

Chapter 19

EQUITY SECURITIES

OVERSEAS ISSUERS

Preliminary

- 19.01 The Exchange Listing Rules apply as much to overseas issuers as they do to Hong Kong issuers, subject to the additional requirements, modifications or exceptions set out or referred to in this Chapter.
- 19.02 The Exchange Listing Rules for overseas issuers are different, depending on whether their primary listing is or is to be on the Exchange or on another stock exchange. The first section deals with rules for primary listings, and the second section deals with secondary listings.
- 19.03 Overseas issuers are encouraged to contact the Exchange if they envisage any difficulties in complying fully with the relevant requirements.

PRIMARY LISTINGS

- 19.04 This section sets out the additional requirements, modifications or exceptions which apply to an overseas issuer whose primary listing is or is to be on the Exchange.

Qualifications for Listing

- 19.05 The following additional requirements apply:—
- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if:—
 - (a) it believes that it is not in the public interest to list them; or
 - (b) the Exchange is not satisfied that the overseas issuer is incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong;

Note: Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents to provide standards of shareholder protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents as the Exchange may require.

- (2) the overseas issuer must appoint, and maintain throughout the period the overseas issuer's securities are listed on the Exchange 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 or residential telephone number, as the case may be;
 - (d) his telex and/or facsimile number; 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 XI of the Companies Ordinance, if applicable.

- (3) (a) in the case of registered securities (other than those transferable by endorsement and delivery), 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; and
- (b) in the case of bearer securities, provision must be made for the payment of dividends or interest and repayment of capital in Hong Kong, or such other place as the Exchange may agree;
- (4) unless the Exchange otherwise agrees only securities registered on the Hong Kong register may be traded on the Exchange. In the case of depositary receipts, an issuer is only required to ensure that the depositary maintains a register of holders of the depositary receipts in Hong Kong in order for the depositary receipts to be traded in Hong Kong;

- (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; and
- (6) where an overseas issuer wishes to obtain its primary listing on the Exchange by way of an introduction in the circumstances set out in rule 7.14(3)
 - (a) it must comply with the following additional requirements:—
 - (i) provide the Exchange with details of the relevant regulatory provisions (statutory or otherwise) in its place of incorporation or other establishment and demonstrate to the satisfaction of the Exchange that the standards of shareholder protection provided by that jurisdiction are not lower than those pertaining in Hong Kong;
 - (ii) include in the listing document a summary of the above-mentioned regulatory provisions in a form to be decided or agreed upon by the Exchange on a case by case basis and in the Exchange's absolute discretion, provided that, in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13, the summary need only be included in the documents offered for inspection (see Appendix 13); and
 - (iii) with the exception of those overseas issuers which are incorporated or otherwise established in any jurisdiction in respect of which additional requirements are set out in Appendix 13, 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) in addition the overseas issuer must comply with such other requirements as the Exchange may on a case by case basis impose, in order to ensure that Hong Kong investors will be afforded the same level of protection as exists in Hong Kong in relation to the holding of securities in a Hong Kong issuer. The additional requirement currently imposed by the Exchange in respect of certain jurisdictions are set out in Appendix 13. The Exchange may add to or waive, modify or not require compliance with these requirements on a case by case basis; and

- (c) attention is particularly drawn to the requirement in rule 7.14(3) that any reorganisation by way of scheme of arrangement or by any other means whereby securities are issued by an overseas issuer in exchange for the securities of one or more listed Hong Kong issuers and the listing of the latter issuer or issuers is withdrawn at the same time as the securities of the overseas issuer are listed, must first be approved by a special resolution of the shareholders of the listed Hong Kong issuer or issuers.

Application Procedures and Requirements

19.06 Attention is particularly drawn to the requirement in rule 9.11(1) that the proof of the listing document submitted for review must be marked in the margin to indicate where the relevant items from Chapter 11 and/or Appendix 1 have been met. This will expedite the application.

19.07 The following modifications apply:—

- (1) in rules 9.09, 9.11(3a), 9.11(19), 9.11(38) and 9.20(1) the references to “directors” should be read as references to members of the overseas issuer’s governing body; and
- (2) [Repealed 2 November 2009]
- (3) the declaration and undertaking to be lodged under rule 9.11(38) may require adjustment by virtue of the laws to which the overseas issuer is subject.

