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# Summary of Requirements for Listing Closed Ended Funds

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# **SUMMARY OF REQUIREMENTS**

## **FOR LISTING CLOSED ENDED FUNDS**

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- **HONG KONG STOCK EXCHANGE LIMITED**
- **BERMUDA STOCK EXCHANGE**
- **CAYMAN ISLANDS STOCK EXCHANGE**
- **IRISH STOCK EXCHANGE**
- **LONDON STOCK EXCHANGE**

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## INTRODUCTION

Hong Kong, Bermuda, the Cayman Islands, Ireland and the United Kingdom have different rules and requirements regarding the admission to listing of closed-ended funds/investment companies and mutual funds on their respective stock exchanges. The purpose of this publication is to summarise the key rules and requirements specified by the listing authority of each of the above jurisdictions in relation to:

- listing qualifications;
- listing procedures;
- listing particulars; and
- continuing obligations of a listed issuer.

This publication is intended to provide only general information for clients and contacts of Charltons and does not purport to be comprehensive or to constitute legal advice. It has not been prepared in contemplation of any particular facts and readers are cautioned not to rely on its contents without first taking specialist legal advice.

**SECTION A**

**LISTING**

**QUALIFICATIONS**

## 1. Hong Kong

Both newly formed and existing companies/funds may apply for listing on the Hong Kong Stock Exchange (“the SEHK”). In order to become listed on the SEHK, a closed-ended fund must demonstrate that it satisfies the following general conditions for listing (which are applicable to all applicant companies):-

- it is duly incorporated or otherwise established under the laws of the place where it is incorporated<sup>1</sup>;
- if it is a Hong Kong company it is not a private company<sup>2</sup>;
- both the issuer and its business are suitable for listing<sup>3</sup>;
- its share capital does not include B Shares<sup>4</sup>;
- it has appointed competent officers and has a sufficient management presence in Hong Kong<sup>5</sup>;
- there must be an open market for and an adequate spread of holders of the securities to be listed<sup>6</sup>;
- it is or employs an approved share registrar<sup>7</sup>;
- it is sponsored by a member of the SEHK, issuing house, merchant bank or other similar person if it is a new applicant<sup>8</sup>.

The following additional conditions will apply in respect of an application for listing by investment companies:

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<sup>1</sup> Rule 8.02 of the SEHK Listing Rules.

<sup>2</sup> Rule 8.03 of the SEHK Listing Rules.

<sup>3</sup> Rule 8.04 of the SEHK Listing Rules.

<sup>4</sup> Rule 8.11 of the SEHK Listing Rules. “**B Shares**” are shares of which the proposed voting power does not bear a reasonable relationship to the equity interest of such shares when fully paid. The SEHK may still accept the listing application in limited circumstances.

<sup>5</sup> Rules 8.12 and 8.17 of the SEHK Listing Rules. This will normally mean that the applicant’s secretary and at least two of its executive directors are ordinarily resident in Hong Kong. Further, the board of directors must include at least three independent non-executive directors, at least one of whom must have appropriate professional qualifications or related management expertise. All proposed directors must be competent and fulfil their fiduciary duties and duties of due skill, care and diligence. They must also accept full responsibility for the issuer’s compliance with the SEHK Listing Rules (Rules 8.15, 3.08, 3.09, 3.10, 3.12 of the SEHK Listing Rules).

<sup>6</sup> Rule 8.08(2) and 8.08(3) of the SEHK Listing Rules. The spread will depend on the size and nature of the issue, but in all cases there must be a minimum of 300 shareholders. The Stock Exchange may be prepared to waive the guideline regarding the minimum number of shareholders in appropriate circumstances (for example, where the securities of the investment company are not marketed to the public in Hong Kong (see Rule 21.04)).

<sup>7</sup> Rule 8.16 of the SEHK Listing Rules.

<sup>8</sup> Rule 3.01 of the SEHK Listing Rules.

- the SEHK must be satisfied as to the character, experience, integrity, fitness and competence of the directors of the investment company, its management company and/or its investment adviser, and must be satisfied that the executive management committee have had satisfactory experience in the professional management of investments on behalf of third party investors<sup>9</sup>;
- the investment company should generally have a custodian or trustee which must be acceptable to the SEHK<sup>10</sup>;
- the constitutive documents or trust deed of the investment company should<sup>11</sup>:
  - ⇒ prohibit the investment company from taking management control of underlying investments or owning or controlling more than 30% of the voting rights in any one company or body;
  - ⇒ require a reasonable spread of investments<sup>12</sup>;
  - ⇒ require shareholders' meetings to be convened and conducted in a manner which is acceptable to the SEHK ;
  - ⇒ prohibit any custodian, management company, and any of their connected persons<sup>13</sup>, and every director of any investment company and management company from voting their own shares at, or being part of a quorum for, any meeting to the extent that they have or any of their associates<sup>14</sup> has, a material interest in the business to be conducted;
  - ⇒ require its auditors to be independent of the issuer, any management company and any custodian;
- in the case of a newly formed issuer, at the conclusion of the initial offering of shares or units or, in the case of an existing investment vehicle, at the time of listing, no person should control 30 % or more of the votes exercisable at any general meeting of the issuer<sup>15</sup>;

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<sup>9</sup> Rule 21.04(1) of the SEHK Listing Rules.

<sup>10</sup> Rule 21.04(2) of the SEHK Listing Rules.

<sup>11</sup> Rule 21.04(3) of the SEHK Listing Rules.

<sup>12</sup> Generally this means that the value of its holding of investments issued by any one company or body shall not exceed 20% of the issuer's net asset value at the time when such investment is made.

<sup>13</sup> “**Connected person**” is defined in Rule 1.01 of the SEHK Listing Rules, and includes directors, chief executives or substantial shareholders of the relevant company or any of its subsidiaries or an associate of any of them. A “**substantial shareholder**” refers to a person who is entitled to exercise or control the exercise of, **10%** or more of the voting power at any general meeting of the company.

<sup>14</sup> “**Associate**” is defined in Rule 1.01 of the SEHK Listing Rules and includes, *inter alia*, (i) in the case of an individual: his spouse and children (“**family interests**”), the trustees of any trust of which he or any of his family interests is a beneficiary, and any company in which he, any of his family interests and/or trustees together controls **30%** or more of the voting power at general meeting, and (ii) in the case of a company: any subsidiaries or holding company or fellow subsidiary of such holding company, or company in which it and/or such other company or companies together controls **30%** or more of the voting power at general meeting.

<sup>15</sup> Rule 21.04(4) of the SEHK Listing Rules. The interests of all the associates of a shareholder and any persons acting in concert with a shareholder will be aggregated.

- in the case of a newly formed issuer, the investment objectives, policies and restrictions set out in the listing document must not be changed for a minimum period of 3 years without shareholders' consent<sup>16</sup>.

Finally, the following corporate governance rule amendments to the SEHK Listing Rules were introduced on 31 March 2004, and apply to all listed companies:

- every board of directors of a listed issuer must include at least **three** independent non-executive directors (“**INEDs**”)<sup>17</sup>;
- at least one of the INEDs must have appropriate professional qualifications or accounting or related financial management expertise<sup>18</sup>;
- every listed issuer must establish an audit committee comprising non-executive directors only<sup>19</sup>;
- every listed issuer must employ a full-time accountant<sup>20</sup>.

