

## Chapter 25

### EQUITY SECURITIES

#### ISSUERS INCORPORATED IN THE PEOPLE'S REPUBLIC OF CHINA

##### Preliminary

- 25.01 (1) Overseas issuers incorporated in the common law jurisdictions of Bermuda and Cayman Islands may list on GEM provided that certain additional requirements set out or referred to in Chapter 24 are fulfilled. The legal system in the PRC is not based on a common law system. Furthermore, existing PRC law imposes various restrictions affecting the use of foreign exchange in the PRC and its remittance out of the PRC. Under current PRC law, only PRC citizens and legal persons are permitted to own the domestic shares (內資股) of a PRC issuer (which pay dividends in Renminbi), and only foreign investors and investors from the regions of Hong Kong, Macau and Taiwan are permitted to own the overseas listed foreign shares (境外上市外資股) of a PRC issuer (which pay dividends in a foreign currency). As a result, although under PRC law such domestic shares and foreign shares are all shares of a PRC issuer, the two kinds of shares in effect operate in separate markets subject to different investor demands.
- (2) To deal with the different markets in which a PRC issuer's shares may be traded as well as with the non-common law basis of the PRC legal system, certain additional requirements, modifications and exceptions to the GEM Listing Rules are necessary in order for a PRC issuer to obtain and to maintain a listing of its securities on GEM.
- (3) The purpose of this Chapter is to clarify that the GEM Listing Rules apply as much to PRC issuers as they do to Hong Kong and other overseas issuers, subject to the additional requirements, modifications and exceptions set out or referred to in this Chapter. Among such requirements are that (a) PRC issuers are expected to present their annual accounts in accordance with HKFRS, IFRS or CASBE; (b) the articles of association of PRC issuers must contain provisions which will reflect the different nature of domestic shares and overseas listed foreign shares (including H shares) and the different rights of their respective holders; and (c) disputes involving holders of H shares and arising from a PRC issuer's articles of association, or from any rights or obligations conferred or imposed by the Company Law and any other relevant laws and regulations concerning the affairs of the PRC issuer, are to be settled by arbitration in either Hong Kong or the PRC at the election of the claimant.
- (4) However, if changes in PRC law or market practices materially alter the validity or accuracy of any of the foregoing statements, then the Exchange may impose additional requirements or make listing of the equity securities of a PRC issuer subject to special conditions as the Exchange considers appropriate. Whether or not any such changes in PRC law or market practices occur, the Exchange retains its general power to impose additional requirements and make special conditions under rule 2.07.
- 25.02 In circumstances where the PRC issuer is or is to be listed on another stock exchange as well as on GEM, the provisions of the GEM Listing Rules, unless otherwise stated, apply in their entirety, save for any additional requirements, modifications and exceptions set out in this Chapter (or elsewhere in the GEM Listing Rules).

25.02A The Exchange may exercise its power under rule 2.07 to waive, modify or not require compliance with a GEM Listing Rule for a PRC issuer with, or seeking, a listing under this chapter on a case by case basis. For PRC issuers with, or seeking, a dual listing under this chapter, the Exchange will consider applications for waivers from strict compliance with a GEM Listing Rule based on the underlying principle that the issuer can demonstrate that strict compliance with both the relevant GEM Listing Rule and the regulations of the other exchange of primary listing 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.

25.03 The Exchange will consider an application by a PRC issuer for listing on GEM under this Chapter only if:—

- (1) it is duly incorporated in the PRC as a joint stock limited company (股份有限公司);
- (2) the Exchange is satisfied that there are adequate communication and cooperation arrangements in place between the Exchange and the relevant securities regulatory authorities in the PRC;
- (3) in the case of a PRC issuer having equity securities listed or to be listed on another stock exchange, the Exchange is satisfied that there is adequate communication arrangement in place between the Exchange and such other stock exchange authority; and
- (4) the Exchange is satisfied that applicable PRC law and the articles of association of the PRC issuer provide a sufficient level of shareholder protection to holders of H shares.

