

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.
- 9.02 New applicants are reminded (see Chapter 3) that the sponsor is responsible for lodging the formal application for listing and all supporting documents and for dealing with the Exchange on all matters arising in connection with the application.
- 9.03 (1) 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 an advance booking on the prescribed form set out in Form A1 in Appendix 5 to the Exchange not less than 25 clear business days prior to the date on which it is expected that the Listing Committee will meet to consider the application ("the expected hearing date"). The advance booking form must be completed by sponsor(s) for the new applicant and accompanied by: –
- (a) the documents stipulated in rules 9.11 (1) to (3); and
 - (b) the initial listing fee.

Note: Where the initial listing fee is calculated based on the estimated monetary value of the equity securities to be listed, the sponsor must inform the Exchange of the actual monetary value as soon as it is determined. Any shortfall of the initial listing fee 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 .

Where the applicant has delayed its proposed timetable and more than six months have elapsed since the date of its advanced booking form, the applicant will forfeit the initial listing fee. Each such applicant wishing to reactivate its listing application must submit a new advance booking form accompanied by the initial listing fee. In case of a change in sponsor(s) (including addition of new sponsor(s)), the Exchange also requires the submission of a new advance booking form accompanied by the initial listing fee. In such a case, the Exchange may consider granting a waiver in relation to the 25 clear business days to the expected hearing date requirement, depending on the progress of the processing of the original listing application. Such waiver will be considered on a case by case basis.

Note: See also Chapter 2B for other circumstances in which a new applicant may be required to submit a new advance booking form.

- (2) The advance booking form must contain a draft timetable which must be agreed with the Exchange. Any changes in that timetable must also be agreed with the Exchange. Where an applicant wishes to reactivate its listing application which has been delayed and the date of such reactivation is within the period of six months from the date of the advanced booking form, the applicant must submit a revised timetable. Such revised timetable must be agreed with the Exchange in order to allow the Exchange sufficient time to review the listing application. The new applicant must keep the Exchange updated on the progress of the listing application on a fortnightly basis. The Exchange also reserves the right to require an applicant to amend the 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 which are not able to be resolved in a timely fashion. Applicants shall not be considered to have fulfilled their obligations to supply documents if they submit documents which are at such an early stage of drafting or subject to such frequent major changes as to make a review of the documents unproductive.

- (3) The Exchange expects to receive an advanced proof of the prospectus with the application form – that is not the initial proof – so that the Exchange’s review is able to commence immediately upon lodgement of the application. The disclosure of the requisite information as set out in Chapter 11 must be substantially completed in the advanced proof of the prospectus. If the Exchange considers the draft prospectus submitted with the Form A1 not to be in an advanced form, the Exchange will not commence review of any documents relating to the application. All documents, including the Form A1 and the initial listing fee, submitted to the Exchange will be returned to the sponsor(s). The sponsor(s) will be required to re-submit a new Form A1 together with the advanced proof of the prospectus.
 - (4) The Exchange may require an applicant to delay the expected hearing date for up to 25 business days if during the review process, the Exchange is of the view that the following cannot be fulfilled by the applicant at least four clear business days before the expected hearing date: -
 - (a) the submission of the revised proof of the prospectus containing sufficient and appropriate disclosure of all the requisite information as set out in Chapter 11;
 - (b) the submission of all the documents as set out in rules 9.11 and 9.12; and
 - (c) the Exchange’s queries and comments being satisfactorily addressed in a timely fashion.
 - (5) During the review process, the sponsor(s) should not revise the contents of the prospectus on a piece-meal basis and submit such revised proofs to the Exchange within a short period of time of each other. A revised proof of the prospectus which has substantially incorporated the Exchange’s comments on the previous proof and any additional information should be submitted to the Exchange at least five business days after the submission of the previous proof, unless the revised proof is requested by the Exchange.
- 9.04 In order to maintain an orderly new issues market the Exchange reserves the right to refuse a booking 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.
- 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 All publicity material released in Hong Kong relating to an issue of securities by a new applicant must be reviewed by the Exchange before release and must not be released until the Exchange has confirmed to the issuer that it has no further comments thereon. In addition, such publicity material must comply with all applicable statutory requirements. For these purposes, 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. Moreover, circulation is permitted of documents of a marketing nature such as the invitation or offering telex (or its equivalent in another medium) and documents which consist of, or are drafts of, or relate to, agreements to be entered into in connection with the issue of the securities, provided that any obligations created thereunder to issue, subscribe, purchase or underwrite the securities are conditional on listing being granted. Such 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 prior to the meeting of the Listing Committee held to consider such application must state that application has been or will be made to the Exchange for listing of and permission to deal in the securities concerned. Where any material relating to a proposed listing by a new applicant is released without prior review by the Exchange before the meeting of the Listing Committee to consider the application, the Exchange may delay the timetable for the proposed meeting of the Listing Committee by up to a month. If this will result in the Form A1 being more than six months old, the applicant may have to re-submit the application with the initial listing fee (see rule 9.03(1)).

