

# Chapter 11

## EQUITY SECURITIES

### QUALIFICATIONS FOR LISTING

#### Preliminary

11.01 This Chapter sets out the basic conditions which have to be met as a pre-requisite to the listing of equity securities. They apply to every method of listing and to both new applicants and listed issuers except where otherwise stated. Further conditions which have to be met by overseas issuers and PRC issuers are set out in Chapters 24 and 25. Issuers are reminded:—

- (1) that these requirements are not exhaustive and that the Exchange may impose additional requirements in any particular case; and
- (2) that the Exchange retains an absolute discretion to accept or reject applications for listing and that compliance with the relevant conditions may not of itself ensure an applicant's suitability for listing.

Prospective issuers, and in particular new applicants, are therefore encouraged to contact the Exchange to seek informal and confidential guidance as to the eligibility of a proposed issue for listing at the earliest possible opportunity.

*Note: Queries should be addressed to the GEM Listing Division and should, so far as practicable, be made by the Sponsor (other than in circumstances where the issuer is not required to have (or does not otherwise retain) a Sponsor).*

11.02 A listed issuer shall, prior to their issue, apply for the listing of any further securities which are of the same class as securities already listed and shall not issue such securities unless approval for the listing of those securities has been granted by the Exchange.

11.03 A new applicant will not be rendered unsuitable for listing on the grounds that any director or shareholder has an interest in a business which competes or may compete with the new applicant's business.

11.04 Full and accurate disclosure of any business or interest of each director, management shareholder and, in relation only to the initial listing document, substantial shareholder and the respective associates of each that competes or may compete with the business of the group and any other conflicts of interest which any such person has or may have with the group must be disclosed in each listing document and circular required pursuant to the GEM Listing Rules (excluding any Explanatory Statement issued pursuant to rule 13.08) and in the annual report and accounts, half-year report and quarterly reports of the listed issuer.

*Notes: 1 For the purposes of the GEM Listing Rules, a controlling shareholder will, in all cases, be deemed to be a management shareholder.*

*2 Each of the documents referred to in this rule is required to set out the interests of directors, management shareholders and, in relation only to the initial listing document, substantial shareholders (including the interests of their respective associates) under a specific heading and both the heading and information must be given suitable prominence within the document.*

- 3 *Of the interests required to be disclosed pursuant to this rule, a director, management shareholder or substantial shareholder must include any directorship or ownership of an entity engaged in a business which competes or is likely to compete with the business of the group. The disclosure should include the name of each such entity, the nature of its business and details of the directorship and/or ownership of the issuer's directors, management shareholders and substantial shareholders and their respective associates in such entity.*

### **General conditions applicable to all issuers**

- 11.05 The issuer must be duly incorporated or otherwise established under the laws of Hong Kong, the PRC, Bermuda or the Cayman Islands and must be in conformity with those laws, including all such laws relevant to the allotment and issue of securities, and with its memorandum and articles of association or equivalent documents. The issuer's memorandum and articles of association must comply with Appendix 3 and, in addition (in the case of overseas issuers incorporated or established in specified jurisdictions) with Appendix 11.
- 11.06 Both the issuer and its business must, in the opinion of the Exchange, be suitable for listing. Without limiting the generality of this rule, an issuer whose assets consist wholly or substantially of cash or short-dated securities will not normally be regarded as suitable for listing.
- 11.07 The issuer must have persons appointed to the following offices and, or to perform the following roles and the issuer must ensure that such persons have satisfied the following rules prior to appointment:—
- (1) directors – rules 5.02, 5.05 and 5.08;
  - (2) company secretary – rule 5.09;
  - (3) qualified accountant – rules 5.10;
  - (4) compliance officer – rule 5.14;
  - (5) authorised representatives – rule 5.19; and
  - (6) members of the audit committee – rules 5.23 and 5.24.
- 11.08 The issuer must either be an approved share registrar or employ an approved share registrar to maintain in Hong Kong its register of members.
- 11.09 A new applicant must, prior to any listing application, have appointed a Sponsor pursuant to a contract for a fixed term period covering at least the remainder of the financial year during which the listing occurs and the 2 financial years thereafter (see rule 6.01). At any time after that, a listed issuer must appoint a Sponsor in the circumstances referred to in rule 6.02.
- 11.10 A new applicant and, if required pursuant to rule 7.01, a listed issuer must have an accountants' report prepared in accordance with Chapter 7, covering (subject to rule 11.14) in the case of a new applicant, at least the 2 financial years immediately preceding the issue of the listing document or if the new applicant satisfies the conditions set out in rule 11.12(3), at least the 12 month period from the commencement of its active business pursuits.

