

Chapter 9

EQUITY SECURITIES

APPLICATION PROCEDURES AND REQUIREMENTS

Preliminary

- 9.01 This Chapter sets out the procedures and requirements for applications for the listing of equity securities, whether by new applicants or by listed issuers. This Chapter does not apply to a transfer of listing from GEM to the Main Board pursuant to Chapter 9A.
- 9.02 New applicants are reminded (see Chapter 3A) that the sponsor is responsible for lodging the listing application and all supporting documents and for dealing with the Exchange on all matters arising in connection with the application.
- 9.03 (1) A new applicant must apply for a listing on a Form A1 set out in Appendix 5. This form must be completed by the sponsor for the new applicant and accompanied by:—
- (a) the documents stipulated in rule 9.10A(1); and
 - (b) the initial listing fee.

- Notes:*
1. *If an estimated figure for the monetary value of the equity securities to be listed is used to calculate the initial listing fee, the sponsor must inform the Exchange of the actual figure as soon as it is determined. Any shortfall of the initial listing fee arising must be paid to the Exchange as soon as the actual monetary value of the equity securities to be listed is determined and in any event before dealings commence.*
 2. *If the Exchange returns an application to a sponsor before the Exchange issues its first comment letter to the sponsor, the initial listing fee will be refunded; and in other cases the initial listing fee will be forfeited.*

If an applicant has delayed its proposed timetable and more than 6 months have elapsed since the date of its listing application form, the applicant will forfeit the initial listing fee. An applicant wishing to reactivate its listing application must submit a new listing application form accompanied by the initial listing fee. If there is a change in sponsor (including an addition or removal of a sponsor), the applicant must also submit a new listing application form accompanied by the initial listing fee.

Note: See also Chapter 2B for other circumstances when a new applicant may be required to submit a new listing application form.

- (2) The listing application form must contain a draft timetable which is subject to agreement with the Exchange. Any changes to a timetable must also be agreed with the Exchange. If an applicant wishes to reactivate its listing application that has been delayed and the date of the reactivation is within 6 months of the date of the listing application form, the applicant must submit a revised timetable which is subject to agreement with the Exchange. A new applicant must update the Exchange on the progress of the listing application on a fortnightly basis. The Exchange also reserves the right to require an applicant to amend its timetable in situations including (but not limited to), where the applicant fails to submit the necessary documentation in a timely fashion or where the Exchange has outstanding comments or queries that cannot be resolved in a timely fashion.
- (3) An applicant must submit a listing application form, an Application Proof and all other relevant documents under rule 9.10A(1), and the information in these documents must be substantially complete except in relation to information that by its nature can only be finalised and incorporated at a later date. If the Exchange decides this information is not substantially complete, the Exchange will not continue to review any documents relating to the application. All documents, including the Form A1 (except for the retention of a copy of these documents for the Exchange's record) submitted to the Exchange will be returned to the sponsor. The initial listing fee will be dealt with in the manner described in note 2 to rule 9.03(1)(b) above. For applications which were previously returned by the Exchange, the applicant can only submit a new Form A1 together with a new Application Proof not less than 8 weeks after the Return Decision.

Note: An application when submitted, must be accompanied by 2 CD-ROMs containing the Application Proof and other documents the Exchange may require.

- (4) The Exchange may require an applicant to delay the expected hearing date if, during the review process, the Exchange believes the following cannot be fulfilled by the applicant at least 4 clear business days before the expected hearing date:—
 - (a) the submission of the revised proof of the listing document containing sufficient and appropriate disclosure of all the requisite information as set out in Chapter 11;
 - (b) the submission of any outstanding documents as requested by the Exchange; and
 - (c) the Exchange's queries and comments being satisfactorily addressed in a timely fashion.

(5) During the review process, the sponsor should not revise the contents of the listing document on a piece-meal basis. A revised proof of the listing document must completely address all the Exchange's comments on the previous proof. The Exchange may elect not to review a revised proof that fails to meet this requirement.

9.04 In order to maintain an orderly new issues market the Exchange reserves the right to refuse a listing application or to change the timetable.

9.05 Where any document is amended after submission, a like number of further copies must be submitted to the Exchange for review, marked in the margin to indicate where the relevant items from Appendix 1 have been met. Such copies must also be marked in the margin to indicate amendments made to conform with points raised by the Exchange.

Note: In the case of a new listing applicant, each amended document, when submitted, must be accompanied by such number of CD-ROMs containing the same document as the Exchange may require.

9.06 No material amendment to the final proof listing document will be allowed without the consent of the Exchange.

9.07 The listing document must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon. However, in the case of a new applicant, circulation of a draft or preliminary listing document, which is clearly marked as such and which states that it is subject to final review by the Exchange is permitted for the purposes of arranging underwriting.