### **Definitions**

25.04 In this Chapter

- (1) the term “close associate” means:—
  - (a) in relation to an individual means:—
    - (i) his spouse;
    - (ii) any child or step-child, natural or adopted, under the age of 18 years of the individual or of his spouse (together with (a)(i) above, the “family interests”);
    - (iii) the trustees, acting in their capacity as such trustees, of any trust of which he or any of his family interests is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object;
    - (iv) [Repealed 3 June 2010]
    - (v) any company (including an equity joint venture established under PRC law) in the equity capital of which he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or any amount specified in applicable PRC law as the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any subsidiary of this company; and

- (vi) any company with which or individual with whom he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where he, his family interests, and/or any of the trustees referred to in (a)(iii) above, acting in their capacity as such trustees, taken together directly or indirectly have 30% (or any amount specified in applicable PRC law as the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture; and
  
- (b) in relation to a company means:—
  - (i) its subsidiary or holding company or a fellow subsidiary of its holding company;
  - (ii) 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 the company's knowledge) a discretionary object;
  - (iii) [Repealed 3 June 2010]
  - (iv) any other company (including an equity joint venture established under PRC law) in the equity capital of which the company, its subsidiary or holding company, a fellow subsidiary of its holding company, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, taken together are directly or indirectly interested so as to exercise or control the exercise of 30% (or any amount specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings, or to control the composition of a majority of the board of directors and any subsidiary of this other company; and
  - (v) any other company with which or any individual with whom the company, its subsidiary or holding company, a fellow subsidiary of its holding company, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, taken together are directly or indirectly interested in a cooperative or contractual joint venture (whether or not constituting a separate legal person) under PRC law where it, its subsidiary or holding company, a fellow subsidiary of its holding company, and/or any of the trustees referred to in (b)(ii) above, acting in their capacity as such trustees, taken together directly or indirectly have 30% (or any amount specified in applicable PRC law as the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more interest either in the capital and/or assets contributions to such joint venture or in the contractual share of profits or other income from such joint venture,

- (2) the term “PRC Governmental Body” means:—
- (a) PRC Central Government, including the State Council of the PRC (中國國務院), State Ministries and Commissions (國家部委), Bureaus and Administrations directly under the State Council (國務院直屬機構), State Council Offices and Institutions (國務院辦事機構及直屬國務院事業單位), Bureaus supervised by State Ministries and Commissions (國家部委代管局);
  - (b) PRC Provincial-level Governments, including Provincial Governments (省政府), Municipalities directly under the Central Government (直轄市) and Autonomous Regions (自治區), together with their respective administrative arms, agencies and institutions; or
  - (c) PRC Local Governments immediately under the PRC Provincial-level Governments, including prefectures (區), municipalities (市) and counties (縣), together with their respective administrative arms, agencies and institutions that is not engaging in commercial business or operating another commercial entity.

*Note: For clarity, entities under the PRC Government that are engaging in commercial business or operating another commercial entity will be excluded from this definition.*

25.04A In the case of a PRC issuer, the requirements of rules 5.02A and 5.13A also apply to supervisors of the issuer with the term “directors” replaced by “supervisors”.

#### **Chapter 6A – Sponsors**

25.05 [Repealed 1 October 2013]

#### **Chapter 9 – Suspension and Resumption of Trading, Cancellation and Withdrawal of Listing**

25.06 The references in rules 9.19, 9.20 and 9.23 to “shareholders” shall be construed to mean “holders of H shares”.

#### **Chapter 11 – Qualifications for Listing**

25.07 The following modifications and additional requirements apply:—

- (1) the Exchange reserves the right, in its discretion, to refuse a listing of securities of a PRC issuer if it believes that it is not in the interest of the public in Hong Kong to list them;
- (2) the PRC issuer must appoint, and maintain throughout the period its 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 number;
- (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; and
- (5) where two or more registers or branch registers of securities are maintained by a PRC issuer, it will not be necessary for the Hong Kong register to contain particulars of the shares registered on any other register or branch register.

