



Hong Kong

August 2019

NEW LISTING RULES ON BACKDOOR LISTINGS EFFECTIVE 1 OCTOBER

Introduction

The Stock Exchange of Hong Kong Limited (**Hong Kong Stock Exchange or HKEx**) published its Consultation Conclusions on Proposed Rule Changes Associated with Backdoor Listing, Continuing Listing Criteria and other Rule Amendments¹ on 26 July 2019 setting out changes to the HKEx Listing Rules on reverse takeovers (i.e. backdoor listings) and the criteria for continued listing which are aimed at preventing the listing and continued listing of “shell companies” which may become vehicles for backdoor listings. The revised Listing Rules take effect on 1 October 2019.

As acknowledged in HKEx’s Consultation Paper² of June 2018, the activities targeted by the Listing Rule changes are confined to a relatively small sector of the market, yet HKEx considers that they may “invite speculative trading and can lead to opportunities for market manipulation, insider trading and unnecessary volatility in the market which are not in the interest of the investing public”.

Key Backdoor Listing Rule Changes

The HKEx Listing Rule changes largely codify HKEx’s existing practices in regulating backdoor listings, but impose new requirements to deal with specific issues and backdoor transaction structures. These include where new investors

obtain *de facto* control of a listed company which is then used as a listing platform to acquire new businesses and circumvent the new listing requirements, and listed companies which make acquisitions by a series of small acquisitions, or acquire a new business that fails to satisfy the new listing requirements, and then dispose of their original businesses.

The compliance requirements for reverse takeovers and extreme transactions have also been tightened to require:

- i) the acquired assets to meet the suitability requirement of Main Board Rule 8.04 (GEM Rule 11.06) and the financial and track record requirements of Main Board Rule 8.05, 8.05A or 8.05B (GEM Rule 11.12A or 11.14);
- ii) the enlarged group to meet all new listing requirements (under Main Board Chapter 8 and GEM Chapter 11) except Main Board Rule 8.05 or GEM Rule 11.12A; and
- iii) a listed company which is proposing a reverse takeover but does not satisfy Main Board Rule 13.24 (GEM Rule 17.26) (typically a suspended company) to demonstrate to HKEx’s satisfaction that there will be sufficient public interest in the business of the acquired assets and the enlarged group (Main Board Listing Rule 14.54 and GEM Listing Rule 19.54).

1 [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2018-Backdoor-and-Continuing-Listing/Conclusions-\(July-2019\)/cp201806cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2018-Backdoor-and-Continuing-Listing/Conclusions-(July-2019)/cp201806cc.pdf?la=en)

2 <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2018-Backdoor-and-Continuing-Listing/Consultation-Paper/cp201806.pdf>

Key Changes to Continuing Listing Criteria

The amendments to the continuing listing criteria for listed companies include:

- i) revision of the rules on sufficiency of operations to require listed companies to have **both** a sufficient level of operations **and** assets of sufficient value to support its operations to warrant its continued listing (instead of sufficient operations **or** assets as currently required) (Main Board Rule 13.24 (GEM Rule 17.26); and
- ii) changes to the rules on cash companies to rename “short-dated securities” as “short-term investments” – i.e. investments that are easily convertible into cash (Main Board Rules 14.82 - 14.84 and GEM Listing Rules 19.82 – 19.84).

The amendments to the Main Board Listing Rules are available here³, and those to the GEM Listing Rules are available here⁴.

HKEx’s current guidance letter on reverse takeovers GL78-14⁵ will be superseded by the following three new guidance letters from 1 October 2019:

- HKEx GL 104-19⁶ - Guidance on application of the reverse takeover rules
- HKEx GL 105-19⁷ - Guidance on large scale issues of securities
- HKEx GL 106-19⁸ - Guidance on sufficiency of operations

The changes effected by the Listing Rule revisions are summarised below.

