

# Chapter 21

## INVESTMENT VEHICLES

### INVESTMENT COMPANIES

#### General

- 21.01 The Exchange Listing Rules apply as much to issues of equity securities or debt securities by investment companies as they do to issues of such securities by other companies. However, notwithstanding that the normal requirements for listing are not met, applications for listing of securities issued by investment companies, unit trusts, mutual funds or any other collective investment scheme not falling within the requirements of Chapter 20, (in this Chapter all referred to as “investment companies”) will be considered under this Chapter.
- 21.02 Applications under this Chapter will be considered in respect of both existing and newly formed investment companies investing in securities, listed or unlisted, including warrants, money market instruments, bank deposits, currency investments, commodities, options, futures contracts and precious metals and investment companies investing in other collective investment schemes. Investments may also take the form of partnership arrangements, participations, joint ventures and other forms of non-corporate investment.
- 21.03 New applicants are reminded (see Chapter 3A, in particular rule 3A.02) that they must be sponsored by a sponsor who is responsible for preparing the new applicant for listing, for lodging the formal application for listing and all supporting documents with the Exchange and for dealing with the Exchange on all matters arising in connection with the application. The sponsor of an investment company need not be independent of the management company or the investment adviser, if any.

#### Qualifications for Listing

- 21.04 The qualifications for listing contained in Chapter 8 shall apply, save for rules 8.05, 8.06, 8.07, 8.08(1) 8.09, 8.10 and 8.21 and save as otherwise agreed with the Exchange. However, the Exchange may be prepared to waive the guideline regarding the minimum number of shareholders which is set out in rule 8.08(2) in appropriate circumstances (for example, where the securities of the investment company are not marketed to the public in Hong Kong). The following additional conditions will apply in respect of an application made under this Chapter:—
- (1) the Exchange must be satisfied as to the character, experience and integrity of the directors of any investment company, its management company and/or its investment adviser (if any) and each of them must be able to demonstrate a standard of competence commensurate with their position in relation to the issuer. The Exchange must be

satisfied as to the fitness and competence of each of the directors of the issuer, its management company and/or its investment adviser and must be satisfied that the executive management committee have had satisfactory experience in the professional management of investments on behalf of third party investors. The Exchange will reserve the right to request further information regarding any such proposed director's or adviser's background, experience or other business interests. The Exchange will not approve an application for listing under this Chapter unless the foregoing provisions are met to the satisfaction of the Exchange;

- (2) the investment company should generally have a custodian or trustee which must be acceptable to the Exchange;
- (3) the investment company and its management must normally be bound, either in its articles of association or trust deed or equivalent constitutive document or in such other manner as is acceptable to the Exchange, to ensure compliance at all times while it remains listed under this Chapter with the following requirements:—
  - (a) that the investment company will not either on its own or in conjunction with any core connected person take legal, or effective, management control of underlying investments and that in any event the investment company will not own or control more than 30% (or such other percentage as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) of the voting rights in any one company or body;
  - (b) that a reasonable spread of investments will be maintained by the investment company. Generally this will mean that the value of its holding of investments issued by any one company or body shall not exceed twenty per cent. of the investment company's net asset value at the time when such investment is made;
  - (c) that shareholders' meetings are convened and conducted in a manner which is acceptable to the Exchange;
  - (d) that any custodian, management company, any of their core connected persons and every director of any investment company and management company is prohibited from voting their own shares at, or being part of a quorum for, any meeting to the extent that they have or any of their close associates has, a material interest in the business to be conducted; and
  - (e) that the investment company's auditors are independent of the investment company, any management company and any custodian, to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the Hong Kong Institute of Certified Public Accountants and that, in the case of an overseas

investment company, the accounts of the investment company are audited to a standard comparable to that required in Hong Kong and all reports conform to International Financial Reporting Standards;

