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**CHAPTER 4 ADVISERS****PART A - DEFINITIONS****4.01 Definitions**

In this Chapter, the following terms and expressions have the following meanings:

- (a) **“conflict of interest”** in relation to an Adviser means circumstances or relationships which affect or may affect the ability of an Adviser to act independently and objectively or where the Adviser has an interest in the outcome of the proposal which interferes or is likely to interfere with the independence and objectivity of the Adviser; and
- (b) **“Public Document”** means any document issued by a listed corporation to the public or to the securities holders of a listed corporation pursuant to these Requirements.

**PART B - ADMISSION OF ADVISERS****4.02 Admission as an Adviser**

- (1) The Exchange may authorise an Adviser to act as an Approved Adviser or Continuing Adviser, if it deems fit.
- (2) An Approved Adviser is authorised to undertake both initial listing activities and post-listing activities, whilst a Continuing Adviser may undertake post-listing activities only.
- (3) Any person wishing to act as an Approved Adviser must -
  - (a) be a corporate finance adviser licensed by the SC;
  - (b) have in its full-time employment at all times, at least 1 personnel (**“Eligible Person”**) licensed by the SC to advise on corporate finance, with the following competency and experience as a supervisor or manager, who has:
    - (i) been involved in at least 1 initial public offering or a transaction resulting in a significant change in the business direction or policy of a listed issuer of the Main Market or ACE Market in the 7 years immediately preceding the date of application for admission to the Register of Advisers;
    - (ii) been involved in at least 3 initial listings on the LEAP Market;
    - (iii) been involved in at least 3 corporate proposals of the Main Market or ACE Market relating to a rights issue, major disposal, withdrawal of listing, a scheme of compromise, arrangement, amalgamation or reconstruction in the 7 years immediately preceding the date of application for admission to the Register of Advisers;
    - (iv) acted as an independent adviser for at least 3 corporate proposals pursuant to the requirements of the Take-Overs and Mergers Code in the 7 years immediately preceding the date of application for admission to the Register of Advisers; or
    - (v) been involved in or acted for a combination of at least 3 activities referred in sub-Rules (ii), (iii) or (iv) above;

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- (c) maintain sufficient professional indemnity insurance for the purposes of listing activities and post-listing activities, where applicable;
  - (d) have a satisfactory reputation and work record;
  - (e) lodge with the Exchange an undertaking in the form as prescribed by the Exchange; and
  - (f) satisfy such conditions as may be imposed by the Exchange.
- (4) For the purpose of fulfilling the Eligible Person's criteria under sub-Rule (3)(b)(i) above, the Exchange may take into account relevant experience from any initial public offering, reverse take-over or back door listing completed in respect of a corporation listed on a comparable stock exchange.
- (5) Any person wishing to act as Continuing Adviser must –
- (a) be a corporate finance adviser licensed by the SC;
  - (b) have a satisfactory reputation and work record;
  - (c) lodge with the Exchange an undertaking in the form as prescribed by the Exchange; and
  - (d) satisfy such conditions as may be imposed by the Exchange.
- (6) Fulfilment of the requirements of sub-Rules (3) and (5) above does not in itself ensure a person's admission to the Register of Advisers for the LEAP Market. The Exchange retains an absolute discretion to –
- (a) admit the person to the Register of Advisers ;
  - (b) subject the admission to such other conditions as the Exchange thinks fit;
  - (c) decline an admission which is contrary to public interest, having particular regard to the need for investor protection; or
  - (d) decline an admission which will or is likely to adversely affect the reputation of the Exchange or the integrity of the market.

## **PART C – ADVISER'S OBLIGATIONS**

### **4.03 Compliance with these Requirements**

An Adviser must at all times observe and comply with these Requirements and any other instruction or directive issued or condition imposed by the Exchange.

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**4.04 Conflict of interest involving an Adviser**

- (1) An Adviser must have controls, procedures and other safeguards to maintain its independence and avoid conflict of interest in relation to its role as an Adviser to the applicant or listed corporation. Where a conflict of interest exists or is likely to exist, all possible steps must be taken to avoid or resolve such conflict of interest. An Adviser must make full disclosure to the board of directors of the applicant or listed corporation and in the Public Document of the nature and extent of the conflict of interest and the steps taken to address such conflict. Where a conflict of interest cannot be resolved satisfactorily, an Adviser must not act for an applicant or listed corporation.
- (2) An Adviser must ensure that none of its directors, principal officers or persons related with any such director or principal officer, holds the position of a director of an applicant or a listed corporation for whom it acts as an Adviser.
- (3) An Adviser must not advise an applicant or a listed corporation if it has 10% or more of the enlarged number of issued shares in the applicant or listed corporation. However, an asset management company licensed by the SC or a venture capital company registered with the SC and operated by the Adviser is not subject to this restriction.
- (4) An applicant and Adviser must declare the following in the listing application:
  - (a) nature and extent of the conflict of interest or potential conflict of interest (if any);
  - (b) the parties to the conflict; and
  - (c) measures taken for resolving, eliminating, or mitigating the situations or conflict of interest.