## 2. Bermuda

The qualifications for listing with the Bermuda Stock Exchange (“**the BSX**”) with which an issuer must comply are as follows:

- it must be incorporated or otherwise established in the British Virgin Islands (funds registered as public funds), Bermuda, Canada, France, Germany, Guernsey, Hong Kong, Isle of Man, Japan, Jersey, Luxembourg, Mauritius, Switzerland, the Republic of Ireland, the United Kingdom or the United States of America<sup>21</sup> or it must restrict investment in its securities to Qualified Investors<sup>22</sup> which may not be traded in lots with an initial value of less than \$100,000<sup>23</sup>;

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<sup>16</sup> Rule 21.04(5) of the SEHK Listing Rules.

<sup>17</sup> Rule 3.10(1) of the SEHK Listing Rules.

<sup>18</sup> Rule 3.10(2) of the SEHK Listing Rules. With regard to “appropriate accounting or related financial management expertise”, the SEHK would expect the person to have, through experience as a public accountant or auditor or as a chief financial officer, controller or principal accounting officer of a public company or through performance of similar functions, experience with internal controls and in preparing and auditing comparable financial statements or experience reviewing or analysing audited financial statements of public companies.

<sup>19</sup> Rule 3.21 of the SEHK Listing Rules. The audit committee must comprise a minimum of three members, at least one of whom is an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise.

<sup>20</sup> Rule 3.24 of the SEHK Listing Rules. The SEHK has indicated that the employment of a full-time accountant by an investment manager would not satisfy Rule 3.24.

<sup>21</sup> Rule 4.5(1) and Appendix 6 of Section IV of the BSX Listing Regulations.

<sup>22</sup> A single investor whose investment is not less than \$1,000,000.

<sup>23</sup> Rule 4.5(2) of Section IV of the BSX Listing Regulations.



- it must be sponsored by a trading member of the BSX<sup>24</sup> and appoint an independent trustee, custodian or prime broker(s)<sup>25</sup>, which is a separate legal entity from the manager, investment adviser and administrator of the collective investment scheme, although these may be part of the same group;
- it must appoint an independent auditor<sup>26</sup>;
- its directors and any manager, investment adviser or administrator must have adequate experience and expertise in its management<sup>27</sup>;
- its securities must be freely transferable (at least between Qualified Investors, in the case of restricted marketing)<sup>28</sup>;
- unless its securities are restricted to Qualified Investors, the issuer's investment policy must prohibit it from taking management control of any underlying investments and require it to obtain the approval of the BSX before it takes legal control of any underlying investment<sup>29</sup>.

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<sup>24</sup> Rule 2.9 of the BSX Listing Regulations.

<sup>25</sup> Rule 4.6 of Section IV of the BSX Listing Regulations.

<sup>26</sup> Rule 4.9 of Section IV of the BSX Listing Regulations.

<sup>27</sup> Rule 4.7 of Section IV of the BSX Listing Regulations.

<sup>28</sup> Rule 4.8 of Section IV of the BSX Listing Regulations.

<sup>29</sup> Rule 4.10 of Section IV of the BSX Listing Regulations.

### 3. Cayman Islands

Both newly formed and existing funds/companies may apply for listing on the Cayman Islands Stock Exchange (“the CSX”). An issuer seeking admission to listing on the CSX must comply with the following conditions:-

- it must appoint a listing agent (unless the application relates to a secondary listing);
- it must be duly incorporated or otherwise established in the Cayman Islands or in a recognised jurisdiction for mutual fund incorporation<sup>30</sup>;
- it must be suitable for listing;
- the issue and marketing of securities of the issuer must be conducted in a fair, open and orderly manner giving investors sufficient information to make an informed decision;
- net asset value of the securities must be calculated at least quarterly<sup>31</sup>;
- its directors and investment manager must have adequate experience and expertise in the management of mutual funds and must collectively and individually take responsibility for the contents of the listing document<sup>32</sup>;
- at least 25% of its listed securities must be in the hands of the public<sup>33</sup>;
- the securities must be freely transferable, but may be subject to certain transfer restrictions provided they are adequately disclosed and approved by the CSX<sup>34</sup>;
- it must appoint a custodian, which must be a separate legal entity from, but may be an associate of the fund, its directors, the investment manager or administrator<sup>35</sup>;
- it must appoint an independent auditor<sup>36</sup>;

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<sup>30</sup> Rule 9.1 of the CSX Listing Rules.

<sup>31</sup> Rule 9.8 of the CSX Listing Rules.

<sup>32</sup> Rule 9.10 (d) of the CSX Rules. Where the investment manager is not known to the CSX, the CSX will rely on the details of the investment manager’s track record, as supplied by the listing agent. The CSX does not apply a benchmark figure to determine the suitability of the investment manager. Each application will be considered on a case by case basis.

<sup>33</sup> Rule 9.2 of the CSX Listing Rules.

<sup>34</sup> Rule 9.5 of the CSX Listing Rules.

<sup>35</sup> Rule 9.6 of the CSX Listing Rules. If the custodian is not known to the CSX it must provide, through the listing agent, evidence that it is of good reputation and has the necessary experience to carry out its duties. If the custodian is a licensed entity in the Cayman Islands, this fact will be taken into account by the CSX.

<sup>36</sup> Rule 9.7 of the CSX Listing Rules.

- if the securities sought to be listed are convertible, they may be admitted to listing only if the CSX is satisfied that investors can obtain information necessary to form an opinion as to the value of the securities into which they are convertible;
- it must appoint a registrar and transfer agent in the Cayman Islands or other financial centre acceptable to the CSX<sup>37</sup>;
- its service providers and directors must also disclose any conflicts of interest that may arise.

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<sup>37</sup> Rule 9.9 of the CSX Listing Rules.

#### 4. Ireland

Existing and newly formed funds/companies may be listed on the Irish Stock Exchange (“**the ISE**”). An issuer seeking listing on the ISE must comply with the following conditions:-

- it must be duly incorporated or otherwise established with limited liability<sup>38</sup>;
- it must have a sponsor appointed for the duration of its listing on the ISE<sup>39</sup>;
- it must demonstrate a spread of investment risk<sup>40</sup>;
- it must be a passive investor<sup>41</sup>;
- it must confine the marketing and sale of units in the listed fund to sophisticated investors where the applicant is not domiciled in an EU Member State, Hong Kong, the Isle of Man, Jersey, Guernsey or Bermuda<sup>42</sup>;
- its auditor’s report relating to the last financial year, must not contain qualifications or refer to matters of fundamental uncertainty, unless the auditor’s report would not have been qualified had the accounts been prepared under another approved standard or method of accounting<sup>43</sup>;
- it must not, in the case of a newly formed issuer, materially change its principal investment objectives and policies for a minimum period of three years other than in exceptional circumstances<sup>44</sup>;
- it must be capable of operating and making decisions independently of any controlling shareholder and all transactions between the issuer and any controlling shareholder must be at arms length and on a normal commercial basis<sup>45</sup>; and
- it must ensure that any dividend payment is only made out of its accumulated net income plus the net of accumulated realised and unrealised capital gains and accumulated realised and unrealised capital losses<sup>46</sup>.

