

SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(NO. 5 OF 2002, SECTION 36(1))

ARRANGEMENT OF SECTIONS

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SECURITIES AND FUTURES (STOCK MARKET LISTING) RULES

(Made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (5 of 2002) after consultation with the Financial Secretary and the Stock Exchange Company.)

PART I

PRELIMINARY

1. Commencement

These Rules shall come into operation on the day appointed for the commencement of Part III of the Securities and Futures Ordinance (5 of 2002).

2. Interpretation

In these rules, unless the context otherwise requires –

"applicant" means a corporation which has made an application under section 3;

"application" means an application made under section 3 and all documents in support of or in connection with the application including any replacement of or amendment or supplement to such application and the filing obligation in section 5(1) applies separately to any such replacement, amendment or supplement;

“approved share registrar” means a share registrar who is member of an association of persons approved, for the purposes of these Rules, by the Commission under section 15;

"chief executive", in relation to a corporation, means a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation;

"director", in relation to the Commission, means a director appointed under Schedule 2 of the Ordinance;

"expert" means an expert within the meaning of section 38C of the Companies Ordinance (Cap. 32);

"issuer" means a corporation or other body whose securities are listed, or proposed to be listed, on a recognized stock market;

“share registrar” means any person who maintains in Hong Kong the register of members of a corporation the securities of which are listed, or proposed to be listed, on a recognized stock market.

PART II

STOCK MARKET LISTING

3. Requirements for listing applications

An application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant must –

- (a) comply with the rules and requirements of the recognized exchange company (except to the extent that compliance is waived or not required by the recognized exchange company);
- (b) comply with any provision of law applicable;
- (c) contain such particulars and information which, according to the particular nature of the applicant and the securities for the listing of which application is being made, is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities and financial position, of the

applicant at the time of the application and its profits and losses and of the rights attaching to such securities;

- (d) state the name of the applicant;
- (e) give particulars of the numbers, classes and denominations of the securities which are the subject of the application;
- (f) give particulars of the proposed manner of issue of the securities, whether by offer for sale, public subscription, private placing, introduction or otherwise;
- (g) state, in so far as is known, or may be ascertained after reasonable enquiry, by the directors of the applicant, the name and address of any person who at the time of the application is a substantial shareholder of the applicant or of another corporation of which it is a subsidiary, and the extent of his shareholding in the applicant or that other corporation;
- (h) give particulars of the qualifications and experience of the directors and chief executive of the applicant;
- (i) specify the purpose for which the applicant intends to use the proceeds (if any) of the issue or sale of the securities to which the application relates, or the portion of such proceeds to be received by the applicant; and
- (j) specify the qualifications of any person whose opinion as an expert is referred to in any document included in the application.

4. Exemptions from section 3

Section 3 does not apply to the listing of any –

- (a) securities issued or allotted –

- (i) by a capitalization issue pro rata (apart from fractional entitlements) to existing shareholders, other than to shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom they are not issued or allotted because of restrictions imposed by legislation of that place; or
 - (ii) pursuant to a scrip dividend scheme which has been approved by the corporation in general meeting;
- (b) securities offered on a pre-emptive basis, pro rata (apart from fractional entitlements) to existing holdings, to holders of the relevant class of shares in the corporation, other than to shareholders whose addresses registered in the books of the corporation are in a place outside Hong Kong and to whom they were not offered because of restrictions imposed by legislation of that place;
- (c) shares issued in substitution for shares listed on a recognized stock market, if the issue of the shares does not involve any increase in the issued share capital of the corporation.

5. Copy of listing materials to be filed with the Commission

(1) An applicant must file a copy of its application with the Commission within one business day after the day on which the applicant submits the application to the recognized exchange company concerned.

(2) An applicant is regarded as having complied with subsection (1) on the day it submits the application to the recognized exchange company concerned if, prior to or at the time of submitting the application to the recognized exchange company the applicant has authorized the recognized exchange company in writing to file the application with the Commission on its behalf.

(3) The recognised exchange company must not list the securities to which the application relates unless –

- (a) the period specified in subsection (5) has expired and the Commission has not, within that period, notified the recognized exchange company and the applicant under subsection (6) that it objects to the listing; or
- (b) the Commission has notified the recognized exchange company and the applicant that it does not object to the listing.

(4) The Commission may, by notice to the applicant and the recognised exchange company given within 10 business days from the date the applicant files a copy of its application with the Commission, require the applicant to supply to the Commission such further information as the Commission may reasonably require for the performance of its functions under these Rules.

