

Chapter 24

DEBT SECURITIES

APPLICATION PROCEDURES AND REQUIREMENTS

Preliminary

- 24.01 This Chapter does not apply to debt issues to professional investors only. It sets out the procedures and requirements for applications for the listing of debt securities, whether by new applicants or by listed issuers. Modified requirements for States, Supranationals and State corporations are set out in Chapters 31, 32 and 33 respectively.
- 24.02 In the case of debt securities issued or guaranteed by the Government of Hong Kong or its regional or local authorities or by State corporations incorporated in Hong Kong, the Exchange will have regard to information already available to the public in deciding on the application of these requirements.
- 24.03 In order to allow the Exchange sufficient time to consider an application for listing on the basis of its supporting documents and to maintain an orderly new issues market, a new applicant must normally apply for a listing application on the prescribed form set out in Form A1 in Appendix 5 to the Exchange at the earliest possible opportunity and normally not less than 14 clear days prior to the date on which the listing document is to be bulk printed. 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 draft timetable which has been agreed in advance with the Exchange. Any changes in that timetable must also be agreed in advance with the Exchange. If it is not possible to lodge documents with the Exchange within these time limits, they should be submitted as soon as they become available. Issuers should appreciate that any significant delay in lodging the documents may affect the listing timetable.
- 24.04 In order to maintain an orderly new issues market the Exchange reserves the right to refuse a booking if there are too many existing reservations in the relevant period.
- 24.05 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.

- 24.06 No material amendment to the final proof listing document will be allowed without the consent of the Exchange.
- 24.07 The listing document must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon. However, circulation of a draft or preliminary listing document, which is clearly marked as such, is permitted for the purposes of arranging underwriting .
- 24.08 All publicity material released in Hong Kong relating to an issue of debt securities by a new applicant must not be released until the Exchange has reviewed it and confirmed to the issuer that it has no comments thereon. In addition, the publicity material must comply with all statutory requirements. For these purposes, publicity material does not relate to an issue of debt securities if its purpose is the promotion of the issuer or its products or business and not the promotion of the debt securities to be issued. Moreover, circulation is permitted of documents of a marketing nature such as the invitation or offering document (or its equivalent) and documents which consist of, or are drafts of, or relate to, agreements to be entered into in connection with the issue of the debt securities, provided that any obligations created thereunder to issue, subscribe, purchase or underwrite the debt securities are conditional on listing being granted. These documents will not be considered as falling within the scope of this rule and need not be submitted for prior review. Any publicity material or announcement referring to a proposed listing by a new applicant which is issued before the Exchange's meeting to consider the application must state that application has been or will be made to the Exchange for listing of and for permission to deal in the debt securities concerned. If no such statement is made, the Exchange may reject the application. Listed issuers must comply with the obligation (which arises under the Listing Agreement) to maintain confidentiality before the announcement of an issue.
- 24.09 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

- 24.10 The following documents must be lodged with the Exchange for initial review, at least fourteen clear days prior to the date on which the listing document is to be bulk printed:
- (1) four drafts or proof prints of the listing document, marked in the margin to indicate where the relevant items from Chapter 25 and/or Appendix 1 have been met;
 - (2) two copies of a draft of the formal notice, where applicable;

- (3) four drafts or proof prints of any application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought;
- (4) four copies of a draft of any temporary document of title proposed to be issued which must comply with Part A of Appendix 2, if available;
- (5) two copies of a draft of the definitive certificate or other document of title proposed to be issued, which must comply with Part B of Appendix 2, if available;
- (6) two copies of a draft of the trust deed or other document securing or constituting the debt securities, which must comply with Appendix 4, if available; and
- (7) where the listing document contains an accountants' report, two copies of a draft of any statement of adjustments relating to the accountants' report.

24.11 The following documents must be lodged with the Exchange in the case of a new applicant at least three clear business days prior to the date of hearing of the application by the Listing Committee and in the case of a listed issuer at least two clear business days prior to the date on which the listing document is to be bulk printed:

- (1) a formal application for listing in the form set out in Form C2 in Appendix 5, signed by a duly authorised officer of the issuer;
- (2)
 - (a) four copies of the final proof of the listing document, where applicable;
 - (b) two copies of the final proof of the formal notice, where applicable;
 - (c) four copies of the final proof of any application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought; and
 - (d) unless previously supplied, the documents referred to in rules 24.10(4), (5) and (6);
- (3) in the case of a new applicant:
 - (a) a written submission to the Exchange in the form prescribed by the Exchange from time to time in support of the application for listing;
 - (b) a certified copy of the certificate of incorporation or equivalent document of the issuer and the guarantor, in the case of a guaranteed issue; and
 - (c) a certified copy of the certificate(s) (if any) entitling the issuer and the guarantor, in the case of a guaranteed issue, to commence business;

