

Chapter 7

EQUITY SECURITIES

METHODS OF LISTING

7.01 Equity securities may be brought to listing by any one of the methods described below.

Offer for Subscription

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

7.03 The subscription of the securities must be fully underwritten.

7.04 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.

7.05 An offer for subscription must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Offer for Sale

7.06 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.

7.07 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.

7.08 An offer for sale must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Placing

7.09 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.

- 7.10 The criteria which will apply are set out in Appendix 6. The Exchange may not permit a new applicant to be listed by way of a placing if there is likely to be significant public demand for the securities.
- 7.11 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 requirement in rule 8.08(1) that a minimum prescribed percentage of any class of listed securities must at all times be held by the public.
- 7.12 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 11. 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 otherwise required or issued, it must comply with the relevant requirements of Chapter 11.

Introduction

- 7.13 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.
- 7.14 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 Hong Kong 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 Hong Kong issuer or issuers.
- 7.15 An introduction will only be permitted in exceptional circumstances if there has been a marketing of the securities in Hong Kong within the six 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.

- 7.16 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.
- 7.17 An introduction must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Rights Issue

- 7.18 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.
- 7.19 (1) In normal circumstances, all rights issues must be fully underwritten.

Note: (1) Underwriting provides a degree of certainty to an issuer through the commitment of sound financial institutions. It also enables an issuer to plan on the basis of assured funds. Where an independent professional underwriter is used it also means that the issue is managed and reviewed by an independent professional party. However, there may be circumstances in which it is appropriate for an issuer to proceed without underwriting. This may occur where (by way of example and without limitation):—

- (a) *underwriting can only be obtained subject to a force majeure clause (or other similar terms and conditions) which is unacceptable to the directors; or*
- (b) *the issuer has specific intended uses for the proceeds and can show that the additional costs of underwriting the issue are not justified in the particular circumstances; or*

- (c) *an underwriting commitments has been terminated by the underwriter upon the occurrence of an event of force majeure (other than an event which also constitutes a breach of warrant by the issuer), after the offer has opened. In such circumstances, the issuer must have ensured that the conditions of the issue are structured in a manner which permits the issue to proceed on a non-underwritten basis, with the consent of the Exchange.*

In appropriate circumstances, the Exchange will be prepared to permit an issue which is not fully underwritten to proceed, subject to the additional disclosure requirements set out in rule 7.19(3) below. In all such cases the issuer should contact the Exchange to seek informal and confidential guidance as to the requirements which will apply to an issue at the earliest opportunity.

- (2) *In order to facilitate fund raising by very substantial companies the Exchange will normally allow such companies to proceed with a rights issue on a non-underwritten basis, subject to prior notification of the Exchange. Even with very substantial companies the Exchange may still insist that a rights issue is fully underwritten in exceptional circumstances (e.g. if the issue is to raise funds for "general corporate purposes"). Companies will be considered as very substantial if they have:—*

- (a) *a public shareholding with a market capitalisation at the time of the proposed issue of more than HK\$500 million; and*

- (b) *made profits in each of the last two financial years.*

- (2) If a rights issue is underwritten and the underwriter is entitled to terminate that underwriting upon the occurrence of any event of force majeure 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:—

- (a) appear on the front cover of the listing document and in a prominent position at the front of the document;
- (b) include a summary of the force majeure clause(s) and explain when its provisions cease to be exercisable;
- (c) state that there are consequential risks in dealing in such rights; and
- (d) be in a form approved by the Exchange.

- (3) If a rights issue is not fully underwritten the listing document must contain full disclosure of that fact and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must:—
- (a) appear on the front cover of the listing document and in a prominent position at the front of the document; and
 - (b) 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.

- (4) If a rights issue is not fully underwritten by a person or persons whose ordinary course of business includes underwriting, the listing document must contain full disclosure of that fact.
- (5) If a rights issue is not fully underwritten:—
- (a) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and
 - (b) 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 7.19(5)(b), 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.

- (6) 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):—

- (a) 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 2.17 in the circular to shareholders;
 - (b) 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; and
 - (c) the Exchange reserves the right to require the rights issue to be fully underwritten.
- (7) Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any rights issue, unless it is made conditional on the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its 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 2.17 in the circular to shareholders.
- (8) Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:
- (a) 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
 - (b) 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 2.17 in the circular to shareholders.

- (9) Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.

7.20 Offers of securities by way of rights are normally required to be conveyed by renounceable provisional letters of allotment or other negotiable instrument, which must state the time, being not less than 10 business 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 15 business days.

7.21 (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 and the basis of allocation of the securities available for excess applications 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 7.21(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renounees 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. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.

7.22 A rights issue must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Open Offer

7.23 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.

7.24 (1) In normal circumstances, all open offers must be fully underwritten.

Note: See Notes (1) and (2) to rule 7.19(1) which shall apply in their entirety to open offers with the following amendments:

(a) the term "rights issue" shall be replaced by the term "open offer"; and

(b) the reference to rule "7.19(3)" shall be replaced by "7.24(2)"

(2) If an open offer is not fully underwritten the listing document must contain full disclosure of that fact and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must:—

(a) appear on the front cover of the listing document and in a prominent position at the front of the document; and

(b) 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.

(3) If an open offer is not fully underwritten by a person or persons whose ordinary course of business includes underwriting, the listing document must contain full disclosure of that fact.

(4) If an open offer is not fully underwritten:—

(a) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and

(b) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeover Code, unless a waiver from the Executive (as defined in the Takeover Code) has been obtained.

Note: In the circumstances set out in sub-paragraph 7.24(4)(b), 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.

- (5) 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):—
- (a) 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 2.17 in the circular to shareholders;
 - (b) 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; and
 - (c) the Exchange reserves the rights to require the open offer to be fully underwritten.
- (6) Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any open offer, unless it is made conditional on the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its 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 2.17 in the circular to shareholders.
- (7) Where shareholders’ approval is required under rules 7.24(5) or 7.24(6), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (a) 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
- (b) 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 2.17 in the circular to shareholders.

- (8) Where shareholders' approval is required under rules 7.24(5) or 7.24(6), the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.

7.25 Offers of securities by way of an open offer must remain open for acceptance for a minimum period of 10 business 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 15 business days.

7.26 If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities will be issued by the directors under the authority of a general mandate granted to them by shareholders in accordance with rule 13.36(2), an open offer requires the prior approval of the shareholders in general meeting.

7.26A (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 and the basis of allocation of the securities available for excess applications 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 7.26A(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. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.

7.27 An open offer must be supported by a listing document which must comply with the relevant requirements of Chapter 11.

Capitalisation Issue

7.28 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 under which profits are capitalised.

7.29 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 11.

Consideration Issue

7.30 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.

7.31 A consideration issue must be set out in an announcement published in accordance with rule 2.07C (see rules 14.34 and 14.35).

Exchange, etc.

7.32 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.

7.33 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 11.

Other Methods

7.34 Securities may also be brought to listing by:—

- (1) the exercise of options, warrants or similar rights to subscribe or purchase securities (see Chapter 15);
- (2) an issue of securities on exercise of options granted to or for the benefit or executives and/or employees (see Chapter 17); or
- (3) such other methods as the Exchange may from time to time approve.

Transfer of Listing from GEM

7.35 An issuer already listed on GEM may transfer the listing to the Main Board pursuant to rules and regulations from time to time prescribed by the Exchange for this purpose. The relevant conditions, requirements and procedures are set out in Chapter 9A.