

CHAPTER 10

ACQUISITIONS AND REALISATIONS

PART I SCOPE OF CHAPTER

1001 This Chapter sets out the rules for transactions by issuers, principally acquisitions and realisations. It does not matter whether the consideration paid or received is cash, shares, other securities, other assets, or any combination of these. This Chapter also describes how transactions are classified, what the requirements are for announcements, and whether a circular and shareholder approval is required.

PART II DEFINITIONS

1002 Unless the context otherwise requires:

- (1) "transaction" refers to the acquisition or disposal of assets by an issuer or a subsidiary that is not listed on the Exchange or an approved Exchange, including an option to acquire or dispose of assets. It excludes an acquisition or disposal which is in, or in connection with, the ordinary course of its business or of a revenue nature.
- (2) "assets" includes securities and business undertaking(s).
- (3) (a) "net assets" means total assets less total liabilities.
(b) "net profits" means profit or loss before income tax, minority interests and extraordinary items.
(c) the net asset and net profit figures used for comparison with the transaction(s) under consideration will be taken from the latest announced consolidated accounts. The Exchange may allow the issuer's net asset value or net profit to be adjusted to take into account any transaction(s) completed subsequent to the latest announced consolidated accounts provided that adequate information about such transaction(s) has already been announced to shareholders.
- (4) "market value" means the weighted average price of the issuer's shares transacted on the market day preceding the date of the sale and purchase agreement.
- (5) "market capitalisation" of the issuer is determined by multiplying the number of shares in issue by the weighted average price of such shares transacted on the market day preceding the date of the sale and purchase agreement.

PART III BASIS OF VALUATION

1003 In determining the basis of valuation of a transaction, the following rules apply:

- (1) In any acquisition or disposal of shares, the value will be assessed by reference to:
 - (a) in the case of unlisted shares, the net asset value represented by such shares; and
 - (b) in the case of listed shares, the market value represented by such shares.
- (2) In any acquisition or disposal of assets other than shares, the value will be assessed by reference to the book value of the assets or, if a valuation has been carried out for the purpose of the acquisition or disposal, the market value of the assets.
- (3) Where the consideration is in the form of shares, the value of the consideration shall be determined by reference either to the market value of such shares or the net asset value represented by such shares, whichever is higher.

PART IV CLASSIFICATION OF TRANSACTIONS

- 1004 Transactions are classified into the following categories:
 - (a) non-discloseable transactions;
 - (b) discloseable transactions;
 - (c) major transactions; and
 - (d) very substantial acquisitions or reverse takeovers.
- 1005 In determining whether a transaction falls into category (a), (b), (c) or (d) of Rule 1004, the sponsor may aggregate separate transactions completed within the last 12 months and treat them as if they were one transaction. The Exchange retains the discretion to determine whether the aggregation was correctly applied, and/or to direct the sponsor to aggregate other transactions.
- 1006 A transaction may fall into category (a), (b), (c) or (d) of Rule 1004 depending on the size of the relative figures computed on the following bases:
 - (a) The net asset value of the assets to be disposed of, compared with the group's net asset value. This basis is not applicable to an acquisition of assets.
 - (b) The net profits attributable to the assets acquired or disposed of, compared with the group's net profits.
 - (c) The aggregate value of the consideration given or received, compared with the issuer's market capitalisation based on the total number of issued shares excluding treasury shares.
 - (d) The number of equity securities issued by the issuer as consideration for an acquisition, compared with the number of equity securities previously in issue.
 - (e) The aggregate volume or amount of proved and probable reserves to be

disposed of, compared with the aggregate of the group's proved and probable reserves. This basis is applicable to a disposal of mineral, oil or gas assets by a mineral, oil and gas company, but not to an acquisition of such assets.

- 1007
- (1) If any of the relative figures computed pursuant to Rule 1006 is a negative figure, this Chapter may still be applicable to the transaction at the discretion of the Exchange. The sponsor should consult the Exchange.
 - (2) Where the disposal of an issuer's interest in a subsidiary is undertaken in conjunction with an issue of shares by that subsidiary, the relative figures in Rule 1006 must be computed based on the disposal and the issue of shares.