- (4) it will normally be a condition of the listing that, in the case of a newly formed investment company, at the conclusion of the initial offering of shares or units or, in the case of an existing investment vehicle, at the time of listing, no person shall control 30 per cent. (or such other amount as may from time to time be specified in the Takeovers Code as being the level for triggering a mandatory general offer) or more of the votes exercisable at any general meeting of the investment company. For these purposes, the interests of all the close associates of a shareholder and any persons acting in concert (within the meaning of the Takeovers Code) with a shareholder will be aggregated;
- (5) in the case of a newly formed investment company, save to the extent agreed otherwise with the Exchange and set out in the listing document at the time of listing, the investment objectives, policies and restrictions set out in the listing document must not be changed for a minimum period of three years, without shareholders' consent and the restrictions required by rule 21.04(3)(a) and (b) must not be changed at all if the investment company wishes to retain its listing under this Chapter; and
- (6) in the case of an investment company which becomes a mutual fund at any time after its initial listing on the Exchange, it will normally be a condition of maintaining its listing that it obtains authorisation from the Commission under the Code and pursuant to section 104 of the Securities and Futures Ordinance not later than the time at which it becomes a mutual fund.

21.04A The Exchange shall be authorised by new applicants and listed issuers to file their "applications" (as defined in section 2 of the Securities and Futures (Stock Market Listing) Rules) and those corporate disclosure materials within the meaning of sections 7(1) and (2) of the Securities and Futures (Stock Market Listing) Rules received by the Exchange with the Commission pursuant to sections 5(2) and 7(3) of the Securities and Futures (Stock Market Listing) Rules respectively and new applicants and listed issuers shall be deemed to have agreed to the above by filing such applications and corporate disclosure materials with the Exchange. The authorisation aforementioned shall not be altered or revoked in any way unless prior written approval has been obtained from the Exchange and the Exchange shall have the absolute discretion to grant such approval. In addition, the Exchange may require and new applicants and listed issuers shall execute such documents in favour of the Exchange perfecting the above authorisation as the Exchange may require. Applications and relevant corporate disclosure materials shall be filed with the Exchange in such manner and number of copies as the Exchange may from time to time prescribe.

## **Application Procedures and Requirements**

- 21.05 The proof prints of the listing document lodged with the Exchange under rules 9.19(1) or 24.10(1) must be marked in the margin so as to indicate where the relevant items from this Chapter as well as the relevant items from Chapters 11 and/or 25 and Appendix 1 have been met. The provisions of Chapter 12 will apply, with appropriate modifications.

### **Listing Documents**

- 21.06 An investment company may omit the following items of information in circumstances where they would otherwise be required by these Exchange Listing Rules:—

(1) the following paragraphs of Part A of Appendix 1:—

26, 28 to 30 (inclusive), 34(1) and 36; and

(2) the following paragraphs of Part B of Appendix 1:—

24, 26, 29(1) and 30.

In addition, the Exchange may be prepared to permit the omission of other information where it considers it appropriate. Investment companies who want to omit any of the prescribed information should therefore consult the Exchange at the earliest possible opportunity.

- 21.07 Some of the items of information specified in Parts A, B and C of Appendix 1 may be inappropriate. In such a case, the item should be appropriately adapted so that equivalent information is given.

- 21.08 In addition to the information required by Chapter 11, every listing document issued by or on behalf of an investment company no part of whose share capital or units is already listed must contain the following:—

(1) details of all costs and charges e.g. the fees of any management company payable from the investment company's assets which an investor would be likely to consider material, and all deductions made from money subscribed for securities;

(2) a statement of any costs of establishing the investment company which are to be paid by the investment company together with an estimate of their size and the period over which they are to be amortised;

(3) details of the investment objectives, policies and restrictions which will be observed on the investment of the investment company's assets and the intended diversification of assets by country or region and, in the case of a newly formed investment

company, a statement that (save to the extent agreed otherwise with the Exchange at the time of listing) such investment objectives, policies and restrictions will not be changed for at least three years following the issue of the listing document without the consent of the shareholders of the investment company in general meeting. In addition the listing document shall clearly distinguish between those investment objectives, policies and restrictions which may only be altered with shareholders' approval, those which may be altered without shareholders' approval and those which are required by rule 21.04(3)(a) and (b) to be complied with in order for the investment company to maintain its listing under this Chapter. The listing document must also disclose the extent to which it is intended to invest in options, warrants, commodities, futures contracts, unlisted securities and precious metals and must include an appropriate negative statement if there is an intention not to invest in any such investments;

