of Securities on the Main Board (the **"Main Board Rules"**) and the Growth Enterprise Market (the "**GEM Rules**") of the Stock Exchange of Hong Kong Limited (together the "**Listing Rules**"), including the Corporate Governance Code contained therein (the "**Code**") and the Model Code for Securities Transactions by Directors of Listed Issuers contained therein;

(c) the Code on Takeovers and Mergers and the Code on Share Buy-backs (the "**Takeovers Code**");

(d) the Declaration and Undertaking (Form B of Appendix 5 to the Main Board Rules) which each director of a company listed on the Main Board is required to lodge with the Exchange; and

(e) the Guide on Directors' Duties issued by the Companies Registry.

II. DIRECTORS' DUTIES

1. Obligation to ensure compliance with the Listing Rules

A listed issuer undertakes in its application for listing to comply with the Listing Rules once its securities are listed on the Exchange. Under Main Board Rule 13.04, the directors of a listed issuer are collectively and individually responsible for ensuring that the listed issuer complies fully with the requirements of the Listing Rules. The directors of a company listed on the Main Board are required to file with the Exchange a Declaration and Undertaking in the form of Form B of Appendix 5 to the Main Board Listing Rules (or Form H of Appendix 5 to the Main Board Rules for PRC companies).

In Form B of Appendix 5 to the Main Board Rules, a director undertakes to:

(a) comply to the best of his ability with the Main Board Rules and use his best endeavours to ensure that the listed issuer complies with the Main Board Rules;

(b) comply to the best of his ability, and use his best endeavours to ensure the listed issuer's compliance, with the requirements of Parts XIVA (in relation to disclosure of inside information (i.e. price sensitive information)) and XV of the SFO (which sets out the requirements in relation to the disclosure of interests in the shares and debentures of the listed issuer and its associated companies), the Takeovers Code, the Code on Share Buy-backs and all other relevant securities laws and regulations from time to time in force in Hong Kong; and

(c) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange.

Any director who breaches any of the above undertakings will be subject to sanctions prescribed by the Listing Rules.

2. Directors' fiduciary duties and duties of skill, care and diligence

The Rules require directors, both collectively and individually, to fulfill fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law (Rule 3.08). According to Rule 3.08, this means that every director must, in the performance of his duties as a director:

(a) act honestly and in good faith in the interests of the company as a whole;

(b) act for a proper purpose;

(c) be answerable to the listed issuer for the application or misapplication of its assets;

(d) avoid actual and potential conflicts of interest and duty;

(e) disclose fully and fairly his interests in contracts with the listed issuer; and

(f) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the listed issuer.

Main Board Rule 3.08 also requires directors to take an active interest in the issuer's affairs, obtain a general understanding of its business and follow up anything untoward that comes to his/her attention. Delegating these functions is permissible but does not absolve directors from his/her responsibilities or from applying the required skill, care and diligence.

Directors' duties are summarised in the Companies Registry's Guide on Directors' Duties. Directors are required to comply with that guide and failure to do so may constitute a breach of the Listing Rules (paragraph 2.8 of Guidance Letter HKEx-GL62-13).

Statutory duty of skill, care and diligence under new Companies Ordinance

The new Companies Ordinance (Cap. 622) which came into effect on 3 March 2014 codified directors' duty of skill, care and diligence summarised in paragraph (f) of Main Board Rule 3.08 in section 465(1). The standard of skill, care and diligence expected of directors under paragraph (f) was considered too low since it used a subjective test. The standard expected was the degree of skill, care and diligence which can be reasonably expected from a person with the particular director's knowledge and experience.

Section 465(2) adopts a mixed objective and subjective test. The standard of care, skill and diligence required is that which would be exercised by a reasonably diligent person with:

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (the objective test); and

(b) the general knowledge, skill and experience that the director has (the subjective test).

The standard is higher than previously since the objective test in Section 465(2)(a) is a minimum standard and cannot be adjusted downwards to accommodate a person who is incapable of attaining the basic standard of what is reasonably expected of a reasonably diligent person carrying out the same function. The subjective test means that where a person has been appointed as a director because he has some special skill, knowledge or experience (for example an accountant), a higher standard of care, skill and diligence will be required of that director compared to directors without such special skill, knowledge or experience.

While section 465(2) of the Companies Ordinance does not apply directly to the directors of non-Hong Kong companies (i.e. companies incorporated outside Hong Kong), the directors of a non-Hong Kong company which is listed on the Exchange must comply with it since they are required by Rule 3.08 to exercise duties of skill, care and diligence to the standard set by Hong Kong law.

III. CONSEQUENCES OF NON-COMPLIANCE WITH THE MAIN BOARD RULES

Under Main Board Rule 2A.09, if a director breaches any of the Main Board Rules, the Exchange may respond with disciplinary procedures including but not limited to:

- issuing a private reprimand;
- issuing a public statement which involves criticism;
- issuing a public censure;
- reporting the offender's conduct to a regulatory authority (for example the Securities and Futures Commission (the "**SFC**")) or to an overseas regulatory authority;
- requiring a breach to be rectified or other remedial action taken within a stipulated period; and
- taking or refraining from taking such other action as the Exchange thinks fit.

If the Exchange considers that the listed issuer failed in a material manner to comply with the Main Board Rules, the Exchange may, under Main Board Rule 6.01(1), suspend dealings in the issuer's securities or cancel the listing of the issuer's securities.

Directors should also be aware that it is a criminal offence under section 384 of the SFO to intentionally or recklessly provide any information which is false or misleading in a material particular in any public disclosure document filed with Exchange or the SFC (this will include any document filed under the Listing Rules' continuing disclosure obligations). The offence carries a maximum penalty of 2 years' imprisonment and a fine of HK$1 million.

Under section 214 of the SFO, the court may make orders disqualifying a person from being a director of any corporation for up to fifteen years if he is found to be wholly or partly responsible for the misconduct of a company's affairs. Misconduct for these purposes will include where shareholders have not been given all the information with respect to the company's business or affairs which they might reasonably expect. In March 2010, the SFC disqualified two former executive directors of Warderly International Holdings Ltd for five years for failing to inform the company's shareholders that the company was in a substantially depleted financial position.

IV. DIRECTORS' LIABILITY FOR MISSTATEMENTS IN PROSPECTUS

The Listing Rules require an issuer's directors to take full responsibility for the contents of a prospectus. The prospectus must contain a responsibility statement which states that "*the directors, having made all reasonable enquiries, confirm that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other matters the omission of which would make any statement herein or this document misleading.*"

Untrue statements contained in a prospectus or the omission of material information ("**misstatements**") may result in criminal and/or civil liability for the issuer's directors. The principal areas of liability include:

- **Section 342E Companies (Winding Up and Miscellaneous Provisions) Ordinance** – imposes civil liability for prospectus misstatements on specified persons (including directors)
- **Section 342F Companies (Winding Up and Miscellaneous Provisions) Ordinance** – imposes criminal liability for prospectus misstatements on persons who "authorized the issue of a prospectus" (which may include the directors)
- **Section 108(1) SFO** – imposes civil liability for making any fraudulent, reckless or negligent misrepresentation which induces others to invest money
- **Sections 277 & 281 SFO** – impose civil liability for disclosing false or misleading information to induce dealings in securities
- **Section 391 SFO –** imposes civil liability for false or misleading public communications to induce dealings in securities
- **Section 107 SFO** – imposes criminal liability for making any fraudulent or reckless misrepresentation to induce others to deal in securities
- **Section 298 SFO** – imposes criminal liability for disclosure of false or misleading information to induce dealings
- **Section 384 SFO** – imposes criminal liability for provision of false or misleading information in a prospectus or other document filed with the Exchange or the SFC

Liability can also arise: (i) under the Misrepresentation Ordinance or the Theft Ordinance; (ii) in tort; or (iii) under contract.

For further information, please see the attached note "Potential Liabilities under Hong Kong Law in Connection with the Publication of a Prospectus on the Listing of a Company on the Stock Exchange of Hong Kong".

V. RESTRICTION ON DISCLOSURE OF MATERIAL INFORMATION TO ANALYSTS

The Hong Kong prospectus is the sole document by which the company sells its shares in the Hong Kong IPO.

Any other additional document by which securities are offered to the public (or members of the public) could constitute a "prospectus" under Hong Kong law, in which case:

- the prospectus content requirements will apply;

- the translation requirements will apply; and
- the registration requirement will apply.

Breach of the prospectus laws is a criminal offence.

To avoid the risk of liability, the directors and senior management of the company must ensure that ***no material information about the company or its securities is provided to any investment research analyst***, unless the information is reasonably expected to be included in the prospectus or is publicly available.

- When assessing whether any such information is "material" information, the test that should be applied is whether the information is material to an investor in forming a valid and justifiable opinion of the company and its financial condition and profitability.
- This restriction covers any information provided to an analyst, directly or indirectly, formally or informally, in writing or verbally. It covers all communications in a meeting, during a presentation, site visit or interview, or in any other context.

It is of utmost importance that no additional material non-public information is provided to other persons, including analysts.

- In case of disclosure (whether intentional or not) to analysts, the company may be compelled to disclose the same information in the prospectus;
- Such information may not be appropriate for a prospectus and may not be verifiable.

Consequences of putting such a statement in the prospectus

The consequences of including information in the prospectus are that:

- any untrue statement (including any statement that is false, misleading or deceptive) in a prospectus may give rise to criminal and civil liability, including personal liabilities of each director and any other person who authorised the issue of the prospectus; and
- the directors must likewise take personal liability for the truthfulness, accuracy and completeness of any information the company may be compelled under the SFC rules to insert into the prospectus under the above circumstances.

The restriction covers any information provided to an analyst, directly or indirectly, formally or informally, in writing or otherwise.

The Company is strongly advised to seek the guidance and assistance of its sponsor(s), its Hong Kong legal advisers and those of the sponsor if there are any uncertainties.

VI. DISCLOSURE OF PRICE SENSITIVE INFORMATION

The statutory regime governing listed corporations' ("**corporations**") disclosure of price sensitive information (referred to in the legislation as "**inside information**") is set out in Part XIVA of the Securities and Futures Ordinance ("**SFO**") which came into effect on 1 January 2013. The SFC has published Guidelines on Disclosure of Inside Information ("**SFC Guidelines**") to assist corporations to comply with the disclosure obligation.

The regime creates a statutory obligation on corporations to disclose inside information to the public, as soon as reasonably practicable after inside information has come to their knowledge. Breaches of the disclosure requirement are dealt with by the Market Misconduct Tribunal ("**MMT**") which can impose a number of civil sanctions including a maximum fine of HK$8 million on the corporation and on its directors and chief executive in certain circumstances. The SFC can institute proceedings directly before the MMT to enforce the disclosure requirement.

1. Key elements of the regime

Key elements of the regime include:

- The application of an objective test in determining whether information is "inside information" - whether a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation;
- An obligation on a corporation to disclose "inside information" as soon as reasonably practicable after it comes to the knowledge of the corporation (i.e. after the information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation);
- An obligation on the directors and officers of a corporation to take all reasonable measures to ensure that proper safeguards exist to prevent the corporation breaching the statutory disclosure requirement;
- For directors and officers of a corporation to be individually liable for the corporation's breach of the statutory disclosure obligation, if they are in breach of the obligation referred to above or if the corporation's breach is a result of any intentional, reckless or negligent conduct or failure to ensure proper safeguards on their part;
- The provision of safe harbours for legitimate circumstances where non-disclosure or late disclosure is permitted;
- The SFC can rely on its powers under the SFO to investigate suspected breaches and to institute proceedings directly before the MMT;
- The MMT can impose a range of civil sanctions, including a fine of up to HK$8 million on the corporation, a director or chief executive of the corporation and disqualification of a director or officer for up to 5 years; and
- A corporation or officer found to have breached the statutory disclosure requirement may be liable to pay compensation to any person who has suffered financial loss as a result of the breach (provided it is fair, just and reasonable that it/he should do so).

2. Definition of inside information

The regime uses the term "inside information" to refer to price sensitive information which a corporation must disclose. "Inside information" is defined in Section 307A SFO as:

specific information that:

(a) is about:

    (i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities.

The inside information which a corporation is required to disclose is the same information that is prohibited from being used for dealing in the securities of the corporation under the insider dealing regime in Parts XIII and XIV of the SFO.

Objective test

An objective test should be applied in considering whether a piece of information is inside information. The test is whether a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.

Key elements of the definition

The three key elements of the definition are that:

(a) the information must be **specific**;

(b) the information **must not be generally known** to that segment of the market which deals or which would likely deal in the corporation's securities; and

(c) the information would, if generally known be **likely to have a material effect on the price of the corporation's securities.**

The SFC Guidelines provide guidance as to how these terms have been interpreted by the MMT in the past.

Specificity of information

- The information must be capable of being identified, defined and unequivocally expressed

  Information regarding a corporation's affairs will be sufficiently specific if "it carries with it such particulars as to a transaction, event or matter, or proposed transaction, event or matter, so as to allow that transaction, event or matter to be identified and its nature to be coherently understood".

- The information need not be precise

  Information may be specific even though the particulars or details are not precisely known. For example, information that a corporation is in financial difficulty or proposes to conduct a share placing would be regarded as specific even if the details are not known.

- Information on a transaction that is only contemplated or under negotiation (and not yet subject to a final agreement (formal or informal) can be specific information

- To constitute specific information, a proposal should be beyond the stage of a vague exchange of ideas or a "fishing expedition". If negotiations or contracts have occurred, there should be a substantial commercial reality to the negotiations which should be at the stage where the parties intend to negotiate with a realistic view to achieving an identifiable goal.

- Mere rumours, vague hopes or worries, wishful thinking and unsubstantiated conjecture are not specific information.

"Not generally known"

The SFC Guidelines note that rumours, media speculation and market expectation about an event or circumstances of a corporation cannot be equated with information which is generally known to the market. There is a clear distinction between the market having actual knowledge of a hard fact which has been properly disclosed by the corporation and speculation or expectation as to an event or circumstances which will require proof.

In determining whether information that is the subject of media comments or analysts' reports or carried by news service providers is considered to be generally known, the corporation should consider the accuracy, completeness and reliability of the information disseminated and not only how widely the information has been disseminated. Where the information disseminated is incomplete or there are material omissions or there are doubts as to its bona fides, the information cannot be regarded as generally known and the corporation is required to make full disclosure.

"Likely to have a material effect on the price of the listed securities"

Whether inside information is likely to materially affect the price of a corporation's securities is judged based on whether the inside information would influence persons who are accustomed to or would be likely to deal in the corporation's shares, in deciding whether or not to buy or sell such shares. The test is necessarily a hypothetical one since it must be applied at the time the information becomes available.

The SFC Guidelines contain a non-exhaustive list of events or circumstances where a corporation should consider whether a disclosure obligation arises.

3. Timing of disclosure

A corporation must disclose inside information to the public as soon as reasonably practicable after any inside information has come to its knowledge (section 307B(1) SFO). Inside information has come to the corporation's knowledge if:

(a) the inside information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation (section 307B(2) SFO).

Corporations must therefore ensure that they have effective systems and procedures in place to ensure that any material information which comes to the knowledge of any of their officers is promptly identified and escalated to the board to determine whether it needs to be disclosed.

Meaning of "as soon as reasonably practicable"

According to the SFC Guidelines, "as soon as reasonably practicable" means that the corporation should immediately take all steps that are necessary in the circumstances to disclose the information to the public. The necessary steps that the corporation should take immediately before the publication of an announcement may include: ascertaining sufficient details; internal assessment of the matter and its likely impact; seeking professional advice where required and verification of the facts (paragraph 40 of the SFC Guidelines).

The corporation must ensure that the information is kept strictly confidential until it is publicly disclosed. If the corporation believes that the required degree of confidentiality cannot be maintained or that there may have been a breach of confidentiality, it should immediately disclose the information to the public (paragraph 41 of the SFC Guidelines). The SFC Guidelines also raise the possibility of a corporation issuing a "holding announcement" to give the corporation time to clarify the details and likely impact of an event before issuing a full announcement.

The definition of "officer"

Under the SFO, an officer is a director, manager, secretary or any other person involved in a corporation's management. In the context of the inside information disclosure regime, a "manager" generally connotes a person who, under the immediate authority of the board, is charged with management responsibility affecting the whole or a substantial part of the corporation. A secretary refers to a company secretary. The information which must be disclosed is restricted to that which becomes known in situations where the officer is acting in the capacity of an officer.

4. Manner of disclosure

Inside information must be disclosed by way of publication of an announcement on the websites of the Exchange and the listed corporation in accordance with Listing Rule 2.07(C) (this is required by Listing Rule 13.09(2)(a)). Publication on the Exchange's website fulfils the requirement of section 307C(1) SFO that disclosure of inside information must be made in a manner that can provide for equal, timely and effective access by the public to the information disclosed (by virtue of Section 307C(2) SFO).

The SFC Guidelines provide that corporations can use additional means to disseminate inside information such as press releases issued through news or wire services, press conferences in Hong Kong and/or posting an announcement on their own websites. These must be additional to announcing the information on Exchange's website as they would not themselves satisfy the requirements of section 307C(1) SFO.

If a corporation is listed on more than one stock exchange, the inside information must be disclosed to the public in Hong Kong at the same time as it is released to the overseas markets. If inside information is released to an overseas market while the Hong Kong market is closed, the corporation should issue an announcement in Hong Kong before the Hong Kong market opens for trading. If necessary, the corporation can request a suspension of trading in its securities pending issue of the announcement in Hong Kong.

The information contained in an announcement of inside information must be complete and accurate in all material respects and not be misleading or deceptive (whether by omission or otherwise).

5. The safe harbours

Section 307D SFO provides four safe harbours to permit corporations to not disclose or delay disclosing inside information. Except for Safe Harbour A, corporations may only rely on the safe

harbours if they have taken reasonable precautions to preserve the confidentiality of the inside information and the inside information has not been leaked.

Safe Harbour A: When disclosure would breach an order by a Hong Kong court or any provisions of other Hong Kong statutes

This grants a safe harbour to corporations if they are prohibited from disclosing inside information under a Hong Kong court order or any Hong Kong statute.

Safe Harbour B: When the information relates to an incomplete proposal or negotiation

The SFC Guidelines give the following examples:

- when a contract is being negotiated but has not been finalised;
- when a corporation decides to sell a major holding in another corporation;
- when a corporation is negotiating a share placing with a financial institution; or
- when a corporation is negotiating the provision of financing with a creditor.

The SFC Guidelines note that where a corporation is in financial difficulty and is negotiating with third parties for funding, reliance on this safe harbour will mean that it will not be necessary to disclose the negotiations. The safe harbour does not however allow the corporation to withhold disclosure of any material change in its financial position or performance which led to the funding negotiations and, to the extent that this is inside information, should be the subject of an announcement.

Safe Harbour C: When the information is a trade secret

There is no statutory definition of trade secret. However the SFC Guidelines provide that a "trade secret" generally refers to proprietary information owned by a corporation:

(a) used in a trade or business of the corporation;
(b) which is confidential (i.e. not already in the public domain);
(c) which, if disclosed to a competitor, would be liable to cause real or significant harm to the corporation's business interests; and
(d) the circulation of which is confined to a limited number of persons on a need-to-know basis.

Trade secrets may concern inventions, manufacturing processes or customer lists. However a trade secret does not cover the commercial terms and conditions of a contractual agreement or the financial information of a corporation, which cannot be regarded as proprietary information or rights owned by the corporation.

Safe Harbour D: When the government's exchange fund or a central bank provides liquidity support to the corporation

Under this safe harbour, no disclosure is required for information concerning the provision of liquidity support from the exchange fund of the government or from an institution which performs the functions of a central bank (including one located outside Hong Kong) to the corporation or any member of its group.

Safe harbour condition of confidentiality

Except for Safe Harbour A, the safe harbours are only available if and so long as:

(a) the corporation takes reasonable precautions for preserving the confidentiality of the information; and

(b) the confidentiality of the information is preserved.

If confidentiality is lost or the information is leaked, the safe harbour will cease to be available and the corporation must disclose the inside information as soon as practicable.

If confidentiality is lost, the corporation will not be regarded as in breach of the disclosure requirement in respect of inside information if it can show that it:

(a) has taken reasonable measures to monitor the confidentiality of the information in question; and

(b) made disclosure as soon as reasonably practicable, once it became aware that the confidentiality of the information had not been preserved.

