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# Amendments To The Main Board And GEM Listing Rules Effective 1 January 2009

## Introduction

The Stock Exchange of Hong Kong Limited (the **Exchange**) has published its Consultation Conclusions on Proposals in the 2008 Combined Consultation Paper (**Consultation Conclusions**).

The Consultation Conclusions set out the results of the consultation on 15 of the 18 substantive policy issues raised in the Combined Consultation Paper. The amendments to the Main Board and GEM Listing Rules are significant and will come into effect on 1 January 2009. The other 3 issues: Issue 5 (public float), Issue 11 (general mandates) and Issue 15 (self-constructed fixed assets) are still under consideration and the Exchange will publish separate conclusions at a later date.

The purpose of this note is to provide a summary only of the Listing Rule amendments and it should therefore be read in conjunction with the detailed provisions of the Listing Rules.

## 1. Phased Reduction Of Pre-Vetting Of Announcements

The Rules have been amended to implement a progressive phased approach to reduction in pre-vetting activities for different types of listed issuers’ announcements.

During Phase 1, which will commence on 1 January 2009, only the announcements specified in Main Board Rule 13.52(2) (GEM Rule 17.53(2)) must be submitted to the Exchange for pre-vetting before publication:

1. announcements of the following **notifiable transactions** under Main Board Chapter 14 and GEM Chapter 19:
	1. major transactions, very substantial acquisitions, very substantial disposals or reverse takeovers under Main Board Rules 14.34 and 14.35 and GEM Rules
	2. 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 GEM Rules 19.88 to 19.90;
	3. cash companies under Main Board Rules 14.82 and 14.83 and GEM Rules19.82 and 19.83; and
2. announcements of all **connected transactions** (including continuing connected transactions) under Main Board Rules 14A.47 and 14A.56 and GEM Rules 20.47 and 20.56.

Phase 1 is a transitional phase which will terminate on a date to be determined by the Exchange. It is envisaged that during Phase 2, pre-vetting will no longer be required for announcements regarding major transactions and connected transactions. Eventually, the Exchange plans to cease pre-vetting for all announcements.

Issuers will be able to consult the Exchange regarding rule compliance in relation to announcements which do not require pre-vetting. The Exchange also reserves the right under Main Board Rule 13.52A (GEM Rule 17.53A) to require issuers to submit for review any draft announcement, circular or other document in individual cases.

### 1.1 - New Requirement to Consult Exchange on Rules Governing Aggregation of Transactions

New rules have been introduced (Main Board Rules 14.23A and 14A.27A and GEM Rules 19.23A and 20.27A) which require a listed issuer to consult the Exchange on the application of the Rules governing aggregation of transactions before it enters into any proposed transaction in the following situations:

1. if any of the circumstances specified in Main Board Rule 14.23 or GEM Rule 19.23 (or Main Board Rules 14A.26 or 14A.27 or GEM Rules 20.26 or 20.27 in the case of a connected transaction) exist in respect of the proposed transaction(s) and any other transaction(s) entered into by the listed issuer in the preceding 12-month period; or
2. the proposed transaction(s) and any other transaction(s) 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 (i.e. 30%) of the listed issuer other than at the level of its subsidiaries.

The Exchange may however aggregate transactions pursuant to existing Rules (Main Board Rules 14.06(6), 14.22 and 14A.25 (and their GEM equivalents)) where no prior consultation was made by the listed issuer.

### 1.2 - Requirement to Consult Exchange on Announcements relating to Trading Arrangements

In the case of matters affecting trading arrangements (including suspension or resumption of trading, and cancellation or withdrawal of listing), although the announcements no longer require pre-vetting, Main Board Rule 13.52B and GEM Rule 17.53B impose requirements that:

1. listed issuers must consult the Exchange before issuing the relevant announcement; and
2. the announcement must not include any reference to a specific date or timetable which has not been agreed in advance with the Exchange.

## 2. Prevetting Requirements For Listing Documents And Circulars

A summary of the pre-vetting requirements for listing documents and circulars under the existing and amended Listing Rules is [set out in Schedule 1 to this note](schedule1.pdf).

### 2.1 - Removal of Pre-vetting Requirement for Circulars Amending Memorandum and Articles of Association and Explanatory Statements for Purchases of own Shares

The Exchange has removed the pre-vetting requirement for matters that normally do not raise material regulatory concerns, including:

1. circulars for proposed amendments to a listed issuer’s Memorandum and/or Articles of Association; and
2. explanatory statements relating to listed issuers purchasing their own shares on a stock exchange.

However, the amended Rules contain the new requirements set out below:

#### Circulars in respect of proposed amendments to a listed issuer’s Memorandum and/or Articles of Association or equivalent documents (Main Board Rule 13.51(12) and GEM Rule 17.50(1))

The circular for the proposed amendments must include an explanation of the effect of the proposed amendments and the full terms of the proposed amendments. The issuer is also required to submit to the Exchange (at the same time as the circular is sent to the issuer’s shareholders):

1. a letter addressed to the issuer from its legal advisers confirming that the proposed amendments comply with the requirements of the Listing Rules and the laws of the place of the issuer’s incorporation or establishment; and
2. a confirmation from the issuer that there is nothing unusual about the proposed amendments for a Hong Kong listed company.