*Note: The accountants' report must cover a period of at least 24 months of active business pursuits in the case of a new applicant described in rule 11.12(2)(a).*

## Additional conditions applicable to new applicants

### *Accountants' report*

- 11.11 In the case of a new applicant, the latest financial period reported on by the reporting accountants must not have ended more than 6 months before the date of the listing document.

### *Active business pursuits*

- 11.12 (1) Subject to rule 11.14, a new applicant must demonstrate that, throughout the period specified in sub-paragraph (2) below, it has, either by itself or through one or more of its subsidiaries, actively pursued one focused line of business under substantially the same management and ownership as existing at the time of the application for listing, and must make a statement in the listing document concerning that business which complies with the requirements of rules 14.15 to 14.18.

- (2) The period referred to in sub-paragraph (1) above is:—

- (a) at least the 24 months immediately preceding the date of submission of the listing application (on the prescribed form set out in Appendix 5A) by the new applicant; or
- (b) in the case of a new applicant satisfying the conditions specified in sub-paragraph (3) below, at least the 12 months immediately preceding the date of submission of the listing application (on the prescribed form set out in Appendix 5A) by the new applicant.

*Note: If the new applicant has a longer period of active business pursuits, the initial listing document should cover the full period from the commencement of active business pursuits.*

- (3) The conditions referred to in sub-paragraph (2) above are:—

- (a) the new applicant has actively pursued its focused line of business for not less than 12 months;
- (b) (i) the new applicant has turnover of not less than HK\$500,000,000 in the last 12 months reported upon in the accountants' report contained in its initial listing document;

*Note: Where a financial period in the accountants' report commences before the "last 12 months," the new applicant must include a note in its accountants' report disclosing the turnover in that financial period attributable to the period after the commencement of the "last 12 months."*

- (ii) the new applicant has total assets of not less than HK\$500,000,000 as shown in the balance sheet in respect of the last financial period reported upon in the accountants' report contained in its initial listing document; or

*Note: The Exchange reserves the right to exclude the intangible assets of the new applicant from its total assets in determining whether the total assets meet the minimum requirement of HK\$500,000,000 if it is of the view that the intangible assets constitute a material portion of the new applicant's total assets.*

- (iii) the expected market capitalisation of the securities of the new applicant (determined as at the time of listing) must be not less than HK\$500,000,000;

- (c) at the time of listing, the equity securities of the new applicant which are in the hands of the public (see Notes 2 and 3 to rule 11.23) must:
- (i) have a market capitalisation of not less than HK\$150,000,000; and
  - (ii) be held among at least 300 shareholders (including those whose equity securities are held through CCASS) with the largest 5 and largest 25 of such shareholders holding in aggregate not more than 35 per cent and 50 per cent, respectively, of the equity securities (being shares) in the hands of the public; and

*Note: In the case where shareholders of the new applicant obtained their securities through a distribution in specie, only a maximum of 100 such shareholders may be counted in determining whether the requirement of "at least 300 shareholders" is met.*

- (d) the offering price of the shares of the new applicant at its initial public offering must be not less than HK\$1.00.

*Notes: 1 The requirement for a new applicant to demonstrate its active business pursuits is one specific to GEM.*

*2 As GEM has been established with the intention of appealing to emerging or growth companies from all industrial and commercial sectors, it is acknowledged that they may not necessarily be able to demonstrate past profits or a consistently profitable track record.*

*3 Nevertheless, a new applicant must be able to demonstrate that it has a business of both substance and potential. A business will, subject to rule 11.14, only be regarded as having the requisite substance if the applicant can show that it has spent at least the 24 month period prior to the issue of the listing document, or for applicants satisfying the conditions of rule 11.12(3), at least the 12 month period set out in rule 11.12(2)(b), making substantial progress in building up that business.*

*4 Whilst every new applicant will wish to demonstrate its own particular activities and performance in the manner it regards as most befitting, the Exchange requires the information to be presented in a reasonable level of detail and in a manner which complies with rules 14.15 to 14.18.*

*5 It is for the Sponsor to satisfy itself, to the best of its knowledge and belief, having made due and careful enquiries, that the new applicant has made sufficient efforts and progress to proceed with a listing on GEM and that it is suitable for a listing on GEM.*

*6 For a new applicant to be considered suitable for listing, it should be actively engaged in one focused line of business rather than two or more disparate businesses. The reason for this is that the Exchange expects an applicant's management to be devoting its attention towards advancing one core business rather than a variety of concerns which compete or may compete for their attention.*

