

# Chapter 29

## DEBT SECURITIES

### (OTHER THAN SELECTIVELY MARKETED SECURITIES)

#### LISTING DOCUMENTS

##### Preliminary

29.01 This Chapter sets out the Exchange's requirements for the contents of listing documents relating to debt securities (other than selectively marketed securities). The requirements in relation to selectively marketed securities are set out in Chapter 30. Issuers are reminded that a listing document which is a prospectus within the meaning of the Companies Ordinance must also comply with and be registered in accordance with the Companies Ordinance. Applicants should note that they are required to confirm in their applications that all requisite information has been included in the listing document or will be included in the final version submitted for review (see Appendix 5C).

29.02 Issuers are reminded (see rule 28.05) that the final proof of the listing document must be lodged with the Exchange at least 4 clear business days before the provisional hearing date. No material amendment to the final proof of the listing document will be allowed without the consent of the Exchange.

29.02A Any document required under the GEM Listing Rules to be published by a new applicant or guarantor in connection with the application for listing, including but not limited to any announcement (including notice) and any listing document, must be published in accordance with the publication requirements contained in Chapter 16, unless otherwise stated.

##### Definition

29.03 A listing document is defined in rule 1.01 as a prospectus, a circular and any equivalent document (including the composite document in relation to a scheme of arrangement and/or an introduction document) issued or proposed to be issued in connection with an application for listing. Issuers are recommended to consult the Exchange at the earliest opportunity if they are in any doubt as to whether a particular document constitutes a listing document as so defined.

##### Disclaimer

29.04 Any listing document must contain on its front cover a prominent and legible disclaimer statement in the form set out in rule 2.19.

##### GEM characteristics

29.05 Any listing document, must contain, at a prominent position in the document, and in bold type, a statement concerning the characteristics of GEM, in the form set out in rule 2.20.

##### When required

29.06 The methods of listing debt securities required by the GEM Listing Rules to be supported by a listing document are:—

- (1) offers for subscription;
- (2) offers for sale;
- (3) placings; and
- (4) exchanges or substitutions of securities.

29.07 Other methods of listing debt securities are not required by the GEM Listing Rules to be supported by a listing document, but if a listing document is otherwise required or issued, it must comply with the relevant requirements of this Chapter.

## **Contents**

29.08 The listing document is required to include the following:—

- (1) the statements required pursuant to rule 29.04 (disclaimer) and rule 29.05 (GEM characteristics);
- (2) subject to rule 29.09, all of the specific items of information which are set out in Part C of Appendix 1;
- (3) appropriate risk factors, taking into consideration the matters set out in rule 29.12; and
- (4) in respect of a listing document issued in support of an application for listing of debt securities of a class new to listing where those debt securities are offered otherwise than to existing shareholders, the listing document must, as an overriding principle, contain such particulars and information which, according to the particular nature of the issuer and guarantor, in the case of a guaranteed issue, and the debt securities for which listing is sought, is necessary to enable an investor to make an informed assessment of:—
  - (a) the activities, profits and losses, assets and liabilities, financial position, management and prospects of the issuer and guarantor, in the case of a guaranteed issue; and
  - (b) the rights and trading arrangements attaching to such debt securities.

29.09 A bank may omit the items of information required by the following paragraphs of Part C of Appendix 1:—

34, 37(2) to (7), 38, 40, 41(2), (3) and (4), 44 and 51

In addition, the Exchange may be prepared to permit the omission of information where it considers it appropriate. Banks who want to omit any of the prescribed information should therefore consult the Exchange at the earliest possible opportunity.

29.10 Negative statements are required only where so indicated in Part C of Appendix 1.

29.11 The Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case. Conversely, it may be prepared to permit the omission or modification of items of information to suit the circumstances of a particular case. Consequently, issuers are encouraged, through their Sponsors where so retained, to seek informal and confidential guidance from the Exchange at the earliest opportunity. The issuer shall not publish the listing document until the Exchange has confirmed that it has no further comments thereon.

## **Risk factors**

29.12 The listing document should fully set out, explain and give appropriate prominence to any risk factors which should be drawn to prospective investors' attention, having regard, as a minimum, to the following principles:—

- (1) whether or not there are risks that are relevant to the issuer itself, including as to matters such as reliance on particular products or services, the concentration of expertise within the issuer, continued sources of funding;

- (2) whether or not there are risks that are relevant to the issuer's business, including risks attendant with the products, services or activities themselves and risks relevant to the industry or sectors in which the issuer operates; and
- (3) whether or not there are risks on a macro-scale that are relevant to the issuer, including geographic, economic, political and exchange rates, currency controls or other financial risks relevant to the issuer or the markets in which it operates.

*Note: Risk factors should be capable of being read in isolation and should not be accompanied by statements or qualifications concerning steps that the issuer proposes to implement in order to alleviate such risks. Information in this regard may however be contained elsewhere in the listing document.*

### **Responsibility**

29.13 Directors of the issuer and of the guarantor, in the case of a guaranteed issue, are required, collectively and individually, to accept full responsibility for the document and a statement (in the form set out in rule 2.18) to this effect must be included in the listing document (adapted, if applicable, to include the directors of the guarantor).

### **Subsequent events**

29.14 The Exchange must be notified immediately if, before the commencement of dealings in any debt securities, the issuer becomes aware that:—

- (1) there has been a significant change affecting any matter contained in the listing document; or
- (2) a significant new matter has arisen, the inclusion of information in respect of which would have been required to be in the listing document if it had arisen before the listing document was issued.

