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DEEP EXPERIENCE.
CREATIVE THINKING.
PRACTICAL SOLUTIONS.
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The completion of a company’s listing on the Hong Kong Stock Exchange brings one intensely regulated process to a close, but is just the beginning of another. Compliance by listed companies with their continuing obligations under the Listing Rules and other regulations is equally demanding, and needs to be managed within fixed time limits and under the glare of public accountability. These continuing obligations are primarily designed to ensure the maintenance of a fair and orderly market in securities, and that all users of the market have simultaneous access to the same information.

*The MoFo Guide to Compliance for Hong Kong Listed Companies* (“Guide”) aims to provide Hong Kong listed companies with a user-friendly guide to these continuing obligations to assist them in successfully fulfilling their responsibilities as listed issuers.

While we have tried to make the Guide as informative as possible, please kindly note that it is only an overview of listed issuers’ continuing obligations under the Listing Rules and certain related statutory provisions (excluding the Takeovers Code) as of June 1, 2013 and therefore should not be relied upon as legal advice in any jurisdiction. Because of the generality of the Guide, the information provided in it may not adequately address, or be applicable to, all situations and should not be acted upon without specific legal advice based on the relevant situation.

Finally, we also invite you to visit our publications website for our China Capital Markets practice (www.mofo.com/hk-capital-markets), where you will be able to find even more resources, including *The MoFo Guide to Hong Kong IPOs* and our *Hong Kong Capital Markets Quarterly News*. If you wish to obtain a free subscription to our *Hong Kong Capital Markets Quarterly News*, please send an email to chinamarketing@mofo.com.

We hope that you enjoy the Guide and find it readable, helpful and useful (for details of the terms used, see the Glossary section at the end). Please do not hesitate to contact any of the members of our capital markets team if you have any questions or comments.
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A. SOURCES

LISTING RULES

In addition to any corporate governance requirements arising under the laws of an issuer’s place of incorporation, the Listing Rules require the directors to fulfill fiduciary duties and duties of care, skill and diligence to the standard established under Hong Kong Law. The Listing Rules contain their own specific requirements for not only directors but also authorized representatives (through whom the Exchange principally communicates with the issuer), board committees and the company secretary.

CORPORATE GOVERNANCE CODE

The Listing Rules also contain a Corporate Governance Code (Appendix 14 to the Listing Rules) providing further requirements and guidance. The Corporate Governance Code sets forth the principles of good corporate governance for a listed issuer to comply with, followed by code provisions and recommended best practices. The code provisions and recommended best practices are not mandatory rules. Deviations from code provisions are acceptable if the issuer considers there are more suitable ways for it to comply with the principles, but it must state in each interim report and annual report whether it has complied with the code provisions for the relevant accounting period and must explain any deviations (this is known as “comply or explain”).

The subject matter of the Corporate Governance Code includes directors, remuneration and evaluation, accountability and audit, board delegation and communication with shareholders and the company secretary.

Issuers must include in their summary financial reports (if any) and in their annual reports a Corporate Governance Report prepared by the board of directors. There are certain mandatory disclosure requirements (contained in Appendix 14 to the Listing Rules), and any breach of these is regarded as a breach of the Listing Rules.
# B. DIRECTORS

## DUTIES

The Listing Rules set out the duties that directors owe to their company (*Listing Rule 3.08*), which are in line with those applicable under Hong Kong law and may be summarized as follows:

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Duty of Skill, Care and Diligence</strong></td>
</tr>
</tbody>
</table>
| • This means the skill, care and diligence that would be exercised by a reasonably diligent person with:  
  – the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and  
  – the general knowledge, skill and experience that the director in fact has.  
  
  *Note:* For clarity, this duty is codified in the new CO, which was enacted in 2012 and is expected to come into force in 2014. |
| **To Act Honestly, Bona Fide for the Benefit of the Company** |
| • Directors owe a duty to act in the interests of all of the company’s shareholders, present and future;  
  • Directors are answerable to the company for the application or misapplication of its assets; and  
  • Full and fair disclosure of a director’s interests in contracts with the company must be provided. |
| **To Exercise Their Powers for a Proper Purpose** |
| • Directors must not use their powers under the company’s articles for a purpose for which they were not intended. |
| **Not to Allow any Actual or Potential Conflict Between Their Duties as Directors and Their Personal Interests** |
| • Directors must not take personal advantage of the company’s opportunities, allow their personal interests to conflict with those of the company or misapply the company’s assets.  
  • Secret profits are not permitted.  
  
  *Note:* If the director has a material interest in a transaction, he should abstain from voting, even if he has no beneficial interest in the shares of the other company (*Listing Rule 13.44*). “Material interest” is not defined in the Listing Rules: materiality should be assessed considering all relevant facts and circumstances.  
  
  But if the director’s interest is the same as all shareholders, such as in approving dividend payments, then he need not abstain from voting. |
Though directors may delegate their functions, Listing Rule 3.08 clarifies that this does not absolve them from the required levels of skill, care and diligence. Directors do not satisfy these required levels if they pay attention to the issuer’s affairs only at formal meetings. At a minimum, they must take an active interest in the issuer’s affairs and obtain a general understanding of its business, including following up anything untoward that comes to their attention.

EVALUATION
The Listing Rules require directors to satisfy the Exchange regarding their character, integrity, experience and competence (Listing Rule 3.09). Directors’ conduct at predecessor companies will be taken into account by the Exchange in determining if the directors have met the required standard of competence (Listing Decision LD34-12).

THE CORPORATE GOVERNANCE CODE
The Corporate Governance Code contains principles, code provisions and recommended best practices regarding the role, leadership and composition of the board, as well as directors’ appointment, responsibilities, information and remuneration.

NON-EXECUTIVE DIRECTORS
Non-executive directors have the same duties of care and skill and fiduciary duties as executive directors. Non-executive directors should be appointed for a specific term, subject to re-election (Code Provision A.4.1).

The functions of non-executive directors should include (Code Provision A.6.2):

- participating in board meetings to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct;
- taking the lead where potential conflicts of interests arise;
- serving on the audit, remuneration, nomination and other governance committees, if invited; and
- scrutinising the issuer’s performance in achieving agreed corporate goals and objectives, and monitoring performance reporting.

INDEPENDENT NON-EXECUTIVE DIRECTORS
An issuer must appoint INEDs representing at least one-third of the board (Listing Rule 3.10A). At least one of the INEDs must have appropriate professional qualifications or accounting or related financial management expertise (Listing Rule 3.10).

Appropriate Professional Qualifications
“Appropriate professional qualifications” normally refers to professional accounting qualifications, including those obtained from a recognized body in an overseas jurisdiction, such as the PRC. In determining whether a certain INED has the “appropriate accounting or related financial management expertise,” the Exchange expects the INED to have “experience with internal controls and in preparing
or auditing comparable financial statements or experience reviewing or analyzing audited financial statements of public companies” gained through experience as a public accountant or auditor or as a chief financial officer, controller or principal accounting officer of a public company, or through performance of similar functions. It is the responsibility of the board to determine on a case-by-case basis whether the candidate is suitable for the position. In making its decision, the board must evaluate the totality of the individual’s education and experience.

Assessing Independence

In assessing the independence of an INED, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:

- holds more than 1% of the total issued share capital of the listed issuer;
- has received an interest in any securities of the listed issuer as a gift, or by means of other financial assistance, from a connected person or the listed issuer itself;
- is a director, partner or principal of a professional adviser that currently provides or has within one year immediately prior to the date of his proposed appointment provided services, or is an employee of such a professional adviser who is or has during the same period been involved in providing services, to (i) the listed issuer, its holding company or any of their respective subsidiaries or connected persons or (ii) any person who was a controlling shareholder of the listed issuer within one year immediately prior to the date of the proposed appointment, or any of their associates;
- has a material interest in any principal business activity of or is involved in any material business dealings with the listed issuer, its holding company or their respective subsidiaries or with any connected persons of the listed issuer;
- is on the board specifically to protect the interests of an entity whose interests are not the same as those of the shareholders as a whole;
- is or was connected with a director, the chief executive officer or a substantial shareholder of the listed issuer within two years immediately prior to the date of his proposed appointment;
- is, or has at any time during the two years immediately prior to the date of his proposed appointment been, an executive or director (other than an INED) of the listed issuer, its holding company or any of their respective subsidiaries, or of any connected persons of the listed issuer; or
- is financially dependent on the listed issuer, its holding company, or any of their respective subsidiaries or connected persons of the listed issuer.

Serving More than Nine Years

If an INED serves more than nine years, his further appointment should be subject to a separate resolution to be approved by shareholders. The papers sent to shareholders with that resolution should include the reasons why the board believes the INED is still independent and should be reelected.

Nomination of INED for Election

An issuer should include an explanation of its reasons for proposing an INED’s election, and the reasons it considers the INED independent, in a circular nominating the INED for election.
BOARD DIVERSITY

Following a public consultation exercise, the Exchange published amendments to the Corporate Governance Code in relation to board diversity, which are effective from September 1, 2013, as follows:

<table>
<thead>
<tr>
<th>Corporate Governance Code</th>
<th>Amendments on Board Diversity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board Composition</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Code Principle A.3</strong></td>
<td>The board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer’s business.</td>
</tr>
<tr>
<td><strong>Nomination Committee</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Code Provision A.5.6</strong></td>
<td>The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary in the corporate governance report. Note: Board diversity will differ according to the circumstances of each issuer. It can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.</td>
</tr>
<tr>
<td><strong>Corporate Governance Report</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Section L(d)(ii)</strong></td>
<td>If the nomination committee (or the board) has a policy concerning diversity, the section of the corporate governance report summarising the work of the nomination committee should include or summarize the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives.</td>
</tr>
</tbody>
</table>
C. AUDIT AND OTHER COMMITTEES

The Listing Rules and the Corporate Governance Code contain requirements for and guidance on the composition and terms of reference of various committees of the listed issuer’s board of directors in connection with corporate governance matters, as follows:

<table>
<thead>
<tr>
<th>Committee</th>
<th>Composition</th>
<th>Key Terms of Reference (Corporate Governance Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Audit Committee</strong></td>
<td>Non-executive directors only with a majority of INEDs Chaired by an INED Minimum of three members, at least one being an INED with appropriate professional qualifications or accounting or financial management expertise (Listing Rule 3.21)</td>
<td>• Review and monitor the company’s relationship with auditors, including the auditors’ independence; • Monitor the integrity of the company’s financial information and review significant reporting judgments in them; • Oversee the company’s financial reporting and internal control procedures; and • Consider major investigation findings on internal control matters and management’s response to these findings.</td>
</tr>
</tbody>
</table>
| **Remuneration Committee** | Majority of INEDs Chaired by INED (Listing Rule 3.25) | • Make recommendations to the board on policy and structure for all director and senior management remuneration; • Review and approve management remuneration proposals; • Review and approve compensation payable for loss or termination of office, or dismissal or removal for misconduct; and • Ensure that no director (nor any of his associates) is involved in deciding his own remuneration.  
*Note: The Listing Rules do not restrict issuers from appointing their staff or executive directors to act as members of the Remuneration Committee, as long as a majority of the Committee’s members are INEDs and it is chaired by an INED.* |
| **Nomination Committee** | Majority of INEDs Chaired by chairman of the board or an INED (Code Provision A.5) | • Review structure, size and composition of the board at least annually; • Identify and recommend potential board members; and • Assess independence of INEDs. |
### D. COMPANY SECRETARY

The company secretary supports the board by ensuring good information flow within the board and that board policy and procedures are followed. The company secretary is responsible for advising the board through the chairman and/or the chief executive on governance matters and should also facilitate induction and professional development of directors.