25.08 [Repealed 1 July 2008]

25.09 [Repealed 1 July 2008]

25.10 Under rule 11.04, the Exchange requires a new applicant to make disclosure where it has a director, or controlling shareholder and, in relation only to the initial listing document, substantial shareholder (including the respective close associates of each) with a business or interest which competes or may compete with the business of the group. In this connection, in the case of a new applicant which is a PRC issuer, "controlling shareholder" means any shareholder or other person or group of persons together entitled to exercise, or control the exercise of 30% (or such other amount as may from time to time be specified in applicable PRC law as being the level for triggering a mandatory general offer or for otherwise establishing legal or management control over a business enterprise) or more of the voting power at general meetings of the new applicant or who is in a position to control the composition of the majority of the board of directors of the new applicant. For the purposes of this rule, the Exchange will normally not consider a PRC Governmental Body (as defined in rule 25.04) as a controlling shareholder of a PRC issuer.

25.11 [Repealed 1 January 2012]

- 25.12 Rules 11.02 and 11.30(1) do not apply to domestic shares or foreign shares other than H shares of a PRC issuer.
- 25.13 (1) In addition to the requirements of Chapter 5, the independent non-executive directors of a PRC issuer must also be able to demonstrate an acceptable standard of competence and adequate commercial or professional experience to ensure that the interests of the general body of shareholders will be adequately represented.
- (2) Supervisors of a PRC issuer must have the character, experience and integrity and be able to demonstrate a standard of competence commensurate with their position as supervisors. The Exchange may request further information regarding the background, experience, other business interests or character of any supervisor or proposed supervisor.
- 25.14 In addition to the requirement of rule 25.10, the Exchange may from time to time determine that certain persons or entities should be treated as connected persons of a PRC issuer for the purposes of the connected transaction provisions of Chapter 20.

### **Chapter 12 – Application Procedures and Requirements**

- 25.15 (1) [Repealed 1 October 2013]
- (2) The forms of declaration, undertaking and acknowledgement to be lodged under rule 12.26(9) may require additional adjustment by virtue of the laws to which the PRC issuer is subject.
- 25.16 [Repealed 1 October 2013]
- 25.17 [Repealed 1 October 2013]
- 25.17A A certified copy of the document issued by the China Securities Regulatory Commission or other PRC competent authority expressly approving the PRC issuer's listing on the Exchange must be lodged with the Exchange by a new applicant at least 4 clear business days before the proposed hearing date.

## Chapter 13 – Restrictions on Purchase, Disposal and Subscription

25.18 A PRC issuer may purchase its own shares on GEM in accordance with the provisions of this rule and rules 13.03 to 13.14. Although such provisions normally apply to a PRC issuer's equity securities which are listed on GEM and which are or are proposed to be purchased on GEM, when seeking shareholders' approval to make purchases of such securities on GEM or when reporting such purchases, a PRC issuer should provide information on the proposed or actual purchases of any or all of its equity securities, whether or not listed or traded on GEM. Therefore, in the case of a PRC issuer, rule 13.06 is amended and restated in its entirety to read as follows:

"For the purposes of rules 13.03 to 13.14, "shares" shall mean shares of all classes listed on GEM and securities listed on GEM which carry a right to subscribe or purchase shares of the PRC issuer, provided that references to "shares" in rules 13.08 and 13.13 shall also include shares of all classes listed on any stock exchange and securities that are listed on any stock exchange which carry a right to subscribe or purchase shares of such PRC issuer, and provided further that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the PRC issuer or subsidiary of the PRC issuer, as the case may be."

25.19 (1) References to "ordinary resolution" in rules 13.07 to 13.09 shall mean, for a PRC issuer, the special resolutions of shareholders in general meetings and of holders of domestic shares and foreign shares (and, if applicable, H shares) at separate meetings of such holders conducted in accordance with such issuer's articles of association for approving share repurchases.

