

Chapter 2

GENERAL

INTRODUCTION

Preliminary

- 2.01 The principal function of the Exchange is to provide a fair, orderly and efficient market for the trading of securities. In furtherance of this, the Exchange has made the Exchange Listing Rules under section 23 of the Securities and Futures Ordinance prescribing the requirements for the listing of securities on the Exchange. These comprise both requirements which have to be met before securities may be listed and also continuing obligations with which an issuer and, where applicable, a guarantor must comply once listing has been granted. The Exchange Listing Rules have been approved by the Commission pursuant to section 24 of that Ordinance.
- 2.02 The purpose of this book is to set out and explain those requirements.
- 2.02A The Exchange Listing Rules shall not apply to Options Contracts traded through the Options System as defined in the Options Trading Rules of the Exchange and the Clearing Rules of The SEHK Options Clearing House Limited. The Traded Options Committee of the Exchange is primarily responsible for the supervision and regulation of the options market. Interested parties are directed to the Options Trading Rules of the Exchange and the Clearing Rules of The SEHK Options Clearing House Limited, as from time to time in effect.

General Principles

- 2.03 The Exchange Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:—
- (1) applicants are suitable for listing;
 - (2) the issue and marketing of securities is conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer and, in the case of a guaranteed issue, the guarantor and of the securities for which listing is sought;
 - (3) investors and the public are kept fully informed by listed issuers and, in the case of a guaranteed issue, the guarantors of all factors which might affect their interests — and in particular that immediate disclosure is made of any information which might reasonably be expected to have a material effect on market activity in, and the prices of, listed securities;
 - (4) all holders of listed securities are treated fairly and equally;
 - (5) directors of a listed issuer act in the interests of its shareholders as a whole — particularly where the public represents only a minority of the shareholders; and
 - (6) all new issues of equity securities by a listed issuer are first offered to the existing shareholders by way of rights unless they have agreed otherwise.

In these last four respects, the rules seek to secure for holders of securities, other than controlling interests, certain assurances and equality of treatment which their legal position might not otherwise provide.

- 2.04 It is emphasised that the Exchange Listing Rules are not exhaustive and that the Exchange may impose additional requirements or make listing subject to special conditions whenever it considers it appropriate. Conversely, the Exchange may waive, modify or not require compliance with the Exchange Listing Rules in individual cases (to suit the circumstances of a particular case), as a variety of circumstances may exist which require it to make ad hoc decisions. However, any waiver or modification of, or decision not to require compliance with, a rule, which is intended to have general effect (i.e. to affect more than one issuer and its subsidiaries at the same time) may only be granted with the prior consent of the Commission. The Exchange will not grant an individual waiver or modification of a rule, or agree not to require compliance with a rule, on a regularly recurring basis so as to create the same result as a general waiver. Consequently, both new applicants and listed issuers and, in the case of a guaranteed issue, guarantors are encouraged to seek informal and confidential guidance from the Exchange at all times.
- 2.05 These Exchange Listing Rules may be amended by the Exchange from time to time, subject to the approval of the Commission under section 24 of the Securities and Futures Ordinance.
- 2.06 Suitability for listing depends on many factors. Applicants for listing should appreciate that compliance with the Exchange Listing Rules may not of itself ensure an applicant's suitability for listing. The Exchange retains a discretion to accept or reject applications and in reaching their decision will pay particular regard to the general principles outlined in rule 2.03. Prospective issuers (including listed issuers) are therefore encouraged to contact the Exchange to seek informal and confidential guidance as to the eligibility of a proposed application for listing at the earliest possible opportunity.