#### EVALUATION

The company secretary must be an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging the functions of the position (Listing Rule 3.28).

#### ACCEPTABLE QUALIFICATIONS

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

- member of The Hong Kong Institute of Chartered Secretaries;
- solicitor or barrister (as defined in the Legal Practitioners Ordinance); and
- certified public accountant (as defined in the Professional Accountants Ordinance).

#### RELEVANT EXPERIENCE

In assessing “relevant experience,” the Exchange will consider the individual’s:

- length of employment with the issuer and other issuers and the roles he played;
- familiarity with the Listing Rules and other relevant laws and regulations, including the SFO, the CO and the Takeovers Code;
- relevant training that has been or will be completed; and
- professional qualifications in other jurisdictions.
Some examples of “relevant experience” that the Exchange has taken into account include:

- directorship in a Hong Kong-listed subsidiary and active involvement in the subsidiary’s compliance with the Listing Rules and corporate governance for a considerable period of time;
- significant years of experience working closely with the retiring or joint company secretary and professional advisers in the company’s secretarial and administrative matters;
- attendance at regular training courses on Listing Rules compliance, corporate governance and other related laws and regulations; and
- previous tenure as CFO of another listed issuer, responsible for financial management and reporting matters, as well as the preparation of the company’s regulatory announcements and circulars.

**TRAINING**

Company secretaries are required to have 15 hours of professional training in each financial year (*Listing Rule 3.29*). The compliance dates are staggered according to the date when a person became the company secretary of a listed issuer:

<table>
<thead>
<tr>
<th>Date of Appointment</th>
<th>Latest Compliance Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2000 to December 31, 2004</td>
<td>January 1, 2013</td>
</tr>
<tr>
<td>January 1, 1995 to December 31, 1999</td>
<td>January 1, 2015</td>
</tr>
<tr>
<td>On or before December 31, 1994</td>
<td>January 1, 2017</td>
</tr>
</tbody>
</table>

**E. MODEL CODE FOR SECURITIES TRANSACTIONS BY DIRECTORS**

A director must ensure that when he is (or is deemed to be) interested in any dealing in securities of his listed issuer, that dealing is conducted in accordance with the Model Code (*Appendix 10 to the Listing Rules*). Any breach of the Model Code is regarded as a breach of the Listing Rules.

The main point in the Model Code is that directors who are aware of any negotiations or agreements related to intended acquisitions or disposals that are notifiable or connected transactions under Chapter 14 or 14A of the Listing Rules, or any inside information, must refrain from dealing in the listed issuer’s securities as soon as they become aware of them until proper disclosure of the information in accordance with the Listing Rules.

Directors who are privy to relevant negotiations, agreements or inside information should warn any other directors who are not so privy that there may be inside information and that they must not deal in the listed issuer’s securities for the same period.

The Model Code’s restrictions on dealings by a director apply equally to any dealings by the director’s spouse or by or on behalf of any minor child (natural or adopted), and any other dealings in which he is interested for the purposes of Part XV of the SFO. The director must therefore seek to avoid any such dealings at a time when he himself is not free to deal.
When a director places securities of the listed issuer under professional management, discretionary or otherwise, the managers must be made subject to the same restrictions and procedures as the director himself with respect to any proposed dealings in the listed issuer’s securities.

In the Model Code, “dealing” includes making or offering to make any acquisition, disposal or transfer of, or creating any security interest in, any securities of the listed issuer or any entity whose assets solely or substantially comprise securities of the listed issuer, and the grant, acceptance, acquisition, disposal, transfer, exercise or discharge of any option or other right or obligation, present or future, conditional or unconditional, to acquire, dispose of or transfer securities, or any interest in securities, of the listed issuer or any such entity, in each case whether or not for consideration, and any agreement to do any of the above.

The requirements to be observed by a director of a listed issuer under the Model Code include the following:

**ABSOLUTE PROHIBITIONS**

- Dealing in the securities of the listed issuer is not permitted at any time when he is in possession of inside information.
- Dealing in the securities of any listed issuer is not permitted when he is in possession of inside information in relation to those securities through his position as a director of another listed issuer.

**BLACKOUT PERIODS FOR DIRECTORS**

Dealing in securities of the listed issuer is not permitted on the day on which its audited financial results are published and is also not permitted:

- during the period of 60 days immediately preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results; and
- during the period of 30 days immediately preceding the publication date of the quarterly results (if any) and half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results.

*Note: An issuer must notify the Exchange before the start of each blackout period. It may choose to do so at the same time that it notifies the Exchange of the board meeting under Listing Rule 13.43.*

**REQUIRED NOTIFICATIONS**

- Dealing in any securities of the listed issuer is not permitted without first notifying the chairman or a designated director (other than himself) in writing and receiving a dated, written acknowledgment.
- A response to a request for such a clearance to deal must be given within five business days of the request being made, and the clearance to deal must be valid for not longer than five business days after the clearance is received.
**PRACTICAL TIP: REVIEW OF MONTHLY MANAGEMENT UPDATES BY DIRECTORS**

Under normal circumstances, where the issuer’s performance is in line with market expectations based on previous disclosure by the issuer, it is unlikely that a director will be prevented from dealing in the issuer’s securities just because he received monthly accounts from management. However, if the monthly management accounts reveal inside information, the director will be unable to deal in the issuer’s securities until the information has been disseminated to the market.

Monthly updates should be provided to directors as soon as practicable after the month-end to enable the directors to monitor the issuer’s financial affairs and inside information disclosure.

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**F. ENVIRONMENTAL, SOCIAL AND GOVERNANCE (“ESG”) REPORTING**

ESG reporting is a recommended practice for all issuers in financial years ending after December 31, 2012, and is guided by an Environmental, Social and Governance Reporting Guide (*Appendix 27 to the Listing Rules*), which covers four subject areas: Workplace Quality, Environmental Protection, Operating Practices and Community Involvement. However, the Exchange does not expect issuers to report on all recommended disclosures from the start. Subject to further consultation, the Exchange plans to raise the level of obligation of some recommended disclosures to “comply or explain” by 2015.

An issuer may disclose the ESG information in its annual report regarding the relevant period, or in a separate report published in print or on its website.
A company listed on the Exchange must meet the continuing obligations set out in the Listing Rules, in addition to statutory obligations under the SFO, the CO and the laws of its place of incorporation. These continuing obligations are primarily designed to ensure the maintenance of a fair and orderly market in securities and that all users of the market have simultaneous access to the same information. Failure by an issuer to comply with any applicable continuing obligation may result in the Exchange taking disciplinary action, in addition to its power to suspend dealings in the issuer’s securities or cancel its listing.

A. STATUTORY DISCLOSURE REGIME

On January 1, 2013, listed issuers came under a statutory obligation under Part XIVA of the SFO to disclose price-sensitive information (defined as “inside information”) to the public, as soon as reasonably practicable after the inside information has come to their “knowledge.”

In conjunction with the statutory disclosure regime, the SFC has also published Guidelines on Disclosure of Inside Information (the “Guidelines”) to illustrate how the statutory disclosure requirements operate in practice and relevant compliance issues, though the Guidelines do not have the force of law. Please refer to the illustrative flowchart later in this chapter.

CONCEPT OF “INSIDE INFORMATION”

The key elements comprising the concept of inside information are:

- specific information about a particular listed corporation, a shareholder or officer of the corporation or the listed securities of the corporation or their derivatives;
- the information is not generally known to those who are accustomed or would be likely to deal in the corporation’s securities; and
- if known, the information would be likely to have a material effect on the price of the listed securities.

WHAT CONSTITUTES “KNOWLEDGE”? 

A listed corporation will be regarded as having knowledge of inside information if:

- information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as its officer; and
- a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.
“OFFICER”
An “officer” is “a director, manager or secretary of, or any other person involved in the management of, the corporation.” The intention of the proposed legislation is to include directors and high-level individuals responsible for managing listed companies.

“OUGHT REASONABLY TO HAVE COME TO THE KNOWLEDGE”
The concept of “ought reasonably to have come to the knowledge” is an element that triggers the disclosure obligation for a listed company and does not by itself result in liability on “officers.” The intention is to prevent listed companies evading the disclosure obligation by arguing that inside information has been channeled to its officers, but has not been read, or deliberately keeping inside information from being accessed by the officers.

Based on section 307G, an “officer” would be held liable only if the breach of a disclosure requirement is the result of the officer’s intentional, reckless or negligent conduct, or his failure to take all reasonable measures from time to time to ensure that proper safeguards existed to prevent a breach of a disclosure requirement.

The SFC sets out clearly in the Guidelines that assuming a listed corporation has implemented reasonable measures to prevent a breach, an officer (including a NED) who acts in good faith and in accordance with all his fiduciary duties without actual knowledge of the information or involvement in the corporation’s breach is unlikely to be personally liable on grounds of intentional, reckless or negligent conduct.

For a list of examples of such reasonable measures and additional guidance on officers’ liability and obligations of NEDs, please refer to the Guidelines.

“REASONABLE PERSON” TEST
If an “officer” acted reasonably in deciding that information is not inside information, and therefore did not disclose the information, it will not cause the officer or the company to be treated as having knowledge of inside information.

TIMING OF DISCLOSURE
A listed corporation should disclose inside information as soon as reasonably practicable, unless the information falls within any of the safe harbors provided in the SFO. The Guidelines clarify that “as soon as reasonably practicable” means that the corporation should immediately take all steps that are necessary in the circumstances to disclose the information to the public, such as ascertaining sufficient details, internally assessing the matter and its likely impact, seeking professional advice and verifying the facts.

CONFIDENTIALITY PRIOR TO DISCLOSURE
A listed corporation must ensure that inside information is kept strictly confidential before the information is fully disclosed to the public. If confidentiality cannot be maintained or may have been breached, the corporation should immediately disclose the information to the public.
The Guidelines state that a listed corporation may consider issuing a “holding announcement” if it needs time to clarify the details of, and the impact arising from, an event or a set of circumstances. However, a listed corporation should consider applying for a trading halt or a trading suspension where confidentiality has not been maintained, and it is not able to make a full or holding announcement.

**MONTHLY MANAGEMENT ACCOUNTS**

Under Code Provision C.1.2 of the Corporate Governance Code, management should provide all members of the board with monthly updates giving a balanced and understandable assessment of the issuer’s performance, position and prospects in sufficient detail to enable the board as a whole and each director to discharge their duties.

These monthly management accounts need not contain inside information. Under normal circumstances, where the issuer’s performance is in line with market expectations based on previous disclosure by the issuer, it is unlikely that a director would be precluded from dealing in the issuer’s securities just because he received monthly accounts from management.

If, however, the monthly management accounts reveal inside information, the director would be precluded from dealing in the issuer’s securities until the information has been disseminated to the market.

**SAFE HARBORS**

There are five safe harbors within which listed companies can withhold or delay disclosure of inside information. Please refer to the flowchart later in this chapter for further details.

**NEED FOR ESTABLISHED MONITORING PROCEEDINGS**

With a view to ensuring compliance with their continuing obligations, it is vital for issuers to establish procedures to monitor actively their share price and any news, comments or reports relating to them circulated in the market. Directors should ensure that they have a proper understanding of the issuer’s business, financial position and prospects and that there is an effective system for them to monitor developments continuously so they can promptly and accurately respond to any inquiries from regulators concerning the issuer’s affairs and, where necessary, publish announcements to correct or prevent a false market.

**DEALING WITH SPECULATION, MARKET RUMORS AND ANALYSTS’ REPORTS**

As clarified in the Guidelines, no analyst, investor or journalist should receive a selective release of inside information.