*7 In exceptional circumstances, the Exchange may, at its discretion and on a case by case basis, permit the listing of a new applicant notwithstanding changes of a material nature in management and ownership during the period referred to in this rule.*

- 11.13 In the event that the company responsible for carrying on the active business is not the new applicant itself, such business must be carried on by a subsidiary or subsidiaries of the new applicant, provided that in relation to any such subsidiary (an “active subsidiary”):—
- (1) the new applicant must control the composition of the board of directors of that active subsidiary and of any intermediate holding company; and
  - (2) the new applicant must have an effective economic interest of no less than 50 per cent in that active subsidiary.
- 11.14 The Exchange may accept a shorter period of active business pursuits for the purposes of rule 11.12 (and an accountants’ report covering a shorter period than that specified in rule 11.10) from prospective new applicants with reasons acceptable to the Exchange in the following cases:
- (1) in respect of newly-formed “project” companies (for example a company formed for the purposes of a major infrastructure project);
  - (2) in respect of natural resource exploitation companies; and
  - (3) in exceptional circumstances under which the Exchange considers it desirable to accept a shorter period.

#### *Business objectives*

- 11.15 A new applicant must, in a statement in the listing document made in compliance with the requirements of rules 14.19 to 14.21, clearly set out its business objectives and explain how it proposes to achieve them.

*Note: The new applicant’s statement of business objectives is designed to indicate, in reasonable detail, the new applicant’s potential, how this is likely to be realised over an identified time frame.*

#### *Property-related matters*

- 11.16 A new applicant that is a property company must have, in respect of a substantially major portion of its PRC properties, long-term title certificates and/or, in respect of a substantially major portion of its properties not situated in the PRC, other appropriate evidence of title, regardless of whether such properties are completed or still under development.

*Note: For the purposes of rules 11.16 to 11.19:—*

- (1) *a “property company” is one the assets of which consist mainly of properties or the income of which is mainly derived from those properties, or interests in companies the assets of which consist mainly of properties or the income of which is mainly derived from those properties; and*
- (2) *the Exchange has a discretion to decide on whether or not any title certificate constitutes a “long term” title certificate.*

- 11.17 For any new applicant, not being a property company as defined in rule 11.16, which has a PRC property that represents a substantial portion of its assets in terms of either asset value or profit contribution, the new applicant must obtain a long-term title certificate for that PRC property.

11.18 In the case of infrastructure companies:—

- (1) an issuer must obtain long-term title certificates for all PRC properties used in infrastructure projects, whether completed or under development; and
- (2) where such companies operate under long-term concessionary arrangements awarded by the government which arrangements do not provide for long-term title certificates to be granted, the Exchange may accept, for the purpose of the listing application, other evidence of the right to use the PRC property in question for the period during which the assets are expected to be operated, depending on the merits of each individual case.

11.19 For any new applicant not being a property company or an infrastructure company, where a PRC property is otherwise significant to the applicant's activities, the applicant will be expected to have the relevant long-term title certificate, unless otherwise permitted by the Exchange.

*Other conditions relevant to new applicants*

11.20 Subject to rule 11.21 a new applicant must not:—

- (1) have changed the period of its financial year during the latest complete financial year immediately preceding the issue of the listing document; or
- (2) change the period of its financial year during the period of any profit forecast, if any, or the current financial year, whichever is the longer period.

11.21 Notwithstanding rule 11.20, a subsidiary of the new applicant will normally be permitted to change the period of its financial year provided that:—

- (1) the change is to make the subsidiary's financial year coterminous with that of the new applicant;
- (2) appropriate adjustments are made in the trading record and such adjustments are fully explained in statements which must be provided to the Exchange; and
- (3) adequate disclosure is provided in the listing document and the accountants' report of the reason for the change and the effect of the change on the new applicant's group trading record and profit forecast, if any.

11.22 At the time of listing, the initial management shareholders (as such term is defined in rule 13.15) and significant shareholders must, between them, hold at least 35 per cent of the issued share capital of the new applicant.

**Conditions relevant to the securities for which listing is sought**

11.23 There must be an open market in the securities for which listing is sought. This will normally mean that:—

- (1) for any class of equity securities, at least the "minimum prescribed percentage" of such class of securities in issue from time to time must, at the time of listing and at all times thereafter, be in the hands of the public.