Delivery of Information and Documents

- 2.07 (1) The procedures regarding the delivery of information and documents under the Exchange Listing Rules shall be determined by the Exchange from time to time and promulgated by way of a practice note to the Exchange Listing Rules.
- Note: See Practice Note 1*
- (2) The Exchange may publish, release or present on the Exchange's website or in any other form or context and to whomsoever the Exchange deems necessary or appropriate for the purposes specified below any information provided by or on behalf of any listed issuer or listing-new applicant to the Exchange, whether pursuant to any obligation of such listed issuer or listing-new applicant under the Exchange Listing Rules to publish such information or otherwise, and without liability on the part of the Exchange. In addition, the Exchange may impose a fee for access to or use of such public information so published, released or presented, and such listed issuer or listing-new applicant shall be deemed to have waived any right to receive any fee or other remuneration from the Exchange in respect of such access or use. The purposes for which the Exchange may so publish, release or present such information are as follows:-
- a) to provide a means of easy access by the investing public to such information;

- b) for the promotion of the Exchange;
 - c) in connection with the compilation of statistical and other information on listed issuers and listing-new applicants;
 - d) investor awareness and education; or
 - e) to preserve the general integrity and reputation of the market.
- (3) Listed issuers and listing-new applicants must submit to the Exchange by electronic means a copy of any announcement, notice or other document which they are obliged to publish in the newspapers pursuant to or otherwise for the purposes of the Exchange Listing Rules for publication on the Exchange's website on the same day as such announcement, notice or other document is to be published in the newspapers. Any copy of an announcement, notice or other document submitted for publication on the Exchange's website must be the same as the version submitted for publication in the newspapers. For documents which require Exchange clearance under the Exchange Listing Rules, the copy must be submitted to the Exchange together with a written confirmation from or on behalf of the listed issuer or listing-new applicant that it has been cleared by the Listing Division.
- (4) All announcements, notices or other documents provided to the Exchange by electronic means must be so provided on diskette or on CD ROM and in a virus-free electronic format according to the timing and procedures specified by the Exchange from time to time or in such other manner as may be determined and promulgated by the Exchange from time to time.

Note: The Exchange accepts no responsibility for any defects in the content or format of any announcement, notice or other document submitted for publication on the Exchange's website and accepts no responsibility for any delay or failure in publication. It is the sole responsibility of the listed issuer or listing-new applicant to ensure that all material submitted by it or on its behalf for publication on the Exchange's website is accurate.

- (5) For the avoidance of doubt, nothing in the Exchange Listing Rules shall be construed as imposing upon the Exchange an obligation to publish on the Exchange's website any document or communication other than the documents referred to in Rule 2.07(3).

Use of Electronic Means

- 2.07A (1) Subject to the provisions set out in this rule 2.07A, any requirement in these Exchange Listing Rules for a listed issuer to send, mail, dispatch, issue, publish or otherwise make available any corporate communication may, to the extent permitted under all applicable laws and regulations and the listed issuer's own constitutional documents, be satisfied by the listed issuer sending or otherwise making available the corporate communication to the relevant holders of its securities using electronic means and any requirement in these Exchange Listing Rules that a corporate communication of a listed issuer must be in printed form may be satisfied by the corporate communication being in electronic format. Notwithstanding the foregoing, all listed issuers availing themselves of the provisions of this rule 2.07A must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time in this regard under Hong Kong law for listed issuers incorporated in Hong Kong.

- (2) The corporate communication may be sent or otherwise made available by the listed issuer to a holder of its securities using electronic means only where the listed issuer has previously received from that holder an express, positive confirmation in writing that the holder wishes to receive or otherwise have made available to the holder the corporate communication by the means and in the manner proposed by the listed issuer.
- (3) A listed issuer which, availing itself of this rule 2.07A, sends or otherwise makes available a corporate communication to holders of its securities using electronic means must afford holders the right at any time by reasonable notice in writing served on the listed issuer to change their choice as to whether they wish to receive corporate communications in printed form or using electronic means. The listed issuer must set out in each such corporate communication the steps for notifying the listed issuer of any such change together with a statement expressly informing holders that:
- (a) holders may at any time choose to receive corporate communications either in printed form or using electronic means; and
- (b) holders who have chosen to receive the corporate communication using electronic means and who for any reason have difficulty in receiving or gaining access to the corporate communication will promptly upon request be sent the corporate communication in printed form free of charge.
- (4) A listed issuer which, availing itself of this rule 2.07A, has made available a corporate communication to holders of its securities by publication on its website, must ensure that such corporate communication remains available on its website on a continuous basis for at least 5 years from the date of first publication.