PART V NON-DISCLOSEABLE TRANSACTIONS

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- (1) Unless Rule 703, 905 or 1009 applies, no announcement of the transaction is required if all of the relative figures computed on the bases set out in Rule 1006 amount to 5% or less.
 - (2) However, if the issuer wishes to announce the transaction, the announcement must include:
 - (a) details of the consideration as required in Rule 1010(3); and
 - (b) the value of assets acquired or disposed of as required in Rule 1010(5).

1009 If the consideration is satisfied wholly or partly in securities for which listing is being sought, the issuer must announce the transaction as soon as possible after the terms have been agreed, stating the information set out in Part VI.

PART VI DISCLOSEABLE TRANSACTIONS

- 1010 Where any of the relative figures computed on the bases set out in Rule 1006 exceeds 5%, an issuer must, after terms have been agreed, immediately announce the following:
- (1) Particulars of the assets acquired or disposed of, including the name of any company or business, where applicable.
 - (2) A description of the trade carried on, if any.
 - (3) The aggregate value of the consideration, stating the factors taken into account in arriving at it and how it will be satisfied, including the terms of payment.
 - (4) Whether there are any material conditions attaching to the transaction including a put, call or other option and details thereof.
 - (5) The value (book value, net tangible asset value and the latest available open market value) of the assets being acquired or disposed of, and in respect of the latest available valuation, the value placed on the assets, the party who

commissioned the valuation and the basis and date of such valuation.

- (6) In the case of a disposal, the excess or deficit of the proceeds over the book value, and the intended use of the sale proceeds. In the case of an acquisition, the source(s) of funds for the acquisition.
- (7) The net profits attributable to the assets being acquired or disposed of. In the case of a disposal, the amount of any gain or loss on disposal.
- (8) The effect of the transaction on the net tangible assets per share of the issuer for the most recently completed financial year, assuming that the transaction had been effected at the end of that financial year.
- (9) The effect of the transaction on the earnings per share of the issuer for the most recently completed financial year, assuming that the transaction had been effected at the beginning of that financial year.
- (10) The rationale for the transaction including the benefits which are expected to accrue to the issuer as a result of the transaction.
- (11) Whether any director or controlling shareholder has any interest, direct or indirect, in the transaction and the nature of such interests.
- (12) Details of any service contracts of the directors proposed to be appointed to the issuer in connection with the transaction.
- (13) The relative figures that were computed on the bases set out in Rule 1006.

1011 Where a sale and purchase agreement is entered into, or a valuation is conducted on the assets to be acquired, the issuer must include a statement in the announcement that a copy of the relevant agreement, or valuation, report is available for inspection during normal business hours at the issuer's registered office for 3 months from the date of the announcement.

1012 Where the announcement in Rule 1010 contains a profit forecast, which may include any statement which quantifies the anticipated level of future profits, the issuer must announce the following additional information:

- (a) Details of the principal assumptions including commercial assumptions upon which the forecast is based.
- (b) Confirmation from the issuer's auditors that they have reviewed the bases and assumptions, accounting policies and calculations for the forecast, and setting out their report on the bases, assumptions, policies and calculations.
- (c) A report from the issuer's financial adviser, if one is appointed, confirming that it is satisfied that the forecast has been stated by the directors after due and careful enquiry. If no such adviser has been appointed in connection with the transaction, the issuer must submit a letter to the sponsor from the board of directors confirming that the forecast has been made by them after due and careful enquiry.