Listed issuers must ~~endeavour to ensure that the proposed listing (and all details thereof) are kept confidential~~ comply with the obligation (which arises under the Listing Agreement) to maintain confidentiality prior to the announcement ~~of an issue concerning the proposed listing~~. This is particularly important where a listed issuer plans to “spin off” part of its business in a separate listing. Where the Exchange believes that a listed issuer or its advisers have permitted price sensitive information regarding the issue of new securities to leak, prior to its proper publication, the Exchange will not normally consider an application for the listing of those securities.

- 9.09 From the time of submission of the formal application for listing until listing is granted, there must be no dealing in the securities for which listing is sought by any connected person of the issuer, except as permitted by rule 7.11. 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 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

- 9.11 The following documents must be lodged with the Exchange for initial review, in the case of (1) to (3) below at the time of submission of Form A1 in accordance with rule 9.03, in the case of (4) to (6) at least 20 clear business days before the expected hearing date, in the case of (7) and (8) at least 15 clear business days before the expected hearing date and in the case of (9) to (15) below, at least 10 clear business days prior to the expected hearing date: –

Together with the Form A1

- (1) in case of a new applicant, six drafts or proofs of the listing document in reasonably advanced state marked in the margin to indicate where the relevant items from Chapter 11 and/or Part A of Appendix 1 and the Companies Ordinance have been met;

- (2) two copies of the audited profit and loss accounts and balance sheets of the companies which comprise or will comprise the group of the listed issuer for at least the first two completed financial years out of the three financial years comprising its track record;
- (3) a written submission on any proposed connected transactions (see Chapter 14A) of the new applicant after listing with relevant details of such transactions and any request for waiver from the requirements of Chapter 14A;

At least 20 clear business days before the expected hearing date

- (4) two copies of the advanced drafts of the accounts of the companies which comprise or will comprise the group of the listed issuer for the balance of the financial years or financial period(s) which make up the track record period;
- (5) where the listing document contains an accountants' report, two copies of a draft of any statement of adjustments relating to the accountants' report;
- (6) three drafts or copies of the memorandum and articles of association or equivalent document, unless previously supplied in the case of a listed issuer, which must comply with Appendix 3 and which are marked in the margin to indicate where the provisions of Appendix 3 have been met;

At least 15 clear business days before the expected hearing date

- (7) in the case of a new applicant, a formal declaration relating to any other business activities and undertaking, in the form set out in Form B/H/I in Appendix 5, duly signed by each director/supervisor and proposed director/supervisor. In the case of a listed issuer, the same declaration and undertaking must be submitted if specifically requested by the Exchange;
- (8) where the listing document contains a profit forecast (see rules 11.16 to 11.19), two copies of a draft of the board's profit forecast memorandum with principal assumptions, accounting policies and calculations for the forecast;

At least 10 clear business days before the expected hearing date

- (9) in respect of every listing document which is required by the Companies Ordinance to annex the same, a copy of every contract required by paragraph 17 of the Third Schedule of the Companies Ordinance to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particular thereof;
- (10) two copies of a draft of the formal notice, where applicable;
- (11) five drafts or proof prints of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;
- (12) in the case of a listed issuer, six drafts or proofs of the listing document marked in the margin to indicate where the relevant paragraphs from Chapter 11 and/or Part B of Appendix 1 and/or the Companies Ordinance have been met;
- (13) five drafts or proof prints of any temporary document of title proposed to be issued, which must comply with Part A of Appendix 2;
- (14) two drafts or proof prints of the definitive certificate or other document of title proposed to be issued, unless previously supplied in the case of a listed issuer, which must comply with Part B of Appendix 2; and

- (15) in the case of a listed issuer, two copies of all resolutions which have been passed by the issuer and which are required to be registered under the Companies Ordinance, unless previously supplied.

In respect of cases which require no hearing of the Listing Committee all relevant periods shall be calculated by reference to the date on which the listing document is intended to be bulk printed.

9.12 The following documents must be lodged with the Exchange, in the case of a new applicant at least four 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 C1 in Appendix 5, signed, in the case of a new applicant, by the sponsor and by a duly authorised officer of the issuer and in every other case by a duly authorised officer of the issuer, together with payment where relevant, in the case of a listed issuer, of the subsequent issue fee (see Appendix 8);
- (2)
 - (a) six copies of the final proof of the listing document, where applicable;
 - (b) two copies of the final proof of the formal notice, where applicable; and
 - (c) five copies of the final proof of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;
- (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;
 - (c) a certified copy of the certificate (if any) entitling the issuer to commence business;
 - (d) a certified copy of the memorandum and articles of association or equivalent documents of the issuer, unless previously supplied (if shareholders' approval to any necessary alteration cannot be obtained before the hearing of the application for listing, an undertaking to amend these documents at the earliest possible opportunity may be accepted); and
 - (e) the annual report and accounts for each of the three completed financial years of the issuer or group immediately preceding the issue of the listing document or such shorter period as may be acceptable to the Exchange (see rule 8.05);
- (4) in the case of a new applicant under Chapters 20 and 21, three copies of Listing Agreement in the form prescribed and provided by the Exchange, each duly signed for and on behalf of the issuer;
- (5) where possible, a certified copy of: –
 - (a) the resolution(s) of the issuer in general meeting (if any) authorising the issue of all securities for which listing is sought; and
 - (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 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 the signing of the Listing Agreement, and approving and authorising the issue of the listing document;