3 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/u/p/Update_127_Attachment_1.pdf

4 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/u/p/Update_62_Attachment_1.pdf

5 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/g/l/gl7814.pdf

6 https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance/Guidance-Letters/gl104_19_preversion.pdf?la=en

7 https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance/Guidance-Letters/gl105_19_preversion.pdf?la=en

8 https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance/Guidance-Letters/gl106_19_preversion.pdf?la=en

Amendments Relating to Backdoor Listings

1. Reverse Takeovers – the revised definition

1.1 Codification of HKEx’s principle-based test for reverse takeovers on HKEx

HKEx’s principle-based test for determining whether a transaction is a reverse takeover (currently set out in HKEx Guidance Letter GL78-14⁹) is codified and revised in New Note 1 to revised Main Board Listing Rule 14.06B (GEM Listing Rule 19.06B). The six assessment factors provide guidance to the market on the factors the HKEx normally considers in determining whether transactions involve a reverse takeover. The following changes have been made to the assessment factors:

- a) the series of transactions/arrangements criterion has been extended to include transactions within 36 months (instead of 24); and
- b) the current “issue of restricted convertible securities” factor now includes changes in control or *de facto* control of the listed company.

Under the new Note, the six assessment criteria that HKEx will apply in determining whether an asset acquisition(s) constitutes an attempt to list the acquired assets and a means to circumvent the new listing requirements are:

- a) the size of the acquisition(s) relative to the size of the listed company;
- b) a fundamental change in the listed company’s principal business;
- c) the nature and scale of the listed company’s business before the acquisition(s) (e.g. whether the listed company is a shell);
- d) the quality of the assets acquired/to be acquired;
- e) a change in control or *de facto* control of the listed company (other than at the level of its subsidiaries); and

9 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/g/l/gl7814.pdf

- f) other transactions or arrangements which, together with the asset acquisition or acquisitions, form a series of transactions or arrangements to list the acquired assets.

The HKEx notes in the Consultation Conclusions that in assessing shell activities, it will pay particular attention to assessment criteria (e) – change in control or *de facto* control and (b) a fundamental change in the listed company’s principal business.

1.2 Extending the factor “issue of restricted convertible securities” to include a change in control or *de facto* control

The principle-based test’s current factor “issue of restricted convertible securities” now includes any change in control or *de facto* control of the listed company. This factor (now set out in Note 1(e) to Main Board Listing Rule 14.06B (GEM Listing Rule 19.06B)) has also been amended to state that in determining whether a change has occurred, the HKEx will consider whether there has been:

- a) a change in the listed company’s controlling shareholder; or
- b) a change in the single largest substantial shareholder who is able to exercise effective control over the listed company, as indicated by factors such as a substantial change to its board of directors and/or senior management.

Factor 1(e) now also provides that where a listed company issues convertible securities with a conversion restriction mechanism aimed at preventing a change in control being triggered under the Takeovers Code, and those securities are issued to an asset vendor as consideration for the sale of assets, the HKEx will consider whether the issue is a means to allow the vendor to gain effective control of the listed company.

1.3 Extending the “series of transactions and/or arrangements” factor

HKEx has revised the assessment factor “other transactions or arrangements which, together with the asset acquisition or acquisitions, form a series of transactions or arrangements to list the acquired assets” which is now set out at paragraph (f) of new Note 1 to Main Board Listing Rule 14.06B (GEM Listing Rule 19.06B).

The amendments clarify that these transactions may include changes in control or *de facto* control, acquisitions and/or disposals. The HKEx may regard these and the asset acquisition(s) as a series if they take place in reasonable proximity to each other (i.e. normally within a period of 36 months) or are otherwise related. The entire series of transactions and/or arrangements would be treated as if it were one transaction. Consequently, a disposal may trigger a reverse takeover ruling with respect to a previously completed acquisition in the same series, or a number of smaller acquisitions may form a reverse takeover. Currently, the reverse takeover rules apply only to acquisitions and may not apply where a listed company disposes of its original business following an acquisition of a new business, which in effect is the listing of the acquired business.

