

Chapter 30

DEBT SECURITIES

SELECTIVELY MARKETED SECURITIES

Introduction

- 30.01 This Chapter sets out the requirements for the listing on GEM of selectively marketed securities. Chapters 26 to 29 do not apply to issues of selectively marketed securities. Issuers of selectively marketed securities with or seeking a listing on GEM must comply with the GEM Listing Rules as modified by this Chapter.
- 30.02 The requirements of this Chapter are subject to the applicable requirements relating to particular types of securities to be marketed by way of selective marketing (Options, Warrants and Similar Rights (Chapter 33), Convertible Debt Securities (Chapter 34), Tap Issues, Debt Issuance Programmes and Asset-Backed Securities (Chapter 35)).
- 30.03 Application for approval, in principle, to a selective marketing must be made at the earliest opportunity. Listing will normally be granted following submission of the relevant documentation subject only to the issue of the debt securities. It is the responsibility of the issuer's Sponsor, authorised representatives or financial adviser to inform the Exchange when the debt securities are due to be issued.

Issuers are reminded that any 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.

Preliminary

- 30.04 Issuers are reminded:—
- (1) that the requirements set out in this Chapter are not exhaustive and that the Exchange may impose additional conditions in a particular case;
 - (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 suitability for listing or the suitability of the guarantor in the case of a guaranteed issue and the Exchange reserves the right, in its absolute discretion, to refuse a listing of debt securities of an issuer if it believes that it is not in the public interest to list them; and
 - (3) that they must supply any further documents and information which the Exchange may require in a particular case.
- 30.05 Issuers are 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.
- 30.05A 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.

Qualifications for listing

30.06 Rules 30.07 to 30.19 set out the basic conditions which have to be met as a pre-requisite to the listing of debt securities by way of selective marketing. The additions and exceptions to the qualifications for listing set out in Chapter 35 apply to issuers of asset-backed securities which are selectively marketed.

Basic conditions for issuers

30.07 No issuer may list its debt securities on GEM unless its equity securities, or the equity securities of its holding company, are already listed on GEM or will be listed on GEM at the same time as the issuer's debt securities.

30.08 Where the holding company of a new applicant seeking only a listing of debt securities on GEM has equity securities already listed on GEM, or seeks to list its equity securities on GEM at the same time as the new applicant's debt securities, the new applicant is not required to appoint a Sponsor. However:—

- (1) in circumstances where the holding company of the new applicant is required to appoint or has appointed a Sponsor under rule 6.01 or 6.02, that Sponsor (or another party admitted to the Exchange's list of Sponsors, specifically appointed for the purpose) must advise the new applicant in connection with the issue and listing of the debt securities; or
- (2) in circumstances where the holding company of the new applicant is not required to appoint and has not appointed a Sponsor under rule 6.01 or 6.02, the new applicant must, in any event, appoint a financial adviser, acceptable to the Exchange, to advise the new applicant in connection with the issue and listing of the debt securities.

30.09 The issuer and the guarantor, in the case of a guaranteed issue, must each be duly incorporated or otherwise established under the laws of the place where it is incorporated or otherwise established and must be in conformity with those laws.

30.10 The issuer and the guarantor, in the case of a guaranteed issue, must each have produced audited accounts in accordance with its national law covering the 2 financial years preceding the application for listing. In very exceptional cases, the Exchange may accept a shorter period.

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

30.12 The nominal amount of each class of debt securities for which listing is sought must be at least HK\$30,000,000. Issues of debt securities by an issuer under a debt issuance programme or further issues of debt securities by an issuer which are or are to be uniform in all respects with debt securities of a class already listed are not subject to this limit.

Notes: 1 In exceptional cases, a lower minimum nominal amount may be acceptable where the Exchange is satisfied as to marketability.