**4.05 Act with integrity, due care and skill**

An Adviser must act with integrity, and use due care and skill at all times when acting for any applicant or listed corporation.

**4.06 Liaison with the Exchange**

An Adviser must liaise with the Exchange on matters concerning the Adviser's responsibilities and other matters which should be brought to the Exchange's attention. In this regard, an Adviser must, among others -

- (a) notify the Exchange immediately when it believes or becomes aware that a matter reported by it to the board of directors of its listed corporation has not been satisfactorily resolved resulting in a breach of these Requirements;
- (b) notify the Exchange if there is any change to its Eligible Person;
- (c) notify the Exchange when it receives any written warning or disciplinary inquiry from any other regulatory authority; and
- (d) notify the Exchange of any material adverse change in its financial or operating position.

**4.07 Appropriate and adequate systems, procedures, policies and resources**

An Adviser must, on a continuous basis, have adequate systems, procedures, policies and resources to discharge its obligations under these Requirements.

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#### 4.08 Record-keeping

An Adviser must maintain and retain sufficient information about its advisory activities and a record of-

- (a) the due diligence enquiries on an applicant or listed corporation;
- (b) key discussions, advice and decision-making processes in relation to the listed corporation and the basis for the advice and decisions; and
- (c) compliance with these Requirements which are applicable to Adviser, any conditions imposed by the Exchange on the Adviser and all applicable legislation and guidelines issued by regulatory authorities.

### PART D – LISTING ACTIVITIES

#### 4.09 Sound understanding of an applicant

An Approved Adviser must have a sound understanding and updated knowledge of the applicant, its business, operation, the industry it operates in and any other issues that might affect the business and industry of the applicant.

#### 4.10 Suitability of an applicant for listing

- (1) An Approved Adviser must assess the suitability of an applicant seeking admission to the LEAP Market.
- (2) In assessing whether an applicant is suitable for listing, an Approved Adviser must make all reasonable due diligence enquiries and consider all relevant matters, including the following:
  - (a) the applicant's business and operation, the industry it operates in, its future plans, historical financial information and other corporate information, as well as any issues relating to the applicant's operations;
  - (b) whether the corporate governance record of the applicant, applicant's substantial shareholders, directors and key management personnel is satisfactory. This includes whether there has been any previous action taken against the applicant or its promoters by the relevant authorities including the SC and the Exchange;
  - (c) whether all conflict of interest or potential conflict of interest have been sufficiently resolved, eliminated or mitigated. An applicant and its Approved Adviser must consider the following factors to determine if a conflict of interest arises:
    - (i) whether any interested persons (which includes directors, major shareholders and chief executive) of the applicant or its subsidiary companies have personal financial interests which are in conflict with those of the applicant or its subsidiary companies;
    - (ii) whether the relationship between a major shareholder and the applicant or its subsidiary companies could result in a conflict between the applicant's obligations towards that major shareholder and its duties to the general body of shareholders;
    - (iii) whether the professional judgment of any interested person to act in the best interests of the applicant or its subsidiary companies is compromised;

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- (iv) whether any interested person is otherwise engaged in an activity which detracts time and commitment from managing the applicant or its subsidiary companies; and
  - (v) whether the conflict is significant in relation to the nature, scale and complexity of the businesses of the applicant or its subsidiary companies;
  - (d) whether the admission of the applicant to the LEAP Market will be contrary to public interest;
  - (e) whether the applicant has put in place sufficient systems, policies, controls and resources to comply with these Requirements;
  - (f) whether the applicant has adequate internal controls and risk management systems; and
  - (g) the adequacy of the disclosures by the applicant.
- (3) An Approved Adviser must conduct, actively participate and oversee the preparation and due diligence process for the admission document and comply with the SC's Guidelines on Due Diligence Conduct for Corporate Proposals, where applicable.
- (4) Where reliance is placed on other experts, the Approved Adviser must undertake reasonable steps to assess the credibility and integrity of the experts. The opinion of the experts should only be relied on after taking due care and consideration and after making appropriate enquiries.

## **PART E – POST-LISTING ACTIVITIES**

### **4.11 Guiding the listed corporation and its directors**

A Continuing Adviser advising a listed corporation post-listing must, where applicable -

- (a) maintain regular contact with the listed corporation, including being available at all times to advise and guide the listed corporation and its directors of their responsibilities and obligations under these Requirements and to ensure their compliance on an on-going basis with these Requirements and all relevant legislation and guidelines issued by regulatory authorities; and
- (b) advise the listed corporation if the trading of the listed corporation's listed securities will or should be halted or suspended.

### **4.12 Documents by a listed corporation**

- (1) A Continuing Adviser must review any Public Document to be submitted or disclosed by the listed corporation to the Exchange and circulars to securities holders prior to their release to ensure compliance by the listed corporation.
- (2) A Continuing Adviser must ensure that any Public Document that it makes, prepares or submits or any information that it provides, whether solely or jointly with a listed corporation complies with these Requirements.

