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TECH news

Hong Kong Listing Rules – Housekeeping Amendments

The Stock Exchange of Hong Kong Limited (the “**Stock Exchange**”) announced on 17 February 2006 that certain housekeeping amendments have been introduced to its Main Board Listing Rules (the “**Main Board Rules**”) and its Growth Enterprise Market Listing Rules (the “**GEM Rules**”). These amendments came into effect on 1 March 2006.

This TechNews provides an overview of the major housekeeping amendments made to the Main Board Rules and the GEM Rules.

The main purposes of the housekeeping amendments are to require listed issuers to disclose additional information to the public; to provide certain clarifications; to codify some existing interpretations or practices; to remove certain inconsistencies; and to align certain listing rules requirements with the Hong Kong Companies Ordinance or the prevailing accounting standards.

Apart from the housekeeping amendments, the Stock Exchange has also introduced amendments to the composition of the Listing Nominating Committee and the Listing Committee, and minor amendments to Chapter 15A of the Main Board Rules in respect of the listing of structured products.

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This publication is intended to provide only general information for clients and contacts of Tricor Services group. It does not purport to be comprehensive nor should it be relied upon or taken as a substitute for proper professional advice concerning specific situations which should be sought in a timely manner. Changes in law or circumstances may occur after the issue date which may make information contained in this publication no longer accurate. Please pay attention to its date of issue.

The major housekeeping amendments to the Main Board Rules and the GEM Rules are summarised as follows:

1. CHAPTER 13 OF THE MAIN BOARD RULES AND CHAPTER 17 OF THE GEM RULES – CONTINUING OBLIGATIONS

| Rule No. | Previous Provisions | Current Provisions |
|--|---|--|
| Advance to an Entity 13.13 to 13.15A of the Main Board Rules 17.15 to 17.17A of the GEM Rules | <ul style="list-style-type: none">A general disclosure obligation will arise where:<ul style="list-style-type: none">(i) any of the 5 Percentage Ratios, as defined in Rule 14.07 of the Main Board Rules or Rule 19.07 of the GEM Rules (the “Percentage Ratios”), of the relevant advance to an entity exceeds 8%; or(ii) the increased amount of the relevant advance to an entity since the previous disclosure is 3% or more under any of the 5 Percentage Ratios.A trade receivable is not excluded from “an advance to an entity” . | <ul style="list-style-type: none">The applicable tests have been amended from the 5 Percentage Ratios tests to only the Total Assets test. So, a general disclosure obligation will now arise where:<ul style="list-style-type: none">(i) the relevant advance to an entity exceeds 8% under the Assets Ratio, as defined in Rule 14.07(1) of the Main Board Rules or Rule 19.07(1) of the GEM Rules (the “Assets Ratio”); or(ii) the increased amount of the relevant advance to an entity since the previous disclosure is 3% or more under the Assets Ratio.New Rule 13.15A of the Main Board Rules and new Rule 17.17A of the GEM Rules exclude a trade receivable from “an advance to an entity” where:<ul style="list-style-type: none">(i) any trade receivable (other than as a result of the provision of financial assistance) arose in the ordinary and usual course of business of the issuer; and(ii) the transaction from which the trade receivable arose was on normal commercial terms. |



