

Chapter 28

DEBT SECURITIES

APPLICATION PROCEDURES AND REQUIREMENTS

Preliminary

28.01 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.

28.02 The issuer must contact the Listing Division to ascertain a date (the “provisional hearing date”) on which the Listing Division or the GEM Listing Committee, as applicable, may consider the issuer’s application for listing. The Exchange reserves the right to change the provisional hearing date.

28.03 In order to allow the Exchange sufficient time to consider an application for listing on the basis of the supporting documents and to maintain an orderly new issues market, the issuer must apply to the Listing Division on the prescribed form set out in Appendix 5C at the earliest possible opportunity. In circumstances where the issuer is applying for the simultaneous listing of equity securities and debt securities, the issuer must follow the timetable relevant to the application to list such equity securities; and must otherwise apply in accordance with the following:—

- (1) in circumstances where the application is required to be supported by a listing document, the application form must be submitted at least 10 clear business days prior to the provisional hearing date; and
- (2) in circumstances where the application is not required to be supported by a listing document, the application must be submitted at least 4 clear business days prior to the proposed date for issuing the securities.

Note: If it is not possible to lodge documents with the Exchange within the specified time limits, they should be submitted as soon as they become available. Issuers should appreciate that any significant delay in lodging documents may affect the listing timetable.

28.04 In order to maintain an orderly new issues market the Exchange reserves the right to postpone consideration of an application if there are too many existing applications in the relevant period.

28.05 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 Part C of Appendix 1 have been met (and in the case only of a prospectus, the relevant provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance). Such copies must also be marked in the margin to indicate amendments made to conform with points raised by the Exchange. In any event, the final form, or, as appropriate, signed original of any document must have been received at least 4 clear business days prior to the provisional hearing date.

28.06 No material amendment to the final proof listing document will be allowed without the consent of the Exchange.

28.07 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.

28.08 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 and announcement referring to a new applicant which is issued before the Exchange's meeting to consider the new applicant's application for listing 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. Where any material relating to a proposed listing by a new applicant is released without the Exchange's prior review before the hearing, the Exchange may postpone the hearing by up to 1 month.

Issuers must maintain confidentiality before announcing an issue. Where the Exchange believes that an issuer or its advisers have permitted inside information regarding the issue of additional securities to leak before announcing the subject, the Exchange will not normally consider an application for the listing of those securities.

28.09 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.

Application

28.10 In circumstances where rule 27.04 applies such that the issuer has appointed a Sponsor or financial adviser, that Sponsor or financial adviser is responsible for providing advice to the issuer in connection with the debt issue and must lodge the issuer's application for listing and all supporting documents and deal with the Exchange on all matters in connection with the application.

28.11 The application for listing must be made, in accordance with the provisions of rule 28.03, in the prescribed form set out in Appendix 5C, signed by a duly authorised officer of the issuer. The form must be accompanied:—

- (1) by the documents, as applicable, stipulated in rule 28.13;
- (2) in circumstances where the issuer or the issuer's holding company is required to have (or otherwise retains) a Sponsor or financial adviser, the Sponsor's or financial adviser's statement relating to independence in a form acceptable to the Exchange; and
- (3) the listing fee in the amount specified in Appendix 9.

28.12 The Exchange has a discretion to reject any application. In such circumstances, the Exchange shall give written notice of the rejection and the reasons therefor.

Documentary requirements

At the time of application for listing

28.13 The following documents, as applicable, must be lodged with the Exchange for review together with the form of application and other items referred to in rule 28.11:—

- (1) 6 drafts or proof prints of the listing document in anticipated final form, marked in the margin to indicate where compliance has been made with the relevant provisions of the GEM Listing Rules and, in the case only of a prospectus, to indicate in addition where compliance has been made with the relevant provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance;

Note: The Exchange acknowledges that information relating to the pricing, the number of securities to be offered, details of the underwriting (if any) and related matters may not have been settled at the time of the application.