9.08 No publicity material on an issue of securities by a new applicant can be released in Hong Kong by a new applicant or its agents unless and until the Exchange has reviewed it and confirmed to the applicant that it has no comments. In addition, the publicity material must comply with all statutory requirements. If the Exchange believes that a new applicant or its advisers have permitted information on the listing of the new applicant's securities to leak, the Exchange will normally delay the application for the listing of those securities. For these purposes:

- (1) publicity material does not relate to an issue of securities if its purpose is the promotion of the issuer or its products or business and not the promotion of the securities to be issued;
- (2) the following documents do not fall within the scope of this rule and need not be submitted for prior review:
 - (a) an Application Proof published on the Exchange's website under rule 12.01A;
 - (b) a Post Hearing Information Pack published on the Exchange's website under rule 12.01B;

- (c) any statement by a new applicant published on the Exchange's website stating that no reliance should be placed on any media reports about the new applicant subsequent to the publication of its Application Proof or the Post Hearing Information Pack, as the case may be; and
 - (d) the invitation or offering document (or its equivalent) and documents that consist of, or are drafts of, or relate to, agreements to be entered into in connection with the issue of the securities. This is provided that any obligations created by these agreements to issue, subscribe, purchase or underwrite the securities are conditional on listing being granted;
- (3) any publicity material or announcement referring to a proposed listing by a new applicant issued before the Listing Committee's meeting to consider the application, must state that an application has been or will be made to the Exchange for listing of and permission to deal in the securities concerned; and
- (4) where any material relating to a proposed listing by a new applicant is released without the Exchange's prior review before the Listing Committee's meeting to consider the application, the Exchange may delay the timetable for the proposed Listing Committee meeting by up to a month. If this results in the Form A1 being more than 6 months old, the applicant will have to re-submit its application with the initial listing fee (see rule 9.03(1)).

9.09 There must be no dealing in the securities for which listing is sought by any core connected person of the issuer (except as permitted by rule 7.11):

- (a) in the case of listing application by listed issuers, from the time of submission of the formal application for listing until listing is granted; and
- (b) in the case of a new applicant, from 4 clear business days before the expected hearing date until listing is granted.

The directors of the issuer for whose securities listing is being sought shall forthwith notify the Exchange of any such dealing or suspected dealing of which they become aware. If any of the directors or their close associates are found to have engaged in such dealing, the application may be rejected.

9.10 Issuers are also reminded that these requirements are not exhaustive and that an applicant for listing must also supply any further documents and information which the Exchange may require in a particular case.

Documentary Requirements – New Listing Applications

9.10A The documents under rules 9.11(1) to (38) must be lodged with the Exchange according to the following schedule:

- (1) documents under rules 9.11(1) to 9.11(17c) must be lodged at the time of submission of Form A1;
- (2) [Repealed 1 October 2013]
- (3) documents under rules 9.11(18) to 9.11(22) must be lodged at least 4 clear business days before the expected hearing date;
- (4) documents under rules 9.11(24) to 9.11(28a) must be lodged before bulk-printing of the listing document;
- (5) documents under rules 9.11(29) to 9.11(32) must be lodged as soon as practicable after the hearing of the application by the Listing Committee but on or before the date of issue of the listing document;
- (6) document under rule 9.11(33) must be lodged by no later than 11 a.m. on the intended date of authorisation of the prospectus; and
- (7) documents under rules 9.11(34) to 9.11(38) must be lodged as soon as practicable after the issue of the listing document but before dealings commence.

9.11 The following documents must be lodged with the Exchange by a new applicant in connection with its listing application:—

Together with the Form A1

- (1) such number of copies of an Application Proof as required by the Exchange and 2 CD-ROMs containing the Application Proof and other documents as the Exchange may require, together with, in respect of each sponsor to the application for listing, an undertaking and statement of independence under rule 3A.03 in the form in Appendix 17 duly signed on the sponsor's behalf, and an undertaking under rule 3A.21 in the form in Appendix 20, duly signed on the compliance adviser's behalf;
- (2) [Repealed 2 November 2009]

- (3) a final or an advanced draft of all requests for waiver from the requirements of the Exchange Listing Rules and the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance from the sponsor and the directors/proposed directors;
- (3a) a written confirmation signed by each director/supervisor that the information in the Application Proof is accurate and complete in all material respects and is not misleading or deceptive;
- (3b) a written confirmation and undertaking signed by each director/supervisor and proposed director/supervisor to the following effect:
 - (i) that the Application Proof referred to in rule 9.11(1) above contains all information about the biographical details of such director/supervisor or proposed director/supervisor as set out in rule 13.51(2) and that those details are true, accurate and complete;
 - (ii) where, before dealings commence, there are any changes in the biographical details as set out in rule 9.11(3b)(i) above, to inform the Exchange as soon as practicable of such changes; and
 - (iii) to lodge with the Exchange in accordance with rule 9.11(38) a declaration and undertaking, in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor.