(5) The period specified for the purposes of subsection (3) is 10 business days –

- (a) where the Commission has not given notice under subsection (4), from the date the applicant files a copy of its application with the Commission; or
- (b) where the Commission has given notice under subsection (4), from the date when the further information is supplied.

(6) The Commission may, by notice in writing to the recognized exchange company and the applicant, object to a listing if it appears to the Commission that –

- (a) the application in respect of the listing does not comply with a requirement specified in section 3;
- (b) an application in respect of the listing is false or misleading as to a material fact or is false or misleading through the omission of a material fact;

- (c) the applicant has failed to comply with a requirement under subsection (4) or, in purported compliance with such requirement has furnished the Commission with information which is false or misleading in any material particular; or
- (d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.

(7) A notice given under subsection (6) must be accompanied by a statement specifying the reasons for the objection.

6. Copy of ongoing disclosure materials to be filed with the Commission

(1) An issuer must file with the Commission a copy of any announcement, statement, circular, or other document made or issued by it or on its behalf to the public or to a group of persons comprising members of the public (including its shareholders) under the rules and requirements of a recognized exchange company or any provision of law applicable, or pursuant to the terms of any listing agreement between the issuer and a recognized exchange company under the rules of the recognized exchange company within one business day following the day on which such announcement, statement, circular or other document is made or issued.

(2) A person must file with the Commission a copy of any announcement, statement, circular or other document made or issued by that person or on his behalf to the public or to a group of persons comprising members of the public (including holders of the securities of an issuer) under any codes published by the Commission under sections 399(2)(a) and (b) of the Ordinance within one business day following the day on which such announcement, statement, circular or other document is made or issued.

(3) An issuer or other person, as the case may be, is regarded as having complied with subsection (1) or (2) if the issuer or other person has –

- (a) filed with the recognized exchange company concerned; and
- (b) authorized the recognized exchange company in writing to file with the Commission on its behalf,

a copy of the relevant announcement, statement, circular or other document.

PART III

SUSPENSION OF DEALINGS

7. Suspension of dealings in securities

- (1) Where it appears to the Commission that –
 - (a) any materially false, incomplete or misleading information has been included in any –
 - (i) prospectus, circular, or other document, including an introduction document and a document containing proposals for an arrangement or reconstruction of a corporation, issued in connection with a listing of securities on a recognized stock market;
 - (ii) announcement, statement, circular or other document made or issued by or on behalf of an issuer in connection with its affairs; or
 - (b) it is necessary or expedient in the interests of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on the recognized stock market it operates;
 - (c) it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in specified securities listed on a recognized stock market; or

- (d) there has been a failure to comply with any condition imposed by the Commission under section 8(3)(c) relating to the listing of, or dealings in, any securities,

the Commission may direct, by notice to the recognized exchange company concerned, the recognized exchange company to suspend all dealings in any securities specified in the notice.

- (2) A recognized exchange company must comply with any notice given under subsection (1) without delay.

8. Powers of the Commission upon the suspension under this Part of dealings in any securities

- (1) An issuer which is aggrieved by the exercise of the Commission's powers under section 7 may make representations in writing to the Commission and where an issuer makes such representations, the Commission must notify the recognized exchange company concerned.

- (2) In respect of the exercise of the Commission's powers under section 7, the recognized exchange company concerned may make representations in writing to the Commission irrespective of whether representations in respect of that exercise of powers have been made by an issuer under subsection (1) and where the recognized exchange company makes such representations, the Commission must notify the issuer concerned.

- (3) Where the Commission has –

- (a) directed a recognized exchange company under section 7(1) to suspend dealings in any securities; and
- (b) considered any –
 - (i) representations by the issuer under subsection (1);

- (ii) representations by the recognized exchange company under subsection (2); and
- (iii) further representations by the issuer or the recognized exchange company,

the Commission by notice to the recognized exchange company concerned may –

- (c) permit dealings in the securities to recommence subject to such conditions as the Commission may think fit to impose, being conditions of the nature specified in subsection (4); or
- (d) direct the recognized exchange company to cancel the listing of the securities on its recognized stock market if the Commission –
 - (i) is satisfied that there has been a failure to comply with the requirements in respect of listing set out in these Rules or in any other rules made under section 36 of the Ordinance; or
 - (ii) considers that such action is necessary to maintain an orderly market in Hong Kong,

and the recognized exchange company must comply with that direction without delay.