SFC's power to grant waivers

The SFC can grant waivers where the disclosure of inside information in Hong Kong would be prohibited under a court order or legislation of another jurisdiction or would contravene a restriction imposed by a law enforcement agency or government authority in another jurisdiction (section 307E(1) SFO). The SFC will grant waivers on a case-by-case basis and may attach conditions. A corporation must copy to the Exchange any application to the SFC for a waiver from the disclosure obligation and the SFC's decision when received.

6. Liability of officers

The officers of a corporation are required to take all reasonable measures to ensure that proper safeguards exist to prevent the corporation's breach of the inside information disclosure requirement (section 307G(1)). Although an officer's breach of this provision is not actionable of itself, an officer will be regarded as having breached the disclosure obligation if the listed corporation has breached such obligation and either:

(a) the breach resulted from the officer's intentional, reckless or negligent conduct; or

(b) the officer has not taken all reasonable measures to ensure that proper safeguards exist to prevent the breach (section 307G(2) SFO).

In relation to officers' obligation to take all reasonable measures to ensure the existence of proper safeguards, the SFC Guidelines focus on the responsibility of officers, including non-executive directors, to ensure that appropriate systems and procedures are put in place and reviewed periodically to enable the corporation to comply with the disclosure requirement. Officers with an executive role will also have a duty to oversee the proper implementation and functioning of the procedures and to ensure the detection and remedy of material deficiencies in a timely manner. The particular needs and circumstances of the listed corporation should be taken into account in establishing appropriate systems and procedures. The SFC Guidelines provide a non-exhaustive list of examples of systems and procedures which listed corporations should consider implementing.

7. Sanctions

The MMT can impose one or more of the following penalties:

(a) a fine of up to HK$8 million on the corporation, a director or chief executive (but not officers) of the corporation;

(b) disqualification of the director or officer from being a director or otherwise involved in the management of a corporation for up to five years;

(c) a "cold shoulder" order on the director or an officer (i.e. the person is deprived of access to market facilities for dealing in securities, futures contracts and other investments) for up to five years;

(d) a "cease and desist" order on the corporation, director or officer (i.e. an order not to breach the statutory disclosure requirement again);

(e) an order that any body of which the director or officer is a member be recommended to take disciplinary action against him: and

(f) payment of costs of the civil inquiry and/or the SFC investigation by the corporation, director or officer.

To try and prevent the occurrence of further breaches of the disclosure requirement, the MMT may additionally require:

(a) the appointment of an independent professional adviser to review the corporation's procedures for disclosure of PSI and advise it on matters relating to compliance; and

(b) the officer to undertake a training programme approved by the SFC on compliance with Part XIVA SFO, directors' duties and corporate governance.

8. Civil liability – Private right of action

A corporation or officer found to be in breach of the statutory disclosure obligation may be found liable to pay compensation to any person who has suffered financial loss as a result of the breach in separate proceedings brought by such person under Section 307Z SFO. The corporation or officer will be liable to pay damages provided that it is fair, just and reasonable that it/he should do so. A determination by the MMT that a breach of the disclosure requirement has taken place or identifying a person as being in breach of the requirement will be admissible in evidence in any such proceedings to prove that the disclosure requirement has been breached or that the person in question has breached that requirement. The courts may also impose an injunction in addition to or in substitution for damages.

VII. LISTING RULE DISCLOSURE OBLIGATIONS

1. The role and duties of the SFC and the Exchange

The SFC is responsible for enforcement of the statutory obligation to disclose inside information. The Exchange will not give guidance on the interpretation or operation of the SFO or the SFC Guidelines. Where, however, the Exchange is aware of a possible breach of the statutory disclosure obligation, the Exchange will refer it to the SFC. The Exchange will not take any disciplinary action itself under the Rules, unless the SFC considers it inappropriate to pursue the matter under the SFO and the Exchange considers action under the Rules for a possible breach of the Rules to be

appropriate. An issuer will not face enforcement action by the SFC and the Exchange at the same time, in respect of the same set of facts.

2. Obligation to avoid false market (Main Board Rule 13.09(1))

If it is the Exchange's view that there is, or is likely to be, a false market in a listed issuer's securities, the issuer must announce the information necessary to avoid a false market as soon as reasonably practicable after consultation with the Exchange.

An issuer is also required to contact the Exchange as soon as reasonably practicable if it believes that there is likely to be a false market in its securities.

Under Main Board Rule 13.09(2), where an issuer is required to disclose inside information under the SFO, it must simultaneously **announce** the information. An issuer is also required to simultaneously copy to the Exchange any application to the SFC for a waiver from the requirement to disclose inside information and to promptly copy to the Exchange the SFC's decision whether to grant such a waiver.

3. Obligation to respond to the Exchange's enquiry

Under Main Board Rule 13.10, if the Exchange makes an enquiry concerning unusual movements in the price or trading volume of an issuer's listed securities, the possible development of a false market in its securities, or any other matters, an issuer will be required to respond promptly to the Exchange's enquiries in one of the following two ways:

(i) provide to the Exchange and, if requested by the Exchange, announce any information relevant to the subject matter(s) of the enquiries available to it, so as to inform the market or to clarify the situation; or

(ii) if appropriate, and if requested by the Exchange, issue a standard announcement confirming that, the directors, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any information that is or may be relevant to the subject matter(s) of the enquiries, or of any inside information which needs to be disclosed under the SFO.

The standard form of the announcement in response to an enquiry is set out in Note 1 to Main Board Rule 13.10:

"*This announcement is made at the request of The Stock Exchange of Hong Kong Limited.*

We have noted [the recent increases/decreases in the price [or trading volume] of the [shares/warrants] of the Company] or [We refer to the subject matter of the Exchange's enquiry]. Having made such enquiry with respect to the Company as is reasonable in the circumstances, we confirm that we are not aware of [any reasons for these price [or volume] movements] or of any information which must be announced to avoid a false market in the Company's securities or of any inside information that needs to be disclosed under Part XIVA of the Securities and Futures Ordinance.

This announcement is made by the order of the Company. The Company's Board of Directors collectively and individually accept responsibility for the accuracy of this announcement."

Main Board Rule 13.10 states that an issuer does not need to disclose inside information under the Rules if the information is exempt from disclosure under Part XIVA SFO.

The Exchange reserves the right to direct a trading halt of an issuer's securities if an announcement under Main Board Rule 13.10 cannot be made promptly.

4. Trading halts or suspension

Main Board Rule 13.10A requires an issuer to request a trading halt or trading suspension if an announcement cannot be made promptly in any of the following circumstances:

(a) where an issuer has information which must be disclosed under the Main Board Rule 13.09;

(b) an issuer reasonably believes that there is inside information which must be disclosed under Part XIVA SFO; or

(c) inside information may have been leaked where it is the subject of an application to the SFC for a waiver from compliance with the statutory disclosure obligation or where it is exempt from the statutory disclosure obligation (except if the exemption concerns disclosure prohibited by Hong Kong law or an order of a Hong Kong court).

The Exchange also has the right to direct a trading halt in an issuer's securities where:

a) there are unexplained movements in the price or trading volume of the issuer's listed securities or where a false market for the trading of such securities has developed and the issuer's authorised representative cannot immediately be contacted to confirm that the issuer is not aware of any matter that is relevant to the unusual price movement or trading volume or the development of a false market;

b) the issuer delays in issuing an announcement in response to enquiries from the Exchange under Main Board Rule 13.10; or

c) there is uneven dissemination or leakage of inside information in the market giving rise to an unusual movement in the price or trading volume of the issuer's listed securities (Paragraph 3 of Practice Note 11).

VIII. ANNOUNCEMENTS

1. The Listing Rules require listed companies to publish announcements in a wide range of situations. The Exchange's Guide on Pre-vetting Requirements and Selection of Headline Categories for Announcements ("**Pre-Vetting Guide**") sets out the situations in which an announcement is required under the Main Board Rules, whether or not the announcement is required to be vetted by the Exchange before publication and the headline categories that will generally apply. The following is a summary of the main situations in which a listed issuer is required to publish an announcement.

Price-sensitive information – any price-sensitive information which is discloseable as inside information under Part XIVA SFO must be announced and kept strictly confidential until a formal announcement is made.

Notifiable transactions – any notifiable transaction within Chapter 14 of the Main Board Rules.

Connected transactions – any connected transaction (unless an exemption is available) within Chapter 14A of the Main Board Rules.

Advances and financial assistance to third parties – the listed issuer or any of its subsidiaries makes a "**relevant advance to an entity**" which:

(a) exceeds 8% of the total assets of the listed issuer (Main Board Rule 13.13); or

(b) is greater than the previously disclosed relevant advance by 3% or more of the listed issuer's total assets (Main Board Rule 13.14).

The expression "relevant advance to an entity" means the aggregate of amounts due from and all guarantees given on behalf of an entity, its controlling shareholder, its subsidiaries and affiliated companies. An advance to a subsidiary of the listed issuer, or between subsidiaries of the listed issuer, is not regarded as a relevant advance to an entity.

Financial assistance to affiliated companies – where financial assistance and guarantees of financial assistance given by the listed issuer or any of its subsidiaries to affiliated companies (being those which are equity accounted for by the issuer) of the listed issuer together exceed 8% of the listed issuer's total assets (Main Board Rule 13.16).

Pledge of controlling shareholder's interest – where the controlling shareholder of the listed issuer has pledged its interest in shares of the issuer to secure debts of the issuer or to secure guarantees or other support of obligations of the issuer (Main Board Rule 13.17).

Loan agreements – where:

(a) the listed issuer (or any of its subsidiaries) enters into a loan agreement that imposes specific performance obligations on any controlling shareholder (e.g. a requirement to maintain a specified minimum holding in the share capital of the listed issuer) and breach of such obligation will cause a default in respect of loans that are significant to the operations of the listed issuer (Main Board Rule 13.18); or

(b) the listed issuer or any of its subsidiaries breaches the terms of a loan that is significant to the operations of the listed issuer, such that the lender may demand immediate repayment and the breach has not been waived by the lender (Main Board Rule 13.19).

Takeover offers – an announcement must be made once a takeover offer is made or accepted, as required by the Takeovers Code.

<u>Accounts and auditors</u>

Board meeting for approval of results – an issuer must inform the Exchange and publish an announcement at least 7 clear business days in advance of the date fixed for any board meeting at which the profits or losses for any period are to be approved for publication (Main Board Rule 13.43).

Annual and half-year results – must be published by way of announcement under Main Board Rule 13.49.

Change in auditor or financial year end – any change in a listed issuer's auditors or financial year end, the reason(s) for the change and any other matters that need to be brought to the attention of holders of the company's securities. The issuer's announcement must state whether the outgoing auditors have confirmed that there are no matters that need to be brought to the attention of holders of the company's securities (Main Board Rule 13.51(4)). The issuer must appoint an auditor at each annual general meeting ("**AGM**") to hold office until the next AGM. Any proposal

to remove an auditor before the end of its term of office must be approved by shareholders in general meeting (Main Board Rule 13.88).

Company matters

Change of company name – once the board decides to change the company name (Main Board Rules 13.51).

Memorandum and Articles of Association – any proposed alteration of the memorandum or articles of association (or equivalent documents) of the listed issuer (Main Board Rule 13.51(1)).

Registered office – any change in the company's registered address, agent for service of process in Hong Kong or registered office or registered place of business in Hong Kong (Main Board Rule 13.51(5)).

Share registrar – any change of the company's share registrar (including any overseas branch share registrar) (Main Board Rule 13.51(5)).

Dividends – an issuer must inform the Exchange and publish an announcement at least 7 clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided (Main Board Rule 13.43). Any decision of the board to declare, recommend or pay a dividend or not to do so must be announced immediately, and include the rate, amount and expected payment date (Main Board Rules 13.45(1) and (2)).

Change in nature of business – an announcement must be published of any decision to change the general character or nature of the issuer or the group (Main Board Rule 13.45(5)).

Winding-up or Liquidation – the appointment of a receiver or manager, the presentation of any winding-up petition or the passing of any resolution authorising the winding up of the listed issuer, its holding company or any of its major subsidiaries (i.e. a subsidiary representing 5% under any of the percentage ratios (please see "Notifiable Transactions" below) or any similar insolvency events (Main Board Rule 13.25(1)).

Decision to withdraw listing – a proposed withdrawal of listing must be notified to shareholders by way of publication of an announcement (Main Board Rule 6.15).

Corporate governance

Audit committee – if the issuer fails to set up an audit committee or does not meet the membership requirements (Main Board Rule 3.23).

Remuneration committee – if the issuer fails to set up a remuneration committee or does not comply with the requirements as to its composition or terms of reference (Main Board Rule 3.27).

Directors and officers

Board composition and independent non-executive directors – an announcement must be made if the number of the issuer's independent non-executive directors ("**INEDs**") is less than three or one third of the number of directors on the board, or if it does not have at least one INED with appropriate professional qualifications or accounting or related financial management expertise (Main Board Rule 3.11).

Change in company secretary – an announcement must be made once the board has decided to change the company secretary (Main Board Rule 13.51(5)).

Change in compliance adviser – an announcement must be made as soon as a compliance adviser resigns, and arrangements must be made immediately to appoint a new compliance adviser. Once a new compliance adviser has been appointed, another announcement must be made (Main Board Rules 13.51(6) and 3A.29).

Change in directors – any change of directors or the chief executive, including, in the case of the resignation or removal of a director or the chief executive, the reasons given by or to him for his resignation or removal (Main Board Rule 13.51(2)). An announcement of the appointment of a new director or chief executive or re-designation of a director or the chief executive must include the information specified in Main Board Rule 13.51(2).

Change in disclosed information about directors – any change to the information specified in paragraphs (h) to (v) of Main Board Rule 13.51(2) previously disclosed about a director must be announced (Main Board Rule 13.51B). Such information relates mainly to matters which may cast doubt on the integrity of the directors involved and their suitability for continuing to serve as directors. Any change in the information specified in paragraphs (a) to (e) and (g) of Main Board Rule 13.51(2) must be set out in the next published annual or interim report. The Rules include an obligation for directors to immediately inform the issuer of any information specified in Main Board Rule 13.51(2) and any change to such information (Main Board Rule 13.51C).

Meetings

Notice of general meetings – notice of an issuer's annual general meeting and other general meetings must be announced (Main Board Rules 13.37 and 13.73).

Results of general meetings – the poll results must be published before commencement of trading on the business day following the meeting (Main Board Rule 13.39(5)).

Shares

Issues of securities – an issue of securities (including convertible securities or warrants, options or similar rights) will almost always require an announcement (except an exercise of options under an employee share scheme) either as inside information under Main Board Rule 13.09(2)(a), or under Chapter 14 or 14A, or under Main Board Rule 13.28.

Changes in the number of issued shares – certain changes in the number of issued shares must be reported to the Exchange for publication on the Exchange's website on the following business day (Main Board Rule 13.25A). Issuers must also submit a monthly return of changes in their equity securities, debt securities and other securitised instruments (Main Board Rule 13.25B).

Share option schemes – an employee share option scheme must be approved by shareholders in general meeting and a listed issuer must publish an announcement of the outcome of the meeting as soon as possible and no later than the business day following the meeting (Main Board Rule 17.02(1)). Further announcements must be published on the grant of share options pursuant to a share option scheme specifying the information required by Main Board Rule 17.06A. The announcement is required to include details of the date of grant, the exercise price and number of options granted, the market price of the issuer's securities on the date of the grant, the name of any grantee who is, or is an associate of, a director, chief executive or substantial shareholder of the listed issuer and the number of options granted to such person, and the validity period of the options.

Basis of allotment of securities – the basis of allotment of any securities offered to the public for subscription or sale or an open offer and of the results of any rights issue and, if applicable, of the basis of any acceptance of excess applications. The company must notify the Exchange of such matters no later than the morning of the next business day after the allotment letters or other relevant documents of title are posted (Main Board Rule 13.30).

Public float – the company must inform the Exchange immediately if it becomes aware that the number of listed securities required to be held by the public has fallen below the prescribed minimum percentage (i.e. 25% unless a lower percentage of between 15% and 25% was approved by the Exchange on listing for a company having an expected market capitalisation at the time of listing of more than HK$10 billion) (Main Board Rule 13.32(1)(a)).

Lack of genuine open market – if the Exchange believes that the issuer's securities lack a genuine open market or are concentrated in the hands of a few shareholders, it may require the issuer to publish an announcement to that effect (Main Board Rule 13.34(a)).

Share Repurchases – any purchase, sale, drawing or redemption by the issuer or its group members of its listed securities (whether on the Exchange or not) (Main Board Rule 13.31). The company should also be aware of the provisions of the Code on Share Buy-backs which sets out detailed rules governing any offer to purchase, redeem or otherwise acquire the shares of a listed issuer made by or on behalf of the listed issuer to any of its shareholders.

2. Announcements which require pre-vetting by the Exchange

Announcements of the following matters or transactions must be submitted to the Exchange for review and approval before publication under Main Board Rule 13.52(2):

(a) very substantial acquisitions, very substantial disposals or reverse takeovers under Main Board Rules 14.34 and 14.35;

(b) transactions or arrangements within 12 months after listing which would result in a fundamental change in principal business activities under Main Board Rules 14.89 to 14.91; and

(c) cash companies under Main Board Rules 14.82 and 14.83.

Announcements other than those specified in Main Board Rule 13.52(2) do not need to be pre-vetted by the Exchange, although companies may consult the Exchange regarding rule compliance issues. The Exchange also reserves the right under Main Board Rule 13.52A to require listed companies to submit for review any draft announcement, circular or other document in individual cases.

A summary of the pre-vetting requirements for announcements is set out in the Exchange's Guide on Pre-vetting and Selection of Headline Categories for Announcement.[1]

3. Matters requiring prior consultation with Exchange prior to announcement

[1] Exchange's Guide on Pre-vetting and Selection of Headline Categories for Announcement (effective 1 April 2015) at http://www.hkex.com.hk/eng/rulesreg/listrules/guidref/guide_pre_vetting_req.htm.

There are a number of Rule compliance issues relating to notifiable transactions or issues of securities which need the Exchange's prior consent or confirmation prior to publication of the announcements. These include, but are not limited to, the following:

(i) whether the Exchange will allow the listed issuer to adopt alternative size test(s) to classify a notifiable transaction under Main Board Rule 14.20;

(ii) whether the Exchange will deem a party to a transaction to be a connected person of the listed issuer under Main Board Rules 14A.19 to 14A.22. Main Board Rule 14A.22 requires a listed issuer to notify the Exchange of any proposed transaction with the parties described in such rules unless the transaction is exempt;

(iii) whether the transaction/matter falls under the special or exceptional circumstances described in the Listing Rules, e.g. a rights issue or open offer proposed by a Main Board issuer without underwriting under the notes to Main Board Rule 7.19 or 7.24; a proposed issue of securities for cash under general mandate at a price representing a discount of 20% or more to the benchmarked price under Main Board Rule 13.36(5); or a proposed issue of warrants that would not meet certain specific requirements under Main Board Rule 15.02; and

(iv) in the case of matters affecting trading arrangements (including suspension or resumption of trading, and cancellation or withdrawal of listing), Main Board Rule 13.52B requires that:

   a. listed issuers must consult the Exchange before issuing the relevant announcement; and

   b. the announcement must not include any reference to a specific date or timetable which has not been agreed in advance with the Exchange.

4. Publication of announcements

Announcements are required to be published on the website of the Exchange and on the listed issuer's own website in accordance with the provisions of Main Board Rule 2.07C. Listed companies must submit an electronic copy of the announcement through the Exchange's electronic submission system ("**HKEx-EPS**"). When doing so, companies must select all appropriate headlines from the list of headline categories which are set out in Appendix 24 to the Main Board Rules. Unless stated otherwise in the Rules, all announcements must be published in both English and Chinese.

With the exception of certain limited types of announcements that can be published at all times during the operational hours of the e-Submission System, announcements must only be submitted during the designated publications windows which are:

On a normal business day:

- 6.00 a.m. to 8.30 a.m.
- 12.00 p.m. to 12.30 p.m.
- 4.15 p.m. to 11.00 p.m.

On the eves of Christmas, New Year and Lunar New Year when there is no afternoon session:

- 6.00 a.m. to 8.30 a.m.

- 12.00 p.m. to 11.00 p.m.

On a non-business day preceding a business day:

- 6.00 p.m. to 8.00 p.m.

The categories of announcements which can be published during trading hours as well as outside trading hours are:

(i) suspension announcements;

(ii) announcements made in response to unusual movements in share price or trading volume;

(iii) announcements denying the accuracy of news reports or clarifying that only its published information should be relied upon; and

(iv) overseas regulatory announcements.