If a director/supervisor is appointed after the submission of the Form A1, then the director/supervisor must submit a duly signed written confirmation and undertaking referred to in this sub-rule as soon as he is appointed. The reference to the Application Proof referred to in rule 9.11(1) above in the confirmation and undertaking shall be read as a reference to the relevant draft listing document that contains the biographical details of such director/supervisor;

- (3c) where the Application Proof contains an accountants' report, an advanced draft of any statement of adjustments relating to the accountants' report;
- (4) in the case of the listing of depositary receipts, a draft deposit agreement and a specimen certificate for the depositary receipts;
- (5) in the case of the listing of depositary receipts, a legal opinion from legal advisers in the jurisdiction which governs the deposit agreement confirming:—
 - (a) that the deposit agreement (taken by itself or together with any deed poll conferring certain rights on holders of depositary receipts) creates valid and binding rights and obligations between the issuer, depositary and the holders of the depositary receipts in accordance with its terms; and

(b) addressing any other matters as the Exchange may have previously requested.

(6)-(8) [Repealed 2 November 2009]

(9) [Repealed 1 January 2009]

(10) (a) where the Application Proof contains a profit forecast (see rules 11.16 to 11.19), a final or an advanced draft of the board's profit forecast memorandum covering the same period of the profit forecast contained in the Application Proof and cash flow forecast memorandum covering at least 12 months from the expected date of publication of the listing document with principal assumptions, accounting policies and calculations for the forecasts;

(b) where the Application Proof does not contain a profit forecast, a final or an advanced draft of the board's profit forecast memorandum covering the period up to the forthcoming financial year end date after the date of listing and cash flow forecast memorandum covering at least 12 months from the expected date of publication of the listing document with principal assumptions, accounting policies and calculations for the forecasts;

(11)-(17) [Repealed 2 November 2009]

(17a) a certified copy of the new applicant's certificate of incorporation or equivalent document;

(17b) where the Application Proof is required to contain a statement by the directors as to the sufficiency of working capital, an advanced draft of a letter from its sponsor confirming that it is satisfied that the sufficiency of working capital statement in the Application Proof has been made by the directors after due and careful enquiry;

(17c) any document as may be required by the Exchange in support of the application for listing;

At least 4 clear business days before the expected hearing date

(18) such number of copies of the final proof of the listing document as required by the Exchange together with 2 CD-ROMs containing the same proof of listing document as the Exchange may require;

(19) [Repealed 1 October 2013]

(20) a confirmation from the new applicant's legal advisers that the new applicant's articles of association conform with the relevant parts of Appendices 3 and 13, and on the whole, are not inconsistent with the Exchange Listing Rules and the laws of the place where the new applicant is incorporated or otherwise established;

- (21) in the case of the listing of depositary receipts, a certified copy of the signed deposit agreement;
- (22) unless previously provided, all executed requests for waiver from the requirements of the Exchange Listing Rules and the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance;
- (23) [Repealed 1 October 2013]

Before bulk-printing of the listing document

- (24) a final proof of the formal notice, where applicable;
- (25) a final proof of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;
- (26) [Repealed 1 October 2013]
- (27) in the case of a new applicant under Chapters 20 and 21, 3 copies of the listing agreement in the form prescribed and provided by the Exchange, each duly signed for and on behalf of the new applicant;
- (28) where the listing document is required to contain a sufficiency of working capital statement by the directors, a final letter from its sponsor confirming that it is satisfied that the statement in the listing document as to the sufficiency of working capital has been made by the directors after due and careful enquiry and that persons or institutions providing finance have stated in writing that such facilities exist;
- (28a) a final copy of all draft documents which have been submitted to the Exchange in support of the application for listing;

As soon as practicable after the hearing of the application by the Listing Committee but on or before the date of issue of the listing document

- (29) (a) a copy of each of the English and the Chinese language version of the listing document dated and signed by every person who is named therein as a director or proposed director of the new applicant or by his agent authorised in writing and by the secretary and the relevant application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;