- 2 In the case of options, warrants or similar rights to subscribe or purchase debt securities, the same limit will apply as would apply to the underlying debt securities to be subscribed or purchased.*

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

- 30.14 The issue and listing of the debt 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 and issue under such law or documents must have been duly given.
- 30.15 The issuer must maintain a paying agent at an address in Hong Kong until the date on which no debt security is listed on the Exchange unless the issuer performs that function itself.
- 30.16 In the case of registered securities (other than those transferable by endorsement and delivery), provision must be made for a register of holders to be maintained in Hong Kong, or such other place as the Exchange may agree, and for transfers to be registered locally. The Exchange may, however, consider an alternative proposal for registering transfers for Hong Kong holders in exceptional circumstances.

Guarantors and guaranteed issues

- 30.17 Where listing is sought for debt securities of an issuer guaranteed or secured by another legal person not being its holding company, the guarantor will be required to comply with the GEM Listing Rules to the same extent as if such guarantor were the issuer of the relevant debt securities. In particular:—
- (1) a listing document issued in relation to a guaranteed issue must contain the same information regarding the guarantor as that regarding the issuer, so that, where appropriate, references in paragraphs of Part C of Appendix 1 to "issuer" should be read as applying equally to the guarantor; and
 - (2) a guarantor will be required to undertake (in the prescribed form set out in Appendix 5C, amended as appropriate so as to apply to the guarantor) to comply with the GEM Listing Rules applicable to issuers of debt securities, save for any that are stated not to apply.
- 30.18 The relevant guarantee must be issued in conformity with the law of the place where the guarantor is incorporated or otherwise established and in conformity with the guarantor's memorandum and articles of association or equivalent documents and all authorisations needed for its issue under such law or documents must have been duly given.
- 30.19 The matters to be included or reported on under rules 7.03 and 7.04, if applicable, must be extended to the guarantor and its subsidiaries as well as the issuer.

Stabilisation

- 30.20 Any activities or transactions carried out prior to the commencement of dealings with a view to stabilising or maintaining the market price of the debt securities at levels other than those which might otherwise prevail must only be effected in accordance with all applicable statutory provisions or regulations. If any such activities or transactions are not effected in accordance with such provisions or regulations the application for listing will be rejected by the Exchange.

Application procedures and requirements

Preliminary

- 30.21 The issuer should approach the Exchange at the earliest possible opportunity prior to the expected launch of an issue of selectively marketed securities to ascertain the requirements which will apply.

- 30.22 In circumstances where the issuer, or the issuer's holding company, is required to appoint or has appointed a Sponsor under rule 6.01 or 6.02, that Sponsor (or another party admitted to the Exchange's list of Sponsors, specifically appointed for the purpose) is responsible for providing advice to the issuer in connection with the debt issue and must lodge the issuer's application for listing and all supporting documents and deal with the Exchange on all matters in connection with the application.
- 30.23 The listing of selectively marketed debt securities is required to be supported by a listing document, submitted in anticipated final form in accordance with rule 30.27. Where any document is amended after submission, a like number of further copies must be submitted to the Exchange for review, marked in the margin to indicate where the relevant items from Part C of Appendix 1 have been met (and, in the case only of a prospectus, the relevant provisions of the Companies Ordinance). Such copies must also be marked to indicate the amendments made to conform with points raised by the Exchange and all other amendments.
- 30.24 No material amendment to the final proof listing document will be allowed without the consent of the Exchange. The listing document must not be issued until the Exchange has confirmed that it has no further comments thereon. However, circulation of a draft or preliminary listing document which is clearly marked as such, is permitted for the purposes of arranging underwriting, syndication and selective marketing.
- 30.25 Rule 28.08, regarding the review and release of publicity material released in Hong Kong, shall apply in full to the issuer of selectively marketed securities.

Documentary requirements

- 30.26 The documents set out in rule 30.27 must be lodged with the Exchange, in the case of an issuer applying for the simultaneous listing of both equity securities and debt securities, in accordance with the timetable relevant to the application to list such securities and otherwise at least 10 clear business days prior to the date on which the GEM Listing Committee may consider the issuer's application for listing or such other period as may be agreed with the Exchange.

Note: The listing fee, must be submitted to the Exchange at the same time as the documents referred to in rule 30.27. Details of the listing fee and other charges (if applicable) are set out in Appendix 9.