IX. LISTING DOCUMENTS AND CIRCULARS WHICH REQUIRE PRE-VETTING

Main Board Listing Rule 13.52(1) requires the following documents to be submitted to the Exchange for review and approval before publication:

(i) listing documents (including prospectuses);

(ii) circulars relating to cancellation or withdrawal of listing of listed securities;

(iii) circulars for notifiable transactions which are subject to shareholders' approval;

(iv) circulars for connected transactions;

(v) circulars to the company's shareholders seeking their approval of issues of securities that require specific mandates from the shareholders (under Main Board Rule 13.36(1));

(vi) circulars to the issuer's shareholders seeking their approval of transactions or arrangements that require independent shareholders' approval and the inclusion of separate letters from independent financial advisers to be contained in the relevant circulars under Main Board Rule 13.39(7), which include:

  (a) spin-off proposals;

  (b) transactions which the Rules require to be subject to independent shareholders' approval (see Main Board Rule 13.39(4)(b)) such as:

    (1) rights issues under Main Board Rule 7.19(6) or 7.19(7);

    (2) open offers under Main Board Rule 7.24(5) or (6);

    (3) refreshments of general mandates before next AGM under Main Board Rule 13.36(4);

    (4) withdrawal of listings under Main Board Rule 6.12; and

(5) transactions or arrangements that would result in a fundamental change in the principal business activities of the listed issuer within 12 months after listing under Main Board Rules 14.89 to 14.91;

(vii) circulars to shareholders seeking their approval of any matter in relation to a share option scheme which is required under Chapter 17 of the Main Board Listing Rules;

(viii) circulars to shareholders seeking their approval of warrant proposals involving approvals by shareholders and all warrant holders under paragraph 4(c) of Practice Note 4 to the Main Board Rules; and

(ix) circulars or offer documents issued by the issuer in connection with takeovers, mergers or offers.

X. DISCLOSURE OF CHANGES IN THE NUMBER OF ISSUED SHARES

1. Next Day Disclosure Requirements

The Listing Rules (Main Board Rule 13.25A) require next day disclosure on the Exchange website of 2 categories of changes in the number of issued shares. The first category comprises changes which always require next day disclosure. The second category comprises changes in the number of issued shares which only require next day disclosure in specified circumstances.

Changes Always Requiring Next Day Disclosure

Changes in the number of issued shares which always require next day disclosure under Main Board Rule 13.25A(2)(a) are changes resulting from the following:

(i) placings;

(ii) consideration issues;

(iii) open offers;

(iv) rights issues;

(v) bonus issues;

(vi) scrip dividends;

(vii) repurchases of shares or other securities;

(viii) exercise of an option under the issuer's share option scheme by any of its directors;

(ix) exercise of an option other than under the issuer's share option scheme by any of its directors;

(x) capital reorganisation; or

(xi) change in the number of issued shares not falling within any of the categories referred to at (i) to (x) above or in Main Board Rule 13.25A(2)(b).

Categories of Changes Requiring Next Day Disclosure in Specified Circumstances

The following changes in the number of issued shares specified in Main Board Rule 13.25A(2)(b) require next day disclosure in specified circumstances:

(i) exercise of an option under a share option scheme other than by a director of the listed issuer;

(ii) exercise of an option other than under a share option scheme not by a director of the listed issuer;

(iii) exercise of a warrant;

(iv) conversion of convertible securities; or

(v) redemption of shares or other securities.

The circumstances in which these categories require next day disclosure are:

(i) where the event, either individually or when aggregated with other events specified in Main Board Rule 13.25A(2)(b) that have occurred since the last Monthly Return or next day disclosure, whichever is the later, results in a change of 5% or more in the number of the listed issuer's issued shares; or

(ii) where the listed issuer is in any case required to disclose some other change in the number of issued shares under Main Board Rule 13.25A(2)(a) and a change in the number of issued shares resulting from an event specified in Main Board Rule 13.25A(2)(b) has occurred but has not yet been disclosed in either a Monthly Return or pursuant to next day disclosure (because the 5% *de minimis* threshold has not been reached).

The percentage change in the listed issuer's number of issued shares is calculated by reference to its total number of issued shares as it was immediately before the earliest relevant event which has not yet been reported in either a Monthly Return or pursuant to next day disclosure.

The Next Day Disclosure Return comprises two sections. Section I deals with disclosure under Main Board Rule 13.25A and Section II deals with disclosure under Main Board Rule 10.06(4)(a) (the share buyback regime). Share repurchases are discloseable under Main Board Rule 13.25A and under Main Board Rule 10.06(4)(a), in which case both sections of the return must be completed.

The Next Day Disclosure Return must be submitted through the Exchange's e-Submission System no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following the relevant event.

2. Monthly Return

A listed issuer is required to submit through HKEx-EPS for publication on the Exchange's website a monthly return in relation to movements in its equity securities, debt securities and any other securitised instruments during the period to which the monthly return relates (13.25B of Main Board Rules). The return must be submitted no later than 8.30 a.m. on the fifth business day next following the end of each calendar month.

The monthly return must be submitted irrespective of whether there has been any change in the information provided in the previous monthly return. The return must be submitted electronically through the Exchange's e-submission system and will be published on the Exchange website.

XI. DISCLOSURE OF FINANCIAL INFORMATION

1. Annual Report and Accounts

The requirements in relation to a company's annual report and accounts are set out in the Companies Ordinance and in Chapter 13 and Appendix 16 of the Main Board Rules.

Timing of Distribution of Annual Report

A Main Board listed issuer must send a copy of its annual report including its annual accounts and, if it prepares consolidated financial statements, its consolidated financial statements, together with a copy of the auditors' report to every shareholder and every holder of its listed securities not less than 21 days before the date of its AGM and no later than 4 months after the end of the financial year (Main Board Rule 13.46).

The annual accounts, directors' report and auditors' report must be laid before the AGM and must be prepared in both English and Chinese.

In the case of overseas shareholders, it is sufficient for the listed issuer to mail the English language version of the relevant documents provided that such documents contain a prominent statement in English and Chinese that a Chinese language version is available from the company on request.

Financial statements must include the disclosures required under the relevant accounting standards adopted as well as the information specified in Appendix 16 to the Main Board Rules ("**Appendix 16**"), including a statement of profit or loss and other comprehensive income, a statement of financial position and information on the rates of dividend paid or proposed for each class of shares (paragraph 4 of Appendix 16).

Annual financial statements must be prepared in accordance with Hong Kong or International Financial Reporting Standards or China Accounting Standards for Business Enterprises ("**CASBE**") in the case of a Chinese issuer that has adopted CASBE (paragraph 2.1 of Appendix 16).

2. Half-year Reports and Accounts

Listed companies are also required to prepare half-year reports and must send these to the company's shareholders and holders of their listed securities within 3 months of the end of the first 6 months of each financial year (Main Board Rule 13.48(1)).

The contents requirements for half-year reports are set out in Appendix 16 to the Main Board Rules.

The financial statements included in the half-year report will generally be unaudited. If this is the case, this fact must be stated. If the financial statements are audited, the auditors' report and any qualifications must be included in the half-year report (Paragraph 43 of Appendix 16 of Main Board Rules).

There is a requirement that half-year reports are reviewed by the listed issuer's audit committee (Paragraph 39 of Appendix 16 of Main Board Rules).

3. Quarterly Reporting

Quarterly reporting is a Recommended Best Practice only under the Corporate Governance Code (Recommended Best Practice C.1.4), rather than a mandatory obligation under the Main Board Rules. If a Main Board listed issuer decides to publish quarterly financial results, it should do so

within 45 days of the end of each quarter. If it subsequently decides not to publish the financial results for any particular quarter, the company should publish an announcement disclosing the reason(s) for that decision (Recommended Best Practice C.1.5 of the Corporate Governance Code).

4. Preliminary Announcements of Results

A company listed on the Main Board must publish a preliminary announcement of its annual and half-year results on the websites of the Exchange and the listed issuer as soon as possible and, in any event, not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day after their approval by the board.

Preliminary year-end results must be published no later than 3 months after the financial year end and preliminary half-year results must be published no later than 2 months after the half-year end.

5. Consequences of Failure to Publish Financial Information

For Main Board issuers, the Listing Rules provide that the Exchange will normally require trading in a listed issuer's shares to be suspended if it fails to publish its financial information on time (Main Board Rule 13.50). The suspension will last until the company publishes the required financial information.

6. Additional Information Required in Financial Reports of Mineral Companies

(i) Mineral Companies are required to include in their half-yearly and annual reports details of their exploration, development and mining production activities and a summary of expenditure incurred on these activities during the period under review. If there has been no exploration, development or production activity, that fact must be stated (Main Board Rule 18.14).

However, to the extent that there are material changes in funding requirements or exploration activity, companies must update shareholders immediately under the general disclosure requirements.

(ii) Mineral Companies must provide an annual update of their resources and/or reserves in their annual reports (Main Board Rule 18.15). Such updates must be prepared in accordance with the accepted reporting standard under which they were previously disclosed or (if none) under one of the accepted reporting standards. The annual updates are not required to be supported by a Competent Person's Report and thus may be prepared by the company's own internal experts. Annual updates may also be achieved by way of a no material change statement which can be prepared by companies' internal management.

(iii) Other (non-Mineral Company) listed issuers that publicly disclose details of resources and/or reserves are also required to provide annual updates of those resources/reserves in their annual reports. Such updates must be prepared in accordance with the reporting standard under which they were previously disclosed or one of the accepted reporting standards. They may also be achieved by way of a no material change statement.

The Exchange has published guidance on the disclosures required in the annual and interim reports of Mineral Companies and other listed issuers which publicly disclose details of their resources and/or reserves. This is set out in Exchange Guidance Letter HKEx-GL47-13 "Continuing Obligations" under Chapter 18.

XII. BOARD MEETINGS

The board should meet regularly and board meetings should be held at least four times a year at approximately quarterly intervals (Code Provision A.1.1).

1. Notice to Exchange in certain circumstances

The issuer must inform the Exchange and publish an announcement on the websites of the Exchange and the issuer at least seven clear business days before the date of any board meeting to consider the declaration, recommendation or payment of a dividend or at which an announcement of the financial results for any period are to be approved (Main Board Rule 13.43).

2. Voting at Board Meetings

Subject to certain exceptions, a director of a listed issuer may not vote on, nor be counted in the quorum for, any board resolution approving any contract or arrangement or any other proposal in which he or any of his close associates has a material interest (Main Board Rule 13.44).

3. Notice to Exchange after Meetings

The issuer must inform the Exchange immediately of any decision:

(a) to declare, recommend or pay a dividend or make any other distribution on its listed securities and the rate and amount thereof;

(b) not to declare, recommend or pay a dividend which would otherwise have been expected;

(c) on preliminary announcement of profits or losses for any period;

(d) on any proposed change in the capital structure, including a redemption of listed securities; and

(e) on any change to the general character or nature of the business of the issuer or the group (Main Board Rule 13.45).

XIII. SHAREHOLDERS' MEETINGS

1. Notice of General Meetings

Code Provision E.1.3 in the Corporate Governance Code requires:

(i) at least 20 clear business days' notice for AGMs; and

(ii) at least 10 clear business days' notice for all other general meetings.

Under the "comply or explain" principle underlying the Code, issuers must explain any failure to comply with these requirements in their interim and annual reports.

Notice of general meetings must be given to all shareholders whether or not their registered address is in Hong Kong (Main Board Rule 13.71). Notice of an AGM and of all other general meetings of shareholders must also be published on the websites of the Exchange and the issuer (Main Board Rules 13.37 and 13.73).

2. Mandatory Voting by Poll on all Resolutions at General Meetings

Voting by poll is mandatory on all resolutions at all general meetings under Main Board Rule 13.39(4). A chairman at a general meeting may exempt certain prescribed procedural and administrative matters from a vote by poll. Examples of such procedural and administrative matters include adjourning a meeting by resolution to ensure the orderly conduct of the meeting, maintain the orderliness of the meeting or announce results at the end of the AGM.

Listed issuers must appoint a scrutineer (who may be the issuer's auditors or share registrar or external accountants who are qualified to serve as auditors) to oversee the voting procedures. The results of the poll must be announced by the issuer as soon as possible and no later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following the general meeting (Main Board Rule 13.39(5)).

The chairman of a general meeting is required to ensure that the detailed procedures for conducting a poll are explained and to answer any questions that are raised (Code Provision E.2.1).

3. Parties Required to Abstain from Voting

Any shareholder that has a "material interest" in a transaction or arrangement to be approved at a general meeting of shareholders is required to abstain from voting on the resolution (Main Board Rule 2.15)

Factors relevant to determining whether a shareholder has a "material interest" include:

- whether the shareholder is a party to the transaction or a close associate of such a party; and
- whether the transaction confers upon the shareholder or his close associate a benefit not otherwise available to other shareholders of the issuer (Main Board Rule 2.16).

XIV. ISSUES OF NEW SECURITIES

1. Pre-Emption Rights

One of the primary aims of the Listing Rules' continuing obligations is to ensure the equal treatment of all shareholders. A key aspect of this is ensuring that members' shareholdings are not diluted by the issue of new shares to third parties.

Accordingly, Main Board Rule 13.36(1) provides that, except in the case of a *pro rata* offer to existing shareholders, the directors of a listed issuer must obtain the consent of shareholders in general meeting prior to the allotment, issue or grant of shares, securities convertible into shares, or options, warrants or similar rights to subscribe for shares or such convertible securities.

Alternatively, Main Board Rule 13.36(2)(b) allows a general mandate to be obtained from shareholders at a general meeting of shareholders to issue shares, convertible securities or rights to acquire shares. The general mandate must be subject to a restriction that the maximum number of securities which may be allotted may not exceed 20% of the number of the company's issued shares as at the date of the resolution granting the general mandate. If a share consolidation or subdivision is conducted after the approval of the issue mandate in general meeting, the maximum number of securities that may be issued will be adjusted accordingly. The general mandate can also separately authorise the company to issue shares equivalent to the number of shares repurchased since the date of the mandate (up to a maximum of 10% of the number of the company's issued shares as at the date of the resolution granting the repurchase mandate). A general mandate granted

under these Rules will lapse at the end of the next AGM unless it is renewed by ordinary resolution passed at that meeting. General mandates can also be revoked or varied by ordinary resolution of the shareholders in general meeting.

The restrictions in Main Board Rule 13.36 do not apply to *pro rata* offers provided that the *pro rata* offer is made to all existing shareholders excluding shareholders resident in a place outside Hong Kong which the directors, after making enquiry as to the legal restrictions under the laws of such place and the requirements of the relevant body or stock exchange, consider it necessary or expedient to exclude because of such restrictions or requirements. The circular or offer document must contain an explanation for the exclusion of such shareholders and must be delivered to shareholders excluded from the offer, subject to compliance with the local laws and regulations.

In view of the Listing Rules' restrictions, notices of AGMs generally include a resolution granting a general mandate to the directors to issue shares, other than on a *pro rata* basis, up to the permitted maximum amount, i.e. 20% of the number of issued shares plus a number equivalent to the number of shares repurchased subject to a cap of 10% of the number of issued shares at the date of the repurchase mandate.

Listed companies can also call an extraordinary general meeting ("**EGM**") to approve an issue of shares for a specific purpose. A company which has obtained a general mandate may also refresh the general mandate at any time before the next AGM. However the company's controlling shareholders (i.e. holders of 30% or more) and their associates or, if there are no controlling shareholders, the company's directors (other than INEDs) and chief executive and their associates are not allowed to vote in favour of the refreshment. In addition the circular to shareholders in relation to the proposed refreshment of the general mandate must set out (i) the company's history of refreshments of the mandate since the last AGM; (ii) the amount of proceeds raised from the resolution of such mandate; (iii) the use of such proceeds; and (iv) the intended use of any amount not yet utilised and how the issuer has dealt with that amount.

The restrictions in Main Board Rule 13.36 apply equally to listed companies incorporated in Hong Kong and those incorporated overseas. They do not however apply to an overseas listed issuer whose primary listing is on another stock exchange which is not subject to any other statutory or other requirement giving shareholders pre-emptive rights to shareholders over further issues of shares.

2. Restrictions on Issues of Securities in 6 months after Listing

A listed issuer is prohibited from issuing (or entering into any agreement to issue) any further shares or securities convertible into its equity securities within 6 months of the commencement of dealing in its securities on the Exchange (whether or not the issue will be completed within 6 months from commencement of dealing) except for:

i. the issue of shares, the listing of which has been approved by the Exchange, pursuant to a share option scheme under Chapter 17;

ii. the exercise of conversion rights attaching to warrants issued as part of the initial public offering;

iii. any capitalisation issue, capital reduction or consolidation or sub-division of shares; and

iv. the issue of shares or securities under an agreement entered into before the commencement of dealing, the material terms of which were disclosed in the listing document issued on the initial public offering (Main Board Rule 10.08).

3. Issues of Securities for Cash

Where a company's directors agree to issue securities for cash (whether under a general mandate or not), the company must publish an announcement as soon as possible and no later than 30 minutes before the earlier of the start of the morning trading session or any pre-opening session on the next business day. The announcement must contain the information set out in Main Board Rule 13.28.

In the case of a placing of securities for cash consideration under the company's general mandate, the issue must not be at a discount of 20% or more to the benchmarked price of the securities. For this purpose, the benchmarked price is the higher of:

(a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

(b) the average closing price in the 5 trading days immediately prior to the earlier of:

  (i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;

  (ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

  (iii) the date on which the placing or subscription price is fixed. (Main Board Rule 13.36(5))

The exception to this rule is where the company can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation involving the issue of new securities at a price which is at a discount of 20% or more to the securities' benchmarked price, or that there are other exceptional circumstances.

Where securities are issued for cash under a general mandate at a discount of 20% or more, the company must publish an announcement giving details of the allottees no later than the commencement of trading on the next business day after the agreement involving the proposed issue is signed (Main Board 13.29A). If there are less than ten allottees, the announcement must include the name of each allottee (or its beneficial owner) and confirmation of its independence from the issuer. If there are more than ten allottees, the names of each allottee subscribing 5% or more of the issued securities must be stated and a general description of all other allottees together with confirmation of their independence from the issuer. In calculating the 5% limit, the number of securities subscribed by the allottee, its holding company and their subsidiaries must be aggregated.

XV. NOTIFIABLE TRANSACTIONS

Chapter 14 of the Listing Rules sets out detailed requirements in respect of certain transactions, principally acquisitions and disposals by a listed issuer, of which the Stock Exchange of Hong Kong (the "**Exchange**") must be notified. The term "listed issuer", as used in Chapter 14 and in this memorandum, refers to both the listed issuer itself and its subsidiaries and accordingly, transactions entered into by subsidiaries of the listed issuer may constitute notifiable transactions. A transaction may be both a notifiable transaction and a connected transaction, in which case the listed issuer must comply with the provisions of Chapter 14 and Chapter 14A.

To determine whether a transaction is notifiable, it is first necessary to determine whether it falls within the definition of "transaction" under Chapter 14.

1. Definition of Transaction

For the purposes of Chapter 14 any reference to a "transaction" by a listed issuer, includes:

(a) the acquisition or disposal of assets, including deemed disposals as referred to in Main Board Rule 14.29;

(b) any transaction involving a listed issuer writing, accepting, transferring, exercising or terminating an option to acquire or dispose of assets or to subscribe for securities;

(c) entering into or terminating finance leases where the financial effects of such leases have an impact on the balance sheet and/or profit and loss account of the listed issuer;

(d) entering into or terminating operating leases which, by virtue of their size, nature or number, have a significant impact on the operations of the listed issuer. The Exchange will normally consider an operating lease or a transaction involving multiple operating leases to have a "significant impact" if such lease(s), by virtue of its/their total monetary value or the number of leases involved, represent(s) a 200% or more increase in the scale of the listed issuer's existing operations conducted through lease arrangements of such kind;

(e) granting an indemnity or a guarantee or providing financial assistance, except to the listed issuer's own subsidiaries, or unless the listed issuer is a banking company or a securities house (however, if such a transaction constitutes a connected transaction, the issuer must comply with the provisions of Chapter 14A); and

(f) entering into any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or a company, or any other form of joint arrangement.

To the extent not expressly provided in (a) to (f) above, the definition of "transaction" excludes any transaction of a revenue nature in the ordinary and usual course of business of the listed issuer.