Listing Documents

19.08 Attention is particularly drawn to:—

- (1) the requirement to include a statement of responsibility (see rule 11.12);
- (2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 11.11);
- (3) the requirement to include a summary of the provisions of the constitutive documents of the overseas issuer and the relevant regulatory provisions (statutory or otherwise) of the jurisdiction in which the overseas issuer is incorporated or otherwise established, in the listing document (see rules 19.10(2) and (3) and 19.10A); and

- (4) the modifications and additional requirements which apply in the case of an introduction in the circumstances set out in rule 7.14(3), where the overseas issuer is incorporated or otherwise established in certain named jurisdictions, and which are set out in Appendix 13.

19.09 The Exchange may be prepared to permit the omission 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 has a listing 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.

19.10 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 (using the same subject headings as is required by Section 2 of Appendix 13 in respect of certain named jurisdictions). This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 and which is applying for listing by way of an introduction in the circumstances set out in rule 7.14(3) (see Appendix 13);
- (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. This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 and which is applying for listing by way of an introduction in the circumstances set out in rule 7.14(3) (see Appendix 13);

- (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 7.14(3), the following modifications, exceptions and additional requirements apply:—
- (a) the listing document must contain (but without in any way limiting the scope of the summary required by rule 19.10(2)) a comparison between the provisions of the listed Hong Kong issuer's existing memorandum and articles of association and the proposed content of the constitutive documents of the overseas issuer (in the same format as is set out in Section 2 of Appendix 13 in respect of certain named jurisdictions). This requirement is modified in the case of an overseas issuer which is incorporated or otherwise established in a jurisdiction in respect of which additional requirements are set out in Appendix 13 (see Appendix 13);
 - (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 issuer were made up;
 - (d) where the consolidated assets and liabilities of the overseas 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 overseas issuer's property interests (see paragraph 51A of Part A of Appendix 1 and Chapter 5) will normally only be required by the Exchange if:—
 - (i) the Hong Kong 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 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 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 issuer's own use or purely for investment purposes; and
- (e) any valuations required to be included by paragraph 51A of Part A of Appendix 1 and Chapter 5 (as modified by rule 19.10(5)(d)) need only be summarised in the listing document, if a copy of the full valuation report is offered for inspection;
- (6) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the Companies Ordinance, where any of such documents are not in the English language, certified English translations thereof must be available for inspection. In addition, where rule 19.10(3) applies, the overseas issuer must offer for inspection 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 offered for inspection; and
- (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 in English, or accompanied by a certified English translation. For example, overseas issuers subject to Securities and Exchange Commission filing requirements in the United States of America may be able to utilise such documents. The Exchange should be consulted in such cases.

19.10A Rules 19.10(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 Exchange Listing Rules.

Accountants' Reports

19.11 Attention is particularly drawn to the requirement for the reporting accountant to be independent both of the overseas issuer and of any other company concerned (see rule 4.03).

19.12 A report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong.

- 19.13 Reports will normally be required to conform with the requirements as to accounting standards set out in rules 4.11 to 4.13.
- 19.14 Where the Exchange allows a report to be drawn up otherwise than in conformity with Hong Kong Financial Reporting Standards or International Financial Reporting Standards, the report will be required to conform with accounting standards acceptable to the Exchange. In such cases the Exchange will normally require the report to contain a statement of the financial effect of the material differences (if any) from either of the above accounting standards.
- 19.15 As indicated in rules 4.14 to 4.16, where the figures in the accountants' report differ from those in the audited annual accounts, a statement of adjustments must be submitted to the Exchange enabling the figures to be reconciled.

**Restrictions and Notification Requirements
on Overseas Issuers Purchasing their own
Shares on a Stock Exchange**

- 19.16 An overseas issuer may purchase its own shares on the Exchange in accordance with the provisions of rule 10.06.