- 30.27 The documents referred to in rule 30.26 are as follows:—

- (1) a formal application for listing in the prescribed form set out in Appendix 5C, signed by a duly authorised officer or member of the governing body of the issuer;
- (2) 6 drafts or proof copies 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;
- (3) 3 copies of the anticipated final proof of the formal notice;
- (4) 3 copies of the anticipated final draft, if available, of the trust deed or other document securing or constituting the debt securities, which must comply with Appendix 4 (with the exception of paragraphs 1(1),1(2) and 6(1)), and which are marked in the margin to indicate where the relevant items from Appendix 4 have been met;

- (5) 3 certified copies of the memorandum and articles of association or equivalent documents of both the applicant and the guarantor, in the case of a guaranteed issue, or, if previously supplied in connection with a previous listing and where no amendments have been made thereto, a certificate of an authorised officer or member of the governing body of the issuer and of the guarantor, in the case of a guaranteed issue, confirming that there have been no amendments thereto;
- (6) in the case of a new applicant, the annual report and accounts for each of the 2 completed financial years of the issuer or its group and the guarantor or its group in the case of a guaranteed issue, immediately preceding the issue of the listing document or such shorter period as may be acceptable to the Exchange;
- (7) where possible, a certified copy of:—
 - (a) the resolution(s) of the issuer in general meeting (if any) authorising the issue of all debt securities for which listing is sought, together with one copy of the notice of meeting (if any) of shareholders referred to in the listing document;
 - (b) the resolution(s) of the board of directors or other governing body or any other person to whom it has properly delegated these powers (together, in such cases, with a certified copy of the power of attorney or resolution delegating the powers) authorising the issue and allotment of such debt securities, the making of the application for listing in the prescribed form and approving and authorising the issue of the listing document; and
 - (c) in the case of a guaranteed issue, the resolution(s) of the board of directors or other governing body of the guarantor approving and authorising the giving and signing of the guarantee(s) and the undertaking to comply with the GEM Listing Rules (see rule 30.17) and authorising the issue of the listing document;
- (8) any checklist(s) in the form prescribed by the Exchange from time to time, duly completed; and
- (9) in circumstances where the issuer or the issuer's holding company is required to have (or otherwise retains) a Sponsor, the Sponsor's declaration of interests in the form set out in Appendix 7H.

30.28 The following documents must be supplied to the Exchange after notification of listing approval:—

- (1) in the case of a new applicant or a listed issuer proposing to issue a listing document of the type referred to in rule 6.58(1) within the minimum period referred to in rule 6.01 or any period fixed for the purposes of rule 6.02 during which the issuer or the issuer's holding company is required to appoint a Sponsor, the signed declaration in the form set out in Appendix 7J as referred to in rule 6.57;
- (2) on or before the date of issue of the listing document (or such other date as the Exchange may agree):—
 - (a) (i) 7 copies of the listing document, one of which must be dated and signed by a duly authorised officer of the issuer and the guarantor, in the case of a guaranteed issue, or by 2 members of an issuer's governing body in the case of an overseas issuer or by their agents authorised in writing;
 - (ii) where any document referred to in (a) above is signed by an agent, a certified copy of the authorisation for such signature;

- (b) a certified copy of every letter, report, financial statement, statement of adjustments, valuation, contract, resolution or other document any part of which is extracted or referred to in the listing document;
 - (c) a certified copy of the written consent by any expert to the issue of the listing document with the inclusion therein of 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 in the form and context in which they are included;
 - (d) 25 copies of each of the English language version and the Chinese language version (if any) of the listing document to be supplied to the Exchange; and
- (3) in the case of a listing document which constitutes a prospectus under the Companies Ordinance, the following documents (lodged with the Exchange by no later than 11:00 a.m. on the intended date of authorisation of the prospectus):—
- (a) 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);
 - (b) 2 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;
 - (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 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
 - (d) 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.
- (4) on or before the date that permission to deal becomes effective:—
- (a) 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; and
- Note: This requirement does not relate to the guarantor, in the case of a guaranteed issue, unless the guarantor is itself a listed issuer.*
- (b) a copy of the relevant page(s) of any newspaper circulating in Hong Kong in which any formal notice was published (if any).