#### Explanatory statements relating to listed issuers purchasing their own shares on a stock exchange (Main Board Rule 10.06(1) and GEM Rule 13.08)

At the same time as the issuer sends the explanatory statement to its shareholders, it must submit to the Exchange:

1. a confirmation from the issuer that the circular contains the information required under the Rules (Main Board Rule 10.06(1)(b) and GEM Rule 13.08) and that there are no unusual features in either the explanatory statement or the proposed share repurchase; and
2. an undertaking from the issuer’s directors to the Exchange to make the purchases in accordance with the Listing Rules and the laws of its place of incorporation (as required by Main Board Rule 10.06(1)(b)(vi) and GEM Rule 13.08(6)).

### 2.2 - Express Requirement for Pre-vetting of Circulars for Significant Transactions or Arrangements

The Exchange has amended the Listing Rules to codify its current practice of requiring pre-vetting of circulars for significant transactions or arrangements on the basis that they generally pose a higher risk of non-compliance with the Rules.

Main Board Listing Rule 13.52(1) and GEM Listing Rule 17.53(1) have been amended so that pre-vetting is now specifically required for:

1. circulars relating to cancellation or withdrawal of listing;
2. circulars to the issuer’s shareholders seeking their approval of issues of securities by a listed issuer that require specific mandates from the shareholders (under Main Board Rule 13.36(1) or GEM Rules 17.39(1) and 17.40);
3. 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) and GEM Rule 17.47 which include:
	1. **spin-off proposals**;
	2. transactions which the Rules require to be subject to independent shareholders’ approval (see Main Board Rule 13.39(4)(b) and GEM Rule 17.47(4)(b)) such as:
		* **rights issues** under Main Board Rule 7.19(6) or 7.19(7) or GEM Rule 10.29;
		* **open offers** under Main Board Rule 7.24(5) or (6) or GEM Rule 10.39;
		* **refreshments of general mandates** before next AGM under Main Board Rule 13.36(4) and GEM Rule 17.42A;
		* **withdrawal of listings** under Main Board Rule 6.12 or GEM Rule 9.20;
		* **transactions or arrangements that would result in a fundamental change** in the principal business activities of the listed issuer after listing under Main Board Rules 14.89 to 14.91 and GEM Rules 19.88 to 19.90; and
		* **issues of shares or securities convertible** into equity securities within 6 months of new listing under GEM Rule 17.29(5);
4. circulars to shareholders seeking their approval of **proposals to explore for natural resources** as an extension to or change from the listed issuer’s existing activities under Main Board Rule 18.07; and
5. circulars to shareholders seeking their approval of **warrant proposals** involving approvals by shareholders and all warrantholders under paragraph 4(c) of Practice Note 4 to the Main Board Listing Rules or GEM Rule 21.07(3).

### 2.3 - Removal of the Circular Requirement for Discloseable Transactions

The circular requirement for discloseable transactions has been removed.

Where an announcement of a discloseable transaction includes a profit forecast, the Rules require that the expert reports for the profit forecast and other specified information must be submitted to the Exchange no later than the time of publication of the announcement (Main Board Rule 14.62 and GEM Rule 19.62). A new requirement has been added that where a profit forecast is included in an announcement of a discloseable transaction, the expert reports for the profit forecast must be included in the announcement or in a supplemental announcement published with 21 days (Main Board Rule 14.60A and GEM Rule 19.60A).

Where a discloseable transaction involves an acquisition by a Main Board listed issuer of mining assets which does not fall within Main Board Rule 18.07(2), the issuer will be required under Rule 14.38 to include the expert report with respect to the estimated reserves of natural resources in a supplemental announcement published within 21 days of the announcement of the discloseable transaction.

### 2.4 - Requirement for Exchange’s Disclaimer Statement to be Included in all Documents Issued by Main Board Issuers under the Rules

The amended Main Board Rules require issuers to include the Exchange’s disclaimer statement in any listing document, circular, announcement or notice issued pursuant to the Rules. These changes are in line with the existing requirement under the GEM Rules.

The form of the disclaimer statement is as follows:

“Hong Kong Exchanges and Clearing Limited and the Stock Exchange of Hong Kong Limited take no responsibility for the contents of this [document]/[circular]/ [/announcement]/ [advertisement], make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

## 3. Disclosure Of Changes In Issued Share Capital

### 3.1 - Next Day Disclosure Requirements

The amended Rules (Main Board Rule 13.25A and GEM Rule 17.27A) require next day disclosure (i.e. disclosure on the Exchange website or GEM website by 9.00 a.m. on the morning of the next business day) of 2 categories of changes in issued share capital. The first category comprises changes which always require next day disclosure. The second category comprises changes in issued share capital which only require next day disclosure in specified circumstances.

