

## Chapter 3A

### SPONSORS AND FINANCIAL ADVISERS

#### General

- 3A.01 A new applicant, for listing of equity securities, units in a unit trust or redeemable shares in a mutual fund, must appoint a sponsor, being a merchant bank or other similar person who is acceptable to the Exchange to prepare itself for listing. The sponsor should be retained over the Fixed Period (as defined in Rule 3A.75) by the new applicant for the purposes set out in Rule 3A.77 and must agree to fulfil the responsibilities set out in this chapter. The relevant rules applicable to sponsors are set out under Rules 3A.03 to 3A.81.
- 3A.02 Financial advisers, for the purposes of this chapter, shall refer to all parties, whether corporations or individuals, who have been appointed pursuant to the Listing Rules to advise a listed issuer, its directors or shareholders on corporate finance and other matters involving the application and interpretation of the Listing Rules. The relevant rules applicable to financial advisers are set out under Rules 3A.82 to 3A.97.

#### SPONSORS

##### Introduction

- 3A.03 To be eligible to act as a sponsor, the party in question must have been approved by the Exchange for such purpose and admitted to a list of sponsors maintained and published by the Exchange from time to time. In circumstances where a prospective sponsor cannot satisfy the requirements of Rule 3A.17, but satisfies all other requirements set out under Rules 3A.14 to 3A.25, the Exchange reserves the right to admit that party to the list, *subject to its acting only in the capacity of a co-sponsor*. For the avoidance of doubt, only a sponsor to which no such limitation in capacity applies may be retained over the Fixed Period (as defined in Rule 3A.75).

*Note: Unless the context otherwise requires, references to a sponsor in this chapter shall be construed as applying equally to any co-sponsor.*

- 3A.04 Although the Exchange reserves the right to review a sponsor's continuing eligibility at any time, it will ordinarily review the same on an annual basis, on or around the anniversary of the sponsor's admission to the list of sponsors.
- 3A.05 As a minimum, any prospective sponsor is expected to comply with the provisions of

Rules 3A.14 to 3A.25 before the Exchange will consider admitting it to the list of sponsors. However, the Exchange reserves the right to waive any criteria or impose any other criteria, either generally or specifically, and has a discretion to refuse admission to the list of sponsors even in circumstances where the applicant is capable of complying with the provisions of Rules 3A.14 to 3A.25 and other criteria or conditions imposed.

3A.06 In assessing a prospective sponsor's suitability to act in that capacity, the Exchange will have regard to the following principles:

- (1) the overriding consideration will be to preserve the reputation and integrity of the Exchange;
- (2) the Exchange must be satisfied that a prospective sponsor is capable of upholding high professional standards; and
- (3) the Exchange must be satisfied that a prospective sponsor has sufficient resources and the experience, expertise and competence to discharge the responsibilities of a sponsor under the Listing Rules.

#### **Application Procedure**

3A.07 Application to become a sponsor must be submitted to the Listing Division on the prescribed Form A set out in Appendix 16 and must be accompanied by all documents required to be submitted with that form and a non-refundable application fee in the amount specified in Appendix 8 of the Listing Rules. Prospective sponsors should note that they are required to undertake to the Exchange to accept the responsibilities of a sponsor as outlined in the Listing Rules, to discharge those responsibilities to the satisfaction of the Exchange and to comply with the Listing Rules from time to time applicable to sponsors.

3A.08 In the application form to become a sponsor, an applicant must provide details of:

- (1) any public censure, public statement involving criticism, private reprimand or any other disciplinary action made or taken by either the Exchange, the Commission or any other regulatory authority, in Hong Kong or elsewhere, within the 5 years prior to the application date, in respect of:
  - (a) the prospective sponsor; and/or
  - (b) any director or member of staff of the prospective sponsor who actively participates in the business of providing general corporate finance advice, investment advice and/or securities dealing and who remains a director or member of staff as at the date of application; and

- (2) having regard to Rule 3A.06, such other information as ought reasonably to be brought to the attention of the Exchange in the context of its considering the application of the prospective sponsor.

*Notes: 1. For the purpose of this chapter, “corporate finance experience” includes experience derived from providing advice on matters under the Listing Rules, the Takeover Code and Code on Share Repurchases.*

*2. The prospective sponsor must provide details of any such disciplinary action taken against any member of the Sponsor Group.*

*3. The term “Sponsor Group” used in this chapter comprises the sponsor, its ultimate holding company and any of their subsidiaries.*

3A.09 Where a prospective sponsor or any of its member of staff has been publicly censured within the 5 years prior to the prospective sponsor’s application, it is unlikely that the prospective sponsor will be regarded as suitable for admission to the Exchange’s list of sponsors.

3A.10 The decision to approve or reject an application will be made by the Listing Committee or an appropriate body within the Exchange. Prospective sponsors may be asked to attend an interview and/or provide further information during the assessment of their application by the Exchange.

*Notes: 1. In respect of each applicant, the Exchange anticipates that the application process is likely to take at least 15 clear business days from the date of application.*

*2. The reasons for the rejection of a prospective sponsor will be given in writing and may be appealed to the Listing Appeals Committee in accordance with Chapter 2B.*

3A.11 The Exchange reserves the discretion to admit a sponsor to the list of sponsors, subject to any conditions, restrictions or other requirements imposed by the Exchange at the time of admission or at any time thereafter and whether of a general nature or specific to any issuer for which the sponsor acts or proposes to act.

### **Warning**

3A.12 Admission of any applicant to the list of sponsors shall be indicative only of the fact that the Exchange is satisfied, based solely on the information provided by the applicant, that the applicant has, as at the date of admission, satisfied the basic qualification and eligibility criteria set out in this chapter. Such admission is not a guarantee of the quality or performance of the sponsor or any issuer for which the sponsor acts.

### **Basic Qualification and Eligibility Criteria**

3A.13 A sponsor has to meet the minimum criteria set out in Rules 3A.14 to 3A.25 in order to satisfy the Exchange that it is competent to fulfil its role. In cases of doubt, the Exchange must be consulted at the earliest opportunity.

