

Chapter 24

EQUITY SECURITIES

OVERSEAS ISSUERS

Preliminary

- 24.01 [Repealed 1 January 2022]
- 24.02 The GEM Listing Rules apply as much to overseas issuers as they do to Hong Kong issuers. This Chapter sets out the additional requirements, modifications or exemptions that apply to an overseas issuer listed or to be listed on GEM. This includes an overseas issuer that has a dual listing. Overseas issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.
- 24.03 The Exchange may exercise its power under rule 2.07 to waive, modify or not require compliance with a GEM Listing Rule for issuers with, or seeking, a listing under this chapter, on a case by case basis.
- 24.04 Any references in the GEM Listing Rules to directors of the issuer shall be construed as references to members of the overseas issuer's governing body.

Chapter 11 – Qualifications for Listing

- 24.05 The following requirements apply in addition to those set out in Chapter 11:—
- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if it believes that it is not in the public interest to list them;
 - (a) [Repealed 1 January 2022]
 - (b) [Repealed 1 January 2022]
 - (2) the overseas issuer must appoint, and maintain throughout the period the overseas issuer's securities are listed on GEM the appointment of, a person authorised to accept service of process and notices on its behalf in Hong Kong, and must notify the Exchange of his appointment and any termination of his appointment and details of:—
 - (a) his address for service of process and notices;
 - (b) if different, his place of business or, if he does not maintain a place of business, his residential address;
 - (c) his business, residential and mobile telephone numbers;
 - (d) his facsimile number and electronic mail address, if any; and
 - (e) any change in the above particulars;

Note: The person appointed under this rule may also be the person authorised to accept service required to be appointed under Part 16 of the Companies Ordinance, if applicable.

- (3) provision must be made for a register of holders to be maintained in Hong Kong, or such other place as the Exchange may agree, and for transfers to be registered locally. The Exchange may, however, consider an alternative proposal for registering transfers for Hong Kong holders in exceptional circumstances;
- (4) unless the Exchange otherwise agrees only securities registered on the Hong Kong register may be traded on GEM;
- (5) where two or more share registers are maintained it will not be necessary for the Hong Kong register to contain particulars of the shares registered on any other register;
- (6) where an overseas issuer wishes to obtain its listing on GEM by way of an introduction in the circumstances set out in rule 10.18(3):—
 - (a) it must,
 - (i) [Repealed 1 January 2022]
 - (ii) if requested to do so by the Exchange, appoint an independent financial adviser acceptable to the Exchange to confirm that the proposals are in the interests of the holders of the securities of the existing listed company or companies.
 - (b) [Repealed 1 January 2022]
 - (c) [Repealed 1 January 2022]

Chapter 12- Application Procedures and Requirements

24.06 The following modifications apply to the requirements of Chapter 12:—

- (1) [Repealed 1 October 2013]
- (2) the declaration, undertaking and acknowledgement to be lodged under rule 12.26(9) may require adjustment by virtue of the laws to which the overseas issuer is subject.

Chapter 13 – Restrictions on Purchase

24.07 An overseas issuer may purchase its own shares (as defined in rule 13.06) on GEM in accordance with rule 13.03. With regard to rule 13.14 concerning the status of shares purchased by an issuer, where the overseas issuer in question has a listing on another stock exchange the rules of (or laws in relation to) which permit treasury stock, the Exchange will be prepared to waive the requirement to cancel and destroy the documents of title of purchased shares, provided that the overseas issuer must apply for the relisting of any such shares which are re-issued, as if it were a new issue of those shares.

Chapter 14 – Listing Documents

24.08 The Exchange may be prepared to permit the omission from the listing document of information where it considers it appropriate. In considering requests for any such omissions, the Exchange will have regard to:—

- (1) whether the overseas issuer is or is to be listed on a regulated, regularly operating, open stock market recognised for this purpose by the Exchange and conducts its business and makes disclosure according to the accepted standards in Hong Kong; and
- (2) the nature and extent of the regulatory standards and controls to which the overseas issuer is subject in its country of incorporation or other establishment.

Overseas issuers who want to omit any of the prescribed information should therefore consult the Exchange at the earliest possible opportunity.

