

Chapter 11

EQUITY SECURITIES

QUALIFICATIONS FOR LISTING

Preliminary

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

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

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

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

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

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

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

Notes: 1 [Repealed 3 June 2010]

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

- 3 *Of the interests required to be disclosed pursuant to this rule, a director or substantial shareholder must include any directorship or ownership of an entity engaged in a business which competes or is likely to compete with the business of the group. The disclosure should include the name of each such entity, the nature of its business and details of the directorship and/or ownership of the issuer's directors and substantial shareholders and their respective close associates in such entity.*
- 4 *See also paragraph 27A of Appendix 1A.*

General conditions applicable to all issuers

- 11.05 The issuer must 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, including all such laws relevant to the allotment and issue of securities, and with its memorandum and articles of association or equivalent documents. The issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the shareholder protection standards set out in Appendix 3. In addition PRC issuers must also comply with Part C of Appendix 11.
- 11.05A Each of the statutory securities regulator of an issuer's jurisdiction of incorporation and the statutory securities regulator of the place of central management and control must be a full signatory to the IOSCO MMOU. This is to enable the Commission to seek regulatory assistance and information from overseas statutory securities regulators to facilitate the Commission's investigations and enforcement actions where an issuer has its records, business operations, assets and management outside Hong Kong.
- 11.05B The Exchange may waive rule 11.05A in an individual case only with the Commission's explicit consent having regard to whether there are adequate arrangements to enable the Commission to access financial and operational information (such as books and records) on an issuer's business in the relevant place of incorporation and place of central management and control for its investigation and enforcement purposes.
- 11.06 (1) Both the issuer and its business must, in the opinion of the Exchange, be suitable for listing. Without limiting the generality of this rule, an issuer will not be regarded as suitable for listing if its group's assets consist wholly or substantially of cash and/or short-term investments (as defined in the notes to rule 19.82).
- (2) Cash and/or short-term investments held by a member of an issuer's group that is a banking company (as defined in rule 20.86), an insurance company (as defined in rule 19.04) or a securities house (as defined in rule 19.04) will normally not be taken into account when applying rule 11.06(1).

Note: This exemption will not apply to an issuer that operates a securities house where the Exchange has concerns that the issuer is holding cash and short-term investments through a member to circumvent rule 11.06(1). For example, an issuer holding excessive cash and/or securities investments cannot circumvent the rule by holding such assets through a member that is a licensed broker with minimal brokerage operations. The Exchange will apply a principle based approach and consider, among others, the cash and/or short-term investments in light of the member's operating model and its cash needs for the purpose of its regulated activities, which should be substantiated by its historical track record.

- 11.07 The issuer must have persons appointed to the following offices and, or to perform the following roles and the issuer must ensure that such persons have satisfied the following rules prior to appointment:—
- (1) directors – rules 5.02 and 5.05;
 - (2) company secretary – rule 5.14;
 - (3) compliance officer – rule 5.19;
 - (4) authorised representatives – rule 5.24; and
 - (5) members of the audit committee – rules 5.28 and 5.29.
- 11.08 The issuer must either be an approved share registrar or employ an approved share registrar to maintain in Hong Kong its register of members.
- 11.09 Issuers must comply with Chapter 6A, in particular, with respect to the appointment of a Sponsor and a Compliance Adviser.
- 11.10 A new applicant and, if required pursuant to rule 7.01, a listed issuer must have an accountants' report prepared in accordance with Chapter 7, covering (subject to rule 11.14) in the case of a new applicant, at least the 2 financial years immediately preceding the issue of the listing document.

Note: The accountants' report must cover a trading record period of at least the 2 financial years preceding the issue of the listing document in the case of a new applicant described in rule 11.12A. For general guidance, where the issuer has a longer operating history of more than two years, the Exchange would encourage voluntary disclosure of three years of financial results in the accountants' report.

Additional conditions applicable to new applicants

Accountants' report

- 11.11 In the case of a new applicant, the latest financial period reported on by the reporting accountants must not have ended more than 6 months before the date of the listing document.
- 11.12 [Repealed 1 July 2008]
- 11.12A (1) A new applicant or its group (excluding any associated companies, joint ventures and other entities whose results are recorded in the issuer's financial statements using the equity method of accounting or proportionate consolidation) must have an adequate trading record of at least two financial years comprising a positive cash flow generated from operating activities in the ordinary and usual course of business before changes in working capital and taxes paid. Such positive cash flow from operating activities carried out by the new applicant, or its group, that are to be listed, must be of at least HK\$30,000,000 in aggregate for the two financial years immediately preceding the issue of the listing document.