Generally, companies are not obliged to respond to press speculation or market rumors. However, where press speculation or market rumors are largely accurate and the information underlying the speculation or rumors constitutes inside information, the company should disclose the information as soon as reasonably practicable.
In relation to incorrect analysts’ reports, the company is not obliged to make corrections or provide clarification under the SFO, unless it knows inside information which has not been disclosed but requires disclosure. The SFC has commented that, for good practice, it may be appropriate for a corporation to clarify historical information and correct any factual errors in analysts’ assumptions which are significant to the extent that they may mislead the market, provided any clarification is confined to drawing the analyst’s attention to information that has already been made available to the market. Nonetheless, a company is under no legal obligation to track reports prepared by third parties.

For general guidance on handling particular situations and issues pursuant to the Listing Rules, see the Exchange’s letter “Recent economic developments and the disclosure obligations of listed issuers,” dated October 31, 2008, which can be found at the Exchange’s website: http://www.hkex.com.hk/eng/rulesreg/listrules/listletter/documents/20081031.pdf. Note that the obligations to disclose inside information under Part XIVA of the SFO are distinct from the disclosure requirements under the Listing Rules and the Takeovers Code.

ENFORCEMENT AND SANCTIONS

Breaches of the statutory disclosure requirement are dealt with by the MMT, which is able to impose a number of civil sanctions including a regulatory fine up to HK$8 million on the listed company, each of the directors and/or its chief executive, respectively. Those who suffer pecuniary loss as a result of others breaching the disclosure requirements will also be able to rely on the findings of the MMT to launch civil claims for compensation.

In addition, the SFC is now able to institute proceedings directly before the MMT (previously only instituted by the Financial Secretary) to enforce the statutory disclosure requirement, as well as to deal with various market misconduct under Part XIII of the SFO.

FLOWCHART

The flowchart and related notes set out below illustrate how the elements of the SFO’s statutory regime are applied.
WHEN IS THE INFORMATION “INSIDE INFORMATION”1 REQUIRING DISCLOSURE?

Specific information2
- Capable of being identified, defined and unequivocally expressed
- Applies to negotiations that have a substantial commercial reality with a realistic view to achieving an identifiable goal

Not generally known to market3
Examples of generally known information:
- General external developments, such as changes in commodity prices or outbreak of pandemic diseases
- Disclosure of interests under Part XV of the SFO

Knowledge of a listed corporation
- Officer5 has actual knowledge or “ought reasonably” to know; and
- Reasonable person test6

Within safe harbors?

Disclosure prohibited under HK law/court order7

Incomplete proposal or negotiation8, 9

Trade secret10

YES

No disclosure obligation under Part XIVA of the SFO

INSIDE INFORMATION MUST BE DISCLOSED AS SOON AS REASONABLY PRACTICABLE

NO

NO
**Likely material effect on price**

Standard by which materiality is to be judged: the information would influence persons who are accustomed or would be likely to deal in the listed shares of the corporation in deciding whether or not to buy/sell.

- **NO**
  - No disclosure obligation under Part XIVA of the SFO

- **NO**
  - No disclosure obligation under Part XIVA of the SFO

- **OR**
  - Provision of liquidity support for the listed group
  - Disclosure is waived by the SFC

- **YES**
  - Reasonable precautions for preserving confidentiality of information; and
  - Confidentiality of information is preserved

- **YES**
  - No disclosure obligation under Part XIVA of the SFO

- **NO**
  - Disclose as soon as reasonably practicable once corporation becomes aware of leakage

Note: for the related footnotes, see next page.
Notes:

1. Note that distinct disclosure requirements apply under the Listing Rules and the Takeovers Code.

2. Specific information that is about the corporation, a shareholder/officer or the listed shares or their derivatives. The information need not be precise—it may still be “specific” even though it has a vague quality, and may be broad, allowing room for further particulars. For example, information about a corporation’s financial crisis or contemplation of share placing would be regarded as specific, even if details are unknown.

3. The market is defined as those persons who are accustomed or likely to deal in the listed securities of the corporation. Where the information known to the market (i) is incomplete; (ii) contains material omissions; or (iii) is of doubtful bona fides, such information cannot be regarded as generally known, and full disclosure is necessary.

4. The following factors should be taken into consideration in determining whether a material effect on price is likely to occur:
   (a) the anticipated magnitude of the event or circumstances in the context of the corporation’s overall activities;
   (b) the relevance of the information as regards the main factors that determine the price;
   (c) the reliability of the source; and
   (d) market variables that affect the price (such as prices, returns, volatilities, liquidity, price relationships among securities, volume, supply, demand, etc.).

   In relation to volatility, the Guidelines state that while a certain percentage movement for a small company’s stock might be seen as immaterial, the same (or even a lower) percentage movement in a large company’s stock might be considered material by virtue of the stock’s nature and size.

5. Defined as “a director, manager or secretary of, or any other person involved in the management of, the corporation.”

6. Whether a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation.

7. This safe harbor does not apply to information the disclosure of which is prevented by a contractual duty.

8. Examples include (i) when a contract is being negotiated but has not been finalized; (ii) when a corporation decides to sell a major holding in another corporation; (iii) when a corporation is negotiating a share placing with a financial institution; or (iv) when a corporation is negotiating the provision of financing with a creditor.

9. This safe harbor does not allow withholding disclosure of any material change in financial position or performance to the extent that this is inside information.

10. Commercial terms and conditions of a contract or financial information of a corporation cannot be regarded as trade secrets, as these are not proprietary information or rights owned by the corporation.

11. Where the liquidity support is from the Exchange Fund of the Government of Hong Kong or from an institution which performs the functions of a central bank, including such an institution located outside Hong Kong.

12. A listed corporation may apply for a waiver from the SFC if there are circumstances where disclosure of the information is prohibited under or would constitute a contravention of a restriction imposed by (a) foreign legislation; (b) an order of a court exercising jurisdiction under foreign law; (c) a foreign law enforcement agency; or (d) a governmental authority in the exercise of a power conferred by foreign legislation, especially where the corporation or certain of its subsidiaries are incorporated or operate outside Hong Kong.
B. LIABILITY UNDER THE SECURITIES AND FUTURES ORDINANCE

The SFO imposes criminal and/or civil liability on listed companies and their officers in certain circumstances, including the following:

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 107</td>
<td>This section imposes criminal liability on a person who induces another person to enter into an agreement to acquire, dispose of, subscribe for, or underwrite securities by means of fraudulent misrepresentation or reckless misrepresentation.</td>
</tr>
<tr>
<td>Section 108</td>
<td>This section imposes civil liability on a person who induces another person to enter into an agreement for the acquisition or subscription of shares by fraudulent, reckless or negligent misrepresentation.</td>
</tr>
<tr>
<td>Section 298</td>
<td>This section prohibits the disclosure, circulation or dissemination by any person of information likely to induce another person to enter into a securities transaction if such information is false or misleading and the first person knows that, or is reckless as to whether, the information is false or misleading.</td>
</tr>
<tr>
<td>Section 300</td>
<td>This section prohibits the use, in a securities transaction, of any deceptive or fraudulent conduct, or of any device or scheme intended to defraud or deceive.</td>
</tr>
<tr>
<td>Section 384</td>
<td>This section prohibits knowingly or recklessly giving false or misleading information to the Exchange and the SFC.</td>
</tr>
<tr>
<td>Section 390</td>
<td>Where a corporation commits an offense under the SFO, this section extends liability to any officer of the corporation who consented, connived, or was reckless as to the commission of that offense.</td>
</tr>
</tbody>
</table>

C. GENERAL DISCLOSURE OBLIGATION UNDER THE LISTING RULES

The Listing Rules also impose disclosure obligations on issuers. These go beyond the statutory disclosure obligations under the SFO.

AVOID FALSE MARKET, OBSERVE SFO REGIME (LISTING RULE 13.09)

If in the Exchange’s view there is (or is likely to be) a false market, the issuer must, as soon as reasonably practicable after consultation with the Exchange, announce the information necessary to avoid a false market. A false market is a situation where there is material misinformation or materially incomplete information in the market, compromising proper price discovery. For example, this would include a case where a false or misleading report or rumor circulates in the market and causes (or appears likely to cause) a material change in the market price or trading volume of the issuer’s securities.

*Note: if an issuer believes there is likely to be a false market, it must contact the Exchange.*
In addition, inside information must be announced in accordance with the Listing Rules when the SFO’s statutory regime requires disclosure, i.e., as soon as reasonably practicable after it has come to the issuer’s knowledge. An issuer must simultaneously copy to the Exchange any application to the SFC for a waiver from disclosure under the SFO’s statutory regime, and also the SFC’s decision (promptly on receipt).

RESPONSE TO INQUIRIES (LISTING RULE 13.10)

Upon inquiries by the Exchange, an issuer must (broadly), if requested, promptly either (a) provide and announce information that clarifies the matter or (b) confirm in a standard announcement that, having made “such inquiry with respect to the company as is reasonable in the circumstances,” it is not aware of:

- any reasons for price/volume movements;
- any information requiring announcement to avoid a false market; and
- any inside information that needs to be disclosed under the new statutory regime.1

If such an announcement cannot be made promptly, the Exchange may impose a trading halt.

ROLES AND RESPONSIBILITIES OF THE SFC AND THE EXCHANGE

The SFC has sole jurisdiction over the enforcement of the SFO’s statutory regime, and the Exchange will not give guidance on the interpretation or operation of the SFO or the Guidelines.

Where the Exchange becomes aware of a possible breach of the SFO’s statutory regime, it will refer it to the SFC. If the SFC decides not to pursue the matter under the SFO, the Exchange may do so under the Listing Rules.

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

CONFIDENTIALITY/SELECTIVE DISCLOSURE

An issuer and its directors must take all reasonable steps to maintain strict confidentiality of inside information until it is announced (i.e., regardless of whether an exemption from disclosure applies under the SFO).2

An issuer must not divulge information in a way that places any person (or a selected class or category of persons) in a privileged dealing position.

TRADING HALT OR TRADING SUSPENSION

An issuer must apply for a trading halt or trading suspension as soon as reasonably practicable in any of the following circumstances where an announcement cannot be made promptly:

1. it has information which must be disclosed under Listing Rule 13.09;

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1. An issuer will not be required to disclose information which is exempted from disclosure under the SFO’s statutory regime.
2. The SFO does not contain such an obligation.
CHAPTER 2  KEY CONTINUING OBLIGATIONS

(2) it reasonably believes that there is inside information which must be disclosed under the SFO’s statutory regime; or

(3) circumstances exist where it reasonably believes or it is reasonably likely that confidentiality may have been lost in respect of inside information (which was exempt, or the subject of a waiver application, under the new statutory regime).

D. ANNOUNCEMENT, CIRCULAR AND DISCLOSURE OBLIGATIONS

The Listing Rules also impose certain continuing publicity requirements, identifying specific circumstances in which an issuer is obliged to disclose information to the holders of its securities and the public. This section highlights the key continuing specific disclosure obligations of listed issuers under the Listing Rules.

POST-VETTING REGIME

In 2009, the Exchange introduced a post-vetting regime, in a shift of its regulatory focus from pre-vetting towards post-vetting, monitoring and enforcement. Under Listing Rule 13.52B(2), issuers are encouraged to consult the Exchange on rule compliance issues.

The following documents continue to require pre-vetting by the Exchange prior to publication (Listing Rule 13.52):

- listing document (including prospectus);
- circular relating to:
  - cancellation or withdrawal of listing;
  - notifiable transaction;
  - connected transaction (including continuing-connected transaction);
  - any proposal to explore for natural resources as an extension to or change from the issuer’s existing activities under Listing Rule 18.07;
  - any warrant proposal under paragraph 4(c) of Practice Note 4 of the Listing Rules;
- circular or offer document relating to a takeover, merger, or offer; and
- announcement for:
  - very substantial disposal, very substantial acquisition, or reverse takeover;
  - any transaction or arrangement which would result in a fundamental change in the principal business activities of the listed issuer within 12 months after listing under Listing Rules 14.89 to 14.91; or
  - any matter relating to a cash company under Listing Rules 14.82 and 14.83.