1013 (1) Where an issuer enters into a discloseable transaction, a major transaction, a

very substantial acquisition or a reverse takeover and accepts a profit guarantee or a profit forecast (or any covenant which quantifies the anticipated level of future profits) from a vendor of assets / business, the issuer's announcement in Rule 1010 must contain information on the profit guarantee or the profit forecast, including the following:

- (a) The views of the board of directors of the issuer in accepting the profit guarantee or the profit forecast and the factors taken into consideration and basis for such a view;
- (b) The principal assumptions including commercial bases and assumptions upon which the quantum of profit guarantee or the profit forecast is based;
- (c) The manner and amount of compensation to be paid by the vendor in the event that the profit guarantee or the profit forecast is not met and the conditions precedent, if any, and the detailed basis for such a compensation; and
- (d) The safeguards put in place (such as the use of a banker's guarantee) to ensure the issuer's right of recourse in the event that the profit guarantee or the profit forecast is not met, if any.

For the avoidance of doubt, the term "profit guarantee" can only be used for transactions where the vendor will compensate the issuer in cash for any shortfall in the level of profits when it provides a quantifiable anticipated level of future profits.

- (2) With reference to Rule 1013(1), where the transaction is a major transaction, a very substantial acquisition or a reverse takeover, the shareholders' circular must contain the information in Rule 1013(1) and the following:
 - (a) A confirmation from the auditors of the business / assets to be acquired that they have reviewed the bases and assumptions, accounting policies and calculations for the profit guarantee or the profit forecast, and their opinion on the bases, assumptions, policies and calculations; and
 - (b) A statement by the financial advisor to the issuer as to whether or not they are of the view that the transaction is on normal commercial terms and is not prejudicial to the interest of the issuer and its shareholders.
- (3) (a) Where the profit guarantee or the profit forecast has been met, the issuer should immediately announce this via SGXNET. Where the profit guarantee or the profit forecast has not been met, the issuer should immediately announce via SGXNET the following:
 - (i) the variance between the profit guarantee or the profit forecast and the actual profit, and the reason for the variance;
 - (ii) any variation of the rights of the issuer; and
 - (iii) the possible course(s) of action by the issuer to protect the interests of the shareholders of the issuer, if any. Notwithstanding this, the issuer must provide timely updates on the specific

course of action including its progress and outcome of the action.

- (b) Where there is any material variation or amendment in the terms of the agreement, the issuer must immediately make an announcement of such a variation. Where such a variation prejudices the issuer, the board of directors of the issuer must disclose the basis for the acceptance of such a variation.

PART VII MAJOR TRANSACTIONS

1014 (1) Where any of the relative figures as computed on the bases set out in Rule 1006 exceeds:

- (a) for an acquisition, 75% but is less than 100%; or
- (b) for a disposal, 50%,

the transaction is classified as a major transaction. The issuer must, after terms have been agreed, immediately announce the information required in Rule 1010, 1011, 1012 and 1013, where applicable.

- (2) A major transaction must be made conditional upon approval by shareholders in general meeting. A circular containing the information in Rule 1010 must be sent to all shareholders. This rule does not apply in the case of an acquisition of profitable assets if the only limit breached is Rule 1006(b). If the major transaction relates to an acquisition or disposal of mineral, oil or gas asset of a mineral, oil or gas company, the circular to shareholders must contain (i) a qualified person's report that is prepared by an independent qualified person who meets the requirements in Rule 442; and (ii) a statement that no material changes have occurred since the effective date of the qualified person's report. The effective date of the qualified person's report must not be more than 6 months from the date of publishing the circular. In the case of a major acquisition, the circular to shareholders must contain a valuation report prepared by an independent qualified person in accordance with the VALMIN Code, SPE-PRMS or an equivalent standard that is acceptable to the Exchange. The effective date of the valuation report must not be more than 6 months from the date of publishing the circular and the contents of the qualified person's report must comply with the requirements as set out in paragraph 5 of Practice Note 4C. The valuation report may form part of the qualified person's report. In ascertaining whether or not the issuer is required to seek shareholders' approval for the transaction, the issuer should refer to the general principles set out in Practice Note 10A. Where the issuer is unclear, the issuer should consult and clarify with the sponsor as soon as possible.

