

# 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 GEM 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 In the event that 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 non-refundable 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 Where there is a termination or addition of a Sponsor during the vetting process of any listing document to be issued by a new applicant or a listed issuer, the Exchange will normally require the issuer to submit a new listing application detailing a revised timetable and, in the case of the new applicant only, a further non-refundable initial listing fee in the amount specified in Appendix 9. Any initial listing fee paid will, in such circumstances, be forfeited.

Notes: 1 *In the circumstances set out in this rule, the Exchange may consider granting a waiver to a new applicant in relation to the “25 clear business days prior to the provisional hearing date” requirement, depending on the progress of the processing of the original application. Such waiver will be considered on a case by case basis.*

2 *See also Chapter 4 for other circumstances in which a new applicant may be required to submit a new listing application form.*

12.09 Documents submitted to the Exchange with the listing application form, including the draft listing document, must be in what the issuer and Sponsor believe to be anticipated final form, save for matters concerning pricing, the number of shares to be offered, details of the underwriting (if any) and related matters. In this regard, the Sponsor must ensure that the draft listing document has been verified in all material respects prior to submission.

Notes: 1 *If the Exchange considers that the draft listing document submitted with the listing application form is insufficiently finalised, the Exchange will not commence review of that or any other documents relating to the application.*

2 *The Exchange may require a new applicant to delay the provisional hearing date (see rule 12.12) 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 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 pursuant to 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.*

3 *During the review process, the Sponsor should not revise the contents of the listing document 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 listing document which has substantially incorporated the Exchange’s comments on the previous proof and any additional information should be submitted to the Exchange at least 5 business days after the submission of the previous proof, unless the revised proof is requested by the Exchange.*

12.10 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 GEM 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 GEM Listing Committee to consider the application, the Exchange may postpone that meeting by up to 1 month. If this will result in the application form being more than 6 months out of date, the applicant may have to submit a new application form and a further non-refundable listing fee (see rule 12.07).

Listed issuers must endeavour to ensure that the proposed listing (and all details thereof) are kept confidential prior to any announcement concerning the proposed listing. Where the Exchange believes that a listed issuer or its advisers have permitted price sensitive information regarding the issue of additional securities to leak, prior to an announcement on the subject, the Exchange will not normally consider an application for the listing of those securities.

- 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 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 associates are found to have engaged in such dealing, the application may be rejected.

#### *Applications by new applicants*

- 12.12 The Sponsor must contact the GEM 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 In order to allow the Exchange sufficient time to consider the application for listing on the basis of its supporting documents and to maintain an orderly new issues market, a new applicant must apply to the GEM Listing Division on the prescribed form set out in Appendix 5A at least 25 clear business days prior to the provisional hearing date.

- 12.14 The listing application form must be accompanied by:—

- (1) the documents, as applicable, stipulated in rules 12.22 and 12.23;
- (2) the Sponsor’s declaration of interests in the form set out in Appendix 7H;
- (3) a certified extract from the board minutes of the new applicant authorising the submission of the listing application form and approving the undertaking, declaration and acknowledgements set out therein; and
- (4) the non-refundable initial listing fee in the amount specified in Appendix 9.

The GEM Listing Division may return to the Sponsor any application for listing which it considers to be incomplete, together with the initial listing fee.

- 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.

- 12.16 A listed issuer must apply to the GEM 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 12.22;
  - (2) in circumstances where the listed issuer is required to have (or otherwise retains) a Sponsor, the Sponsor'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 GEM Listing Division for review at the earliest opportunity, but in any event so that the final form, or as appropriate signed original, of any document has been received by the GEM Listing Division, in the case of a new applicant, at least 4 clear business days prior to the provisional hearing date and in the case of a listed issuer at least 2 clear business days prior to the intended bulk printing date for the listing document. 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 The GEM Listing Committee, in considering an application for listing, may determine that it is necessary to reconsider the matter at an adjourned meeting of the GEM Listing Committee, having had an opportunity to request and review any further documents, information or clarification of matters arising out of the application form and supporting documents.
- 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**

*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 form of application for listing in respect of both a new applicant and a listed issuer:—
- (1) 6 drafts or proofs 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 Ordinance;

- (2) unless previously supplied in the case of a listed issuer, 3 certified copies of the memorandum and articles of association or equivalent document of the issuer, marked in the margin to indicate where compliance has been made with the provisions of Appendix 3 and a letter of compliance concerning the same from the issuer's Sponsor or legal adviser;
- (3) 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;
- (4) 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 summarised in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (5) 3 copies of the anticipated final draft or proof of the formal notice, where applicable;
- (6) 3 copies of the anticipated final draft or proof of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;
- (7) a copy of the notice(s) of meeting (if any) referred to in the listing document;
- (8) where possible, a certified copy of the resolution(s) of the issuer in general meeting (if any) authorising the allotment of all securities for which listing is sought;
- (9) unless previously supplied, a copy of all resolutions which have been passed by the issuer and which are required to be registered under the Companies Ordinance;
- (10) where possible, 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 allotment of such securities, the making of the application for listing 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;
- (11) 3 anticipated final drafts or proofs of any temporary document of title, if applicable (which must comply with Part A of Appendix 2);
- (12) 3 anticipated final drafts or proofs 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 (which must comply with Part B of Appendix 2);
- (13) where the listing document is required to contain a statement by the directors as to the sufficiency of working capital, a copy of the anticipated final draft of a letter from the Sponsor or the issuer's financial advisers or auditors, confirming that it or 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;
- (14) where the listing document contains a profit forecast, 3 copies of the anticipated final draft reports thereon by the reporting accountants and the Sponsor, in accordance with rule 14.29, and 3 copies of the anticipated final draft of the profit forecast memorandum with principal assumptions, accounting policies and calculations for the forecasts; and
- (15) any application for a waiver of any provision of the GEM Listing Rules.