24.09 The following modifications and additional requirements apply:—

- (1) some of the items of information specified in Parts A and B of Appendix 1 may be inappropriate. In such a case, the item should be appropriately adapted so that equivalent information is given;
- (2) the listing document must contain a summary of all provisions of the constitutive documents of the overseas issuer in so far as they may affect shareholders' rights and protections and directors' powers;

Note: An overseas issuer can refer to Section 2 of Appendix 11 Part C (The People's Republic of China) for guidance on the subject headings that should be used to provide this summary.

- (3) the listing document must contain a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established in a form to be agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion;
- (4) if the overseas issuer does not have a board of directors, the statement of responsibility required under paragraph 2 of Parts A and B of Appendix 1 must be made by all the members of the overseas issuer's equivalent governing body and the listing document should be modified appropriately;
- (5) for an introduction in the circumstances in rule 10.18(3), the following modifications, exceptions and additional requirements apply:—
 - (a) the following may be published on the Exchange's website and the issuer's own website rather than set out in the listing document:
 - (i) (without in any way limiting the scope of the summary required by rule 24.09(2)) a comparison between the provisions of the listed Hong Kong issuer's existing articles of association and the proposed content of the constitutive documents of the overseas issuer;

Notes:

1. *In such cases the details of the articles of association or equivalent document required to be set out in the listing document by paragraph 7 of Part A of Appendix 1 may be limited to a summary of the changes, if any, between the Hong Kong issuer's articles of association and the overseas issuer's proposed constitutive documents, in respect of each of the areas set out in that paragraph, provided that the summary also includes details of any differences or additional provisions in the proposed new constitutive documents which confer on directors of the overseas issuer any special powers, the exercise of which would affect the rights or interests of the shareholders.*
 2. *An overseas issuer can refer to Section 2 of Appendix 11 Part C (The People's Republic of China) for guidance on the format that should be used to provide this comparison.*
- (ii) a summary of the provisions of the constitutive documents of the overseas issuer, which is required by rule 24.09(2); and
- (iii) a summary of the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established which is required by rule 24.09(3) together with a copy of all relevant statutes and/or regulations;
- (b) the details of the rights of shareholders required by paragraph 25 of Part A of Appendix 1 may be limited to a summary of any changes which will occur, if any, as a result of the exchange of securities;
- (c) the particulars of any alterations in the capital of any member of the group which is required to be included by paragraph 26 of Part A of Appendix 1 may be limited to particulars of any alterations since the date to which the latest published audited accounts of the Hong Kong listed issuer were made up;
- (d) where the consolidated assets and liabilities of the issuer are substantially the same as those of the issuer or issuers whose securities have been exchanged, the requirement for a valuation and other information on all the issuer's property interests (see paragraph 50A of Part A of Appendix 1 and Chapter 8) will normally only be required by the Exchange if:—
- (i) the Hong Kong listed issuer does not have a policy of revaluing its properties (or a large part of its property portfolio) on an annual basis;
 - (ii) the Hong Kong listed issuer has not published a revaluation of its property interests in the last 12 months; and
 - (iii) the overseas issuer is unwilling to revalue its property interests in its next annual report and accounts.
- In determining whether property valuations are required in such cases the Exchange will have regard to the following factors:—
- (A) the percentage of the book value of the total assets of the Hong Kong listed issuer (as disclosed in the latest published audited accounts or consolidated accounts, as appropriate) represented by the properties;

- (B) the date on which the properties were last valued; and
 - (C) whether the properties are held for the Hong Kong listed issuer's own use or purely for investment purposes; and
- (e) any valuations required to be included by paragraph 50A of Part A of Appendix 1 and Chapter 8 (as modified by rule 24.09(5)(d)) need only be summarised in the listing document, if a copy of the full valuation report is published on the Exchange's website and the issuer's own website;
- (6) the documents to be published on the Exchange's website and the issuer's own website will be the documents corresponding to those mentioned in paragraph 52 of Part A and paragraph 42 of Part B of Appendix 1. Where any of such documents are not in English or Chinese, a certified English or Chinese translation thereof must be published on the Exchange's website and the issuer's own website. In addition, where rule 24.09(3) applies, the overseas issuer must publish on the Exchange's website and the issuer's own website a copy of any statutes or regulations which are relevant to the summary of the regulatory provisions of the jurisdiction in which the overseas issuer is incorporated or otherwise established. In particular cases, the Exchange may require other additional documents to be published on the Exchange's website and the issuer's own website; and

Note: The Exchange may consider an application for a waiver from strict compliance with the requirement to publish on the Exchange's website and the issuer's own website the relevant statutes or regulations under rule 24.09(6) for issuers having a dual listing, subject to the conditions that the website addresses of the relevant statutes and regulations applicable to the issuer are disclosed in the listing document; and these websites are easily accessible to the public free of charge.