(2) For a PRC issuer, rule 13.08(7) is restated in its entirety as follows:—

"a statement as to the consequences of any purchases which shall arise under either or both of the Takeovers Code and/or any similar applicable law of which the directors are aware, if any."

(3) For a PRC issuer, the reference to "10% of the existing issued share capital of the PRC issuer" in rule 13.09(1) is amended to mean "10% of the total amount of existing issued H shares of the PRC issuer".

## Chapter 14 – Listing Documents

25.20 The following modifications and additional requirements apply to the contents of listing documents:

- (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 constitutional documents of the PRC issuer in so far as they may affect shareholders' rights and protection and directors' powers (using, and covering at the least, the same subject headings as is required by Section 2 in Part C of Appendix 11 in respect of PRC issuers);
- (3) the listing document must contain a summary of the relevant PRC law; and

*Note: In general, the relevant PRC law to be summarised normally would be expected to cover matters such as taxation on the PRC issuer's income and capital, tax (if any) deducted on distributions to shareholders, foreign exchange controls or restrictions, company law, securities regulations or other relevant laws or regulations, and any PRC law which regulates or limits the PRC issuer's major business(es) or the industry in which it mainly operates.*

- (4) 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, and where any 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 25.20(3) applies, the PRC 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 relevant PRC law. In particular cases, the Exchange may require other additional documents to be published on the Exchange's website and the issuer's own website.

25.20A Rules 25.20(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

### *General*

25.21 Whilst Chapters 17 and 18 apply equally to PRC issuers, the Exchange may be prepared to agree to such modifications as it considers appropriate in a particular case.

25.22 Conversely, the Exchange may impose further additional requirements in a particular case (see, for example, rule 25.14). The additional requirements currently imposed by the Exchange in respect of PRC issuers are set out in Part C of Appendix 11. The Exchange may add to, waive or not require compliance with, the requirements of Chapters 17 and 18, on a case by case basis in its discretion.

25.22A The reference to "every member" in rule 18.03 shall mean and refer to only registered holders of the PRC issuer's H shares.

*Pre-emptive rights*

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

“17.39 Except in the circumstances mentioned in rule 17.41, the directors of the PRC issuer shall obtain the approval by a special resolution of shareholders in general meeting and the approvals by special resolutions of holders of domestic shares and overseas listed foreign shares (and, if applicable, H shares) (each being otherwise entitled to vote at general meetings) at separate class meetings conducted in accordance with the PRC issuer’s articles of association, prior to authorising, allotting, issuing or granting:—

- (1) shares;
- (2) securities convertible into shares; and
- (3) options, warrants or similar rights to subscribe for any shares or such convertible securities.

*Note: Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the PRC issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the PRC issuer entitled to be offered them) pro-rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro-rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rule 17.41.*

17.40 Notwithstanding rule 17.41, the directors of the PRC issuer shall obtain the approval by special resolution of its shareholders in general meeting, prior to allotting any voting shares if such allotment would effectively alter the control of the PRC issuer.

17.41 No such approval as is referred to in rule 17.39 shall be required in the case of authorising, allotting or issuing shares if, but only to the extent that,

- (1) it is made under a bonus or capitalisation issue to the shareholders of the PRC issuer, which excludes for that purpose any shareholder that is resident in a place outside the PRC and Hong Kong, provided that the directors of the PRC issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the PRC issuer entitled to the issue, pro rata (apart from fractional entitlements) to their existing holdings; or

*Notes: (1) The PRC issuer must make enquiries regarding the legal restrictions under the laws of the relevant place and the requirements of the relevant regulatory body or stock exchange and may only exclude such overseas shareholders on the basis that, having made such enquiries, it would be necessary or expedient to do so.*

