

Amendments to GEM Listing Rules

Chapter 7

GENERAL

ACCOUNTANTS' REPORTS AND PRO FORMA FINANCIAL INFORMATION

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Statement of adjustments

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- 7.20 Where the accountants' report is set out in a listing document the statement of adjustments relating to that report must be submitted to the Exchange in anticipated final draft form in accordance with rules 12.22(3), 12.26B(2) and 28.13(7) and in certified form in accordance with rules 12.24(6) and 28.14(3). In every other case, the statement of adjustments must be submitted to the Exchange at the same time as the proofs of the circular containing the accountants' report are submitted.

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Chapter 10

EQUITY SECURITIES

METHODS OF LISTING

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Placing

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- 10.12 A placing by or on behalf of a new applicant or by or on behalf of a listed issuer of securities of a class new to listing must be supported by a listing document which must comply with the relevant requirements of Chapter 14 and such a placing must comply with the following specific requirements:—

...

- (6) Separate Marketing Statements in the form set out in Appendix 5D signed by each of: (a) the lead broker; (b) any distributor(s); and (c) any Exchange Participant referred to in rules 12.26(6)(a) and 12.27(6)(a), must be lodged with the Exchange before dealings commence.

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Chapter 12

EQUITY SECURITIES

APPLICATION PROCEDURES AND REQUIREMENTS

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Applications

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Application by listed issuers

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12.17 The listing application form must be accompanied by:—

- (1) the documents, as applicable, stipulated in rule 12.226B;

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Further provisions applicable to applications by new applicants and listed issuers

12.18 Where any document that has been submitted is amended after submission, a like number of further copies of that document marked up to show all changes must be submitted to the Listing Division for review at the earliest opportunity, ~~but in any event so that the final form, or as appropriate signed original, of any document has been received by the Listing Division.~~ In the case of a new applicant, the final form, or as appropriate signed original, of any document must be lodged with the Exchange at least 4 clear business days prior to the provisional hearing date 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.

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Documentary requirements – New Listing Applications

At the time of application for listing

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

...

- (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 new applicant 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 new applicant issuer's Sponsor or legal adviser;

...

- (8) where possible, a certified copy of the resolution(s) of the new applicant 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 new applicant issuer and which are required to be registered under the Companies Ordinance;

...

- (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 ~~is 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;

...

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) ...
- (2) ...
- (2a) ...

~~In the case of a listed issuer, the same written confirmation must be submitted if specifically requested by the Exchange.~~

...

- (3) a certified copy of the certificate of incorporation and any certificates of incorporation on change of name or equivalent document of the new applicant issuer;

- (4) a certified copy of the certificate (if any) entitling the new applicant~~issuer~~ to commence business;

...

- (6) if requested by the Exchange, whether at the time of submitting the application for listing or at any time thereafter:—

- (a) ...

- (b) ...

- (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~~ by a new applicant, as soon as practicable after the hearing of the application by the Listing Division 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 rules 6A.13 to 6A.16 ~~and in the case of a listed issuer proposing to issue a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, the signed declaration in the form set out in Appendix 7J as referred to in rule 6A.35;~~

- (2) ~~in the case of a new applicant,~~ 4 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 new applicant~~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

...

...

- (4) ~~in the case of a new applicant,~~ 1 copy of the formal notice, where applicable;

- (5) ~~in the case of a new applicant,~~ 4 copies of any application form (including any excess or preferential application form) to subscribe or purchase the securities for which the listing is sought;

...

- (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;

...

...

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~~ as a condition for granting listing approval:—

...

- (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 new applicant~~issuer~~;

...

- (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) ...

(b) ...

- (7) a declaration substantially in the form set out in Appendix 5E, duly signed by a director and the secretary of the new applicant~~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,~~ a written declaration, undertaking and acknowledgement, in the relevant form set out in Appendix 6, duly signed by each director/supervisor and proposed director/supervisor. ~~In the case of a listed issuer, the same declaration, undertaking and acknowledgement must be submitted if specifically requested by the Exchange.~~

Documentary Requirements – Applications by Listed Issuers

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

At the time of application for listing

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

- (1) such number of copies of drafts or proofs of the listing document as the Exchange may require, marked in the margin to indicate where the relevant provisions of the GEM Listing Rules and/or the Companies Ordinance have been met;
- (2) if the listing document contains an accountants' report, a draft of any statement of adjustments relating to the accountants' report;
- (3) if the listing document contains a profit forecast (see rules 14.28 to 14.31), a draft of the board's profit forecast memorandum with principal assumptions, accounting policies and calculations for the forecast; and
- (4) for issue of new warrants to existing warrant holders, a legal opinion, from a lawyer of the relevant jurisdiction, confirming that the warrant proposal complies with the relevant provisions of the issuer's constitutive documents and the terms of the existing warrant instrument (see rule 21.07(7)).

Before bulk-printing of the listing document

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

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

On or before the date of issue of the listing document

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

- (1) every written undertakings from the listed issuer, its shareholders and/or other relevant parties to the Exchange referred to in the listing document;

- (2) for listing of a new class of securities, a copy of the written notification issued by HKSCC stating that the securities will be Eligible Securities; and
- (3) if the listed issuer proposes to issue a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, the signed declaration in the form set out in Appendix 7J as referred to in rule 6A.35.