3A.14 A sponsor must:

- (1) be a limited liability company incorporated under the Companies Ordinance or registered under Part XI of the Companies Ordinance;
- (2) be properly licensed by the Commission or is otherwise appropriately exempt from the licensing requirements;
- (3) satisfy the Exchange that it meets the minimum financial criteria set out in Rule 3A.16;
- (4) possess the experience, expertise and competence to discharge the responsibilities of a sponsor; and
- (5) comply with and fulfil any relevant criteria and responsibilities relating to sponsors as published by the Exchange from time to time and to discharge those responsibilities in a timely manner and to the satisfaction of the Exchange.

3A.15 A sponsor is expected to demonstrate to the Exchange that it has relevant corporate finance advisory experience (as defined in Note (1) to Rule 3A.08) with companies listed on the Exchange.

3A.16 A sponsor must ensure that it has adequate financial resources to fulfil the role expected of a sponsor.

For the purpose of this rule, the sponsor must:

- (1) have total paid up share capital and/or non-distributable reserves of not less than HK\$10,000,000 *and* a net tangible asset value after minority interests of not less than HK\$10,000,000 represented by unencumbered assets; or
- (2) produce an unconditional and irrevocable guarantee from a company within the Sponsor Group or an authorised institution (as defined under the Banking Ordinance) that is, and in a form that is, acceptable to the Exchange in respect of the sponsor's liabilities up to an aggregate amount of not less than HK\$10,000,000.

- Notes: 1. *For the purpose of sub-paragraph (a) of this rule, the amount of the paid up share capital and/or non-distributable reserves and the net tangible asset value after minority interests must be evidenced by the balance sheet as contained in the sponsor's latest audited financial statements in respect of a date which must not have ended more than 6 months prior to the date of application. In circumstances where such audited accounts are in respect of a date that ended more than 6 months prior to the date of application, then such matters must also be evidenced by a balance sheet (audited or unaudited) of the prospective sponsor as at a date not more than 6 months prior to the date of application. Any unaudited balance sheets produced for this purpose must be prepared on the same basis as the audited balance sheet and signed by two executive directors of the sponsor.*
2. *In circumstances where no audited accounts have been prepared, the said financial requirements must be evidenced by an unaudited balance sheet, signed by 2 executive directors of the sponsor, as at a date not more than 6 months prior to the date of application.*
3. *In all cases, the sponsor must also confirm that there are no material changes to its financial position subsequent to its latest balance sheet date.*
4. *For the purposes of sub-paragraph (b) of this rule, the latest audited accounts and any subsequent published financial statements of the prospective guarantor (other than in respect of a prospective guarantor that is an authorised institution (as defined under the Banking Ordinance)) and/or any other information required by the Exchange must be submitted to the Exchange, which must be satisfied as to the financial standing of the prospective guarantor. In addition, the prospective form of guarantee must be submitted at the time of application, which guarantee must be for the duration of the period over which the sponsor is admitted to the Exchange's list of sponsors.*

3A.17 To be admitted onto the Exchange's list of sponsors, a sponsor must be able to demonstrate that it has been involved:

- (1) as a sponsor on at least 2 completed initial public offering transactions on the Exchange during the 5 year period before application; or
- (2) as a co-sponsor on at least 3 completed initial public offering transactions over the 5 year period before application, provided that the sponsor is able to satisfy all other requirements set out under Rules 3A.14 to 3A.25.

In both cases, at least one of such sponsoring must have been completed during the year before application.

Notes: (1) *For the purposes of this rule, the Exchange does not recognise sponsorship experience gained from the re-domicile of issuers.*

(2) *Where the sponsorship activity undertaken does not involve a new applicant seeking a primary listing on the Exchange by means of an initial public offering transaction, the Exchange will consider the nature and structure of the relevant transaction in order to determine whether the experience gained by a prospective sponsor from such transaction will be recognised for the purposes of this rule.*

3A.18 A sponsor must ensure that sufficient number of staff is available at all times to enable it to properly discharge its responsibilities. For the purpose of this rule, a sponsor must have:

(1) a minimum of 2 full time executive directors who are able to satisfy the criteria of Principal Supervisor as set out under Rule 3A.21; and

(2) a minimum of 2 other full time staff members who are able to satisfy the criteria of Assistant Supervisor as set out under Rule 3A.22.

3A.19 Only a sponsor who is able to satisfy the requirements of Rule 3A.17 may act as the *lead* sponsor to a new applicant and be the sole channel of communication with the Exchange concerning matters involving the listing application. For the purpose of this rule, there must be at least one sponsor to a new listing who is able to fulfil *all* the requirements of Rules 3A.17 and 3A.18.

3A.20 The Exchange expects that each new listing application should be handled by at least one Principal Supervisor who should not be working simultaneously on more than 2 listing applications to the Exchange. A Principal Supervisor shall be assisted by at least one other Assistant Supervisor who should also not be working simultaneously on more than 2 listing applications.

3A.21 A Principal Supervisor shall be a full-time executive director of the sponsor and must be properly licensed by the Commission or is otherwise appropriately exempt from the licensing requirements. Each Principal Supervisor must have played a substantial role on at least 2 completed initial public offering transactions on the Exchange over the 5 year period prior to the date of declaration and have relevant corporate finance experience (as defined in Note (1) to Rule 3A.08). In this regard, a prospective sponsor must submit, together with its application, declarations in the prescribed Form B set out in Appendix 16 signed by each person which it proposes to be one of its Principal Supervisors.

3A.22 Assistant Supervisors shall be other full time professional staff of the sponsor and must be properly licensed by the Commission or are otherwise appropriately exempt from the licensing requirements. Each Assistant Supervisor must have relevant corporate finance experience (as defined in Note (1) to Rule 3A.08) for a period of at least 3 years prior to the date of declaration. In this regard, a prospective sponsor must submit, together with its application, declarations in the prescribed Form C set out in Appendix 16 signed by each person which it proposes to be one of its Assistant Supervisors.

3A.23 With reference to Rules 3A.21 to 3A.22 in relation to Principal and Assistant Supervisors:

1. The declarations require the declarants to confirm that they are able to fulfil either Rule 3A.21 or Rule 3A.22, as the case may be, and to provide, inter alia, details on their qualifications and corporate finance experience. The declarants must also confirm whether they have ever been charged with any indictable offence, publicly censured, privately reprimanded, disciplined or fined by any regulatory or recognised professional body in Hong Kong or elsewhere within the 5 years prior to the date of declaration.
2. In respect of Principal Supervisors, the Exchange reserves a discretion to waive or relax the requirements set out in Rule 3A.21 in exceptional circumstances where the proposed Principal Supervisor, whilst not having played a substantial role on 2 completed initial public offering transactions over the 5 year period in question can, nevertheless, demonstrate that he has proven experience of public offering transactions on the Exchange and recognised expertise in this regard, gained over a period in excess of 5 years prior to the date of declaration.
3. It is not necessary that the proposed Principal or Assistant Supervisor should have been working for the prospective sponsor throughout all or any of the period to which his experience relates.