- (2) *If any shareholders that are resident outside the PRC and Hong Kong are excluded from an offer of securities pursuant to rule 17.41(1), the PRC issuer shall include an explanation for the exclusion in the relevant circular or document containing the offer of securities. PRC issuers shall ensure that the circular or offer document is delivered to such shareholders for their information subject to compliance with the relevant local laws, regulations and requirements.*
- (2) the shareholders of the PRC issuer have by special resolution of its shareholders in general meeting given approval, either unconditionally or subject to such terms and conditions as may be specified in the resolution, for the PRC issuer to authorise, allot or issue, either separately or concurrently once every twelve months, not more than twenty per cent of each of the existing issued domestic shares and overseas listed foreign shares of the PRC issuer; or
- (3) such shares are part of the PRC issuer's plan at the time of its establishment to issue domestic shares and overseas listed foreign shares and which plan is implemented within fifteen months from the date of approval by China Securities Regulatory Commission or such other competent state council securities regulatory authority.

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

*2 Notwithstanding any issue of securities pursuant to a general mandate given under rule 17.41, the PRC issuer must at all times comply with the prescribed minimum percentage requirements concerning shares held by the public, as set out in rule 11.23."*

*Annual report and accounts and auditors' report*

25.24 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.

25.25 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 PRC 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 the 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; or
- (3) [Repealed 1 January 2022]

- (4) under the mutual recognition agreement, a PRC firm of practising accountants which has been approved by the China Ministry of Finance and the China Securities Regulatory Commission as being suitable to act as an auditor or a reporting accountant for a PRC incorporated company listed in Hong Kong and is a Recognised PIE Auditor under section 20ZT of the FRCO on the condition that the PRC issuer has adopted CASBE for the preparation of its annual financial statements.

*Notes:*

1. *In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by a PRC 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)).*
2. *The mutual recognition agreement referred to in (4) above means the agreement between the Mainland of China and Hong Kong in 2009 for mutual recognition of qualified auditors from either jurisdiction (home jurisdiction) to act as auditors of corporations incorporated in the home jurisdiction and listed in the other jurisdiction.*

- 25.26 The accounts must be audited to a standard comparable to that required in Hong Kong or under International Standards on Auditing or China Auditing Standards.
- 25.27 The report of the auditors must be annexed to all copies of the annual accounts required to be sent by the PRC 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 in the case of the issuer's cash flow statement, of the cash flows for the financial year; and
  - (2) in the case where consolidated accounts are prepared, of the state of affairs, the profit or loss and the cash flows of the issuer and the group of which the issuer is the holding company.
- 25.28 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.
- 25.29 If the PRC 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.
- 25.30 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.

*Information to accompany annual report and accounts*

- 25.31 A PRC 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.
- 25.32 A PRC 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.
- 25.33 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 PRC or, in the absence of such provisions, with generally accepted accounting principles.

*Half-year and quarterly reports*

- 25.34 If the PRC issuer publishes a half-year or quarterly report in the PRC, the Exchange may authorise it to publish that report (if necessary, translated into English and Chinese) instead of the half-year and quarterly reports provided for in Chapter 18, provided that the information given is equivalent to that which would otherwise have been required.

**Despatch of circular and listing document**

- 25.34A The timing for despatching a circular under rules 17.46(2), 19.41(b), 19.51, 20.44(1) and 23.06 is modified to require a PRC issuer to despatch the circular on or before the deadline for giving notice of the general meeting under the Company Law.
- 25.34B The timing for despatching a listing document under rule 19.57 is modified to require a PRC issuer to despatch the listing document on or before the deadline for giving notice of the general meeting under the Company Law.

**Chapter 19 – Notifiable Transactions**

- 25.34C Rule 19.07(4) is amended by adding the following provisions:

In respect of a PRC issuer whose domestic shares are listed on a PRC stock exchange, the market capitalisation of its PRC listed domestic shares is to be determined based on the average closing price of those shares for the 5 business days immediately preceding the transaction.

Where a PRC issuer has issued unlisted domestic shares, the market capitalisation of its unlisted domestic shares is calculated by reference to the average closing price of its H shares for the 5 business days preceding the transaction.