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<sup>38</sup> Rule 2.1 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>39</sup> Rule 2.2 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>40</sup> Rule 2.3 of the ISE Listing Requirements and Procedures for Investment Funds. In particular, no more than 20% of the value of the gross assets of an applicant may be lent to or invested in the securities of any one issuer or may be exposed to the creditworthiness or solvency of any one counterparty (see also Rule 2.52 of the ISE Listing Requirements and Procedures for Investment Funds).

<sup>41</sup> Rule 2.4 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>42</sup> Rule 2.5 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>43</sup> Rules 2.6 and 2.6A of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>44</sup> Rule 2.9 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>45</sup> Rule 2.13 of the ISE Listing Requirements and Procedures for Investment Funds. Although this does not apply in the case of an open ended fund authorised and regulated by the Central Bank.

<sup>46</sup> Rule 2.14 of the ISE Listing Requirements and Procedures for Investment Funds. Although this does not apply where the applicant is authorised and regulated by the Central Bank and an applicant which is a venture capital fund that confines the sale of its units to

The issuer must also satisfy the listing authority that its **directors**:

- have, collectively, appropriate and relevant expertise and experience<sup>47</sup>; and
- are free of conflicts<sup>48</sup>.

Further, at least two of the directors must be independent<sup>49</sup> and all directors are responsible for the information contained in the listing particulars<sup>50</sup>.

The issuer must satisfy the following qualifications relating to its appointed **service providers**:-

- its investment manager has adequate and appropriate expertise and experience<sup>51</sup>, is suitable<sup>52</sup> and free of conflicts<sup>53</sup>;
- its custodian has suitable and relevant experience and expertise<sup>54</sup>, is a separate legal entity to the investment manager and any investment adviser; the custodian must enter into a written legal agreement with the issuer outlining the responsibilities of the custodian<sup>55</sup> including the safekeeping and custody of the assets of the applicant<sup>56</sup>;
- its directors, custodian, investment manager or the issuer itself shall require any broker to segregate its assets and identify them as belonging to the issuer or the custodian as nominee or fiduciary for the issuer<sup>57</sup>;
- where the custodian appoints a subcustodian to provide custody for assets of the issuer, the custodian is required to exercise reasonable skill, care and diligence in selecting the subcustodian, and must maintain an appropriate level of supervision over the subcustodian<sup>58</sup>;
- it must appoint an independent auditor<sup>59</sup>;

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sophisticated investors may distribute proceeds on the sale of investments without taking realised and unrealised capital losses into account provided that sufficient funds are retained to meet its liabilities.

<sup>47</sup> Rule 2.17 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>48</sup> Rule 2.21 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>49</sup> Rule 2.20 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>50</sup> Rule 2.19 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>51</sup> Rule 2.22 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>52</sup> Rule 2.23 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>53</sup> Rule 2.25 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>54</sup> Rule 2.30 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>55</sup> Rule 2.29 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>56</sup> Rule 2.28 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>57</sup> Rule 2.38 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>58</sup> Rules 2.36 and 2.37 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>59</sup> Rule 2.40 of the ISE Listing Requirements and Procedures for Investment Funds.

- it must appoint an entity to be responsible for the determination and calculation of net asset value; this entity must be a separate legal entity from the custodian, subcustodian and broker<sup>60</sup>.

The issuer must also satisfy the following conditions relating to the **securities** for which listing is sought:

- the securities must conform with the laws of the issuer's place of incorporation or establishment and its constitutive documents<sup>61</sup>;
- the securities must be freely transferable and tradable<sup>62</sup> and may be voting or non-voting<sup>63</sup>;
- the securities may not be subject to any transfer restrictions or compulsory redemption except (i) where the holding of such securities may result in regulatory, pecuniary, legal, taxation or material administrative disadvantage for the issuer or the unitholders as a whole or (ii) to maintain a minimum holding per unitholder (as specified in the listing particulars)<sup>64</sup>;
- the listing must relate to all securities of that class<sup>65</sup> and a listed class may not be converted into a different class without the approval of a majority of the holders of that listed class except where the conversion is for the purpose of consolidation of classes and is provided for and explained fully in the listing particulars<sup>66</sup>;
- the price of the securities must not be less than the net asset value per security of that class<sup>67</sup>;
- the net asset value of the securities must be calculated at least quarterly in accordance with accounting standards<sup>68</sup>;
- convertible securities may only be listed if either (a) the securities into which they are convertible are already or will become listed securities, or (b) they are listed on a

<sup>60</sup> Rule 2.39 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>61</sup> Rule 2.41 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>62</sup> Rule 2.43 of the ISE Listing Requirements and Procedures for Investment Funds. Nil or partly paid securities will be regarded as fulfilling this condition provided that the Exchange is satisfied that their transferability is not restricted. In exceptional circumstances approved by the Exchange an applicant may reserve and exercise the right to disapprove the transfer of units provided that the exercise of such power would not materially disturb the market in those units (Rule 2.45 of the ISE Listing Requirements and Procedures for Investment Funds).

<sup>63</sup> Rule 2.42 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>64</sup> Rule 2.44 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>65</sup> Rule 2.47 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>66</sup> Rule 2.48 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>67</sup> Unless authorised by a majority of the holders of that class, offered first on a pro-rata basis to those holders or through the exercise of options and/or warrants which are granted subject to the provisions of the listing particulars. Rule 2.46 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>68</sup> Rule 2.50 of the ISE Listing Requirements and Procedures for Investment Funds.

regulated, regularly operating, recognised exchange, or (c) the Exchange is satisfied that the holders have at their disposal all the information necessary for them to form an opinion concerning the value of the underlying securities<sup>69</sup>.

The key **investment restrictions** with which an issuer must comply include the following:

- it may not take or seek to take legal or management control of any of its underlying investments<sup>70</sup> unless it is investing in venture capital<sup>71</sup> or it is a feeder fund<sup>72</sup>;
- no more than 20% of the value of its gross assets may be lent to or invested in the securities of any one issuer or may be exposed to the creditworthiness or solvency of any one counterparty<sup>73</sup> although up to 40% of the value of its gross assets may be invested in any other fund or may be allocated by the investment manager to any manager to manage on a discretionary basis, provided that the other fund or manager operates on the principle of risk spreading<sup>74</sup>;
- no more than 10% in aggregate of the value of its gross assets may be invested in physical commodities or real property<sup>75</sup>.

In addition, an issuer must provide facilities and information to enable security holders to exercise their rights and in particular issuers must<sup>76</sup>:

- inform security holders of meetings which they are entitled to attend;
- enable security holders to vote;
- publish notices or distribute circulars regarding the allocation and payment of dividends and interest, the issue of new securities and the redemption or repayment of the securities;
- designate one or more financial institutions in member states where the securities are listed through which the security holders may exercise their financial rights.