- (4) details of the distribution policy and the approximate dates on which distributions will be made;
- (5) details of the principal taxes levied on the investment company's income and capital (including taxes withheld at source on distributions received by the investment company) and tax, if any, deducted on distributions to shareholders;
- (6) a summary of the borrowing powers of the investment company, if any, stating that at no time will it exceed a certain amount, and stating the circumstances under which borrowings might take place;
- (7) a statement as to whether certificates for securities will be issued in registered or bearer form, or in both forms;
- (8) the name, address and description of any management company, custodian, investment adviser, distribution company and any alternate custodian;
- (9) the full names, addresses and descriptions of every director of the investment company and every director of the management company;
- (10) a description of the relevant experience of any management company, investment adviser and the directors of the investment company;
- (11) particulars of what reports will be sent to registered shareholders and when;
- (12) a statement as to whether or not the directors of the investment company, the management company, any investment adviser or any distribution company, or any associate of any of those persons, is or will become entitled to receive any part of any brokerage charged to the investment company, or any re-allowance of other types on purchases charged to the investment company;

- (13) a warning that an investment in the investment company is subject to abnormal risks, if the nature of the investment policy so dictates;
- (14) details of the investment company's foreign exchange policy and in particular details of any foreign exchange controls or restrictions of relevance to the investment company or its investment policy or objectives;
- (15) in the case of an existing investment company, full details of all listed investments and all other investments with a value of more than five per cent. of the investment company's gross assets, and details of at least the ten largest investments, stating:—
  - (a) a brief description of the business;
  - (b) proportion of the share capital owned;
  - (c) cost;
  - (d) directors' valuation and, in the case of listed investments, market value;
  - (e) dividends or other income received during the year from such investment (indicating any abnormal dividends);
  - (f) dividend cover or underlying earnings; and
  - (g) [Repealed 1 January 2013]
  - (h) net assets attributable to the investment; and
- (16) in the case of an existing investment company, an analysis of any provision for diminution in value of investments, naming the investments against which provision has been made and stating for each investment:—
  - (a) cost;
  - (b) provision made;
  - (c) book value; and
  - (d) reason for the provision.

21.09 In addition to the information required by Chapter 11 every listing document issued by or on behalf of an investment company some part of whose share capital is already listed must contain the information required by rules 21.08(1), (3), (4), (5), (6), (8), (9), (12) to (16) above.

21.10 The statement of responsibility required under paragraph 2 of Parts A, B, and C of Appendix 1 must be given by the directors of the management company as well as the directors of the investment company and the statement in the listing document should be modified accordingly.

## Listing Agreement

- 21.11 The Listing Agreement must be signed for and on behalf of the management company, if any, as well as the investment company and must be lodged with the Exchange before bulk-printing of the listing document (see rule 9.11(27) or 24.11(5)). A certified copy of the resolutions of the relevant boards of directors or other governing bodies authorising the signing of the Listing Agreement must be lodged with the Exchange prior to the commencement of dealings (see rule 9.11(34)).
- 21.12 The Listing Agreement for an investment company must include the following additional continuing obligations:—
- (1) the annual report and accounts shall include:—
- (a) a list of all investments with a value greater than 5 per cent. of the investment company's gross assets, and at least the 10 largest investments stating, with comparative figures where relevant:—
    - (i) a brief description of the business;
    - (ii) proportion of share capital owned;
    - (iii) cost;
    - (iv) directors' valuation and, in the case of listed investments, market value;
    - (v) dividends received during the year (indicating any abnormal dividends);
    - (vi) dividend cover or underlying earnings; and
    - (vii) [Repealed 1 January 2013]
    - (viii) net assets attributable to investment;
  - (b) an analysis of any provision for diminution in the value of investments, naming the investments against which provision has been made and stating for each investment:—
    - (i) cost;
    - (ii) provision made; and
    - (iii) book value; and
  - (c) an analysis of realised and unrealised surpluses, stating separately profits and losses as between investments which are listed on a regulated, regularly operating, open stock market which is recognised by the Exchange and those investments which are not so listed;