- (4)
 - (a) a certified copy of the memorandum and articles of association or equivalent documents of both the applicant and the guarantor, in the case of a guaranteed issue, or, if previously supplied in connection with a previous listing and where no amendments have been made thereto, a certificate of an authorised officer of the issuer and of the guarantor, in the case of a guaranteed issue, confirming that there have been no amendments thereto; and
 - (b) the annual report and accounts for each of the three completed financial years of the issuer or its group and the guarantor or its group, in the case of a guaranteed issue, immediately preceding the issue of the listing document or such shorter period as may be acceptable to the Exchange or, if such accounts have previously been supplied in connection with a previous listing, a certificate from the auditors of the issuer and the guarantor, in the case of a guaranteed issue, that there has been no material adverse change in the financial position and prospects of the issuer or guarantor, as the case may be, since the date of the latest audited accounts. (see rule 23.06);
- (5) unless previously supplied in connection with a previous listing, a Listing Agreement in the form prescribed and provided by the Exchange, duly signed for and on behalf of the issuer and the guarantor, in the case of a guaranteed issue;
- (6) where possible, a certified copy of:—
 - (a) the resolution(s) of the issuer in general meeting (if any) authorising the issue of all debt securities for which listing is sought;
 - (b) 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 debt securities, the making of the application for listing in the form set out in Form C2 in Appendix 5 and the signing of the Listing Agreement and approving and authorising the issue of the listing document; and
 - (c) in the case of a guaranteed issue, the resolution(s) of the board of directors or other governing body of the guarantor approving and authorising the giving and signing of the guarantee(s) and authorising the issue of the listing document;
- (7) three copies of the notice(s) of meeting (if any) of shareholders referred to in the listing document;
- (8) a draft of the trust deed or other document securing or constituting the debt securities, unless previously supplied; and

- (9) a written confirmation and undertaking signed by each director and member of the issuer's governing body to the following effect:
- (a) that the listing document referred to in rule 24.11(2)(a) above contains all information about the biographical details of such director or member of the issuer's governing body as set out in rule 13.51(2) and that those details are true, accurate and complete;
 - (b) where, before dealings commence, there are any changes in the biographical details as set out in rule 24.11(9)(a) above, to inform the Exchange as soon as practicable of such changes; and
 - (c) to lodge with the Exchange in accordance with rule 24.14(9) a declaration and undertaking, in the form set out in Form B in Appendix 5, duly signed by such director or member of the issuer's governing body.

If the director or the member of the issuer's governing body is appointed after the submission of Form C2, then the director/member of the issuer's governing body 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 listing document referred to in rule 24.11(2)(a) 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 or member of the issuer's governing body.

24.12 In the case of a listed issuer, a new Listing Agreement in the appropriate form may be required.

24.13 In the case of a new applicant, 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 and, in the case of a listed issuer, on or before the date of issue of the listing document, the following documents must be supplied to the Exchange:—

- (1) [Repealed 1 September 2008]
- (2) a certified copy of every letter, report, financial statement, statement of adjustments, valuation, contract, resolution or other document any part of which is extracted or referred to in the listing document; and
- (3) a certified copy of the written consent by any expert to the issue of the listing document with the inclusion therein of the following in the form and context in which they are included:—
 - (a) a statement purporting to be a copy of or extract from or summary of or reference to a report or valuation or other statement by such expert; and

- (b) any recommendation by such expert in relation to acceptance or rejection of an offer or proposal.

(4) [Repealed 1 September 2008]

24.14 As soon as practicable after the issue of the listing document, the following documents must be lodged with the Exchange as a condition for granting listing approval:—

- (1) [Repealed 25 June 2007];
- (2) unless previously supplied under rule 24.11(6), a certified copy of the resolution(s) therein referred to;
- (3) [Repealed 25 June 2007];
- (4) [Repealed 25 June 2007];
- (5) a specimen of any temporary document of title;
- (6) when available, a specimen of the definitive certificate or other document of title;
- (7) if requested by the Exchange, a declaration from the security printers responsible for the production of bearer documents of title in accordance with paragraph 25 of Part B of Appendix 2;
- (8) a declaration substantially in the form set out in Form F in Appendix 5, duly signed by a director or the secretary of the issuer and a director or secretary of the guarantor, in the case of a guaranteed issue, together with any annual listing fee which is payable and which has not previously been paid (see Appendix 8); and
- (9) in the case of a new applicant, a written declaration and undertaking, in the form set out in Form B in Appendix 5, duly signed by each director/member of the issuer's governing body. In the case of a listed issuer, the same declaration and undertaking must be submitted if specifically requested by the Exchange.

24.15 The provisions of Chapter 11A apply equally to debt securities.