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<sup>69</sup> Rule 2.51A of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>70</sup> Rule 2.53 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>71</sup> Rule 2.63 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>72</sup> Rule 2.10 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>73</sup> Rule 2.52 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>74</sup> Rule 2.54 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>75</sup> Rules 2.56 and 2.57 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>76</sup> Rule 4.2 of the ISE Listing Requirements and Procedures for Investment Funds.

## 5. United Kingdom

Both newly formed and existing funds/companies may apply for listing on the London Stock Exchange (“LSE”). In evaluating an application for listing, the U.K. Listing Authority (“the UKLA”) will have regard to the following fundamental principles<sup>77</sup>:

- those responsible for managing the investments must have adequate experience;
- there must be an adequate spread of investment risk;
- the issuer must be a passive investor and must not control or seek to control, or be actively involved in the management of any companies or businesses in which it invests;
- the applicant must not, to a significant extent, be a dealer in investments.

An issuer must satisfy the following conditions in order to be admitted to listing:

- it must be duly incorporated or otherwise validly established and operating in conformity with its memorandum and articles of association or equivalent constitutional documents<sup>78</sup>;
- it must have published or filed independently audited and consolidated accounts, covering the last three years or, in the case of a new applicant, the latest accounts must be in respect of a period ending not more than six months before the date of the listing particulars<sup>79</sup>;
- it must be carrying on as its main activity, either by itself or through one or more of its subsidiary undertakings, an independent business for at least the period covered by the accounts required by Rule 3.3(a) of the Listing Rules of the LSE (see last paragraph)<sup>80</sup>;
- if the investment company is not able to satisfy fully the conditions relating to audited accounts for three years and the nature and duration of business activities, it must satisfy the UKLA that its directors and investment managers have sufficient and satisfactory experience in the management of investments of the type in which the company proposes to invest<sup>81</sup>;
- its directors and senior management must collectively have the appropriate expertise and experience for the management of its business<sup>82</sup>;
- its directors are free of conflicts of duty<sup>83</sup>;

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<sup>77</sup> Rule 21.2 of the Listing Rules of the LSE.

<sup>78</sup> Rule 3.2 of the Listing Rules of the LSE.

<sup>79</sup> Rule 3.3 of the Listing Rules of the LSE.

<sup>80</sup> Rule 3.6(a) of the Listing Rules of the LSE.

<sup>81</sup> Rule 21.9 (a) of the Listing Rules of the LSE.

<sup>82</sup> Rule 3.8 of the Listing Rules of the LSE

<sup>83</sup> Rule 3.9 of the Listing Rules of the LSE



- it must be capable of carrying on business independently of its controlling shareholder and all transactions and relationships between the issuer and any controlling shareholder must be at arm's length and on a normal commercial basis<sup>84</sup>;
- the securities sought to be listed must conform with the law of the issuer's place of incorporation, be duly authorised according to the requirements of its memorandum and articles of association and have any necessary statutory or other consents<sup>85</sup>;
- the securities sought to be listed must be admitted to trading<sup>86</sup> and be freely transferable<sup>87</sup>;
- except where securities of the same class are already listed, the expected aggregate market value of all securities to be listed must be at least £700,000 for shares and £200,000 for debt securities<sup>88</sup>;
- a sufficient number of shares of the class sought to be listed must, no later than the time of admission, be distributed to the public in one or more member states<sup>89</sup>;
- an application for a listing must, if no securities of that class are already listed, relate to all securities of that class or if securities of that class are already listed, relate to all further securities of that class<sup>90</sup>;
- the shares or securities sought to be listed must be eligible for electronic settlement<sup>91</sup>.

An applicant issuer must also satisfy the following additional qualifications<sup>92</sup>:-

- if its investment policy is principally to invest its funds in another company or fund which invests in a portfolio of investments, its directors must comprise a majority of the directors of that other company/fund and control the policy of that other company/fund to ensure that the other company/fund conforms with the investment policies and related requirements that apply to investment companies;

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<sup>84</sup> Rule 3.12 of the Listing Rules of the LSE. A controlling shareholder is one who is entitled to exercise or to control the exercise of 30% or more of the rights to vote at general meetings of the company or who is able to control the appointment of directors who are able to exercise a majority of votes at board meetings of the company (Rule 3.13 of the Listing Rules of the LSE).

<sup>85</sup> Rule 3.14 of the Listing Rules of the LSE.

<sup>86</sup> Rule 3.14A of the Listing Rules of the LSE.

<sup>87</sup> Rule 3.15 of the Listing Rules of the LSE. In exceptional circumstances approved by the UKLA an applicant may take power to disapprove the transfer of shares provided that the exercise of such power would not disturb the market in those shares.

<sup>88</sup> Rule 3.16 of the Listing Rules of the LSE. However, the UKLA may admit securities of lower value if it is satisfied that there will be an adequate market for the securities concerned (Rule 3.17 of the Listing Rules of the LSE).

<sup>89</sup> Rule 3.18 of the Listing Rules of the LSE. A sufficient number is distributed when at least 25% of the shares are in public hands although a lower percentage may be acceptable if the market will still operate properly (Rule 3.19 of the Listing Rules of the LSE).

<sup>90</sup> Rule 3.22 of the Listing Rules of the LSE.

<sup>91</sup> Rule 3.27 of the Listing Rules of the LSE.

<sup>92</sup> Rule 21.9 of the Listing Rules of the LSE.

- the board of directors must act independently of any investment managers and a majority must not be directors or employees of or professional advisers to the investment managers or any other company in the same group as the investment manager<sup>93</sup>;
- the distributable income of the issuer must be principally derived from investment and the issuer and any of its subsidiaries must not conduct a trading activity which is significant in the context of the group as a whole;
- except in certain circumstances, the issuer must not take legal or management control of the investments in its portfolio;
- except in certain circumstances, not more than 20% of the gross assets of the company may be lent to or invested in the securities of any one company or group at the time the investment or loan is made;
- the issuer must not pay dividends unless they are covered by income received from underlying investments<sup>94</sup>;
- the distribution of surpluses arising from the realisation of investments as dividends must be prohibited in the issuer's memorandum and articles of association;
- Not more than 10% of the gross assets of the issuer at the time of admission may be invested in other listed investment companies<sup>95</sup>;

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<sup>93</sup> Rule 21.9(d) of the Listing Rules of the LSE. Amendments coming into force on 1 April 2005 will additionally state that no more than one director, partner, other officer or employee of or professional adviser to each such investment manager or any other company in the same group as any such investment manager may be a director of the investment company, and any such director will be subject to annual re-election by shareholders. The amendments will also require the Chairman of the Board of the investment company to be free of conflicts of interest and independent of any investment managers and any other company in the same group as the investment managers.

<sup>94</sup> A share of profits of an associated company is unavailable unless and until distributed to the issuer.

<sup>95</sup> This restriction does not apply to investments in investment companies which themselves have stated investment policies to invest no more than 15% of their gross assets in other listed investment companies.