3A.24 A sponsor must ensure that all its Assistant Supervisors involved in sponsorship activities are closely supervised and managed by the Principal Supervisors.

3A.25 A sponsor must have appropriate internal controls, procedures and clear reporting lines to ensure that staff involved in sponsorship activities do not act beyond their respective proper and explicit authority. The sponsor is expected to demonstrate, upon the request of the Exchange, that the internal control procedures that are in place meet the objectives set out in this rule.

### **Independence of Sponsors**

3A.26 A sponsor should be capable of giving the new applicant impartial advice before accepting the role. A firm may not act as sponsor for any new applicant of which it is not independent. The prospective sponsor is required to consult the Exchange at the first instance where there may be conflict of interest concerns.

3A.27 The question of independence is determined according to the circumstances of each particular case. However, the following circumstances may give rise to concerns on a sponsor's independence:

- (1) a sponsor or any member of the Sponsor Group holding directly or indirectly, more than 5 per cent of the issued share capital of a new applicant or controlling, directly or indirectly, the composition of the majority of the board of directors of the new applicant;

- (2) the value of the shareholding referred to in Rule 3A.27(1) in a new applicant exceeding 15 per cent of the consolidated net tangible assets of the Sponsor Group;
- (3) a sponsor is controlled by or is under the same control as the new applicant.

*Notes: (1) Control will normally include any holding, directly or indirectly, of the equity capital carrying 35 per cent (or such lower amount as may from time to time be specified in the Takeover Code as being the level for triggering a mandatory general offer) or more of the voting rights at general meetings, or to control, directly or indirectly, the composition of a majority of the board of directors of the sponsor.*

*(2) Rule 3A.27(3) will not apply to investment entities where the sponsor's interest arises by virtue of the holdings of its discretionary clients.*

- (4) relationships that would give the Sponsor Group a material benefit in the success of a flotation or where the aggregate value of financial assistance granted by the Sponsor Group and utilised by the new applicant represents 50 per cent or more of the latter's aggregate banking facilities, or any other relevant transaction (other than as sponsor);
- (5) where 50 per cent or more of the proceeds raised from an initial public offering is applied to settle debts due to the Sponsor Group; and
- (6) where a director or employee of the sponsor has an interest in any class of shares, debt or loan capital of, or business or other interests in, a new applicant.

3A.28 A sponsor is expected to demonstrate to the Exchange that there is an effective system of barriers (Chinese Wall) among the various departments of the Sponsor Group in order to maintain its independence. However, in most situations, the Exchange would not consider that *sole* reliance on the existence of a Chinese Wall is sufficient to deal with a conflict of interest situation.

3A.29 A sponsor, whether a corporation (subject to Rule 3A.27(1)) or an individual, is required to disclose its/his interests in the new applicant and its group in the relevant listing document. All documents (including financial reports and accounts and circulars) released by the listed issuer during the Fixed Period (as defined in Rule 3A.75) must also set out the interests of the sponsor in the listed issuer.

### **Continuing Requirements**

3A.30 The sponsor must comply and undertake, pursuant to its application to be admitted to the list of sponsors, to comply with the Listing Rules applicable to sponsors. Without prejudice to the generality of the foregoing, the sponsor must, subject to Rule 3A.32, use all reasonable endeavours to ensure that it continues to satisfy all of the eligibility criteria set out in Rules 3A.14 to 3A.25 and any other criteria or conditions imposed by the Exchange from time to time.



3A.31 Principal Supervisors and Assistant Supervisors are required to comply with the provisions of Rules 3A.20 and 3A.24.

3A.32 A sponsor must maintain the financial resources referred to in Rule 3A.16. In this connection, a sponsor:

- (1) must not, in the event that such value falls below HK\$10,000,000, take on new sponsorship roles for any new applicant or listed issuer (or continue, as sponsor, to advise any new applicant), until such time as its net tangible asset value after minority interests has been restored to an amount of not less than HK\$10,000,000.

*Note: The Exchange may be prepared to accept an unconditional and irrevocable guarantee from a company within the Sponsor Group or an authorised institution (as defined under the Banking Ordinance) that is, and in a form that is, acceptable to the Exchange in respect of a sponsor's liabilities up to an aggregate amount of not less than HK\$10,000,000.*

*However, nothing in this rule shall limit or restrict a sponsor's on-going obligations and responsibilities with regard to a listed issuer for which it already acts as at the time such value falls below HK\$10,000,000.*

- (2) must use all reasonable endeavours to ensure such value does not fall below HK\$5,000,000, and provided that if, for any reason, it does, the sponsor must take immediate steps to rectify the position and will be expected to have restored its net tangible asset value after minority interests to not less than HK\$5,000,000 within 30 days of the date on which it breaches this rule.

*Notes: 1. It is recognised that a sponsor may incur liabilities during the conduct of its corporate finance business and accordingly, the Exchange will allow a sponsor's net tangible asset value after minority interests to fall below HK\$10,000,000, subject to its retaining, at all times, a minimum value of HK\$5,000,000.*

*2. This rule is designed to ensure, among other things, that should any sponsor take the decision to phase out its business of acting as sponsor, it must, for the duration of the outstanding period over which it is obliged to act as the sponsor of any new applicant or listed issuer and in the absence of a guarantee arrangement acceptable to the Exchange, have a minimum net tangible asset value after minority interests of HK\$5,000,000.*

3A.33 A sponsor must notify the Exchange immediately if any of the events set out below take place:

- (1) it no longer satisfies the eligibility criteria set out in Rules 3A.14 to 3A.25 (as varied by the provisions of Rule 3A.32 concerning the sponsor's on-going net tangible asset value after minority interests) and any other criteria or conditions imposed by the Exchange from time to time;
- (2) any information provided by it to the Exchange in connection with its application to be admitted to the list of sponsors or in connection with any subsequent review, as referred to in Rule 3A.37, has changed adversely or has become misleading in any material respect;
- (3) the sponsor, its Principal Supervisor or Assistant Supervisor ceases to be licensed;
- (4) the Principal Supervisor working on the listing application resigns or is dismissed by the sponsor;
- (5) the sponsor, its directors or employees are charged with any indictable offence or are censured or fined by any regulatory organisation or recognised professional body in Hong Kong or elsewhere;
- (6) there is any material adverse change in the financial position of a sponsor's guarantor (as referred to in Rule 3A.16(2)); and
- (7) the minimum number of staff a sponsor is required to maintain falls below that specified under Rule 3A.18 which has been caused, for example, by any period of absence of a Principal Supervisor exceeding 3 months.

