

Chapter 12

EQUITY SECURITIES

APPLICATION PROCEDURES AND REQUIREMENTS

Introduction

- 12.01 This Chapter sets out the procedures and requirements for applications for the listing of equity securities by new applicants and listed issuers. The procedures and requirements are applicable to both new applicants and listed issuers except where otherwise stated.
- 12.02 The Exchange may raise any enquiries or call for any information or documentation in connection with any listing application. Both the Sponsor and the issuer in question are required to respond in a prompt and efficient manner to all such enquiries raised and the issuer shall not (save, in the case of a new applicant, for the express purposes set out in rule 12.15) publish or issue any listing document (if any) until the Exchange confirms that it has no further comments thereon.

Enquiries prior to application

- 12.03 In the context of preparing the application for listing, if the issuer or its Sponsor has any queries on any aspect of the GEM Listing Rules, the Sponsor (or if the issuer is not required to have (or does not otherwise retain) a Sponsor, the issuer) should contact the Listing Division. The Exchange reserves the right to require that any query be submitted to it in writing, accompanied by such information or documentation as the Exchange deems appropriate or necessary.
- 12.04 Responses from the Exchange to any query made of it prior to consideration of any listing application shall not be binding on the Exchange and provide no assurance that the listing application will be approved.

Applications

General

- 12.05 An application must be made to the Exchange for the purposes of listing securities issued by a new applicant and a listed issuer alike.
- 12.06 The Sponsor (or if the issuer is not required to have (or does not otherwise retain) a Sponsor, the issuer) is responsible for lodging the application for listing and all supporting documents and for dealing with the Exchange on all matters arising in connection with the application.
- 12.07 If the listing of a new applicant remains outstanding for more than 6 months after the date of the application form, a new application form together with a further listing fee in the prescribed amount must be submitted to the Exchange. Any initial listing fee paid will, in such circumstances, be forfeited.
- 12.08 If there is a termination or addition of a Sponsor during the vetting process of any listing document to be issued by a new applicant, the new applicant must submit a new listing application detailing a revised timetable and a further initial listing fee in the amount specified in Appendix 9. Any initial listing fee paid will, in such circumstances, be forfeited.

Notes:(1) [Repealed 1 October 2013]

(2) See also Chapter 4 for other circumstances when a new applicant may be required to submit a new listing application form.

(3) *Where there is a change in Sponsors, the replacement or remaining Sponsor, as the case may be, must submit to the Exchange why the outgoing Sponsor left; a copy of the clearance letter (if any) from the outgoing Sponsor; and any matters the replacement or remaining Sponsor considers necessary to be brought to the Exchange's attention regarding the application and the outgoing Sponsor as soon as practicable.*

(4) *Where an additional Sponsor is appointed, the new applicant and the Sponsors must submit to the Exchange reasons for appointing the additional Sponsor; and the additional Sponsor must submit to the Exchange a confirmation that it fully agrees with all submissions previously made by the new applicant and its existing Sponsor when a new listing application is submitted pursuant to rule 6A.02B(2).*

- 12.09 (1) An applicant must submit a listing application form, an Application Proof and all other relevant documents under rules 12.22 and 12.23, and the information in these documents must be substantially complete except in relation to information that by its nature can only be finalised and incorporated at a later date.
- (2) If the Exchange decides this information is not substantially complete, the Exchange will not continue to review any documents relating to the application. All documents, including the Form 5A (except for the retention of a copy of these documents for the Exchange's record) submitted to the Exchange will be returned to the Sponsor. The initial listing fee will be dealt with in the manner described in the note to rule 12.14(4) below.
- (3) For applications which were previously returned by the Exchange, the applicant can only submit a new Form 5A together with a new Application Proof not less than 8 weeks after the Return Decision.