*Notes: 1 For the purposes of the GEM Listing Rules, the "minimum prescribed percentage" for any class of equity securities of an issuer shall be established by*

reference to the expected market capitalisation of the issuer at the time of listing in accordance with the following table:—

<b>Market capitalisation (determined as at the time of listing)</b>	<b>Minimum prescribed percentage of securities to be in public hands</b>
Not exceeding HK\$4,000m	25 per cent.
Over HK\$4,000m	The higher of: i) the percentage that would result in the market value of the securities to be in public hands equal to HK\$1,000m (determined as at the time of listing); and ii) 20 per cent.

2. Listed issuers which commenced dealings of their securities on GEM before 1 October 2001 should at all times comply with the following “minimum prescribed percentage” requirement:—

<b>Market capitalisation (determined as at the time of listing)</b>	<b>Minimum prescribed percentage of securities to be in public hands</b>
Not exceeding HK\$1,000m	20 per cent.
Over HK\$1,000m but not exceeding HK\$1,333m	The percentage that would result in the market value of the securities to be in public hands equal to HK\$200m (determined as at the time of listing)
Over HK\$1,333m	15 per cent.

- (2) with regard to all equity securities for which a listing is sought, except those specified in subparagraphs (3) and (4):—

- (a) the market capitalisation of such equity securities (determined as at the time of listing) in the hands of the public must be at least HK\$30,000,000; and
- (b) there must, as at the time of listing, be an adequate spread of holders of such securities. The number will depend on the size and nature of the issue but, as a guideline, the equity securities in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose equity securities are held through CCASS);

*Note: Where rule 11.12(2)(b) applies, the equity securities in the hands of the public must also meet the requirements of rule 11.12(3)(c).*

- (3) with regard to options, warrants or similar rights to subscribe or purchase shares (“warrants”) for which a listing is sought:—

- (a) in the case of a new applicant:—
- (i) the market capitalisation of such warrants (determined as at the time of listing) must be at least HK\$6,000,000; and

- (ii) there must, as at the time of listing, be an adequate spread of holders of such warrants. The number will depend on the size and nature of the issue but, as a guideline, the warrants in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose warrants are held through CCASS); and
- (b) in the case of a listed issuer:—
- (i) the market capitalisation of such warrants (determined as at the time of listing) must be at least HK\$6,000,000; and
  - (ii) save where such warrants are offered to existing holders of the issuer's securities by way of bonus issue, there must, as at the time of listing be an adequate spread of holders of such warrants. The number will depend on the size and nature of the issue but, as a guideline, the warrants in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose warrants are held through CCASS);
- (4) in the case of a listed issuer seeking the listing of further securities of a class already listed, neither of the restrictions set out in sub-paragraph (2) and (3) shall apply; and
- (5) exceptionally, the Exchange may accept a lower percentage than that specified in sub-paragraph (1) above where it is satisfied that the number of securities concerned and the extent of their distribution would enable the market to operate properly with a lower percentage.

*Notes: 1 Issuers should note that the minimum prescribed percentage of securities must remain in public hands at all times. If the percentage falls below the minimum, the Exchange has the right to cancel the listing or suspend trading until appropriate steps have been taken to restore the minimum percentage of securities in public hands (see also rule 17.36). If the Exchange is satisfied that, even though the percentage has fallen below the minimum, there remains an open market in the securities, the Exchange may refrain from suspension against receipt of an undertaking from the controlling shareholder(s) to take appropriate steps to ensure restoration of the minimum percentage of securities to public hands within a specified period. At any time when the percentage of securities in public hands is less than the required minimum, and the Exchange has permitted trading in the securities to continue, the Exchange will monitor closely all trading in the securities to ensure that a false market does not develop and will suspend the securities promptly if there is any unusual price movement.*

2 *The Exchange will not regard:*

- (a) *at any time, any connected person of the issuer;*
- (b) *at the time of listing and for the duration of the periods referred to in rule 13.16, any initial management shareholder (as defined in rule 13.15);*
- (c) *at the time of listing and for the duration of the 6-month period referred to in rule 13.17, any significant shareholder; or*
- (d) *at the time of listing, any employee of the issuer or its subsidiaries or an associate of such employee (for the purposes of this Note, "associate" shall have the same meaning as set out in rule 1.01, save that it shall be construed as applying to the employee)*

*as a member of “the public” or shares held by any such person (in the case of an initial management shareholder (as defined in rule 13.15) or significant shareholder, being shares held by him during the relevant periods specified in rule 13.16 or the period specified in rule 13.17 (as the case may be)) as being “in public hands.”*

3 *The Exchange will also not recognise as a member of “the public”:—*

*(a) any person whose acquisition of securities has been financed directly or indirectly by a connected person; or*

*(b) any person who is accustomed to taking instructions from a connected person in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.*

4 *With regard to Note 2(d) above, it is the issuer’s responsibility to ensure that sufficient information is obtained in relation to securities held by such employee or its associate in determining whether the issuer meets the requirements for minimum prescribed percentage/market capitalisation of equity securities in public hands.*

11.24 In the case of any listing application involving the issue of a listing document pursuant to which the issuer proposes to raise new capital in an amount not fully underwritten, the issuer must indicate the minimum amount proposed to be raised which, in the case of a new applicant, must (so far as practicable) be identified by reference to its statement of business objectives, and the listing shall be conditional on such amount being so raised.