- (2) 3 copies of the anticipated final draft or proof of the formal notice, where applicable;
- (3) 3 copies of the anticipated final draft or proof print of any application form (including any excess or preferential application form) to subscribe or purchase the debt securities for which listing is sought;
- (4) 3 copies of the anticipated final draft or proof of any temporary document of title (which must comply with Part A of Appendix 2) where applicable;
- (5) 3 copies of the anticipated final draft or proof of the definitive certificate or other document of title (which must comply with Part B of Appendix 2) (unless the securities for which listing is sought are or are to be identical in all respects with a class already listed);
- (6) a copy of the anticipated final draft, if available, of the trust deed or other document securing or constituting the debt securities, which must comply with Appendix 4, and which are marked in the margin to indicate where the relevant items from Appendix 4 have been met;
- (7) where the listing document contains an accountants' report, 3 copies of the anticipated final draft of any statement of adjustments relating to the accountants' report;
- (8)
 - (a) 3 certified copies 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 of each of the completed financial years, as shown in the accountants' report, 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, 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 guaranteed issue, that there has been no material adverse change in the financial position and prospects of the issuer and guarantor, as the case may be, since the date of the latest audited accounts. (see rule 27.06).

- (9) 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 and the making of the application for listing in the prescribed form (Appendix 5C); 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 the undertaking to comply with the GEM Listing Rules (see rule 27.15) and authorising the issue of the listing document (if applicable); and
- (10) 3 copies of the notice(s) of meeting (if any) referred to in the listing document; and
- (11) any checklist(s) in the form prescribed by the Exchange from time to time, duly completed.

After notification of listing approval but before the date of issue of the listing document

28.14 On or before the date of issue of the listing document, the following documents must be supplied to the Exchange:—

- (1) in the case of a new applicant or a listed issuer proposing to issue a listing document of the type referred to in rule 6A.36(1) within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20 during which the issuer or the issuer's holding company is required to appoint a Compliance Adviser, the signed declaration in the form set out in Appendix 7J as referred to in rule 6A.35;
- (2) [Repealed 1 September 2008]
- (3) 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
- (4) 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.

(5) [Repealed 1 September 2008]

28.15 In the case of a listing document which constitutes a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the following documents must be lodged with the Exchange by 11 a.m. on the intended date of authorisation of the prospectus:—

- (1) an application for authorisation for registration of the prospectus pursuant to section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be);
- (2) two printed copies of the prospectus, duly signed in accordance with section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be) and having endorsed thereon or annexed thereto the documents stipulated by the relevant section;
- (3) in respect of a 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 or in respect of an English translation of the prospectus, a certificate issued by the translator certifying that the English translation of the Chinese version of the prospectus is true and accurate; and in either case, 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
- (4) 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.

After the date of issue of the listing document but before dealings commence

28.16 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) unless previously supplied under rule 28.13(9), a certified copy of the resolution(s) therein referred to;
- (2) the completed company information sheet in the prescribed form set out in Appendix 5F, submitted in the electronic format specified by the Exchange from time to time, for publication on the Exchange's website, together with a hard copy duly signed by or on behalf of each of the directors of the issuer;

Note: This requirement does not relate to the guarantor, in the case of a guaranteed issue, unless the guarantor is itself a listed issuer.

(3) [Repealed 25 June 2007]

- (4) [Repealed 25 June 2007]
- (5) [Repealed 25 June 2007]
- (6) a specimen of any temporary document of title;
- (7) where available, a specimen of the definitive certificate or other document of title;
- (8) if requested by the Exchange, a declaration from the security printers responsible for the production of bearer documents of title in accordance with paragraph 24 of Part B of Appendix 2; and
- (9) a declaration substantially in the form set out in Appendix 5E, 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 9).

28.17 For the avoidance of doubt, the provisions of Chapter 15 relating to prospectuses apply equally to debt securities.