*Notes: (1) In the circumstances set out under item (5) of this rule, the sponsor must immediately cease to act in the listing application.*

*(2) In the circumstances set out under items (6) to (7) of this rule, the sponsor must not take on new or additional sponsorship roles without the prior approval of the Exchange. The sponsor must advise the Exchange of the action it proposes to take to remedy the situation and must comply with any grace period prescribed by the Exchange for remedying the same.*

3A.34 Each Principal Supervisor and Assistant Supervisor of a sponsor is under an obligation to inform the Exchange of any material adverse changes to the particulars provided by him in the prescribed Form B or Form C as set out in Appendix 16, as appropriate (as updated pursuant to the prescribed Form E or Form F as set out in Appendix 16, as appropriate) immediately after he becomes aware of such change.

3A.35 Notifications under Rules 3A.33 and 3A.34 should be addressed to the Executive Director - Listing, The Stock Exchange of Hong Kong Limited by fax and letter (or any other means as approved by the Exchange from time to time).

3A.36 If, at any time after a sponsor has been admitted to the Exchange's list of sponsors, the Exchange:

- (1) considers that the sponsor no longer continues to satisfy the eligibility criteria set out in Rules 3A.14 to 3A.25 (as varied by the provisions of Rule 3A.32 concerning the sponsor's on-going net tangible asset value after minority interests) and any other criteria or conditions imposed by the Exchange from time to time; or
- (2) has reasonable grounds to suspect that the sponsor has failed to disclose fairly and accurately any information that ought reasonably to have been disclosed, whether pursuant to Rule 3A.33 or otherwise; or
- (3) considers that the sponsor has breached or failed to discharge its responsibilities or obligations under the Listing Rules or is no longer competent to act properly as a sponsor; or
- (4) considers that the integrity or reputation of the Exchange may be or may have been impaired as a result of the conduct or judgement of the sponsor,

it may, in accordance with Rule 3A.39, remove the sponsor from the list of sponsors, thereby rendering it ineligible to act for new applicants or listed issuers and/or take any other disciplinary action against the sponsor.

3A.37 Without prejudice to Rule 3A.36, the Exchange will review each sponsor's continued inclusion on the list of sponsors on an annual basis. However, the Exchange reserves the right to conduct the review at any time prior to the anniversary of the date on which the sponsor was admitted to the list of sponsors or of the date on which the sponsor was last reviewed by the Exchange. The review will be carried out in the following manner:

- (1) If a sponsor wishes to remain on the list of sponsors or is otherwise obliged under its existing commitments to any listed issuer to continue to act as a sponsor, it must submit a review form for continuing eligibility, in the prescribed Form D as set out in Appendix 16, together with all documents required to be submitted with that form and a non-refundable review fee in the amount specified in Appendix 8.

*Notes: 1. The review form, documents and fee should be submitted to the Listing Division no later than:*

- (a) *1 month prior to the anniversary of the date on which the sponsor was admitted to the list of sponsors;*
- (b) *1 month prior to the anniversary of the date on which the sponsor was last reviewed; or*
- (c) *any period specified by the Exchange for such purpose, as applicable.*

2. *Sponsors should confirm in the review form whether or not they continue to meet the eligibility criteria set out in Rules 3A.14 to 3A.25 and any other criteria or conditions imposed by the Exchange from time to time.*
3. *If a sponsor ceases to meet the eligibility criteria set out in Rules 3A.14 to 3A.25 (as varied by the provisions of Rule 3A.32 concerning a sponsor's on-going net tangible asset value after minority interests) or any other criteria or conditions imposed by the Exchange from time to time, full details, including the reasons therefor, must be provided to the Exchange.*
4. *In this regard, if the net tangible asset value after minority interests of a sponsor has fallen below HK\$10,000,000 and in circumstances where no guarantee has been provided (as referred to in Rule 3A.16(2)), the Exchange must be advised of this matter; notwithstanding that, by virtue of Rule 3A.32, such value may fall to a minimum of HK\$5,000,000.*
5. *Sponsors should note that, save as regards the requirement concerning its on-going net tangible asset value after minority interests (see Rule 3A.32), the Exchange will review the sponsor each year as if it were a prospective sponsor seeking admission to the list of sponsors. Accordingly, the experience criteria, for each of the sponsors and the requisite minimum number of Principal Supervisors and Assistant Supervisors, must be satisfied on an on-going basis.*
6. *Among the documents required to be submitted by a sponsor together with a review form are:*
  - (a) *its latest audited accounts and, in circumstances where a sponsor's last financial year end was more than 6 months before the date of submission, the audited or unaudited balance sheet of the sponsor as at a date not more than 6 months prior to the date of submission (signed, in the case of the unaudited balance sheet, by 2 executive directors of the sponsor);*
  - (b) *in the case of a sponsor whose liabilities have been guaranteed (as referred to in Rule 3A.16(2)), the latest audited accounts and any subsequent published financial statements of the guarantor (other than in respect of a guarantor that is an authorised institution (as defined under the Banking Ordinance)), together with confirmation that the form of guarantee, as approved by the Exchange, remains in full force and effect;*
  - (c) *review Forms E and F as set out in Appendix 16 respectively from each of the sponsor's continuing Principal Supervisors and Assistant Supervisors; and*

(d) *completed declarations in the prescribed Form B and/or Form C as set out in Appendix 16 in respect of any proposed additional Principal Supervisors and/or Assistant Supervisors as the case may be.*

7. *Any failure by a sponsor to submit a review form may result in the removal of the sponsor from the list of sponsors and/or disciplinary action against the sponsor by the Exchange.*

- (2) The review of a sponsor's continued inclusion on the list of sponsors will be considered by the Listing Committee or an appropriate body within the Exchange. Sponsors may be asked to attend interviews and or provide further information for the purposes of the review.