Issues of New Securities for Cash

The definition of "transaction" excludes the issue of new securities for cash only. These transactions are however within the definition of "transaction" which applies for the purposes of "connected transactions" under Main Board Rule 14A.24(6).

Transaction of a "Revenue Nature"

Pursuant to Note 4 of Main Board Rule 14.04(1)(g), in considering whether or not a transaction is of a revenue nature, a listed issuer should take into account the following factors:

(a) whether previous transactions or recurring transactions that were of the same nature were treated as notifiable transactions;

(b) the historical accounting treatment of its previous transactions that were of the same nature;

(c) whether the accounting treatment is in accordance with generally acceptable accounting standards; and

(d) whether the transaction is a revenue or capital transaction for tax purposes.

The above list is non-exhaustive and the Exchange may take other factors into account.

It should be noted that any transaction involving the acquisition and disposal of properties will generally not be considered to be of a revenue nature unless such transactions are carried out as one of the principal activities and in the ordinary and usual course of business of the listed issuer (Note 2 to Main Board Rule 14.04(1)).

Transaction in the "Ordinary and Usual Course of Business"

The term "ordinary and usual course of business" is defined as the existing principal activities of the listed issuer or an activity wholly necessary for its principal activities. Further, financial assistance is only regarded as being in the ordinary and usual course of business if it is provided by: (i) a banking company; or (ii) by a securities house on normal commercial terms for the purposes set out in Main Board Rule 14.04(1)(e)(iii) (Main Board Rule 14.04(8)).

A banking company is defined under Main Board Rule 14A.88 as a bank, restricted licence bank or deposit taking company as defined in the Banking Ordinance (CAP 155) or a bank constituted under appropriate overseas legislation or authority. A securities house is defined under Main Board Rule 14.04(10E) as a corporation which is licensed or registered under the Securities and Futures Ordinance (CAP 571) for Type 1 (dealing in securities) or Type 8 (securities margin financing) regulated activity.

2. Classification of Notifiable Transactions

The requirements for a notifiable transaction depend upon which of the 6 categories of notifiable transaction set out in Main Board Rule 14.06 it falls into. Classification is made on the basis of the percentage ratios set out in Main Board Rule 14.07 as set out in the table below.

Transaction Type	**Assets ratio**	**Consideration ratio**	**Profits ratio**	**Revenue ratio**	**Equity capital ratio**
Share transaction	less than 5%	less than 5%	less than 5%	less than 5%	less than 5%
Discloseable transaction	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%	5% or more but less than 25%
Major transaction - disposal	25% or more, but less than 75%	25% or more, but less than 75%	25% or more, but less than 75%	25% or more, but less than 75%	Not Applicable
Major transaction – acquisition	25% or more, but less than 100%	25% or more, but less than 100%	25% or more, but less than 100%	25% or more, but less than 100%	25% or more, but less than 100%
Very Substantial Disposal	75% or more	75% or more	75% or more	75% or more	Not applicable

Transaction Type	Assets ratio	Consideration ratio	Profits ratio	Revenue ratio	Equity capital ratio
Very Substantial Acquisition	100% or more	100% or more	100% or more	100% or more	100% or more

The categories of notifiable transactions set out in Main Board Rule 14.06 are:

- A ***share transaction*** is an acquisition of assets (excluding cash) by a listed issuer where the consideration includes securities for which listing will be sought and where all percentage ratios are less than 5%;
- A ***discloseable transaction*** is a transaction or a series of transactions by a listed issuer where any percentage ratio is 5% or more, but less than 25%;
- A ***major transaction*** is a transaction or a series of transactions by a listed issuer where any percentage ratio is 25% or more, but less than 100% for an acquisition or 75% for a disposal;
- A ***very substantial disposal*** is a disposal or a series of disposals of assets (including deemed disposals under Main Board Rule 14.29) by a listed issuer where any percentage ratio is 75% or more;
- A ***very substantial acquisition*** is an acquisition or a series of acquisitions of assets by a listed issuer where any percentage ratio is 100% or more; and
- A ***reverse takeover*** is an acquisition or a series of acquisitions of assets by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new applicants set out in Chapter 8 of the Listing Rules.

A "reverse takeover" includes:

(a) an acquisition/series of acquisitions of assets **constituting a very substantial acquisition** where there is or which will result in a **change in control** (i.e. 30% or more of the voting rights) of the listed issuer; or

(b) an acquisition/series of acquisitions of assets **from the incoming controlling shareholder(s) or his/their associates within 24 months after the change in control of the listed issuer** that had not been regarded as a reverse takeover, which individually or together **reach the threshold for a very substantial acquisition**.

In determining whether the acquisition(s) constitute(s) a very substantial acquisition, the lower of:

(i) the latest published figures of the asset value, revenue and profits as shown in the listed issuer's accounts and the market value of the listed issuer at the time of the change in control; and

(ii) the latest published figures of the asset value, revenue and profits as shown in the listed issuer's accounts and the market value of the listed issuer at the time of the acquisition(s),

is to be used as the denominator of the percentage ratios.

3. Percentage Ratios

The percentage ratios normally referred to as the "five tests" are the figures expressed as percentages resulting from each of the following calculations:

- ***Assets ratio*** —the total assets which are the subject of the transaction divided by the total assets of the listed issuer;

- ***Profits ratio*** — the profits attributable to the assets which are the subject of the transaction divided by the profits of the listed issuer;

- ***Revenue ratio*** — the revenue attributable to the assets which are the subject of the transaction divided by the revenue of the listed issuer;

- ***Consideration ratio*** — the consideration divided by the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer's securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of the transaction; and

- ***Equity capital ratio*** — the number of shares to be issued by the listed issuer as consideration divided by the total number of the listed issuer's issued shares immediately before the transaction. The numerator includes shares that may be issued upon conversion or exercise of any convertible securities or subscription rights to be issued or granted by the listed issuer as consideration. The listed issuer's debt capital (if any), including any preference shares, is not included in the calculation of the equity capital ratio.

Exceptions to the Classification Rules

If any size test produces an anomalous result or is inappropriate to the issuer's sphere of activity, the Exchange may disregard the calculation and substitute other relevant size indicators or industry specific tests (Main Board Rule 14.20).

Transactions involving an Acquisition and Disposal

Where a transaction involves both an acquisition and a disposal, the Exchange will apply the percentage ratios to both the acquisition and the disposal. The transaction will be classified based on the larger of the acquisition or disposal, and subject to the requirements applicable to that classification. Where a circular is required, each of the acquisition and disposal will be subject to the content requirements applicable to their respective transaction classification (Main Board Rule 14.24).

4. Aggregation of Transactions

Pursuant to Main Board Rule 14.22, the Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12 month period or are otherwise related.

Factors which the Exchange will take into account in determining whether transactions will be aggregated include whether the transactions:

1. are entered into by the listed issuer with the same party or with parties connected or otherwise associated with one another;

2. involve the acquisition or disposal of securities or an interest in one particular company or group of companies;

3. involve the acquisition or disposal of parts of one asset; or

4. together lead to substantial involvement by the listed issuer in a business activity which did not previously form part of the listed issuer's principal business activities.

Aggregation is not automatic only because one factor is triggered. The Exchange will also consider whether the aggregation would result in a higher transaction classification.

With regards to the aggregation of transactions, the Exchange should be consulted at an early stage:

- in cases of doubt;
- if any of the factors above apply to any transaction entered into by the listed issuer in the preceding 12-month period; or
- if any transaction entered into by the listed issuer involve acquisitions of assets from a person or group of persons or any of his/their associates within 24 months of such person or group of persons gaining control of the listed issuer (other than at the subsidiary level).

The Exchange may aggregate transactions regardless of whether it was consulted by the listed issuer.

5. Consequences of entering into a notifiable transaction

The actions required to be taken by the issuer depend on the category of notifiable transaction within which the transaction falls. The requirements under Main Board Rule 14.33 generally applicable to each category are as follows:

	Notification to Exchange	Short suspension of dealings	Publication of an Announcement	Circular to shareholders	Shareholder approval	Accountants' report
Share transaction	Yes	Yes	Yes	No	No[1]	No
Discloseable transaction	Yes	No, unless there is PSI	Yes	No	No	No
Major transaction	Yes	Yes	Yes	Yes	Yes[2]	Yes[3]
Very substantial disposal	Yes	Yes	Yes	Yes	Yes[2]	No[5]
Very substantial	Yes	Yes	Yes	Yes	Yes[2]	Yes[4]

	Notification to Exchange	Short suspension of dealings	Publication of an Announcement	Circular to shareholders	Shareholder approval	Accountants' report
acquisition						
Reverse takeover	Yes	Yes	Yes	Yes	Yes[2, 6]	Yes[4]

Notes:

1 *No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to Main Board Rule 13.36(2)(b), to obtain shareholders' approval in general meeting prior to the issue of the consideration shares.*

2 *Any shareholder and his associates must abstain from voting if such shareholder has a material interest in the transaction.*

3 *An accountants' report on the business, company or companies being acquired is required (see also Main Board Rules 4.06 and 14.67(6)).*

4 *An accountants' report on any business, company or companies being acquired is required (see also Main Board Rules 4.06 and 14.69(4)).*

5 *A listed issuer may at its option include an accountants' report (see Note 1 to Main Board Rule 14.68(2)(a)(i)).*

6 *Approval of the Exchange is necessary.*

6. Notification and Announcement Requirements

As soon as possible after the terms of a notifiable transaction have been finalised, the listed issuer must:

(1) inform the Exchange; and

(2) publish an announcement on the websites of the Exchange and the listed issuer in accordance with Main Board Rule 2.07C (Main Board Rule 14.34).

7. Short suspension of dealings

Where a listed issuer has signed an agreement in respect of a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover and the required announcement has not been published on a business day, the listed issuer must request a short suspension of dealings in its securities pending the publication of the announcement in accordance with Main Board Rule 2.07C. A listed issuer that has signed an agreement in respect of any notifiable transaction that is expected to be price sensitive must immediately request a short suspension of dealings pending publication of an announcement (Main Board Rule 14.37). Where a listed issuer has finalised the major terms of a notifiable transaction that is expected to be price

sensitive, it must ensure the confidentiality of the relevant information until an announcement is published.

8. Announcement contents: general requirements

All notifiable transactions require the publication of an announcement containing the following information specified in Main Board Rule 14.58:

(1) a prominent and legible disclaimer at the top of the announcement in the form set out in Main Board Rule 14.88;

(2) a description of the principal business activities carried on by the listed issuer and a general description of the principal business activities of the counterparty, if the counterparty is a company or entity;

(3) the date of the transaction. The listed issuer must also confirm that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer;

(4) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought, the listed issuer must also include the amounts and details of the securities being issued;

(5) the basis upon which the consideration was determined;

(6) the value (book value and valuation, if any) of the assets which are the subject of the transaction;

(7) where applicable, the net profits (both before and after taxation and extraordinary items) attributable to the assets which are the subject of the transaction for the two financial years immediately preceding the transaction;

(8) the reasons for entering into the transaction, the benefits which are expected to accrue to the listed issuer as a result of the transaction and a statement that the directors believe that the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole; and

(9) where appropriate, details of any guarantee and/or other security given or required as part of or in connection with the transaction.

Under Main Board Rule 2.07C(3), when submitting an announcement through the e-Submission System, all appropriate headlines must be selected from the list of headlines set out in Appendix 24 to the Listing Rules. In particular, the headline category “Price Sensitive Information” must be among those selected if the subject matter or transaction of the announcement is price sensitive in nature under Main Board Rule 13.09.

Additional requirements for share transaction announcements

Announcements for share transactions must include the following additional information required by Main Board Rule 14.59:

i. the amount and details of the securities being issued and details of any restrictions on the subsequent sale of such securities;

ii. brief details of the assets being acquired, including the name of any company or business or the assets or properties and, if the assets include securities, the name and general description of the activities of the company in which the securities are held

iii. if the transaction involves an issue of securities by a subsidiary of the listed issuer, a declaration as to whether the subsidiary will continue to be a subsidiary after the transaction

iv. a statement that the announcement appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for the securities

v. a statement that application has been or will be made to the Exchange for listing and permission to deal in the securities.

Additional requirements for announcements of notifiable transactions (other than share transactions)

All other announcements must include the additional information required by Main Board Rule 14.60:

i. the general nature of the transaction including, if securities are involved, details of any restrictions applying to subsequent sale of the securities;

ii. brief details of the assets being acquired or disposed of, including the name of the company/business or assets or properties and if the assets include securities, the name and general activities of the company in which the securities are held;

iii. in the case of a disposal:

- details of the gain or loss expected and the basis of its calculation (the gain or loss should be calculated by reference to the carrying value); and

- the intended application of the sale proceeds;

iv. for a major transaction to be approved by written shareholders' approval of a shareholder or a closely allied group of shareholders, the name of the shareholder(s), the number of shares held by each and the relationship between the shareholders;

v. if the transaction involves the disposal of an interest in a subsidiary, a declaration as to whether the subsidiary will continue to be a subsidiary after the transaction; and

vi. (except for discloseable transactions) the expected date of despatch of the circular to shareholders and, if this is more than 15 days after the announcement date, the reasons why this is so.

If there is expected to be delay in despatch of the circular, the listed issuer must as soon as practicable disclose this fact by way of an announcement stating the reason for the delay and the new expected date of despatch of the circular (Main Board Rule 14.36A).

9. Pre-vetting requirements

Generally, announcements for notifiable transactions do not need to be pre-vetted (that is, reviewed and approved by the Exchange) before publication. However, pursuant to the transitional provisions of Main Board Rule 13.52(2) (which will cease to take effect on a date to be determined by the Exchange), announcements for any very substantial disposal, very substantial acquisition or reverse takeover must be pre-vetted.

Requirements for further announcements

Where a previously announced notifiable transaction is terminated or there is any material variation of its terms or material delay in the completion of the agreement, the listed issuer must as soon as practicable announce this fact by means of an announcement published in accordance with Main Board Rule 2.07C (Main Board Rule 14.36).

10. Shareholders' Approval Requirements

Major Transactions, Very Substantial Disposals, Very Substantial Acquisitions and Reverse Takeovers must be made conditional on approval by shareholders in general meeting (Main Board Rule 14.40).

Voting at General Meetings on Notifiable Transactions

All voting at general meetings must be taken by poll (Main Board Rule 13.39(4)) and the results of the poll must be announced on the next business day following the meeting. The issuer must appoint its auditor, share registrar or external accountants to act as scrutineer for the vote taking.

Any shareholder that has a material interest in the transaction must abstain from voting. Factors relevant to determining whether a shareholder has a "material interest" include:

- whether the shareholder is a party to the transaction or a close associate of such a party; and
- whether the transaction confers upon the shareholder or his close associate a benefit not available to other shareholders of the issuer (Main Board Rule 2.16).

On a reverse takeover where there is a change in control 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. This prohibition does not apply where the decrease in the outgoing shareholder's shareholding results solely from a dilution through the new issue of shares to the incoming controlling shareholder rather than a disposal of shares by the outgoing shareholder.

Written Shareholders' Approval

Under Main Board Rule 14.44, major transactions only may be approved by written shareholders' approval in lieu of holding a general meeting if:

(i) no shareholder would be required to abstain from voting if the listed issuer were to convene an extraordinary general meeting for the approval of the transaction;

(ii) the written shareholders' approval has been obtained from a shareholder or *closely allied group of shareholders* (as defined in Main Board Rule 14.45) who together hold more than 50% of the voting rights at the general meeting to approve the transaction; and

(iii) the reporting accountants do not give a qualified opinion in their accountants' report (Main Board Rule 14.86).

11. Circular to Shareholders

Main Board Rule 14.63 requires that a circular for a major transaction, very substantial disposal or very substantial acquisition and a listing document for a reverse takeover sent by a listed issuer to holders of its listed securities must:

i. provide a clear, concise and adequate explanation of its subject matter;

ii. if voting or shareholders' approval is required:

   (a) contain all information necessary to allow the holders of the securities to make a properly informed decision;

   (b) contain a heading emphasising the importance of the document and advising holders of securities, who are in any doubt as to what action to take, to consult appropriate independent advisers;

   (c) contain a recommendation from the directors as to the voting action that shareholders should take, indicating whether or not the proposed transaction described in the circular is, in the opinion of the directors, fair and reasonable and in the interests of the shareholders as a whole; and

   (d) contain a statement that any shareholder with a material interest in a proposed transaction and his close associates will abstain from voting on resolution(s) approving that transaction; and

iii. contain a confirmation that, to the best of the directors' knowledge, information and belief having made all reasonable enquiry, the counterparty and the ultimate beneficial owner of the counterparty are third parties independent of the listed issuer and connected persons of the listed issuer.

The circular must be sent to shareholders:

- in the case of a major transaction to be approved by written shareholders' approval – within 15 business days after publication of the announcement (Main Board Rule 14.41(a));

- for major transactions to be approved in general meeting, very substantial acquisitions and very substantial disposals, at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction (Main Board Rules 14.41(b) and 14.51).

The listed issuer must also despatch to its shareholders any revised or supplementary circular and/or provide any material information that has come to the attention of the directors after the issue of the circular (by way of announcement published in accordance with Main Board Rule 2.07C) on the transaction to be considered at a general meeting not less than 10 business days before the date of the relevant general meeting (Main Board Rules 14.42 and 14.52).

The Listing Rules set out additional requirements for shareholders' circulars involving an acquisition or disposal of any business, company or companies or revenue-generating assets with an identifiable income stream or asset valuation. Depending on the type of transaction, the listed

issuer may be required to include in the circular an accountants' report, profit/loss statement or pro forma financial statement.

Additional Requirements for Circulars for Major Transactions involving an acquisition of any business or company(ies)

The issuer is also required to include the following in a shareholders' circular in relation to a notifiable transaction which involves an acquisition of a business or one or more companies:

- an accountants' report on the business or company(ies) being acquired (although the Exchange may relax this requirement if the company will not become a subsidiary of the issuer);
- a pro forma statement of the assets and liabilities of the listed issuer's group combined with those of the business or company(ies) being acquired on the same accounting basis (Main Board Rule 14.67(6)); and
- a discussion and analysis of the results of the business or company(ies) being acquired (Main Board Rule 14.67(7)).

Additional Requirements for Circulars for Major Transactions involving an acquisition of any revenue generating assets (other than a business or company)

The additional requirements for a shareholders' circular in relation to a notifiable transaction which involves an acquisition of any revenue generating assets (other than a business or company) with an identifiable income stream include:

- a profit and loss statement and valuation for the 3 preceding financial years (or less if the asset has been held by the vendor for a shorter period) on the identifiable net income stream and valuation in relation to such assets, reviewed by the auditors or reporting accountants;
- a pro forma statement of the assets and liabilities of the listed issuer's group combined with the assets being acquired on the same accounting basis (Main Board Rule 14.67(6)(b)); and
- a discussion and analysis of the results of the business or company(ies) being acquired (Main Board Rule 14.67(7)).

Additional Requirements for Circulars for VSAs and Reverse Takeovers ("**RTOs**") involving an acquisition of any business or company(ies) (Main Board Rule 14.69(4)(a))

The additional requirements for a VSA or RTO circular in relation to an acquisition of a business or one or more companies include:

- an accountants' report on the business or company(ies) being acquired;
- a pro forma income statement, balance sheet and cash flow statement of the enlarged group on the same accounting basis; and
- in relation to a VSA, a separate discussion and analysis of the performance of each of the existing group and any business or company(ies) acquired or to be acquired for the relevant period referred to in Main Board Rule 4.06(1)(a).

Additional Requirements for Circulars for VSAs and RTOs involving an acquisition of any revenue generating assets

The additional requirements for a circular to shareholders for a VSA or RTO relating to an acquisition of any revenue generating assets (other than a business or company) with an identifiable income stream or assets valuation include:

- a profit and loss statement and valuation for the 3 preceding financial years (or less if, other than in the case of an RTO, the asset has been held by the vendor for a shorter period) on the identifiable net income stream and asset valuation, reviewed by the auditors or reporting accountants;

- a pro forma profit and loss statement and net assets statement on the enlarged group on the same accounting basis (Main Board Rule 14.69(4)(b)); and

- in relation to a VSA, a separate discussion and analysis of the performance of each of the group and any business or company acquired for the period referred to in Main Board Rule 4.06(1)(a) (Main Board Rule 14.69(7)).