Note: A statement of cash flow prepared using the indirect method for submission to the Exchange for the purpose of satisfying rule 11.12A must also be included in the prospectus for disclosure purpose, if it is not already included in the accountants' report. Details regarding cash flow statements prepared under the indirect method are further described under the relevant accounting standard dealing with cash flow statements in accordance with HKFRS, IFRS or CASBE.

- (2) The applicant must have had continuity of ownership and control throughout the full financial year immediately preceding the issue of the listing document and up until the date of listing; and
- (3) The applicant must have been under substantially the same management throughout the 2 full financial years immediately preceding the issue of the listing document and up until the date of listing.

11.13 In the event that the company responsible for carrying on the active business is not the new applicant itself, such business must be carried on by a subsidiary or subsidiaries of the new applicant, provided that in relation to any such subsidiary (an "active subsidiary"):—

- (1) the new applicant must control the composition of the board of directors of that active subsidiary and of any intermediate holding company; and
- (2) the new applicant must have an effective economic interest of no less than 50 per cent in that active subsidiary.

11.14 The Exchange may accept a trading record period of less than two financial years for the purposes of rule 11.12A (and an accountants' report covering a shorter period than that specified in rule 11.10) and waive or vary the ownership and management requirements in rule 11.12A(2) and (3) for prospective new applicants with reasons acceptable to the Exchange in the following cases:

- (1) in respect of newly-formed "project" companies (for example a company formed for the purposes of a major infrastructure project);
- (2) in respect of Mineral Companies; and
- (3) in exceptional circumstances under which the Exchange considers it desirable to accept a shorter period.

Note: Where the Exchange accepts a trading record of less than two financial years, the applicant must nevertheless still meet the cash flow requirement of HK\$30 million for that shorter trading record period.

Business objectives

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

Note: The new applicant's statement of business objectives is designed to indicate, in reasonable detail, the new applicant's potential, how this is likely to be realised over an identified time frame. Due regard should also be given to the disclosure requirements under Rule 18.08A when preparing the statement of business objectives.

Property-related matters

11.16 Property interests of an applicant's property activities must have, in respect of a substantially major portion of its PRC properties, long-term title certificates and/or, in respect of a substantially major portion of its properties not situated in the PRC, other appropriate evidence of title, regardless of whether such properties are completed or still under development.

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

- (1) a "property activity" has the same definition as defined in rule 8.01(2); and
- (2) the Exchange has a discretion to decide on whether or not any title certificate constitutes a "long term" title certificate.

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

11.18 In the case of infrastructure companies:—

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

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

Other conditions relevant to new applicants

11.20 Subject to rules 11.21 and 11.21A, a new applicant must not:—

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

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

- (1) the change is to make the subsidiary's financial year coterminous with that of the new applicant;
- (2) appropriate adjustments are made in the trading record and such adjustments are fully explained in statements which must be provided to the Exchange; and

- (3) adequate disclosure is provided in the listing document and the accountants' report of the reason for the change and the effect of the change on the new applicant's group trading record and profit forecast, if any.

11.21A Notwithstanding rule 11.20, the Exchange may consider an application for a waiver from strict compliance with rule 11.20 if:—

- (1) the new applicant is an investment holding company and the change is to allow its financial year to be coterminous with that of all or a majority of its major operating subsidiaries;
- (2) the new applicant would be able to satisfy all requirements under rule 11.12A before and after the proposed change; and
- (3) the proposed change will not materially affect the presentation of financial information, or result in any omission of material information in the listing document or information that would otherwise be relevant to assessment of the new applicant's suitability.

11.22 [Repealed 1 July 2008]

Conditions relevant to the securities for which listing is sought

11.22A There must be an adequate market in the securities for which listing is sought. This means that the issuer must demonstrate that there will be sufficient public interest in the business of the issuer and in the securities for which listing is sought.