*Note: The Exchange reserves the right to change the date for which the review of any sponsor has been scheduled.*

- (3) The Listing Committee or an appropriate body within the Exchange, in forming its view, may take into consideration the information provided in the continuing review form and the documents submitted with that form and other matters considered by it to be relevant.

3A.38 The Exchange reserves a discretion to retain a sponsor on the list of sponsors, subject to any conditions, restrictions or other requirements imposed by the Exchange at any time and whether of a general nature or specific to any new applicant for which the sponsor acts or proposes to act.

3A.39 If, at any time, the Exchange exercises its power to remove a sponsor from the list of sponsors, the Exchange shall give written notice to the Sponsor informing it of the intention to remove the sponsor, stating the reasons therefor and advising the sponsor of its rights to appeal to the Listing Appeals Committee in accordance with Chapter 2B.

### **Co-sponsorships and Additional Sponsors**

3A.40 Where more than one sponsor has been appointed by a new applicant, the Exchange must be advised as to which of the sponsors is, in the first instance, principally responsible for communicating, on behalf of the new applicant, with the Exchange.

*Note: For the avoidance of doubt, the designated sponsor must fulfil the requirements for lead sponsors as set out in Rule 3A.19 and be fully and actively aware of all the facts of a listing application.*

3A.41 Where there is more than one sponsor to a new applicant, all information submitted by the sponsors to the Exchange must be signed by all sponsors concerned.

3A.42 Each of the sponsors to a new applicant is answerable to the Exchange, assumes the *same* degree of responsibility and accountability in a listing application and shall be *jointly and severally responsible* for the accuracy and completeness of information contained in all submissions (including the listing documents) provided to the Exchange, in writing or otherwise, in respect of the listing application.

3A.43 Where a co-sponsor to a listing application is apparently the main provider of information to the Exchange, the Exchange may question the lead sponsor (see Rule 3A.19) concerned in a meeting to determine whether it is, in fact, assuming the role of lead sponsor in name only. The result of the meeting will be taken into consideration in the review by the Exchange of a sponsor's continued inclusion on the list of sponsors in accordance with Rule 3A.37

*Note: The purpose of this rule is to ensure that each sponsor to a listing application can be held fully accountable and responsible for all information provided to, including verbal communication with, the Exchange.*

3A.44 Where there is an addition of a new sponsor during the processing of the listing application, the Exchange will require the resubmission of the advance booking form together with a new initial listing fee in accordance with the provisions of Rule 9.03(1).

3A.45 Only one sponsor to a new applicant needs be retained over the Fixed Period (see Rule 3A.75) to give on-going corporate finance advice to the listed issuer and to assume responsibilities of the nature set out in Rule 3A.77.

*Note: The sponsor retained over the Fixed Period must fulfil the requirements of Rules 3A.14 to 3A.25 in relation to a sponsor's basic qualification and eligibility criteria. Where a financial adviser is appointed during the Fixed Period, the financial adviser must fulfil the requirements of Rules 3A.82 to 3A.97 in relation to Financial Advisers.*

### **Responsibilities of Sponsors**

3A.46 The responsibilities of a sponsor as set out in Rules 3A.47 to 3A.66 are owed solely to the Exchange. Failure to carry out these responsibilities may result in the Exchange taking one or more of the steps referred to in Rule 3A.99.

3A.47 A Sponsor must designate 2 of its executive directors to act, at all times, as the principal channel of communication with the Exchange concerning matters relevant to the sponsor. Those individuals must supply the Exchange with details in writing of how they can be contacted, including office, mobile and home telephone numbers, facsimile number and electronic mail address.

3A.48 In an initial public offering which involves the offer for subscription or an offer for sale to the public (the "public offer"), a sponsor should be responsible for:

- (1) providing competent advice to the new applicant on all aspects relating to the conduct of the public offer;

- (2) the overall management of the public offer;
- (3) assessing the likely interest on or the reception of the offer by the public; and
- (4) putting in place sufficient arrangements and resources to ensure that the public offer is conducted in a fair, timely and orderly manner.

3A.49 In discharging its obligations under Rule 3A.48, a sponsor should have regard to at least the following matters:

- (1) whether there are sufficient prospectuses and application forms for the securities offered for distribution to the public during the offer period;
- (2) without derogating from the sponsor's obligation to act as the overall manager of the public offer, whether specific responsibilities in relation to the public offer should be carved out for handling by other professionals or advisers; and, if so, whether such professionals or advisers are competent and have sufficient capacity and resources to handle the relevant responsibilities;
- (3) whether sufficient measures have been put in place to ensure that:
  - (a) the distribution of prospectuses and application forms to the public;
  - (b) the collection of completed application forms from the public; and
  - (c) the despatch of unsuccessful applications, refund cheques and share certificates after the offer period closes,can be made in a timely and orderly fashion;
- (4) whether appropriate contingency plans have been drawn up to deal with events of disorder or failure which may arise during the public offer period and before the trading of securities commences; and
- (5) where balloting is required to determine the successful applications under a public offer, whether appropriate arrangements have been put in place to ensure that balloting would be conducted fairly and independently of the new applicant and parties associated with it.

3A.50 A sponsor, having made due and careful enquiry of the new applicant, must satisfy itself, on the basis of all available information, that a new applicant is suitable for listing. The sponsor is expected to know the new applicant, understand the nature of its business and industry, and record diligently the nature and extent of due diligence work performed on the listing application to achieve the objective of this rule.

3A.51 A sponsor must deal with all matters arising in connection with the listing application which are raised by the Exchange and must ensure that such matters raised are resolved to the satisfaction of the Exchange.