The HKEx has however removed references to greenfield operations, equity fundraisings and termination of businesses which the Consultation Paper proposed including in the “series of transactions and/or arrangements factor” to address consultation respondents’ concerns that the reverse takeover rules could apply to transactions in a company’s ordinary course of business.

Guidance on aggregation of transactions

The new guidance letter on reverse takeovers (HKEx-GL 104-19) notes that the “series of transactions and/or arrangements” factor is typically applied together with other assessment factors, for example the relative size of the transaction to the listed company, and whether the series of transactions would lead to a fundamental change in the principal business of the listed company.

The guidance letter also makes the following points:

- a) This criterion should not unduly restrict listed companies’ business expansion or diversification that occur over a reasonable period where publicly disclosed information will inform shareholders and the public about listed companies’ business operations and developments.
- b) HKEx will not normally consider a transaction or arrangement outside the three-year period to be part of the series, except where the transactions are clearly related or there are specific concerns regarding circumvention of the reverse takeover rules. The following examples are given:

- i) a transaction proposed just outside the three-year period which was likely under contemplation within it;
 - ii) where a listed company terminates a proposed acquisition of a target business (or reduces the size of an acquisition) after the HKEx rules it to be a reverse takeover, the HKEx may treat any further acquisitions of the target business outside the three-year period as part of a series; and
 - iii) where a listed company acquires a new business with an option to acquire another target business and the option is exercised more than three years after the original acquisition, the HKEx may consider the acquisitions as a series.
- c) HKEx will normally aggregate acquisitions that are related, such as:
- i) acquisitions that are in a similar line of business;
 - ii) acquisitions of interests in the same company or group of companies; and
 - iii) acquisitions of businesses from the same or a related party.

Size Tests

In assessing whether the size of acquisitions in a series is substantial, the HKEx will normally compare:

- a) the aggregate financial figures/ consideration of the acquired assets at their respective acquisition times to:
- b) the size of the listed company being the lower of its latest published financial figures (i.e. revenue, profits and assets) or market capitalisation: (i) before the first transaction in the series; and (ii) at the time of the last transaction in the series (Guidance Letter HKEx-GL104-19 at paragraph 32).

The above is however guidance only and the HKEx will consider anomalous results case-by-case.

Removing the application of the reverse takeover rules to aborted proposed transactions

The Consultation Paper proposed that where a listed company aborts a proposed transaction (being the last transaction in a series) after the HKEx rules that it constitutes a reverse takeover, the HKEx would impose additional obligations on the completed transactions if it considers them to be a pre-ordained strategy to circumvent the new listing requirements. The additional obligations were to include a requirement to engage a financial adviser to conduct due diligence and an obligation to make enhanced disclosure on the completed acquisitions in the series.

Due to concerns expressed by respondents to the consultation that an aborted transaction could taint a series of completed acquisitions, the HKEx will not adopt the proposal. However, where the HKEx is concerned that a terminated transaction is part of a series of transactions aimed at circumventing the new listing requirements, it may require the listed company to include a negative statement in the announcement regarding the listed company's plans and intention, and those of its connected persons.

1.4 Revised bright line tests for reverse takeovers on HKEx

The bright line tests of Note 2 to Main Board Listing Rule 14.06B (GEM Listing Rule 19.06B) have been amended to include very substantial acquisition(s) from a listed company's controlling shareholder within 36 (instead of 24) months from a change in control.

1.5 Retention and modification of restriction on disposals after change in control

New Main Board Listing Rule 14.06E (GEM Listing Rule 19.06E) retains the bright line test restricting listed companies from disposing of their business after a change in control under the Takeovers Code, which is currently set out in Main Board Listing Rules 14.92 and 14.93 (GEM Listing Rules 19.91 and 19.92).