In addition, the Exchange has the right to request to review any announcements, circulars and other relevant documents before publication. In such cases, the issuer should submit a draft to the Exchange for review, and until the Exchange has cleared the document it may not be issued to the public (Listing Rule 13.52A).

3. The obligation is on the issuer to form a reasoned view as to whether the information is inside information.
## ANNOUNCEMENT

Once a decision has been made by the shareholders of a listed issuer at a general meeting on any substantive matter, an announcement must be issued notifying its shareholders and the Exchange. A listed issuer should also issue an announcement in the following circumstances:

### General Corporate Change
- Change of company name
- Change in memorandum and articles of association *(Listing Rule 13.51(1))*

### Share Capital
- Issue of securities for cash *(Listing Rule 13.28)*
- Issue of securities for cash at a 20% (or more) discounted issue price *(Listing Rule 13.29)*
- Adoption of share option scheme *(Listing Rule 17.02(1)(a))*
- Rights issue or open offer *(Listing Rule 13.09)*
- Changes in rights attaching to any class of listed securities and changes in rights attaching to any shares into which any listed debt securities are convertible or exchangeable *(Listing Rule 13.51(3))*

### Directors, Supervisors and Chief Executives
- Appointment, resignation, re-designation, retirement, or removal of any director, supervisor or chief executive *(Listing Rule 13.51(2))*
- Changes in information regarding a director or supervisor (including any public or regulatory sanctions, bankruptcy orders, or judgments made against him) during term of office *(Listing Rule 13.51B(2))*
- Notice from a shareholder to propose a person for election as director at a general meeting is received by the issuer after publication of the notice of meeting *(Listing Rule 13.70)*
- Number of independent non-executive directors falls below the minimum number required under Listing Rule 3.10(1) or their qualifications fail to meet the requirement under Listing Rule 3.10(2) *(Listing Rules 3.11 and 3.14)*
- Failure to set up an audit or remuneration committee or appoint appropriate members to such committees *(Listing Rules 3.23, 3.27)*

### Auditors, Compliance Adviser and Others
- Changes in auditor or financial year end *(Listing Rule 13.51(4))*
- Resignation or termination of engagement of compliance adviser *(Listing Rule 3A.29)*
- Changes in company secretary, share registrar (including any change in overseas branch share registrar), registered address or agent for the service of process in Hong Kong *(Listing Rule 13.51(5))*
### Specific Transactions
- Advance to an entity exceeding certain asset ratio *(Listing Rules 13.13 and 13.14)*
- Financial assistance and guarantee to affiliated company of the issuer *(Listing Rule 13.16)*
- Controlling shareholder pledging its shares in support of the issuer *(Listing Rule 13.17)*
- Entering into loan agreements which impose performance obligation on a controlling shareholder *(Listing Rule 13.18)*
- Issuer’s breach of loan agreement *(Listing Rule 13.19)*
- Notifiable transactions
- Connected transactions not exempt from the announcement requirement
- Other transactions involving inside information which would fail to be disclosed under the general disclosure obligation *(Listing Rule 13.09)*

### Overseas Regulatory Announcements
- Any overseas regulatory announcement: disclose in Hong Kong at the same time *(Listing Rule 13.10B)*

**Note**: This includes any information released by a subsidiary listed overseas, if discloseable under other Listing Rules

### Profit Forecasts
- Any event occurring during a profit forecast period and which would, if known beforehand, have caused any of the assumptions on which the profit forecast was based to be materially different
- Issuer becomes aware it is likely that some activity outside its ordinary and usual course of business, and not disclosed in the profit forecast, will materially contribute to or reduce the profits for the forecast period *(Listing Rule 13.24B)*

### Financial Information
- Preliminary announcement of results for each full or first half of the financial year *(Listing Rule 13.49)*
- Seven business days in advance of any board meeting at which declaration, recommendation or payment of dividend is expected to be decided, or an announcement of profits/losses for any year, half-year or other period is to be approved for publication *(Listing Rules 13.43)*

### Shareholders’ Meeting
- Notice of annual general meeting *(Listing Rule 13.37)*
- Poll results of any general meeting *(Listing Rule 13.39(5))*

### Closure of Books and Record Date
- At least 10 business days before closure of transfer books or register of members (in the case of a rights issue, at least six business days) *(Listing Rule 13.66(1))*
CIRCULAR

When an issuer needs to seek approval from its shareholders on certain matters, a circular must be issued containing a recommendation from the board of directors and a notice of the general meeting. Where a matter does not require shareholders’ approval, issue of a circular is generally not required. A listed issuer should issue a circular in the following circumstances:

| General Corporate Change | • Proposed change in memorandum and articles of association \(^{(\text{Listing Rule } 13.51(1))}\)  
|                         | • Proposed change of company name  
| Share Capital           | • Proposed issue of shares, convertible securities, options, warrants or similar rights to subscribe for any shares \(^{(\text{Listing Rule } 13.36)}\)  
|                         | • Proposed increase in authorized share capital \(^{(\text{Listing Rule } 13.57)}\)  
|                         | • Share repurchase by the issuer \(^{(\text{Listing Rule } 10.06)}\)  
|                         | • Rights issue and open offer \(^{(\text{Listing Rules } 7.22 \text{ and } 7.27)}\)  
|                         | • Adoption of share option scheme \(^{(\text{Listing Rule } 17.02(1)(a))}\)  
| Directors and Others    | • Approval of directors’ service contracts \(^{(\text{Listing Rule } 13.68)}\)  
|                         | • Appointment of auditor or removal prior to expiration of his term of office \(^{(\text{Listing Rule } 13.88)}\)  
| Specific Transactions   | • Major transaction, very substantial disposal, very substantial acquisition, and reverse takeover  
|                         | • Connected transaction not exempt from the independent shareholders’ approval requirements  
| Shareholders’ Meeting   | • Annual general meeting  
| Other                   | • Withdrawal of listing \(^{(\text{Listing Rules } 6.11 \text{ and } 6.12)}\)  

ANNUAL REPORT AND INTERIM REPORT

In addition to publishing an announcement of its financial results for the full financial year and first half of the financial year, a listed issuer should issue an annual report not later than four months, and an interim report not later than three months, after the end of the relevant period (see also Chapter 3 on “Key Compliance Dates”). It is a recommended best practice under the Corporate Governance Code for the issuer to publish quarterly financial results.

Chapter 14 and Appendix 16 of the Listing Rules set out the minimum financial information which a listed issuer should include in its preliminary results announcements, interim reports, annual reports and other listing documents. In addition to financial performance of the issuer, an annual report should include the following information:

- details of directors’ emoluments;
- change in any information required to be disclosed under paragraphs (a) to (e) of Listing Rule 13.51(2) during the course of the term of office of a director or supervisor \(^{(\text{Listing Rule } 13.51B(1))}\);
- certain types of connected transactions \(^{(\text{Listing Rules } 14A.28 \text{ and } 14A.45)}\);
• certain types of continuing-connected transactions (Listing Rules 14A.29 and 14A.37);
• a corporate governance report; and
• whether the issuer has complied with the code provisions under the Corporate Governance Code and an explanation where it deviates from any of them. For further details on the Code, please refer to Chapter 10 of this Guide.

OTHER DISCLOSURES

As a continuing obligation of a listed issuer, the following documents should be posted in English and Chinese on the websites indicated below:

<table>
<thead>
<tr>
<th>Website of Exchange</th>
<th>Website of Exchange and Issuer</th>
<th>Website of Issuer</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Monthly return in relation to movements in the issuer’s securities (Listing Rule 13.25B)</td>
<td>• Constitutional documents (Listing Rule 13.90)</td>
<td>• Procedures for shareholders to propose a person for election as director (Listing Rule 13.51D)</td>
</tr>
<tr>
<td>• Next day disclosure return in relation to certain corporate events (Listing Rule 13.25A)</td>
<td>• Updated list of directors identifying their role and function (Code Provision A.3.2)</td>
<td>• Communication policy with shareholders (Code Provision E.1.4)</td>
</tr>
<tr>
<td></td>
<td>• Terms of reference of the nomination, remuneration and audit committees (Code Provisions A.5.3, B.1.3, C.3.4)</td>
<td></td>
</tr>
</tbody>
</table>

E. BOARD AND SHAREHOLDERS MEETINGS

BOARD MEETING

A listed issuer should hold at least four board meetings each year (Code Provision A.1.1). Prior to and after a board meeting, an announcement must be issued in respect of any decision on certain prescribed matters, such as the payment of a dividend (see also the subsection above on issuance of announcements). A listed issuer should also observe the provisions of its articles of association or bylaws with respect to the proceedings of a board meeting.

Director’s Interest in Contracts

Subject to exceptions, a director of a listed issuer may not vote on any board resolution approving any contract or other proposal in which he or any of his associates has a material interest, and he may not be counted in the quorum present at the board meeting (Listing Rule 13.44). Where a director is interested in a contract, he should disclose his interest at the board meeting.
SHAREHOLDERS MEETING

A listed issuer should hold annual general meetings and extraordinary or special general meetings where appropriate pursuant to its articles of association. General meetings are important in allowing shareholders, directors and members of senior management to examine and make decisions on important affairs of the company. Under the Corporate Governance Code, the chairman of the board, the chairmen of the audit, remuneration, nomination and any other committees (as appropriate) should attend the annual general meeting (Code Provision E.1.2). The external auditor of the issuer should also attend the annual general meeting to answer questions about the audit, accounting policies and content of the auditor’s report.

Any vote of shareholders at general meetings must be taken by poll, except where the chairman decides to allow a resolution in relation to administrative matters (Listing Rule 13.39(4)). Where parties are required to abstain from voting in favor of a resolution at a general meeting, they may vote against the resolution at the general meeting provided that their intention has been stated in the relevant circular or listing document to the shareholders (Listing Rule 13.40).

Notice of Meeting and Poll Results

Notice of an annual general meeting must be published on the website of the exchange (Listing Rule 13.37) and sent to all shareholders at least 20 clear business days before the meeting. For all other general meetings, the required period is at least 10 clear business days before such meeting (Code Provision E.1.3). However, by virtue of the PRC Mandatory Provisions for Companies Listing Overseas, at least 45 days’ notice is required for all general meetings of PRC issuers.

Notice of any general meeting must be sent with a proxy form offering two-way voting on all resolutions, and the proxy form must also be published on the website of the Exchange (Listing Rule 13.38).

As soon as poll results are available, they must be published at least 30 minutes before the start of the morning trading session (including any pre-opening session) on the business day after the meeting (Listing Rule 13.39(5)).

F. DISCLOSURE OF SHARE INTERESTS

Part XV of the SFO requires directors and others to disclose certain interests in listed securities, and changes therein, by notice to the Exchange and the listed issuer.

“The overriding objective of the disclosure regime is to provide investors in listed corporations with more complete and better quality information on a timely basis to enable them to make informed investment decisions.”

SFC’s Outline of Part XV of the SFO – Disclosure of Interests
DISCLOSURE DUTIES OF SUBSTANTIAL SHAREHOLDERS *(Divisions 2-6 of Part XV of the SFO)*

Substantial shareholders, being for these purposes individuals and corporations who are interested in 5% or more of any class of voting shares in the listed issuer, must disclose their interests and short positions in voting shares of the issuer.