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

- (1) [Repealed 1 July 2008]
- (2) with regard to all equity securities for which a listing is sought, except those specified in sub-paragraphs (3) and (4):—
 - (a) the market capitalisation of such equity securities (determined as at the time of listing) in the hands of the public must be at least HK\$45,000,000; and
 - (b) there must, as at the time of listing, be an adequate spread of holders of such securities. The number will depend on the size and nature of the issue but, as a guideline, the equity securities in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose equity securities are held through CCASS);
- (3) with regard to options, warrants or similar rights to subscribe or purchase shares ("warrants") for which a listing is sought:—
 - (a) in the case of a new applicant:—
 - (i) the market capitalisation of such warrants (determined as at the time of listing) must be at least HK\$6,000,000; and
 - (ii) there must, as at the time of listing, be an adequate spread of holders of such warrants. The number will depend on the size and nature of the issue but, as a guideline, the warrants in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose warrants are held through CCASS); and

- (b) in the case of a listed issuer:—
- (i) the market capitalisation of such warrants (determined as at the time of listing) must be at least HK\$6,000,000; and
 - (ii) save where: (a) such warrants are offered to existing holders of the issuer's shares by way of bonus issue; and (b) in the 5 years preceding the date of the announcement on the proposed bonus issue, there are no circumstances to indicate that the shares of the issuer may be concentrated in the hands of a few shareholders, there must, as at the time of listing be an adequate spread of holders of such warrants. The number will depend on the size and nature of the issue but, as a guideline, the warrants in the hands of the public should, as at the time of listing, be held among at least 100 persons (including those whose warrants are held through CCASS);
- (4) in the case of a listed issuer seeking the listing of further securities of a class already listed, neither of the restrictions set out in sub-paragraph (2) and (3) shall apply;
- (5) [Repealed 1 July 2008]
- (6) the expected total market capitalisation of a new applicant at the time of listing must be at least HK\$150,000,000 which shall be calculated on the basis of all issued shares (including the class of securities for which listing is sought and such other class(es) of securities, if any, that are either unlisted or listed on other regulated market(s)) of the new applicant at the time of listing;
- (7) subject to rule 11.23(10) below, at least 25% of the issuer's total number of issued shares must at all times be held by the public;
- (8) not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders, save where: (a) the securities to be listed are options, warrants or similar rights to subscribe or purchase shares; (b) such securities are offered to existing holders of a listed issuer's shares by way of bonus issue; and (c) in the 5 years preceding the date of the announcement on the proposed bonus issue, there are no circumstances to indicate that the shares of the issuer may be concentrated in the hands of a few shareholders;
- (9) where an issuer has one class of securities or more apart from the class of securities for which listing is sought, the total securities of the issuer held by the public (on all regulated market(s) including the Exchange) at the time of listing must be at least 25% of the issuer's total number of issued shares. However, the class of securities for which listing is sought must not be less than 15% of the issuer's total number of issued shares, having an expected market capitalisation at the time of listing of not less than HK\$45,000,000;
- (10) the Exchange may, at its discretion, accept a lower percentage of between 15% and 25% in the case of issuers with an expected market capitalisation at the time of listing of over HK\$10,000,000,000, where it is satisfied that the number of securities concerned and the extent of their distribution would enable the market to operate properly with a lower percentage, and on condition that the issuer will make appropriate disclosure of the lower prescribed percentage of public float in the initial listing document and confirm sufficiency of public float in successive annual reports after listing (see rule 17.38A) . Additionally, a sufficient portion (to be agreed in advance with the Exchange) of any securities intended to be marketed contemporaneously within and outside Hong Kong must normally be offered in Hong Kong; and

- (11) notwithstanding the requirement that the minimum prescribed percentage of securities must at all times remain in public hands, the Exchange may consider granting a temporary waiver to an issuer which is the subject of a general offer under the Takeovers Code (including a privatisation offer), for a reasonable period after the close of the general offer to restore the percentage. The issuer must restore the minimum percentage of securities in public hands immediately after the expiration of the waiver, if granted.

Notes: 1 [Repealed 1 July 2008]

2 *The Exchange will not regard at any time,*

- (a) *in relation to an issuer other than a PRC issuer, and other than any subsidiaries of a PRC issuer, a director, chief executive or substantial shareholder of such issuer or any of its subsidiaries or a close associate of any of them; or*
- (b) *in relation to a PRC issuer, a promoter, director, supervisor, chief executive or substantial shareholder of the PRC issuer or any of its subsidiaries or a close associate of any of them*

as a member of "the public" or shares held by any such person as being "in public hands."