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**4.13 Proposal by a listed corporation**

- (1) Subject to sub-Rule (3) below, where a listed corporation undertakes a corporate proposal prescribed by the Exchange to require the services of an Adviser and the listed corporation appoints its existing Continuing Adviser to act on its behalf, the Continuing Adviser, having made reasonable due diligence enquiries (including complying with the SC's Guidelines on Due Diligence Conduct for Corporate Proposals, where applicable) and having considered all relevant matters, must do the following:
  - (a) assess and be satisfied with the suitability and competency of other professionals and consultants involved in the corporate proposal;
  - (b) review and be satisfied with the adequacy of disclosure set out in any Public Documents relating to the corporate proposal to ensure compliance with these Requirements;
  - (c) ensure that the execution of the corporate proposal is in compliance with these Requirements, guidelines issued by the relevant regulatory authorities and other applicable laws; and
  - (d) ensure that any difference in the effect of the corporate proposal on minority shareholders compared to the other shareholders, is clearly disclosed in the Public Documents.
- (2) An Adviser appointed by a listed corporation for any corporate proposals prescribed by the Exchange to require the services of an Adviser, must comply with sub-Rule (1) above with the necessary modifications.
- (3) Where a listed corporation appoints another Adviser to undertake a corporate proposal during the Advisory Period, the Continuing Adviser is not required to comply with sub-Rule (1) above.

**PART F – ENDING ADVISORY SERVICES OR REMOVAL FROM THE REGISTER OF ADVISERS****4.14 Removal of an Adviser from the Register of Advisers**

- (1) The Exchange may remove an Adviser from the Register of Advisers in the following circumstances:
  - (a) upon the Adviser's request;
  - (b) if the Adviser fails to comply with these Requirements; or
  - (c) in the Exchange's opinion, the removal is in the interest of the public or the Exchange.
- (2) An entity removed pursuant to this Rule 4.14 will remain responsible under these Requirements for all its actions, conduct, omission or breaches during its tenure as an Adviser.
- (3) An Approved Adviser which is unable to meet the eligibility criteria as a result of the Eligible Person leaving the full-time employment of the Approved Adviser must notify the Exchange in writing immediately.

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- (4) Where an Approved Adviser is unable to meet the eligibility criteria in Rule 4.02 after admission to the Register of Advisers, the Approved Adviser will be given a grace period of 3 months to meet the requirements. After the grace period, the Approved Adviser will not be allowed to submit applications to the Exchange if it is still unable to meet the eligibility criteria specified in Rule 4.02.

#### **4.15 Cessation of activities**

If an entity ceases to be registered on the Register of Advisers for any reason whatsoever including voluntary cessation or removal by the Exchange, that entity must, unless otherwise directed by the Exchange, immediately cease all listing and post-listing activities in relation to the listed corporation.

### **PART G – RULES GOVERNING LISTED CORPORATIONS IN DEALING WITH ADVISERS**

#### **4.16 Appointment of Adviser to undertake a proposal**

Where a listed corporation appoints another Adviser to undertake a corporate proposal prescribed by the Exchange to require the services of an Adviser during the Advisory Period, the listed corporation must obtain the prior written consent of its existing Continuing Adviser for such appointment, and such consent must not be unreasonably withheld by the existing Continuing Adviser.

#### **4.17 Engagement and consultation with Continuing Adviser**

- (1) A listed corporation must consult and seek the advice of its Continuing Adviser on a timely basis in the following circumstances:
- (a) where it contemplates a corporate proposal or transaction, which if carried out, would require a listed corporation, at the minimum, to announce the proposal or transaction to the Exchange;
  - (b) where it contemplates a new issue of securities;
  - (c) where it contemplates a change to the utilisation of proceeds raised by the listed corporation from the issuance of securities that deviates by 25% or more from the original utilisation of proceeds; or
  - (d) in such other circumstances as may be prescribed by the Exchange.
- (2) The listed corporation must take into account the advice of its Continuing Adviser in considering the proposal or transaction referred to in sub-Rule (1) above.

#### **4.18 Review of Public Document**

- (1) A listed corporation must ensure that its Adviser reviews any Public Document to be submitted or disclosed by the listed corporation to the Exchange, to ensure compliance with these Requirements.
- (2) During the Advisory Period, a listed corporation must include a statement that its admission to the LEAP Market was advised by the Approved Adviser in all its Public Documents. The statement must be in print no smaller than the main text and positioned on the front page of the Public Document.

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**4.19 Provision of information and assistance to Advisers**

A listed corporation must provide its Adviser all necessary and reasonable assistance to enable the Adviser to perform its obligations under these Requirements including:

- (a) provide its Adviser, on a timely basis, all relevant information within the listed corporation's possession;
- (b) provide its Adviser access to all its information, books, records, personnel and premises;
- (c) immediately inform its Adviser of any material change of information or status when it becomes aware of such change; and
- (d) ensure that its directors, subsidiaries, employees and where possible, its substantial shareholders, associated companies or any other relevant parties of the listed corporation provide assistance and co-operation to its Adviser.

[End of Chapter]