For this purpose "significant" means significant for the purpose of making an informed assessment of the matters mentioned in rule 29.08(4). The Exchange will consider in each case what action should be taken and whether any publication of the change or new matter is required. In such circumstances, the Exchange may, at its absolute discretion, withdraw any listing approval granted or impose any conditions which it considers appropriate.

### **Language and format**

29.15 Every listing document must be in the English language and be accompanied by a Chinese translation or be in the Chinese language and be accompanied by an English translation except that, in the case of a new applicant, the English language version of the listing document may be distributed separately from its Chinese translation or the Chinese language version of the listing document may be distributed separately from its English translation (as the case may be) provided that both are available at each place where, and for so long as, the distribution of such documents takes place.

29.16 The information contained in the listing document should be clearly presented and should be in plain language.

### **Illustrations**

29.17 A listing document may include illustrations of a pictorial or graphic nature provided that such illustrations are not misleading or likely to mislead in the form and context in which they are included.

## Publication

- 29.18 In the case of an offer for sale or an offer for subscription, a formal notice stating the information set out in rule 29.19 must be published on GEM website in accordance with the requirements of Chapter 16 on the date of issue of the listing document.
- 29.19 In every other case, a formal notice stating the following information must be published on the GEM website in accordance with Chapter 16 not less than 2 clear business days before dealings commence:—
- (1) the name and country of incorporation or other establishment of the issuer;
  - (2) the name and country of incorporation or other establishment of the guarantor, in the case of a guaranteed issue;
  - (3) the amount and title of the debt securities for which listing is sought;
  - (4) the address(es) at which copies of the listing document (if any) are available to the public;
  - (5) the date of publication of the notice;
  - (6) in the case of tap issues, the total amount of the debt securities which would be issued under such an arrangement;
  - (7) in the case of a placing, the names of the issuing houses involved in the placing;
  - (8) a statement that application has been made to the Exchange for listing of and permission to deal in the debt securities;
  - (9) a statement that the formal notice appears for information purposes only and does not constitute an invitation or offer to acquire, purchase or subscribe for debt securities;
  - (10) the date upon which dealings in the debt securities are expected to commence; and
  - (11) in the case of an offer for sale or an offer for subscription a statement that applications will only be considered on the basis of the listing document.
- 29.20 Model forms of formal notices for offers for subscription or sale and placings are set out in Appendix 10 for the guidance of issuers. Issuers are reminded that, where a prospectus has been registered with the Registrar of Companies pursuant to the Companies Ordinance, every formal notice must comply with section 38B of that Ordinance.
- 29.21 The issuer must make sufficient copies of the listing document available to the public, free of charge, at the address(es) referred to in rule 29.19(4) to satisfy public demand for a reasonable period (in the case of an offer for subscription or offer for sale, not being less than the offer period and, in every other case, not being less than 14 days) from the date on which the formal notice is published. In all cases where the listing document is published in the newspapers, it must be accompanied by a statement that copies of the listing document are available to the public at a stated address(es) for a similar period.

29.21A All listing documents published by a new applicant must be in printed form. However, a new applicant may, to the extent permitted under applicable laws and regulations and the new applicant's own constitutional documents, make additional copies available to the public in electronic format on CD ROM (together with the relative application form (if any) in electronic format on the same CD ROM) (the "CD ROM Method"). Where the new applicant has its own website, it must also make additional copies available to the public in electronic format through publication of the listing document (together with the relative application form (if any)) on its website in accordance with the publication requirements of rule 16.19 (the "Website Method").

Where the new applicant has made additional copies available using either or both of the CD ROM Method and the Website Method, the new applicant must ensure that:

- (a) the CD ROM and/or (as the case may be) the page on the new applicant's own website where additional copies of the listing document and relative application form (if any) are made available include(s):
  - (i) a confirmation that the contents of the listing document and relative application form (if any) in electronic format are identical with the contents of the listing document and application form (if any) in printed form; and
  - (ii) a confirmation that the listing document and relative application form (if any) are also available in printed form and addresses of the locations where they are available; and
- (b) any supplemental listing documents or subsequent amendments to the listing document are also made available in both printed form and electronic format (using the same method(s), that is, the CD ROM Method and/or the Website Method, as was/were used when the main or first listing document was published) and the new applicant must also comply with the requirements of (a) above with all references to "listing document" and "application form" being construed as references to the supplemental listing document or subsequent amendment to the listing document and the relative application form (if any).

29.22 In the case of an offer for subscription or an offer for sale, an announcement of the results of the offer, the basis of allotment of the debt securities (including the extent to which securities have been taken up by the underwriters (if any) and their associates) and the amount actually issued if not underwritten must be published on the GEM website, in accordance with the requirements of Chapter 16, as soon as possible but, in any event, not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following the date on which the allotment letters or other documents of title are posted.

*Note: For the purposes of this rule, "associate" shall have the same meaning as set out in the definition of associate in rule 1.01, save that it shall be construed as applying to underwriters.*

29.23 In the case of an offer for subscription or an offer for sale by tender, an announcement of the striking price must be published on the GEM website, in accordance with the requirements of Chapter 16, as soon as possible but, in any event, not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following the date on which the allotment letters or other documents of title are posted.

29.24 In the case of a placing, an announcement of the results of the placing (containing, as applicable, the details set out in rule 10.12(4)) must be published on the GEM website in accordance with the requirements of Chapter 16 prior to commencement of dealings in the securities so placed.