#### Changes Always Requiring Next Day Disclosure

Changes in issued share capital which always require next day disclosure under Main Board Rule 13.25A(2)(a) and GEM Rule 17.27A(2)(a) are:

1. placings;
2. consideration issues;
3. open offers;
4. rights issues;
5. bonus issues;
6. scrip dividends;
7. repurchase of shares or other securities;
8. exercise of an option other than under a share option scheme by a director of the listed issuer or any of its subsidiaries;
9. exercise of an option under a share option scheme by a director of a listed issuer or any of its subsidiaries;
10. capitalisation reorganisation; or
11. change in issued share capital not falling within any of the categories referred to at (i) to (x) above or in Main Board Rule 13.25A(2)(b) or GEM Rule 17.27A(2)(b).

#### Categories of Changes Requiring Next Day Disclosure in Specified Circumstances

The following changes in issued share capital specified in Main Board Rule 13.25A(2)(b) and GEM Rule 17.27A(2)(b) require next day disclosure in specified circumstances:

1. exercise of an option other than by a director of the listed issuer or any of its subsidiaries;
2. exercise of a warrant;
3. conversion of convertible securities;
4. redemption of share or other securities.

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

1. where the event, either individually or when aggregated with other events specified in Main Board Rule 13.25A(2)(b) or GEM Rule 17.27A(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 of the listed issuer’s existing issued share capital before the relevant change; or
2. where the listed issuer is in any case required to disclose some other change in issued share capital under Main Board Rule 13.25A(2)(a) or GEM Rule 17.27A(2)(a) and a change in issued share capital resulting from an event specified in Main Board Rule 13.25A(2)(b) or GEM Rule 17.27A(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 issued share capital is calculated by reference to its total issued share capital 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 has been merged with the current Share Buyback Report in Appendix 5G to the Listing Rules. The merged 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 current share buyback regime). Share repurchases are discloseable under both Main Board Rule 13.25A and 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.

#### Listed Collective Investment Schemes

Listed collective investment schemes (**CISs**) (including REITs) other than open-ended CIS are also required to submit a Next Day Disclosure Return similar to the one proposed for equity issuers.

### 3.2 - Monthly Returns

The Rules have been amended to require listed issuers to submit a Monthly Return to the Exchange by no later than 9.00 a.m. on the fifth business day following the end of each calendar month (Main Board Rule 13.25B and GEM Rule 17.27B). Publication of a Monthly Return is optional under the current Listing Rules. The return must show changes in the issuer’s equity securities, debt securities and any other securitised instruments during the relevant period. Listed issuers are also required to report any future obligation to issue shares under options, warrants, convertible securities or any other agreement.

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 or GEM website (as applicable).

#### Listed Collective Investment Schemes

All CISs listed under Chapter 20 of the Main Board Rules will be required to submit a Monthly Return setting out movements in the units during the relevant month and an opening and closing balance.

### 3.3 - New Requirement for Announcement of Share Option Grants

The Listing Rules have been amended to require listed issuers to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme (Main Board Rule 17.06A and GEM Rule 23.06A). 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.

## 4. Disclosure Requirements For Announcements Regarding Issues Of Securities For Cash And Allocation Basis For Excess Shares In Rights Issue

### 4.1 - New Disclosure Requirements for Announcements of all Issues of Securities for Cash

The Exchange has amended Main Board Rule 13.28 and GEM Rule 17.30 so that the disclosure requirements for announcements regarding issues of securities for cash under a general mandate are extended to announcements of all issues of securities for cash (irrespective of whether general mandates are involved).

The amended Rules also require disclosure of the following items of additional information:

1. a statement on whether the issue is subject to shareholders’ approval;
2. where the securities are issued under a general mandate, details of the mandate;
3. where the securities are issued by way of a rights issue or an open offer, the information relating to the rights issue or open offer specified in paragraph 18 of Appendix 1, Part B of the Listing Rules;
4. where the issue involves convertible securities or warrants, their material terms (including the conversion/subscription price and provisions for adjustments of such price) and the maximum number of shares that could be issued upon exercise of the conversion/subscription rights; and
5. where applicable, the name of the underwriting/placing agent and the principal terms of the underwriting/placing arrangements.

Certain specific disclosure requirements (including the basis for determining the issue price, any conditions to which the issue is subject and any other material information relating to the issue) that are currently included in GEM Rule 17.30 have also been included in Main Board Rule 13.28.

### 4.2 - New Requirement for Disclosure of Allocation Basis for Excess Shares for Rights Issues and Open Offers

The amended Rules require disclosure of the basis of allocation of excess shares in the announcement, listing document and any circular for a rights issue or an open offer (Main Board Rules 7.21, 7.26A(1), 13.28 and 13.29 and GEM Rules 10.31, 10.42(1), 17.30 and 17.30A).

## 5. Model Code For Securities Transactions By Directors Of Listed Issuers

### 5.1 - Extension of the Black out Period for Directors’ Dealings

The Exchange has adopted what was one of the most controversial proposals included in the Consultation Paper, namely the extension of the “black out periods” during which directors are prohibited from dealing in the listed issuer’s securities. Under the amended rules, the black out period has been extended to commence from the end of the listed issuer’s financial period (whether year, half year, quarter or other interim period) and end on the date on which the issuer publishes the relevant results announcement (whether or not publication of the results is required under the Listing Rules). The new provisions are set out in Paragraph A.3 of the Model Code for Securities Transactions by Listed Issuers at Appendix 10 to the Main Board Rules (the **Model Code**) and Rule 5.56 of the GEM Rules.