Continuing Obligations

- 19.17 Whilst Chapter 13 and Appendix 16 apply equally to overseas issuers, the Exchange may be prepared to agree to such modifications as it considers appropriate in a particular case.
- 19.18 Conversely, the Exchange may impose additional requirements in a particular case. In particular, the Exchange may impose such additional requirements as it considers necessary to ensure that investors have the same protection as that afforded to them in Hong Kong. The additional requirements currently imposed by the Exchange in respect of certain jurisdictions are set out in Appendix 13. The Exchange may add to or waive, modify or not require compliance with, these requirements on a case by case basis in its absolute discretion.

Annual report and accounts and auditors' report

- 19.19 The following modifications and additional requirements apply to Appendix 16 insofar as an issuer is an overseas issuer. To the extent such modifications and additional requirements conflict with the provisions of Appendix 16, the following provisions shall apply.
- 19.20 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 overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements on independence issued

by the International Federation of Accountants and, if the overseas issuer's primary listing is or is to be on the Exchange, must be either:—

- (1) qualified under the Professional Accountants Ordinance for appointment as an auditor of a company; or
 - (2) a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants.
- 19.21 The 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.
- 19.22 The report of the auditors must be annexed to all copies of the annual accounts and indicate whether in the opinion of the auditors the accounts give a true and fair view:—
- (1) in the case of the overseas issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the overseas 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 overseas issuer and cash flows of the group.
- 19.23 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.
- 19.24 If the 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.
- 19.25 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.

Listing Fees

- 19.26 Details of the initial listing fee, annual listing fee, subsequent issue fee and other charges together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in Appendix 8.

General

- 19.27 All documents furnished by an overseas issuer, including accounts, which are in a language other than English must be accompanied by a certified English 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.
- 19.28 Information to be supplied by overseas issuers in a listing document or accounts notwithstanding any obligation in the Exchange 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.

SECONDARY LISTINGS

- 19.29 This section sets out the additional requirements, modifications or exceptions which apply to an overseas issuer whose primary listing is or is to be on another stock exchange.

Qualifications for Listing

- 19.30 The following additional requirements apply:—

- (1) the Exchange reserves the right, in its absolute discretion, to refuse a listing of securities of an overseas issuer if:—
 - (a) it believes that it is not in the public interest to list them; or
 - (b) it is not satisfied that the overseas issuer's primary listing is or is to be on an exchange where the standards of shareholder protection are at least equivalent to those provided in Hong Kong;

Note: Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, but that it is possible by means of varying the overseas issuer's constitutive documents to provide standards of shareholder protection equivalent to those provided in Hong Kong, then the Exchange may approve the listing of securities of the overseas issuer subject to the overseas issuer making such variations to its constitutive documents as the Exchange may require.

- (2) the overseas issuer must normally appoint, and maintain throughout the period the overseas issuer's securities are listed on the Exchange 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 or residential telephone number, as the case may be;
- (d) his telex and/or facsimile number; 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 XI of the Companies Ordinance, if applicable.

- (3) listing on the overseas issuer's primary exchange must have been granted before listing on the Exchange can be granted;
 - (4)
 - (a) in the case of registered securities (other than those transferable by endorsement and delivery), 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 provided that adequate arrangements are made to have a share transfer agent in Hong Kong; and
 - (b) in the case of bearer securities, provision must be made for the payment of dividends or interest and repayment of capital in Hong Kong, or such other place as the Exchange may agree;
 - (5) unless the Exchange otherwise agrees only securities registered on the Hong Kong register may be traded on the Exchange; and
 - (6) 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.
- 19.31 The requirement in rule 8.08 that a prescribed percentage of any class of listed securities must at all times be held by the public does not apply.

Application Procedures and Requirements

- 19.32 Attention is particularly drawn to the requirement in rule 9.11(1) that the proof of the listing document submitted for review must be marked in the margin to indicate where the relevant items from Chapter 11 and/or Appendix 1 have been met. This will expedite the application.

19.33 The following modifications apply:—

- (1) in rule 9.09, 9.11(3a), 9.11(19), 9.11(38) and 9.20(1) the references to “directors” should be read as references to members of the overseas issuer’s governing body;
- (2) the one signed copy of the listing document lodged with the Exchange pursuant to rule 9.11(29)(a) may be signed by two members of the overseas issuer’s governing body or by their agents authorised in writing rather than by or on behalf of every director or proposed director; and
- (3) the declaration and undertaking to be lodged under rule 9.11(38) may require adjustment by virtue of the laws to which the overseas issuer is subject.