**When Does the Duty Arise?**

Circumstances in which the duty of disclosure of a substantial shareholder arises include:

- when an individual or corporation first becomes, or ceases to be interested in, 5% or more of the shares of a listed issuer;
- when there is an increase or decrease in the percentage figure of the shareholding, which is above 5%, resulting in the interest crossing over a whole percentage number;
- when an entity has a notifiable interest and the nature of its interest in the shares changes (e.g., on exercise of an option);
- when an entity has a notifiable interest and it comes to, or ceases to, have a short position of more than 1%; and
- when an entity has a notifiable interest and there is an increase or decrease in the percentage figure of its short position that results in its short position crossing over a whole percentage number which is above 1%.

*Note: A person has a notifiable interest at any time when he is interested in 5% or more of the issued share capital of a listed issuer (section 311(5) of the SFO).*

**De Minimis Exemption**

Where a person acquires an interest in shares, or ceases to be interested in shares, of the issuer and, as a result, his interest crosses over a whole percentage number, the person will not need to disclose the new interest if:

- the percentage level of his interest is the same as, or less than, the percentage level of his interest given in his last notification to the Exchange and the issuer; and
- the difference between the percentage figure of his interest disclosed in his last notification and the percentage figure of his interest at all times thereafter is less than 0.5% of the issued share capital (of the same class) of the listed issuer (section 313(7) of the SFO).

**Other Exemptions**

*Wholly owned group exemption:* in certain circumstances where a parent company makes a disclosure in respect of an interest, its wholly owned subsidiary does not need to make a separate disclosure.

*Securities borrowing and lending exemption:* securities borrowing and lending are exempt from the duty of disclosure by virtue of the Securities and Futures (Disclosure of Interests—Securities Borrowing and Lending) Rules, in prescribed circumstances.
DISCLOSURE DUTIES OF DIRECTORS AND CHIEF EXECUTIVES  
(Divisions 7-10 of Part XV of the SFO)

Directors and chief executives of a listed issuer must disclose their interests and short positions in any shares in or debentures1 of the listed issuer (or any of its associated corporations2).

When Does the Duty Arise?

Circumstances in which duty of disclosure of a director or chief executive arises (section 341(1) of the SFO) include:

- when he becomes, or ceases to be, interested in shares in or debentures of the listed issuer or its associated corporation;
- when he contracts to sell any shares in or debentures of the listed issuer or its associated corporation;
- when he assigns a right granted to him by the listed issuer or its associated corporation to subscribe for its shares or debentures;
- when the nature of his previously notified interests changes; and
- when he comes to have or ceases to have a short position in shares of the listed issuer or its associated corporation.

INTERESTS IN SHARES

For the purposes of part XV of the SFO, a person has an “interest” in shares if:

- his name is on the register of members of the issuer;
- the shares are held for him by another person, such as his stockbroker, custodian, trustee or nominee, including the Central Clearing and Settlement System;
- he is entitled to exercise rights attaching to the shares or to control their exercise; or
- he is deemed interested (see further below).

---

1. Debentures include debenture stocks, bonds and other securities of a corporation, whether constituting a charge on the assets of the corporation or not (schedule 1 of the SFO).

2. An associated corporation means:
   (a) a subsidiary or holding company of the issuer;
   (b) a subsidiary of the issuer's holding company (i.e., a fellow subsidiary); or
   (c) a corporation in which the issuer has an interest exceeding 20% of any class of its issued share capital (section 308 of the SFO).
Deemed Interests

The following related persons’ interests in the shares of the issuer are attributed to (i.e., deemed held by) a substantial shareholder, director or chief executive of the listed issuer (the “Relevant Person”):

<table>
<thead>
<tr>
<th>Family Interest</th>
<th>Spouse and any child under the age of 18 of the Relevant Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Interest</td>
<td>A corporation if the Relevant Person controls, directly or indirectly, one-third or more of the voting power at its general meetings, or if the corporation or its directors are accustomed to act in accordance with the Relevant Person’s directions</td>
</tr>
</tbody>
</table>
| Trust Interest | • A trust, if the Relevant Person is a trustee or beneficiary of the trust, except in the case of a bare trust  
• A discretionary trust, if the Relevant Person is the founder of the trust |
| Interest Held by Parties Acting in Concert | All persons who have agreed to act in concert to acquire interests in the shares of the issuer by an arrangement with the Relevant Person, where any of the parties has in fact acquired such an interest under the arrangement |

In calculating the total number of shares in which the Relevant Person is interested, his deemed interests through the above parties are to be included.

TIMING OF NOTIFICATION

For most relevant events, notifications must be given within three business days (excluding Saturdays) of the day the Relevant Person becomes aware of the relevant event which triggered the duty of disclosure. However, for an initial notification, such as when a director first comes under a duty of disclosure by reason of holding shares in the issuer at the time it becomes a listed corporation, or by reason of holding shares in an associated corporation when the director becomes a director of the issuer, notification must be given within 10 business days (excluding Saturdays) of the date of the relevant event.
G. INSIDER DEALING

Insider dealing is both a criminal offense and a form of civil market misconduct governed by Part XIII of the SFO. As noted in the Model Code in Appendix 10 to the Listing Rules, directors of an issuer wishing to deal in any of its securities must first have regard to the insider dealing provisions.

Listed issuers must adopt rules governing directors’ dealings on terms no less exacting than those of the Model Code. Any breach of the required standard will be treated as a breach of the Listing Rules (Listing Rule 13.67). For more details on the Model Code, see Chapter 1 of this Guide (section E).

OVERVIEW OF INSIDER DEALING REGIME

Under the insider dealing provisions, where a person (i) has information which he knows is relevant information in relation to a listed corporation and (ii) is connected with that listed corporation, or received the information (directly or indirectly) from a person whom he knows is so connected and whom he knows (or has reasonable cause to believe) held the information as a result of being so connected, that person should not deal, or counsel or procure another to deal, or disclose information to another person knowing or having reasonable cause to believe that such other person will make use of the information for the purpose of dealing, or of counseling or procuring another person to deal, in the securities of the Hong Kong listed corporation (or a related corporation) or their derivatives.

The key elements of these restrictions and their implications are:

1. Relevant Information

Inside information, defined in the SFO as “relevant information,” is information that is not generally known and is material and specific. The term means specific information about:

- a corporation or a shareholder or officer of the corporation; or
- the listed securities of the corporation or their derivatives.

It only applies where such information is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation. What is “material” information is a question of fact to be assessed on the basis of how general investors would have acted on the date when the dealing took place, if they had known the relevant information.

3. In a 2009 case regarding Chaoda Modern Agriculture, the MMT stated that “it is not necessary that all the particulars or details of the transaction, event or matter be precisely known,” but that there is “substantial commercial reality” to the event occurring.
2. Connected

The SFO defines persons who are “connected” with a corporation in very broad terms, including among others (broadly, and in addition to group companies’ directors, employees and substantial shareholders) any person who has access to relevant information concerning the corporation by reason of his being “connected” with another corporation, where the information relates to any actual or contemplated transaction involving both those corporations, or involving one of them and the listed securities of the other or their derivatives, or to the fact that such a transaction is no longer contemplated. Those who are wall crossed in relation to a prospective transaction involving a listed corporation will typically be “connected” with it by virtue of receiving information from a person falling within this definition.

3. Dealing, Counseling or Procuring

The SFO’s scope extends to a wide range of dealings in listed securities or their derivatives. A person “deals” in securities or their derivatives if (whether as principal or agent and whether on or off market) he buys, sells, exchanges or subscribes for listed securities or their derivatives or agrees to do so, or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for any listed securities or their derivatives (section 289 of the SFO).

Insider dealing also takes place when a person with relevant information counsels or procures another to deal in listed securities or their derivatives (section 291(1)(b) of the SFO).

ENFORCEMENT ACTIONS

Under the civil regime of the SFO, the MMT is empowered to impose various sanctions, including:

- disqualification orders (disqualification as director, liquidator, receiver or manager of listed companies, etc.);
- cold-shoulder orders (bar on banned individuals having access to assistance from SFC licensees in acquiring, disposing of or dealing in securities or financial products for a period not exceeding five years); and
- disciplinary referrals.

Under the criminal regime of the SFO, a person who commits an insider dealing offense may be liable to a fine of up to HK$10 million and to a maximum of 10 years’ imprisonment.
H. ISSUE OF SHARES

CONSENT FOR ISSUE OF NEW SHARES/SUBSCRIPTION RIGHTS (LISTING RULE 13.36(1)(a))

In order to protect the shareholders of listed issuers from dilution, the Listing Rules require an issuer to obtain its shareholders’ consent (subject to exceptions noted below) for any allotment, issue or grant by it of any:

- shares;
- convertible securities; or
- options, warrants or similar rights to subscribe for any shares or convertible securities.

EXCEPTIONS TO SHAREHOLDERS’ CONSENT

However, no such consent is required in the following circumstances:

- Rights issue/open offer: where a listed issuer offers new shares to its existing shareholders on a pro rata basis (Listing Rule 13.36(2)(a)) (see section G below for further details); or
- General mandate: where the existing shareholders have by ordinary resolution in a general meeting given a general mandate to the directors to allot or issue such shares or to grant any offers or options which would require the issue, allotment or disposal of shares during the continuance of such mandate (Listing Rule 13.36(2)(b)).

Such a general mandate is subject to a restriction that the number of securities allotted or agreed to be allotted must not exceed the aggregate of 20% of the existing issued share capital of the issuer and, if so resolved separately by the shareholders, the number of such securities repurchased by the issuer since the granting of the general mandate (up to 10% of the existing issued share capital).

A general mandate may only continue in force until:

- the end of the first annual general meeting after it has been granted, at which time it lapses unless renewed; or
- it is revoked or varied by ordinary resolution in general meeting.

NO SHARE ISSUE WITHIN SIX MONTHS OF LISTING (LISTING RULE 10.08)

The Exchange does not permit further issues of shares or securities convertible into equity securities of a listed issuer within six months after the issuer becomes listed on the Exchange, except for:

- the issue of shares pursuant to a share option scheme under Chapter 17 of the Listing Rules or Chapter 23 of the GEM Listing Rules;
- the exercise of conversion rights attaching to warrants issued as part of the initial public offering;
- any capitalization issue, capital reduction, consolidation or subdivision of shares;
- the issue of shares or securities pursuant to an agreement entered into before the commencement of dealing and disclosed in the issuer’s listing document; and
• the issue of shares or securities to be traded on the Main Board by a listed issuer that has successfully transferred its listing from GEM to the Main Board under Chapter 9A.

SUBSEQUENT LISTINGS (LISTING RULE 13.26)
Prior to any share issue, an issuer must apply for the listing of any securities of the same class as securities already listed, and may not issue such securities until the Exchange has granted approval for their listing.

The Exchange issued a “Guide on Practices and Procedures for Post-vetting Announcements of Listed Issuers and Handling Matters Involving Trading Arrangements prior to Publication of Announcements” in January 2009 (updated in January 2010), which sets out specific information required in relation to subsequent listings.

PLACINGS
No placing for cash may be made by a listed issuer pursuant to a general mandate at an issue price representing a discount of 20% or more to the benchmarked price (Listing Rule 13.36(5)). The benchmarked price is the higher of the closing price on the date of the placing agreement and a five-day trailing average.

Appendix 6 of the Listing Rules sets out the requirements for a placing by an issuer.

I. RIGHTS ISSUES AND OPEN OFFERS
Rights issues and open offers are offers of shares by the issuer to its shareholders on a pro rata basis. They fall within one of the exceptions under which shareholders’ consent is not required by the Listing Rules for the issue of shares (Listing Rule 13.36(2)(b)).