The new rule also modifies the previous Listing Rule provisions by:

- a) Extending the restriction to any material disposal, or a disposal by way of distribution in specie that amounts to a material disposal, of the listed company's existing business within 36 months

after a change in control of the listed company, except where: (i) the remaining business; or (ii) any assets acquired after the change in control, can meet the requirements of Main Board Listing Rule 8.05, 8.05A or 8.05B (GEM Listing Rule 11.12A or 11.14).

ii) for a period of 36 months from such change, if the HKEx considers that the disposal(s) and/or distribution(s) in specie may be part of a series of arrangements to circumvent the new listing requirements.

The revised rule thus:

- i) extends the restriction period from 24 months to 36 months;
 - ii) applies the restriction to distributions in specie amounting to a material disposal of the listed company's business;
 - iii) extends the restriction to a disposal *at the time of the change in control* (and not only disposal(s) occurring after the change in control). This will catch shell creation structures where a controlling shareholder disposes of its shareholding interest to a new investor, and at the same time buys back a material part of the listed company's principal business; and
 - iv) disapply the restriction if the remaining group (and not merely assets obtained after the change in control) can satisfy the requirements of Main Board Listing Rule 8.05, 8.05A or 8.05B or GEM Listing Rule 11.12A or 11.14.
- b) A new Note to Main Board Listing Rule 14.06E (GEM Listing Rule 19.06E) will give the HKEx the discretion to apply the rule to a material disposal (or a disposal by way of distribution in specie that amounts to a material disposal) of an issuer's existing business:
- i) when there is a proposed change in *de facto* control of the listed company (by reference to the factors set out in Note 1(e) to Main Board Listing Rule 14.06E (GEM Listing Rule 19.06E)); or

1.6 Backdoor listing through large scale securities issue

New Main Board Listing Rule 14.06D (GEM Listing Rule 19.06D) has codified HKEx Guidance Letter GL84-15 to disallow backdoor listings through large scale issues of securities for cash, where:

- a) there is, or will result in, a change of control or *de facto* control of the listed company; and
- b) the proceeds will be applied to acquire and/or develop a new business that is expected to be substantially larger than the listed company's existing principal business.

2. Tightened compliance requirements for reverse takeovers

Where a transaction constitutes a reverse takeover:

- a) the assets to be acquired by the listed company (together with assets already acquired in a series of transactions or arrangements) (defined as "acquisition targets" in new Main Board Listing Rule 14.04(2A)/ GEM Listing Rule 19.04(2)) must:
 - i) be considered by the HKEx to be suitable for listing (under Main Board Listing Rule 8.04 or GEM Listing Rule 11.06); and
 - ii) meet the financial and trading record requirements for new applicants under Main Board Listing Rule 8.05, 8.05A or 8.05B (GEM Listing Rule 11.12A or 11.14); and
- b) the enlarged group must satisfy all new listing criteria under Main Board Chapter 8 (except Main Board Listing Rule 8.05) or GEM Chapter 11 (other than GEM Listing Rule 11.12A) (under Main Board Listing Rule 14.54/GEM Listing Rule 19.54). The Consultation Paper had proposed requiring the enlarged group to meet Main Board Listing Rule 8.05/ GEM Listing Rule 11.12A, but removed that requirement due to concerns that it would prevent

listed companies with substantial historical losses from conducting reverse takeovers except where the acquisition targets have significant profits.

Track record period

New Main Board Listing Rule 14.57A (GEM Listing Rule 19.57A) clarify that the track record period for a reverse takeover involving a series of transactions and/or arrangements will be referenced to the latest proposed transaction and cover the three years (for Main Board listed companies) and two years (for GEM listed companies) before the issue of the listing document for the latest proposed transaction in the series.

HKEx has not adopted the original proposal that listed companies should include a *pro forma* income statement of all acquisition targets and new business in the listing document. Instead, the listed company must provide the HKEx with sufficient information to demonstrate that the acquired assets can meet the requirements of Main Board Listing Rule 8.05, 8.05A or 8.05B or GEM Listing Rule 11.12A or 11.14.