**Chapter 23 – Share Option Schemes**

- 25.34D The Exchange may waive the exercise price requirement under Note 1 to rule 23.03(9) for a share option scheme of a PRC issuer dually listed on the Exchange and a PRC stock exchange, provided that: (i) the scheme involves only shares listed on the PRC stock exchange; and (ii) the scheme contains provisions to ensure that the exercise price of the options is no less than the prevailing market price of the relevant shares on the PRC stock exchange at the time of grant of the options.

### **Listing on a PRC stock exchange**

25.35 A PRC issuer shall not apply for the listing of any of its foreign shares on a PRC stock exchange unless the Exchange is satisfied that the relative rights of the holders of overseas listed foreign shares are adequately protected.

### **Constitutional documents**

25.36 A PRC issuer shall not at any time permit or cause any amendment to be made to its articles of association which would cause the same to cease to comply with the provisions of Appendix 3 or Section 1 of Part C of Appendix 11 of the GEM Listing Rules.

### **Other requirements applicable to PRC issuers**

25.37 A PRC issuer shall publish on the Exchange's website and the issuer's own website the following:—

- (a) [Repealed 4 October 2021]
- (b) a report showing the state of the issued share capital of the PRC issuer;
- (c) the PRC issuer's latest audited financial statements and the directors', auditors' and supervisors' reports thereon;
- (d) special resolutions of the PRC issuer;
- (e) reports showing the number and nominal value of securities repurchased by the PRC issuer since the end of the last financial year, the aggregate amount paid for such securities and the maximum and minimum prices paid in respect of each class of securities repurchased (with a breakdown between domestic shares and foreign shares (and, if applicable, H shares)); and
- (f) a copy of the latest annual return filed with the Administration for Industry and Commerce or other relevant PRC authority.
- (g) [Repealed 4 October 2021]

25.37A A PRC issuer shall make available copies of the following at a place in Hong Kong:

- (a) a complete duplicate register of shareholders (for inspection by the public and shareholders free of charge, and for copying by shareholders at reasonable charges); and
- (b) the minutes of meetings of shareholders (for inspection by shareholders free of charge, and for copying by shareholders at reasonable charges).

25.38 A PRC issuer shall appoint one or more receiving agents in Hong Kong and pay to such agents dividends declared and other monies owing in respect of securities listed on GEM to be held, pending payment, in trust for the holders of such securities.

25.39 A PRC issuer shall ensure that all its listing documents include the statements stipulated below and shall instruct and cause each of its share registrars not to register the subscription, purchase or transfer of any of its shares in the name of any particular holder unless and until such holder delivers to such share registrar a signed form in respect of such shares bearing statements to the following effect:—

- (1) The acquirer of shares agrees with the PRC issuer and each shareholder of the PRC issuer, and the PRC issuer agrees with each shareholder, to observe and comply with the Company Law, the Regulations and the articles of association of the PRC issuer.
- (2) The acquirer of shares agrees with the PRC issuer, each shareholder, director, supervisor, manager and officer of the PRC issuer and the PRC issuer acting for itself and for each director, supervisor, manager and officer agrees with each shareholder to refer all differences and claims arising from the articles of association or any rights or obligations conferred or imposed by the Company Law or other relevant laws and administrative regulations concerning the affairs of the PRC issuer to arbitration in accordance with the articles of association, and any reference to arbitration shall be deemed to authorise the arbitration tribunal to conduct hearing in open session and to publish its award. Such arbitration shall be final and conclusive.
- (3) The acquirer of shares agrees with the PRC issuer and each shareholder of the PRC issuer that shares in the PRC issuer are freely transferable by the holder thereof.
- (4) The acquirer authorises the PRC issuer to enter into a contract on his behalf with each director and officer whereby such directors and officers undertake to observe and comply with their obligations to shareholders stipulated in the articles of association.

All documents of title for equity securities (including certificates for H shares) of the PRC issuer listed on GEM and listing documents relating thereto should include the statements above, modified as appropriate, to refer to the relevant equity securities, and the PRC issuer shall instruct its registrar for the relevant equity securities to act accordingly.