*Note: Where the listing document refers to an amount proposed to be raised in excess of the minimum amount indicated, the listing document must explain the impact to the issuer and its statement of business objectives of raising such excess amount. In this regard, a statement that the excess will represent working capital shall not be adequate, unless a reasonably detailed explanation is given as to how such working capital is to be applied.*

11.25 The issued share capital of a new applicant must not include shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid (“B Shares”). The Exchange will not be prepared to list any new B Shares issued by a listed issuer nor to allow any new B Shares to be issued by a listed issuer (whether or not listing for such shares is to be sought on the Exchange or any other stock exchange) other than in exceptional circumstances agreed with the Exchange.

11.26 The securities for which listing is sought must be freely transferable.

11.27 Neither partly-paid shares nor bearer shares will be admissible to listing on GEM.

11.28 Derivative warrants of the type referred to in the Main Board Listing Rules will not be admissible to listing on GEM.

11.29 (1) In the case of a new applicant or a listed issuer in respect of a class of securities new to listing, the securities for which listing is sought must be Eligible Securities from the date on which dealings in the securities are to commence.

(2) The new applicant or the listed issuer must make all necessary arrangements to comply with sub-paragraph (1).

(3) An issuer shall ensure, so far as it is able, that its listed securities remain Eligible Securities.

11.30 Where application for listing is made in respect of any class of securities:—

- (1) if none of the securities of that class are already listed, the application must relate to all securities of that class issued or proposed to be issued; or
- (2) if some of the securities of that class are already listed, the application must relate to all further securities of that class issued or proposed to be issued.

11.31 The issue and listing of the securities for which listing is sought must be in conformity with the law of the place where the issuer is incorporated or otherwise established and in conformity with the issuer's memorandum and articles of association or equivalent documents and all authorisations needed for their creation, issue and listing under such law or documents must have been duly given.

11.32 Securities to which options, warrants or similar rights to subscribe or purchase equity securities are attached must comply both with the requirements applicable to the securities for which listing is sought and with the requirements applicable to such options, warrants or similar rights (see Chapter 21).

### **Basis of allocation**

11.33 A listing document must disclose full details of the basis on which the issuer proposes to allocate securities, including details of the respective securities in any public and placing tranches (if any). With regard to all securities offered for subscription or sale to the public whether by a new applicant or a listed issuer (excluding, for the avoidance of doubt, securities subject to placing arrangements), the issuer, its directors, Sponsor and underwriters (if applicable) must adopt a fair basis of allocating the same to all persons subscribing or applying for the securities.

*Note: See also rules 13.01 and 13.02.*

### **Certainty of offer period in respect of any public offers**

11.34 Any method of listing involving an offer to the public requires the issuer to set out details relating to the offer period in the listing document (see paragraph 15(3)(f) of Part A and paragraph 18(1) of Part B of Appendix 1).

*Note: The Exchange considers the details of an offer period to be a material term of the listing document which must be able to be relied upon by all investors and which should remain the same for all investors. Furthermore, in order to ensure that all investors are treated fairly and equally, and so that there is no confusion or uncertainty surrounding the offer period, the offer period set out in the listing document should not normally be revised or extended.*

11.35 Any right to revise or extend the offer period or period during which the subscription list is open, as stipulated in the listing document, must:—

- (1) be limited to possible delays caused by a tropical cyclone warning signal or such similar extraneous factors affecting whether the stated closing date is a banking day or not, as are acceptable to the Exchange; and
- (2) be set out in the details included in the listing document; and

subject to any such qualifications acceptable to the Exchange, the closing date of the offer period and the period during which the subscription list is open, as stated in the listing document, may not be revised or extended and may not be subject to any unilateral right on the part of the issuer, the underwriter or any other person to revise or extend such date or period.

## **Underwriters**

11.36 The Exchange reserves the right to inquire of an issuer as to the financial suitability of any proposed underwriter (if any) and may reject an application for listing if it is not satisfied as to the underwriter's ability to meet its underwriting commitment.