

# Chapter 7

## EQUITY SECURITIES

### METHODS OF LISTING

- 7.01 Equity securities may be brought to listing, or sold or transferred out of treasury by any one of the methods described below. The requirements set out in this Chapter shall apply, mutatis mutandis, to a sale or transfer of treasury shares.

#### 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 F1. 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.
- 7.12A Placings of securities by a listed issuer will be allowed only in the following circumstances:—
- (1) where the placing falls within any general mandate given to the directors of the listed issuer by the shareholders in accordance with rule 13.36(2); or
  - (2) where the placing is specifically authorised by the shareholders of the listed issuer in general meeting ("specific mandate placing").

*Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.*

### **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 close 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) Rights issues need not be underwritten. Where rights issues are underwritten, normally the underwriters must satisfy the following requirements:
- (a) the underwriters are persons licensed or registered under the Securities and Futures Ordinance for Type 1 regulated activity and their ordinary course of business includes underwriting of securities, and they are not connected persons of the issuers concerned; or
  - (b) the underwriters are the controlling or substantial shareholders of the issuers.

The rights issue announcement, listing document and circular (if any) must contain a statement confirming whether the underwriter(s) comply with rule 7.19(1)(a) or (b).

- (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.*

- 7.19A (1) A proposed rights issue must be made conditional on minority shareholders’ approval in the manner set out in rule 7.27A if the proposed rights issue would increase either the number of issued shares (excluding treasury shares) 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).
- (2) 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 minority shareholders’ approval in the manner set out in rule 7.27A.

*Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.*

- 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 must 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 or their renounees by offering the securities to independent places for the benefit of the persons to whom they were offered by way of rights.

The arrangements described in rule 7.21(1)(a) or (b) must be fully disclosed in the rights issue announcement, listing document and any circular.

- (2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the rights issue, the issuer must make the arrangements described in rule 7.21(1)(b).
- (3) Where arrangements described in rule 7.21(1)(a) are made:
  - (a) 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; and
  - (b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the rights issue minus the number of securities taken up by the relevant shareholders under their assured entitlements.

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 In relation to underwriting of open offers, the requirements under rules 7.19(1), (3), (4) and (5) apply in their entirety to open offers with the term “rights issue” replaced by “open offer”.

7.24A (1) A proposed open offer must be made conditional on minority shareholders’ approval as set out in rule 7.27A unless the securities will be issued by the listed issuer under the authority of a general mandate granted to them by shareholders in accordance with rules 13.36(2)(b) and 13.36(5).

(2) 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 minority shareholders’ approval as set out in rule 7.27A.

*Note: See rule 7.27B for the additional requirements relating to rights issues, open offers and specific mandate placings.*

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 [Repealed 3 July 2018]

7.26A (1) In every open offer the issuer must make arrangements to:-

(a) dispose of securities not validly applied for by shareholders under their assured allotments 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 validly applied for by shareholders under their assured allotments by offering the securities to independent placees for the benefit of those shareholders.

The arrangements described in rule 7.26A(1)(a) or (b) must be fully disclosed in the open offer announcement, listing document and any circular.

(2) Where any of the issuer’s controlling or substantial shareholders acts as an underwriter or sub-underwriter of the open offer, the issuer must make the arrangements described in rule 7.26A(1)(b).

- (3) Where arrangements described in rule 7.26A(1)(a) are made:
- (a) 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; and
  - (b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the “relevant shareholders”), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the open offer minus the number of securities taken up by the relevant shareholders under their assured entitlements.

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

7.27A Where minority shareholders' approval is required for a rights issue or open offer under rule 7.19A or 7.24A:

- (1) the rights issue or 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;
- (2) 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 or 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 rights issue or open offer was made or approved by the board, and their respective associates;



- (3) the issuer must set out in the circular to shareholders:
  - (a) the purpose of the proposed rights issue or 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 rights issue or 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
  - (b) the information required under rule 2.17 in the circular to shareholders; and
- (4) the issuer must comply with the requirements under rules 13.39(6) and (7), 13.40, 13.41 and 13.42.

#### **Restrictions on rights issues, open offers and specific mandate placings**

7.27B A listed issuer may not undertake a rights issue, open offer or specific mandate placing that would result in a theoretical dilution effect of 25% or more (on its own or when aggregated with any other rights issues, open offers, and/or specific mandate placings announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed 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, open offers and/or specific mandate placings), unless the issuer can demonstrate that there are exceptional circumstances (for example, the issuer is in financial difficulties and the proposed issue forms part of the rescue proposal).

*Notes: 1. Theoretical dilution effect of an issue refers to the discount of the "theoretical diluted price" to the "benchmark price" of shares.*

- (a) *The "theoretical diluted price" means the sum of (i) the issuer's total market capitalisation (by reference to the "benchmark price" and the number of issued shares (excluding treasury shares) immediately before the issue) and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares (excluding treasury shares) as enlarged by the issue.*

- (b) *The “benchmark price” means the higher of:*
- (i) *the closing price on the date of the agreement involving the issue; and*
  - (ii) *the average closing price in the 5 trading days immediately prior to the earlier of:*
    - (1) *the date of announcement of the issue;*
    - (2) *the date of the agreement involving the issue; and*
    - (3) *the date on which the issue price is fixed.*
- (c) *Where aggregation of a series of rights issues, open offers and/or specific mandate placings is required, the theoretical dilution effect would be calculated as if the relevant rights issues, open offers and/or specific mandate placings were all made at the same time as the first issue of the series.*

*For the purpose of determining the theoretical diluted price in paragraph (a) above, the total funds raised and to be raised from the issues would be calculated by reference to (i) the total number of new shares issued and to be issued and (ii) the weighted average of the price discounts of the issues (each price discount is measured by comparing the issue price against the benchmarked price at the time of that issue).*

2. *Issuers should consult the Exchange before they announce rights issues, open offers or specific mandate placings that may trigger the 25% threshold set out in rule 7.27B.*

7.27C The Exchange may exercise its discretion to withhold approval for, or impose additional requirements on, any rights issue, open offer or specific mandate placing that does not fall into rule 7.27B if in the opinion of the Exchange, such issue is inconsistent with the general principles of listing set out in rule 2.03, having regard to its terms (for example, a very large issue size or price discount).

### **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 to or for the benefit of specified participants of share schemes (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 Chapters 9A and 9B.