1. CHAPTER 13 OF THE MAIN BOARD RULES AND CHAPTER 17 OF THE GEM RULES – CONTINUING OBLIGATIONS (CONT’)

| Rule No. | Previous Provisions | Current Provisions |
|---|--|--|
| <p>Financial Assistance and Guarantees to Affiliated Companies of an Issuer</p> <p>13.16 & 13.22 of the Main Board Rules</p> <p>17.18 & 17.24 of the GEM Rules</p> | <ul style="list-style-type: none"> A general disclosure obligation will arise where any of the 5 Percentage Ratios of the financial assistance to affiliated companies of an issuer, and guarantees given for facilities granted to affiliated companies of an issuer, together in aggregate exceeds 8%. Where the circumstances giving rise to the above disclosure under Rule 13.16 of the Main Board Rules or Rule 17.18 of the GEM Rules continue to exist at the issuer’s quarterly (for GEM issuers only) or half yearly period end or annual financial year end, the issuer’s quarterly (for GEM issuers only), half-year or annual report shall include a proforma combined balance sheet of affiliated companies as at the latest practicable date. | <ul style="list-style-type: none"> The applicable tests have been amended from the 5 Percentage Ratios tests to only the Total Assets test. So, a general disclosure obligation will now arise where the financial assistance to affiliated companies of an issuer, and guarantees given for facilities granted to affiliated companies of an issuer, together in aggregate exceeds 8% under the Assets Ratio. Amendments have been made to Rule 13.22 of the Main Board Rules and Rule 17.24 of the GEM Rules to clarify that a combination of balance sheets of affiliated companies is not “proforma” financial information as required under Rule 4.29 of the Main Board Rules or Rule 7.31 of the GEM Rules. |
| <p>Timing for the Release of Results Announcement</p> <p>13.45 of the Main Board Rules</p> | <ul style="list-style-type: none"> A Main Board issuer shall inform the Stock Exchange of decisions on dividends and results either between 12:30 and 1:30 p.m. or after the market closes at 4:00 p.m. to enable the Stock Exchange to release the information outside of trading hours on its website and any other electronic news dissemination system operated by the Stock Exchange. | <ul style="list-style-type: none"> The timing for the release of results announcement pursuant to Rule 13.45 of the Main Board Rules has been changed from 4:00 p.m. to 4:15 p.m. so that the release will not affect the price of derivative products in the futures market which closes at 4:15 p.m. |



1. CHAPTER 13 OF THE MAIN BOARD RULES AND CHAPTER 17 OF THE GEM RULES – CONTINUING OBLIGATIONS (CONT’)

| Rule No. | Previous Provisions | Current Provisions |
|--|--|--|
| <p>Timing for the Release of Results Announcement (cont’)</p> | <p>13.45 of the Main Board Rules</p> | <p>[The timing for the release of results announcement for GEM issuers is not specified in the GEM Rules, but in the booklet entitled “Procedures to submit documents to and communicate with the Exchange” issued by the Stock Exchange (the “Booklet”). The Booklet specifies that the results announcement for GEM issuers shall be submitted to the Stock Exchange between 12:30 and 1:00 p.m. or after 4:00 p.m. In practice, the Stock Exchange has already requested GEM issuers to submit the results announcement between 12:30 and 1:00 p.m. or after 4:15 p.m. It is therefore anticipated that the relevant provision in the Booklet will be amended to change the time from 4:00 p.m. to 4:15 p.m.]</p> |
| <p>Appointment or Re-designation of Director or Supervisor or Change in an Executive Office</p> | <ul style="list-style-type: none"> An issuer shall include the details of any newly appointed or re-designated director (and, in the case of a PRC issuer, any newly appointed or re-designated supervisor) as specified in Rule 13.51(2) (a) to (h) of the Main Board Rules or Rule 17.50(2) (a) to (h) of the GEM Rules in the announcement of his/her appointment or re-designation. | <ul style="list-style-type: none"> An issuer shall disclose in the announcement the details of a newly appointed or re-designated director or supervisor as specified in Rule 13.51(2) (a) to (x) of the Main Board Rules or Rule 17.50(2) (a) to (x) of the GEM Rules, i.e. additional biographical information shall be disclosed. Such additional details mirror the disclosure made in the director’s or supervisor’s declaration and undertaking to the Stock Exchange. |
| <p>13.51(2) of the Main Board Rules</p> | <p>17.50(2) of the GEM Rules</p> | <p>Accordingly, an issuer should disclose such details required under Rule 13.51(2) (a) to (x) of the Main Board Rules or Rule 17.50(2) (a) to (x) of the GEM Rules in respect of any</p> |