- (4) The conditions which may be imposed under subsection (3)(c) are –

- (a) where the Commission has exercised its powers under section 7(1)(a) or (d), conditions imposed with the object of ensuring, so far as is reasonably practicable, that the issuer remedies the default by reason of which the suspension of dealings was directed, provided that the Commission must permit such dealings unconditionally without delay if it is of the view that there has been no such default;

- (b) where the Commission has exercised its powers under section 7 (1)(b), such conditions as the Commission may consider necessary or expedient in the interests of maintaining an orderly and fair market in securities traded through the facilities of a recognized exchange company on its recognized stock market;
- (c) where the Commission has exercised its powers under section 7(1)(c), such conditions as the Commission may consider to be in the interest of the investing public or in the public interest, or to be appropriate for the protection of investors generally or for the protection of investors in specified securities listed on a recognized stock market.

(5) In subsection (3) "further representations" means representations either in writing or orally or both in writing and orally as the issuer or the recognized exchange company concerned may determine which are submitted within such reasonable time as the Commission may determine.

(6) The functions of the Commission under this section may only be exercised by a meeting of the Commission and are not delegable.

(7) A director of the Commission who made the decision in the exercise of the Commission's powers under section 7 may not participate in the deliberations or voting of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers.

(8) Notwithstanding subsection (7), the director referred to in that subsection may attend any meeting or proceeding of the Commission in the performance of its functions under this section as regards that exercise of the Commission's powers and may make such explanations of his decision as he thinks necessary.

9. Provisions supplementary to sections 7 and 8

(1) At any hearing held by the Commission to receive oral representations made to it under section 8(3), the issuer and the recognized exchange company each have the right to be represented by its counsel or solicitor.

(2) If representations are made under section 8(1) or 8(2) against a direction made under section 7(1) then, pending the decision of the Commission under section 8 (3), all dealings in the securities concerned shall continue to be suspended.

10. Restriction on re-listing

No security the listing of which has been cancelled under section 8 may be listed again on a recognized stock market except in accordance with Part II.

11. Waiver of requirements of Parts II and III

The Commission may by notice to an applicant or an issuer, as the case may be, and a recognized exchange company, modify or waive, subject to such reasonable conditions as the Commission may think fit to impose, the requirements of any provision of Parts II and III where the Commission is of the opinion that –

- (a) the applicant or issuer, as the case may be, cannot comply with the provision or it would be unreasonable or unduly burdensome for the applicant or issuer to do so;
- (b) the provision has no relevance to the circumstances of the applicant or issuer, as the case may be; or

- (c) compliance with the provision would be detrimental to the commercial interests of the applicant or issuer, as the case may be, or to the interests of the holders of its securities.

PART IV

APPROVED SHARE REGISTRARS

12. Approval of share registrars

- (1) The Commission may approve an association of persons as an association each of whose members must be an approved share registrar for the purposes of these Rules.
- (2) The Commission may cancel the approval of any association of persons approved under subsection (1).
- (3) The Commission must maintain a list of associations of persons approved under subsection (1).

13. Securities not to be listed where approved share registrar not employed

No application made by a corporation to a recognized exchange company for the listing of any securities issued or to be issued by that applicant may be approved by the recognized exchange company concerned unless the applicant is an approved share registrar or employs an approved share registrar.

14. Suspension of dealings on cessation of employment etc. of approved share registrar

- (1) If –
 - (a) the securities of a corporation are listed on a recognized stock market; and

- (b) the corporation ceases either to be an approved share registrar or to employ an approved share registrar;

the recognized exchange company concerned must suspend dealings in those securities unless within 3 months after the date on which the recognized exchange company first learned of such cessation or before the expiry of 21 days' notice given under subsection (2), whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(2) Before suspending dealings in the securities of a corporation under subsection (1) the recognized exchange company concerned must give notice in writing to the corporation warning the corporation of its intention to suspend dealings in the corporation's securities unless, before the date specified in the notice, being the date on which the period of 3 months specified in subsection (1) expires or 21 days from the date of the notice, whichever is the later, the corporation becomes an approved share registrar or employs an approved share registrar as its share registrar.

(3) The Commission may require a recognized exchange company to give notice under subsection (2) to a corporation which has ceased either to be an approved share registrar or to employ an approved share registrar if, in the Commission's opinion, the recognized exchange company has failed or neglected to do so within a reasonable time, and the recognized exchange company must comply with such a requirement without delay.

(4) A recognized exchange company which has suspended dealings in the securities of any corporation under subsection (1) must permit the recommencement of dealings in those securities when it is satisfied that the corporation has become an approved share registrar or has employed an approved share registrar as its share registrar.

15. Power to exempt

(1) The Commission may exempt all or any particular class of securities issued by a specified corporation from all or any of the provisions of this Part.