DIFFERENCES BETWEEN RIGHTS ISSUES AND OPEN OFFERS
A rights issue is an offer by way of rights to existing shareholders which enables them to subscribe securities in proportion to their existing shareholdings, or to renounce and sell the subscription rights (Listing Rule 7.18).

An open offer is an offer to existing shareholders to subscribe for securities on the basis that, although their subscription rights are proportionate to their existing shareholdings, others may take up any unsubscribed securities. In an open offer, securities offered to shareholders are not allotted to them as renounceable documents as in the case of a rights issue. An open offer may be combined with a placing, made subject to the rights of existing shareholders to subscribe part or all of the placed securities on a pro rata basis (Listing Rule 7.23).
REQUIREMENTS FOR RIGHTS ISSUES AND OPEN OFFERS

1. Offer Period (Listing Rules 7.20 and 7.25)

Rights issues and open offers must remain open for acceptance for a period of not less than 10 business days. Where an issuer proposes an offer period of more than 15 business days, such as where there is a large number of overseas shareholders, the Exchange must be consulted.

2. Fully Underwritten (Listing Rules 7.19(1) and 7.24(1))

Underwriting provides a degree of certainty to the issuer through commitment of sound financial institutions. In normal circumstances, a rights issue or an open offer must be fully underwritten. However, there may be circumstances where it is appropriate to proceed without underwriting, subject to additional disclosure requirements (Listing Rules 7.19(3) and 7.24(4)) and prior notification to the Exchange (e.g., where the issuer has specific intended uses for the proceeds and additional underwriting costs are not justified).

3. Shareholders’ Approval (Listing Rules 7.19(6) and 7.24(5))

The general rule under Listing Rule 13.36(2)(b) is that the shareholders’ consent is not required for any offering to shareholders on a pro rata basis. But a proposed rights issue or open offer must be approved by shareholders in general meeting if it would increase the issued share capital or market capitalization of the issuer by more than 50%, either on its own or when aggregated with any rights issues or open offers announced by the issuer:

• within 12 months before announcement of the proposed rights issue or open offer; or
• before that 12-month period, where dealing in the new shares started within the 12-month period.

In such case, a circular must be issued setting out required information such as the purpose of the proposed rights issue or open offer and the total funds to be raised (Listing Rules 7.19(6)(b) and 7.24(5)(b)).

J. HALT, SUSPENSION AND RESUMPTION OF TRADING

The halt, suspension and resumption of trading of listed securities are regulated by Chapter 6 of the Listing Rules.

TRADING HALT OR SUSPENSION

Where necessary in the interests of all parties, a request for a trading halt or suspension must be made by the issuer or issuer’s authorized representative or financial adviser with specific supporting reasons (Listing Rule 6.02); although in many cases, the issue of an announcement is preferable to fettering the proper functioning of the market by a trading halt or suspension.
Whether or not a request has been made to the Exchange, it may also direct a trading halt or suspend dealing in the issuer’s securities (Listing Rule 6.01) where:

- the issuer has failed to comply with the Listing Rules in a material manner;
- there are insufficient securities in public hands;
- the issuer does not have a sufficient level of operations or sufficient assets to warrant the continued listing;
- the issuer or its business is no longer suitable for listing; or
- the issuer has failed to publish timely financial information (Listing Rule 13.50).

**RESUMPTION OF TRADING**

The Exchange has power to direct the resumption of trading of halted or suspended securities, and the issuer may be required to issue an announcement in respect of the terms of the resumption (Listing Rule 6.07).

The Exchange considers that the continuation of any trading halt or suspension for longer than absolutely necessary denies reasonable access to the market and prevents its proper functioning. The Exchange’s power to direct resumption may only be exercised after giving the issuer the opportunity to be heard, and at the hearing the burden is on the issuer opposing the resumption of trading to satisfy the Exchange that a continued trading halt or suspension would be appropriate (Listing Rule 6.08).

**WITHDRAWAL OF LISTING**

An issuer may voluntarily withdraw its listing on the Exchange if:

- after a general offer, a right to compulsory acquisition is exercised resulting in the acquisition of all the listed securities of the issuer; or
- the issuer is privatized by way of a scheme of arrangement or capital reorganization, which is governed by and in compliance with the Takeovers Code,

and notice of the withdrawal has been given to shareholders by way of an announcement (and the intention not to retain its listing on the Exchange has been set out in a shareholder circular) (Listing Rule 6.15). In other cases, additional restrictions apply.
K. SHARE REPURCHASES

In Hong Kong, a share repurchase by a listed issuer can be achieved by:

- a repurchase by a general offer to all shareholders;
- an on-market repurchase (an offer made through the Exchange); or
- an off-market repurchase.

Each of these methods is subject to restrictions in the Listing Rules and the Share Repurchase Code, in addition to requirements under the laws of the place of incorporation.

REPURCHASE BY GENERAL OFFER

A repurchase by general offer has to be authorized by the independent shareholders of the listed issuer at a general meeting in accordance with the requirements of the Share Repurchase Code. The notice of meeting must be accompanied by the offer document.

Share repurchases by general offer must be made to all shareholders of the class, and arrangements must be made for those shareholders who wish to do so to accept in full for the relevant percentage of their holdings. Shares tendered in excess of this percentage must be accepted by the offeror from each shareholder in the same proportion as the number tendered to the extent necessary to enable the offeror to obtain the total number of shares for which the offer has been made.

ON-MARKET REPURCHASE

On-market share repurchases by listed issuers are subject to restrictions under the Listing Rules. An issuer whose primary listing is on the Exchange may only repurchase shares on the Exchange if:

- the shares proposed to be repurchased are fully paid up;
- the issuer has previously sent its shareholders an explanatory statement in compliance with the Listing Rules; and
- the shareholders of the issuer have given specific approval or a general mandate to the directors of the issuer to make such repurchases by way of an ordinary resolution, and a copy of such resolution has been delivered to the Exchange (Listing Rule 10.06(1)(a)).

The total number and description of the shares which the issuer is authorized to repurchase may not exceed 10% of the issued share capital of the issuer as at the date of the resolution granting the mandate (Listing Rule 10.06(1)(c)(iii)). In addition, the issuer must also submit a confirmation to the Exchange that the explanatory statement fulfills the contents requirements and that the share repurchase and explanatory statement contain no unusual features, and submit a compliance undertaking from the directors (Listing Rule 10.06(1)(b)).
Dealing Restrictions

The following dealing restrictions apply to repurchases of shares on the Exchange (Listing Rule 10.06(2)):

- no purchase of shares if the purchase price is higher by 5% or more than the average closing market price for the five trading days preceding the day on which the shares were traded on the Exchange;
- no purchase of shares for a consideration other than cash or for settlement other than in accordance with the trading rules of the Exchange from time to time;
- no purchase of shares from a connected person, and a connected person shall not knowingly sell shares to the issuer, on the Exchange;
- the issuer must procure that any broker it appoints to effect the repurchases will disclose to the Exchange any information on the repurchases as the Exchange may request;
- the issuer must not purchase its shares on the Exchange at any time after inside information has come to its knowledge until the inside information is publicly available. In particular, the issuer should not repurchase any shares in the period starting one month before the earlier of:
  - the date of the board meeting for the approval of the issuer’s results for any year, half-year, quarter or other interim period;
  - the deadline for the issuer to publish an announcement of its results for any year, half-year, quarter or other interim period,
and ending on the date of the results announcement; and
- the repurchase must not result in the public float falling below 25% (or any lower level determined by the Exchange for the relevant issuer upon its listing).

The Exchange may waive all or part of the above restrictions if, in its opinion, there are exceptional circumstances justifying the waiver (Listing Rule 10.06(2)(g)).

STATUS OF REPURCHASED SHARES

The listing of all shares which are repurchased by an issuer (on the Exchange or otherwise) must be automatically cancelled, and the issuer must apply for listing of any further issues of that type of shares in the normal way (Listing Rule 10.06(5)). The issuer must ensure that the documents of title of repurchased shares are cancelled and destroyed as soon as reasonably practicable following the settlement of any such purchase.

SUBSEQUENT ISSUES

Without the prior approval of the Exchange, an issuer may not issue new shares or announce a proposed new issue of shares within 30 days after any share repurchase, whether on the Exchange or otherwise (other than an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that repurchase) (Listing Rule 10.06(3)).
OFF-MARKET REPURCHASES

The Share Repurchase Code provides that off-market repurchases must be approved by the SFC and by at least three-fourths of the votes cast on a poll by disinterested shareholders at a general meeting (Rule 2 of Share Repurchase Code). The notice of the meeting must comply with certain minimum content requirements, and the directors must have made diligent inquiries of the members who will be affected by the proposal. In addition, the purchase agreement has to be disclosed.

L. PUBLIC FLOAT

At least 25% of a listed issuer’s total issued share capital must be held in public hands at all times (Listing Rule 8.08), save that at the time of listing (but not later) the Exchange may at its discretion grant to eligible issuers (of sufficient size) a lower required percentage (Listing Rule 8.08(1)(d)). Compliance with the required level must be disclosed in the issuer’s annual report (Listing Rule 13.35).

NOTIFICATION TO EXCHANGE

Once a listed issuer becomes aware that its public float has fallen below 25% (or any lower minimum applicable to it), or if any part of the securities of the issuer or its subsidiary becomes listed or traded on any other stock exchange, it must inform the Exchange immediately (Listing Rule 13.32(1)).

SUSPENSION OF TRADING

Where a listed issuer’s percentage of a public float falls below the required level, the Exchange will normally require suspension of trading in its securities (Listing Rule 13.32(3)), and reserves the right to continue suspension until appropriate steps have been taken to restore the required level.

PUBLIC FLOAT WAIVER AFTER GENERAL OFFER

In the case of an issuer which is the subject of a general offer under the Takeovers Code, the Exchange may grant a temporary waiver of the public float requirement for a reasonable period after the close of the general offer (Listing Rule 13.33).

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4. Having conducted a public consultation in 2008, the Exchange has in some cases granted waivers substituting a required public float of not less than 10% where the market capitalization of the issuer exceeds HK$40 billion (approximately US$5.1 billion).
M. NOTIFIABLE AND CONNECTED TRANSACTIONS

NOTIFIABLE TRANSACTIONS

The classification of notifiable transactions is based on the calculation of the following percentage ratios:

<table>
<thead>
<tr>
<th>Percentage Ratio</th>
<th>Formula</th>
<th>Description</th>
</tr>
</thead>
</table>
| Asset ratio =    | \[
\frac{\text{Total assets which are the subject of the transaction}}{\text{Total assets of the listed issuer}}\]
| Profits ratio =  | \[
\frac{\text{Profits attributable to the assets which are the subject of the transaction}}{\text{Profits of the listed issuer}}\]
| Revenue ratio =  | \[
\frac{\text{Revenue attributable to the assets which are the subject of the transaction}}{\text{Revenue of the listed issuer}}\]
| Consideration ratio = | \[
\frac{\text{Consideration}}{\text{Total market capitalization of the listed issuer}}\]
| Equity Capital ratio* = | \[
\frac{\text{Nominal value of the issuer’s equity capital issued as consideration}}{\text{Nominal value of the issuer’s issued equity capital before the transaction}}\]

* Equity capital ratio relates only to an acquisition (and not a disposal) by a listed issuer issuing new equity capital.