Listing Documents

19.34 Attention is particularly drawn to:—

- (1) the requirement to include a statement of responsibility (see rule 11.12); and
- (2) the fact that the Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case (see rule 11.11). In particular, the Exchange may require the listing document to contain a summary of the relevant regulatory provisions (statutory or otherwise) which apply to companies with a primary listing on the overseas issuer’s primary stock exchange, in a form to be agreed upon by the Exchange on a case by case basis.

19.35 The Exchange may be prepared to permit the omission 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 has its primary listing 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 on its primary exchange.

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

19.36 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) 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;
- (3) the documents to be offered for inspection will be the documents corresponding to those mentioned in paragraph 53 of Part A and paragraph 43 of Part B of Appendix 1. Unless otherwise provided by the Companies Ordinance, where any of such documents are not in the English language, certified English translations thereof must be available for inspection. In particular cases, the Exchange may require additional documents to be offered for inspection;
- (4) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or primary listing, if different) may be permitted to incorporate in listing documents relevant documents so published. Such documents must be in English, or accompanied by a certified English translation. For example, overseas issuers subject to Securities and Exchange Commission filing requirements in the United States of America may be able to utilise such documents. The Exchange should be consulted in such cases;
- (5) the listing document need not be accompanied by a Chinese translation, unless required to do so by section 342(1) of the Companies Ordinance, but must be in the English language or be accompanied by a certified English translation except that, in the case of a new applicant, the English language version of the listing document may be distributed separately from its Chinese translation (and vice-versa) provided that both are available at each place where, and for so long as, the distribution of such documents takes place; and
- (6) for the purposes of rule 2.11, the overseas issuer need only appoint one authorised representative who need not be a director or secretary but must be a person acceptable to the Exchange. The authorised representative may also be the person authorised to accept service required to be appointed under the provisions of rule 19.30(2). The authorised representative should act as the principal channel of communication between the overseas issuer and the Exchange.

Accountants' Reports

- 19.37 Attention is particularly drawn to the requirement for the reporting accountant to be independent both of the overseas issuer and of any other company concerned (see rule 4.03).
- 19.38 A report will not normally be regarded as acceptable unless the relevant accounts have been audited to a standard comparable to that required in Hong Kong.
- 19.39 Reports are required to conform with accounting standards acceptable to the Exchange which will normally be:—
- (a) Hong Kong Financial Reporting Standards; or
 - (b) International Financial Reporting Standards; or
 - (c) generally accepted accounting principles in the United States of America ("US GAAP").

Where the Exchange allows reports to be drawn up otherwise than in conformity with the accounting standards set out in this rule, the Exchange may, having regard to the exchange on which the overseas issuer has its primary listing, require the report to contain a statement of the financial effect of the material differences (if any) from either of the accounting standards referred to in rule 4.11.

- 19.40 As indicated in rules 4.14 to 4.16, where the figures in the report differ from those in the audited annual accounts, a statement of adjustments must be submitted to the Exchange enabling the figures to be reconciled.

Options, Warrants and Similar Rights

- 19.41 The Exchange may be prepared to vary the limit in rule 15.02(1) for an overseas issuer if the issuer's primary listing is or is to be on another stock exchange where such a limit does not apply.

Share Schemes

- 19.42 The Exchange may be prepared to vary the requirements applicable to schemes involving the issue of or grant of options over shares or other securities by listed issuers to, or for the benefit of, executives and/or employees set out in Chapter 17 for an overseas issuer if its primary listing is or is to be on another stock exchange where different (or no such) requirements apply.

**Restrictions and Notification Requirements
on Overseas Issuers Purchasing their own
Shares on a Stock Exchange**

- 19.43 (1) An overseas issuer may purchase its own shares on the Exchange in accordance with the relevant provisions of rule 10.06, provided that the Exchange will be prepared to waive some or all of the applicable dealing restrictions set out in rule 10.06(2) if the overseas issuer's primary exchange already imposes equivalent dealing restrictions on the overseas issuer in respect of purchases of shares on the Exchange.
- (2) The Exchange will be prepared to waive the requirement to cancel and destroy the documents of title of purchased shares in the case of an overseas issuer whose primary exchange permits treasury stock, provided that the overseas issuer must apply for the relisting of any such shares which are reissued as if it were a new issue of those shares.