### 5.2 - New Time Limits on Responding to a Request to Deal and Dealing once Clearance has been Received

The amended Rules (Rule B.8 of the Model Code and GEM Rule 5.61) have introduced a deadline of 5 business days within which an issuer must respond to a request for clearance to deal. Any clearance granted can only be valid for 5 business days of clearance being received.

### 5.3 - 3 New Exceptions to the Definition of Dealing

Three new exceptions have been introduced to the definition of “dealing” under paragraph 7(d) of the Model Code and GEM Rule 5.52:

1. dealing where the beneficial interest or interests in the relevant securities of the listed issuer do not change;
2. where a shareholder who places out his existing shares in a “top-up” placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price (after expenses) is the same as the price at which the existing shares were placed out; and
3. dealing where the beneficial ownership is transferred from another party by operation of law.

Note: The wording of (i) and (ii) and the existing paragraphs 7(d)(iv) and (v) of Appendix 10 (and their GEM Rule equivalents) have been revised to make it neutral as to who might be dealing to eliminate any doubt as to whether a director’s associates may enjoy the benefit of the exceptions.

### 5.4 - Clarification of the Meaning of Price Sensitive Information

A Note has been added to Rule A.1 of the Model Code and GEM Rule 5.54 to clarify that the term “price sensitive information” in the context of the Model Code means information described in Main Board Rule 13.09 and GEM Rule 17.10 and the notes thereto. Main Board Rule 13.09(1)(c) and its notes 9 and 10 (GEM Rule 17.10(3) and its notes 10 and 11) are stated to be particularly relevant.

## 6. Voting At General Meetings

### 6.1 - Mandatory Voting by Poll on all Resolutions at General Meetings

Voting by poll will be mandatory on all resolutions at all general meetings from 1 January 2009 under Main Board Rule 13.39(4) and GEM Rule 17.47(4).

Listed issuers must therefore ensure they are in a position to comply with the requirements under Main Board 13.39(5) or GEM 17.47(5) relating to:

1. the appointment of 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;
2. the submission of an announcement of the results of the poll for publication on the Exchange or GEM website 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.

Circulars in respect of general meetings to be held after 1 January 2009 should state that voting will be by poll. The requirement to include the procedure for demanding a poll in circulars convening a general meeting has been removed. Under the Code on Corporate Governance Practices (Appendix 14 of the Main Board Rules and Appendix 15 of the GEM Rules), the chairman of the meeting should ensure that the detailed procedures for conducting a poll are explained at the beginning of the meeting (Code Provision E.2.1).

### 6.2 - New Code Provision Specifies Minimum Notice Periods for General Meetings

#### Background

The Companies Ordinance, which applies to listed issuers incorporated in Hong Kong, requires 14 days’ notice for the passing of an ordinary resolution and 21 days’ notice for passing a special resolution and for convening an annual general meeting (**AGM**). The Listing Rules extend these minimum notice period requirements to issuers incorporated in Bermuda and the Cayman Islands by requiring these provisions to be incorporated in their constitutional documents. In the case of H-share issuers, 45 days’ notice of shareholder meetings is required for all resolutions under the “Mandatory Provisions for Companies Listing Overseas”.

The Consultation Paper sought views on amending the Listing Rules to provide for a minimum notice period of 28 calendar days for convening all general meetings.

#### Amendments

The Exchange has introduced a new Code Provision E.1.3 in the Code on Corporate Governance Practices requiring:

1. at least 20 clear business days’ notice for AGMs; and
2. 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.

## 7. Disclosure Of Information About And By Directors

The amended Rules (new Main Board Rule 13.51B and GEM Rule 17.50A) require an increased level of disclosure of information about and by directors and supervisors during their term of office with the issuer.

Immediate disclosure (by way of announcement) is required for any change to the information specified in paragraphs (h) to (v) of Main Board Rule 13.51(2) or GEM Rule 17.50(2). 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) and GEM Rule 17.50(2) must be set out in the next published annual or interim report.

The Rules include a new obligation for directors and supervisors to immediately inform the issuer of any information specified in Main Board Rule 13.51(2) or GEM Rule 17.50(2) and any change to such information (Main Board Rule 13.51C and GEM Rule 17.50B).

#### Other Amendments

Other amendments made to Main Board Rule 13.51(2) and GEM Rule 17.50(2) include:

1. Clarifying amendments to paragraphs (u) and (v) so that disclosure will not be required if it is prohibited by law;
2. Clarifying amendments to paragraph (a) to require disclosure of directors’ and supervisors’ current and past (held in the last 3 years) directorships in all public companies listed in Hong Kong and overseas and of directors’ professional qualifications;
3. Amendments to paragraph (m)(ii) of Main Board Rule 13.51(2) so that the convictions of directors and supervisors which have to be disclosed include convictions under the ordinances referred to in GEM Rule 17.50(2)(m)(ii); and
4. Amendments to Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) to clarify that the disclosure obligation arises where a conviction falls under any one of the three limbs in Main Board Rule 13.51(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii).