**SECTION B**

**LISTING**

**PROCEDURE**

## 1. Hong Kong

Securities may be brought to listing on the SEHK in the following ways<sup>96</sup>:

- offer for subscription;
- offer for sale;
- placing;
- introduction;
- rights issue;
- open offer;
- capitalisation issue;
- consideration issue;
- exchange;
- exercise of options or warrants.

A new issuer must be sponsored by a member of the SEHK, issuing house, merchant bank or other similar person who is acceptable to the SEHK<sup>97</sup>. This requirement will end once the new applicant is listed although the SEHK recommends that the issuer retain the services of its sponsor for at least one year following its listing<sup>98</sup>. If the issuer is already listed, it must appoint 2 authorised representatives rather than a sponsor who shall be either 2 directors of the issuer or its secretary and a director<sup>99</sup>.

The sponsor is responsible for preparing the issuer for listing and lodging the formal application for listing and all relevant documents as well as dealing with the SEHK<sup>100</sup>. In addition, the sponsor must be satisfied that the issuer is suitable for listing and that its directors appreciate the nature of their responsibilities and can fulfil their obligations under the SEHK Listing Rules and other applicable laws and provisions relating to securities<sup>101</sup>.

Once an issuer has made the decision to apply for listing, it (or its sponsor in the case of a new applicant) must pay the initial listing fee and make an advance booking with the Listing Committee to consider the merits of the listing application. It then needs to submit documentation in support of its application to enable the Listing Committee to assess its eligibility and suitability for listing prior to the hearing date. The issuer must also sign a Listing Agreement which sets out the obligations of the issuer during and after the listing process<sup>102</sup>.

Listing documents must contain sufficient particulars and information to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position,

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<sup>96</sup> Chapter 7, SEHK Listing Rules.

<sup>97</sup> Rules 3.01 of the SEHK Listing Rules. A potential sponsor will not be considered acceptable by the Exchange if the Exchange does not consider that it will be able to give the new applicant impartial advice.

<sup>98</sup> Rule 3.02 of the SEHK Listing Rules.

<sup>99</sup> Rule 3.05 of the SEHK Listing Rules.

<sup>100</sup> Rule 3.03 of the SEHK Listing Rules.

<sup>101</sup> Rule 3.04 of the SEHK Listing Rules.

<sup>102</sup> Chapter 13 of the SEHK Listing Rules.

management, prospects of the issuer and of its profits and losses and of the rights attaching to the securities<sup>103</sup>.

Once the SEHK has approved the listing of the issuer, the listing documents may be issued and formal notices and announcements published. Dealings in the securities can commence shortly afterwards.

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<sup>103</sup> Rule 11.07 of the SEHK Listing Rules.

## 2. Bermuda

When applying for listing on the BSX, a new issuer must appoint a sponsor who is responsible for ensuring that the issuer receives fair and impartial guidance and advice, lodging all documents with the BSX including the sponsor's declaration and generally communicating with the BSX during the listing process<sup>104</sup>. The sponsor must lodge the following with the BSX<sup>105</sup>:

- a formal letter of application signed by a duly authorised officer and the sponsor together with various supporting documents;
- a prospectus;
- the appropriate fees.

The above requirements are not exhaustive and the issuer must satisfy any additional requirements of the BSX<sup>106</sup>. The BSX will seek to process the application within seven business days of all of the information and supporting documents requested by the BSX<sup>107</sup>. Trading may then commence.

As an estimate, the listing process can in practice, cost between \$7,500 and \$20,000 in legal fees and takes between 2 to 3 weeks, although the BSX claims to be able to respond to an application within 48 hours.

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<sup>104</sup> Rule 2.9 of Section IV of the BSX Listing Regulations.

<sup>105</sup> Rule 5.5 of Section IV of the BSX Listing Regulations.

<sup>106</sup> Rule 5.2 of Section IV of the BSX Listing Regulations.

<sup>107</sup> Rule 5.4 of Section IV of the BSX Listing Regulations.

### 3. Cayman Islands

Securities may be brought to listing on the CSX by any method, including by means of a public offering or private placement or an introduction<sup>108</sup>.

A listing agent registered with the CSX must be appointed by every applicant for a primary listing<sup>109</sup>. The listing agent is responsible for dealing with the CSX on all matters relating to the application and for ensuring the applicant's suitability for listing. There is no need to appoint a listing agent in the case of a secondary listing.

The fund and its listing agent must ensure that it can satisfy all conditions for listing. Applicant investment companies are encouraged to discuss any issues with the CSX directly prior to making any application.

An issuer must submit, through its listing agent, a listing document or one or more such documents and/or pricing supplements<sup>110</sup> in reasonable time<sup>111</sup> for review and comment by the CSX prior to the proposed publication date. Usually this document will be the prospectus which will be used to promote the fund. The CSX Listing Rules require specific disclosures to be included in the document, which must also demonstrate compliance with the CSX's conditions for listing.

All applications for listing are dealt with by the CSX's Head of Listing, and the Listing Department of the CSX. Once the Listing Department is satisfied with an application, they will submit it to the Listing Committee of the CSX for approval. Once the document is approved by the Listing Committee, supporting documentation and the initial listing fee must be filed before the fund is admitted to listing. If the listing application is being made in conjunction with the launch of a fund, the listing approval will be granted subject to the successful launch and the closing of the initial offering.

Once the applicant's securities have been issued and the listing procedures are complete, it will be admitted to listing. It will be allocated a Bloomberg equity ticker and its details, including price information, will be captured on the CSX's dedicated pages on the Bloomberg system. Similar details will also be added to the CSX's internet website, together with any marketing materials submitted to the CSX by the issuer. Once listed, it must continue to comply with its on-going obligations.

The cost of listing an issuer is approximately \$7,500 to \$20,000 and the CSX claims to be able to respond within 24 hours of the application for listing being lodged.

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<sup>108</sup> Rules 2.10 to 2.12 of the CSX Listing Rules.

<sup>109</sup> Rule 2.8 of the CSX Listing Rules.

<sup>110</sup> Rule 2.13 of the CSX Listing Rules.

<sup>111</sup> Rule 2.16 of the CSX Listing Rules.

#### 4. Ireland

When applying for listing on the ISE, an issuer must appoint a sponsor<sup>112</sup>.

The sponsor should apply in writing to the ISE for approval in principle as to the suitability of the applicant for listing, giving brief details of the securities, method of issue and whether an application has been made or will be made to any other stock exchange<sup>113</sup>.

The sponsor is responsible to the ISE for the following<sup>114</sup>:

- satisfying itself that the issuer complies with all of the listing requirements imposed by the ISE;
- satisfying itself that there are no matters other than those disclosed in the listing particulars or otherwise which should be taken into account by the ISE in considering the suitability of the issuer for listing;
- ensuring that the applicant is guided and advised as to the application of the listing rules;
- lodging the formal application for listing and all supporting documents;
- satisfying itself as to the independence of the directors and confirming their identities;
- explaining to the directors prior to listing, the nature of their responsibilities and obligations as directors in respect of the listing particulars and their continuing obligations.