- (6) three copies of the notice(s) of meeting (if any) referred to in the listing document;
- (7) a specimen of any temporary document of title;
- (8) two specimens of the definitive certificate or other document of title (unless the securities for which listing is sought are or are to be identical in all respects with a class already listed);
- (9) in the case of a listed issuer, where 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 in discharging the outstanding debt; and
 - (b) a certified copy of the receiving bankers' acknowledgement of this authority and an agreement to act on it; and
- (10) where the listing document is required to contain a statement by the directors as to the sufficiency of working capital, a letter from the sponsor or, in the case of a listed issuer, the issuer's financial advisers or auditors, confirming that they are 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.

9.13 The following documents may be required: –

- (1) in the case of a new applicant where the promoter or other interested party is a limited company or a firm, a statutory declaration as to the identity of those who control it or are interested in its profits or assets;
- (2) in the case of a listed issuer: –
 - (a) a certified copy of the memorandum and articles of association or equivalent documents and certified copies of all resolutions which are required to be registered under the Companies Ordinance, unless previously supplied; and
 - (b) where applicable, three copies of new-Listing Agreement in the appropriate form, each duly signed for and on behalf of the issuer; and
- (3) in the case of a new applicant with a corporate shareholder holding over five per cent. of the issued capital, a declaration by a duly authorised officer of each such corporate shareholder, giving details of its registered office, directors, shareholders and business.

- 9.14 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)
 - (a) four copies of the listing document one of which must be dated and signed by every person who is named therein as a director or proposed director of the issuer or by his agent authorised in writing and by the secretary or, in the case of a capitalisation issue, one of which has been dated and signed by the secretary;
 - (b) four copies of the formal notice, where applicable;
 - (c) four copies of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought; and
 - (d) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;
 - (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, other than, in the case of a capitalisation issue, the annual report and accounts and the certified copies of every resolution extracted or referred to in the listing document supporting the capitalisation issue;
 - (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) in the case of an offer for subscription or offer for sale, 25 copies of each of the English language version and the Chinese language version of the listing document and relative application form;
 - (5) in any other case, 25 copies of each of the English language version and the Chinese language version of the listing document and relative application form (including any excess application form);
 - (6) a copy of the written notification issued by HKSCC stating the securities will be Eligible Securities; and
 - (7) every written undertaking from the applicant, its shareholders and/or other relevant parties to the Exchange referred to in the listing document.
- 9.15 In case of a listing document which constitutes a prospectus under the Companies Ordinance, the following documents must be lodged with the Exchange by no later than 11 a.m. on the intended date of authorisation of the prospectus: –
- (a) an application for authorisation for registration of the prospectus pursuant to section 38D(3) or section 342C(3) of the Companies 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 Ordinance (as the case may be) and having endorsed

thereon or annexed thereto the documents stipulated by the relevant section;

- (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 and a certificate issued by a competent officer of the sponsor certifying that the translator is competent to have given the certificate as to translations in respect of the prospectus documents; and
- (d) the powers of attorney or other authority pursuant to which the prospectus is signed, together with one certified copy of each such power or authority.

9.16 As soon as practicable after the issue of the listing document but before dealings commence, the following documents must be lodged with the Exchange: –

- (1) a copy of the relevant page(s) of each newspaper circulating in Hong Kong in which the listing document and/or formal notice was published (see rules 12.02 and 12.03);
- (2) (unless previously supplied under rule 9.12(5)) a certified copy of the resolution(s) therein referred to and in the case of a capitalisation issue (unless previously supplied under rule 9.14(2)), a certified copy of any resolution which is extracted or referred to in the listing document supporting the capitalisation issue and the annual report and accounts;
- (3) in the case of an offer for subscription, offer for sale or open offer, a copy of the relevant page of each newspaper circulating in Hong Kong in which the announcement of the results of the offer was published (see rule 12.08) together with a list containing the name and address and number of securities received by each successful applicant;
- (4) in the case of an offer for subscription or an offer for sale by tender, a copy of the relevant page of each newspaper circulating in Hong Kong in which the announcement of the striking price was published (see rule 12.09);
- (5) in the case of a rights issue, a copy of the relevant page of each newspaper circulating in Hong Kong in which the announcement of the results of the issue and of the basis of any acceptance of excess applications was published (see rule 12.10) together with a list containing the name and address and number of securities received by each successful applicant;
- (6) in the case of a placing of securities by a new applicant, or 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 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;
- (7) where securities are offered with a cash alternative, a statement of the total amount of securities issued;

- (8) in the case of securities issued as consideration for shares in a listed company which are acquired pursuant to section 168 of the Companies Ordinance, a certified copy of the notice given under that section;
- (9) where 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;
- (10) where 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;
- (11) in the case of a new applicant, a declaration substantially in the form set out in Form E in Appendix 5, duly signed by the sponsor; and
- (12) a declaration substantially in the form set out in Form F in Appendix 5, duly 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).