Listing documents

30.29 A listing of selectively marketed debt securities is required to be supported by a listing document. The Exchange may require disclosure of such additional or alternative items of information as it considers appropriate in any particular case. Certain issuers may not be able to comply with all the requirements concerning listing documents referred to below. The Exchange may be prepared to permit the omission or modification of items of information to suit the circumstances of a particular case and should be consulted at the earliest opportunity for informal and confidential guidance in order to establish whether any further dispensation may be allowed in any particular case.

30.30 In addition to the detailed requirements set out below, the listing document must:—

- (1) comply with the requirements as to content generally recognised and accepted in the selectively marketed debt securities markets in which the selectively marketed debt securities concerned are to be issued;
- (2) as an overriding principle, in respect of all listing documents issued by an issuer in support of an application for listing of selectively marketed securities of a class new to listing, 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 and 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 selectively marketed securities;
- (3) contain a statement restricting the distribution of it and any other offering or invitation materials relating to the debt securities and restricting the offer or sale of the debt securities themselves to those persons who are the subject of the selective marketing;
- (4) contain on the front cover or the inside front cover a prominent and legible disclaimer statement in the form set out in rule 2.19; and
- (5) make clear that the issue may be cancelled at any time up to the time when subscription moneys have been received and the debt securities issued (the “closing date”).

30.31 Subject to rule 30.32, listing documents issued in relation to selectively marketed securities must contain at least the information specified by the following paragraphs of Part C of Appendix 1 according to the nature and circumstances of the issuer and the guarantor, in the case of a guaranteed issue, and the type of debt securities:—

1, 2, 4, 5, 8(1) and (2), 10, 12, 13, 14 (other than 14(4) and (11)), 15, 16, 18, 32, 33, 37(1), 39, 42, 43, 45, 48 49(1) and (2), 51 and 53(5)

30.32 The listing document must contain the items of information specified in rule 30.30 and those paragraphs of Part C of Appendix 1 listed in rule 30.31, subject to the following modifications and exceptions:—

- (1) the responsibility statement referred to in paragraph 2 of Part C of Appendix 1 may subject to the Exchange’s prior approval be given by another person or persons considered appropriate by the Exchange, including the corporate declaration customarily adopted for selective marketings;

- (2) (a) in substitution for the accountants' report required by paragraph 42 of Part C of Appendix 1, a statement (which may be in the form of a comparative table) will normally be permitted setting out the following financial information about the issuer and the guarantor, in the case of a guaranteed issue:—
- (i) profit and loss accounts in respect of each of the 2 completed financial years immediately preceding the issue of the listing document, or in respect of each of the financial years since incorporation or other establishment of the issuer or guarantor, if this occurred less than 2 years prior to such issue, and if the latest information is in respect of a period ending on a date earlier than 3 months before such issue, a statement that no accounts have been made up since that date;
 - (ii) the latest balance sheet, including any explanatory notes and a statement of accounting principles adopted and comparative figures at the preceding balance sheet date;
 - (iii) the full text of the auditors' report accompanying the last accounts referred to in the statement. If audited accounts have not yet been prepared, the auditors should prepare a report in the format normally adopted for these circumstances for inclusion in the listing document; and
 - (iv) any interim financial statement published since the end of the last financial year which need not be a consolidated statement if the issuer or the guarantor has in the past always published interim statements on another basis;

An issuer which has existing debt securities listed on the Exchange may omit the information required by paragraph 42 of Part C of Appendix 1 and the above information;