## 8. New Requirements For Director’s And Supervisor’s Declaration And Undertaking

### 8.1 - Amendments Relating to Director’s/Supervisor’s Declaration and Undertaking

On the appointment of a director (or supervisor in the case of an H share issuer), the director or supervisor must lodge with the Exchange a declaration and undertaking in the form set out in Appendices 5B, 5H or 5I of the Main Board Rules or Appendices 6A, 6B and 6C of the GEM Rules (**DU Forms**). The following Rule amendments have been made:

1. The questions relating to directors’ and supervisors’ biographical details have been removed from the DU forms as most of this information is also required to be made public by way of the appointment announcements required by Main Board Rule 13.51(2) and GEM Rule 17.50(2);
2. The statutory declaration requirement for DU forms has been deleted. The sponsor’s certification and solicitor’s certification sections have however been retained. A new section has been added requiring the director or supervisor to confirm the accuracy of the personal details set out in the listing document (in the case of a new applicant) or in the appointment announcement (in the case of a listed issuer); and
3. The GEM Rules have been amended to require DU forms to be lodged after (rather than before) the appointment of the director or supervisor (this aligns the timing requirements with those under the Main Board Rules).

Other amendments have been made to the DU forms to codify the Exchange’s powers to gather information from directors and, in the case of Main Board Director Undertakings, to include detailed provisions for the service of disciplinary proceedings.

PDF versions of the new DU Forms can be downloaded from the Exchange’s website:

1. for [listing applicants](http://www.hkex.com.hk/issuer/nla/guidelines.htm);
2. for [issuers listed on the Main Board](http://www.hkex.com.hk/listing/epp/cft_MB.htm); and
3. for [issuers listed on the GEM](http://www.hkex.com.hk/listing/epp/cft_GEM.htm).

### 8.2 - New Requirements relating to Directors and Supervisors of New Listing Applicants

A number of new provisions have been introduced for new listing applicants.

#### Biographical Details of Directors and Supervisors in Listing Documents

Listing documents of new applicants must contain no less information about directors and supervisors than that required under Main Board Rule 13.51(2) and GEM Rule 17.50(2) (Paragraph 41 of Part A of Appendix 1 to the Main Board and GEM Listing Rules).

#### Requirement for Two Undertakings from Directors and Supervisors

Under the amended Rules, each director or supervisor of a new applicant is required to submit **two** undertakings to the Exchange relating to the accuracy of his personal details.

The first confirmation and undertaking is submitted at the time of making the listing application under Main Board Rule 9.11(3a) or GEM Rule 12.23(2a) and covers the listing application stage. Each director and supervisor must confirm and undertake that: (a) the draft listing document contains all the biographical information required by Main Board Rule 13.51(2) or GEM Rule 17.50(2) and that such information is complete and accurate; and (b) they will inform the Exchange of any change to such information. If a director or supervisor is appointed after the submission of the listing application, the confirmation and undertaking must be given as soon as he is appointed with respect to the draft listing document containing the director’s/supervisor’s biographical details.

The second declaration and undertaking (in the form set out in Appendix 5 of the Main Board Rules and Appendix 6 of the GEM Rules) is filed after the listing document is issued and before the listing date (under Main Board Rule 9.16(13) and GEM Rule 12.26(9)). Listing approval is made conditional on the submission of those undertakings.

The [IPO checklists](http://www.hkex.com.hk/issuer/nla/guidelines.htm) have been revised to reflect the two-stage nature of the undertakings.

### 8.3 - Requirement for Existing Directors to Execute a New Undertaking before 31 March 2009

Due to the changes made to the Undertakings, all directors appointed before 1 January 2009 are required to submit to the Exchange a new Undertaking in the form set out in Part 2 of Form B or H of Appendix 5 of the Main Board Rules or Part 2 of Form A or B of Appendix 6 to the GEM Rules. The requirement is set out in Main Board Rule 3.20A and GEM Rule 5.12A. The undertaking should however omit the declaration in paragraph (i) of that undertaking.

The Exchange has prepared an abridged version of the new DU forms and blank copies of the Undertaking Forms will be sent to the authorised representatives of all listed issuers before 1 January 2009. Directors may also download the abridged Undertaking Form from the Exchange’s website for [Main Board](http://www.hkex.com.hk/listing/epp/cft_MB.htm) and for [GEM](http://www.hkex.com.hk/listing/epp/cft_GEM.htm). The new Undertaking forms must be submitted after 1 January 2009 but before **31 March 2009**.

Supervisors appointed by PRC listed issuers before 1 January 2009 who have submitted the old undertaking forms are not affected by the rule change and are not required to submit new undertakings.

## 9. Alignment Of Requirements For Material Dilution In A Major Subsidiary And Deemed Disposal

The Exchange has aligned the requirements for material dilution in a major subsidiary and deemed disposal in the event of a subsidiary allotting shares to third parties.