Currently, the authorised sponsors specialising in investment funds include the following:

- J & E Davy
- Dillon Eustace
- Ernst & Young
- Goodbody Stockbrokers
- Kilroys
- NCB Stockbrokers Limited
- RSM Robson Rhodes
- McCann FitzGerald Listing Services Limited
- A&L Listing Limited; A&L Goodbody Solicitors
- Arthur Cox Listing Services Limited

The listing particulars must then be submitted to the ISE for review and approval prior to publication<sup>115</sup>. Once these have been approved, the applicant must submit supporting

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<sup>112</sup> Rule 1.1 of the ISE Listing Requirements and Procedures for Investment Funds

<sup>113</sup> Rule 6.1 of the ISE Listing Requirements and Procedures for Investment Funds

<sup>114</sup> Rule 1.2 of the ISE Listing Requirements and Procedures for Investment Funds

<sup>115</sup> Rule 6.4 of the ISE Listing Requirements and Procedures for Investment Funds.



documents at least 48 hours before the fund is due to list<sup>116</sup>. The listing particulars must then be published and made available to the public in printed form and free of charge<sup>117</sup>. After listing has commenced and the securities are issued pursuant to the listing, the applicant must continue to comply with its ongoing obligations.

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<sup>116</sup> Rule 6.6 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>117</sup> Rules 6.9 and 6.10 of the ISE Listing Requirements and Procedures for Investment Funds.

## 5. United Kingdom

A new issuer may bring securities to listing through the following means<sup>118</sup>:

- an offer for sale;
- an offer for subscription;
- a placing;
- an intermediaries offer;
- an introduction;
- a rights issue;
- an open offer;
- an acquisition or merger issue;
- a tender consideration placing;
- a capitalisation issue; or
- an issue for cash.

An issuer applying for listing on the LSE must appoint a sponsor to manage the listing application. The responsibilities of a sponsor include<sup>119</sup>:

- ensuring that the issuer is properly guided and advised as to the application or interpretation of the relevant listing rules;
- satisfying itself that the issuer has complied with all applicable conditions for listing;
- providing to the UKLA any information or explanation as the UKLA may reasonably require for the purposes of verifying whether listing rules are being and have been complied with by it or by the issuer;
- satisfying itself that the directors of the issuer have had explained to them the nature of their responsibilities and obligations as directors of a listed company;
- obtaining written confirmation from the issuer that the directors have established procedures that provide a reasonable basis for them to make proper judgments as to the financial position and prospects of the issuer and its group and satisfying itself that this confirmation has been given after due and careful enquiry;
- reporting to the UKLA in writing that it has obtained written confirmation from the issuer that the working capital available to the group is sufficient for its present requirements;
- reporting to the UKLA that it has satisfied itself, where a profit forecast or estimate appears in the listing particulars, that the forecast or estimate has been made after due and careful enquiry by the issuer;

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<sup>118</sup> Rules 4.2 to 4.33 of the Listing Rules of the LSE.

<sup>119</sup> Rules 2.7 to 2.17 of the Listing Rules of the LSE.

- obtaining written confirmation from the issuer that the financial information published in the listing particulars has been properly extracted from its accounting records and satisfying itself that this confirmation has been given after due and careful enquiry;
- communicating with the UKLA, lodging all supporting documents and seeking the UKLA's approval of a shelf document and listing particulars.

A public sector issuer and an issuer issuing specialist securities or miscellaneous securities must also have a listing agent when they make an application for listing<sup>120</sup>. The listing agent is responsible to the UKLA for<sup>121</sup>:

- ensuring that the issuer is guided and advised as to the application of the listing rules;
- completing the declaration confirming that all documents required by the listing rules to be included in the application for listing have been supplied to the UKLA and all other requirements of the listing rules have been complied with;
- communicating with the UKLA;
- lodging all documents supporting the application for listing.

The listing fee must be lodged with the UKLA and at least 2 business days before the consideration of the application for admission to listing the various listing particulars must be filed. The UKLA will then consider the application for listing. If the listing is accepted, further documentation must be lodged as soon as practicable or within 5 days of receipt of such documents.

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<sup>120</sup> Rule 2.5 of the Listing Rules of the LSE.

<sup>121</sup> Rule 2.19 of the Listing Rules of the LSE.

**SECTION C**

**LISTING**

**DOCUMENTS**

## 1. Hong Kong

The sponsor must lodge the following documents with the SEHK for initial review at least 20 days before the expected hearing date with the Listing Committee<sup>122</sup>:

- 6 drafts or proofs of the listing document;
- a written submission on any proposed connected transactions;
- 2 copies of the advanced draft of the accounts of the issuer and any statement of adjustments;
- 3 drafts or copies of the memorandum and articles of associations or equivalent constitutive documents of the issuer.

At least 15 clear business days before the expected hearing date, the sponsor must lodge the following with the SEHK<sup>123</sup>:

- a formal declaration relating to any other business activities and undertakings of the issuer; and
- 2 copies of a draft of the board's profit forecast with principal assumptions, accounting policies and calculations if the listing document contains a profit forecast.

At least 10 days before the expected hearing date, the sponsor must lodge the following documents<sup>124</sup>:

- a copy of every contract or details of every verbal agreement referred to in the listing document;
- 2 copies of a draft of the formal notice (if any);
- 5 drafts or proof prints of any application form to subscribe or purchase the securities sought to be listed;
- 5 drafts or proof prints of any temporary document of title proposed to be issued;
- 2 drafts or proof prints of the definitive certificate or other document of title proposed to be issued;
- copies of all relevant resolutions passed.

At least 4 clear business days before the expected hearing date, the sponsor must submit the following documents on behalf of a new issuer<sup>125</sup>:

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<sup>122</sup> Rules 9.11 (1) to (6) of the SEHK Listing Rules.

<sup>123</sup> Rules 9.11(7) and (8) of the SEHK Listing Rules.

<sup>124</sup> Rules 9.11(9) to (11) of the SEHK Listing Rules.

- a formal application for listing;
- 6 copies of the final proof of the listing document;
- 2 copies of the final proof of the formal notice;
- 5 copies of the final proof of any application form to subscribe or purchase the securities for which listing is sought;
- a written submission in support of the application for listing;
- a certified copy of the certificate of incorporation or equivalent document;
- a certified copy of the issuer's constitutive documents;
- 3 copies of the Listing Agreement;
- a certified copy of the resolutions of the issuer in general meeting (if any) and the board of directors authorising the issue and allotment of the securities for which listing is sought;
- 3 copies of the notices of meeting (if any) referred to in the listing document;
- a specimen of any temporary document of title;
- 2 specimens of the definitive certificate or other document of title.

As soon as possible after the hearing date but on or before the date of issue of the listing document, the sponsor must lodge the following documents with the SEHK<sup>126</sup>:

- 4 copies of the listing document;
- 4 copies of the formal notice;
- 4 copies of any application form to subscribe or purchase the securities sought to be listed;
- a certified copy of all letters, documents etc referred to in the listing document;
- 800 copies of the listing document and application forms for distribution;
- a copy of the written notification by the Hong Kong Securities Clearing Company (“**the HKSCC**”) stating the securities will be Eligible Securities<sup>127</sup>.

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<sup>125</sup> Rule 9.12 of the SEHK Listing Rules.