Additional Requirements for Circulars for VSDs involving a disposal of any business or company(ies) (Main Board Rule 14.68(2)(a))

The additional requirements for a VSD circular involving a business or company being disposed of include:

- financial information on either: (a) the business or company(ies) being disposed of; or (b) the issuer's group with the business or company(ies) being disposed of shown separately as a disposal group(s) or a discontinuing operation(s) for the relevant period described in Main Board Rule 4.06(1)(a);

- the financial information must include at least the income statement, balance sheet, cash flow statement and statement of changes in equity and must be reviewed by the issuer's auditors or reporting accountants; and

- a pro forma income statement, balance sheet and cash flow statement of the remaining group on the same accounting basis (Main Board Rule 14.68(2)(a)).

Additional Requirements for Circulars for VSDs involving a disposal of revenue-generating assets (other than a business or company(ies) (Main Board Rule 14.68(2)(b))

The additional requirements for a VSD circular in relation to a disposal of revenue generating assets (other than a business or company) with an identifiable income stream or assets valuation include:

- a profit and loss statement and valuation for the 3 preceding financial years (or less where the asset has been held by the issuer for a shorter period) on the identifiable net income stream and valuation in relation to such assets which must be reviewed by the auditors or reporting accountants; and

- a pro forma profit and loss statement and net assets statement on the remaining group on the same accounting basis (Main Board Rule 14.68(2)(b)).

Summary of historical financial information requirements applicable to acquisitions of any business, company, companies or revenue-generating asset with an identifiable income stream or asset valuation

	Where the target is a business/ company	**Where the target is a revenue-generating asset with an identifiable income stream or asset valuation**
Major disposal	**Not required**	**Not required**
Major acquisition	**Accountants' report on the target**	**Profit/ loss statement and (where available) valuation of the target**
Very substantial disposal	**Financial information of either the target or the listed issuer group with the target shown separately**	**Profit/ loss statement and (where available) valuation of the target**
Very substantial acquisition or reverse takeover	**Accountants' report on the target**	**Profit/ loss statement and (where available) valuation of the target**

Source: the Hong Kong Stock Exchange

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Summary of pro forma financial information requirements applicable to acquisitions of any business, company, companies or revenue-generating asset with an identifiable income stream or asset valuation

	Where the target is a business/ company	**Where the target is a revenue-generating asset with an identifiable income stream or asset valuation**
Major disposal	**Not required**	**Not required**
Major acquisition	**Pro forma statement of assets and liabilities of the enlarged group**	**Pro forma statement of assets and liabilities of the enlarged group**
Very substantial disposal	**Pro forma income statement, balance sheet and cash flow statement of the remaining group**	**Pro forma profit and loss statement and net assets statement on the remaining group**
Very substantial acquisition or reverse takeover	**Pro forma income statement, balance sheet and cash flow statement of the enlarged group**	**Pro forma profit and loss statement and net assets statement on the enlarged group**

Source: the Hong Kong Stock Exchange

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12. Requirements for Reverse Takeovers (Main Board Rule 14.54)

The Exchange will treat a listed issuer proposing a reverse takeover as a new listing applicant. The enlarged group or the assets to be acquired must be able to meet one of the financial tests in Main Board Rule 8.05 and the enlarged group must be able to meet all other listing criteria of Chapter 8 of the Listing Rules.

The listed issuer must comply with the procedures and requirements for new listing applicants set out in Chapter 9 of the Listing Rules and must issue a listing document and pay the initial listing fee. A reverse takeover listing document is required to include virtually all the information required by Part A of Appendix 1 to the Listing Rules in addition to the information required under Main Board Rules 14.63 and 14.69. The listing document must be sent to shareholders at the same time as or before the listed issuer gives notice of the general meeting to approve the transaction. The announcement of the reverse takeover must state the expected date of despatch of the listing document and if this is more than 15 business days after the publication of the announcement, reasons for this must be given.

The Definition of Reverse Takeover

The preamble to Main Board Rule 14.06 defines a reverse takeover as an acquisition or series of acquisitions by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for new listing applicants under Chapter 8 of the Listing Rules (the "**Principle Based Test**").

Main Board Rules 14.06(6)(a) and (b) set out bright line tests ("**Bright Line Tests**") which apply to two specific forms of reverse takeover. These are:

(a) an acquisition or a series of acquisitions of assets (aggregated under Main Board Rules 14.22 and 14.23) by a listed issuer which **constitute a very substantial acquisition ("VSA")** where there is, or which will result in, a **change of control** (as defined in the Takeovers Code (i.e. 30%)) of the listed issuer (other than at the level of its subsidiaries); or

(b) an acquisition or a series of acquisitions of assets (aggregated under Main Board Rules 14.22 and 14.23) by a listed issuer which **constitute a VSA** from a person or group (or their associates) under any agreement or arrangement entered into by the listed issuer within **24 months** of that person or group gaining **control** of the listed issuer (where the original transaction did not constitute an RTO). In determining whether one or more transactions constitute a VSA, the denominator in the percentage ratio calculation is measured at the time of the change of control or the acquisition(s), whichever produces the lower figure.

To fall within the Bright Line Tests, there must be a change in control of the listed issuer and a VSA by the incoming controlling shareholder at the time of the change in control or within the following 24 months. A VSA which is within the Bright Line Tests will be a reverse takeover and the listed issuer proposing the VSA will be treated as a new listing applicant.

If a VSA falls outside the Bright Line Tests, the Exchange will apply the Principle Based Test to assess whether the acquisition(s) are an attempt to list the assets acquired and circumvent the new listing requirements).

Exchange Guidance Letter HKEx-GL78-14

Where there is no change in control, the Exchange will treat a VSA which attempts to list the assets acquired and circumvent the new listing requirements as an RTO only if it considers the VSA to be an "**extreme case**".[2]

In determining whether the VSA is an extreme case, the Exchange takes the following factors into account:

- the size of the acquisition relative to the size of the issuer;
- the quality of the acquired business – whether it can meet the trading record requirements for new listings, or whether it is unsuitable for listing (e.g. an early stage mineral exploration company);
- the nature and scale of the issuer's business before the acquisition (a key question is whether it is a listed shell);
- any fundamental alteration to the issuer's principal business (e.g. the existing business would be discontinued or very immaterial to the enlarged group's operations post acquisition);
- any other events and transactions, whether they be historical, proposed or intended, which, when considered alongside the acquisition, constitute a sequence of arrangements designed to circumvent the reverse takeover rules ("**RTO Rules**") (e.g. a disposal of the issuer's original business simultaneous with a very substantial acquisition); and
- any issue to the vendor of Restricted Convertible Securities which would provide it with *de facto* control of the issuer. Restricted Convertible Securities are highly dilutive convertible securities with a conversion restriction mechanism (e.g. restriction from conversion that would cause the securities holder to hold 30% interest or higher) which avoids triggering a change of control under the Code on Takeovers and Mergers.

Non-extreme Cases

The Exchange will not apply the RTO Rules to a VSA within the Principle Based Test which it does **not** consider to be extreme. The Exchange may nevertheless require the issuer to prepare a transaction circular under an enhanced disclosure and vetting approach.

Extreme VSAs

Where the Exchange considers a VSA to be extreme, but the acquired assets or enlarged group are unable to meet the requirements for new listing, the RTO Rules will be applied and the transaction will not be able to proceed.

The Exchange's Guidance Letter HKEx-GL78-14 describes "extreme VSAs" as VSAs which are considered extreme, but the acquired assets meet the minimum profit requirement under Rule 8.05 and circumvention of the requirements for new listings is not a material concern.

The Exchange refers extreme VSAs to the Listing Committee for its decision.

Where the Listing Committee determines that the RTO Rules will apply, the issuer will be treated as a new listing applicant and will be subject to the requirements applicable to new listing applicants.[3]

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[2] Exchange Guidance Letter HKEx-GL78-14.

[3] Exchange Guidance Letter HKEx-GL78-14 at paragraphs 9 and 30.

Where the Listing Committee determines that the RTO Rules will not apply to an extreme VSA, the issuer will be required to:

(a) prepare a transaction circular under an enhanced disclosure and vetting approach; and

(b) appoint a financial adviser to conduct due diligence on the acquisition.[4]

In cases involving the acquisition of new businesses or assets, enhanced disclosure is likely to be of limited use, as the business or assets in question will have little in the way of operating history or track record. Such cases are therefore more likely to be regarded as new listings.

Reverse Takeovers and the Restriction on Disposals after a Change of Control (Main Board Rules 14.92 and 14.93)

The Listing Rules prohibit a listed issuer from disposing of its existing business within 24 months after a change in control unless assets acquired by the listed issuer after the change in control can meet the trading record requirement of Main Board Rule 8.05. If not, on a disposal by a listed issuer of its existing business within 24 months of a change in control, the issuer will be treated as a new listing applicant.

In its 2008 and 2009 reports, the Listing Committee clarified that the aim of Main Board Rules 14.92 and 14.93 was to prevent circumvention of the reverse takeover rules by a new controlling shareholder deferring the sale of an existing business until after the asset injection, thereby avoiding classification as a VSA.

A waiver of Main Board Rule 14.92 can therefore be sought for a legitimate sale of an existing business within 24 months of a change of control provided that:

- the incoming controlling shareholder has not injected assets into the listed issuer; and
- after factoring in the disposal(s) of the issuer's existing business, the asset injection(s) before and after the change in control would not have constituted a VSA.

(See Listing Committee's Annual Reports of 2008 and 2009 and Listing Decision HKEx-LD7-2011)

13. Additional requirements for transactions involving mineral assets

A Mineral Company which proposes to acquire or dispose of assets which are solely or mainly mineral or petroleum assets as part of a major transaction (i.e. 25% or more of existing activities) or above (a **Relevant Notifiable Transaction**) must:

(i) Comply with the requirements for notifiable transactions of Main Board Chapter 14 and, if relevant, the requirements for connected transactions of Main Board Chapter 14A;

(ii) Prepare a Competent Person's Report, which must form part of the circular to shareholders, on the resources and/or reserves being acquired or disposed of as part of the relevant transaction;

(iii) In the case of a major (or above) acquisition, produce a Valuation Report, which must form part of the circular to shareholders, on the mineral or petroleum assets being acquired. The Valuation Report must be prepared by a Competent Evaluator being someone who (a) meets

[4] Exchange Guidance Letter HKEx-GL78-14 at paragraph 9. Where the acquisition in involves natural resources and a competent person's report and valuation report are prepared under Chapter 18 of the Rules (Chapter 18A of the GEM Rules), the Listing Committee may not apply additional due diligence requirements.

the independence test under Main Board Rule 18.22; (b) has at least 10 years' relevant and recent general mining/petroleum experience; (c) has at least 5 years' relevant and recent experience in assessment and/or valuation of mineral or petroleum assets; and (d) has all necessary licences (Main Board Rule 18.23). Valuation Reports must be prepared under the VALMIN Code, SAMVAL Code or CIMVAL (Main Board Rule 18.34); and

(iv) Comply with the requirements of Main Board Rules 18.05(2) to 18.05(6) in relation to the assets being acquired (Main Board Rule 18.09).

Other listed issuers (i.e. non-Mineral Companies) that propose to acquire assets which are solely or mainly mineral or petroleum assets as part of a Relevant Notifiable Transaction must also comply with the above requirements. On completion of the transaction, the listed issuer will be treated as a Mineral Company, unless the Exchange decides otherwise.

It should be noted that the Exchange may dispense with the requirement to produce a new Competent Person's Report or a Valuation Report (Main Board Rules 18.05(1), 18.09(2) or 18.09(3), if the issuer already has a Competent Person's Report or Valuation Report (or equivalent) that complies with Main Board Rules 18.18 to 18.34 (where applicable) and is not more than six months old (Main Board Rule 18.12).

Prior written consent must be obtained from the Competent Person(s) or Competent Evaluator before an issuer may include their reports in the listing document or circular for a Relevant Notifiable Transaction, regardless of whether the person or firm is retained by the listing applicant or issuer (Main Board Rule 18.13).

14. Pre-vetting requirements

Main Board Rule 13.52(1) requires that circulars or listing documents in respect of notifiable transactions must be pre-vetted (that is, reviewed and approved by the Exchange) before publication, including listing documents and prospectuses (e.g. for notifiable transactions, such as reverse takeovers, that are treated as new listings).

XVI. CONNECTED TRANSACTIONS

The following is a summary of the rules governing connected transactions.

1. Introduction

The rules on connected transactions are set out in Chapter 14A of the Main Board Listing Rules. Their objectives are:

a) to ensure that a listed issuer takes into account the interests of shareholders as a whole when it or one of its subsidiaries enters into connected transactions;

b) to provide safeguards against the directors, chief executive and substantial shareholders (or their associates) taking advantage of their positions. This is achieved by the general requirement of independent shareholders' approval for connected transactions.

Generally, a connected transaction is any transaction between a listed **issuer** or any of its **subsidiaries** and a connected person.

For classification purposes, the Exchange may aggregate a series of transactions that are completed over a 12-month period or are otherwise related.

Factors which the Exchange takes into account in determining whether connected transactions should be aggregated are whether they:

i. are entered into by the listed issuer with the same party or parties connected/associated with one another;

ii. involve the acquisition or disposal of securities or an interest in one particular company or group of companies;

iii. involve the acquisition or disposal of parts of one asset; or

iv. together lead to substantial involvement by the listed issuer in a business activity not previously part of its principal business activities (Main Board Rule 14A.82).

The Exchange may consider aggregating continuing connected transactions with a single connected person (Main Board Rule 14A.83).

A connected transaction can also be a notifiable transaction. If so, the listed issuer must comply with both Chapters 14 and 14A of the Main Board Listing Rules.

2. Definitions

The term "transaction" for the purposes of the connected transaction requirements includes the following, regardless of whether any such transaction is of a revenue nature and entered into in the ordinary and usual course of the group's business:

<u>Transaction</u>

a) the acquisition or disposal of assets including a deemed disposal under Main Board Rule 14.29;

b) any transaction involving an option to acquire or dispose of assets or to subscribe for securities;

c) entering into or terminating finance or operating leases;

d) granting an indemnity or a guarantee or providing financial assistance;

e) entering into a joint venture in any form;

f) issuing new securities of the issuer or its subsidiaries;

g) provision or receipt of services;

h) sharing of services;

i) providing or acquiring raw materials, intermediate products and finished goods; and

j) a qualified property acquisition (Main Board Rule 14A.24).

<u>Connected Person</u>

"Connected persons" are defined to include:

(a) a **director, chief executive or substantial shareholder** (holding 10% or more of the voting rights) of the listed **issuer** or any of its **subsidiaries**, or an **associate** of any such persons;

Persons connected with the listed issuer's "insignificant subsidiaries" are **not** connected persons. An "insignificant subsidiary" is a subsidiary of the issuer whose total assets, profits and revenues are less than:

(i) 10% under the percentage ratios for each of the three preceding financial years; or

(ii) 5% under the percentage ratios for the latest financial year (Main Board Rule 14A.66).

(b) a **person who was a director** of the listed issuer or any of its subsidiaries in the past 12 months, or an **associate** of such a person; or

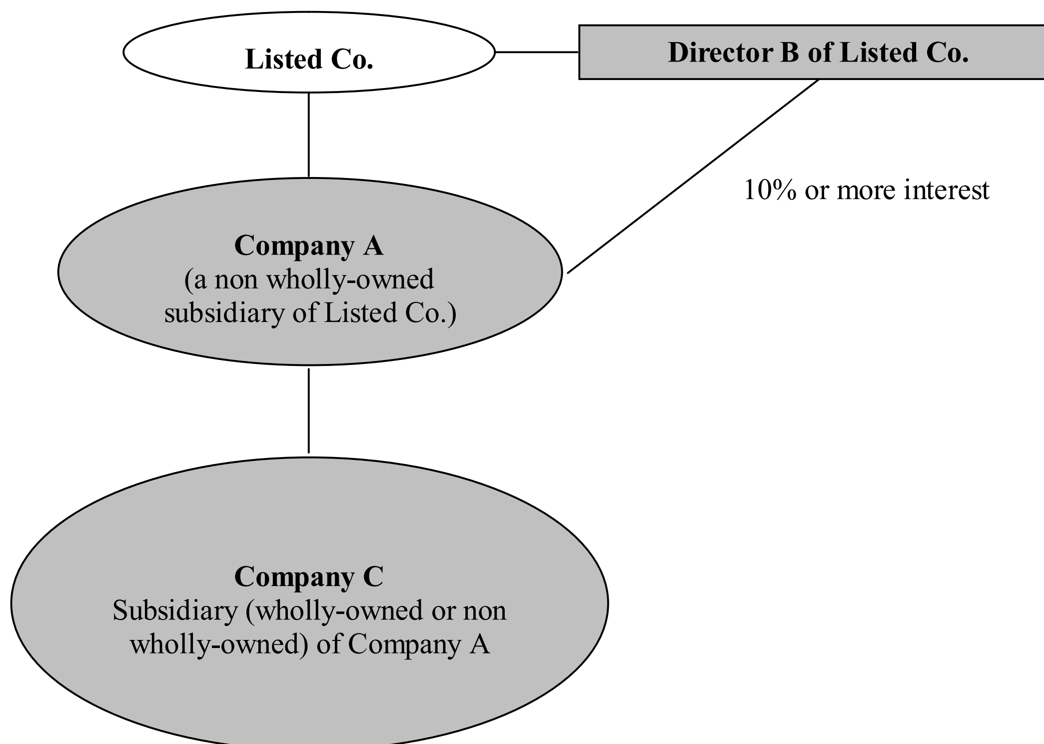
(c) a **connected subsidiary**

a "connected subsidiary" is:

(i) a **non-wholly owned subsidiary** of the listed issuer where any connected person(s) at the **issuer level** are entitled to exercise, or control the exercise of, **10% or more of the voting power** at general meetings of the non-wholly owned subsidiary. This excludes an indirect interest in the subsidiary which is held by the connected person(s) through the listed issuer; or

(ii) **a subsidiary of such a non-wholly owned subsidiary**.

*Note: A **wholly-owned subsidiary** of a listed issuer is **not** a connected person.*



Company A and Company C are connected persons of the listed company as Company A is a non-wholly owned subsidiary in which a connected person at the issuer level (Director B) holds 10% of the shares. Company C as its subsidiary is also connected.

Associates of an individual

The associates of a connected person who is an individual include:

a) his spouse, his (or his spouse's) child or step-child (natural or adopted) under the age of 18 years (each an "**immediate family member**")(Main Board Rule 14A.12(1)(a));

b) the trustees, acting in their capacity as trustee of any trust of which the **individua**l or his **immediate family member** is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object (the "**trustees**").

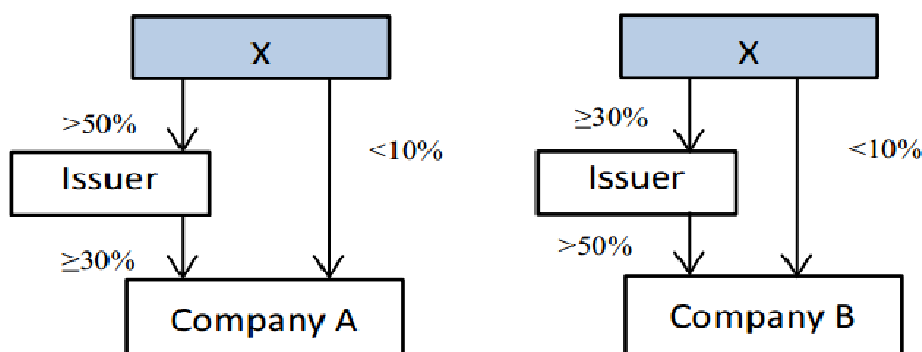
The trustees of an employee share scheme or occupational pension scheme are **not** "associates" of a connected person if:

(i) the scheme is established for a wide scope of participants; and
(ii) the connected persons' interests in the scheme are together less than 30% (Main Board Rule 14A.12(1)(b));

c) a company in which the **individual**, his **immediate family members** and/or the **trustees** (individually or together) control the exercise of **30%** or more of the voting power or control the composition of a majority of the board of directors, and **any subsidiary** of such company (Main Board Rule 14A/12(1)(c)).

A company is not an associate of an individual if the interests of the connected person and his associates in the entity (other than those held through the issuer) are together less than 10% (Main Board Rule 14A.14).

In the diagrams below, neither Company A nor Company B is an associate of X because X's direct interest is less than 10%.