A subsidiary’s allotment of shares to a third party will be treated as a deemed disposal under Main Board Rule 14.29 and GEM Rule 19.29 only, subject to the notifiable transaction requirements under Main Board Chapter 14 and GEM Chapter 19. Depending on the size tests, it may be required to be treated as a very substantial disposal, major transaction or discloseable transaction. The share allotment will no longer be subject to the more stringent material dilution provisions (Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2)) which have been removed.

As a result:

1. the requirement for shareholders’ approval will be based on a size test of 25% (i.e. the threshold for a major transaction) (and not 5% which was the size test threshold under the material dilution provisions); and
2. a written certificate is acceptable in lieu of a physical shareholders’ meeting (whereas the material dilution provisions required a physical shareholders’ meeting).

## 10. Removal Of Main Board Minimum Spread Of Holders Requirement For Bonus Issues Of Options, Warrants & Similar Rights

The Exchange has removed the Main Board requirement for a minimum spread of securities holders at the time of listing (Main Board Rules 8.08(2) and 8.08(3)) in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares. This aligns the Main Board and GEM requirements.

However, the exemption will not be available if the Exchange has reason to believe that the existing listed shares of an issuer may be concentrated in the hands of a few shareholders. There is a **five-year limit** for assessing this and the Exchange will take into account any indications of concentration of shareholdings in the previous 5 years, including any announcement on high concentration.

## 11. Disclosure Of Information In Takeovers

New Rules (Main Board 14.67A and GEM Rule 19.67A) have been introduced to codify the Exchange’s practice of granting waivers to allow listed issuers to publish certain prescribed information on target companies being acquired by the listed issuer in a supplemental circular at a later time when the information becomes available.

The new Rule applies to acquisitions of companies listed on an exchange recognised by the Exchange, where the listed issuer has no or only limited access to non-public information on the target company due to the lack of cooperation of the board of directors of the target company and/or legal or regulatory restrictions on providing non-public information to the listed issuer.

In these circumstances, the listed issuer is required to publish an initial circular in partial compliance with Main Board Rules 14.66 and 14.67 (GEM Rules 19.66 and 19.67) for a major transaction or Main Board Rule 14.69 (GEM Rule 19.69) for a very substantial acquisition which should include the information specified by Main Board Rule 14.67A(2) and GEM Rule 19.67A(2). The supplemental circular must then be dispatched to shareholders within 45 days of the earlier of the following:

1. the listed issuer being able to gain access to the target company’s books and records for the purpose of complying with the disclosure requirements in respect of the target company and the enlarged group under Main Board Rules 14.66 and 14.67 or 14.69 (GEM Rules 19.66 and 19.67 or 19.69); and
2. the listed issuer being able to exercise control over the target company (under new Main Board Rule 14.67A(3) and new GEM Rule 19.67A(3)).

## 12. Use Of Websites For Communication With Shareholders

### 12.1 - New Procedure for Deeming Shareholders’ Consent to Website Communication

The Exchange has removed the requirement for overseas issuers to comply with a standard equivalent to that applicable under Hong Kong law with regard to how Hong Kong incorporated issuers make corporate communications available to shareholders. That requirement has meant that an overseas issuer (like Hong Kong issuers) cannot send corporate communications to a shareholder by electronic means unless it has obtained the shareholder’s express consent.

The amendments have also introduced a new deeming procedure which will allow a listed issuer to deem consent on the part of a shareholder to a corporate communication being made available to him solely on the listed issuer’s website.

Under the amended Rules (Main Board Rule 2.07(2A) and GEM Rule 16.04(2A)), listed issuers can deem shareholders’ consent to corporate communications being made available to them solely on the issuer’s website if:

1. this has been approved by shareholders’ resolution in general meeting or is permitted under the issuer’s constitutional documents;
2. each shareholder has been asked individually to agree that corporate communications can be sent to him by means of the issuer’s website. That request must state clearly the effect of a failure to respond; and
3. the issuer does not receive a response indicating the shareholder’s objection within 28 days of the sending of the issuer’s request.

Accordingly, a listed issuer must have waited for **28 days** before deeming consent from a shareholder to website communication. However, a shareholder is not deemed to have consented if the listed issuer’s request for consent was sent **less than 12 months** after a previous request made to him for the purposes of the deeming procedure in respect of the same class of corporate communications.

A listed issuer must notify shareholders receiving corporate communications via the issuer’s website when any new corporate communication is made available on its website. The issuer must notify such shareholders of the presence of a communication on the issuer’s website, the address of the website, the place on the website where it may be accessed and how to access the communication. That notification may be sent by email to shareholders who have expressly consented to being advised electronically of the availability of communications on the issuer’s website and have provided an email address for the purpose. Shareholders who do not reply within the 28 day period may be deemed to have consented to website communication. However, they must be sent a hard copy of the notification unless they have provided the listed issuer with an email address for this purpose.