1. CHAPTER 13 OF THE MAIN BOARD RULES AND CHAPTER 17 OF THE GEM RULES – CONTINUING OBLIGATIONS (CONT’)

| Rule No. | Previous Provisions | Current Provisions |
|--|--|--|
| Inclusion of Stock Code in Documents 13.51A of the Main Board Rules 17.52A of the GEM Rules | <ul style="list-style-type: none">No such provision. | <ul style="list-style-type: none">New Rule 13.51A of the Main Board Rules and new Rule 17.52A of the GEM Rules are introduced to codify the practice to require an issuer to set out its stock code in a prominent position on the cover page or, where there is no cover page, the first page of all its announcements, circulars and other documents published pursuant to the Main Board Rules or the GEM Rules. |

2. CHAPTER 14 OF THE MAIN BOARD RULES AND CHAPTER 19 OF THE GEM RULES – NOTIFIABLE TRANSACTIONS

| Rule No. | Previous Provisions | Current Provisions |
|---|---|--|
| Definition of “transaction” 14.04 of the Main Board Rules 19.04 of the GEM Rules | <ul style="list-style-type: none">Rule 14.04(1)(e) of the Main Board Rules and Rule 19.04(1)(e) of the GEM Rules provide that the granting of an indemnity or a guarantee or provision of financial assistance by (i) an issuer to its subsidiaries, or (ii) an issuer that is a banking company in its ordinary and usual course of business, does not constitute a transaction under Chapter 14 of the Main Board Rules or Chapter 19 of the GEM Rules. | <ul style="list-style-type: none">The Rules are amended to exempt a listed securities house from the disclosure and shareholder approval provisions of Chapter 14 of the Main Board Rules or Chapter 19 of the GEM Rules in respect of IPO financing and securities margin financing provided by the listed securities house in its ordinary and usual course of business and upon normal commercial terms.New Rule 14.04(10A) of the Main Board Rules and new Rule 19.04(10A) of the GEM Rules define a “securities house” as a corporation licensed or registered under the Securities and Futures Ordinance for Type 1 (dealing in securities) or Type 8 (securities margin financing) regulated activity. |

2. CHAPTER 14 OF THE MAIN BOARD RULES AND CHAPTER 19 OF THE GEM RULES - NOTIFIABLE TRANSACTIONS (CONT')

| Rule No. | Previous Provisions | Current Provisions |
|---|---|---|
| <p>Figures used in Total Assets Calculation</p> <p>14.19 of the Main Board Rules</p> <p>19.19 of the GEM Rules</p> | <ul style="list-style-type: none"> In calculating total assets, the Stock Exchange may require the exclusion of all liabilities irrespective of whether they are regarded as part of the consideration. | <ul style="list-style-type: none"> The Rules are amended to clarify that total assets should be calculated without deducting liabilities. |
| <p>Discloseable Transaction Circulars</p> <p>14.64(4) of the Main Board Rules</p> <p>19.64(5) of the GEM Rules</p> | <ul style="list-style-type: none"> The Rules require that a discloseable transaction circular shall contain information regarding the assets being acquired or disposed of, being the information which is necessary to be included in the announcement under Rule 14.60 of the Main Board Rules or Rule 19.60 of the GEM Rules. | <ul style="list-style-type: none"> Since a discloseable transaction also includes a transaction that does not involve any acquisition or disposal of assets, such as a financial assistance transaction, the Rules are amended to clarify that a discloseable transaction circular shall contain information that is required to be included in the announcement under Rule 14.60 of the Main Board Rules or Rule 19.60 of the GEM Rules, and not restricted to the information regarding the assets being acquired or disposed of. |
| <p>Major Transaction Circulars</p> <p>14.67(5) of the Main Board Rules</p> | <ul style="list-style-type: none"> No such provision. | <ul style="list-style-type: none"> A new Rule 14.67(5) of the Main Board Rules has replaced the previous Rule 14.66(5). This new Rule 14.67(5) provides that a circular issued in relation to an acquisition constituting a major transaction must contain a management discussion and analysis of results of the business, company or companies being acquired. |