- (b) a copy of the formal notice, where applicable; and
 - (c) where any document or application form referred to in (a) above is signed by an agent, a certified copy of the authorisation or the power of attorney for such signature;
- (30) a copy of the written notification issued by HKSCC stating the securities will be Eligible Securities;
- (31) every written undertaking and confirmation from the new applicant, its shareholders and/or other relevant parties to the Exchange referred to in the listing document;
- (32) the original signed sponsor declaration(s) required by rule 3A.13 in the form in Appendix 19;

In case of a listing document which constitutes a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, by 11 a.m. on the intended date of authorisation of the prospectus

- (33) (a) an application for authorisation for registration of the prospectus under section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be);
- (b) 2 printed copies of the prospectus, duly signed in accordance with section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be) and having endorsed on or attached to the documents stipulated by the relevant section; and
- (c) in respect of every Chinese translation of the prospectus, a certificate issued by the translator certifying that the Chinese translation of the English version of the prospectus is true and accurate or in respect of an English translation of the prospectus, a certificate issued by the translator certifying that the English translation of the Chinese version of the prospectus is true and accurate; and in either case, a certificate issued by a competent officer of the sponsor certifying that the translator is competent to give translations on prospectus documents;

As soon as practicable after the issue of the listing document but before dealings commence as a condition for granting listing approval

- (34) (a) a certified copy of the resolution(s) of the new applicant in general meeting (if any) authorising the issue of all securities for which listing is sought; and

- (b) a certified copy of the resolution(s) of the board of directors or other governing body or any other person to whom it has properly delegated these powers (together, in such cases, with a certified copy of the power of attorney or resolution delegating the powers) authorising the issue and allotment of such securities, the making of the application for listing in Form A1 in Appendix 5, and where applicable, the making of all necessary arrangements enabling such securities to be admitted into CCASS, and the signing of the listing agreement, and approving and authorising the issue of the listing document;
- (35) in the case of a placing of securities:—
 - (a) a copy of the placing letter and separate marketing statements in Form D in Appendix 5 signed by each of: (i) the lead broker; (ii) any distributors; and (iii) any Exchange Participant referred to in paragraph 9 of Appendix 6; and
 - (b) a list from each placing broker setting out the names, addresses and identity card or passport numbers (where individuals) and the names, addresses and registration numbers (where companies) of all its placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each of its placees. Such lists may be supplied directly to the Exchange by each placing broker in order to maintain confidentiality;
- (36) a declaration substantially as in Form E in Appendix 5, duly signed by the sponsor;
- (37) a declaration substantially as in Form F in Appendix 5, duly signed by a director and the secretary of the new applicant together with any annual listing fee which is payable and which has not previously been paid (see Appendix 8); and
- (38) a written declaration and undertaking, in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor of the new applicant.

9.12 [Repealed 2 November 2009]

9.13 [Repealed 2 November 2009]

- 9.14 (1) (a) [Repealed 2 November 2009]
- (b) [Repealed 2 November 2009]
- (c) [Repealed 1 September 2008]
- (d) [Repealed 2 November 2009]
- (2)-(3) [Repealed 2 November 2009]
- (4) [Repealed 1 September 2008]
- (5) [Repealed 1 September 2008]
- (6)-(8) [Repealed 2 November 2009]

9.15 [Repealed 2 November 2009]

- 9.16 (1) [Repealed 25 June 2007]
- (2) [Repealed 2 November 2009]
- (3) [Repealed 25 June 2007]
- (4) [Repealed 25 June 2007]
- (5) [Repealed 25 June 2007]
- (6)-(13) [Repealed 2 November 2009]

Documentary Requirements – Applications by Listed Issuers

9.17 Rules 9.18 to 9.23 set out the documentary requirements for applications for the listing of equity securities by listed issuers.

At the time of application for listing

9.18 A listed issuer applying for the listing of equity securities must submit to the Exchange a listing application in the form set out in Form C1 in Appendix 5, signed by a duly authorised officer of the issuer, together with payment of the subsequent issue fee (see Appendix 8). The application must be submitted:

- (1) if it is required to be supported by a listing document, at least 10 clear business days before the date on which the issuer proposes to bulk print the listing document; and
- (2) if it is not required to be supported by a listing document, at least 4 clear business days before the proposed date for issuing the securities.

9.19 The following documents, as applicable, must be lodged with the Exchange together with the listing application:—

- (1) such number of copies of drafts or proofs of the listing document as the Exchange may require, marked in the margin to indicate where the relevant paragraphs from Chapter 11 and/or Part B/F of Appendix 1 and/or the Companies (Winding Up and Miscellaneous Provisions) Ordinance have been met;
- (2) if the listing document contains an accountants' report, a draft of any statement of adjustments relating to the accountants' report;
- (3) if the listing document contains a profit forecast (see rules 11.16 to 11.19), a draft of the board's profit forecast memorandum with principal assumptions, accounting policies and calculations for the forecast; and
- (4) for issue of new warrants to existing warrant holders, a legal opinion, from a lawyer of the relevant jurisdiction, confirming that the warrant proposal complies with the relevant provisions of the issuer's constitutive documents and the terms of the existing warrant instrument (see paragraph 4(f) of Practice Note 4).