Notes: (1)-(3) [Repealed 1 October 2013]

- (4) The Exchange may require a new applicant to delay the provisional hearing date (see rule 12.12) if, during the review process, the Exchange believes the following cannot be fulfilled by the new applicant at least 4 clear business days before the provisional hearing date:—
- (a) the submission of the revised proof of the listing document containing sufficient and appropriate disclosure of all information required under the GEM Listing Rules;
- (b) the submission of any outstanding documents as requested by the Exchange; and
- (c) the Exchange's queries and comments being satisfactorily addressed in a timely fashion.
- (5) During the review process, the Sponsor should not revise the contents of the listing document on a piece-meal basis. A revised proof of the listing document must completely address all the Exchange's comments on the previous proof. The Exchange may elect not to review a revised proof that fails to meet this requirement.
- (6) Where the GEM Listing Committee is considering an application for listing from a new applicant, the Listing Division will normally invite the new applicant and its directors to make itself available to attend the GEM Listing Committee hearing. The new applicant, including its directors and its Sponsor shall be prepared to answer questions raised by the GEM Listing Committee, but they will normally only be invited into the GEM Listing Committee hearing if the GEM Listing Committee wishes to directly question the new applicant. If the new applicant is invited to make itself available to attend, the new applicant may be accompanied by its directors, Sponsor and/or proposed authorised representatives.

- 12.10 No publicity material on an issue of securities by a new applicant can be released in Hong Kong by a new applicant or its agent unless and until the Exchange has reviewed it and confirmed to the applicant that it has no comments. In addition, the publicity material must comply with all statutory requirements. If the Exchange believes that a new applicant or its advisers have permitted information on the listing of the new applicant's securities to leak, the Exchange will normally delay the application for the listing of those securities. For these purposes:

- (1) 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;
- (2) the following documents do not fall within the scope of this rule and need not be submitted for prior review:
 - (a) an Application Proof published on the GEM website under rule 16.01A;
 - (b) a Post Hearing Information Pack published on the GEM website under rule 16.01B;
 - (c) any statement by a new applicant published on the GEM website stating that no reliance should be placed on any media reports about the new applicant subsequent to the publication of its Application Proof or the Post Hearing Information Pack, as the case may be; and
 - (d) the invitation or offering document (or its equivalent) and document that consist of, or are drafts of, or relate to, agreements to be entered into in connection with the issue of the securities. This is provided that any obligations created by these agreements to issue, subscribe, purchase or underwrite the securities are conditional on listing being granted;
- (3) any publicity material or announcement referring to a proposed listing by a new applicant issued before the GEM Listing Committee's hearing of the new applicant's application for listing must state that an application has been or will be made to the Exchange for listing of and permission to deal in the securities concerned; and
- (4) 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. If this results in the application form being more than 6 months out of date, the applicant will have to submit a new application form and a further listing fee (see rule 12.07).

12.11 From the time of submission of the application for listing until listing is granted, there must be no dealing in the securities for which listing is sought by any core connected person of the issuer, except as permitted by rule 10.16. The directors of the issuer shall forthwith notify the Exchange of any such dealing or suspected dealing of which they become aware. If any of the directors or their close associates are found to have engaged in such dealing, the application may be rejected.

Applications by new applicants

12.12 The listing application form must contain a draft timetable which is subject to agreement with the Exchange. The Sponsor must contact the Listing Division to ascertain a date ("the provisional hearing date") on which the GEM Listing Committee may consider the new applicant's application for listing. The Exchange reserves the right to change the provisional hearing date.

12.13 A new applicant must apply for a listing on the prescribed form set out in Appendix 5A.

12.14 The listing application form must be accompanied by:—

- (1) the documents, as applicable, stipulated in rules 12.22 and 12.23;
- (2) [Repealed 1 January 2005]
- (3) [Repealed 1 October 2013]

- (4) the initial listing fee in the amount specified in Appendix 9.

Notes: (1) If the Exchange returns an application to a Sponsor before the Exchange issues its first comment letter to the Sponsor, the initial listing fee will be refunded; and in other cases the initial listing fee will be forfeited.

(2) For applications re-submitted at any time after the lapse of a previous application, the new applicant and its Sponsor must provide, if applicable, a submission with supporting documents addressing all outstanding matters set out in the Exchange's letter on the lapsed application and material changes in the listing application, business or circumstances of the new applicant.

(3) For applications re-submitted within three months of a lapsed application by at least one of the original and independent Sponsors of the lapsed application (see notes 3 and 4 to rule 12.08), all documents lodged with the Exchange in relation to the previous application will remain valid and applicable. The new applicant and its Sponsor will only need to submit documents that have been revised due to material changes, and provide a confirmation to the Exchange that there has been no material changes to all other documents.

12.15 A new applicant may not publish or issue any listing document until the Exchange has confirmed that it has no further comments thereon. However, the new applicant is permitted to circulate 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, for the purposes of arranging underwriting.