Additional requirements for companies not complying with Rule 13.24 (GEM Rule 17.26)

Where a reverse takeover is proposed by a listed company that is unable to comply with Main Board Listing Rule 13.24 or GEM Listing Rule 17.26, typically a suspended company, HKEx must additionally be satisfied that there will be sufficient public interest in the business of the acquired assets and the enlarged group (Main Board Listing Rule 14.54 and GEM Listing Rule 19.54).

Waiver

The HKEx may grant a waiver from strict compliance with the requirements where a reverse takeover involves a series of transactions and/or arrangements and the acquired assets cannot meet the management continuity and/or the ownership continuity and control requirements of Main Board Rule 8.05(1) (b) and (c) (GEM Listing Rule 11.12A(2) and (3)) due to a change in their ownership and management solely as a result of their acquisition by the listed company. In considering whether to grant a waiver of Rule 8.05(1)(b), the HKEx will consider

whether the listed company has the expertise and experience in the relevant business/industry of the acquired assets to ensure their effective management and operation.

3. Tightened compliance requirements for “extreme transactions”

3.1 Extreme Transactions Definition

“Extreme very substantial acquisitions” under HKEx Guidance Letter GL78-14¹⁰ have been renamed “extreme transactions” under Main Board Listing Rule 14.06C (GEM Listing Rule 19.06C) and further criteria have been added for a transaction to be regarded as an extreme transaction rather than a reverse takeover. Extreme transactions are also subject to additional requirements under the revised Listing Rules.

An “extreme transaction” is a proposed and/or completed acquisition or series of acquisitions of assets, which individually or together with other transactions or arrangements, may have the effect of achieving a listing of the acquired assets (determined by reference to the factors specified in Note 1 to Main Board Listing Rule 14.06B/ GEM Listing Rule 19.06B), where the listed company can demonstrate to the HKEx’s satisfaction, that it is not attempting to circumvent the requirements for new applicants of Main Board Chapter 8 (GEM Chapter 11). To qualify as an “extreme transaction” the following three conditions must also be met:

- a) either:
 - i) the listed company has been under the control or *de facto* control of a person or group of persons for a long period (normally at least 36 months), and the transaction would not result in a change in control or *de facto* control of the listed company (other than at the level of its subsidiaries); or
 - ii) the listed company has been operating a principal business of a substantial size, which will continue after the transaction. New Guidance Letter GL-104 provides guidance on what constitutes a business “of a substantial size”, which includes a listed company with annual revenue or total asset value of HK\$1 billion according to its latest published financial statements. The HKEx will also take

¹⁰ https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/g/ll/gl7814.pdf

into account the listed company's financial position, the nature and operating model of its business and its future business plans.

- b) the acquired assets must:
 - i) be suitable for listing under Main Board Listing Rule 8.04 (GEM Listing Rule 11.06); and
 - ii) meet the financial and track record requirements of Main Board Listing Rule 8.05, 8.05A or 8.05B (GEM Listing Rule 11.12A or 11.14).
- c) the enlarged group must meet all the new listing requirements of Chapter 8 of the Main Board Listing Rules (except Listing Rule 8.05) or Chapter 11 of the GEM Listing Rules (except GEM Listing Rule 11.12A).

3.2 Disclosure and due diligence requirements for extreme transactions

New Main Board Listing Rule 14.53A (GEM Listing Rule 19.53A) requires a listed company proposing an extreme transaction to:

- i) comply with the requirements for very substantial acquisitions set out in Main Board Listing Rules 14.48 to 14.53 (GEM Listing Rules 19.48 to 19.53). The circular must contain the information required under Main Board Listing Rule 14.69 (GEM Listing Rule 19.69); and
- ii) appoint a financial adviser to perform due diligence on the assets subject to the acquisition (and any assets and businesses subject to a series of transactions and/or arrangements, if any). The financial adviser must submit to the HKEx a declaration in relation to the due diligence conducted before the bulk-printing of the circular for the transaction.

