

# Chapter 20

## INVESTMENT VEHICLES

### AUTHORISED COLLECTIVE INVESTMENT SCHEMES

#### General

20.01 This Chapter sets out the requirements for the listing of interests in any Collective Investment Scheme (or “CIS” in this Chapter) which has been authorised by the Commission. Applications will be considered in respect of both existing and newly formed Collective Investment Schemes.

#### Notes:

- i) *The Commission is empowered by Section 104 of the Securities and Futures Ordinance to authorise Collective Investment Schemes in accordance with the requirements of the respective codes applicable to Collective Investment Schemes issued by the Commission from time to time. Its authorisation process includes vetting of the Hong Kong offering documents or such other product description documents as required by various codes (referred to as the “CIS Disclosure Document” in this Chapter).*
- ii) *The Exchange is responsible for the listing of authorised Collective Investment Schemes including vetting the listing documents and other relevant documents in respect of listing issues not covered by the Commission’s codes, supervising the conduct of the listing process and monitoring continuing compliance with the Listing Rules, in each case in accordance with the applicable rules of the Exchange.*
- iii) *Where required by the codes issued by the Commission, marketing materials and announcements or notices should be submitted to the Commission for approval or filing.*
- iv) *The Collective Investment Scheme must remain authorised by the Commission for so long as it is listed under this Chapter.*
- v)
  - (1) *In the case of a new applicant or listed issuer in respect of a class of securities new to listing, the securities for which listing is sought must be Eligible Securities from the date on which dealings in the securities are to commence.*
  - (2) *The new applicant or the listed issuer must make all necessary arrangements to comply with sub-paragraph (1).*

- (3) *Sub-paragraph (1) does not apply in the case of a new applicant or a listed issuer which is unable to satisfy the eligibility criteria as determined from time to time by HKSCC by reason only of a provision of law affecting the transferability or ownership of the new applicant's or the listed issuer's securities.*
- (4) *The Exchange may, in exceptional circumstances and in the absolute discretion of the Exchange, waive compliance with sub-paragraph (1).*
- (5) *An issuer shall ensure, so far as it is able, that its securities remain Eligible Securities.*

20.02 The Exchange will normally grant a listing in respect of a Collective Investment Scheme which has been authorised by the Commission. However, authorisation by the Commission does not ensure that listing will be granted and the Exchange has the discretion to accept or reject applications for listing of the interests in authorised Collective Investment Schemes.

20.03 New applicants (including existing Collective Investment Schemes) are encouraged to contact the Exchange to discuss their plans of listing at the earliest opportunity.

20.04 The Exchange requires every application for listing of interests in a Collective Investment Scheme to be supported by a listing document (comprising the CIS Disclosure Document) which must comply with the relevant requirements of this Chapter.

20.04A 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.

20.05 All of the requirements of this Chapter will apply to every application for the listing of a new class of interest in a Collective Investment Scheme (including one which has one or more class of interest already listed), as if it were a new applicant.

## Application Procedures and Requirements

### Preliminary

20.06 A new CIS listing applicant must appoint an agent, with sufficient experience, to discharge the following functions:

- (1) Communications with the Exchange – the agent will deal with the Exchange on all matters arising in connection with the listing application and ensure that all the applicable procedural and documentary requirements of this Chapter be complied with; and
- (2) Overall management of the listing process – the agent will ensure that the listing process is managed and conducted in a fair, timely and orderly manner. Where the new CIS listing applicant intends to conduct an initial public offer of its CIS interests or in circumstances the Exchange or the Commission may otherwise determine, the listing process includes, but is not limited to, the following activities:
  - (a) processing of offer applications;
  - (b) allocations of interest in the CIS;
  - (c) underwriting and distribution activities;
  - (d) administration of subscription lists; and
  - (e) processing of subscription monies.

*Notes:*

- (1) *Subject to (2), the CIS Operator or its authorised representative will normally, but not necessarily, be eligible to be appointed as the listing agent.*
- (2) *Where the new CIS listing applicant intends to conduct an initial public offering of its CIS interests, or in other circumstances as the Exchange or the Commission may otherwise determine, we require the appointed agent to have all the necessary licences to oversee the management of the matters in rule 20.06(2)(a) to (e).*

20.07 No formal application of listing under this Chapter may be made unless and until the Commission has confirmed that it has no further comments on the CIS Disclosure Document.