%.

d) a person cohabiting with him as a spouse, or his child, step-child, parent, step-parent, sibling or step-sibling (each a "**family member**")(Main Board Rule 14A.12(2)(a));

e) a company in which the **family members** (individually or together), or the **family members** together with the **individual**, his **immediate family members** and/or the **trustees** control the exercise of **50%** or more of the voting power or control the composition of a majority of the board of directors, and any of its **subsidiaries** (Main Board Rule 14A.12(2)(b));

f) a parent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, nephew, niece or cousin of the connected person (each a "**relative**") whose association with the **connected person** is such that, in the opinion of the Exchange, the proposed transaction should be subject to the connected transaction requirements (Main Board Rule 14A.21); and

g) a company in which the **relatives** (individually or together) or the relatives together with the connected person, the trustees, his immediate family members and/or family members control the exercise of **50%** or more of the voting power or control the composition of a majority of the board of directors, and any of its **subsidiaries**, whose association with the **connected person** is such that, in the opinion of the Exchange, the proposed transaction should be subject to the connected transaction requirements (Main Board Rule 14A.22 and Main Board Rule 14A.21(1)(b)).

Associates of a company

The associates of a connected person which is a company include:

a) its **subsidiary** or **holding company**, or **fellow subsidiary** of such a holding company (together, the "**group companies**")(Main Board Rule14A.13(1));

b) the **trustees** of any trust of which the company is a beneficiary or, to the company's knowledge, discretionary object (the "**trustees**")(Main Board Rule 14A.13(2));

c) a **company** in which the company, the group companies and/or the trustees (individually or together), can:

   (i) exercise or control the exercise of **30% or more of the voting power** at general meetings; or

   (ii) control the composition of a majority of the board of directors; and

d) a subsidiary of a company in (c).

Deemed Connected Persons

The Exchange has the power to deem a person or entity as an issuer's connected person where:

a) the person or entity has entered, or proposes to enter, into:

   (i) a transaction with the group; and

   (ii) an agreement, arrangement, understanding or undertaking (whether formal or informal and whether express or implied) with respect to the transaction with a director, chief executive or substantial shareholder of the issuer or any of its subsidiaries or a person who was such a director within the previous 12 months; and

b) the person or entity should, in the Exchange's opinion, be considered as a connected person (Main Board Rule 14A.21).

3. Connected Transactions where there is no transaction with a connected person

Acquisition of interest in a Company (Main Board Rule 14A.28)

A group acquiring an interest in a company (the "**target company**") from a person who is not a connected person is a connected transaction if the target company's substantial shareholder:

(i) is (or is proposed to be) a **controller** (i.e. a director, chief executive or controlling shareholder of the listed issuer); or

(ii) is, or will, as a result of the transaction, become, an associate of a controller or proposed controller of the listed issuer.

Acquiring the target company's assets is also a connected transaction if the assets account for 90% or more of the target company's net assets or total assets.

The Exchange may aggregate the interests of the controller and his/its associates in the target company to determine if they are together the target company's substantial shareholder. Main Board Rule 14A.28 does not apply to a listed issuer's acquisition if the controller or his/its associates are together a substantial shareholder of the target only because of their indirect shareholdings in the target company held through the listed issuer's group (Main Board Rule 14A.30).

4. Financial assistance

Financial assistance includes granting credit, lending money, providing security for, or guaranteeing a loan (Main Board Rule 14A.24(4)).

Financial assistance provided **by** a listed issuer or its subsidiaries will constitute a connected transaction where it is provided **to**:

a) a connected person; or

b) a Commonly Held Entity.

Financial assistance provided to a listed issuer or its subsidiaries will constitute a connected transaction where it is provided by:

a) a connected person; or

b) a Commonly Held Entity.

Financial assistance must comply with the Connected Transaction Rules if it involves:

a) Financial Assistance for the Benefit of Connected Interests – i.e. the listed issuer or its subsidiaries providing an indemnity, guarantee or other financial assistance to and/or for the benefit of a connected person or a Commonly Held Entity; or

b) Granting Security to Connected Interests – i.e. the listed issuer or its subsidiaries grant security over the group's assets for financial assistance provided by a connected person or a Commonly Held Entity to the listed issuer or its subsidiaries.

The term "Commonly Held Entity" refers to a company whose shareholders include:

a) a member of the listed issuer's group; and

b) a connected person(s) at the issuer level who, individually or together, can exercise or control the exercise of 10% or more of the voting power at the company's general meeting (Main Board Rule 14A.27).

5. Options involving Connected Persons

The grant, acceptance, transfer, exercise or non-exercise of an option by a listed issuer or its subsidiaries to or from a connected person is a connected transaction and is classified by reference to the percentage ratios (except the profits ratio) (Main Board Rule 14A.24(2)(a)).

Termination of an option by a listed issuer is a "transaction" unless termination is in accordance with the terms of the original agreement and there is no payment of any penalty, damages or other compensation.

Options granted by listed group to a connected person

If the listed issuer's group **grants an option** to a connected person and exercise of the option is **not** at the group's discretion:

- on grant of the option to a connected person, the transaction is classified as if the option had been exercised. The percentage ratios are calculated based on the consideration for the transaction (which is taken to include the premium and the exercise price), the value of the underlying assets, and the revenue attributable to the assets (Main Board Rule 14A.79(1));
- the issuer must announce:

  (i) any exercise or transfer of the option by the option holder; and/or

  (ii) if the option is not exercised in full, the option holder notifying the listed issuer's group that it will not exercise the option, or the expiry of the option, whichever is the earlier (Main Board Rule 14A.61).

Options acquired by listed group from a connected person

If the listed issuer's group acquires or accepts an option granted by a connected person where the option is exerciseable at the discretion of the listed group:

- on acquisition by (or grant of the option to) the group, only the premium is taken for the purpose of calculating the percentage ratios. However, if the premium represents 10% or more of the sum of the premium and the exercise price, the percentage ratios are calculated based on the premium, the exercise price, the value of the underlying assets, and the revenue attributable to such assets (Main Board Rule 14A.79(2));
- on exercise of the option by the group, the exercise price, the value of the underlying assets and the revenue attributable to such assets are used for the purpose of calculating the percentage ratios;
- if the listed group transfers the option to a third party, terminates the option or decides not to exercise the option:

  (i) the transaction is classified as if the option was exercised. The exercise price, value of the underlying assets, the revenue attributable to such assets and (if applicable) the consideration for transferring the option, or the amount receivable or payable by the listed group for terminating the option are used for the purpose of the percentage ratios (Main Board Rule 14A.79(4)(a)); or

  (ii) the Exchange may allow the listed issuer to classify the transaction using the asset and consideration ratios based on the **higher** of:

    (a) 1) for a **put option** held by the listed issuer's group, the exercise price less the value of the assets subject to the option; **or**

    2) for a **call option** held by the listed issuer's group, the value of the assets subject to the option less the exercise price; and

(b) the consideration or amount payable or receivable by the listed group.

An issuer may adopt the alternative classification test under (ii) above if the value of the option assets is readily ascertainable and the issuer is able to provide:

- a valuation of the option assets prepared by an independent expert using generally acceptable methodologies; and
- a confirmation from the INEDs and an independent financial adviser that the transfer, termination or non-exercise of the option is fair and reasonable and in the interests of the listed issuer and its shareholders as a whole.

If an issuer adopts the alternative method, it must announce the transfer, termination or non-exercise of the option with the views of the INEDs and independent financial adviser.

6. Joint Ventures involving Connected Persons

The entering into of any arrangement or agreement involving the formation of a joint venture entity in any form, such as a partnership or company or any other form of joint venture arrangement, by a listed issuer and a connected person constitutes a connected transaction (Main Board Rule 14A.24(5)).

7. Continuing Connected Transactions

Continuing connected transactions are connected transactions that:

a) involve the provision of goods, services or financial assistance;

b) are carried out on a continuing or recurring basis; and

c) are expected to extend over a period of time (Main Board Rule 14A.31).

They are usually transactions in a group's ordinary and usual course of business.

8. Classification of Connected and Continuing Connected Transactions

Connected and continuing connected transactions fall into three categories:

i. Non-exempt transactions which must be: (a) reported in the listed issuer's annual report; (b) announced on the websites of the Exchange and the listed issuer; and (c) made conditional on being approved by the issuer's independent shareholders;

ii. Transactions exempt from the reporting, announcement and independent shareholders' approval requirements ("**wholly exempt**" transactions); and

iii. Transactions exempt from the circular, independent financial advice and shareholders' approval requirements only (but subject to the reporting and announcement requirements) ("**partially exempt**" transactions).

9. Connected Transaction Requirements

Written agreement requirement

The listed issuer must enter into a written agreement with all relevant parties in respect of the connected transaction.

Reporting requirements

The listed issuer's next published annual report and accounts must include details of the connected transaction including the transaction date, the transaction parties and a description of their connected relationship, a brief description of the transaction and its purpose, the total consideration and terms and the nature and extent of the connected person's interest.

Notification and Announcement requirements

The listed issuer must notify the Exchange as soon as possible after the terms of the connected transaction have been agreed upon and publish an announcement as soon as possible (Main Board Rule 14A.35).

Independent shareholders' approval requirements

Connected transactions and continuing connected transactions must be approved by the issuer's independent shareholders. Any shareholder who has a material interest in the transaction must abstain from voting (Main Board Rule 14A.36).

Voting on the resolution approving the connected transaction must be by way of poll.

Independent board committee and financial adviser requirements

An **independent board committee** must be established to advise shareholders as to:

- whether the terms of the connected transaction are fair and reasonable;
- whether the transaction is in the interests of the listed issuer and the shareholders as a whole;
- whether the connected transaction is on normal commercial terms and in the issuer's ordinary and usual course of business; and
- how to vote, taking into consideration the views of the independent financial adviser (Main Board Rules 13.39(6)(a) and 14A.40).

An **independent financial adviser** acceptable to the Exchange must be appointed to make recommendations to the independent board committee as to the matters set out above (Main Board Rule 13.39(6)(b)).

Written Independent Shareholders' Approval

The Exchange may waive the general meeting requirement and accept a written independent shareholders' approval if:

i. no shareholder of the issuer would be required to abstain from voting if a general meeting were held; and

ii. the written independent shareholders' approval is obtained from a shareholder or closely allied group of shareholders who (together) hold more than 50% of the voting rights in general meeting. (Main Board Rule 14A.37)

Shareholders' Circular Requirement

The listed issuer must send a circular to shareholders:

- at the same time as it gives notice of the general meeting to approve the transaction; or

- if the transaction is to be approved by way of written shareholders' approval from a shareholder or closely allied group of shareholders, within 15 business days after publication of the announcement (Main Board Rule 14A.46).

The shareholders' circular must comply with the contents requirements of Main Board Rules 14A.69 and 14A.70 and must include the letter from the independent board committee and the independent financial adviser's opinion.

Continuing Connected Transaction Requirements

Additional requirements for continuing connected transactions

In the case of continuing connected transactions, the agreement governing the transaction must be on normal commercial terms and must be for a fixed period. It must not exceed 3 years except in special circumstances where the nature of the transaction requires a longer period. In this case, the issuer must appoint an independent financial adviser to explain why the agreement requires a longer period and that it is normal business practice for agreements of this type to be of a longer duration (Main Board Rule 14A.52). The reporting requirements must be followed for each subsequent financial year during which the listed issuer undertakes the continuing connected transaction.

Annual cap requirement for continuing connected transactions

The listed issuer must set a maximum aggregate annual cap expressed in monetary terms, the basis of which must be disclosed. The annual cap must be determined by reference to previous transactions and figures in the group's published information or be based on reasonable assumptions if no previous transaction exists. The annual cap must be approved by shareholders if the continuing connected transaction requires shareholder approval (Main Board Rule 14A.53).

If the annual cap is exceeded, or if the relevant agreement is renewed or its terms are changed materially, the listed issuer must re-comply with the announcement and independent shareholders' approval requirements (Main Board Rule 14A.54).

Annual review requirements for continuing connected transactions

Each year, the INEDs of the listed issuer must review the continuing connected transactions and confirm in the annual report and accounts that the transactions have been entered into:

a) in **the ordinary and usual course of business** of the group;

b) on **normal commercial terms** or better; and

c) in accordance with the relevant agreement on terms that are fair, reasonable and in the interests of the listed issuer's shareholders as a whole (Main Board Rule 14A.55).

Each year, the auditors must provide a letter to the issuer's board of directors confirming whether anything has come to their attention that causes them to believe that the non-exempt continuing connected transactions:

a) have not been approved by the board;

b) were not, in all material respects, in accordance with the group's pricing policies if the transactions involve the provision of goods or services;

c) were not entered into, in all material respects, in accordance with the relevant agreement; and

d) have exceeded the annual cap.

The listed issuer must provide the Exchange with a copy of the auditors' letter at least 10 business days before the bulk printing of its annual report.

10. Exemptions from Connected Transaction Requirements

10.1 Wholly exempt connected transactions

Connected transactions exempt from the reporting, announcement and independent shareholders' approval requirements include, but are not limited to:

- intra-group transactions
- de minimis transactions
- certain issues of new securities
- purchase of own securities
- directors' service contracts
- provision of director's indemnity or purchase of director's insurance
- sharing of administrative services
- buying or selling of consumer goods or services
- transactions with associates of a passive investor
- transactions with a connected person at the subsidiary level

Intra-group transactions

Transactions between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries are wholly exempt where:

a) none of the subsidiaries concerned are connected persons; and

b) no connected persons at the issuer level exercise or control the exercise of 10% or more of the voting power at any general meeting of any of the subsidiaries concerned (Main Board Rule 14A.18).

Connected transactions are also exempt from the Listing Rules' requirements where they are between the issuer's non wholly-owned subsidiary of which a connected person of the issuer (at the issuer level) controls 10% or more of the voting power at any general meeting of such non wholly-owned subsidiary and any of its subsidiaries which are connected persons only by virtue of being the subsidiaries of such non-wholly owned subsidiary or where the transacti on is between any of these subsidiaries (Main Board Rule 14A.17).

De minimis transactions

Transactions on normal commercial terms are wholly exempt where each or all of the percentage ratios except the profits ratio is/are:

(a) less than 0.1%;

(b) less than 1% and the transaction is a connected transaction only because it involves a connected person at the subsidiary level; or

(c) less than 5% and the total consideration is less than HK$3 million (Main Board Rule 14A.76(1)).

This exemption does **not** apply to the issue of new securities by an issuer to a connected person.

Certain issues of new securities

Issues of new securities by a listed issuer or its subsidiaries to a connected person are wholly exempt where:

(a) the connected person receives a pro rata entitlement to securities in its capacity as shareholder;

(b) securities are issued under a share option scheme which complies with Chapter 17 or securities are issued under a share option scheme in existence before the issuer was listed on the Exchange for which approval for listing was granted at the time of listing;

(c) the connected person subscribes for securities in a rights issue or open offer:

  (i) through excess application (under Main Board Rule 7.21(1) or 7.26A(1)); or

  (ii) in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer, and Main Board Rule 7.21 or 7.26A (arrangements to dispose of excess securities) has been complied with; or

(d) securities are issued under a "top-up placing and subscription" that meets the following conditions:

  (i) the new securities are issued to the connected person:

  - after such connected person has reduced its holding in the same class of securities by placing them to third parties who are not its associates under a placing agreement; and

  - within 14 days after the date of the placing agreement;

  (ii) the number of new securities issued to the connected person does not exceed the number of securities placed by it; and

  (iii) the new securities are issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing. (Main Board Rule 14A.92(4)).

Purchase of own securities

Share repurchases by a listed issuer or its subsidiary from a connected person on a recognised stock exchange are wholly exempt from the connected transaction requirements (unless the connected person knowingly sells shares to the listed issuer) (Main Board Rule 14A.94(1). Share repurchases

under a general offer made under the Code on Share Buy-backs are also wholly exempt (Main Board Rule 14A.94(2)).

Directors' service contracts

A director entering into a service contract with the listed issuer or its subsidiary is wholly exempt.

Provision of director's indemnity or purchase of director's insurance

The provision of an indemnity to, or the purchase of insurance for, a director of the issuer or its subsidiaries is exempt from the connected transaction rules if:

(a) the indemnity/insurance is for liabilities that may be incurred in the course of the director performing his duties; and

(b) the indemnity/insurance is in a form allowed under the laws of Hong Kong, and, where the company providing or purchasing the insurance is incorporated outside Hong Kong, the laws of the company's place of incorporation (Main Board Rules 14A.91 and 14A.96).

Sharing of administrative services

The sharing of administrative services between a group and a connected person on a cost basis is wholly exempt, provided that the costs are identifiable and are allocated to the parties involved on a fair and equitable basis.

Buying or selling consumer goods or services

A group buying consumer goods or services as a customer from, or selling consumer goods or services to, a connected person on normal commercial terms in the ordinary and usual course of business is wholly exempt if the following conditions are met:

a) the goods or services must be of a type ordinarily supplied for private use or consumption;

b) they must be for the buyer's own consumption or use, and not be:

    (i) processed into the buyer's products or for resale; or

    (ii) used by the buyer for any of its businesses or contemplated businesses. This condition does not apply if the buyer is the group and there is an open market and transparency in the pricing of the goods or services;

c) they must be used or consumed by the buyer in the same state as when they were bought; and

d) the transaction must be on no more favourable terms to the connected person, or no less favourable terms to the group, than those available to or from independent third parties.

Transactions with associates of a passive investor

A connected transaction of a revenue nature in the ordinary and usual course of the listed group's business and on normal commercial terms or better is wholly exempt where:

a) the transaction is a connected transaction only because it involves an associate (the "Relevant Associate") of a substantial shareholder of the listed issuer and/or any of its subsidiaries; and

b) the substantial shareholder is a passive investor in the listed issuer and/or any of its subsidiaries and meets the following criteria:

(i) it is a sovereign fund, or a unit trust or mutual fund authorised by the Securities and Futures Commission or an appropriate overseas authority;

(ii) it has a wide spread of investments other than the securities of the listed issuer's group and the Relevant Associate;

(iii) it is a connected person only because it is a substantial shareholder of the listed issuer;

(iv) it is not a controlling shareholder of the listed issuer or its subsidiaries;

(v) it does not have any representative on the board of directors of the listed issuer or its subsidiaries, and is not involved in the management of the group (including any influence over the listed issuer's management through negative control (e.g. its veto rights) on material matters of the listed issuer's group); and

(vi) it is independent of the directors, chief executive, controlling shareholder(s) and any other substantial shareholder(s) of the listed issuer or its subsidiaries (Main Board Rules 14A.99 and 14A.100).

Provision of director's indemnity or purchase of director's insurance

The provision of an indemnity to, or the purchase of insurance for, a director of the issuer or its subsidiaries is exempt from the connected transaction rules if:

a) the indemnity/insurance is for liabilities that may be incurred in the course of the director performing his duties; and

b) the indemnity/insurance is in a form allowed under the laws of Hong Kong, and, where the company providing or purchasing the insurance is incorporated outside Hong Kong, the laws of the company's place of incorporation (Main Board Rules 14A.91 and 14A.96).

10.2 Partially exempt connected transactions

De minimis transactions

Connected transactions (other than an issue of new securities by the listed issuer) are exempt from the circular, independent financial advice and independent shareholders' approval requirements (but are subject to the reporting and announcement requirements) where:

a) the connected transaction is on normal commercial terms or better; and

b) all the percentage ratios (except the profits ratio) is/are:

(i) less than 5%; or

(ii) less than 25% and the total consideration is less than HK$10 million (Main Board Rule 14A.76).

Exemption for connected persons at the subsidiary level

Transactions with persons connected **only at the subsidiary level** are exempt from the circular, independent financial advice and shareholders' approval requirements if:

a) the transactions are on normal commercial terms or better;
b) the transactions are approved by the issuer's board of directors; and
c) the issuer's INEDs confirm that the terms of the transactions are fair and reasonable, and they are on normal commercial terms and in the interests of the issuer and its shareholders as a whole (Main Board Rule 14A.101).

10.3 Wholly exempt continuing connected transactions

The following exemptions for connected transactions also apply to continuing connected transactions: the sharing of administrative services, buying or selling consumer goods or services, transactions with associates of a passive investor and *de minimis* transactions. In the case of the *de minimis* exemption, the percentage ratios are calculated on an annual basis.

Wholly exempt continuing connected transactions are exempt from the reporting, announcement, independent shareholders' approval and annual review requirements (Main Board Rule 14A.33).