Note: It is the sole responsibility of the listed issuer to ensure that any proposed arrangement is permitted under, and that the listed issuer will at all times comply with, all applicable laws and regulations and the listed issuer's own constitutional documents (including, in the case of a listed issuer incorporated outside Hong Kong, a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong as referred to in (1) above).

- 2.07B (1) Any requirement in these Exchange Listing Rules for a listed issuer to send, mail, dispatch, issue, publish or otherwise make available any corporate communication in both English and Chinese may, where the listed issuer has made adequate arrangements to ascertain whether or not a holder of its securities wishes to receive the English language version only or the Chinese language version only and to the extent permitted under applicable laws and regulations and the listed issuer's own constitutional documents, be satisfied by the listed issuer sending the English language version only or the Chinese language version only (in accordance with the holder's stated wish) to the holder concerned. Any arrangement by the listed issuer to ascertain a holder's wish must afford the holder the choice of receiving the English language version only, the Chinese language version only or both the English language version and the Chinese language version.
- (2) A listed issuer which, availing itself of this rule 2.07B, sends the English language version only or the Chinese language version only of a corporate communication to holders of its securities must afford holders the right at any time by reasonable

notice in writing served on the listed issuer to change their choice as to whether they wish to receive the English language version only, the Chinese language version only or both the English language version and the Chinese language version. The listed issuer must set out in each such corporate communication the steps for notifying the listed issuer of any such change together with a statement expressly informing holders that they may at any time choose to receive the English language version only, the Chinese language version only or both the English language version and the Chinese language version notwithstanding any wish to the contrary previously conveyed to the listed issuer.

Note: By way of an example and without prejudice to the generality of the above, the Exchange will normally regard as adequate an arrangement along the following lines:

- (1) *A letter, together with a pre-paid reply form (the "First Letter") in both English and Chinese, is sent by the listed issuer to holders of its securities to enable them to select either an English language version or a Chinese language version or both versions of the corporate communication. The First Letter clearly explains the consequential arrangement (see (3) below) if no reply is received from such holders by a certain date (the "Deadline").*
- (2) *The listed issuer sends the selected language version of the corporate communication to those holders who have made a selection.*
- (3) *If no reply is received on or before the Deadline, the following arrangements apply, where applicable :—*
 - (a) *the English language version of the corporate communication is sent to: (i) all overseas holders; and (ii) all Hong Kong holders other than natural persons with a Chinese name; and*
 - (b) *the Chinese language version of the corporate communication is sent to all Hong Kong holders who are natural persons with a Chinese name.*

Whether a holder is a Hong Kong or an overseas person will be determined by his or its address as appearing in the listed issuer's register of securities holders.

- (4) *When the corporate communication is sent out according to the arrangements set out in (3) above, a letter, together with a pre-paid request form (the "Second Letter") in both English and Chinese, is attached to or printed at some prominent place in the sent out versions of the corporate communication stating that the corporate communication prepared in the other language will be available upon request.*
- (5) *Both the English language version and the Chinese language version of the corporate communication is made available on the listed issuer's website in an accessible format and a copy in electronic format of the corporate communication in both languages is submitted to the Exchange ~~on the same day as such corporate communication is sent to holders~~ in accordance with the publication requirements of rule 2.07C(1)(b)(i).*

- (6) *The listed issuer provides a dial-up hotline service or other equivalent public communication channel acceptable to the Exchange to enable holders to make enquiry of the listed issuer's proposed arrangements.*
- (7) *The First Letter and the Second Letter mention that the corporate communication will be available in both languages on the listed issuer's website and a dial-up hotline service or other equivalent public communication channel will be provided as mentioned in (5) and (6) respectively.*
- (8) *The listed issuer makes a public announcement stating the proposed arrangements at the same time as the First Letter is dispatched to holders.*