Under Listing Rule 13.87B, the financial adviser must be a person licensed or registered for Type 6 regulated activity under the SFO, and permitted under its licence or certificate of registration to undertake sponsor work. The financial adviser is

also required to submit to the HKEx an undertaking to comply with the Listing Rules and co-operate in any investigation conducted by the HKEx.

3.3 Track record period

The track record period for an extreme transaction involving a series of transactions and/or arrangements will be three years (for Main Board listed companies) and two years (for GEM listed companies) before the issue of the circular for the latest proposed transaction in the series (new Main Board Listing Rule 14.57A (GEM Listing Rule 19.57A)). The listed company must provide the HKEx with sufficient information to demonstrate that the acquired assets can meet the requirements of Main Board Listing Rule 8.05, 8.05A or 8.05B or GEM Listing Rule 11.12A or 11.14.

Revisions to continuing listing criteria

The amendments to the criteria for continuing listing address specific concerns relating to listed companies involved in shell activities.

4. Amendments to Listing Rule 13.24 (GEM Rule 17.26) on sufficiency of operations

The revised Listing Rules require a listed company to have a business with a sufficient level of operations and assets of sufficient value to support its operations to warrant its continued listing (revised Main Board Listing Rule 13.24 and GEM Listing Rule 17.26).

A new note replacing the existing note clarifies that the rule is a qualitative test, and the HKEx may consider a listed company to have failed to comply with the rule in situations where, for example, the HKEx considers that it does not operate a business that has substance and/or that is viable and sustainable. It further provides that HKEx's assessment is made on the basis of the specific facts and circumstances of each case, and notes that where the HKEx raises concerns with a listed company about compliance with the rule, the onus is on the company to provide the HKEx with information addressing its concerns and demonstrating its compliance with the rule.

Exclusion of trading and/or investment in securities

In assessing the sufficiency of a listed company's operations and assets under Main Board Listing Rule 13.24(1) (GEM Listing Rule 17.26(1)), its proprietary trading and/or securities

investment activities are excluded (except for Chapter 21 investment companies). The note to new Main Board Rule 13.24(2) and GEM Rule 17.26(2) adds that the rule also does not apply to the proprietary trading and/or securities investment activities of banking companies (as defined in Listing Rule 14A.88) and insurance companies and securities houses (as defined in Listing Rule 14.04).

5. Revised cash company rules

The definition of “short-dated securities” in the cash company Listing Rules (Main Board Rules 14.82 - 14.84 and GEM Listing Rules 19.82 – 19.84) have been amended to include “short term investments”, that is investments that are easily convertible into cash. The note to Main Board Rule 14.82 (GEM Listing Rule 19.82) provides that the HKEx will apply a principle-based approach in determining the listed company’s intention holding the assets and the marketability or liquidity of the assets. Examples given of short-term investments include bonds, bills and notes with less than one year to maturity, those with a maturity of more than one year intended to be held for less than one year, listed securities that are available for sale, investments that are easily convertible into cash, and advances to third parties that are repayable within one year (excluding trade receivables arising in the listed company’s ordinary and usual course of business).

Cash and short-term investments held by a banking company, insurance company or a securities house will not normally be taken into account. However, the exemption for securities houses will not apply if the HKEx has concerns that the listed company is holding cash and short-term investments through a member to circumvent Listing Rule 14.82 (GEM Listing Rule 19.82) on cash companies. For example, a listed company holding excessive cash and/or securities investments cannot circumvent the rule by holding such assets through a group member that is a licensed broker with minimal brokerage operations.

Transitional Arrangements

A 12-month transitional period commencing on 1 October 2019 will apply to listed companies that do not comply with revised Main Board Listing Rules 13.24 or 14.82 (GEM Rules 19.24 or 19.82) strictly due to the rule amendments.