- 20.08 A new applicant must apply to the Exchange for a listing application on Form A2 in Appendix 5. The listing application form must be accompanied by a non-refundable deposit of the initial listing fee payable. The listing application form must contain a proposed timetable. If the issuer fails to submit the necessary documentation in accordance with this Chapter, the Exchange reserves the right to require an issuer to amend the timetable, and the deposit may be forfeited as a result.
- 20.09 [Repealed 1 September 2003]
- 20.10 [Repealed 1 September 2003]
- 20.11 [Repealed 1 September 2003]
- 20.12 The listing document must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon.
- 20.13 In addition, an applicant for listing must supply any further documents and information which the Exchange may require in each particular case.

#### **Documentary Requirements**

- 20.14 The following documents must be lodged with the Exchange at the time of submission of Form A2 in accordance with rule 20.08:
- (1) five copies of the advanced proof of the listing document comprising the CIS Disclosure Document and a CD-ROM containing the draft listing document;
  - (2) a copy of the Commission's confirmation that it has no further comments on the CIS Disclosure Document;
  - (3) the Listing Agreement in the form prescribed and provided by the Exchange, duly signed, for and on behalf of the CIS, the CIS Operator, and the custodian or the trustee or its functional equivalent;
  - (4) where possible, a certified copy of the resolutions of the boards of directors or other governing bodies (or their functional equivalent) of the CIS and the CIS Operator and of the custodian or trustee or its functional equivalent (as appropriate) authorising and approving, as the case may be:
    - (a) the making of the application for listing in the form set out in Form A2 in Appendix 5;
    - (b) the issuance of the listing document; and
    - (c) the signing of the Listing Agreement;

- (5) a final copy of any application form to subscribe or purchase the CIS interests for which listing is sought; and
  - (6) a copy of the most recent annual report and accounts of the CIS (unless the CIS is newly formed), the CIS Operator, trustee or custodian or its functional equivalent, and (if applicable) the investment adviser to the CIS.
- 20.15 In the case of a listed CIS issuer (other than an open-end CIS), the following documents must be lodged with the Exchange at least five clear business days, unless otherwise agreed by the Exchange, prior to the date on which it is expected that the Exchange will consider approving the listing of additional interests in the CIS:
- (1) a formal application for listing in the form set out in Form C3 in Appendix 5, signed for and on behalf of the CIS, and the CIS Operator; and
  - (2) a certified copy of the resolutions of the boards of directors or other governing bodies (or their functional equivalent) of the CIS and the CIS Operator authorising the making of the application for listing in the form set out in Form C3 in Appendix 5.
- 20.16 In the case of a new applicant, as soon as practicable after approval of the listing application by the Exchange but on or before the date of issue of the listing document, the following documents must be supplied to the Exchange:
- (1) a copy of the listing document dated and signed by every person who is a director or officer of the governing body of the CIS or the functional equivalent in discharging the officer's duties or by his agent authorised in writing and by or on behalf of the CIS Operator;
  - (2) a copy of any application form to subscribe or purchase the CIS interests for which listing is sought; and
  - (3) where any document referred to in (1) above is signed by an agent, a certified copy of the authorisation for such signature.
- 20.17 As soon as practicable after the issue of the listing document but before dealings commence (unless previously supplied under rule 20.14(4)), a certified copy of the resolutions therein referred to and a certified copy of the trust deed or memorandum and articles of association or other documents constituting the CIS must be lodged with the Exchange together with any annual listing fee which is payable and which has not previously been paid (see Appendix 8).

## Listing Documents

20.18 Every listing document which is issued by or on behalf of the Collective Investment Scheme must:

- (1) contain a statement that application has been made to the Exchange for listing of and for permission to deal in the CIS interests;
- (2) contain the CIS Disclosure Document authorised by the Commission and other relevant information relating to the listing of the CIS;
- (3) contain particulars of any other stock exchange on which any part of the CIS interests is listed or dealt in or where listing or permission to deal is being or will be sought, the name of the stock exchange on which the primary listing is or is to be and particulars of the dealing and settlement arrangements on each such exchange and between such exchanges, or an appropriate negative statement; and
- (4) be in the English language and (to the extent required by the Commission) be accompanied by a Chinese translation.

20.19 Every further listing document issued by or on behalf of the Collective Investment Scheme must contain a statement that the CIS interests which have already been issued are listed on the Exchange.

20.19A All listing documents (including any supplemental listing document(s) or subsequent amendments to the listing document(s)) issued by an applicant must be made available in electronic form on the Exchange's website and the issuer's own website or such other form as may be approved by the Commission.

