
CONSEQUENTIAL GEM RULE AMENDMENTS RELATING TO CONNECTED TRANSACTIONS

Chapter 1

GENERAL

INTERPRETATION

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1.01

...

“**substantial shareholder**”

in relation to a company means a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of the company

Note: This definition is qualified in the case of connected transactions falling within rule ~~20.27~~20.13(1)(b)(i).

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Chapter 8

VALUATION OF AND INFORMATION ON PROPERTIES

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Requirements for an issuer

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8.02A Valuation of a property interest is not required if:

(1) ...

(2) the property is acquired under a Qualified Property Acquisition (as defined in rule 19.04(10C)) falling under rules 19.33A to 19.33B ~~or rules 20.72 to 20.73~~; or

...

...

8.03 For an acquisition or a disposal of any property interest or a company whose assets consist solely or mainly of property (including a company listed on the Exchange) from or to a connected person, a valuation of and information on the property must be included in any circular issued to shareholders in connection with the acquisition or disposal (see rule ~~20.68(7)~~20.59(7)). The circular must include full text of valuation reports and the general information in rule 8.36, if it applies.

Chapter 9

GENERAL

TRADING HALT, SUSPENSION AND RESUMPTION OF DEALINGS, ~~CANCELLATION~~ CANCELLATION AND WITHDRAWAL OF LISTING

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Trading halt or suspension

9.03 An issuer shall endeavour to avoid any trading halt or suspension of dealings in its securities.

Notes: 1 ...

2 ...

3 *Where a detailed announcement may take time to prepare, the issuer should, subject to rules 19.37 and ~~20.33~~20.47 concerning announcements of notifiable and connected transactions, consider making a short announcement to disclose information which is or may be inside information (and for the purpose of avoiding a suspension). This could be followed, at the soonest practicable opportunity thereafter, with a detailed announcement giving all information required by the GEM Listing Rules.*

Chapter 13

EQUITY SECURITIES

RESTRICTIONS ON PURCHASE, DISPOSAL AND SUBSCRIPTION

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Restrictions on disposal of shares following the listing of a new applicant

13.15 For the purposes of rules 13.15 to 13.20, the following terms have the following meanings:—

...

(5) references to a “disposal” (of securities) includes the creation of any option, rights or interests (over such securities) but shall exclude the following:

(a) ...

(b) any placing and issue of securities made in the manner described in rule ~~20.90(4)~~20.34(3)(d) during the second six month period of the issuer's listing date where:

(i) there is no change in the number of securities held by the relevant shareholder before and after completion of the placing and issue of securities; and

(ii) the placing of securities does not result in a controlling shareholder of the issuer ceasing to be a controlling shareholder after completion of the placing and issue of securities.

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Chapter 17

EQUITY SECURITIES

CONTINUING OBLIGATIONS

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Pre-emptive rights

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17.41 No such consent as is referred to in rule 17.39 shall be required:—

(1) ...

(2) ...

Note: Other than where independent shareholders' approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 17.41(2) is only permitted in the circumstances set out in rule ~~20.90~~20.31(3).

...

Meetings of holders of securities

17.47 (1) ...

...

(6) In relation to any ~~connected transactions pursuant to Chapter 20 of the GEM Listing Rules~~, transactions that are subject to independent shareholders' approval pursuant to the GEM Listing Rules, any issue of shares or securities convertible into equity securities of an issuer pursuant to rule 17.29(5) or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3(e) of Practice Note 3,

(a) the issuer shall establish an independent board committee (which shall consist only of independent non-executive directors) to advise shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote, taking into account the recommendations of the independent financial adviser appointed under rule 17.47(6)(b);

(b) the issuer shall appoint an independent financial adviser acceptable to the Exchange to make recommendations to the independent board committee and the shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote; and

- (c) the independent board committee shall not consist of any independent non-executive directors who have a material interest in the relevant transaction or arrangement. The independent board committee may consist of only one independent non-executive director if all other independent non-executive directors have a material interest in the relevant transaction or arrangement. If all the independent non-executive directors have a material interest in the relevant transaction or arrangement, no independent board committee can be formed. In that event, the independent financial adviser shall make its recommendation to the shareholders only in the manner prescribed under rule 17.47(7)(b).
- (7) In relation to any ~~connected transactions pursuant to Chapter 20 of the GEM Listing Rules~~, transactions that are subject to independent shareholders' approval pursuant to the GEM Listing Rules, any issue of shares or securities convertible into equity securities of an issuer pursuant to rule 17.29(5) or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3(e) of Practice Note 3, the circular to shareholders must contain at least:
 - (a) if applicable, a separate letter from the independent board committee advising shareholders as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and advising shareholders on how to vote, taking into account the recommendations of the independent financial adviser; and
 - (b) a separate letter from the independent financial adviser containing its recommendation to the independent board committee and shareholders (or, if applicable, to the shareholders only) as to whether the terms of the relevant transaction or arrangement are fair and reasonable and whether such a transaction or arrangement is in the interests of the issuer and its shareholders as a whole and advising shareholders on how to vote. Such letter must set out the reasons for and the key assumptions made and factors taken into consideration in forming that opinion.
- (8) For any connected transactions, the requirements relating to the opinion and recommendation of the independent board committee and the independent financial adviser are set out in Chapter 20.

Note: "Independent shareholders" under paragraphs (6) and (7) of this rule 17.47 means any shareholders other than controlling shareholders of the issuer and their associates or, where there are no controlling shareholders, any shareholders other than directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates.

