

Chapter 10

EQUITY SECURITIES

METHODS OF LISTING

General

10.01 A new applicant may bring securities to listing by any of the following methods:—

- (1) an offer for subscription;
- (2) an offer for sale;
- (3) a placing;
- (4) an introduction; or
- (5) such other method as may be accepted by the Exchange.

10.02 A listed issuer may bring equity securities (whether or not a class already listed) to listing by any of the following methods:—

- (1) an offer for subscription;
- (2) an offer for sale;
- (3) a placing;
- (4) a rights issue;
- (5) an open offer;
- (6) a capitalisation issue;
- (7) a consideration issue;
- (8) an exchange, substitution or conversion of securities; or
- (9) such other method as may be accepted by the Exchange.

Offer for subscription

10.03 An offer for subscription is an offer to the public by or on behalf of an issuer of its own securities for subscription.

10.04 In the case of offers by tender, the Exchange must be satisfied as to the fairness of the basis of allotment so that every investor who applies at the same price for the same number of securities receives equal treatment.

10.05 An offer for subscription must be supported by a listing document which must comply with the relevant requirements of Chapter 14.

- 10.06 Offers for subscription require compliance with the publication requirements set out in rules 16.07 and 16.13 or 16.14.

Offer for sale

- 10.07 An offer for sale is an offer to the public by or on behalf of the holders or allottees of securities already in issue or agreed to be subscribed.
- 10.08 In the case of offers by tender, the Exchange must be satisfied as to the fairness of the basis of allotment so that every investor who applies at the same price for the same number of securities receives equal treatment.
- 10.09 An offer for sale must be supported by a listing document which must comply with the relevant requirements of Chapter 14.
- 10.10 Offers for sale require compliance with the publication requirements set out in rules 16.07 and 16.13 or 16.14.

Placing

- 10.11 A placing is the obtaining of subscriptions for or the sale of securities by an issuer or intermediary primarily from or to persons selected or approved by the issuer or intermediary.
- 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:—
- (1) No allocations will be permitted to nominee companies unless the name of the ultimate beneficiary is disclosed, without the prior written consent of the Exchange.
 - (2) Details of the placing must be published in accordance with the requirements of rules 16.07 or 16.08, as applicable, and (as regards the results) in accordance with sub-paragraph (4) below and rule 16.16.
 - (3) In relation to any initial public offering to be effected by way of a placing or which includes a placing tranche, the listing document issued in connection therewith must state details of any arrangements to allocate securities to any placee on a preferential basis, as referred to in rule 13.02. The Exchange reserves the right to reject any such proposed arrangements.
 - (4) The announcement of the results of the placing required pursuant to rule 16.16 must include a brief generic description of the placees. If securities have been placed with different groups of placees, then the announcement must contain a description of each group and the number of shares placed with each group, provided that certain types of placee (as specified in Note 1 to this rule) must be identified on an individually-named basis, with the number of shares placed with each named placee also being disclosed. In the case of an initial public offering effected by way of a placing or which included a placing tranche, the announcement must also include information on:—
 - (a) the level of interest in the placing;

- (b) a table showing the distribution of the placing shares; and
- (c) an analysis of the distribution, in particular, the concentration of the placing shares, including but not limited to the number of placing shares that are placed with the top 1, 5, 10 and 25 placees. Where, in the view of the Exchange, there is a high concentration of shares being marketed for which listing is sought with a few placees, a statement substantially in the following form:

“Investors should be aware that the concentration of shareholders may affect the liquidity of the shares of the [issuer]. Consequently, shareholders and potential investors are advised to exercise caution when dealing in such shares.”

Notes: 1 The purpose of this rule is to enable shareholders and investors to understand the broad composition of the ownership of the placed shares immediately prior to trading in those shares. The groups of placees which the issuer must identify in the announcement, to the extent applicable, include:—

- (a) management shareholders and their associates (on an individually-named basis);*
- (b) directors and their associates (on an individually-named basis);*
- (c) substantial shareholders and their associates (on an individually-named basis);*
- (d) in relation only to an initial public offering effected by way of a placing or which included a placing tranche, significant shareholders and their associates (on an individually-named basis);*
- (e) employees;*
- (f) the Sponsor and its associates;*
- (g) the lead broker and/or any distributor and any connected clients of either (as defined in Note 2 below);*
- (h) customers or clients of the issuer;*
- (i) suppliers to the issuer; and*
- (j) the underwriters (if any) and their associates, if different from (f) or (g) above.*

The announcement should, if applicable, give particulars of any duplication between the descriptions of placees and must indicate the number and proportion of shares placed to the public.