2.07C (1) (a) ~~An issuer must submit to the Exchange by electronic means for publication on the Exchange's website a ready-to-publish copy of any announcement or notice which is required under the Exchange Listing Rules to be published in the newspapers. any corporate communication for publication on the Exchange's website on the same day as such corporate communication is (in the case of a listed issuer) sent by means permitted under the Exchange Listing Rules or (in the case of a new applicant) published by the issuer. The copy must be received by the Exchange no later than 9.00 p.m. on the business day last preceding the day on which it is published in the newspapers.~~

(b) (i) ~~Other than where a prospectus is to be registered under the Companies Ordinance, a listed issuer must submit to the Exchange by electronic means for publication on the Exchange's website a ready-to-publish copy of any corporate communication which is required by the Exchange Listing Rules to be sent to holders of any of the issuer's listed securities. The copy must be received by the Exchange no later than 9.00 p.m. on the business day last preceding the day on which it is so sent.~~

(ii) ~~Where a prospectus is to be registered under the Companies Ordinance, the listed issuer must submit to the Exchange by electronic means for publication on the Exchange's website a ready-to-publish copy of each of the prospectus and any application forms. The copies must be received by the Exchange no later than 9.00 a.m. on the day of registration of the prospectus under the Companies Ordinance.~~

(c) ~~A new applicant must submit to the Exchange by electronic means for publication on the Exchange's website a ready-to-publish copy of each of the prospectus (or other listing document) and any application forms issued by the new applicant in connection with its application for listing. The copies must be received by the Exchange no later than 9.00 a.m. on the day of registration of the prospectus under the Companies Ordinance or, where the listing document is not to be registered, no later than 9.00 p.m. on the business day last preceding its date of issue.~~

Note: ~~Issuers must accordingly bear in mind the time required to comment on and clear the form of any document so as to be able to submit the ready-to-publish copy to the Exchange by the stipulated deadline.~~

- (2) Any copy of a ~~corporate communication document~~ submitted for publication on the Exchange's website must be the same as the version ~~(in the case of a listed issuer)~~ sent by means permitted under the Exchange Listing Rules or ~~(in the case of a new applicant)~~ published (as the case may be) by the issuer. For ~~corporate communications documents~~ which require Exchange clearance under the Exchange Listing Rules, the copy must be submitted to the Exchange together with a written confirmation from or on behalf of the issuer that it has been cleared by the Listing Division. Where a prospectus is to be registered under the Companies Ordinance, the issuer must also provide written confirmation of such registration accompanied by a copy of the letter from the Companies Registry confirming the registration, as soon as the issuer has received this letter.
- (3) All ~~corporate communications documents~~ provided to the Exchange by electronic means must be so provided on diskette or on CD ROM and in a virus-free electronic format according to the timing and procedures specified by the Exchange from time to time or in such other manner as may be determined and promulgated by the Exchange from time to time.

Note: The Exchange accepts no responsibility for any defects in the content or format of any ~~corporate communication document~~ submitted for publication on the Exchange's website and accepts no responsibility for any delay or failure in publication. It is the sole responsibility of the issuer to ensure that all material submitted by it or on its behalf for publication on the Exchange's website is accurate.

- ~~(4) For the purpose of this rule 2.07C, "corporate communication" means, in the case of a listed issuer, any document which it publishes for the information or action of, and which it is required under the Exchange Listing Rules to send by means permitted under the Exchange Listing Rules to, holders of any of its listed securities, including but not limited to:—~~

~~(a) the directors' report, its annual accounts together with a copy of the auditors' report and, where applicable, its summary financial report;~~

~~(b) the interim report;~~

~~(c) a notice of meeting;~~

~~(d) a listing document; and~~

~~(e) a circular;~~

~~and, in the case of a new applicant, any document which it is required to publish under the Exchange Listing Rules in connection with the application for listing, including but not limited to the listing document and the relative application form (if any).~~

Structure

- 2.08 The Exchange Listing Rules fall into four main parts: Chapters 1 — 6 set out matters of general application; Chapters 7 — 19A set out the requirements applicable to the issue of equity securities; Chapters 20 and 21 set out the requirements applicable to unit trusts, mutual funds and other investment companies; and Chapters 22 — 37 set out the requirements applicable to the issue of debt securities.