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Miscellaneous obligations

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Independent financial advisers

17.92 An independent financial adviser appointed under rule 17.47(6)(b), rule 20.42 or rule 24.05(6)(a)(ii) must take all reasonable steps to satisfy itself that:

- (1) it has a reasonable basis for making the statements required by rule 20.43~~paragraphs (4) to (5) of rule 20.22~~; and
- (2) without limiting the generality of paragraph (1) above, there is no reason to believe any of the following information is not true or omits a material fact:
 - (a) any information relied on by the independent financial adviser in forming its opinion; or
 - (b) any information relied on by any third party expert on whose opinion or advice the independent financial adviser relies in forming its opinion.

Notes: 1. ...

2. *The Exchange expects the independent financial adviser will ensure the letter referred to at rule 20.43~~20.22~~ takes account of the following principles:*

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Chapter 18

EQUITY SECURITIES

FINANCIAL INFORMATION

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Annual reports

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18.09 (1) In relation to connected transactions (including continuing connected transactions) that are not exempt from annual reporting requirement in Chapter 20 ~~under rule 20.34~~, particulars of the transactions pursuant to rule 20.69~~20.45~~.

~~(2) In relation to continuing connected transactions that are not exempt under rule 20.33, particulars of the transactions pursuant to rules 20.45 and 20.46.~~

~~(2)~~ (3) Where a listed issuer includes in its annual report particulars of a related party transaction or continuing related party transaction (as the case may be) in accordance with applicable accounting standards adopted for the preparation of its annual financial statements, a statement as to whether or not the transaction falls under the definition of “connected transaction” or “continuing connected transaction” (as the case may be) in Chapter 20. The listed issuer must also confirm whether or not it has complied with the disclosure requirements in accordance with Chapter 20.

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Chapter 19
EQUITY SECURITIES
NOTIFIABLE TRANSACTIONS

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Definitions

19.04 For the purposes of this Chapter:—

(1) any reference to a “transaction” by a listed issuer:

(a) ...

...

(e) includes granting an indemnity or a guarantee or providing financial assistance by a listed issuer, other than by a listed issuer which:

(i) is a banking company (as defined in rule ~~20.06(3)~~~~20.10(1)~~) and provides the financial assistance (as defined in rule ~~20.06(17)~~~~20.10(4)~~) in its ordinary and usual course of business (as referred to in rule 19.04(8));

(ii) grants an indemnity or a guarantee, or provides financial assistance to its subsidiaries; or

(iii) is a securities house and provides the financial assistance (as defined in rule ~~20.06(17)~~~~20.10(4)~~) in its ordinary and usual course of business (as referred to in rule 19.04(8)) and upon normal commercial terms, either:

(A) by way of securities margin financing (which means providing a financial accommodation in order to facilitate:

(aa) the acquisition of securities listed on any stock market, whether a recognized stock market (as defined in Schedule 1 to the Securities and Futures Ordinance) or any other stock market outside Hong Kong; and

(bb) (where applicable) the continued holding of those securities,

whether or not those or other securities are pledged as security for the accommodation); or

- (B) for the purpose of a proposed acquisition of securities in accordance with the terms of a prospectus which is registered in Hong Kong and issued in respect of an initial public offering of equity securities to be listed in Hong Kong.

Note: Such a transaction may nevertheless in some cases constitute a connected transaction under Chapter 20. In such cases, the listed issuer will have to comply with the provisions of Chapter 20.

- ...
- (5) “de minimis ratio” means the ratio determined in accordance with rules 20.74, 20.85(2) and 20.85(3) ~~20.31(2), 20.32, 20.33(3), 20.34, 20.65(2), 20.66(1) or 20.66(2)~~ (as the case may be);
- ...

...

Contents of circulars

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Circulars for specific types of companies

- 19.71A Where a discloseable transaction, major transaction or very substantial acquisition involves a Qualified Property Acquisition ~~entered into pursuant to a General Property Acquisition Mandate as defined and described in Note to rule 20.99~~ 20.10 and rule 20.74, the Qualified Issuer shall comply with additional ~~circularisation~~, announcement and reporting requirements with details as described in chapter 20 ~~under rules 20.75 to 20.78.~~
- ...

Chapter 25

EQUITY SECURITIES

ISSUERS INCORPORATED IN THE PEOPLE’S REPUBLIC OF CHINA

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Chapter 11 – Qualifications for Listing

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

Chapters 17 and 18 – Continuing Obligations and Financial Information

Pre-emptive rights

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

“17.39 ...

17.40 ...

17.41 ...

Notes: 1 Other than where independent shareholders’ approval has been obtained, an issue of securities to a connected person pursuant to a general mandate given under rule 17.41(2) is only permitted in the circumstances set out in rule ~~20.90~~~~20.31(3)~~.

2 ...”

...

Despatch of circular and listing document

25.34A The timing for despatching a circular under rules 17.46(2), 19.41(b), 19.51, ~~20.44(1)~~~~20.49(b)~~ and 23.06 is modified to require a PRC issuer to despatch the circular on or before the deadline for giving notice of the general meeting under the Company Law.

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Appendix 1

Contents of Listing Documents

Part B

Equity Securities

In the case where listing is sought for equity securities of an issuer some part of whose share capital is already listed

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18. Where the securities for which listing is sought are offered by way of rights or by way of an open offer to the holders of an existing listed security, a statement as to:—

(1) ...;

...

(4) the matters required to be disclosed by rules 10.25, 10.27, 10.28, 10.29, 10.29A and 10.31 (in the case of a rights issue) and 10.36, 10.38, 10.39, 10.39A and 10.42 (in the case of an open offer) and/or ~~20.90(2)(b)~~~~20.31(3)(c)~~, as appropriate.

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