- (7) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be accompanied, as necessary, by a certified English translation and a certified Chinese translation. The Exchange should be consulted in any such case.

24.09A Rules 24.09(2) and (3) do not apply to listing documents issued by listed issuers unless they are issued in connection with an introduction or a deemed new listing under the GEM Listing Rules.

Chapters 17 and 18 -Continuing Obligations and Financial Information

24.10 [Repealed 1 January 2022]

24.11 [Repealed 1 January 2022]

Annual report and accounts and auditors' report

24.12 The following modifications and additional requirements apply to Chapter 18 and to the extent such modifications and additional requirements conflict with the provisions of Chapter 18, the following provisions shall apply.

24.13 The annual accounts must be audited by a person, firm or company who must be a practising accountant of good standing. Such person, firm or company must also be independent of the issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the International Federation of Accountants and must be:-

- (1) qualified under the PAO for appointment as an auditor of a company and a Registered PIE Auditor under the FRCO; or
- (2) an overseas firm of practising accountants that is a Recognised PIE Auditor of that issuer under the FRCO.

Note: In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an overseas issuer, the Exchange may provide a statement of no objection to that issuer for appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO (see note 2 to rule 7.02(1)).

24.14 The annual accounts must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants or by the International Auditing and Assurance Standards Board of the International Federation of Accountants.

Note: A list of alternative overseas auditing standards that are considered comparable to the standards set out in this rule is published on the Exchange's website, as amended from time to time.

24.15 The report of the auditors must be annexed to all copies of the annual accounts required to be sent by the overseas issuer and indicate whether in the opinion of the auditors the accounts give a true and fair view:

- (1) in the case of the issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the issuer's profit and loss account, of the profit or loss and cash flows for the financial year; and
- (2) in the case where consolidated accounts are prepared, of the state of affairs and profit or loss of the issuer and cash flows of the group.

24.16 The report of the auditors must indicate the act, ordinance or other legislation in accordance with which the annual accounts have been drawn up and the authority or body whose auditing standards have been applied.

24.17 If an overseas issuer is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, the Exchange may allow its accounts to be drawn up to that standard. Reference must, however, be made to the Exchange. If an overseas issuer is in doubt as to what more detailed and, or additional information should be provided, it should contact the Exchange for guidance.

24.18 An auditors' report in a different form may be applicable in the case of banking and insurance companies. The wording of such an auditors' report should make it clear whether or not profits have been stated before transfers to or from undisclosed reserves.

24.18A The annual accounts are required to conform with financial reporting standards acceptable to the Exchange, which are normally HKFRS or IFRS. Where the Exchange allows annual accounts to be drawn up otherwise than in conformity with HKFRS or IFRS, the annual accounts will be required to conform with financial reporting standards acceptable to the Exchange. In such cases the Exchange will normally require the annual accounts to contain a reconciliation statement setting out the financial effect of the material differences (if any) from either HKFRS or IFRS.

Notes:

1. *The suitability of alternative overseas financial reporting standards depends on whether there is any significant difference between the overseas financial reporting standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the overseas financial reporting standards with IFRS.*
2. *A list of alternative overseas financial reporting standards that are considered comparable to HKFRS or IFRS is published on the Exchange's website, as amended from time to time.*

3. *An overseas issuer is also required to include a reconciliation statement in its half-year and quarterly report. The reconciliation statement contained in the annual accounts or half-year or quarterly report must be reviewed by its auditor.*
4. *An overseas issuer with a dual listing that adopts one of the alternative standards referred to in Note 2 above (other than issuers incorporated in a member state of the European Union which have adopted EU-IFRS) for the preparation of its annual accounts must adopt HKFRS or IFRS if it de-lists from the jurisdiction of that alternative standard and must do so for any annual, interim and quarterly financial statements that fall due under the GEM Listing Rules, and are published, after the first anniversary of the date of its de-listing.*

