
CONSEQUENTIAL MAIN BOARD RULES AMENDMENTS RELATING TO CONNECTED TRANSACTIONS

CHAPTER 1

GENERAL

INTERPRETATION

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1.01

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“substantial shareholder”

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

provided always that a depositary shall not be a substantial shareholder merely by reason of the fact that it is holding shares of the issuer for the benefit of the holders of depositary receipts

Note: This definition is modified in the case of Chapter 14A by the provisions of rule 14A.2914A.13(1)(b)(i).

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Chapter 5

VALUATION OF AND INFORMATION ON PROPERTIES

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Requirements for an issuer

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5.02A Valuation of a property interest is not required if:

(1) ...

(2) the property is acquired under a Qualified Property Acquisition (as defined in rule 14.04(10C)) falling under rules 14.33A to 14.33B ~~or rules 14A.72 to 14A.73~~; or

...

...

5.03 For an acquisition or a disposal of any property interest or of 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 ~~14A.70(7)~~~~14A.59(6)~~). The circular must include full text of valuation reports and the general information in rule 5.10, if it applies.

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Chapter 13

EQUITY SECURITIES

CONTINUING OBLIGATIONS

...

Pre-emptive rights

- 13.36 (1) (a) ...
(b) ...
(2) ...
(a) ...
(b) ...

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 13.36(2)(b) is only permitted in the circumstances set out in rule ~~14A.92~~~~14A.31~~(3).

2. ...

...

...

Meetings of Shareholders

- 13.39 (1) ...
...
(6) In relation to any ~~connected transactions pursuant to Chapter 14A,~~ transactions that are subject to independent shareholders' approval pursuant to the Exchange Listing Rules or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3 (e) of Practice Note 15 of the Exchange Listing Rules,
(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 13.39(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 13.39(7)(b).
- (7) In relation to any ~~connected transactions pursuant to Chapter 14A,~~ transactions that are subject to independent shareholders' approval pursuant to the Exchange Listing Rules or spin-off proposals that are subject to approval of the shareholders of the issuer pursuant to paragraph 3 (e) of Practice Note 15 of the Exchange Listing Rules, 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 14A.

Note: "Independent shareholders" under paragraphs (6) and (7) of this rule 13.39 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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Independent financial advisers

13.80 An independent financial adviser appointed under rule 13.39(6)(b), rule 14A.44 or rule 19.05(6)(a)(iii) must take all reasonable steps to satisfy itself that:

- (1) it has a reasonable basis for making the statements required by rule 14A.45~~paragraphs (1) to (5) of rule 14A.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 ~~14A.45~~14A.22 takes account of the following principles:*

(a) ...;
...

13.81 The issuer must:

- (1) afford any independent financial adviser it appoints pursuant to rule 13.39(6)(b), rule 14A.44 or rule 19.05(6)(a)(iii) full access at all time to all persons, premises and documents relevant to the independent financial adviser's performance of its duties as set out in the Exchange Listing Rules. In particular, ...

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Chapter 14

EQUITY SECURITIES NOTIFIABLE TRANSACTIONS

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Definitions

14.04 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 ~~14A.06(3)~~~~14A.10(4)~~) and provides the financial assistance (as defined in rule ~~14A.06(17)~~~~14A.10(4)~~) in its ordinary and usual course of business (as referred to in rule 14.04(8));
 - (ii) ...; or
 - (iii) is a securities house and provides the financial assistance (as defined in rule ~~14A.06(17)~~~~14A.10(4)~~) in its ordinary and usual course of business (as referred to in rule 14.04(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 14A. In such cases, the listed issuer will have to comply with the provisions of Chapter 14A.