<sup>126</sup> Rule 9.14 of the SEHK Listing Rules.

<sup>127</sup> “Eligible Securities” means an issue of securities accepted as eligible by HKSCC for deposit, clearance and settlement in the Central Clearing and Settlement System (“CCASS”) operated by HKSCC, in accordance with the general rules of CCASS.

Finally, the documents lodged by the sponsor with the SEHK after the issue of the listing documents but before dealing commences must include the following<sup>128</sup>:

- a copy of the listing document, formal notice and/or offer for subscription, sale, open offer, sale by tender, results of the rights issue or placing letter and list of places;
- any annual listing fee payable.

As well as the specific items of information set out in Appendix 1 of the SEHK Listing Rules, every listing document issued by or on behalf of a new issuer must comply with the provisions of the Companies Ordinance in relation to prospectuses and contain the following<sup>129</sup>:

- details of all costs and charges which an investor would be likely to consider material and all deductions made from money subscribed for securities;
- a statement of any costs of establishing the issuer which are to be paid by the issuer together with an estimate of their size and the period over which they are to be amortised;
- details of the investment objectives, policies and restrictions which will be observed on the investment of the issuer's assets and the intended diversification of assets;
- details of the distribution policy and the approximate dates on which distributions will be made;
- details of the principal taxes levied on the issuer's income and any tax deducted on distributions to shareholders;
- a summary of the borrowing powers of the issuer;
- a statement as to whether certificates for securities will be issued in registered or bearer form or in both forms;
- the name, address and description of every director of the issuer and every director of the management company and their experience;
- particulars of what reports will be sent to registered shareholders and when;
- a statement as to whether or not the directors of the issuer, the management company, any investment adviser or any distribution company or any associate of these is or will become entitled to receive any part of any brokerage charged to the issuer or any other re-allowance;
- a warning that an investment in the issuer is subject to abnormal risks, if the nature of the investment policy so dictates;

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<sup>128</sup> Rule 9.16 of the SEHK Listing Rules.

<sup>129</sup> Rule 21.08 of the SEHK Listing Rules.

- details of the issuer's foreign exchange policy and in particular details of any foreign exchange controls or restrictions of relevance to the issuer or its investment policy or objectives;
- in the case of an existing company, full details of all listed investments and all other investments with a value of more than 5% of the issuer's gross assets and details of at least the 10 largest investments;
- in the case of an existing issuer, an analysis of any provision for diminution in value of investments, naming the investments against which provision has been made.

As newly formed funds/companies are permitted to list, unlike other companies seeking listing, financial information is not required.



## 2. Bermuda

An issuer seeking admission to listing must lodge with the BSX a formal letter of application which must contain the following information<sup>130</sup>:

- general details concerning the issuer, its incorporation or other establishment;
- a formal request for the listing of the securities specifying the nature of the securities, the proposed method by which the securities are to be brought to listing and details of any proposed distribution of the securities, the estimated market capitalisation, and an estimate of the net proceeds;
- details of the share capital or ownership of the issuer;
- a short history of the issuer including a description of the business, its subsidiaries, investment policies and restrictions, principal investments held and the manner in which securities have been marketed in the past;
- a summary of the performance of the issuer for the last three financial years or from the date of inception including the balance sheet for that period;
- details of any subsidiaries;
- details of dividend payments over the last three years;
- details of any litigation or claims against any member of the group in the last five years;
- details of every director or proposed director and any person who performs an important role in the group, the nature of any family relationship between them, their business experience over the last five years and any criminal convictions or bankruptcies;
- the details of any sponsor, financial advisers, principal bankers, authorised representatives, solicitors, custodians or trustees and the share registrar/transfer agent;
- a statement of any requirements that have been waived, modified or cannot be met; and
- a declaration that the BSX Listing Regulations have been complied with.

In support of its letter of application, an issuer must lodge the following documents with the BSX:

- a certified copy of its certificate of incorporation or equivalent document, its constitution, the resolutions of the applicant and the board of directors authorising the issue and allotment of the securities;
- the audited annual report and accounts for the three preceding financial years or since incorporation if shorter;

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<sup>130</sup> Appendix 1 of Section IV of the BSX Listing Regulations.

- an Issuer's Undertaking in the form set out in Appendix 3 of section IV of the BSX Listing Regulations ;
- a copy of any temporary document of title and any definitive document of title to be used in respect of the securities to be listed; and
- a certified copy of every material letter, report, valuation, contract, resolution and other documents referred to in the prospectus.

The prospectus must contain a statement disclaiming the liability of the BSX and particulars and information which is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the applicant issuer and of its profits and losses and of the rights attaching to such also securities<sup>131</sup>. In particular it must contain the following<sup>132</sup>:

- general information about the issuer, its advisers, management team and the prospectus;
- information about the securities for which listing is sought and the terms and conditions of their issue and distribution, the applicant issuer's capital, its investments and any investment managers and advisers etc;
- financial information about the group and the prospects of the group;
- details of the intended use of the proceeds of the issue;
- details of all material contracts entered into by any member of the group within the two years immediately preceding the issue of the prospectus; and
- the times and locations where the constitution of the issuer, contracts, reports, letters or other documents, balance sheets, valuations and statements by any expert and audited accounts can be inspected.

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<sup>131</sup> Rule 5.9 of Section IV of the BSX Listing Regulations

<sup>132</sup> Appendix 2 of Section IV of the BSX Listing Regulations

### 3. Cayman Islands

The following documents must be submitted to the CSX together with the initial listing fee and annual fee for the first year before formal approval is given<sup>133</sup>:

- an application for listing;
- 2 copies of the listing document in final form;
- a declaration by the issuer, each director and proposed director and the listing agent;
- a letter from the issuer or listing agent confirming which of the listing requirements (if any) do not apply;
- a shareholders' statement where applicable;
- a copy of the issuer's constitutional documents;
- the audited financial statements (in the case of an existing issuer) of the issuer and any guarantor for each of the periods forming the issuer or guarantor's financial record as detailed in the listing document;
- any interim financial statements;
- a copy of any reports, letters, valuations, expert statements, contracts or other documents referred to in the listing document;
- a copy of any temporary and definitive documents of title.

The listing document lodged by the issuer must contain the following<sup>134</sup>:

- the name, address and domicile of the applicant issuer and its legal form;
- a directors' responsibility statement;
- details of its auditors and other service providers;
- information regarding any pending legal proceedings;
- a statement that application for listing has been made in relation to the securities;
- information regarding the nature, amount and price of the issue and details of any valuation, subscription and redemption procedures, as well as arrangements for conversion between classes of securities and a clear statement as to any cross-class liabilities;

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<sup>133</sup> Rules 2.18 and 9.57 of the CSX Listing Rules.

<sup>134</sup> Rules 9.10 to 9.46 of the CSX Listing Rules.