- 3A.52 A sponsor should accompany the new applicant at any meetings with the Exchange, which the new applicant is asked to attend, unless otherwise requested by the Exchange. The sponsor may be requested to address questions put to the new applicant or itself by the Listing Committee or an appropriate body within the Exchange at any hearings of the Listing Committee or an appropriate body within the Exchange relating to the application for listing.
- 3A.53 A sponsor must be closely involved in the preparation of the listing document and must ensure that all statements made are true, accurate and not misleading, and that the listing document complies with the Listing Rules and all relevant legislation.
- 3A.54 A sponsor has the responsibility to provide the Exchange, in a timely manner, with such information as it may reasonably require for the purpose of verifying whether the Listing Rules, and any other additional matters raised by the Exchange from time to time in connection with the listing application, are being or have been complied with by the sponsor, the new applicant or its directors.
- 3A.55 A sponsor must obtain written confirmation from the new applicant that relevant financial information published in the listing document has been properly extracted from the accounting records of the new applicant. A sponsor must be satisfied that this confirmation has been made by the new applicant after due and careful enquiry.
- 3A.56 A sponsor must ensure that all material information is included in an advanced proof of the listing document which is submitted to the Exchange at the time of lodging the advance booking form. If the Exchange considers that the draft listing document submitted with the listing application not to be in a sufficiently advanced form in order for it to carry out a meaningful review, all documents, including the advance booking form and the initial listing fee will be returned in accordance with Rule 9.03(3).
- 3A.57 No material changes should be made to the advanced proof of the listing document without the consent of the Exchange. Any material amendments made without the consent of the Exchange may result in such delay to the new applicant's listing timetable, as the Exchange considers appropriate. Where the listing timetable will be delayed by more than 6 months from the date of the advance booking form, the applicant shall need to submit a new application with a new initial listing fee in accordance with the provisions of Chapter 9.
- 3A.58 A sponsor has a duty to ensure that there is no unauthorised publication or leakage of publicity material(s) on a new applicant regarding its listing application prior to the meeting of the Listing Committee or an appropriate body within the Exchange to consider the listing application. Failure in this respect may result in a delay in the timetable for the proposed meeting of the Listing Committee or an appropriate body within the Exchange by up to a month in accordance with Rule 9.08 or the rejection of the listing of those securities, regardless of how such an event occurred.
- 3A.59 A sponsor must not reveal any privileged information to outside parties, including any person within the Sponsor Group not authorised to be in possession of such material, until a formal announcement is made. Particular emphasis is placed on information that may affect market activity in, and the price of, the listed issuer's securities.



*Note: All staff members of a sponsor must meticulously avoid any disclosure of such privileged information to his/her family, partners, other employees of the firm, his/her customers, the research or trading departments within the Sponsor Group. Adequate measures must be taken to guard the confidential nature of the information to prevent misuse. A Sponsor Group is expected to have adequate controls in place with respect to personal account dealings to ensure that its employees do not make use of undisclosed price sensitive information for their own benefits.*

3A.60 A sponsor must ensure that the advanced proof of the listing document has been verified by itself and all other relevant professional advisers involved in the listing application to a standard that enables the sponsor to submit to the Exchange the declarations referred to in Rule 3A.64. All submissions in respect of the listing application, whether made by the sponsor or other professional advisers, must have been verified prior to submission to the Exchange.

3A.61 A sponsor must have an in-house due diligence questionnaire on new applicants, which must be made available to the Exchange upon request. Upon completion of this questionnaire, the respective heads of the compliance and corporate finance departments must sign a confirmation of compliance, in the prescribed Form G as set out in Appendix 16. The confirmation is required to be submitted to the Exchange together with the advance booking form.

*Note: The purpose of this rule is to ensure that a sponsor has discharged all of its responsibilities with due care and skill and that there are no matters, other than those disclosed in the listing document or otherwise in writing to the Exchange, to be taken into account by the Exchange in considering the listing application.*

3A.62 A sponsor must have satisfied itself that the new applicant has established:

- (1) proper accounting and management information systems which provide a reasonable basis for its directors to make proper judgement as to the financial position and prospects of the new applicant and its group. Such systems must be of a standard that would enable the new applicant to release timely information, financial and otherwise, to the market as required by the Listing Rules; and
- (2) effective internal control procedures, which can reasonably be expected to be properly maintained subsequent to listing.

*Note: For the purposes of this rule, the sponsor must obtain written confirmation from the new applicant that the directors have established procedures which provide a reasonable basis for them to make proper judgements as to the financial position and prospects of the new applicant and its group and be satisfied that the confirmation has been given after due and careful enquiry by the new applicant.*

3A.63 Where a profit forecast or estimate appears in the prospectus, the sponsor must report that it has satisfied itself that the forecast or estimate has been made by the new applicant after due and careful enquiry. Such a report must be included in the listing document. The sponsor may be required to demonstrate to the Exchange how it arrived at such conclusion.

*Note: Where a profit forecast or estimate has not been prepared for inclusion in the listing document, each of the sponsors and underwriters to the new applicant must undertake to the Exchange that brokers affiliated with them will not publish a profit forecast or estimate in respect of the new applicant in any brokerage or other report. In addition, the sponsor, new applicant and its directors must not disclose such information to other parties where it is reasonably expected that the information provided will be used for the purpose of preparation of a profit forecast or estimate for public release.*

3A.64 A sponsor must provide the Exchange with:

- (1) on submission of the advance booking form, declarations, in the prescribed Form G as set out in Appendix 16, requiring each of the sponsors to a listing application to confirm, among other things, that all the relevant requirements of the Listing Rules and qualifications for listing have been met or fulfilled in respect of the application.
- (2) prior to the issue of the listing document, a declaration in the prescribed Form H as set out in Appendix 16, requiring each of the sponsors to a listing application to confirm, among other things, that the new applicant is suitable for listing on the Exchange and is in full compliance with the Listing Rules and that there are no other matters the omission of which would make the statements in the listing document misleading and affect the judgement of investors.

3A.65 Working papers in relation to the sponsor's work on the listing application including records of any book building or placing exercises must be kept for record purposes for a minimum of 6 years after the date on which such records have been taken. These records must, subject to applicable laws, be made available to the Exchange upon request.

3A.66 Sponsors and declarants must inform the Exchange immediately of any changes to the particulars lodged with the Exchange under Rule 3A.64.

### **Responsibilities between and among Co-sponsors**

3A.67 Where there is more than one sponsor to a listing application, each sponsor concerned must be appropriately involved in the duties and responsibilities undertaken as a sponsor to the new applicant. Each sponsor must not place undue reliance on the work performed by the co-sponsor(s) to the new listing.