2 For the purposes of sub-paragraph (g) of Note 1 above “connected client” in relation to an Exchange Participant means any client of such Exchange Participant who is:—

- (a) a partner of such Exchange Participant;*

- (b) *an employee of such Exchange Participant;*
- (c) *where the Exchange Participant is a company,*
 - (i) *any person who is a substantial shareholder of such Exchange Participant; or*
 - (ii) *a director of such Exchange Participant;*
- (d) *the spouse or infant child or step child of any individual described in (a) to (c) above;*
- (e) *a person in his capacity as trustee of a private or family trust (other than a pension scheme) the beneficiaries of which include any person in (a) to (d) above;*
- (f) *a close relative of any person in (a) to (d) above where his account is managed by such Exchange Participant in pursuance of a discretionary managed portfolio agreement; or*
- (g) *a company which is a member of the same group of companies as such Exchange Participant.*

3 *For the purposes of this rule, "associate" (in the context of any significant shareholder, the Sponsor or underwriters (if any)) shall have the same meaning as set out in rule 1.01, save that it shall be construed as also applying to a significant shareholder, Sponsor and an underwriter.*

- (5) Dealings in the securities cannot commence until the Exchange has been supplied with and approved a list setting out the names, addresses and identity card or passport numbers (where individuals) and the names, addresses and business registration numbers (where companies) of all placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each placee. The Exchange reserves the right to require submission of such further information (on an electronic spreadsheet or such other format as it may request) on the placees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership.
- (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 rule 12.26(6)(a), must be lodged with the Exchange before dealings commence.
- (7) The lead broker and each distributor and Exchange Participant referred to in sub-paragraph (6) above must keep a record of their placees for at least 3 years following the placing. This record should contain the information referred to in sub-paragraph (5) above.

10.13 Placings of securities by a listed issuer will be allowed only in the following circumstances:—

- (1) where such placing falls within any general mandate given to the directors of the applicant by the shareholders in accordance with rule 17.41(2); or
- (2) where the placing is specifically authorised by the shareholders of the applicant in general meeting.

10.14 Placings by a listed issuer made in either of the circumstances set out in rule 10.13 are required to comply with the requirements of rule 10.12 (excluding sub-paragraphs (2), (3), (6) and (7) in the case of a placing of securities of a class already listed).

- 10.15 A placing by or on behalf of a listed issuer of securities of a class already listed does not have to be supported by a listing document but if a prospectus or other listing document is required, it must comply with the relevant requirements of Chapter 14.
- 10.16 The Exchange may be prepared to allow preliminary arrangements and placings to be made to dispose of securities before the start of dealings where necessary to comply with the requirements of rule 11.23(1) that a minimum prescribed percentage of any class of listed securities must at all times remain held by the public.

Introduction

- 10.17 An introduction is an application for listing of securities already in issue where no marketing arrangements are required because the securities for which listing is sought are already of such an amount and so widely held that their adequate marketability when listed can be assumed.
- 10.18 Introductions will normally be appropriate in the following circumstances:—
- (1) where the securities for which listing is sought are already listed on another stock exchange;
 - (2) where the securities of an issuer are distributed in specie by a listed issuer to the shareholders of that listed issuer or to the shareholders of another listed issuer; or
 - (3) where a holding company is formed and its securities are issued in exchange for those of one or more listed issuers. Any reorganisation by way of scheme of arrangement or by any other means whereby securities are issued by an overseas issuer in exchange for the securities of one or more listed issuers and the listing of the latter issuer or issuers is withdrawn at the same time as the securities of the overseas issuer are listed must first be approved by a special resolution of the shareholders of the listed issuer or issuers.

Note: Any issuer contemplating an introduction of the type referred to in sub-paragraph (3) is referred to the provisions of rule 24.05(6).