Transactions are classified in the following types based on their percentage ratios (Listing Rule 14.08):

- **Share transaction**: less than 5% in all percentage ratios and involving an acquisition of assets (other than cash) by a listed issuer where the consideration includes securities for which listing will be sought;
- **Disclosable transaction**: 5% or more but less than 25% in any percentage ratio;
- **Major transaction (disposal)**: 25% or more but less than 75% in any percentage ratio, except for equity capital ratio;
- **Major transaction (acquisition)**: 25% or more but less than 100% in any percentage ratio;
- **Very substantial disposal**: 75% or more in any percentage ratio; and
- **Very substantial acquisition**: 100% or more in any percentage ratio.
Different types of notifiable transaction are subject to the following different disclosure requirements. Chapter 14 of the Listing Rules explains the specific requirements in more detail.

<table>
<thead>
<tr>
<th>Disclosure Requirements:</th>
<th>Notification to Exchange</th>
<th>Publication of Announcement</th>
<th>Circular to Shareholders</th>
<th>Shareholders’ Approval</th>
<th>Accountants’ Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share Transaction</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No(1)</td>
<td>No</td>
</tr>
<tr>
<td>Discloseable Transaction</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Major Transaction</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes(2)</td>
</tr>
<tr>
<td>Very Substantial Disposal</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Very Substantial Acquisition</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes(2)</td>
</tr>
<tr>
<td>Reverse Takeover</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes(3)</td>
<td>Yes(2)</td>
</tr>
</tbody>
</table>

Notes: (1) No shareholders’ approval is necessary if the consideration shares are issued under a general mandate.

(2) An accountants’ report on the business, company or companies being acquired is required.

(3) Approval from the Exchange is necessary.

**CONNECTED TRANSACTIONS**

Connected transactions may be either one-off transactions or continuing transactions. The connected transactions rules are intended (i) to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when the listed issuer enters into connected transactions and (ii) to provide certain safeguards against listed issuers’ directors, chief executives or substantial shareholders (or their associates) taking advantage of their positions.

Generally speaking, connected transactions are required to be disclosed after listing of an issuer’s securities and are subject to independent shareholders’ approval. Accordingly, when a connected transaction is proposed, in general the transaction must be announced publicly by means of an announcement and a circular must be sent to shareholders giving information about the transaction. Prior approval by the shareholders in a general meeting is often required before the transaction can proceed.

However, certain categories of transaction are exempt from the disclosure and independent shareholders’ approval requirements, and certain transactions are subject only to disclosure requirements. See below for further details.
### What are Connected Transactions?

Connected transactions include transactions between a group and connected persons.

Connected transactions also include transactions between a group and third parties that may confer benefits on connected persons. Such transactions relate to investments in, or financing arrangements with, companies in which the group and its directors, chief executives or controlling shareholders are, or will as a result of the transactions become, shareholders.

Connected transactions include both capital and revenue transactions. They may be one-off transactions or continuing transactions.

### Who are Connected Persons?

As explained more fully below this table, connected persons of an issuer are persons who can control or exercise significant influence over the group or who stand to benefit from transactions with the group.

They include chief executives and substantial shareholders of the issuer or its subsidiaries, and any persons closely associated with them.

The scope of connected persons also includes an issuer’s non-wholly owned subsidiary if it is substantially held by chief executives and/or substantial shareholders at the level of the issuer (and/or their associates).

### Requirements for Connected Transactions

The general requirements for connected transactions include disclosures in announcements and annual reports, and shareholders’ approval. Persons with material interests cannot vote on the resolution approving the transaction. Continuing connected transactions must be for a fixed period not exceeding 3 years (except in special circumstances) and also require annual reviews by independent non-executive directors and the auditors.

A connected person is:

1. a director, chief executive or substantial shareholder of the issuer or any of its subsidiaries;
2. a person who was a director of the issuer or any of its subsidiaries in the past 12 months;
3. a supervisor of a PRC issuer or any of its subsidiaries;
4. an associate of any of the above persons;
5. a connected subsidiary of the issuer (i.e., a subsidiary of which 10% or more of the voting power is controlled by persons in categories (1) to (4) above); or
6. a person deemed by the Exchange to be connected, based on certain extended family relationships, or on the person’s proposed or actual arrangement with a person in categories (1) to (3) above regarding the relevant transaction.
CHAPTER 2 ➤ KEY CONTINUING OBLIGATIONS

An associate of an individual includes:

1. a spouse, his/her (or his/her spouse’s) child (natural or adopted) or stepchild under the age of 18 years (each an “immediate family member”);
2. the trustees, acting in their capacity as trustee of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object (the “trustee”);
3. a 30%-controlled company held by the individual, his immediate family members and/or the trustees (individually or together), or any of its subsidiaries;
4. a person cohabiting with him/her as a spouse, or his/her child, stepchild, parent, step-parent, brother, stepbrother, sister or stepsister (each a “family member”); or
5. a majority-controlled company held by his family members (individually or together), or of which his family members control the composition of a majority of the board of directors.

An associate of a corporation includes:

1. its subsidiary or holding company, or a fellow subsidiary of the holding company (together the “group companies”);
2. the trustees, acting in their capacity as trustees of any trust of which the company is a beneficiary, or in the case of a discretionary trust, is (to its knowledge) a discretionary object (the “trustees”); or
3. a 30%-controlled company held by the company, the group companies and/or the trustees (individually or together), or any of its subsidiaries.

EXEMPTIONS

Exemptions from all or some of the connected transaction requirements are available for specific categories of connected transaction, based either on the size being immaterial to the group, or on specific circumstances in which the risk of abuse by connected persons is low. (See the “Plain Language Guide on Connected Transaction Rules” published by the Exchange for further details).

Connected transactions may therefore be classified by a combination of their nature and size. They can be broadly divided into three categories:

- Wholly exempted – exempt from all reporting, announcement and independent shareholders’ approval (Listing Rules 14A.31 and 14A.33);
- Partially exempted – exempt from independent shareholders’ approval but subject to certain reporting and announcement requirements (Listing Rules 14A.32 and 14A.34); or
- Non-exempt – subject to reporting, announcement and independent shareholders’ approval requirements (Listing Rule 14A.17).

As regards assessment of size, the percentage ratios (other than the profits ratio) set out at the start of this section, under the heading ‘Notifiable Transactions’, are applicable for determining whether a connected transaction/continuing connected transaction qualifies as a wholly exempt or partially exempt connected transaction.

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5. For ease of presentation, certain types of associate are set out in the preceding list of the categories of connected persons.
If the amount of a relevant connected transaction/continuing connected transaction is lower than the designated threshold according to the appropriate percentage ratio, that transaction may qualify as a wholly exempt or partially exempt connected transaction. The following table summarizes the relevant thresholds:

<table>
<thead>
<tr>
<th>Category</th>
<th>Exemption</th>
<th>Thresholds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholly Exempted</td>
<td><em>Exempted from all the reporting, announcement and independent shareholders’ approval requirements</em></td>
<td>Each or all of the percentage ratios is/are:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) less than 0.1%;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) less than 1% and the transaction is a connected transaction only because it involves a person who is a connected person of the listed issuer by virtue of its/his relationship(s) with the issuer’s subsidiary or subsidiaries; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) less than 5% and the total consideration is less than HK$1 million.</td>
</tr>
<tr>
<td>Partially Exempted</td>
<td><em>Exempted from independent shareholders’ approval requirements</em></td>
<td>Each or all of the percentage ratios (other than the profits ratio) is/are:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a) less than 5%; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) less than 25% and the total consideration is less than HK$10 million.</td>
</tr>
</tbody>
</table>

**WHERE A CONNECTED TRANSACTION IS ALSO A NOTIFIABLE TRANSACTION**

A connected transaction may also be a notifiable transaction under Chapter 14 of the Listing Rules, and accordingly, subject to the relevant disclosure requirements. In such cases, additional disclosures should be made in the circular as required for that type of notifiable transaction (*Listing Rule 14A.60*).

**N. MINERAL COMPANIES**

To promote the Exchange as a listing platform for overseas mining and natural resources companies, the Exchange updated Chapter 18 of the Listing Rules in June 2010. The revisions clarified and updated the Listing Rules and synchronized them in certain important respects with globally recognized standards.

In January 2013, the Exchange released a series of listing decisions in relation to the compliance requirements for mineral companies under Chapter 18 of the Listing Rules:
<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Summary of Listing Decision</th>
</tr>
</thead>
</table>
| Requirement for portfolio of Indicated Resources that is meaningful and of sufficient substance to justify a listing – Listing Rule 18.03(2) (Listing Decision LD39-2013) | Company A proposed to acquire a target that was engaged in the exploration, exploitation and processing of mineral resources. As the size of the acquisition was very significant to Company A, when assessing whether the acquisition would constitute a reverse takeover, one of the factors that the Exchange considered was whether the target could meet the new listing requirements.  

The parties could only demonstrate Indicated Resources of value representing 10% of the consideration, and a substantial part of the target’s portfolio of minerals was not substantiated in the competent person’s report.  

The Exchange decided the portfolio was not meaningful and substantial enough to comply with Listing Rule 18.03(2), and the circumstances of the case indicated that the target was an early exploration company at the time of the acquisition. The Exchange reaffirmed its stance against listing early exploration companies. |
| Waiver of Competent Person and Valuation Reports on target’s mining interests – Listing Rule 18.09(2) and (3) (Listing Decision LD40-2013) | Company A proposed to acquire a target and sought a waiver from producing competent person’s reports (CPRs) and valuation reports on certain mines which were a minor part of the Target’s portfolio of mineral resources under the acquisition and were not expected to have any material value.  

The Exchange agreed that it would be unduly burdensome for Company A to produce CPRs and valuation reports on these particular mines and granting the waiver would not result in an omission of material information in the circular. |
| Requirement for portfolio of Indicated Resources that is meaningful and of sufficient substance to justify a listing – Listing Rule 18.03(2) (Listing Decision LD41-2013) | Company A proposed to acquire a target which held mining rights of certain iron mines in the PRC but had not yet commenced production.  

Chinese standards are not yet recognized as acceptable reporting standards for the purpose of the Chapter 18 requirements. The target could not rely on resources and reserves identified solely under the Chinese standards to demonstrate that its portfolio of natural resources was meaningful and substantial enough to comply with Listing Rule 18.03(2). |
<table>
<thead>
<tr>
<th>Subject Matter</th>
<th>Summary of Listing Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiver of Competent Person’s Report on Mineral Resources to be disposed of –</td>
<td>Company A proposed to sell its interest in a mining project to a third party, which would be a very substantial disposal. The Listing Rules required Company A to include a competent person’s report on the mine in the circular for the disposal. Company A sought a waiver. The mine was acquired by Company A some years previously (before the current Chapter 18 came into effect), and a technical report was prepared using the Chinese standards and included in the transaction circular. The Exchange noted the technical report was outdated and was prepared under the Chinese standards, which is not a recognized reporting standard acceptable by the Exchange under the current Chapter 18. The Exchange refused to grant the waiver.</td>
</tr>
<tr>
<td>Listing Rule 18.09(2)</td>
<td>(Listing Decision LD42-2013)</td>
</tr>
<tr>
<td>Clear path to commercial production – Listing Rules 18.04 and 18.07; Guidance</td>
<td>Company A proposed to acquire a target that held the mining licenses of a number of coal mines in the PRC. Since the acquisition was very significant for Company A, it was evaluated as a reverse takeover. However, the target did not meet the track record requirements in Listing Rule 8.05, and the Exchange was unlikely to waive them unless it demonstrated a clear path to commercial production. There was concern on whether the target’s plan for commercial production could be achieved, in light of the prolonged suspension of operations of the coal mines and the target not holding all the necessary permits and licenses for coal production. However, the Exchange also considered the special circumstances of the case, which included the target’s acquisition of the relevant mines pursuant to a Chinese government policy, and accepted Company A’s submission as demonstrating that the coal mines would be able to commence commercial production within a reasonable period.</td>
</tr>
<tr>
<td>Letter GL22-10</td>
<td>(Listing Decision LD43-2013)</td>
</tr>
<tr>
<td>Right to participate actively in the exploration for and/or extraction of</td>
<td>Company A proposed to acquire a target that participated in a gold mining project. Although the target did not have any interest in the project at the time of the acquisition, it had entered into earn-in agreements, which allowed it to explore for minerals in the project areas using its own resources and to secure an interest in the project by completing the exploration works. The agreements were demonstrated to give the target rights to exercise significant influence in decisions on the exploration activities of the project. Hence, the Exchange considered that the target had the right to participate actively in the exploration for natural resources as required under Listing Rule 18.03(1)(b).</td>
</tr>
<tr>
<td>Natural Resources – Listing Rule 18.03(1)</td>
<td>(Listing Decision LD44-2013)</td>
</tr>
</tbody>
</table>

For guidance on the obligations under Chapter 18 of the Listing Rules in relation to the preparation of annual and interim reports, see Guidance Letter GL47-13 (January 2013).
A. FINANCIAL AND MONTHLY REPORTING

Listed issuers are required to issue interim (i.e. half-year) reports and annual reports, and to publish announcements of these results. The deadlines for publishing interim and annual results announcements are two and three months, respectively, after the relevant period ends, and the deadline for the relevant report is in each case one month later.