(3) Where a major transaction is not completed or is rescinded by any party to the transaction due to any reason, the issuer must immediately announce via SGXNET the following:

- (a) the reasons for the non-completion or rescission of the transaction;
- (b) the financial impact of the non-completion or rescission on the issuer; and

- (c) the possible course(s) of action to protect the interests of the shareholders of the issuer. Notwithstanding this, the issuer must provide timely updates on the specific course of action including its progress and outcome.
- (4) If the major transaction relates to an acquisition or disposal of mineral, oil or gas assets of a mineral, oil or gas company, the circular to shareholders required in Rule 1014(2) must contain an independent qualified person's report that meets the requirements in Rule 441.

PART VIII VERY SUBSTANTIAL ACQUISITIONS OR REVERSE TAKEOVERS

- 1015
- (1) (a) Where an acquisition of assets (whether or not the acquisition is deemed in the issuer's ordinary course of business) is one where any of the relative figures as computed on the bases set out in Rule 1006 is 100% or more, or is one which will result in a change in control of the issuer, the transaction is classified as a very substantial acquisition or reverse takeover respectively. An issuer undertaking such a transaction must appoint a full sponsor. The issuer must, after terms have been agreed, immediately announce the following:
 - (i) the information required in Rules 1010, 1011, 1012, and 1013, where applicable; and
 - (ii) the latest two years of historical financial information (of the assets to be acquired) and one year of proforma financial information (of the enlarged group).
 - (b) The acquisition must be made conditional upon the approval of shareholders and, if applicable, the issue of a listing and quotation notice by the Exchange.
 - (2) For very substantial acquisition, the enlarged group must comply with the requirements in Rules 406(3) and (7), Part IX of Chapter 4 and if applicable, Part XII of Chapter 4. The issuer must appoint a competent and independent valuer to value the target business. For the avoidance of doubt, the valuation report for a mineral, oil and gas company must comply with Rules 441 and 442.
 - (3) For reverse takeover, the incoming business and the enlarged group must comply with the following:
 - (a) the requirements in Rule 406, Part IX of Chapter 4 and if applicable, Rule 416 or Part XII of Chapter 4. The issuer must appoint a competent and independent valuer to value the incoming business. For the avoidance of doubt, the valuation report for a mineral, oil and gas company must comply with Rules 441 and 442. With regard to Rule 406(1), the proportion of share capital in public hands must be at least 15% based on the total number of issued shares excluding treasury shares of the enlarged group. Where reference is made to "offer document", it shall mean a shareholders' circular as required pursuant to Rule 1015(2); and

- (b) the requirements specified in Rules 420, 421 and 422 or 443 are applicable to:
 - (i) persons who are existing controlling shareholders or who will become controlling shareholders of the issuer as a result of the asset acquisition; and
 - (ii) associates of any person in (i).

Rule 1015(3)(b) is also applicable to very substantial acquisition.

- (c) where the consideration for the acquisition of assets by the issuer is to be satisfied by the issue of shares, the price per share of the issuer after adjusting for any share consolidation must not be lower than S\$0.20.

- (4) In relation to the assets to be acquired, the shareholders' circular must contain the following:

- (a) information required by Rules 407, 416, Part XII of Chapter 4, 1010, 1011, 1012 and 1013, where applicable. Where reference is made in Rule 407 to "offer document", it shall mean a shareholders' circular as required pursuant to Rule 1015(2);
- (b) a statement by the sponsor and each financial adviser in the form set out in Practice Note 12A.

- (5) Unless the Exchange prescribes otherwise, the issuer must comply with the requirements set out in Appendix 4F which sets out the following:

- (a) the main steps in the very substantial acquisition or reverse takeover process; and
- (b) documents to be submitted by the sponsor to the Exchange. The sponsor must give the Exchange any additional information or documents which the Exchange requires, either in the particular case or generally.

- (6) The issuer's sponsor must provide the confirmation required in Appendix 10A that the enlarged group is suitable for listing and complies with the Rules.