Applications by listed issuers

12.16 A listed issuer must apply to the Listing Division for the listing of additional equity securities. The application must be on the prescribed form set out in Appendix 5B. In circumstances where the application is required to be supported by a listing document the application must be submitted at least 10 clear business days prior to the date on which the issuer proposes to bulk print the listing document and 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. In all cases, the Exchange may require a longer time period to consider the listing application.

12.17 The listing application form must be accompanied by:—

- (1) the documents, as applicable, stipulated in rule 12.26B;
- (2) in circumstances where the listed issuer is required to have (or otherwise retains) a Compliance Adviser (or other adviser appointed pursuant to rule 6A.37), the adviser's declaration of interests in the form set out in Appendix 7H; and
- (3) the subsequent issue fee in the amount specified in Appendix 9.

Further provisions applicable to applications by new applicants and listed issuers

12.18 Where any document that has been submitted is amended after submission, a like number of further copies of that document marked up to show all changes must be submitted to the Listing Division for review at the earliest opportunity. In the case of a new applicant, the final form, or as appropriate signed original, of any document must be lodged with the Exchange at least 4 clear business days prior to the provisional hearing date. No material amendment to the final proof listing document will be allowed without the consent of the Exchange.

12.19 Issuers are reminded that the above requirements are not exhaustive and that a new applicant or listed issuer must also supply any further documents and information which the Exchange may require in a particular case.

12.20 [Repealed 1 July 2008]

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

Documentary requirements – New Listing Applications

At the time of application for listing

12.22 The following documents, as applicable, must be lodged with the Exchange for review together with the application for listing form in respect of a new applicant:—

- (1) such number of copies of an Application Proof as required by the Exchange and 2 CD-ROMs containing the Application Proof and other documents as the Exchange may require;
- (2) a confirmation from the new applicant's legal advisers that the new applicant's articles of association conform with the relevant parts of Appendices 3 and 11, and on the whole, are not inconsistent with the GEM Listing Rules and the laws of the place where the new applicant is incorporated or otherwise established;
- (3) where the Application Proof contains an accountants' report, an advanced draft of any statement of adjustments relating to the accountants' report;
- (3a) a written confirmation to the new applicant from the reporting accountants that no significant adjustment is expected to be made to the draft accountants' reports on (1) historical financial information; (2) pro forma financial information; and (3) profit forecast (if any) included in the Application Proof based on the work done as of the date of the confirmation;
- (3b) a written confirmation to the new applicant from each of the experts who is named as an expert in the listing document (excluding reporting accountants) that no material change is expected to be made to the relevant expert opinion included in the Application Proof based on the work done as of the date of the confirmation;

Note: Where the relevant information in the listing document is updated, the reporting accountants and each of the experts, where applicable, must provide a written confirmation on the updated information similar to those in sub-paragraphs (3a) and (3b).

(4) [Repealed 1 October 2013]

(5) a final proof of the formal notice, where applicable;

(6) a final proof of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;

(7-12) [Repealed 1 October 2013]

- (13) where the Application Proof is required to contain a statement by the directors as to the sufficiency of working capital, an advanced draft of a letter from its Sponsor, confirming that it is satisfied that the sufficiency of working capital statement in the Application Proof has been made by the directors after due and careful enquiry;
- (14a) where the Application Proof contains a profit forecast (see rules 14.28 to 14.31), a final or an advanced draft of the board's profit forecast memorandum covering the same period of the profit forecast contained in the Application Proof and cash flow forecast memorandum covering at least 12 months from the expected date of publication of the listing document with principal assumptions, accounting policies and calculations for the forecasts;
- (14b) where the Application Proof does not contain a profit forecast, a final or an advanced draft of the board's profit forecast memorandum covering the period up to the forthcoming financial year end date after the date of listing and cash flow forecast memorandum covering at least 12 months from the expected date of publication of the listing document with principal assumptions, accounting policies and calculations for the forecasts; and
- (15) a final or an advanced draft of any application for a waiver of any provision of the GEM Listing Rules and the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance from the Sponsor and the directors/proposed directors.

Note: Unless previously provided, all executed requests for waivers must be submitted at least four clear business days before the expected hearing date.