2. CHAPTER 14 OF THE MAIN BOARD RULES AND CHAPTER 19 OF THE GEM RULES - NOTIFIABLE TRANSACTIONS (CONT')

| Rule No. | Previous Provisions | Current Provisions |
|---|--|--|
| <p>Very Substantial Acquisition Circulars</p> <p>14.69(7) of the Main Board Rules</p> <p>19.69(8) of the GEM Rules</p> | <ul style="list-style-type: none"> The Rules require that a circular issued in relation to a very substantial acquisition shall contain a discussion and analysis of the performance of the enlarged group for the 3 preceding financial years. | <ul style="list-style-type: none"> The Rules are amended to clarify that a circular for a very substantial acquisition shall contain two separate management discussion and analysis statements, one on the existing group and one on the business or company acquired or to be acquired, for the 3 preceding financial years in both cases. |

3. CHAPTER 14A OF THE MAIN BOARD RULES AND CHAPTER 20 OF THE GEM RULES – CONNECTED TRANSACTIONS

| Rule No. | Previous Provisions | Current Provisions |
|--|---|--|
| <p>Definition of "connected person"</p> <p>14A.12 of the Main Board Rules</p> <p>20.12 of the GEM Rules</p> | <ul style="list-style-type: none"> The Rules specify that the definition of "connected person" does not include a wholly-owned subsidiary of the listed issuer. | <ul style="list-style-type: none"> The Rules are amended to clarify that both direct and indirect wholly-owned subsidiaries of a listed issuer are not regarded as connected persons. |
| <p>Definition of "continuing connected transaction"</p> <p>14A.14 of the Main Board Rules</p> <p>20.14 of the GEM Rules</p> | <ul style="list-style-type: none"> The Rules specify that continuing connected transactions are connected transactions involving the provision of goods or services, which are carried out on a continuing or recurring basis, and are expected to extend over a period of time. | <ul style="list-style-type: none"> The Rules are amended to codify the existing interpretation that continuing connected transactions include financial assistance. |



3. CHAPTER 14A OF THE MAIN BOARD RULES AND CHAPTER 20 OF THE GEM RULES – CONNECTED TRANSACTIONS (CONT’)

| Rule No. | Previous Provisions | Current Provisions |
|---|---|---|
| <p>Fully Exempted Connected Transactions</p> <p>14A.31(1) of the Main Board Rules</p> <p>20.31(1) of the GEM Rules</p> | <ul style="list-style-type: none"> The Rules specify that an intra-group transaction which is exempt from all the reporting, announcement and independent shareholders’ approval requirements should be a transaction between a listed issuer and a non wholly-owned subsidiary or between its non wholly-owned subsidiaries, where no connected person(s) of the listed issuer (other than at the level of its subsidiaries) is/are (individually or together) entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting of any of the subsidiaries concerned. | <ul style="list-style-type: none"> The Rules are amended to clarify that the applicability of the intra-group transaction exemption is subject to the proviso that none of the subsidiaries concerned itself falls within the definition of “connected persons” under Rule 14A.11 or Rule 1.01 of the Main Board Rules or Rule 20.11 or Rule 1.01 of the GEM Rules. |

4. APPENDIX 3 AND APPENDIX 13B OF THE MAIN BOARD RULES AND APPENDIX 3 AND APPENDIX 11B OF THE GEM RULES – ARTICLES OF ASSOCIATION

| Rule No. | Previous Provisions | Current Provisions |
|--|--|---|
| <p>Removal of Director</p> <p>4(3) of Appendix 3 and 5(1) of Appendix 13B of the Main Board Rules</p> <p>4(3) of Appendix 3 and 5(1) of Appendix 11B of the GEM Rules</p> | <ul style="list-style-type: none"> The Rules require the Articles of Association or equivalent document of an issuer to specify that, unless otherwise provided by law applicable to the issuer, the issuer in a general meeting shall have the power to remove any director before the expiration of his/her term of office by a special resolution. | <ul style="list-style-type: none"> The Rules are amended to provide that, where it is not otherwise provided by law applicable to the issuer, a director may be removed by an ordinary resolution in a general meeting instead of a special resolution. This amendment is to reflect the requirement of the Hong Kong Companies Ordinance. <p>[In view of such amendment, your Company’s articles of association or bye-laws may need to be altered].</p> |