A shareholder will continue to be entitled to receive a printed, hard copy free of charge upon giving notice to the listed issuer to change his choice of communication, irrespective of any preference previously indicated to the listed issuer (Main Board Rule 2.07A(3) and GEM Rule 16.04A).

It should be noted that Hong Kong incorporated issuers will not be able to take advantage of the new deeming procedure until the requirements of Hong Kong law for shareholders to expressly consent to the sending of communications by electronic means have been removed. Overseas listed issuers will be able to implement the deeming procedure for consent to website communication provided that this is not prohibited under the laws of the country of its incorporation.

### 12.2 - Express Consent Requirement Extended to CDs

The newly amended Main Board Rule 2.07A(2) (and its GEM Rule equivalent) make clear that express, positive confirmation is required not only for the use of electronic means (e.g. emailing a corporate communication or its hyperlink to a shareholder) but also for making available a corporate communication to a shareholder in electronic format (e.g. on a CD). The new deemed consent provisions apply only to website-based communication. They have not been extended to sending communications by email or CD, which still require shareholders’ express consent.

## 13. Removal Of Requirement For Qualified Accountant And New Responsibilities For Directors And Audit Committee Under Corporate Governance Code

The Exchange has removed the requirement for a qualified accountant for both Main Board and GEM issuers.

To address concerns as to declining corporate governance standards, the Exchange has added new obligations in relation to internal controls in the Code on Corporate Governance Practices:

1. New Code Provision C.2.2 requires that the board’s annual review of its internal controls must include a review of the adequacy of the resources, qualifications and experience of staff of the issuer’s accounting and reporting function; and
2. Code Provision C.3 has been amended to provide that the audit committee has an oversight role over the financial reporting function and that it should review and report to the board on the adequacy of resources, qualifications and experience of staff of the issuer’s accounting and financial reporting function, their training programmes and budget.

Should the listed issuer choose to deviate from the Code Provision requirements, it will be required to include an explanation in its Corporate Governance Report.

## 14. Sponsors’ Independence Required From A1 Filing Until Listing

A sponsor will be required to be independent of the listing applicant from the date of submission of the Form A1 until the date of listing (Main Board Listing Rule 3A.07 and GEM Listing Rule 6A.07).

## 15. Exchange’s Information Gathering Powers

New rules (Main Board 2.12A and GEM Rule 17.55A) have been adopted giving the Exchange an express general power to gather information. An issuer may be required to provide any information which the Exchange: (i) considers appropriate to protect investors or ensure the smooth operation of the market; or (ii) requires to investigate a suspected breach of, or verifying compliance with, the Listing Rules.

## 16. Codification Of Waiver To Property Companies

The amended Rules codify the conditional waiver granted by the Exchange that exempts listed issuers actively engaged in property development as a principal business activity (**Qualified Issuers**) from the shareholders’ approval requirements under the Listing Rules in certain situations of acquisitions (**Acquisitions**) of land or property development projects in Hong Kong from Government or Government-controlled entities through public auctions or tenders (**Qualified Property Projects**).

The waiver exempts Qualified Issuers engaging in Acquisitions, whether on a sole or joint venture basis, from the shareholders’ approval requirements of the Listing Rules. Generally, projects undertaken with non-connected persons will be subject to the reporting and announcement rules only. Projects undertaken with an independent third party who has become a connected person of the Qualified Issuer only because such person is a substantial shareholder with or without board representation in one or more non-wholly owned subsidiaries of the Qualified Issuer formed to participate in property projects, each of which is single purpose and project specific (a **Qualified Connected Person**), will also be exempted from the shareholders’ approval requirements for specific projects. However, the Qualified Issuer will have to obtain prior authority from its shareholders in general meeting to engage in the acquisitions.

### 16.1 - Eligibility for Exemptions

The exemptions are available only to Qualified Issuers as now defined in Main Board Rule 14.04(10B) and GEM 19.04(10B). The amended Rules give guidance on factors that the Exchange will ordinarily accept as demonstrating compliance with the test of whether or not the listed issuer is actively engaged in property development as a principal business activity. The factors to be taken into account are:

1. Clear disclosure of property development activity as a current and continuing principal business activity in the Directors’ Report of the issuer’s latest published annual financial statements;
2. Property development activity is reported as a separate and continuing business segment (if not the only segment) in the issuer’s latest published financial statements; and
3. The issuer’s format for reporting segmental information is in business segments and its latest published annual financial statements are fully compliant with Hong Kong Accounting Standard 14 or International Accounting Standard 14, whose requirements include the reporting of segment revenue and segment expense.

### 16.2 - Scope of the Exemptions

The scope of the exemptions is confined to: (a) Qualified Property Projects, although such projects are allowed to contain a portion of capital element as opposed to being restricted to projects that are of a revenue nature only; and (b) Qualified Property Projects involving property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (**Type B Property Joint Ventures**).

Under Main Board Rule 14.33AA and GEM Rule 19.33A, a Qualified Property Acquisition which constitutes a major transaction or a very substantial acquisition is exempted from the shareholders’ approval requirement. The transaction however remains subject to the notification, announcement and circular to shareholders requirements.