In case of a listing document constituting a prospectus under the Companies Ordinance

12.26E If the listing document constitutes a prospectus under the Companies Ordinance, the following documents must be submitted to the Exchange:

- (1) at least 10 business days before the proposed date of registration of the prospectus by the Registrar of Companies, notice of the proposed date of registration of the prospectus (see rule 15.09);
- (2) by 11 a.m. on the intended date of authorisation for registration of the prospectus,
 - (a) an application for authorisation for registration of the prospectus under section 38D(3) or section 342C(3) of the Companies Ordinance (as the case may be);
 - (b) two printed copies of the prospectus, duly signed in accordance with section 38D(3) or section 342C(3) of the Companies Ordinance (as the case may be) and having endorsed thereon or annexed thereto the documents required under the relevant section;
 - (c) in respect of a Chinese translation of the prospectus, a certificate issued by the translator certifying that the Chinese translation of the English version of the prospectus is true and accurate or in respect of an English translation of the prospectus, a certificate issued by the translator certifying that the English translation of the Chinese version of the prospectus is true and accurate; and in either case, a certificate issued by the issuer certifying that the translator is competent to have given the certificate as to translations in respect of the prospectus documents; and
 - (d) any power of attorney or other authority under which the prospectus is signed, together with a certified copy thereof; and
- (3) as soon as after the registration of the prospectus, a copy of the letter from the Registrar of Companies confirming the registration (see rule 16.17(2)(b)).

Before dealings commence

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

- (1) [Repealed 25 June 2007]
- (2) ~~where securities are offered with a cash alternative, a statement of the total amount of securities to be issued;~~ [Repealed 2 November 2009]
- (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 if the listing is pursuant to document provides for 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;~~
- (5) 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 in the form set out in Appendix 5B, and where applicable, the making of all necessary arrangements enabling such securities to be admitted into CCASS, and approving and authorising the issue of the listing document;
- (6) in the case of the placing by a listed issuer of a class of securities new to listing:
 - (a) a copy of the placing letter and separate marketing statements in the form set out in Appendix 5D signed by each of: (i) the lead broker; (ii) any distributors; and (iii) any Exchange Participant referred to in that Appendix; and
 - (b) a list from each placing broker setting out the names, addresses and identity card or passport numbers (in the case of individuals) and the names, addresses and registration numbers (in the case of companies) of all its placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each of its placees. Such lists may be supplied directly to the Exchange by each placing broker in order to maintain confidentiality.

In the case of the placing by a listed issuer of a class of securities already listed, the Exchange may require the issuer to submit

information on the places for the purpose of establishing their independence (see also rule 17.30(7));

- (7) if required, a declaration from the security printers responsible for production of bearer documents of title in accordance with paragraph 24 of Part B of Appendix 2;
- (8) a declaration substantially in the form set out in Appendix 5E, 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); and
- (9) the completed company information sheet, in the prescribed form set out in Appendix 5F, submitted in the electronic format specified by the Exchange from time to time, for publication on the GEM website, together with a hard copy duly signed by or on behalf of each of the directors of the issuer.

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Chapter 14

EQUITY SECURITIES

LISTING DOCUMENTS

Preliminary

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14.02 In order to allow the Exchange sufficient time to consider an application for listing:

- (1) ...
- (2) listed issuers are reminded that the listing document in anticipated final form must be lodged with the Exchange at least 10 clear business days prior to the intended date of its bulk printing ~~and, if any amendments are made thereto, in final form at least 2 clear business days prior to bulk printing.~~

~~In either case, n~~No material amendment to the final proof listing document will be allowed without the consent of the Exchange.

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Chapter 15

EQUITY SECURITIES

PROSPECTUSES

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Procedural requirements

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- 15.11 If the Exchange is satisfied that the prospectus delivered to it pursuant to rules 12.245 and 12.26E(2) should be authorised for registration pursuant to the Companies Ordinance, it will issue a certificate under section 38D(5) or section 342C(5) of the Companies Ordinance (as the case may be). It is the responsibility of the issuer to deliver the prospectus and any ancillary documents to the Companies Registry for registration pursuant to section 38D(7) or section 342C(7) of the Companies Ordinance (as the case may be).

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Chapter 25

EQUITY SECURITIES

ISSUERS INCORPORATED IN THE PEOPLE'S REPUBLIC OF CHINA

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Chapter 12 – Application Procedures and Requirements

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- 25.16 In addition to the documentary requirements of rule 12.22, new applicants must lodge with the Exchange the following documents ~~must be lodged with the Exchange~~, for initial review, at time of submitting a listing application:—

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- (5) 3 copies of the anticipated final draft legal opinion by the PRC issuer's ~~Hong Kong~~ legal advisers, citing and attaching the legal opinion by PRC lawyers authorised by the relevant authorities in the PRC to advise on securities laws, confirming the due incorporation and legal person status of the PRC issuer as a joint stock limited company (股份有限公司) under PRC law and the obtaining of all relevant regulatory approvals in the PRC required for the issue and listing contemplated by the PRC issuer's listing application.

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Appendix 5

FORMS RELATING TO LISTING

FORM B

**Application Form – Equity securities
(of an issuer part of whose share capital is already listed)**

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16. **We hereby undertake:—**

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- (b) **to lodge with the Exchange, before dealings in the securities the subject of this application commence, the declaration (Appendix 5E) required by rule ~~12.26(7)~~7(8) of the GEM Listing Rules; and**

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