12.23 In addition to the documents required under rule 12.22, a new applicant must lodge the following documents with the Exchange at the time of submitting the application for listing:—

- (1) [Repealed 1 October 2013]
- (2) in respect of each Sponsor to the application for listing, an undertaking and statement of independence under rule 6A.03 in the form in Appendix 7K duly signed on the Sponsor's behalf, and an undertaking and a declaration of interest under rules 6A.21 and 6A.31 in the forms in Appendix 7M and Appendix 7H, both duly signed on the compliance adviser's behalf;
- (2a) a written confirmation signed by each director/supervisor that the information in the Application Proof is accurate and complete in all material respects and is not misleading or deceptive;
- (2b) a written confirmation and undertaking signed by each director/supervisor and proposed director/supervisor to the following effect:
 - (i) that the Application Proof referred to in rule 12.22(1) above contains all information about the biographical details of such director/supervisor or proposed director/supervisor as set out in rule 17.50(2) and that those details are true, accurate and complete;
 - (ii) where, before dealings commence, there are any changes in the biographical details as set out in rule 12.23(2b)(i) above, to inform the Exchange as soon as practicable of such changes; and
 - (iii) to lodge with the Exchange in accordance with rule 12.26(9) a declaration, undertaking and acknowledgement, in the relevant form in Appendix 6, duly signed by each director/supervisor and proposed director/supervisor and the contact information as described in rule 5.13A(1) (in the manner prescribed by the Exchange from time to time).

If a director/supervisor is appointed after the submission of the listing application form, then the director/supervisor 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 Application Proof referred to in rule 12.22(1) 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/supervisor;

- (3) a certified copy of the new applicant's certificate of incorporation or equivalent document; and

(4)-(5) [Repealed 1 October 2013]

- (6) any document as may be required by the Exchange in support of the application for listing.

(a)-(c) [Repealed 1 October 2013]

Before bulk-printing of the listing document

12.23A The following must be lodged with the Exchange by a new applicant before bulk-printing of the listing document:—

- (1) where the listing document is required to contain a sufficiency of working capital statement by the directors, a final letter from its Sponsor, confirming that it is 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; and
- (2) a final copy of all draft documents which have been submitted to the Exchange in support of the application for listing.

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

12.24 The following must be lodged with the Exchange by a new applicant as soon as practicable after the hearing of the application by the GEM Listing Committee but on or before the date of issue of the listing document:—

- (1) the signed Sponsor's declaration in Appendix 7G required by rule 6A.13;
- (2) a copy of each of the English and the Chinese language version of the listing document dated and signed by every person who is named therein as a director or proposed director of the new applicant or by his agent authorised in writing and by the secretary and the relevant application form (including any excess or preferential application form) to subscribe or purchase the securities for which the listing is sought;

(a)-(b) [Repealed 1 October 2013]

- (3) where any document or application form referred to in (2) above is signed by an agent, a certified copy of the authorisation or the power of attorney for such signature;
- (4) a copy of the formal notice, where applicable;

(5)-(7) [Repealed 1 October 2013]

- (8) a copy of the written notification issued by HKSCC stating the securities will be Eligible Securities; and
- (9) any written undertakings and confirmations from the new applicant, its shareholders and/or other relevant parties to the Exchange referred to in the listing document.

(10)(11)[Repealed 1 October 2013]

12.25 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 under section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be);
- (2) 2 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 on or attached to the documents stipulated by the relevant section; and
- (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 give translations on the prospectus documents.
- (4) [Repealed 1 October 2013]

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

12.26 As soon as practicable after the issue of the listing document but before dealings commence, the following documents must be lodged with the Exchange in respect of a new applicant as a condition for granting listing approval:—

- (1) [Repealed 1 October 2013]
- (1a) a certified copy of the resolution(s) of the new applicant in general meeting (if any) authorising the issue of all securities for which listing is sought;
- (1b) a certified copy of 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 Form 5A and, the making of all necessary arrangements enabling such securities to be admitted into CCASS, and approving and authorising the issue of the listing document;

- (2) the completed company information sheet in Appendix 5F, submitted in the electronic format specified by the Exchange from time to time, for publication on the GEM website, together with a hard copy duly signed by or on behalf of each of the directors of the new applicant;
- (3) [Repealed 25 June 2007]
- (4) [Repealed 25 June 2007]
- (5) [Repealed 25 June 2007]
- (6) in the case of a placing of securities by a new applicant:—
 - (a) a copy of the placing letter and separate marketing statements in Appendix 5D signed by each of: (i) the lead broker; (ii) any distributors; and (iii) any Exchange Participant referred to in that Appendix; 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 business registration numbers (where companies) of all its placees, the names and addresses of the beneficial owners of the securities (in the case of nominee companies) and the amounts taken up by each of its placees;
- (7) a declaration substantially as in Appendix 5E, duly signed by a director and the secretary of the new applicant together with any fee which is payable and which has not previously been paid (see Appendix 9);
- (8) a declaration substantially as in Appendix 7I duly signed by the Sponsor; and
- (9) a written declaration, undertaking and acknowledgement, in the relevant form in Appendix 6, duly signed by each director/supervisor and proposed director/supervisor and the contact information as described in rule 5.13A(1) (in the manner prescribed by the Exchange from time to time).