Listed issuers are also required to submit a monthly return in relation to movements in their equity and debt securities and any other securitized instruments. In addition, the Model Code prescribes a blackout period for dealings before results announcements (see Section E of Chapter 1, “Corporate Governance”).

Set out below is the compliance timetable for results announcements and reports, including the relevant blackout periods, for companies with a December 31 financial year end.

<table>
<thead>
<tr>
<th>Month</th>
<th>Required Filing with the Exchange</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>Monthly Return¹</td>
<td>January 7</td>
</tr>
<tr>
<td></td>
<td>Latest Commencement Date for Blackout Period² for Annual Results</td>
<td>January 30</td>
</tr>
<tr>
<td>February</td>
<td>Monthly Return</td>
<td>February 7</td>
</tr>
<tr>
<td>March</td>
<td>Monthly Return</td>
<td>March 7</td>
</tr>
<tr>
<td></td>
<td>Deadline for Announcement of Annual Results³</td>
<td>March 31</td>
</tr>
<tr>
<td>April</td>
<td>Monthly Return</td>
<td>April 5</td>
</tr>
<tr>
<td></td>
<td>Deadline for Annual Report⁴</td>
<td>April 30</td>
</tr>
<tr>
<td>May</td>
<td>Monthly Return</td>
<td>May 7</td>
</tr>
<tr>
<td>June</td>
<td>Monthly Return</td>
<td>June 7</td>
</tr>
<tr>
<td>July</td>
<td>Monthly Return</td>
<td>July 5</td>
</tr>
<tr>
<td>August</td>
<td>Latest Commencement Date for Blackout Period for Half-Year Results</td>
<td>August 1</td>
</tr>
<tr>
<td></td>
<td>Monthly Return</td>
<td>August 7</td>
</tr>
<tr>
<td></td>
<td>Deadline for Announcement of Half-Year Results³</td>
<td>August 31</td>
</tr>
<tr>
<td>September</td>
<td>Monthly Return</td>
<td>September 6</td>
</tr>
<tr>
<td></td>
<td>Deadline for Half-Year Interim Report⁵</td>
<td>September 30</td>
</tr>
<tr>
<td>October</td>
<td>Monthly Return</td>
<td>October 7</td>
</tr>
<tr>
<td>November</td>
<td>Monthly Return</td>
<td>November 7</td>
</tr>
<tr>
<td>December</td>
<td>Monthly Return</td>
<td>December 6</td>
</tr>
</tbody>
</table>

Note: for the related footnotes, see next page.
Notes:

1. A listed issuer shall, by no later than the fifth business day next following the end of each calendar month, submit a monthly return in relation to movements in the listed issuer’s equity securities, debt securities and any other securitized instruments (irrespective of whether there has been any change in the information provided in its previous monthly return). *(Listing Rule 13.25B)*

2. A listed issuer must notify the Exchange before the commencement of its blackout period. The blackout period in which a director must not deal in any securities of the listed issuer is ‘any day on which its financial results are published and:
   (i) during the period of 60 days immediately preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results; and
   (ii) during the period of 30 days immediately preceding the publication date of the quarterly results (if any) and half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results, unless the circumstances are exceptional...’ *(Listing Rule 13.67 and Appendix 10, paragraph A.3)*

3. Listing Rule 13.49

4. A listed issuer is required to send to its members a copy of its annual report including its annual accounts, together with a copy of the auditors’ report thereon, not less than 21 days before the date of the annual general meeting and in any event not more than four months after the end of the financial year. *(Listing Rule 13.46)*

5. In respect of the first six months of each financial year of a listed issuer, it shall send to its members an interim report not later than three months after the end of that period of six months. *(Listing Rule 13.48)*

**B. KEY COMPANIES REGISTRY FILINGS FOR NON-HONG KONG COMPANIES**

Non-Hong Kong companies are required by the CO to file information at the Companies Registry as follows:

<table>
<thead>
<tr>
<th>Specified Form (Governing Provisions of Companies Ordinance)</th>
<th>Prescribed Filing Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Return (s.334)</td>
<td>Within 42 days after the anniversary of the date of registration of the company in Hong Kong</td>
</tr>
<tr>
<td>Accounts (s.336)</td>
<td>Within 42 days after the anniversary of the date of registration together with the annual return</td>
</tr>
<tr>
<td>Notification of Alteration in the Charter, Status etc. (s.335(1)(a))</td>
<td>Within 1 month after the date of change</td>
</tr>
<tr>
<td>Notification of Change of Secretary and Director (Appointment/Cessation) (s.335(1)(b))</td>
<td>Within 1 month after the date of change</td>
</tr>
<tr>
<td>Notification of Change of Particulars of Secretary and Director (s.335(1)(c))</td>
<td>Within 1 month after the date of change</td>
</tr>
<tr>
<td>Notification of Change of Authorized Representative (s.335(1)(b) &amp; (c))</td>
<td>Within 1 month after the date of change</td>
</tr>
<tr>
<td>Notification of Change of Address (s.335(1)(d))</td>
<td>Within 1 month after the date of change</td>
</tr>
<tr>
<td>Notification of Change in the Corporate Name (s.335(2)(a))</td>
<td>Within 1 month after the date of change</td>
</tr>
<tr>
<td>Notification of Cessation of Having a Place of Business in Hong Kong (s.339(1))</td>
<td>Within 7 days after the date of ceasing to have the place of business</td>
</tr>
<tr>
<td>Mortgage or Charge Details (s80(1), 81(1), 82(1), 91(1) &amp; 91(5))</td>
<td>Within 5 weeks after the date of creation of the charge</td>
</tr>
</tbody>
</table>
C. NOTICE PERIODS

The Listing Rules require listed companies to give advance notice of certain corporate actions, including the following:

<table>
<thead>
<tr>
<th>Notice to Shareholders</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual general meeting (Code Provision E.1.3)</td>
<td>At least 20 clear business days(^6)</td>
</tr>
<tr>
<td>All other general meetings (Code Provision E.1.3)</td>
<td>At least 10 clear business days(^6)</td>
</tr>
<tr>
<td>Closure of books (Listing Rule 13.66)</td>
<td>At least 6 business days before the closure for a rights issue, or 10 business days before the closure in other cases</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Notice to the Exchange</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board meeting to declare, recommend or pay a dividend, or to approve for publication any announcement of profits or losses (Listing Rule 13.45)</td>
<td>At least 7 clear business days</td>
</tr>
</tbody>
</table>

---

\(^6\) At least 45 calendar days for any general meeting of an H-share issuer (PRC Mandatory Provisions for Companies Listing Overseas).
FURTHER RESOURCES

The following guidance materials explain how the Exchange and the SFC deal with certain listing-related matters, in terms of both conceptual approach and regulatory processes.

1. SFC Guidelines on Disclosure of Inside Information
   http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openConclusionAppendix?refNo=10CP2&appendix=4

2. The Exchange’s Guide on Connected Transaction Rules

3. The Exchange’s Guide on General Meetings

4. The Exchange’s Policy on Share Trading Suspension

5. Guide on Practices and Procedures for Post-vetting Announcements of Listed Issuers and Handling Matters Involving Trading Arrangements prior to Publication of Announcements
# Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>CO</td>
<td>the Companies Ordinance of Hong Kong as amended from time to time.</td>
</tr>
<tr>
<td>controlling shareholder</td>
<td>any person who is (or group of persons who are together) (i) entitled to exercise or control the exercise of 30% or more of the voting power at general meetings of an issuer, or (ii) in a position to control the composition of a majority of the board of directors of the issuer.</td>
</tr>
<tr>
<td>Corporate Governance Code</td>
<td>the Corporate Governance Code set out in Appendix 14 to the Listing Rules, as amended from time to time.</td>
</tr>
<tr>
<td>Exchange</td>
<td>The Stock Exchange of Hong Kong Limited.</td>
</tr>
<tr>
<td>Guidelines</td>
<td>the Guidelines on Disclosure of Inside Information published by the SFC.</td>
</tr>
<tr>
<td>Indicated Resources</td>
<td>that part of a mineral Resource for which tonnage, densities, shape, physical characteristics, grade and mineral content can be estimated with a reasonable level of confidence.</td>
</tr>
<tr>
<td>INED</td>
<td>independent non-executive director.</td>
</tr>
<tr>
<td>JORC Code</td>
<td>The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2004 edition), as published by the Joint Ore Reserves Committee, as amended from time to time.</td>
</tr>
<tr>
<td>listing</td>
<td>the grant of a listing of and permission to deal in securities on the Exchange (and “listed” is to be construed accordingly).</td>
</tr>
<tr>
<td>Listing Rules</td>
<td>the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Ltd.</td>
</tr>
<tr>
<td>MMT</td>
<td>the Market Misconduct Tribunal, which has jurisdiction over certain proceedings instituted under the SFO.</td>
</tr>
<tr>
<td>Model Code</td>
<td>the Model Code for Securities Transactions by Directors of Listed Issuers set out in Appendix 10 to the Listing Rules, as amended from time to time.</td>
</tr>
<tr>
<td>Natural Resources</td>
<td>minerals and/or petroleum.</td>
</tr>
<tr>
<td>NED</td>
<td>non-executive director.</td>
</tr>
<tr>
<td>PRC</td>
<td>the People’s Republic of China which, for the purposes of this Guide, excludes Hong Kong and Macau.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Share Repurchase Code</td>
<td>the Code on Share Repurchases issued by the SFC, as amended from time to time.</td>
</tr>
<tr>
<td>SFC</td>
<td>the Securities and Futures Commission of Hong Kong, the independent statutory body responsible for the supervision and regulation of Hong Kong’s securities and futures markets.</td>
</tr>
<tr>
<td>SFO</td>
<td>the Securities and Futures Ordinance of Hong Kong, as amended from time to time.</td>
</tr>
<tr>
<td>substantial shareholder</td>
<td>as used in the Listing Rules, 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 a listed company.</td>
</tr>
<tr>
<td>Takeovers Code</td>
<td>the Code on Takeovers and Mergers issued by the SFC, as amended from time to time.</td>
</tr>
<tr>
<td>trading halt</td>
<td>an interruption of trading in an issuer’s securities requested or directed pending disclosure of inside information under the Listing Rules and extending for no more than two trading days. A trading halt automatically becomes a trading suspension if it exceeds two trading days.</td>
</tr>
</tbody>
</table>
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