Partially exempt continuing connected transactions

Continuing connected transactions on normal commercial terms or better are exempt from only the independent shareholders' approval requirements where each or all of the percentage ratios (except the profits ratio) is/are on an annual basis:

a) less than 5%; or

b) less than 25% and the annual consideration is less than HK$10 million (Main Board Rule 14A.76(2)).

10.4 Exemptions for Financial Assistance

Wholly exempt financial assistance provided by a listed issuer which is not a bank

Financial assistance provided by a listed issuer or its subsidiary to a connected person or a Commonly Held Entity is fully exempt if it is:

a) provided on normal commercial terms (or better to the group); and

b) the assistance provided is proportional to the equity interest directly held by the issuer or its subsidiary in the connected person or Commonly Held Entity and any guarantee is given on a several basis (Main Board Rule 14A.89).

Financial assistance received by a listed issuer's group

Financial assistance provided by a connected person or a Commonly Held Entity to a listed issuer or its subsidiary is fully exempt if it is:

a) provided on normal commercial terms (or better to the group); and

b) no security over the assets of the listed issuer or its subsidiaries is granted in respect of the financial assistance (Main Board Rule 14A.90).

Exchange's discretion

In any situation, the Exchange reserves the right to specify that an exemption will not apply to a particular transaction, or to require the listed issuer to meet the independent shareholders' approval requirements (Main Board Rule 14A.75).

XVII. CORPORATE GOVERNANCE

1. Requirement for INEDs

INEDs must make up at least one third of a listed issuer's board. The minimum number of INEDs is three INEDs and at least one INED must have 'appropriate professional qualifications or accounting or related financial management expertise'. The Listing Rules provide guidance as to what such financial expertise entails. But ultimately it is the responsibility of the board to determine on a case by case basis whether a candidate is suitable for the position.

In assessing the independence of a non-executive director, the Exchange will be likely to question the independence of a candidate in the circumstances below:

a) The director holds more than a 1% shareholding interest (whether legal or beneficial and including any rights to call for the issue of shares) in the listed issuer, or if he has received any shareholding interest as a gift, or by means of other financial assistance (e.g., a loan), from the listed issuer or its connected person. A director holding a 5% or more shareholding interest will not normally be considered independent.

b) The director is a professional adviser to the listed issuer, its holding company or any of their subsidiaries or connected persons, or to any person who was a controlling shareholder within the past one year or their associates if there is no controlling shareholder, the chief executive or a director of the listed issuer within the past one year or their associates, in each case subject to a one-year cooling-off period.

c) The director is appointed to protect the interests of a particular shareholder.

d) The director has a material interest in any principal business activity of, or is involved in any material business dealings with, the group or with any connected person of the listed issuer.

e) The director is 'connected with' a director, the CEO or any person who was a substantial shareholder in the past two years. Main Board Rule 3.13(6) provides further elaboration on what constitutes a 'connection' (normally includes relatives).

f) The director is an 'executive' (including one who exercises a management function or acts as a company secretary) or director of the group or of any connected person of the listed issuer, subject to a two-year cooling-off period.

g) The director is financially dependent on the group or any connected persons of the listed issuer.

If a listed issuer fails to meet the requirements as to the minimum number of INEDs or the qualification of the INEDs, it must immediately inform the Exchange and publish an announcement on the Exchange's website as well as its own.

The issuer then has three months to appoint a sufficient number of INEDs or an INED with appropriate professional qualifications to meet the Rules' requirements.

2. Audit Committee

Every listed issuer is required to establish an audit committee comprising non-executive directors only. The audit committee must comprise a minimum of 3 members, at least one of whom must be an INED with appropriate professional qualifications or accounting or related financial management expertise. The majority of the audit committee members must be INEDs and it must

be chaired by an INED (Main Board Rule 3.21). The duties and procedures of the audit committee are Code Provisions under Section C.3 of the Corporate Governance Code.

The audit committee's terms of reference must include, among others:

a) monitoring the relationship with the issuer's auditors, including responsibility for making recommendations to the board on the appointment, reappointment and removal of the auditors;

b) monitoring the integrity of the issuer's financial statements and reviewing significant financial reporting judgements contained in them;

c) overseeing the issuer's financial reporting system and internal control procedures;

Code Provision C2.2 further requires that the board's review of its internal controls must include a review of the adequacy of the resources, qualifications and experience of staff, training programmes and budget of the issuers' accounting and reporting function.

3. Directors' Service Contracts

Shareholders' prior consent is required before the grant of a service contract to a director of the listed issuer or any of its subsidiaries, if the contract is for 3 years or more or requires the listed issuer to give more than one year's notice or pay the equivalent of more than one year's remuneration on termination (Main Board Rule 13.68).

4. Directors' Remuneration

Fees and any other reimbursement or emolument (including allowances and benefits in kind) paid to a director or a past director must be disclosed in full in the annual reports and accounts of an issuer on an individual and named basis (Paragraph 24 of Appendix 16 to Main Board Rules). The company must also disclose information in respect of the 5 highest paid individuals during the financial year under Paragraph 25 of Appendix 16. This information is however only required if any of those individuals is/are not directors whose emoluments will be disclosed under Paragraph 24.

5. Remuneration Committee

Main Board Rules 3.25-3.27 require:

i. issuers to establish a remuneration committee with a majority of INED members;

ii. an INED as chairman of the remuneration committee;

iii. written terms of reference for the remuneration committee; and

iv. an issuer that fails to comply with these Rules to immediately announce its reasons for not doing so and any other relevant details. The issuer will have a three-month period to rectify its non-compliance.

The Corporate Governance Code allows for two different types of remuneration committee. In the first model, the board delegates to the remuneration committee authority to determine the remuneration of executive directors and senior management. In the second model, the board retains that authority, with the remuneration committee taking an advisory role. The minimum terms of reference of the remuneration committee are set out in Code Provision B.1.2. The terms of reference should be made available on the websites of the HKEx and the listed issuer (Code Provision B.1.3).

6. Nomination Committee

A listed issuer should establish a nomination committee with a majority of INEDs, chaired by an INED or the board chairman (Code Provision A.5.1). The nomination committee's written terms of reference should include:

a) reviewing the board's structure, size and composition (including the skills, knowledge and experience) at least annually;

b) identifying and recommending potential board members; and

c) assessing the independence of INEDs.

7. Compliance Adviser

An issuer must appoint a compliance adviser (licensed by the SFC to conduct sponsor work) from the date of listing until the publication date of its financial results for the first full financial year commencing after listing.

An issuer is required to consult and, if necessary, seek advice from its Compliance Adviser in the following situations:

a) before publication of any regulatory announcement, circular or financial report;

b) where a transaction which might be a notifiable or connected transaction is contemplated (including share issues and repurchases);

c) where the listed issuer proposes to use the IPO proceeds in a manner different to that set out in the listing document;

d) where the business activities, developments or results of the issuer deviate from any forecast, estimate or other information in the listing document; and

e) where the Exchange makes an inquiry of the issuer under Main Board Rule 13.10 (Main Board Rule 3A.23).

8. Authorised Representatives

A listed issuer is required to appoint 2 authorised representatives to act as its principal channel of communication with the Exchange. These must be two directors or a director and the company secretary. Whenever they are outside Hong Kong, the authorised representatives must appoint suitable alternates and provide the Exchange with the alternates' contact details. The Exchange must be given prior notification of an authorised representative's proposed termination of his role and the reasons for it.

9. Company Secretary

An issuer must appoint a company secretary being an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging the functions of company secretary (Main Board Rule 3.28).

The Exchange considers the following to have acceptable academic or professional qualifications:

a) members of the Hong Kong Institute of Chartered Secretaries;
b) solicitors or barristers (as defined in the Hong Kong Legal Practitioners Ordinance); and
c) certified public accountants (as defined in the Hong Kong Professional Accountants

Ordinance).

If a person does not have the above qualifications, the Exchange will take the following factors into account in determining whether he has "relevant experience" for the appointment:

a) the length of employment with the listed issuer or with other listed issuers and the roles he played;

b) his familiarity with the Listing Rules and other relevant law and regulations including the Securities and Futures Ordinance, the Companies Ordinance and the Takeovers Code;

c) relevant training taken and/or to be taken; and

d) his professional qualifications in other jurisdictions.

10. Board Diversity

Under the Corporate Governance Code, a listed issuer's board should have a balance of skills, experience and diversity of perspective appropriate to the requirements of the issuer's business.

The nomination committee (or the board) of a listed issuer should have a policy on board diversity which should be disclosed in the issuer's corporate governance report (Code Provision A.5.6). Alternatively, a summary of the diversity policy may be disclosed. This is not then a mandatory requirement: however, if an issuer does not comply with the Code Provision it must state this and give considered reasons for the non-compliance in the corporate governance report included in its annual reports. As to the meaning of "diversity", a note to Code Provision A.5.6 sets out the following guidance:

"*Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.*"

11. Website Publication of Certain Documents

The Main Board Listing Rules require certain documents to be published on the websites of the listed issuer and the Exchange. These include:

a) an up to date consolidated version of its constitutional documents must be published on the issuer's own website and the HKEx website (Main Board Rule 13.90); and

b) the procedures for shareholders to propose a person for election as a director must be published on the issuer's own website (Main Board Rule 13.51D).

The Corporate Governance Code requires publication on the websites of the issuer and the Exchange of:

a) an up-to-date list of directors identifying their role and function and whether they are INEDs (Code Provision A.3.2); and

b) the terms of reference of the issuer's nomination, remuneration and audit committees explaining their roles and the authority delegated to them by the board (Code Provisions A.5.3, B.1.3 and C.3.4).

Documents published on the issuer's and the HKEx's website should be in both English and Chinese.

12. Environmental, Social and Governance ("ESG") Reporting

Appendix 27 to the Main Board Rules sets out a guide for ESG reporting, which is a requirement under Main Board Rule 13.91. The board has overall responsibility for a listed issuer's ESG reporting. It must evaluate and determine the listed issuer's ESG-related risks and ensure that an effective ESG risk management system is in place. Management should provide a confirmation to the board on the effectiveness of such system.

There are two levels of disclosure obligations. Listed issuers must state whether or not they have complied with the "comply or explain" provisions of the ESG Guide, but may choose not to report on the recommended disclosures (although the Exchange encourages it). If there is any deviation from any of the "comply or explain" provisions, reasons for such deviation must be provided in the ESG report.

The ESG Guide sets out two key subject areas for reporting: Environmental and Social. Governance is addressed separately in the Corporate Governance Code set out in Appendix 14 to the Main Board Rules. There are various aspects under each area, and each aspect sets out the general disclosure requirements and the Key Performance Indicators ("**KPIs**") to measure ESG performance. The ESG Guide is not comprehensive and issuers are encouraged to identify and disclose additional ESG issues and KPIs relevant to their businesses. They may adopt international ESG reporting guidance for their relevant industry or sector if it includes disclosure provisions comparable to the "comply or explain" provisions of the ESG Guide.

An ESG report must be included in an issuer's annual report or in a separate report published in print or on the issuer's website. Regardless of the format adopted, the ESG report must be published on the websites of the Exchange and the issuer. An issuer's ESG report must cover the same period as its annual report. Where the ESG report is not included in the annual report, it must be published as close as possible to, and no later than three months after the publication of the issuer's annual report.

XVIII. THE CORPORATE GOVERNANCE CODE

The Corporate Governance Code (the "**Code**") is set out in Appendix 14 of the Main Board Rules. It contains two tiers of recommended practices. The first tier contains the "Code Provisions" which are the minimum standards with which listed companies are expected to comply. Compliance is not however mandatory. Instead, the Code adopts a "comply or explain" approach. This means that companies must state in their half-year and annual reports whether they have complied with the Code Provisions. If they have chosen to deviate from the Code Provisions, considered reasons for each deviation must be stated. The Code allows listed companies to adopt their own codes on corporate governance practices on such terms as they consider appropriate. They must however disclose and give considered reasons for any deviation from the Code Provisions as set out in the Listing Rules.

The second tier of recommended practices consists of recommended best practices which listed companies are encouraged to adopt. Listed companies are encouraged, but are not required, to include a statement as to compliance with the recommended best practices and considered reasons for any deviations from them in their financial reports.

The Code covers 5 principal areas: Directors; Remuneration of Directors and Senior Management; Accountability and Audit; Delegation by the Board and Communication with Shareholders.

Code Provisions

The Code Provisions in relation to directors include the following:

(i) Full board meetings should be held at least 4 times a year at approximately quarterly intervals;

(ii) Different people should perform the roles of chairman and chief executive;

(iii) All directors should be subject to retirement by rotation once every 3 years; and

(iv) The directors should conduct an annual review of the internal controls of the issuer and its subsidiaries;

(v) Directors should provide records of training they received to the issuer;

(vi) Issuers should arrange appropriate insurance cover for directors;

(vii) In the circular nominating an INED for election, issuers should include the reasons why the board considers an INED to be independent. Shareholders should vote on a separate resolution to retain an INED who has served on the board for more than nine years;

(viii) An audit committee should meet the external auditor at least twice a year and an audit committee's terms of reference should include arrangements for employees to raise concerns about financial reporting improprieties;

(ix) Non-executive directors, including INEDs, should attend board, committee and general meetings and contribute to the issuer's strategy and policies; and

(x) Management should provide monthly updates of the issuer's performance, position, and prospects to board members sufficient to enable them to discharge their duties.

The Corporate Governance Report

Listed issuers are required to include a Corporate Governance Report prepared by the board in their annual reports and any summary financial report. The Corporate Governance Report must include certain mandatory disclosures which are set out at paragraphs G to Q of Appendix 14 to the Listing Rules. Failure to include any of the mandatory disclosures is regarded as a breach of the Listing Rules. The mandatory disclosures relate to corporate governance practices, directors' securities transactions, the board of directors, the chairman and chief executive, non-executive directors, board committees, auditor's remuneration, the company secretary, shareholders' rights and significant changes to the issuer's constitutional documents during the year.

XIX. THE MODEL CODE FOR SECURITIES TRANSACTIONS BY DIRECTORS OF LISTED ISSUERS ("MODEL CODE")

Listed Companies are required to adopt rules governing dealings by directors in their listed securities on terms no less stringent than the terms set out in the Model Code in Appendix 10 of the Main Board Rules. All directors of a listed issuer are required to comply with the Model Code (or the Company's own code) and a breach of the requirements of the Model Code will amount to a breach of the Listing Rules.

1. Absolute Prohibition

The Model Code provides that a director of a listed issuer must not deal in the securities of the company:

a) at any time when he is in possession of inside information in relation to those securities, or if

clearance to deal has not been given (Model Code Rule A.1);

b) on the publication date of the company's financial results;

c) during the period of 60 days preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results (Model Code Rule A.3(a)(i)); and

d) during the period of 30 days preceding the publication date of the quarterly results (if any) or half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results (Model Code Rule A.3(a)(ii)).

A listed issuer must give advance notice to the Exchange of the commencement date of each blackout period under (c) and (d) above.

Further, a director of a listed issuer must not deal in its securities if he is in possession of inside information in relation to those securities by virtue of his position as a director of another listed issuer (Model Code Rule A.2). The restrictions on dealings in the Model Code apply equally to dealings by directors' spouses and children under the age of 18 and to any dealings in which they are deemed to be interested for the purposes of Part XV of the SFO (Model Code Rule A.6).

2. Duty of Notification

A listed issuer is required by the Model Code to establish a procedure whereby a director is required to provide written notification to the chairman or a director (other than himself) designated by the board and receive a dated written acknowledgement before dealing in any securities of the listed issuer. A response to a request for clearance to deal must be given to the relevant director within 5 business days and the clearance to deal must be valid for no more than 5 business days of clearance being received. The issuer must also maintain a written record of notifications given by directors, acknowledgements of such notifications and the written responses given.

XX. DISCLOSURE OF INTERESTS UNDER PART XV SFO

Part XV of the SFO contains complex provisions requiring substantial shareholders (holders of 5% or more) and directors and chief executives to disclose their interests in listed companies. The following is a summary only of the principal provisions relevant to directors.

The directors and chief executive of a listed issuer are required to disclose:

a) their interests and short positions in any shares of the listed issuer or its associated corporations;

b) their interests in any debentures of the listed issuer or its associated corporations; and

c) any change in or cessation of any such interest.

An "**associated corporation**" is defined to include the holding companies and subsidiaries of the listed issuer, subsidiaries of any holding company and any company in which the listed issuer holds more than 20% of any class of its issued shares.

In calculating the number of shares in which a director is interested, he/she must include any interests held by a spouse, children under the age of 18, a company controlled by the director and a trust. A company will be "controlled" by a director if the director directly or indirectly controls one third or more of the voting power at general meetings of the company or if the company or its directors are accustomed to act in accordance with his directions.

Directors must also disclose their interests in the underlying shares of equity derivatives. The term "equity derivative" is defined to include any contract which gives a person rights, options or interests in respect of the underlying shares. Accordingly, if a director holds any options or warrants giving him the right to acquire shares in the listed issuer, he will be taken to be interested in the underlying shares and must disclose such interests.

Generally speaking, a person has a short position in shares if he:

a) borrows shares under a securities borrowing and lending agreement; or

b) holds or issues a financial instrument under which he has a right to require another person to take the underlying shares or is under an obligation to deliver the underlying shares.

Long and short positions must be disclosed separately and cannot be netted off.

Where a person is, or will become, a director or chief executive of a company on its listing on the Exchange, he has **10 business days** in which to file notice of the following interests:

i) an interest in the shares of the listed issuer or in the shares of an associated corporation;

ii) a short position in the shares of the listed issuer or in the shares of an associated corporation; and

iii) an interest in debentures of the listed issuer or in the debentures of an associated corporation.

A new director of a listed issuer must give notice of the above interests within **10 business days** of being appointed as a director.

Subsequent filings by directors and the chief executive of a listed issuer are required on the occurrence of certain events, called "relevant events". In the case of interests in shares and any short positions, the relevant events include:

i) when a director becomes interested in the shares of the listed issuer or any of its associated corporations (e.g. on the grant to the director of share options);

ii) when a director ceases to be interested in such shares;

iii) when a director enters into a contract to sell any such shares;

iv) when a director assigns any right granted to him by the listed issuer to subscribe for such shares;

v) when an associated corporation grants a director a right to subscribe for shares in the associated corporation or the director exercises or assigns such rights;

vi) when the nature of the director's interest changes (e.g. on the exercise of an option);

vii) when a director comes to have, or ceases to have, a short position in the shares of the listed issuer or in the shares of an associated corporation;

viii) if a director has an interest, or a short position, in the shares of the listed issuer, or in the shares of an associated corporation, at the time when he becomes a director or chief executive of the listed issuer; and

ix) if a director has an interest, or a short position, in the shares of an associated corporation, at the time when it becomes an associated corporation.

Notice of the relevant events at (i) to (vii) above must be filed with the listed issuer and the Exchange within **3 business days** after the relevant event. Notice of the relevant events at (viii) and (ix) above must be filed within **10 business days** after the relevant event.

Failure to make proper and timely disclosure as required by Part XV is a criminal offence which carries a maximum penalty of a fine of HK$100,000 and imprisonment for up to two years.

The listed issuer also has a duty to keep registers of:

a) the interests and short positions of its substantial shareholders (i.e. holders of 5% or more of any class of voting shares);
b) the interests and short positions of its directors and chief executive in the shares of the listed issuer and its associated corporations;
c) the interests of its directors and chief executive in the debentures of the listed issuer and its associated corporations.

These registers must be kept either at the registered address of the listed issuer or at the place where the register of shareholders is kept. When the issuer receives a notice in the prescribed form, it must enter the information on the form in the register within 3 business days after it is received.

The interests and short positions of a listed issuer's directors and chief executive in the shares, underlying shares and debentures of the company and its associated corporations must also be disclosed in the company's annual accounts and half-year reports.

Due to the complexity of the provisions concerning disclosure of interests under the SFO, only the basic requirements have been dealt with. Further information is set out in the SFC's Outline of Part XV of the Securities and Futures Ordinance. The directors of a listed issuer should consult its professional advisers before making any disclosure.