*Note: Companies (Winding Up and Miscellaneous Provisions) Ordinance states that it shall not be lawful to issue any form of application for shares in or debentures of a company unless the application form is issued with a prospectus that is compliant with that ordinance. The Exchange would expect the combination of this statutory requirement and rule 20.19A to result in the issue of both listing documents and application forms in the same medium, i.e. in electronic format only, unless a Mixed Media Offer is adopted.*

## **Listing Agreement**

- 20.20 Every Collective Investment Scheme is required to sign a formal agreement with the Exchange in the form prescribed and provided by the Exchange by which the signatories thereto undertake to comply with the continuing obligations to which they will be subject as a condition of the listing of the CIS interests.
- 20.21 The Listing Agreement is required to be signed on the first occasion on which any of the CIS interests are listed and must be lodged with the Exchange at the time of submission of Form A2, unless otherwise agreed by the Exchange (see rule 20.14(3)). The Listing Agreement must be signed by and on behalf of the directors or officers of the governing bodies of the CIS (or their functional equivalent in discharging the officers' duties), the CIS Operator and the custodian or the trustee or its functional equivalent. A certified copy of the resolutions of the relevant boards of directors or other governing bodies (or their functional equivalent) authorising the signing of the Listing Agreement must be lodged with the Exchange prior to the commencement of dealings (see rules 20.14(4) and 20.17).
- 20.22 The text of the prescribed form of Listing Agreement for Collective Investment Schemes is reproduced in Part G of Appendix 7 together with notes on its interpretation and application.
- 20.23 In order to maintain high standards of disclosure, the Exchange may require the publication of further information by and impose additional requirements on listed Collective Investment Schemes either specifically or generally. The Collective Investment Scheme must comply with such requirements and, if it fails to do so, the Exchange may itself publish the information after having heard the representations of the Collective Investment Scheme.

Conversely, the Exchange may be prepared to dispense with, vary or not require compliance with the terms of the Listing Agreement to suit the circumstances of a particular case, but may require the Collective Investment Scheme concerned to enter into an ancillary agreement, in that event, as a condition of such dispensation.

## Bookbuilding and placing activities

20.23A In the case of offerings involving bookbuilding activities (as defined under the Code of Conduct) of interests in a REIT by a new REIT listing applicant or an existing authorized REIT, Chapter 3A and the other relevant Exchange Listing Rule provisions relating to sponsor-overall coordinator, overall coordinator and other capital market intermediaries shall apply.

*Note: These requirements include but are not limited to those provisions relating to (a) the appointment of overall coordinator(s) and sponsor-overall coordinator(s); (b) obligations of new applicants, issuers and their directors; (c) engagement of capital market intermediaries; and (d) related reporting, publication and disclosure requirements.*

20.23B In the context of a REIT, where references are made to the requirements under these Exchange Listing Rules, unless the context otherwise requires, the following modifications shall apply:

- (a) references to the “issuer” shall be construed as references to the REIT seeking the Commission’s authorisation;
- (b) references to the “listed issuer” shall be construed as references to the REIT;
- (c) references to the “directors” of the new applicant or the listed issuer shall be construed as references to the directors of the management company of the REIT;
- (d) references to “controlling shareholders” shall be construed as references to “controlling unitholders”;
- (e) references to “shares” and “equity securities or interests” in relation to a new applicant or a listed issuer, shall be construed as references to interests in a REIT;
- (f) references to “shareholders” shall be construed as references holders of the interests in a REIT;
- (g) references to “substantial shareholder” shall be construed as references to “substantial holder” as defined in the Code on Real Estate Investment Trusts;

- (h) references to “sponsor” shall mean the listing agent in the context of a REIT seeking the Commission’s authorisation;
- (i) references to “expected hearing date” of the Listing Committee shall refer to the expected date of issue of the approval-in-principle letter by the Commission in the context of a REIT seeking the Commission’s authorisation;
- (j) references to “listing application” shall refer to the Application Form for Real Estate Investment Trusts submitted by a REIT seeking the Commission’s authorisation; and
- (k) in the context of the exercise of discretion and powers by the Exchange, and administration of the requirements (for example, provide notifications, seek guidance, prior consent or approval, provide relevant information and document to demonstrate compliance and make relevant applications to/from the Exchange), references to the Exchange should include the Commission as the party with whom the management company of the scheme shall contact and consult.

*Note: The management company should consult the Commission at an early stage if it is in any doubt as to the application of the relevant requirements to a REIT.*

### **Disclaimer**

- 20.24 Every listing document required pursuant to this Chapter must contain on the front cover or inside front cover of the listing document a prominent and legible disclaimer statement as follows:—

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

### **Publication Requirements**

- 20.25 A new applicant with a listing agent appointed which is required to discharge the functions equivalent to those of a sponsor must publish its Application Proof on the Exchange’s website in accordance with rule 2.07C and Practice Note 22.
- 20.26 A new applicant with a listing agent appointed which is required to discharge the functions equivalent to those of a sponsor must publish its Post Hearing Information Pack on the Exchange’s website in accordance with rule 2.07C and Practice Note 22.