Under Main Board Rule 14A.73 and GEM Rule 20.73, Type B Property Joint Ventures are exempted from the shareholders’ approval requirement subject to certain conditions.

### 16.3 - Conditions for the Exemptions

Main Board Rule 14A.73 and GEM Rule 20.73 provide an exemption from the shareholders’ approval requirement for Qualified Issuers engaging in Acquisitions by way of Type B Property Joint Ventures provided that the Qualified Issuer has obtained, in advance at its AGM, authority from its shareholders to engage in Qualified Property Acquisitions under a General Property Acquisition Mandate (**GPA Mandate**) and approval of an annual cap. The annual cap for the purpose of the GPA mandate and the detailed basis on which it is calculated must be set out in the shareholders’ circular, and both the Independent Financial Adviser (**IFA**) and the independent board committee must opine that the proposed annual cap and the underlying assumptions are reasonable for the proposed General Property Acquisition Mandate. The GPA Mandate remains in force until the conclusion of the first AGM following the passing of the resolution at which time it will lapse, unless it is renewed by ordinary resolution passed at that meeting.

Any refreshments of the GPA Mandate before the next AGM must be approved by shareholders in general meeting. Written shareholders’ approval will not be accepted in lieu of holding a general meeting and the relevant circular to shareholders must contain information relating to the use of the GPA Mandate, the Qualified Issuer’s history of refreshments of the mandate since the last AGM and the status of each Type B property joint venture formed under the GPA Mandate.

Other requirements are that:

1. when notified of the success of a bid for a Qualified Property Acquisition undertaken with a Qualified Connected Person under a General Property Acquisition Mandate, a Qualified Issuer must notify the Exchange, publish an announcement and circularise details of the Qualified Property Acquistion (Main Board Rule 14A.76(1) and (2) and GEM Rule 20.76(1) and (2));
2. when the successful Qualified Property Acquisition becomes legally binding, the Qualified Issuer must submit to the Exchange written confirmation that its controlling shareholder(s) and their associates do not have any material business dealings or relationships with the joint venture partner(s) or its controlling shareholder(s) or its/their associates (Main Board Rule 14A.76(3) and GEM Rule 20.76(3));
3. a Qualified Issuer must include in its subsequent annual reports detailed information in relation to the General Property Acquisition Mandate and the Annual Cap, together with details of each successful transaction, the terms of the joint venture and its dividend policy; and
4. the independent board committee of the Qualified Issuer is required to review all transactions under the joint venture arrangements annually. That review must be based on an opinion from an independent financial adviser. In addition, the independent board committee must confirm in the annual report that each successful transaction has been carried out in accordance with the initial purpose of the joint venture and the relevant agreement(s) governing the transaction are on terms that are fair and reasonable and in the interests of the shareholders of the Qualified Issuer as a whole.

In the case of Qualified Property Acquisitions undertaken on a sole basis or on a joint venture basis with a non-connected person, while these are exempted from strict compliance with the shareholders’ approval requirements under Main Board Chapter 14 (GEM Chapter 19), they continue to be subject to the Rules’ other requirements. These requirements include:

1. A Qualified Issuer is required to publish an announcement upon notification of the success of its bid for the Qualified Property Project and will need to send a circular to holders of its listed securities setting out details of the Acquisition; and
2. Appropriate details of the Acquisition and a description of its status must be included in the issuer’s next annual report.

## 17. Further Information

The following information can be downloaded from the Exchange’s website at [www.hkex.com.hk](http://www.hkex.com.hk/):

* [The Consultation Conclusions](http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cc200811.pdf) ([see archive](cc200811.pdf))
* [The amendments to the Main Board Listing Rules](http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/mb_ruleupdate.htm)
* [The amendments to the GEM Listing Rules](http://www.hkex.com.hk/eng/rulesreg/listrules/gemrulesup/gemrule_update.htm)
* [A set of frequently asked questions on the rule amendments](http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/faq.htm)
* [The Exchange’s Guide on Practices and Procedures for Post-vetting Announcements of Listed Issuers and Handling Matters Involving Trading Arrangements Prior to Publication of announcements](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/listpp/eppguid/documents/ai_postvet.doc) ([see archive](ai_postvet.doc))
* [The Exchange’s Guide on Pre-vetting Requirements and Selection of Headline Categories for Announcements](http://www.hkex.com.hk/eng/rulesreg/listrules/guidref/guide_pre_vetting_req.htm)([see archive](2014_prevet_guide.pdf)) (note: this information has been updated since the time of the publication of the newsletter)
* [The Exchange’s Guide on Interpretation of Listing Rules and Requests for Individual Guidance](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/listpp/eppguid/documents/b_guidance.doc) ([see archive](b_guidance.doc))
* [The Exchange’s Guide on Applications for Waivers and Modifications of the Listing Rules](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/listpp/eppguid/documents/c_waivers.doc) ([see archive](c_waivers.doc))

This note is intended as a summary only of the amendments to the Main Board and GEM Listing Rules which will come into effect on 1 January, 2009. It is provided for information purposes only and its contents do not constitute legal advice. Specific advice should be sought in relation to any particular situation.

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