- (7) The Exchange may suspend the securities of the issuer until:

- (a) the information required in Rule 1010 has been announced (unless the only information missing is insignificant); and
- (b) the issuer has met the admission requirements set out in Rule 1015(3)(a).

- (8) Rule 1015 does not apply in the case of an acquisition of profitable asset(s) if the only limit breached is Rule 1006(b).

- (9) Where a very substantial acquisition or reverse takeover is not completed or is rescinded by any party to the transaction due to any reason, the issuer must immediately announce via SGXNET the following:

- (a) the reasons for the non-completion or rescission of the transaction;
- (b) the financial impact of the non-completion or rescission on the issuer; and
- (c) the possible course(s) of action to protect the interests of the shareholders of the issuer. Notwithstanding this, the issuer must provide timely updates on the specific course of action including its progress and outcome.

1016 The Exchange normally applies the same criteria for IPO to reverse takeovers and may modify any requirement in this Chapter or impose additional requirements if it considers it appropriate, taking into account the rationale for the acquisition, the nature of the issuer's business and its track record.

1017 **Cash Companies**

(1) If the assets of an issuer consist wholly or substantially of cash or short-dated securities, the issuer must consult its sponsor and notify the Exchange. The issuer's securities will normally be suspended. The suspension will remain in force until the issuer has a business which is able to satisfy the Exchange's requirements for a new listing, and all relevant information has been announced. Upon completion of the disposal of its operations and/or assets, the issuer must do the following:

- (a) Place 90% of its cash and short-dated securities (including existing cash balance and the consideration arising from the disposal(s) undertaken by the issuer) in an account opened with and operated by an escrow agent which is part of any financial institution licensed and approved by the Authority. The amount that is placed in the escrow account cannot be drawn down until the completion of the acquisition of a business which is able to satisfy the Exchange's requirements for a new listing, except for payment of expenses incurred in a reverse takeover approved by shareholders and pro-rata distributions to shareholders; and
- (b) Provide monthly valuation of its assets and utilisation of cash, and quarterly updates of milestones in obtaining a new business, to the market via SGXNET.

Taking the above compliance into account, the Exchange may allow continued trading in a cash company's securities on a case-by-case basis, subject to:

- (c) Contractual undertakings from the issuer's directors, controlling shareholders, chief executive officer and their associates, to observe a moratorium on the transfer or disposal of all their interests, direct and indirect, in the securities of the issuer; and
 - (d) The period of the moratorium must commence from the date the shareholders approve the disposal of business, up to and including the completion date of the acquisition of a business which is able to satisfy the Exchange's requirements for a new listing.
- (2) The Exchange will proceed to remove an issuer from the Official List if it is unable to meet the requirements for a new listing within 12 months from the time

it becomes a cash company. The issuer may (through its sponsor) apply to the Exchange for a maximum 6-month extension to the 12-month period if it has already signed a definitive agreement for the acquisition of a new business, of which the acquisition must be completed in the 6-month extension period. The extension is subject to the issuer providing information to investors on its progress in meeting key milestones in the transaction. In the event the issuer is unable to meet its milestones, or complete the relevant acquisition despite the extension granted, no further extension will be granted and the issuer will be ~~required removed from the Official List to delist~~ and a cash exit offer in accordance with Rule 1308 should be made to its shareholders within 6 months.

PART IX OPTIONS TO ACQUIRE OR DISPOSE OF ASSETS

1018 The following Rules apply to options to acquire or dispose of assets, in addition to the other requirements in this Chapter:

- (1) If the option is not exercisable at the discretion of the issuer, shareholder approval must be obtained at the time of grant of the option.
- (2) If the option is exercisable at the discretion of the issuer and the exercise terms are fixed at the time of grant, shareholder approval must be obtained at the time of grant of the option.
- (3) If the option is exercisable at the discretion of the issuer and the exercise terms are not fixed, but are based on factors existing at the time of exercise, the issuer must obtain shareholder approval at the time of exercise of the option. At the time of acquisition or grant of the option, the issuer must make an appropriate announcement.