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

- (a) *any person whose acquisition of securities has been financed directly or indirectly by a person referred to in note 2 above; or*
- (b) *any person who is accustomed to taking instructions from a person referred to in note 2 above in relation to the acquisition, disposal, voting or other disposition of securities of the issuer registered in his name or otherwise held by him.*

4 [Repealed 1 July 2008]

5 *Issuers should note that the minimum prescribed percentage of securities must remain in public hands at all times. If the percentage falls below the minimum, the Exchange reserves the right to cancel the listing or suspend trading until appropriate steps have been taken to restore the minimum percentage of securities in public hands (see rule 17.36).*

6 *Where the percentage has fallen below the minimum, the Exchange may refrain from suspension if the Exchange is satisfied that there remains an open market in the securities and either:*

- (a) *the shortfall in the prescribed percentage arose purely from an increased or newly acquired holding of the listed securities by a person who is, or after such acquisition becomes, a core connected person only because he is a substantial shareholder of the issuer and/or any of its subsidiaries. Such substantial shareholder must not be a controlling shareholder or single largest shareholder of the issuer. He must also be independent of*

the issuer, directors and any other substantial shareholders of the issuer and must not be a director of the issuer. If the substantial shareholder has any representative on the board of directors of the issuer, he must demonstrate that such representation is on a nonexecutive basis. In general, the Exchange would expect this to apply to holdings of the listed securities by institutional investors with a wide spread of investments other than in the listed securities concerned. Holdings of the listed securities by private equity or venture capital funds which have been involved in the management of the issuer before and/or after listing would not qualify. It is the responsibility of the issuer to provide sufficient information to the Exchange to demonstrate the independence of such substantial shareholder and to inform the Exchange of any change in circumstances which would affect his independence as soon as it becomes aware of such change; or

(b) the issuer and the controlling shareholder(s) or single largest shareholder undertake to the Exchange to take appropriate steps to ensure restoration of the minimum percentage of securities to public hands within a specified period which is acceptable to the Exchange.

7 At any time when the percentage of securities in public hands is less than the required minimum, and the Exchange has permitted trading in the securities to continue, the Exchange will monitor closely all trading in the securities to ensure that a false market does not develop and may suspend the securities if there is any unusual price movement.

8 GEM listed issuers that have been allowed a lower minimum prescribed percentage of public float (including those which have been granted a waiver under repealed GEM Rule 11.23(5)) have a grace period of three years to comply with the public float requirement under rule 11.23. Accordingly, all GEM issuers must comply with the public float requirement by no later than 30 June 2011.

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

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

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

- 11.26 The securities for which listing is sought must be freely transferable.
- 11.27 Neither partly-paid shares nor bearer shares will be admissible to listing on GEM.
- 11.28 Derivative warrants of the type referred to in the Main Board Listing Rules will not be admissible to listing on GEM.
- 11.29 (1) In the case of a new applicant or a listed issuer in respect of a class of securities new to listing, the securities for which listing is sought must be Eligible Securities from the date on which dealings in the securities are to commence.
- (2) The new applicant or the listed issuer must make all necessary arrangements to comply with sub-paragraph (1).
- (3) An issuer shall ensure, so far as it is able, that its listed securities remain Eligible Securities.
- 11.30 Where application for listing is made in respect of any class of securities:—
- (1) if none of the securities of that class are already listed, the application must relate to all securities of that class issued or proposed to be issued; or
- (2) if some of the securities of that class are already listed, the application must relate to all further securities of that class issued or proposed to be issued.
- 11.31 The issue and listing of the securities for which listing is sought must be in conformity with the law of the place where the issuer is incorporated or otherwise established and in conformity with the issuer's memorandum and articles of association or equivalent documents and all authorisations needed for their creation, issue and listing under such law or documents must have been duly given.
- 11.32 Securities to which options, warrants or similar rights to subscribe or purchase equity securities are attached must comply both with the requirements applicable to the securities for which listing is sought and with the requirements applicable to such options, warrants or similar rights (see Chapter 21).

Basis of allocation

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

Note: See also rules 13.01 and 13.02.

Certainty of offer period in respect of any public offers

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

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

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

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

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

Underwriters

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