25.40 A PRC issuer shall observe and comply with the Company Law, the Regulations and the PRC issuer's articles of association.

25.41 A PRC issuer shall enter into a contract in writing with every director and officer containing at least the following provisions:—

- (1) an undertaking by the director or officer to the PRC issuer to observe and comply with the Company Law, the Regulations, the articles of association, the Takeovers Code and the Share Buy-backs Code and an agreement that the PRC issuer shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment;
- (2) an undertaking by the director or officer to the PRC issuer acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the articles of association; and
- (3) an arbitration clause as follows:—
  - (a) Whenever any disputes or claims arise from this contract, the company's articles of association or any rights or obligations conferred or imposed by the Company Law or other relevant laws and administrative regulations concerning the affairs of the company between (i) the company and its directors or officers; and (ii) a holder of overseas listed foreign shares and a director or officer of the company, the parties concerned shall resolve such disputes and claims through arbitration.

- (b) Where a dispute or claim described above is referred to arbitration, the entire dispute or claim shall be resolved through arbitration; all persons who have a cause of action based on the same facts giving rise to the dispute or claim or whose participation is necessary for the resolution of such dispute or claim, if they are shareholders, directors, supervisors, manager or other officers of the company or the company, shall submit to arbitration.
- (c) Disputes over who is a shareholder and over the share register do not have to be resolved through arbitration.
- (d) The party seeking arbitration may elect to have the dispute or claim arbitrated either by the China International Economic and Trade Arbitration Commission in accordance with its arbitration rules or by the Hong Kong International Arbitration Centre in accordance with its securities arbitration rules. Once the party seeking arbitration submits a dispute or claim to arbitration, the other party must submit to the arbitral body selected by the party seeking the arbitration.
- (e) If the party seeking arbitration elects to arbitrate the dispute or claim at the Hong Kong International Arbitration Centre, then either party may apply to have such arbitration conducted in Shenzhen according to the securities arbitration rules of the Hong Kong International Arbitration Centre.
- (f) The laws of the People's Republic of China shall govern the arbitration of disputes or claims described in clauses (a), (b) and (c) above, unless otherwise provided by law or administrative regulations.
- (g) The award of the arbitral body is final and shall be binding on the parties thereto.
- (h) This agreement to arbitrate is made by the director or officer with the company on its own behalf and on behalf of each shareholder.
- (i) Any reference to arbitration shall be deemed to authorise the arbitral tribunal to conduct hearings in open session and to publish its award.

25.42 A PRC issuer shall enter into a contract in writing with every supervisor containing at least the following provisions:—

- (a) an undertaking by the supervisor to the PRC issuer to observe and comply with the Company Law, the Regulations and the articles of association and an agreement that the PRC issuer shall have the remedies provided in the articles of association and that neither the contract nor his office is capable of assignment;
- (b) an undertaking by the supervisor to the PRC issuer acting as agent for each shareholder to observe and comply with his obligations to shareholders stipulated in the articles of association; and
- (c) the arbitration clause set forth in rule 25.41(3), subject to necessary modifications.

25.43 All notices or other documents required under Chapter 17 to be sent by the PRC issuer to the Exchange or to holders of the PRC issuer's securities listed on GEM shall be in English with a Chinese translation or in Chinese with an English translation.

## **General**

- 25.44 References in Chapter 19 to an issuer's "accounts" shall mean, in the case of a PRC issuer, the latest published audited accounts or consolidated accounts of such PRC issuer which have been prepared in accordance with Hong Kong Financial Reporting Standards, International Financial Reporting Standards or China Accounting Standards for Business Enterprises as provided for in rule 18.04.
- 25.45 All documents furnished by a PRC issuer, 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 PRC issuer's expense by such person or persons as the Exchange shall specify.
- 25.46 Information to be supplied by PRC 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 PRC issuer under applicable PRC law.