Documentary Requirements – Applications by Listed Issuers

12.26A Rules 12.26B to 12.27 set out the documentary requirements for applications for the listing of equity securities by listed issuers.

At the time of application for listing

12.26B The following documents, as applicable, must be lodged with the Exchange together with the listing application in accordance with rule 12.16:—

- (1) such number of copies of drafts or proofs of the listing document as the Exchange may require, marked in the margin to indicate where the relevant provisions of the GEM Listing Rules and/or the Companies (Winding Up and Miscellaneous Provisions) Ordinance have been met;
- (2) if the listing document contains an accountants' report, a draft of any statement of adjustments relating to the accountants' report;
- (3) if the listing document contains a profit forecast (see rules 14.28 to 14.31), a draft of the board's profit forecast memorandum with principal assumptions, accounting policies and calculations for the forecast; and

- (4) for issue of new warrants to existing warrant holders, a legal opinion, from a lawyer of the relevant jurisdiction, confirming that the warrant proposal complies with the relevant provisions of the issuer's constitutive documents and the terms of the existing warrant instrument (see rule 21.07(7)).

Before bulk-printing of the listing document

12.26C If the listing document contains a statement as to the sufficiency of working capital, a letter from the issuer's financial advisers or auditors must be submitted to the Exchange before bulk-printing of the listing document, confirming that:

- (1) the statement has been made by the directors after due and careful enquiry; and
- (2) persons or institutions providing finance have stated in writing that such facilities exist.

On or before the date of issue of the listing document

12.26D The following documents must be submitted to the Exchange on or before the date of issue of the listing document:

- (1) every written undertakings from the listed issuer, its shareholders and/or other relevant parties to the Exchange referred to in the listing document; and
- (2) [Repealed 1 March 2019]
- (3) if the listed issuer proposes to issue a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, the signed declaration in the form set out in Appendix 7J as referred to in rule 6A.35.

*In case of a listing document constituting a prospectus under the Companies
(Winding Up and Miscellaneous Provisions) Ordinance*

12.26E If the listing document constitutes a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, the following documents must be submitted to the Exchange:

- (1) at least 10 business days before the proposed date of registration of the prospectus by the Registrar of Companies, notice of the proposed date of registration of the prospectus (see rule 15.09);
- (2) by 11 a.m. on the intended date of authorisation for registration of the prospectus,
 - (a) an application for authorisation for registration of the prospectus under section 38D(3) or section 342C(3) of the Companies (Winding Up and Miscellaneous Provisions) 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 (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be) and having endorsed thereon or annexed thereto the documents required under the relevant section;

- (c) 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 the issuer certifying that the translator is competent to have given the certificate as to translations in respect of the prospectus documents; and
 - (d) any power of attorney or other authority under which the prospectus is signed, together with a certified copy thereof.
- (3) [Repealed 1 March 2019]

Before dealings commence

12.27 The following documents must be submitted to the Exchange before dealings commence:—

- (1) [Repealed 25 June 2007]
- (2) [Repealed 2 November 2009]
- (3) [Repealed 1 March 2019]
- (4) [Repealed 1 March 2019]
- (5) [Repealed 1 March 2019]
- (6) 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 Appendix 5D signed by each of: (i) the lead broker; (ii) any distributors; and (iii) any Exchange Participant referred to in that Appendix; and
 - (b) a list from each placing broker setting out the names, addresses and identity card or passport numbers (in the case of individuals) and the names, addresses and registration numbers (in the case of 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.

In the case of the placing by a listed issuer of a class of securities already listed, the Exchange may require the issuer to submit information on the placees for the purpose of establishing their independence (see also rule 17.30(7));

- (7) if required, a declaration from the security printers responsible for production of bearer documents of title in accordance with paragraph 24 of Part B of Appendix 2;
- (8) any fee which is payable and which has not previously been paid (see Appendix 9); and
- (9) 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 GEM website.