Before bulk-printing of the listing document

9.20 The following documents must be submitted to the Exchange before bulk-printing of the listing document:—

- (1) if the listing document contains a statement as to the sufficiency of working capital, a letter from the issuer's financial advisers or auditors, confirming that:
 - (a) the statement has been made by the directors after due and careful enquiry; and
 - (b) persons or institutions providing finance have stated in writing that such facilities exist; and

- (2) if the vendor of securities being marketed has not paid in full for those securities at the date of the offer:—
 - (a) a certified copy of an irrevocable authority given by the vendor to the receiving bankers for the offer authorising the receiving bankers to apply the proceeds of the offer to discharge the outstanding debt; and
 - (b) a certified copy of the receiving bankers' acknowledgement of this authority and an agreement to act on it.

On or before the date of issue of the listing document

- 9.21 The following documents must be submitted to the Exchange on or before the date of issue of the listing document:—
- (1) every written undertaking from the listed issuer, its shareholders and/or other relevant parties to the Exchange referred to in the listing document; and
 - (2) for listing of a new class of securities, a copy of the written notification issued by HKSCC stating that the securities will be Eligible Securities.

In case of a listing document constituting a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance

- 9.22 If the listing document constitutes a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the following documents must be submitted to the Exchange:—
- (1) at least 14 days before the proposed date of registration of the prospectus by the Registrar of Companies, notice of the proposed date of registration of the prospectus (see rule 11A.09);
 - (2) by 11 a.m. on the intended date of authorisation for registration of the prospectus,
 - (a) an application for authorisation for registration of the prospectus under section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be);
 - (b) two printed copies of the prospectus, duly signed in accordance with section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be) and having endorsed thereon or annexed thereto the documents required under the relevant section;

- (c) in respect of every Chinese translation of the prospectus,
 - (i) a certificate issued by the translator certifying that the Chinese translation of the English version of the prospectus is true and accurate; and
 - (ii) a certificate issued by the issuer certifying that the translator is competent to have given the certificate referred to in (i) above; and
 - (d) any power of attorney or other authority under which the prospectus is signed, together with a certified copy thereof; and
- (3) as soon as after the registration of the prospectus, a copy of the letter from the Registrar of Companies confirming the registration (see rule 2.07C(1)(b)(iii)).

Before dealings commence

9.23 The following documents must be submitted to the Exchange before dealings commence:—

- (1) a certified copy of the resolution(s) of the board of directors or other governing body or any other person to whom it has properly delegated these powers (together, in such cases, with a certified copy of the power of attorney or resolution delegating the powers) authorising the issue and allotment of such securities, the making of the application for listing in the form set out in Form C1 in Appendix 5, and where applicable, the making of all necessary arrangements enabling such securities to be admitted into CCASS, and approving and authorising the issue of the listing document;
- (2) in the case of the placing by a listed issuer of a class of securities new to listing:
 - (a) a copy of the placing letter and separate marketing statements in the form set out in Form D in Appendix 5, signed by each of: (i) the lead broker; (ii) any distributors; and (iii) any Exchange Participant referred to in paragraph 9 of Appendix 6; and
 - (b) a list from each placing broker setting out the names, addresses and identity cards or passport numbers (in the case of individuals) and the names, addresses and registration numbers (in the case of companies) of all its placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each of its placees. Such lists may be supplied directly to the Exchange by each placing broker in order to maintain confidentiality.

In the case of the placing by a listed issuer of a class of securities already listed, the Exchange may require the issuer to submit information on the placees for the purpose of establishing their independence (see also rule 13.28(7));

- (3) in the case of securities issued as consideration for shares in a listed company which are acquired under Division 4 of Part 13 of the Companies Ordinance, a certified copy of the notice given under that section;
- (4) if the listing document provides for a capital reduction, scheme of arrangement or similar proposal requiring the approval of the court, a certified copy of the court order and of any certificate of registration issued by the Registrar of Companies or of any equivalent document;
- (5) if required, a declaration from the security printers responsible for production of bearer documents of title in accordance with paragraph 25 of Part B of Appendix 2; and
- (6) a declaration substantially in the form set out in Form F in Appendix 5, signed by a director and the secretary of the issuer together with any annual listing fee which is payable and which has not previously been paid (see Appendix 8).