*Note: It is the responsibility of each of the sponsors to ensure that it/he is competent to carry out its/his designated duties and obligations in a listing application.*

- 3A.68 Each of the sponsors is expected to be able to demonstrate, upon the request of the Exchange, the nature of work each has undertaken in order to hold the opinion that, after due and careful enquiry, all information contained in the listing document and those provided to the Exchange, in writing or otherwise, in respect of the application is true and accurate.
- 3A.69 Each of the sponsors must sign all submissions provided to the Exchange and shall be jointly and severally responsible for their accuracy and completeness, having made due and careful enquiry, of the information contained therein.

#### **Responsibilities between Sponsors and other Professional Advisers**

- 3A.70 A sponsor must not place unsubstantiated reliance on information provided by other professional advisers (such as reporting accountants, legal advisers, valuers) involved in a listing application. The sponsor is expected to demonstrate, upon the request of the Exchange, how it has taken all reasonable steps to ensure that all information provided by such professional advisers is accurate, complete and prepared with due care and consideration. The sponsor is also expected to carry out its own due diligence review to satisfy itself that the work carried out by the professional advisers is able to support its final opinion on the suitability of the new applicant for listing, given the sponsor's knowledge of its client and the client's business and industry sector.

#### **Responsibilities between Sponsors and Directors of a New Applicant**

- 3A.71 A sponsor is expected to complete the advance booking form together with the new applicant and to guide and advise the new applicant over the course of the listing process.
- 3A.72 A sponsor must not place undue reliance on information provided by the directors of the new applicant and is expected to carry out its own due diligence review based on its understanding of the client's business and industry sector. A sponsor is expected to demonstrate, upon the request of the Exchange, all the steps undertaken to ensure the truth, accuracy and completeness of the information provided by the directors of the new applicant and that no material information has been withheld.
- 3A.73 A sponsor must certify that it has read the answers which each director of the new applicant is required to provide in response to the questions in Part 1 of the relevant forms of Declaration and Undertaking with regard to Directors, as set out in Appendix 5, and that, at the date of certification, it is not aware of any information that would lead a reasonable person to question the truth, accuracy or completeness of any of the answers given. The certification shall be in the form provided in Part 3 of such form as set out in Appendix 5.
- 3A.74 A sponsor must explain to each director of the new applicant his obligations, responsibilities and fiduciary duties as a director of a listed issuer under the Listing Rules, the Takeover Code, the Code on Share Repurchases and all other relevant ordinances, and his legal and other obligations toward both the creditors and the shareholders of a listed issuer.

### **One-year Continuing Sponsorship**

- 3A.75 A listed issuer must retain the services of its sponsor for at least one year following its date of listing (the “Fixed Period”) for the purposes of Rule 3A.77. Financial advisers (including independent financial advisers) appointed by the listed issuer for any other purpose must meet the provisions of Rules 3A.82 to 3A.97.
- 3A.76 A sponsor retained by the listed issuer over the Fixed Period must be able to satisfy the financial resources requirements set out under Rule 3A.16. Reference is also made to Rule 3A.32 on the on-going obligations of the sponsor relating to maintaining its minimum capital requirements.
- 3A.77 Over the Fixed Period, at least one Principal Supervisor and one Assistant Supervisor from the sponsor responsible for the listing application must be actively involved in giving on-going corporate finance advice to the listed issuer. The sponsor must discharge, among other things, the following responsibilities with due care and skill:
- (1) ensure that the listed issuer is properly guided and advised as to the application and interpretation of the Listing Rules;
  - (2) have on-going communication, which should take the form of formal meetings, with the listed issuer;
  - (3) accompany the listed issuer at any meetings with the Exchange, which the listed issuer is asked to attend, unless otherwise requested by the Exchange;
  - (4) review, with the listed issuer, the operating performance and financial condition of the listed issuer against the business objectives as stated in its listing document;
  - (5) monitor whether the profit forecast or estimate which appeared in the listing document will be met by the listed issuer. The sponsor should ensure that the listed issuer notifies the Exchange and informs the public by way of a press announcement immediately if it fails to meet the profit forecast or estimate;
  - (6) ensure that all undertakings provided by the listed issuer, its directors and/or controlling shareholder(s) and their beneficial owners, as the case may be, at the time of listing will be honoured by the relevant parties concerned;
  - (7) review all information (including all announcements, circulars, listing documents and financial reports) prior to submission to the Exchange to ensure that statements disclosed therein are true, accurate and complete;
  - (8) deal with the Exchange in respect of all matters relating to, and transactions proposed to be undertaken by, the listed issuer; and
  - (9) brief all new appointees to the board of directors of the listed issuer as to the nature of their responsibilities and fiduciary duties under the Listing Rules, the Takeover Code, the Code on Share Repurchases, and all other relevant ordinances, and their legal and other obligations toward both the creditors and the shareholders of the listed issuer.

- 3A.78 If during the Fixed Period and subsequent to the filing of the Declaration and Undertaking with Regard to Directors (as set out in Appendix 5), a director of a new applicant or listed issuer is charged with or is convicted of a criminal offence, or is the subject of an investigation, the sponsor must notify the Exchange immediately.
- 3A.79 A sponsor must retain the documentation pertaining to the work performed during the Fixed Period for a minimum period of 6 years after the date on which such records have, from time to time, been taken.

### **Termination of a Sponsor's Role**

- 3A.80 A sponsor may only terminate its role as sponsor in exceptional circumstances where it is no longer able to perform that role satisfactorily and only after first notifying the Exchange of such proposed termination and the reasons thereof.
- 3A.81 If a sponsor's role is terminated by a new applicant, the ex-sponsor must immediately notify the Exchange of such termination stating the reasons why it believes such appointment was terminated. A replacement sponsor must be appointed as soon as possible.
- (1) Where the termination is made during the processing of the listing application, the new sponsor should immediately notify the Exchange of its appointment and re-submit, on behalf of the new applicant, an application together with a new initial listing fee in accordance with Chapter 9. Any initial listing fee paid will, in such circumstances, be forfeited.
  - (2) Where the termination is made during the Fixed Period, the listed issuer is required to appoint one of the other co-sponsors to its listing application, where applicable, or a financial adviser for the remaining term of the Fixed Period.