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

- (1) the annual report and accounts of the companies which comprise or will comprise the group of the new applicant for each of the years forming the subject of the accountants' report (rule 11.10);
- (2) a formal declaration undertaking and acknowledgement, in the relevant form set out in Appendix 6, duly signed by each director and proposed director (and, in the case of a PRC issuer, each supervisor and proposed supervisor);
- (3) a certified copy of the certificate of incorporation and any certificates of incorporation on change of name or equivalent document of the issuer;
- (4) a certified copy of the certificate (if any) entitling the issuer to commence business;
- (5) any checklist(s) in the form prescribed by the Exchange from time to time, duly completed; and
- (6) if requested by the Exchange, whether at the time of submitting the application for listing or at any time thereafter:—
  - (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) 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; and
  - (c) where the new applicant has any corporate shareholder holding over 5 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.

*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, in the case of 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 and, in the case of a listed issuer, on or before the date of issue of the listing document:—

- (1) in the case of a new applicant, the signed Sponsor's declaration in the form set out in Appendix 7G, as referred to in rule 6.47 and in the case of a listed issuer proposing to issue a listing document of the type referred to in rule 6.58 within the minimum period referred to in rule 6.01 or any period fixed for the purposes of rule 6.02, the signed Sponsor's declaration in the form set out in Appendix 7J as referred to in rule 6.57;
- (2) 7 copies of the listing document:—
  - (a) 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; and

- (b) one of which must be 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 where compliance has been made with the relevant provisions of the Companies Ordinance;
- (3) where any document referred to in (2)(a) above is signed by an agent, a certified copy of the authorisation for such signature;
- (4) 7 copies of the formal notice, where applicable;
- (5) 7 copies of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which listing is sought;
- (6) a certified copy of every letter, report, financial statement, statement of adjustments, valuation, contract, resolution or other document (including any profit forecast memorandum, if applicable) 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;

*Note: The Exchange must be passed a certified copy of any valuation report in respect of properties held under operating leases notwithstanding that the full text of such valuation report may not be required to be included in the listing document, as referred to in rule 8.06.*

- (7) 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;
- (8) in the case of a class of securities new to listing, a copy of the written notification issued by HKSCC stating the securities will be Eligible Securities;
- (9) any undertakings referred to in the listing document and/or required to be given to the Exchange, including (where it has been possible to ascertain and complete the same prior to the issue of the listing document) those undertakings from initial management shareholders (see rule 13.16) and significant shareholders (see rule 13.17) substantially in the forms set out in Appendix 5G and 5H respectively; together, where possible, with copies of the proposed form(s) of agreement(s) with relevant escrow agent(s) (see rules 13.16 and 13.17);
- (10) a specimen of any temporary document of title, where applicable; and
- (11) a specimen 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.

12.25 In the 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:—

- (1) 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);

- (2) 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;
- (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*

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 both a new applicant and a listed issuer:—

- (1) unless previously supplied under rules 12.22 or 12.24 a certified copy of the resolution(s) therein referred to and in the case of a capitalisation issue (unless previously supplied under rule 12.24(6)), 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;
- (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 GEM website, together with a hard copy duly signed by or on behalf of each of the directors of the issuer;
- (3) a copy of the relevant page(s) of any newspaper circulating in Hong Kong in which the listing document (if any) and/or any formal notice was published (if any);
- (4) in the case of an offer for subscription or an offer for sale, a copy of the relevant page(s) of any newspaper circulating in Hong Kong in which the results of the offer were published (if any), and a list containing the name and address and number of securities received by each successful applicant;
- (5) in the case of an offer for subscription or an offer for sale by tender, a copy of the relevant page(s) of any newspaper circulating in Hong Kong in which the announcement of the striking price was published (if any);
- (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 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 (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) a declaration substantially in the form set out in Appendix 5E, duly signed by a director and the secretary of the issuer together with any fee which is payable and which has not previously been paid (see Appendix 9);
- (8) in the case of a new applicant only, a declaration substantially in the form set out in Appendix 7I duly signed by the Sponsor; and
- (9) in the case of a new applicant only, duly completed undertakings from each of the initial management shareholders (see rule 13.16) and each of the significant shareholders (see rule 13.17) substantially in the forms set out in Appendix 5G and 5H respectively, together with copies of all proposed form(s) of agreement(s) with relevant escrow agent(s), in all cases, to the extent not previously provided pursuant to rule 12.24(9).

12.27 In addition to the documents required pursuant to rule 12.26, a listed issuer must lodge the following documents as soon as practicable after the date of issue of the listing document but before dealings commence:—

- (1) in the case of a rights issue or open offer, a copy of the relevant page of any 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 (if any) and a list containing the name and address and number of securities received by each successful applicant;
- (2) where securities are offered with a cash alternative, a statement of the total amount of securities to be issued;
- (3) 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; and
- (4) where the listing is pursuant to 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.