Sponsors

- 2.09 A new application for listing, in the case of equity securities, must be sponsored by an Exchange Participant, issuing house, merchant bank or other similar person acceptable to the Exchange as more fully explained in Chapter 3.
- 2.10 In the first instance, all matters concerning an application for listing by a new applicant must be dealt with between the Exchange and the new applicant and its sponsor.

Authorised Representatives

- 2.11 Every listed issuer must appoint and retain at all times two authorised representatives as more fully explained in Chapter 3.

Listing Fees and Other Charges

- 2.12 The details of the initial listing fee, annual listing fee, subsequent issue fee and other charges together with details of the brokerage charge, transaction levies and trading fees on new issues are set out in Appendix 8.

Presentation of Information

2.13 Without prejudice to any specific requirements of the Exchange Listing Rules as to content or responsibility for the document in question, any announcement, listing document or circular required pursuant to the Exchange Listing Rules must be prepared having regard to the following general principles:

- (1) the information contained in the document must be clearly presented and in the plain language format specified or recommended by the Exchange and/or the Commission from time to time; and
- (2) the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not, among other things:—
- (a) omit material facts of an unfavourable nature or fail to accord them with appropriate significance;
- (b) present favourable possibilities as certain or as more probable than is likely to be the case;
- (c) present projections without sufficient qualification or explanation; or
- (d) present risk factors in a misleading way.

2.14 Any listing document, circular or announcement issued by an issuer pursuant to the Exchange Listing Rules must disclose the name of each director as at the date of the relevant listing document, circular or announcement.

Material interest in a transaction

2.15 Where a transaction or arrangement of an issuer is subject to shareholders' approval under the provisions of the Exchange Listing Rules, any shareholder that has a material interest in the transaction or arrangement shall abstain from voting on the resolution(s) approving the transaction or arrangement at the general meeting. Issuers must comply with the requirements under rules 13.39(4) and 13.39(5).

Note: For the avoidance of doubt, any provision in the Exchange Listing Rules requiring any other person to abstain from voting on a transaction or arrangement of an issuer which is subject to shareholders' approval shall be construed as being in addition to the requirement set out in rule 2.15.

2.16 For the purpose of determining whether a shareholder has a material interest, relevant factors include:

- (1) whether the shareholder is a party to the transaction or arrangement or an associate (as defined in rule 1.01) of such a party; and
- (2) whether the transaction or arrangement confers upon the shareholder or his associate a benefit (whether economic or otherwise) not available to the other shareholders of the issuer.

There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.

2.17 The issuer must, to the extent that it is aware having made all reasonable enquiries, include in the listing document or circular:

- (1) a statement as at the date by reference to which disclosure of the shareholding is made in the listing document or circular as to whether and to what extent any shareholder who is required to abstain from voting under the Exchange Listing Rules controls or is entitled to exercise control over the voting right in respect of his shares in the issuer;
- (2) particulars of:
 - (a) any voting trust or other agreement or arrangement or understanding (other than an outright sale) entered into by or binding upon any such shareholder; and
 - (b) any obligation or entitlement of any such shareholder as at the date by reference to which disclosure of the shareholding of any such shareholder is made in the listing document or circular,

whereby he has or may have temporarily or permanently passed control over the exercise of the voting right in respect of his shares in the issuer to a third party, either generally or on a case-by-case basis;

- (3) a detailed explanation of any discrepancy between any such shareholder's beneficial shareholding interest in the issuer as disclosed in the listing document or circular and the number of shares in the issuer in respect of which he will control or will be entitled to exercise control over the voting right at the relevant meeting; and
- (4) steps undertaken by the shareholder (if any) to ensure shares being the subject of the discrepancy referred to in rule 2.17(3) are not voted.