- (2) the interim report and any preliminary announcement of results for the full year shall include a division of income between:—
  - (a) dividend and interest received; and
  - (b) other forms of income (which may be income of associated companies),  
  
distinguishing where significant between underwriting income and the results of dealings by subsidiaries;
- (3) the investment company must publish in accordance with rule 2.07C an announcement containing a statement of its net asset value as at the end of each month within 15 days of that date;
- (4) in the case of a unit trust, mutual fund or collective investment scheme not authorised under the Code and pursuant to section 104 of the Securities and Futures Ordinance, an undertaking that units, shares and interests in the scheme will not be advertised, promoted, marketed or sold in Hong Kong in any way which breaches the laws and regulations (including the Code) in Hong Kong; and
- (5) an undertaking to comply with the requirements of rules 21.04(3), (5) and (6), if applicable.

21.13 The Listing Agreement for an investment company will state that the provisions of Chapter 14 will not apply to investment companies save for rules 14.06(3), 14.06(4), 14.34 to 14.37, 14.38A, 14.40 to 14.46, 14.48 to 14.53 (for very substantial disposals), 14.58, 14.60 to 14.63, 14.66 to 14.68, 14.70 to 14.77, 14.85 and 14.86.

### **Investment Companies with Restricted Marketing**

- 21.14 Applications for listing of units or shares in investment companies which are not marketed to the public in Hong Kong (including unit trusts, mutual funds or other collective investment schemes not authorised under the Code and pursuant to section 104 of the Securities and Futures Ordinance) may be considered under this Chapter subject to the following modifications and/or additional requirements:—
- (1) the investment company and the securities must, in the opinion of the Exchange, be suitable for listing and the Exchange must be satisfied that there is not likely to be significant public demand for the securities of the investment company because of either the nature of the investment company or the size of the minimum subscription and/or investment;
  - (2) the qualifications for listing contained in rules 8.12, 8.13 and 8.13A will not apply;



- (3) the Exchange must be satisfied that adequate arrangements have been made to ensure that the securities of the investment company will not be permitted to be marketed to the public in Hong Kong. This provision does not prohibit marketing to “professional persons” in Hong Kong;
- (4) the provisions of rule 21.04(6) will not apply;
- (5) the Exchange reserves the right to impose a minimum investment and/or minimum board lot size if it deems it necessary, by virtue of the nature of the investment company;
- (6) the investment company need not include a summary of the regulatory provisions in its place of incorporation or other establishment (see rule 19.10(3)) in its initial listing document;
- (7) the initial listing document need not be accompanied by a Chinese translation;
- (8) in addition to the provisions of rule 21.06 and rule 21.14(4), the initial listing document need not contain the information required by the following paragraphs of Part A of Appendix 1:—

35, 37, 38, 39 and such other paragraphs as the Exchange may agree, provided that in the case of an existing investment company the listing document must contain the latest published consolidated audited financial statements (including the accompanying notes thereto) and the auditors report thereon together with a statement by the directors of any material adverse change in the financial or trading position of the group since the date to which those accounts have been made up, or an appropriate negative statement;

- (9) any subsequent listing document must normally comply with requirement of Parts B and C of Appendix 1 (subject as provided in rules 21.06 and 21.07 and subject to the omission of such other paragraphs of that Appendix as the Exchange may agree on a case by case basis);
- (10) the Exchange may be prepared to agree such modifications to the Listing Agreement as it considers appropriate in particular case. Conversely, the Exchange may impose additional requirements in a particular case;
- (11) if the investment company is an overseas issuer then the Exchange will normally be prepared to waive the requirements of rule 19.05(3)(a), provided that adequate arrangement are made to have a share transfer agent in Hong Kong; and
- (12) the formal notice in Appendix 11 for listings under this rule shall be modified to note that listing documents will be available in Hong Kong for information only. A Chinese translation of the notice is, however, required.

## Secondary Listings

21.15 In the case of an investment company whose primary listing is or is to be on another stock exchange and which is listed by way of introduction the Exchange will normally be prepared to permit the following additional modifications:—

- (1) the listing document need not be accompanied by a Chinese translation; and
- (2) the Exchange will normally be prepared to waive the requirement of rule 19.30(4) (a), provided that adequate arrangements are made to have a share transfer agent in Hong Kong.