XXI. INSIDER DEALING (SECTIONS 270 AND 291 OF THE SFO)

1. Definition

Insider dealing takes place when:

(i) a person who is (1) connected with a listed issuer and having information which he knows is inside information; or (2) contemplating (or has contemplated) making a take-over offer for a listed issuer and who knows that the information that the offer is contemplated (or is no longer contemplated) is inside information in relation to the listed issuer:

  a. deals, or counsels or procures another to deal, in the company's listed securities or their derivatives or in those of a related corporation (otherwise than for the purpose of the takeover in the case of paragraph (2) above); or

  b. discloses the information knowing or having reasonable cause to believe that the recipient will use the information to deal, or to counsel or procure another person to deal, in the company's listed securities or their derivatives or in those of a related corporation;

(ii) a person who has received inside information from a connected person or a person who is contemplating or has contemplated making a takeover offer for a listed issuer either deals, or counsels or procures another person to deal, in the company's listed securities or their derivatives or those of a related corporation;

(iii) a person who has information which he knows is inside information in relation to a listed issuer in any of the circumstances referred in paragraphs (i) and (ii) above:

a. counsels or procures another person to deal, knowing or having reasonable cause to believe that the person will deal in the company's listed securities or their derivatives or in those of a related corporation outside Hong Kong on an overseas stock market; or

b. discloses the information knowing or having reasonable cause to believe that the recipient will use the information to deal, or to counsel or procure another person to deal, in the company's listed securities or their derivatives or in those of a related corporation outside Hong Kong on an overseas stock market.

2. Key definitions

The term "securities" is defined widely and includes shares, stocks, debentures, loan stocks, bonds and notes as well as any rights, options or interests in respect of any of the foregoing.

"Persons connected with a corporation" or "connected persons" include the directors (including non-executive directors and shadow directors), employees and substantial shareholders (meaning those holding 5% or more of the issued voting share capital) of the listed issuer and its related corporations. The term also includes persons who have a professional or business relationship with the listed issuer or its related corporation which give them access to inside information.

"Related corporations" of a listed issuer include its subsidiaries and holding companies and other subsidiaries of any holding company of the listed issuer. In addition, where two or more companies are controlled by the same individual, each of those companies and their subsidiaries are regarded as "related corporations" of each other. "Control" for these purposes means that the individual controls either the composition of the company's board of directors or more than half of the voting power at general meetings of the company, or holds more than half of the company's issued shares.

"Inside information" in relation to a company means specific information about the company, a shareholder or officer of the company, the listed securities of the company or their derivatives, which is not generally known to the persons who are accustomed or likely to deal in the listed securities of the company but which would, if it were generally known to them, be likely to materially affect the price of the listed securities.

The directors of a listed issuer will be "insiders" for the purposes of these provisions. In practical terms, this means that a director should immediately refrain from dealing or procuring another to deal in the listed securities of his own company once he is aware of, or privy to any negotiations, agreements or information which are or may be price-sensitive until a formal announcement of such information has been made.

XXII. MARKET MISCONDUCT

The SFO sets out 6 types of market misconduct which are prohibited in relation to shares listed on the Exchange. Market misconduct includes:

- insider dealing;
- false trading;
- price rigging;
- disclosure of information about prohibited transactions;

- stock market manipulation; and
- disclosure of false or misleading information inducing transactions.

1. False Trading (Sections 274 and 295 of the SFO)

False trading takes place when a person:

(i) intentionally or recklessly engages in conduct which creates a false or misleading appearance:

a. of active trading in securities or futures contracts traded on an exchange or through an authorised automated trading service ("**ATS**") in Hong Kong; or

b. with respect to the market for, or the price of, such securities or futures contracts;

(ii) engages in similar conduct similar to (i) above in Hong Kong which has a similar effect on securities or futures contracts traded on an overseas market;

(iii) is involved in one or more transactions with the intention that, or being reckless as to whether, they create or maintain an artificial price for securities or futures contracts traded on an exchange or through an ATS in Hong Kong; or

(iv) engages in conduct similar to (iii) above in Hong Kong which has a similar effect on securities or futures contracts traded on an overseas market.

A person who engages in an on-market "wash sale" or "matched order" is presumed to have committed false trading. A "wash sale" is a trade in which a person buys or sells securities without there being a change in beneficial ownership. A "matched order" is where a person offers to buy or sell securities at a price that is substantially the same as that at which he or an associate has made or proposes to make, an offer to sell or buy substantially the same number of such securities.

2. Price rigging (sections 275 and 296 of the SFO)

Price rigging occurs when a person engages in:

(i) a wash sale of securities which maintains, increases, reduces, stabilises or causes fluctuations in, the price of securities traded on an exchange or through an ATS in Hong Kong; or

(ii) any fictitious or artificial transaction or device with the intention that, or being reckless as to whether, it maintains, increases, reduces, stabilizes or causes fluctuations in, the price of securities or futures contracts traded on an exchange or through an ATS in Hong Kong.

The same conduct by a person in Hong Kong which affects securities or futures contracts traded on an overseas market will also constitute price rigging if such conduct is unlawful in the country in which the relevant market is situated.

3. Stock Market Manipulation (sections 278 and 299 of the SFO)

These provisions relate only to transactions in securities. Stock market manipulation occurs when a person, in Hong Kong or elsewhere, engages directly or indirectly in two or more transactions in the securities of a company that by themselves or in conjunction with any other transaction increase, reduce, maintain or stabilise the price of any securities traded on an exchange or through an ATS in Hong Kong, or are likely to do so, with the intention of inducing another person to buy or subscribe for, or to refrain from selling, securities issued by that corporation or a related corporation.

The same conduct by a person in Hong Kong which affects securities traded on an overseas market will also amount to stock market manipulation if the same conduct is unlawful in the relevant country.

4. Disclosure of information about prohibited transactions (sections 276 and 297 of the SFO)

Disclosure of information about prohibited transactions occurs when a person, in Hong Kong or elsewhere, discloses or disseminates, or authorises or is concerned in the disclosure or dissemination of, information about the effect of a prohibited transaction (being a transaction which contravenes the provisions of Part XIII or XIV of the SFO) on the price of securities or the price for dealings in future contracts traded on a Hong Kong market, if the person or an associate of his:

a. participates in the prohibited transaction;

b. or benefits or expects to benefit, directly or indirectly, from the disclosure, circulation or dissemination of the information.

5. Disclosure of false or misleading information inducing transactions (sections 277 and 298 of the SFO)

This form of market misconduct concerns the disclosure of false or misleading information about securities or futures contracts that is likely to induce investment decisions or have a material price effect. A person will have engaged in market misconduct if he discloses or is involved in the disclosure of:

(i) information likely to induce others to enter into transactions or to affect the price of securities or futures contracts, that is false or misleading in a material fact or through the omission of a material fact; and

(ii) he knows or is reckless or (for civil market misconduct only) negligent as to whether, the information is false or misleading in a material fact or through the omission of a material fact.

Negligence will not suffice to establish criminal liability.

6. Dual Civil and Criminal Regimes

The six forms of market misconduct may either be prosecuted as a criminal offence under Part XIV SFO or made the subject of civil proceedings before the Market Misconduct Tribunal ("**MMT**").

7. Criminal Penalties

The maximum criminal sanction is 10 years' imprisonment and/or a fine of up to $10 million. The court may also impose disqualification, cold shoulder and disciplinary referral orders. Failure to comply with a disqualification or cold shoulder order is an offence liable to a maximum fine of $1 million and up to 2 years' imprisonment.

8. No double jeopardy

A person will not be subject to the 'double jeopardy' of both civil proceedings under Part XIII and criminal proceedings under Part XIV for the same conduct. The SFO provides that a person who has been subject to criminal proceedings under Part XIV may not be subject to MMT proceedings if those proceedings are still pending or if no further criminal prosecution could be brought against that person again under Part XIV in respect of the same conduct and vice versa (Sections 283 and 307 SFO).

9. Proceedings of the MMT

The MMT may identify a person as having engaged in market misconduct if:

(i) he has perpetrated any market misconduct;

(ii) the market misconduct was perpetrated by a corporation of which he is an officer with his consent or connivance; or

(iii) another person engaged in market misconduct and he assisted or connived with that person in the perpetration of the market misconduct, knowing that such conduct constitutes or might constitute market misconduct.

10. Orders of the MMT

At the end of any proceedings, the MMT may impose the following sanctions:

(a) *a disqualification order* – that a person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed corporation or any other specified corporation or in any way, whether directly or indirectly, be concerned or take part in the management of a listed corporation or other specified corporation for up to 5 years;

(b) *a cold shoulder order* – that a person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any of them or a collective investment scheme for up to 5 years;

(c) *a cease and desist order* – that the person must not again engage in any specified form of market misconduct;

(d) *a disgorgement order* – that the person pay to the Government an amount up to the amount of any profit gained or loss avoided as a result of the market misconduct;

(e) *Government costs order* – that the person pay to the Government its costs and expenses in relation to the proceedings and any investigation;

(f) *SFC costs order* – that the person pay the SFC's costs and expenses in relation to any investigation; and

(g) *disciplinary referral order* – that any body which may take disciplinary action against the person as one of its members be recommended to take such action against him.

11. Civil Liability – Private right of action

The SFO creates a private right of civil action in favour of anyone who has suffered financial loss as a result of market misconduct or any offence under Part XIV to seek damages from the person who committed the market misconduct or Part XIV offence. The perpetrator is liable to pay damages, unless it is fair, just and reasonable that he should not (Sections 281 and 305 SFO).

A person will be taken to have committed market misconduct if:

(i) he has perpetrated any market misconduct;

(ii) the market misconduct was perpetrated by a corporation of which he is an officer with his consent or connivance; or

(iii) any other person committed market misconduct and he assisted or connived with that person in the perpetration of the market misconduct, knowing that such conduct constitutes or might constitute market misconduct.

12. Liability of Officers

Section 279 of the SFO imposes a duty on all officers of a corporation to take reasonable measures to ensure that proper safeguards exist to prevent the corporation from acting in a way which would result in the corporation perpetrating any market misconduct. The duty applies to all forms of market misconduct and not just insider dealing.

The definition of an "officer of a corporation" includes a director (including a shadow director and any person occupying the position of a director), manager or secretary of, or any other person involved in the management of, the corporation. The last category (*i.e.*, any other person involved in management) could, in principle, catch supervisors and anyone else with management responsibilities.

Under Section 258, where a corporation has been identified as having been engaged in market misconduct and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him by Section 279, the MMT may make one or more of the orders detailed above in respect of that person even if that person has not been identified as having engaged in market misconduct himself. However, a breach of the Section 279 duty will not expose a person to civil suits by third parties unless he has been identified as having engaged in market misconduct.

13. Civil Liability of Officers

As described above, the SFO clearly provides that anyone who suffers financial loss as a result of market misconduct or a Part XIV offence has a right of civil action to seek compensation. As noted above, an officer of a corporation which perpetrated market misconduct is taken to have committed market misconduct himself, if the corporation perpetrated the misconduct with his consent or connivance.

14. Criminal Liability of Officers

Under Section 390 of the SFO, where it is proved that an offence committed under Part XIV was aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to the recklessness of, any officer of the corporation, or any person purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and liable to be punished accordingly.

THE CODES ON TAKEOVERS AND MERGERS AND SHARE BUY-BACKS

The Code on Takeovers and Mergers (the "**Takeovers Code**") and the Code on Share Buy-backs apply to takeovers, mergers and share buy-backs affecting public companies in Hong Kong and companies with a primary listing of their shares in Hong Kong.

The primary purpose of the Codes is to ensure that all shareholders affected by takeovers, mergers and share buy-backs of relevant companies are treated fairly. In order to achieve fair treatment, the Codes require equality of treatment of shareholders and disclosure of timely and adequate information to shareholders. The Takeovers Code in particular has the objective of protecting minority shareholders when control of their company changes.

XXIII. THE TAKEOVERS CODE

The Takeovers Code is concerned with:

(i) offers for, and takeovers and mergers of, all relevant companies; and

(ii) partial offers, offers by a parent company for shares in its subsidiary and certain other transactions where control (as defined) of a company is to be obtained or consolidated.

The provisions of the Takeovers Code are detailed, but the most significant provisions are as follows:

Mandatory Offer Requirement: Rule 26

Except where a waiver has been granted, Rule 26 of the Takeovers Code requires a mandatory offer to be made to all the shareholders of the company in the following circumstances:

(i) when any person (or two or more persons acting in concert) acquires, whether by a series of transactions over a period of time or not, 30% or more of the voting shares of a company; or

(ii) when any person (or two or more persons acting in concert) who holds between 30% and 50% of the voting shares of a company, acquires additional voting shares that increase his or their holding of voting shares by more than 2% from the lowest percentage holding by that person (or the concert group) in the previous 12 month period.

"Persons acting in concert"

A person will be taken to be acting in concert with an offeror if, pursuant to an agreement or understanding, he is actively co-operating through the acquisition of voting rights, to obtain or consolidate control of the offeree. In the absence of proof to the contrary, certain categories of persons are presumed to be acting in concert with others in the same category. The categories of persons presumed to be acting in concert include:

(i) a company, its parent, its subsidiaries, its fellow subsidiaries, associated companies of any of the foregoing, and companies of which such companies are associated companies; and

(ii) a company with any directors (together with their close relatives, related trusts and companies controlled by any of the directors, their close relatives or related trusts) of it or its parent company.

Offers made under Rule 26 must be made in cash or be accompanied by a cash alternative at not less than the highest price paid by the offeror (or any person acting in concert) for shares of the offeree in the previous 6 months.

Requirements of the Takeovers Code

Rules 1 and 2 of the Takeovers Code set out the steps which should be taken by the boards of directors of the offeree and offeror companies in the course of takeover and merger transactions.

They require firstly that any offer of takeover of a listed issuer should be put in the first instance to the board of the listed issuer or its advisers before the offer is announced to the public. The identity of the offeror must also be disclosed. The board of the listed issuer must establish an independent committee of the board to make a recommendation: (i) as to whether or not the offer is fair and reasonable; and (ii) as to acceptance and voting. The board must also retain an independent financial adviser to advise the independent board committee as to those matters.

XXIV. THE CODE ON SHARE BUY-BACKS

Hong Kong has a separate Code on Share Buy-backs.

The Share Buy-backs Code distinguishes between 4 types of share buy-backs:

1. **On Market** – this is the most usual method and is normally carried out pursuant to the 10% general mandate normally granted at the AGM.

2. **Off-Market** – Off-market share buy-backs must be approved by the Executive Director of the Corporate Finance Division of the SFC under Rule 2 of the Share Buy-backs Code. Approval is normally conditional on the approval of at least three-quarters of the votes cast by "disinterested shareholders".

3. **Exempt** – exempt share buy-backs include an employee share buy-back; a share buy-back made in accordance with the terms attached to the shares; and a share buy-back that is required by the law of the jurisdiction in which the offeror is incorporated or established.

4. **By General Offer** – this usually takes the form of a tender offer of a certain percentage of all shareholders' holdings. A share buy-back by General Offer requires approval by at least 50% of shareholders in general meeting. A shareholder with a material interest in the share buy-back will not be allowed to vote. If the buy-back will result in privatisation or de-listing of the issuer, the approval of 75% of shareholders is required.

1. On-market share buy-backs

Main Board Rules 10.5 and 10.6 set out the relevant requirements in relation to on-market buy-backs. An issuer whose primary listing is on the Exchange may only purchase shares on the Exchange in the following circumstances:

- the shares proposed to be repurchased are fully-paid up;
- an Explanatory Statement complying with the detailed contents requirements of Main Board Rule 10.06(1)(b) is issued to the shareholders; and
- its shareholders have given specific approval or a general mandate to make the buy-back(s) by way of an ordinary resolution passed at a general meeting of the issuer duly convened.

The Explanatory Statement must contain all information reasonably necessary to enable the shareholders to make an informed decision on whether to vote for or against the ordinary resolution to approve the share buy-back. Such information includes, in summary, the following:

- total number and description of the shares to be repurchased, and reasons for the buy-back;
- the proposed source of funds for making the proposed buy-back;
- any directors or any associates of the directors who have an intention to sell shares to the issuer, or an appropriate negative statement;
- consequences arising under the Takeovers Code of which the directors are aware, if any;
- details of any purchases by the issuer of shares made in the previous 6 months (whether on the Exchange or not);
- whether or not any core connected persons of the issuer have notified the issuer that they have an intention to sell their shares to the issuer; and
- the highest and lowest prices at which the relevant shares have traded on the Exchange during each of the previous 12 months.

Dealing restrictions for on-market buy-back

On-market buy-backs are subject to the following dealing restrictions:

- no shares may be repurchased if the purchase price is higher by 5% or more than the average closing market price for the 5 preceding trading days;

- shares cannot be repurchased for non-cash consideration;

- the issuer must not knowingly purchase its shares from a core connected person;

- the issuer must not repurchase its shares on the Exchange at any time after inside information has come to its knowledge until the information is made public. In particular, buy-backs are not allowed during the period of one month immediately preceding the earlier of: (i) the date of the board meeting to approve the annual or interim financial results; and (ii) the deadline for publishing any such results under the Listing Rules, and ending on the date of the results announcement; and

- no shares may be repurchased if that purchase will result in the number of listed shares held by the public falling below the prescribed minimum percentage.

2. Off-market share buy-backs

Off-market buy-backs must be approved by the SFC before a repurchasing company acquires any shares. Such approval will normally be conditional upon:

- approval being given by at least 75% of votes cast on a poll by disinterested shareholders in attendance in person or by proxy at a general meeting of the issuer;

- notice of the shareholders' meeting being accompanied by a circular containing:

    i. details of the proposed offeree(s);

    ii. terms and conditions of the agreement between the issuer and the proposed offeree(s); and

    iii. advice of an independent financial adviser and the recommendation of an independent committee of the board in relation to the off-market share buy-back;

- a certified copy of the shareholders' resolution approving the share buy-back being filed with the SFC within three days of the general meeting; and

- a copy of the agreement(s) for the off-market share buy-back being available for inspection by the shareholders.

3. Buy-back by general offer

A share buy-back by general offer must be approved by a majority of the votes cast by independent shareholders in attendance in person or by proxy at general meeting. The notice of meeting must be accompanied by the offer document.

If the share buy-back will result in the delisting and privatisation of the issuer:

- the directors of the offeror and any persons acting in concert will not be considered to be independent and therefore may not vote at the general meeting; and

- the share buy-back must be approved by at least 75% of votes attaching to the shares owned by independent shareholders cast in person or by proxy, and the number of votes cast against the resolution must not be more than 10% of the votes attaching to the shares owned by independent shareholders.

4. Reporting requirements for repurchases

The issuer must submit for publication to the Exchange through HKEx-EPS a next day disclosure return no later than 30 minutes before the commencement of the morning trading session (or any earlier pre-opening session) on the business day following the repurchase showing the number of shares repurchased and the purchase price paid per share (or the lowest and highest prices paid).

Listed issuers must also include in their annual report and accounts a monthly breakdown of purchases of shares made during the financial year under review showing the number of shares purchased each month (whether on the Exchange or otherwise), the purchase price paid per share (or the lowest and highest prices paid) and the aggregate price paid. The directors' report must refer to the purchases made during the year and the directors' reasons for making such purchases.

5. Status of purchased shares

The listing of the repurchased shares will be automatically cancelled upon purchase and the issuer must apply for listing of any further issues of that type of shares. The issuer must ensure that the documents of title of the repurchased shares are cancelled and destroyed as soon as reasonably practicable.

6. Restriction on new issue of shares following repurchase

An issuer whose primary listing is on the Exchange cannot issue, or announce a proposed new issue of shares, in the 30 days after its repurchase of shares (whether on the Exchange or otherwise), without the Exchange's prior approval. Exchange approval is not required for issues of securities pursuant to the exercise of warrants, share options or similar instruments which were outstanding before the share repurchase.

7. Takeovers Implications of Share Repurchases

The takeovers implications of share buy-backs are set out in Rule 32 of the Takeovers Code. Under Rule 32.1 of the Takeovers Code, a share buy-back is considered to be an acquisition by shareholders whose shares are **not** repurchased. This is because their percentage holding of shares increases even though the actual number of shares held does not. As a result, a shareholder, or group of shareholders acting in concert, could obtain control of the issuer and become obliged to make a mandatory general offer obligation under Rule 26. The Executive will normally grant a whitewash waiver in the case of general offer obligations triggered by off-market share buy-backs or share buy-backs by general offer.

Effectively the Rule 32 whitewash mechanism applies only to a shareholder who is a director or a person who is acting in concert with a director of the company. An unconnected shareholder would not normally be regarded as having triggered a mandatory bid obligation under Rule 26 if the increase in his shareholding is solely due to share buy-backs by the company (Note 2 to Rule 32).

January 2016

This note contains a summary only of certain obligations of companies listed on the Hong Kong Stock Exchange. It is intended for information and educational purposes only and should not be treated as a substitute for legal advice.