(2) An exemption granted under subsection (1) must be notified in writing by the Commission to the specified corporation and to the recognized exchange company which operates the recognised stock market on which the exempted class of securities are, or are proposed to be, listed.

(3) The Commission may withdraw any exemption granted under subsection (1), and such withdrawal must be notified in the same manner as an exemption is required to be notified under subsection (2).

(4) Where any securities of a corporation are listed on a recognised stock market and have been exempted under subsection (1), in the event of a withdrawal under subsection (3) of the exemption the recognised exchange company concerned must suspend dealings in those securities unless at the date of notification of the withdrawal the corporation is, or within 3 months after the date the corporation becomes, an approved share registrar or employs an approved share registrar as its share registrar.

16. Appeal against suspension

(1) Where a recognized exchange company suspends dealings in the securities of a corporation under sections 13 or 14 the corporation may within 21 days of the suspension appeal in writing to the Commission against the suspension.

(2) An appeal under subsection (1) must be accompanied by such submissions in writing as the corporation wishes to make.

(3) On any appeal under subsection (1), the Commission may –

- (a) dismiss the appeal;
- (b) direct the recognized exchange company to recommence dealings in the securities; or
- (c) direct the recognized exchange company to recommence dealings in the securities subject to such conditions as the Commission thinks fit.

PART V

MISCELLANEOUS

17. Suspensions, etc. by recognized exchange company to be notified to the Commission

(1) If a recognized exchange company intends to suspend dealings in any securities it must, where reasonably practicable, inform the Commission of its intention prior to such suspension and, if not so practicable, inform the Commission of the suspension as soon as possible after the event.

(2) A recognized exchange company, after having suspended dealings in any securities, may not permit dealing in them to recommence without first giving notice to the Commission.

(3) A recognized exchange company may not cancel the listing of any securities unless it gives the Commission 48 hours' notice of its intention to do so.

18. Notices, etc. to be in writing

Any notice or direction under these rules must be in writing.

Chairman
Securities and Futures Commission

Explanatory Note

These Rules are made by the Securities and Futures Commission under section 36(1) of the Securities and Futures Ordinance (5 of 2002). They prescribe certain requirements to be met before securities may be listed including requirements for applications for the listing of securities and the employment of approved share registrars and provide for the cancellation of the listing of any specified securities by the Commission if the requirements for listing are not met. The Rules prescribe the circumstances in which and the conditions subject to which a recognized exchange company must suspend dealings in specified securities. They also prescribe for the filing with the Commission of copies of applications for the listing of securities and information disclosed to the public by issuers and certain other persons under the rules and other requirements of a recognized exchange company.

SECURITIES AND FUTURES
(TRANSFER OF FUNCTIONS – STOCK EXCHANGE COMPANY) ORDER

(Made by the Chief Executive in Council under
section 25(1) of the Securities and Futures
Ordinance (No. 5 of 2002))

1. Commencement

This Order shall come into operation on the day appointed for the commencement of Part III of the Securities and Futures Ordinance (No. 5 of 2002).

2. Interpretation

In this Order, unless the context otherwise requires, the expressions "prospectus" (招股章程), "share" (股份) and "debenture" (債權證) have the respective meanings assigned to them by the Companies Ordinance (Cap. 32).

3. Application

Nothing in this Order applies to a prospectus offering interests in a collective investment scheme, the issue of which –

- (a) would be an offence under section 103(1)(b) of the Ordinance; or
- (b) is exempted from the application of section 103(1)(b) solely by virtue of section 103(3)(h) of the Ordinance.

4. Transfer of functions of the Commission

The functions conferred upon the Commission by sections 38B(2A)(b), 38D(3) and (5) and 342C(3) and (5) of the Companies Ordinance (Cap. 32) are transferred to the Stock Exchange Company to the extent that they relate to any prospectus which is concerned with any shares in or debentures of a corporation that have been approved by the Stock Exchange Company for listing on a recognised stock market.

5. Fees

The Stock Exchange Company is entitled to charge and retain any fees for the performance of functions transferred under this Order which, had this Order not been made, would be payable to the Commission under the Securities and Futures (Fees) Rules (L.N. [] of 2002) in relation to the performance by the Commission of such functions.

Clerk to the Executive Council

COUNCIL CHAMBER

2002

Explanatory Note

This Order is made by the Chief Executive in Council under section 25(1) of the Securities and Futures Ordinance (No. 5 of 2002). It transfers certain functions of the Securities

and Futures Commission in relation to prospectuses under the Companies Ordinance (Cap.32) to the Stock Exchange of Hong Kong Limited.