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(5) “de minimis ratio” means the ratio determined in accordance with rules ~~14A.76, 14A.87(2) and 14A.87(3)~~ ~~14A.31(2), 14A.32, 14A.33(3), 14A.34, 14A.65(2), 14A.66(1) or 14A.66(2)~~ (as the case may be);

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Contents of circulars

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Circulars for specific types of companies

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14.71A 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 14A.10 and rule 14A.74~~, the Qualified Issuer shall comply with additional ~~circularisation, announcement and reporting requirements with details as described in Chapter 14A under rules 14A.75 to 14A.78.~~

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Chapter 19A

EQUITY SECURITIES

ISSUERS INCORPORATED IN THE PEOPLE’S REPUBLIC OF CHINA

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Chapter 8 — Qualifications for Listing

19A.19 In addition to the requirement of rule 19A.14, the Exchange may from time to time determine that certain persons or entities should be treated as connected persons of a PRC issuer for purposes of the connected transaction provisions of Chapter 14A. ~~However, the Exchange will normally not treat a PRC Governmental Body (see definition in rule 19A.04) 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 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.~~

Chapter 13 — Continuing Obligations

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Pre-emptive rights

19A.38 The requirements of rule 13.36(1) and (2) are replaced in their entirety by the following provisions:

“13.36 (1) (a) ...

...

(2) ...

(a) ...

(b) ...

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 13.36(2) is only permitted in the circumstances set out in rule ~~14A.92~~14A.31(3).

(2) ...

(3) ...”

Chapter 14 — Notifiable Transactions

19A.39A The timing for despatching a circular under rules 13.73, 14.41(b), 14.51, ~~14A.46(1)~~14A.49(b) and 17.06 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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Practice Note 12

VALUATIONS OF PROPERTY SITUATED IN DEVELOPING PROPERTY MARKETS

10. Notifiable Transactions and Connected Transactions

Where in any transaction which are subject to Chapters 14 and/or 14A ~~falls within rules 14.06 and 14A.13~~ of the Exchange Listing Rules, the relevant party is or intends to contribute capital or to contribute to or become liable for all or part of the cost of development of any property project or development, or to any company or venture involved in any development project, then the Exchange:

(a) may require further disclosure of how such capital contribution or development costs have been derived;

(b) may require an independent valuation report even if such report is not expressly required under Chapter 5 of these Rules; and

- (c) may consider taking account of such capital or cost contributions when considering whether the transaction falls within any of the categories of notifiable transactions and connected transactions referred to in Chapters 14 and 14A rules 14.06 and 14A.13 of the Exchange Listing Rules.

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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

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 7.19(2), (3), (4), (6) and (7), 7.21(1) and (2), 7.24(2), (3), (5) and (6), 7.26A(1) and (2) and/or 14A.92(2)(b)14A.31(3)(e), where appropriate.

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Appendix 1

Contents of Listing Documents

Part F

Depository receipts

46. 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 7.19(2), (3), (4), (6) and (7), 7.21(1) and (2), 7.24(2), (3), (5) and (6), 7.26A(1) and (2) and/or 14A.92(2)(b)14A.31(3)(e), where appropriate.

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Appendix 16

DISCLOSURE OF FINANCIAL INFORMATION

Information in annual reports

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8. (1) In relation to connected transactions (including continuing connected transactions) that are not exempt from annual reporting requirement in Chapter 14A under rule 14A.34, a listed issuer shall include particulars of the transactions pursuant to rule 14A.7114A.45.
- ~~(2) In relation to continuing connected transactions that are not exempt under 14A.33, a listed issuer shall include particulars of the transactions pursuant to rules 14A.45 and 14A.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, it must specify whether or not the transaction falls under the definition of “connected transaction” or “continuing connected transaction” (as the case may be) in Chapter 14A of the Exchange Listing Rules. The listed issuer must also confirm whether or not it has complied with the disclosure requirements in accordance with Chapter 14A of the Exchange Listing Rules.
48. Subject to rules 11.09, 14.67, 14.69, and 14A.6414A.60, the circular shall, in addition to those items specified in Part B of Appendix 1, contain:–
- (1) financial statements as set out in paragraph 2;
- 48.1 *Where there have been material changes in group structure of the business or company acquired during the period covered by the accountants’ report, the listed issuer should consult with the Exchange at the earliest opportunity in respect of the contents and presentation of the cash flow statement in the circular.*
- (2) a discussion and analysis of the performance of the business or company acquired during the period covered by the accountants’ report covering all those matters set out in paragraph 32; and
- (3) where the listed issuer is regarded as a financial conglomerate (as defined in paragraph 36), all information required by paragraph 35. If, in the opinion of the directors of the listed issuer, the market risk arising from the trading book is not considered as material, a statement to this effect shall be made and the information required by sub-paragraph 35(4)(a) may be omitted.