Continuing Obligations

- 19.44 Whilst Chapter 13 and Appendix 16 apply equally to overseas issuers, the Exchange will be prepared to agree to such modifications as it considers appropriate in a particular case. In particular, in the case of an overseas issuer whose primary listing is on another regulated, regularly operating, open stock market recognised for this purpose by the Exchange, the Exchange may accept such modifications which provide for equivalent continuing obligations to those imposed by that other stock market.
- 19.45 Conversely, the Exchange may impose additional requirements in a particular case. In particular, if the overseas issuer's primary listing is or is to be on an exchange with regulatory requirements which the Exchange is not satisfied provide equivalent shareholder protection to that provided in Hong Kong, the Exchange may impose such additional requirements as it considers necessary to ensure that the overseas issuer will provide equivalent standards of shareholder protection.

Annual report and accounts and auditors' report

- 19.46 The following modifications and additional requirements apply to Appendix 16 insofar as an issuer is an overseas issuer. To the extent such modifications and additional requirements conflict with the provisions of Appendix 16, the following provisions shall apply.
- 19.47 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 overseas issuer to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the statements on independence issued by the International Federation of Accountants and, if the overseas issuer's primary listing is or is to be on the Exchange, must be either:—

- (1) qualified under the Professional Accountants Ordinance for appointment as an auditor of a company; or
 - (2) a firm of accountants acceptable to the Exchange which has an international name and reputation and is a member of a recognised body of accountants.
- 19.48 The 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.
- 19.49 The report of the auditors must be annexed to all copies of the annual accounts and indicate whether in the opinion of the auditors the accounts give a true and fair view:—
- (1) in the case of the overseas issuer's balance sheet, of the state of its affairs at the end of the financial year and in the case of the overseas 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 overseas issuer and cash flows of the group.
- 19.50 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.
- 19.51 If the 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.
- 19.52 An auditors' report which conforms to the requirements of the International Standards on Auditing issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants is acceptable.
- 19.53 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.

Listing Fees

- 19.54 Details of the initial listing fee, annual listing fee, subsequent issue fee and other charges together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in paragraph 11 of Appendix 8.

General

- 19.55 All documents furnished by an overseas issuer, including accounts, which are in a language other than English must be accompanied by a certified English 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.
- 19.56 Information to be supplied by overseas issuers in a listing document or accounts notwithstanding any obligation in the Exchange 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.
- 19.57 If, in the sole opinion of the Exchange, the majority of trading in the overseas issuer's securities is likely to be on the Exchange, then:—
- (1) the overseas issuer's primary listing must be on a regulated, regularly operating, open stock market which is recognised for this purpose by the Exchange;
 - (2) the overseas issuer must have an adequate nexus with that market; and
 - (3) the primary regulator in that market must have entered into a written agreement with the Exchange governing the parties' respective roles in the regulation of the overseas issuer, in a form acceptable to the Exchange, after prior consultation with the Commission.

Note 1: London Stock Exchange plc and the Irish Stock Exchange Limited are recognised for this purpose by the Exchange. If an overseas issuer's primary listing will be on a different stock market, in these circumstances, then the overseas issuer must satisfy the Exchange that the proposed stock market should be recognised by the Exchange for this purpose.

Note 2: Overseas issuers should note that in these circumstances the Exchange reserves the right to charge the same amounts in listing fees as are payable in the case of a primary listing (see paragraph 11 of Appendix 8).

Note 3: An adequate nexus will be shown where the Exchange is satisfied that there is an established trading market in the overseas issuer's securities in the primary market. In determining whether there is an established trading market the Exchange will normally expect, inter alia, at least 10 per cent. of worldwide trading volume or HK\$1 billion of trading by value in the overseas issuer's securities to have taken place on the overseas issuer's primary exchange during the 12 month period preceding the application for a secondary listing.