- 10.19 An introduction will only be permitted in exceptional circumstances if there has been a marketing of the securities in Hong Kong within the 6 months prior to the proposed introduction where such marketing was made conditional on listing being granted for those securities. Furthermore, there may be other factors, such as a pre-existing intention to dispose of securities, a likelihood of significant public demand for the securities or an intended change of the issuer's circumstances, which would render an introduction unacceptable to the Exchange. An introduction will not be permitted if a change in the nature of the business is in contemplation.
- 10.20 An issuer should apply to the Exchange as early as possible to obtain confirmation that an introduction will be an appropriate method of listing. The application must state the names and holdings of the ten largest beneficial holders of the securities (if known) and the total number of holders. A copy of the share register may be required by the Exchange. In addition, particulars of the holdings of the directors and their associates must be included. If such approval to the method of listing is given, it does not necessarily mean that listing for the securities will ultimately be granted.
- 10.21 An introduction must be supported by a listing document which must comply with the relevant requirements of Chapter 14.
- 10.22 Introductions require compliance with the publication requirements set out in rule 16.08.

Rights issue

- 10.23 A rights issue is an offer by way of rights to existing holders of securities which enables those holders to subscribe securities in proportion to their existing holdings. Rights issue need not be underwritten.
- 10.24 A rights issue must be made conditional on shareholders' approval in the circumstances set out in rules 10.29 and 10.31(2).
- 10.25 If a rights issue is not fully underwritten the listing document must contain full disclosure of the fact that it is not fully underwritten and all other relevant circumstances, including the consequential risks in dealing in such rights, and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must appear on the front cover of the listing document and in a prominent position at the front of the document and be in a form approved by the Exchange.

In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.

- 10.26 If a rights issue is not fully underwritten:—

- (1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and
- (2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.

Note: In the circumstances set out in rule 10.26(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.

- 10.27 If a rights issue is underwritten and the underwriter is entitled to terminate that underwriting upon the occurrence of any event after dealings in the rights in nil-paid form have commenced, then the rights issue listing document must contain full disclosure of that fact. Such disclosure must:—

- (1) appear on the front cover of the listing document and in a prominent position at the front of the document;
- (2) include a summary of the termination provisions and explain when they will cease to be exercisable and such summary must appear in a prominent position in the document;
- (3) detail any consequential risks in dealing in such rights; and
- (4) be in a form approved by the Exchange.

- 10.28 If a rights issue is underwritten (whether in whole or in part) by a person or persons whose ordinary business does not include underwriting, the listing document must contain full disclosure of that fact.

- 10.29 If the proposed rights issue would increase either the issued share capital or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together

with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—

- (1) the rights issue must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and
- (2) the issuer shall set out in the circular to shareholders the purpose of the proposed rights issue, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed rights issue, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.29A Where shareholders' approval is required under rule 10.29, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their associates; or
- (2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.29B Where shareholders' approval is required under rule 10.29, the issuer must comply with the requirements under rules 17.47(4) to 17.47(7) and rules 17.47A, 17.47B and 17.47C.

10.30 Offers of securities by way of rights are normally required to be conveyed by renounceable provisional letters of allotment or other negotiable instruments, which must state the time, being not less than 14 days, in which the offer may be accepted. In cases where the issuer has a large number of overseas members a longer offer period may be desirable, provided that the Exchange must be consulted if the issuer proposes an offer period of over 21 days.

Note: Part A of Appendix 2 contains further provisions which are relevant to rights issues.

10.31 (1) In every rights issue, the issuer may make arrangements to:—

- (a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or
- (b) dispose of securities not subscribed by allottees under provisional letters of allotment in the market, if possible, for the benefit of the persons to whom they were offered by way of rights.

The offer of such securities must be fully disclosed in the rights issue announcement, listing document and any circular.

- (2) If no arrangements or arrangements other than those described in rule 10.31(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renouncees and the rights issue is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. Where any shareholder is required to abstain from voting at the general meeting, the issuer must comply with the requirements under rules 17.47(4) and 17.47(5). The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.32 A rights issue must be supported by a listing document which must comply with the relevant requirements of Chapter 14.