5. OTHER AMENDMENTS

| Rule No. | Summary of the Amendments |
|--|---|
| 1.01 of the Main Board Rules and the GEM Rules | <ul style="list-style-type: none">To change the definition of "subsidiary" to reflect amendments made to the definition of "subsidiary" in the Hong Kong Companies Ordinance. |
| New Rule 4.05A of the Main Board Rules and new Rule 7.04A of the GEM Rules | <ul style="list-style-type: none">To require a new listing applicant to disclose, in the accountants' report for its listing document, pre-acquisition financial information on material businesses/companies acquired during the trading record period in order to provide full and useful information to investors. |
| 4.11 of the Main Board Rules and 7.12 of the GEM Rules | <ul style="list-style-type: none">To clarify that any change in the accounting standards applied in an accountants' report is not permitted. |
| 4.28 of the Main Board Rules and 7.30 of the GEM Rules | <ul style="list-style-type: none">To clarify that for a new listing applicant without any published audited consolidated financial statements, any comparison for classifying acquisitions required under the relevant Listing Rule should be made instead to the new applicant's latest audited consolidated financial statements in the accountants' report. |
| 8.17 of the Main Board Rules and 5.14 of the GEM Rules | <ul style="list-style-type: none">To reflect the change of name of "The Hong Kong Institute of Company Secretaries" to "The Hong Kong Institute of Chartered Secretaries" (the "Institute") and amendment is also made to the Rules in reference to the Institute's "members" to "Ordinary Members" (as regards the qualification of the company secretary of a listed issuer). |
| 9.11(1) of the Main Board Rules and 12.23(2) of the GEM Rules | <ul style="list-style-type: none">To include as documents required to be submitted by a new applicant to the Stock Exchange in an application for listing (i) an undertaking of each sponsor pursuant to Rule 3A.03 of the Main Board Rules or Rule 6A.03 of the GEM Rules; and (ii) a statement of each sponsor pursuant to Rule 3A.08 of the Main Board Rules or Rule 6A.08 of the GEM Rules. |



5. OTHER AMENDMENTS (CONT')

| Rule No. | Summary of the Amendments |
|---|--|
| 11.02 and Form C1 of Appendix 5 of the Main Board Rules | <ul style="list-style-type: none"> To amend the deadline for submission of the final proof of the listing document and the listing application by a new applicant to the Stock Exchange from 3 clear business days to 4 clear business days prior to the date of hearing of the formal application for listing, so as to remove inconsistency with Rule 9.12 of the Main Board Rules. |
| 41 of Appendix 1A and 34 of Appendix 1B of the Main Board Rules and the GEM Rules | <ul style="list-style-type: none"> To require an issuer to provide additional information regarding its management in the listing documents, i.e. current and past directorships in other listed public companies for the previous three years in respect of every director and senior manager or proposed director and senior manager. |
| 1(1) of Appendix 15 and 4(1) of Appendix 16 of the Main Board Rules and 18.50B(1) and 18.80(1) of the GEM Rules | <ul style="list-style-type: none"> To align the disclosure requirements required under these Rules with the prevailing accounting standards. |
| Form G in Appendix 5 of the Main Board Rules | <ul style="list-style-type: none"> To amend the Form G (Form of Share Buyback Report to the Stock Exchange) to conform to the reporting requirements set out in Chapter 10 of the Main Board Rules. |

SUMMARY

Overall, we consider that the said housekeeping amendments, though scattered and minor for the most part, show the efforts of the Stock Exchange to clear up uncertainties and inconsistencies in the Listing Rules and to enhance disclosure requirements.

Should you need further information or clarification regarding this TechNews, please do not hesitate to approach any of your usual Tricor contacts.

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