Information to accompany annual report and accounts

- 24.19 An overseas issuer shall include in its directors' report and accounts the information necessary to enable holders of its securities to obtain any relief from taxation to which they are entitled by reason of their holding of such securities.
- 24.20 An overseas issuer shall include in its directors' report and accounts those additional disclosures required of Hong Kong incorporated companies under the provisions of the Companies Ordinance and subsidiary legislations set out in rule 18.07A.
- 24.21 The statement of reserves available for distribution to shareholders required pursuant to rule 18.37 shall be calculated in accordance with any statutory provisions applicable in the overseas issuer's place of incorporation or, in the absence of such provisions, with generally accepted accounting principles.

Half-year reports and quarterly reports

- 24.22 If the overseas issuer publishes a half-year or quarterly report in its country of incorporation or other establishment, the Exchange may authorise it to publish that report (as necessary, translated into English and Chinese) instead of the half-year or quarterly report provided for in Chapter 18, provided that the information given is equivalent to that which would otherwise have been required.

General

- 24.23 All documents furnished by an overseas issuer to the Exchange, including accounts, which are in a language other than English or Chinese must be accompanied by a certified English or Chinese translation. If the Exchange so requires, an additional translation must be prepared in Hong Kong at the overseas issuer's expense by such person or persons as the Exchange shall specify.
- 24.24 Information to be supplied by overseas issuers in a listing document or accounts notwithstanding any obligation in the GEM Listing Rules, the Statutory Rules or any obligation imposed by the laws of Hong Kong shall not be less than that required to be supplied by the overseas issuer in its place of incorporation or other establishment.

Common Waivers

- 24.25 The Exchange will consider applications for waivers from issuers with, or seeking, a dual listing under this chapter, based on the underlying principle that the issuer can demonstrate that strict compliance with both the relevant GEM Listing Rules and the overseas regulations would be unduly burdensome or unnecessary (including where the requirements under the GEM Listing Rules contradict the applicable overseas laws or regulations and strict compliance with the GEM Listing Rules would result in a breach of applicable overseas laws or regulations) and that the granting of such waivers by the Exchange will not prejudice the interest of the investing public. In particular, the Exchange will consider applications for waivers from strict compliance with rules 12.11, 14.08, 16.18(3)(a), 24.09(6) and paragraph 15(3)(c) of Appendix 1A from overseas issuers with, or seeking, a dual listing under this chapter. The Exchange will consider these applications on individual merit based on all relevant facts and circumstances, including compliance with the prescribed conditions as set out in the relevant rules.
- 24.26 An overseas issuer may apply for waivers from the requirements of other rules which the Exchange will consider on a case by case basis, based on the general principles set out in Chapter 2 and rule 24.25.

Company Information Sheet

- 24.27 An overseas issuer with a listing under this chapter (including a dual listing) that meets any of the following criteria should publish a Company Information Sheet on the relevant information as soon as possible on the Exchange's website and the overseas issuer's website:
- (1) there are novel waiver(s) granted to the issuer (for example, where an overseas issuer is allowed to take alternative measures to meet any core shareholder protection standards set out in Appendix 3 without providing such standards in its constitutional documents);
 - (2) the laws and regulations in its home jurisdiction and primary market are materially different from those required by Hong Kong laws regarding:
 - (a) the rights of holders of its securities and how they can exercise their rights;
 - (b) directors' powers and investor protection; and
 - (c) the circumstances under which its minority shareholders may be bought out or may be required to be bought out after a successful takeover or share repurchase; or
 - (3) it is subject to any withholding tax on distributable entitlements or any other tax that is payable by shareholders (e.g. capital gains tax, inheritance or gift taxes).

The Exchange may also at its own discretion require an issuer to publish a Company Information Sheet if it is of the view it will be informative to investors.

Notes:

1. *The purpose of the Company Information Sheet is to enable investors to easily locate specific information on the differences between the overseas requirements to which an overseas issuer is subject and the Hong Kong requirements.*
2. *The relevant information to be disclosed under GEM Rule 24.27(3) includes details of the relevant tax(es) and whether Hong Kong investors have any tax reporting obligations.*

24.28 An overseas issuer that is required to publish a Company Information Sheet must update it from time to time to reflect any material change to the information disclosed within it as soon as practicable after such a change occurs.