10.33 Rights issues require compliance with the publication requirements set out in rule 16.15.

Open offer

10.34 An open offer is an offer to existing holders of securities to subscribe securities, whether or not in proportion to their existing holdings, which are not allotted to them on renounceable documents. An open offer may be combined with a placing to become an open offer with a claw back mechanism, in which a placement is made subject to the rights of existing holders of securities to subscribe part or all of the placed securities in proportion to their existing holdings. Open offers need not be underwritten.

10.35 An open offer must be made conditional on shareholders' approval in the circumstances set out in rules 10.39, 10.41 and 10.42(2).

10.36 If an open offer is not fully underwritten the listing document must contain full disclosure of the fact that it is not fully underwritten and all other relevant circumstances and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must appear on the front cover of the listing document and in a prominent position at the front of the document and be in a form approved by the Exchange.

In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.

10.37 If an open offer is not fully underwritten:—

- (1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and
- (2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.

Note: In the circumstances set out above in rule 10.37(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.

10.38 If an open offer is underwritten (whether in whole or in part) by a person or persons whose ordinary business does not include underwriting, the listing document must contain full disclosure of that fact.

10.39 If the proposed open offer would increase either the issued share capital or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—

- (1) the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and
- (2) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.39A Where shareholders' approval is required under rule 10.39, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or
- (2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.39B Where shareholders' approval is required under rule 10.39, the issuer must comply with the requirements under rules 17.47(4) to 17.47(7) and rules 17.47A, 17.47B and 17.47C.

10.40 Offers of securities by way of an open offer must remain open for acceptance for a minimum period of 14 days. In cases where the issuer has a large number of overseas members a longer offer period may be desirable, provided that the Exchange must be consulted if the issuer proposes an offer period over 21 days.

10.41 If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities are to be allotted by the directors under the authority of a general mandate granted in accordance with rule 17.41(2), an open offer requires the prior approval of the shareholders in general meeting.

10.42 (1) In every open offer the issuer may make arrangements to dispose of securities not validly applied for by shareholders in excess of their assured allotments, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis. The offer of such securities must be fully disclosed in the open offer announcement, listing document and any circular.

(2) If no arrangements or arrangements other than those described in rule 10.42(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. Where any shareholder is required to abstain from voting at the general meeting, the issuer must comply with the requirements under rules 17.47(4) and 17.47(5). The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.43 An open offer must be supported by a listing document which must comply with the relevant requirements of Chapter 14.

10.44 Open offers require compliance with the publication requirements set out in rule 16.13.

Capitalisation issue

10.45 A capitalisation issue is an allotment of further securities to existing shareholders, credited as fully paid up out of the issuer's reserves or profits, in proportion to their existing holdings, or otherwise not involving any monetary payments. A capitalisation issue includes a scrip dividend scheme.

10.46 A capitalisation issue must be supported by a listing document, in the form of a circular to shareholders, which must comply with the relevant requirements of Chapter 14.

Consideration issue

10.47 A consideration issue is an issue of securities as consideration in a transaction or in connection with a takeover or merger or the division of an issuer.

10.48 A consideration issue must be announced by the issuer in accordance with rules 19.34 and 19.35.

Exchange, substitution or conversion

10.49 Securities may be brought to listing by an exchange or a substitution of securities for or a conversion of securities into other classes of securities. A conversion of securities includes:—

- (1) the exercise of options, warrants or similar rights to subscribe or purchase securities as granted in accordance with Chapter 21;
- (2) the conversion of convertible equity securities as issued in accordance with Chapter 22;
- (3) the exercise of options granted to or for the benefit of participants as granted in accordance with Chapter 23; and
- (4) the conversion of convertible debt securities in accordance with Chapter 34.

10.50 An exchange or a substitution of securities must be supported by a listing document, in the form of a circular to shareholders, which must comply with the relevant requirements of Chapter 14.

Other methods

10.51 Securities may also be brought to listing by:—

- (1) an issue of new shares as a result of a consolidation, sub-division or capital reduction of existing listed securities; or
- (2) such other methods as the Exchange may from time to time approve.

10.52 An issue of new shares as a result of a consolidation, sub-division or capital reduction must be supported by a listing document, in the form of a circular to shareholders, which must comply with the relevant requirements of Chapter 14.