

# **Chapter 15**

## **EQUITY SECURITIES**

### **PROSPECTUSES**

#### **Preliminary**

- 15.01 Issuers are reminded that a listing document which is a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance must both comply with the GEM Listing Rules and, where required, comply with and be registered in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The GEM Listing Rules are entirely independent of and without prejudice to the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance relating to prospectuses. Accordingly, compliance with the GEM Listing Rules does not guarantee compliance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance nor does it guarantee that such prospectus will be authorised by the Exchange for registration by the Registrar of Companies.
- 15.02 This Chapter discusses the Exchange's role in respect of its authorisation of a prospectus for registration by the Registrar of Companies and sets out some procedural requirements which must be complied with in respect of a prospectus which is to be authorised by the Exchange.

#### **Transfer of functions**

- 15.03 The Commission's functions under sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, to the extent that they relate to any prospectus which is concerned with any shares or debentures of a company that have been or are proposed to be approved for listing on GEM, and the power to charge and retain the fees which would have been payable to the Commission in respect of any such prospectus under the Commission's fees rules, have been transferred to the Exchange by order of the Chief Executive in Council pursuant to section 25 of the Securities and Futures Ordinance (the "Transfer Order").
- 15.04 Under the terms of the Transfer Order the Exchange shall vet every prospectus which relates to shares and debentures that have been or are proposed to be approved for listing on the Exchange and shall have the authority to authorise the registration of such a prospectus by the Registrar of Companies under the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

#### **Compliance with Companies (Winding Up and Miscellaneous Provisions) Ordinance**

- 15.05 To ensure compliance, issuers are urged to seek advice from their legal advisers. Issuers are reminded that compliance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance remains their primary responsibility and that they will not be absolved from any liability by virtue only of the submission of a prospectus to the Exchange for vetting or the issue by the Exchange of a certificate authorising registration.

#### **Certificates of exemption**

- 15.06 The Commission's power to grant certificates of exemption under the Companies (Winding Up and Miscellaneous Provisions) Ordinance has not been transferred to the Exchange.

### **Abridged prospectuses**

15.07 The Commission's powers under section 38B(2A)(b) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance to authorise in any particular case the form and manner of publication of any extract from or abridged version of a prospectus, have been transferred to the Exchange in so far as they relate to shares or debentures that have been approved for listing on the Exchange.

### **Procedural requirements**

15.08 On making an application for listing in accordance with rule 12.05, the draft prospectus must be passed to the Listing Division. The Listing Division may promulgate from time to time procedures to be followed in the submission of prospectuses for vetting.

15.09 Every listed issuer must notify the Listing Division at least 10 clear business days in advance of the date on which it is proposed to register a prospectus.

15.10 The Exchange will review a prospectus for compliance with the GEM Listing Rules concurrently with the review of the prospectus for compliance with the relevant provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance. The Exchange will not authorise a prospectus for registration by the Registrar of Companies until it is satisfied that it has no further comments on such prospectus in respect of the Companies (Winding Up and Miscellaneous Provisions) Ordinance requirements and is prepared to grant a listing for the securities to which such prospectus relates.

15.11 If the Exchange is satisfied that the prospectus delivered to it pursuant to rules 12.25 and 12.26E(2) should be authorised for registration pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance, it will issue a certificate under section 38D(5) or section 342C(5) of the Companies (Winding Up and Miscellaneous Provisions) 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 (Winding Up and Miscellaneous Provisions) Ordinance (as the case may be).

*Note: The issue of the certificate of authorisation by the Exchange does not constitute a form of confirmation that the prospectus complies with the requirements of the Companies (Winding Up and Miscellaneous Provisions) Ordinance. Nor does the issue of the certificate constitute registration of a prospectus under the Companies (Winding Up and Miscellaneous Provisions) Ordinance. Issuers must ensure that a copy of the prospectus, complying with the requirements of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, has been registered by the Registrar of Companies before it is issued. Under no circumstances should the certificate of authorisation issued by the Exchange be relied upon as evidence either of compliance with the provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance or of registration.*