Other HKEx Listing Rule Amendments

1. Limiting the revenue exemption for securities transactions

The revenue exemption from the notifiable transaction requirements is now only available for purchases and sales of securities if they are conducted by members of a listed group that are subject to the supervision of prudential regulators (i.e. banking companies, insurance companies or securities houses) (Main Board Listing Rule 14.04(1)(g) and GEM Listing Rule 19.04(1)(g)).

In response to a question regarding how the aggregation rules apply to securities transactions, new FAQ¹¹ (effective 1 October 2019) provides that a listed company is required to aggregate investments made in the same company or group.

Listing Decision LD53-2 which is superseded by the Listing Rule changes will be removed.

2. Annual report disclosure of significant investments

Listed companies will be required to disclose in their annual reports details of each securities investment with a value of 5% or more of their total assets as at the year-end date. The details to be included are:

- a) details of each investment, including the name and principal businesses of the underlying company, the number and percentage of shares held and the investment costs;
- b) the fair value of each investment as at the year-end date and its size relative to the listed company’s total assets;
- c) the performance of each investment during the year, including any realised and unrealised gain or loss and any dividends received; and
- d) a discussion of the listed company’s investment strategy for these significant investments.

¹¹ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Interpretation-and-Guidance/Frequently-Asked-Questions/faq057_2019_preversion.pdf

3. Significant Distribution in Specie of Unlisted Assets (Main Board Rule 14.94 and GEM Rule 19.93)

Listing Decision LD75-4's requirements for significant distributions in specie of unlisted assets is codified and revised to impose further requirements on a distribution in specie that is equivalent in size to a very substantial disposal (Main Board Listing Rule 14.94 and GEM Listing Rule 19.93).

The requirements for a distribution in specie are that it:

- a) must be approved by independent shareholders in general meeting by at least 75% of the votes attaching to any class of listed securities held by holders voting either in person or by proxy at the meeting;
- b) the number of votes cast against the resolution must not be more than 10% of the votes attaching to any class of listed securities held by holders permitted to vote in person or by proxy at the meeting. Controlling shareholders (or directors (other than independent non-executive directors) and the chief executive, where there is no controlling shareholder) and their respective associates must abstain from voting for the resolution; and
- c) the shareholders (other than the directors (excluding independent non-executive directors), chief executive and controlling shareholders) should be offered a reasonable cash alternative or other reasonable alternative.

4. Other Matters relating to Notifiable and Connected Transactions

4.1 Disclosure of the outcome of a financial performance guarantee of a target acquired in a notifiable or connected transaction

Chapters 14 and 14A (GEM Chapters 19 and 20) have been revised to require a listed company to disclose:

- a) in its next annual report the outcome of a guarantee on the financial performance of an acquisition target that is subject to the notifiable or connected transaction requirements (irrespective of whether the guaranteed financial performance is met);

b) by way of announcement if there is:

- i) any change to the terms of a guarantee referred to in (a) above; or
- ii) the actual financial performance of the target acquired fails to meet the guarantee (or the amended guarantee).

4.2 Disclosure of the identities of parties to notifiable transactions

The revised HKEx Listing Rules (Main Board Listing Rule 14.58 and GEM Listing Rule 19.58) require the identities of the parties to notifiable transactions (including extreme transactions and reverse takeovers) to be disclosed in announcements of, and circulars for, notifiable transactions.

4.3 Disclosure of the identities of parties to connected transactions

The revised HKEx Listing Rules require connected transaction announcements and circulars to disclose the identities and a description of the principal business activities of the parties to the connected transaction and of their ultimate beneficial owners (Main Board Listing Rules 14A.68(1A) and 14A.70 and GEM Listing Rules 20.68(3) and 20.66).

4.4 Alternative size tests requirements

HKEx has revised the Listing Rules to make clear that where any calculation of the percentage ratios for a transaction produces an anomalous result, or is inappropriate to the listed company's sphere of activities, the HKEx (or the company) can apply an alternative size test it considers appropriate to assess the transaction's materiality under Chapter 14 or 14A (GEM Chapters 19 or 20).

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