- (b) the statement should be prepared on a consolidated basis for the purpose of the listing document unless the issuer or guarantor has in the past always published accounts on another basis. The issuer's or guarantor's own accounts should also be included if they provide significant additional information;
 - (c) the Exchange will retain the right to enquire of the issuer and the guarantor, in the case of a guaranteed issue, (in the case of issues proposed to be made by issuers other than banks or international issuers listed on another regulated, regularly operating, open stock market recognised by the Exchange) as to whether internationally recognised accounting principles have been applied and as to the standing of the auditors within the accounting profession of the country where they practice;
 - (d) the issuer's auditors must be independent both of the issuer and of any other company concerned; and
 - (e) where the Exchange, in exceptional circumstances, allows reports to be drawn up otherwise than in conformity with accounting standards approved by the Hong Kong Society of Accountants or the International Accounting Standards Committee, the Exchange will normally require the report to contain a statement of the financial effect of the material differences (if any) and a summary of any material difference in disclosure (if any) from either of those standards;
- (3) compliance with paragraph 37(1) of Part C of Appendix 1 may take the form of a description of the general nature of the business of the issuer or the group;

- (4) the capitalisation statement required by paragraph 39 of Part C of Appendix 1 should be made up to the most recent practicable date and need not include an indebtedness statement;
- (5) in order to comply with paragraph 48 of Part C of Appendix 1 only the registered office need be included;
- (6) compliance with paragraph 49(1) and (2) of Part C of Appendix 1 may take the form of a statement of the total of the interests of the directors in the share capital, together with any options in respect of such share capital;
- (7) the particulars of contracts pertaining to the issue required by paragraph 51 of Part C of Appendix 1 may be restricted to those contracts directly concerning the issue; for example, the trust deed, the guarantee and the fiscal or paying agency and subscription or underwriting agreements;
- (8) in particular cases, the Exchange may require additional documents to be offered for inspection; and
- (9) overseas issuers which are subject to public reporting and filing obligations in their country of incorporation or other establishment (or listing, if different) may be permitted to incorporate in listing documents relevant documents so published.

- 30.33 (1) A 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;
- (2) All documents furnished by an issuer to the Exchange, including accounts, which are in a language other than English or Chinese must be accompanied by a certified English or Chinese translation. If the Exchange so requires, an additional translation must be prepared in Hong Kong at the issuer's expense by such person or persons as the Exchange shall specify; and
 - (3) 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 in electronic format on CD ROM (the "CD ROM Method"). Where the new applicant has its own website, it must also make available copies available in electronic format through publication of the listing document 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:

- (i) 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 is made available include(s):
 - (aa) a confirmation that the contents of the listing document in electronic format are identical with the contents of the listing document in printed form; and
 - (bb) a confirmation that the listing document is also available in printed form and addresses of the locations where it is available; and

- (ii) 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 (i) above with all references to “listing document” being construed as references to the supplemental listing document or subsequent amendment to the listing document.

30.34 A bank may omit the items of information required by rule 30.31 in respect of paragraphs 51 of Part C of Appendix 1.

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

Subsequent events

30.36 The Exchange must be notified immediately if before permission to deal in the debt securities has become effective 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 30.30(2) above. 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.

Publication

30.37 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 permission to deal in the debt securities has become effective:—

- (1) the name and country of incorporation or other establishment of the issuer and guarantor in the case of a guaranteed issue;
- (2) the amount and title of the debt securities for which listing is sought;
- (3) the date of publication of the notice;
- (4) in the case of tap issues and all listed issues under debt issuance programmes (unless otherwise agreed by the Exchange), the total amount of the debt securities which could be issued under such an arrangement;
- (5) the names of the institutions involved in the selective marketing;
- (6) a statement that application has been made to the Exchange for listing of and permission to deal in the debt securities;
- (7) 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; and

- (8) the date upon which permission to deal in the debt securities on the Exchange is expected to become effective.

30.38 A model form of formal notice for an issue of selectively marketed securities is set out in Appendix 10 for the guidance of issuers.

Constitution and documents of title

30.39 In the absence of a trust deed or equivalent document constituting debt securities the relevant requirements of Appendix 4 (other than those set out in paragraphs 6(1) and 7) must be complied with by the inclusion of appropriate provisions in the terms and conditions of issue contained in the listing document and the documents of title.

Continuing obligations

30.40 The provisions of Chapter 31 are also applicable to all issuers and guarantors, in the case of guaranteed issues of selectively marketed debt securities.

Overseas issuers

30.41 The provisions of Chapter 32 are also applicable to all overseas issuers of selectively marketed debt securities.