## **FINANCIAL ADVISERS**

### **Basic Qualification and Eligibility Criteria**

- 3A.82 This section of the Listing Rules deals with the requirements for financial advisers (including independent financial advisers) appointed pursuant to the Listing Rules.
- 3A.83 A financial adviser has to meet the minimum criteria set out in Rules 3A.84 to 3A.89 in order to satisfy the Exchange that it is competent to fulfil its role. However, the Exchange reserves the right, in its absolute discretion, to waive any criteria, impose any other conditions, either specifically or generally, and to reject the appointment of a financial adviser even in circumstances where the proposed financial adviser fulfils the eligibility criteria set out in this section. In cases of doubt, the Exchange must be consulted at the earliest opportunity.

3A.84 A financial adviser, whether a corporation or an individual, must be acceptable to the Exchange and possess the experience, expertise and competence to discharge all of the responsibilities of a financial adviser. A financial adviser must ensure that its duties and obligations owed to the Exchange are properly and competently discharged.

3A.85 A financial adviser, being a corporation, must:

- (1) be a limited liability company incorporated under the Companies Ordinance or registered under Part XI of the Companies Ordinance;
- (2) be properly licensed by the Commission or is otherwise appropriately exempt from the licensing requirements; and
- (3) satisfy the Exchange, where the financial adviser assumes the role of an underwriter (including, but not limited to, rights issues, open offers and placing exercises), that it has sufficient financial resources to meet all its underwriting obligations on hand.

3A.86 A financial adviser, being an individual, must be properly licensed by the Commission or is otherwise appropriately exempt from the licensing requirements. A financial adviser may be assisted by other staff members who again must be properly licensed.

3A.87 A financial adviser must be able to demonstrate that it is capable of giving impartial advice before agreeing to accept this role and consideration must be given to Rules 3A.26 to 3A.29 on the issue of independence for this purpose.

3A.88 A financial adviser, whether a corporation or an individual, is required to disclose its interests in the listed issuer and its group and, where applicable, in the transaction in question in all documents (including financial reports and accounts and circulars) published by the listed issuer concerned.

3A.89 Each transaction undertaken by a financial adviser, being a corporation, must have at least one Principal Supervisor and one Assistant Supervisor on the transaction. The financial adviser is expected to be able to demonstrate, upon the request of the Exchange, that the responsible Principal Supervisor and/or Assistant Supervisor possess(es) the relevant experience to act as the financial adviser by providing details of the types of transactions undertaken in the previous 2 years and the nature of advice given.

*Note: Drafting and documentation work undertaken by a financial adviser do not constitute the provision of corporate finance advice (as defined in Note (1) to Rule 3A.08).*

### **Responsibilities of Financial Advisers**

- 3A.90 A financial adviser is expected to accept and comply with any relevant criteria and responsibilities as published by the Exchange from time to time. A financial adviser is expected to fully co-operate with the Exchange, the Commission and any other relevant parties and to discharge its duties and responsibilities in a timely manner and to the satisfaction of the Exchange.
- 3A.91 A financial adviser is expected to properly guide and advise a listed issuer as to the application and interpretation of the Listing Rules, the Takeover Code, the Code on Share Repurchases and all other relevant legislation.
- 3A.92 A financial adviser must be closely involved in the preparation of all documents and must read all information provided to the Exchange prior to submission. A financial adviser must review, with the listed issuer, all announcements, circulars and listing documents in respect of the relevant transaction undertaken to ensure that all statements disclosed therein are true, accurate and complete, and no material information has been withheld.
- 3A.93 A financial adviser must deal with the Exchange in respect of all matters relating to transactions proposed to be undertaken by a listed issuer during the Fixed Period, where applicable, and thereafter in respect of the transactions concerned.
- 3A.94 A financial adviser is expected to observe the highest standard of professionalism and integrity by keeping all issues concerning its client confidential. Adequate procedures must be in place to ensure that its employees do not make use of undisclosed price sensitive information for personal account dealings.

### **Independent Financial Advisers**

- 3A.95 A financial adviser appointed pursuant to the Listing Rules to advise the independent board committee or the independent shareholders of the listed issuer must not have served as a financial adviser to the relevant listed issuer, its subsidiaries or any of their respective connected persons for a period of 2 years prior to such appointment.
- 3A.96 A sponsor will not be eligible to act in the capacity of independent financial adviser until 2 years from the relevant listed issuer's date of listing on the Exchange or until 2 years from the end of the Fixed Period, as the case may be.
- 3A.97 It is the responsibility of the independent financial adviser to ensure that all information it considers relevant for the independent shareholders of the listed issuer to make an informed decision must be disclosed and properly analysed in any document published by the listed issuer.

## SANCTIONS AGAINST SPONSORS AND FINANCIAL ADVISERS

3A.98 If the Exchange considers that a sponsor or a financial adviser has been in breach of its responsibilities under the Listing Rules or is no longer competent to act as a sponsor or a financial adviser, it will refer the matter to the Listing Committee or an appropriate body within the Exchange.

3A.99 If the Listing Committee or an appropriate body within the Exchange finds that a sponsor or a financial adviser has been in breach of its responsibilities under the Listing Rules or is no longer competent to act properly as a sponsor or a financial adviser, it may do one or more of the following:

- (1) issue a private reprimand;
- (2) issue a public statement of criticism;
- (3) issue a public censure;
- (4) remove the sponsor from the list of sponsors maintained by the Exchange whether or not for a stated period;
- (5) bar the sponsor or financial adviser from representing a specified party in relation to a stipulated matter or matters coming before the Exchange for a stipulated period;
- (6) report the sponsor's or the financial adviser's conduct to the Commission or any other regulatory authority in Hong Kong or elsewhere;
- (7) request the Commission to consider withdrawing or revoking the sponsor's or the financial adviser's licence;
- (8) require a breach to be rectified or other remedial action to be taken within a stipulated period;
- (9) take such other action as it considers appropriate in the circumstances; and/or
- (10) publish any actions taken and the reasons thereto.

3A.100 The sanctions referred to in Rule 3A.99 may also or instead be imposed by the Exchange on any of the directors or employees of the sponsor or financial adviser.

3A.101 Any decision of the Exchange resulting in Rule 3A.99 will be subject to the procedures for appeal, as described under Chapter 2A.

3A.102 A sponsor or financial adviser and any of their respective relevant executives sanctioned by the Exchange in accordance with Rule 3A.99 may not be involved in any sponsorship or advisory activities, as the case may be, whether solely or otherwise, in each case for a period of one year, or such other period to be determined by the Exchange, from the date of sanction.