- a description of the investment objective and policies;
- a statement of the dividends policy;
- details of any investments made or to be made other than by purchase through a stock exchange or other open market;
- details of all material risks;
- details of the investment manager, custodian, sub-custodian and advisers;
- a summary of the provisions of all material contracts;
- details of directors' service agreements and the aggregate remuneration of directors;
- where an issuer fund has not commenced operations, a statement to that effect;
- where an issuer has been in existence for less than twelve months, an audited statement of net asset value and the portfolio of investments as of a date not more than three months prior to the date of the listing document;
- where the issuer has been in existence for twelve months or more at the date of listing, audited accounts must be provided. If more than nine months have elapsed since the date to which the last audited accounts were made up, an interim financial statement made up to a date no earlier than three months prior to the date of the listing document must be included;
- a statement of any material information which may be relevant to the financial prospects of the issuer for at least the current financial year or since commencement of operations;
- where the listing document contains a profit forecast, a statement of the principal assumptions;
- the terms of the securities to be listed;
- details of the promoter (if any);
- details of any litigation or claims of material importance pending or threatened;
- provision in its constitution that it will obtain shareholder approval before:
  - ⇒ changing its constitution;
  - ⇒ changing the rights of any class of listed securities;
- creating any additional classes of securities;
- materially changing its investment policies or objectives, investment restrictions or borrowing restrictions;

- extending the life of or terminating the fund or compulsorily redeeming all of its securities.

A supplementary listing document must be prepared if, after the listing document has been approved by the CSX , the issuer becomes aware that there has been a significant change in the listing document or a significant new matter has arisen<sup>135</sup>.

The issuer must have copies of the following documents available for inspection<sup>136</sup>:

- its constitutional documents;
- all material contracts referred to in the listing document;
- the listing document and any supplementary listing documents;
- any interim financial statements.

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<sup>135</sup> Rule 2.21 of the CSX Listing Rules.

<sup>136</sup> Rule 9.47 of the CSX Listing Rules.

#### 4. Ireland

The following must be included in the applicant's listing documents:

- a statement disclaiming the liability of the ISE <sup>137</sup>;
- details of the persons responsible for the listing particulars, the auditors and any other advisers <sup>138</sup>;
- details relating to the securities for which the listing application is being made <sup>139</sup>;
- particulars of the issuer's and its capital <sup>140</sup>;
- details of the issuer's investment policy <sup>141</sup>;
- details regarding the issuer's directors and service providers <sup>142</sup>;
- information regarding the issuer's assets, liabilities and financial position <sup>143</sup>;
- an existing issuer must provide the following audited information <sup>144</sup>:
  - ⇒ audited annual accounts which should contain a balance sheet, a profit and loss account and notes;
  - ⇒ an audited statement of net assets and audit report;
  - ⇒ a director's statement confirming that there has been no significant change in the financial or trading position of the applicant since the date of the audited information;
- in the event that unaudited financial information is used the issuer must provide details and a comprehensive and meaningful analysis of all investments made or to be made at the date of listing <sup>145</sup>.

Where applicable, issuers must also provide the following additional information:

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<sup>137</sup> Rule 3.A of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>138</sup> Rules 3.A.1 to 3.A.10 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>139</sup> Rule 3.B of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>140</sup> Rule 3.C of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>141</sup> Rule 3.D of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>142</sup> Rule 3.E of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>143</sup> Rule 3.G of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>144</sup> Chapter 5 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>145</sup> Rules 5.17 to 5.22 of the ISE Listing Requirements and Procedures for Investment Funds.

- details of the financial institution which is the paying agent in Ireland at the time of listing<sup>146</sup>;
- a statement as to whether the issuer assumes responsibility for the withholding of tax at source<sup>147</sup>;
- a statement of the offer if there has been a takeover offer by a third party in relation to its securities in the last financial year or any public takeover offer by the applicant<sup>148</sup>;
- details of the private placement of any securities whether in the same class or not, that occurred simultaneously or almost simultaneously with the issue for which the application is made<sup>149</sup>;
- details relating to an offer by way of rights, open offer or allotment by way of capitalisation of reserves or undistributed profits to the holders of existing listed securities if any<sup>150</sup>;
- details of the aggregate number of units reserved for allocation to its existing unitholders, directors, employees and past employees or its subsidiary undertakings and any other preferential allocation arrangements where the units for which application is being made are being marketed by a new applicant<sup>151</sup>;
- a statement that various documents are available for inspection at a specified location in or near Dublin<sup>152</sup>;
- details of authorised but unissued capital (if any), the categories of persons having preferential subscription rights for such capital and the terms and arrangements for the unit issue of such capital<sup>153</sup>;
- the details of any units not representing capital<sup>154</sup>;
- a summary of the changes over the last three years (if applicable) in the amount of issued capital and the capital of any member of its group<sup>155</sup>;

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<sup>146</sup> Rule 4.3 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>147</sup> Rule 4.4 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>148</sup> Rule 4.5 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>149</sup> Rule 4.6 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>150</sup> Rule 4.7 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>151</sup> Rule 4.8 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>152</sup> Rule 4.10 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>153</sup> Rule 4.11 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>154</sup> Rule 4.12 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>155</sup> Rule 4.13 of the ISE Listing Requirements and Procedures for Investment Funds.

- the name of any person other than a director or investment manager who directly or indirectly is interested in 10% or more of any class of capital carrying a right to vote at general meetings of the applicant, together with the amount of each such person's interest or, if there are no such persons, a negative statement to that effect<sup>156</sup>;
- details of any units which the applicant or any subsidiary has acquired where such details are different from the balance sheet<sup>157</sup>;
- details of the consideration and any variation in the total emoluments receivable by the directors or investment manager of the applicant as a consequence of a merger, division of a company, takeover offer, acquisition of an undertaking's assets and liabilities or transfer of assets<sup>158</sup>;
- particulars of any arrangement under which a director of the applicant has waived or agreed to waive future emoluments and any waivers which occurred in the last financial year<sup>159</sup>; and
- details of the applicant's business activities<sup>160</sup>, assets, liabilities and financial position<sup>161</sup> and general information regarding the trend of the applicant's operations and prospects for the current financial year<sup>162</sup>.

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<sup>156</sup> Rule 4.14 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>157</sup> Rule 4.15 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>158</sup> Rule 4.16 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>159</sup> Rule 4.17 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>160</sup> Rules 4.18 to 4.28 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>161</sup> Rules 4.29 to 4.31 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>162</sup> Rule 4.32 of the ISE Listing Requirements and Procedures for Investment Funds.



## 5. United Kingdom

When applying for listing on the LSE an applicant issuer must:

- lodge the following documents in final form with the UKLA no later than midday at least 2 business days prior to the consideration of the application for admission to listing<sup>163</sup>:
  - ⇒ an application for admission to listing in the appropriate form issued by the UKLA signed by a duly authorised officer of the issuer;
  - ⇒ two copies of the listing particulars, circular or other document relating to the issue signed and dated by every director and proposed director of the issuer or his agent or attorney, together with, where relevant, copies of any notice of meeting referred to in such documents;
  - ⇒ where applicable, a copy of a national newspaper which contains the listing particulars, mini prospectus, offer notice, formal notice or other document;
  - ⇒ a copy of the resolution of the board of the issuer allotting the securities;
  - ⇒ in the case of a new applicant, a copy of the certificate of incorporation or equivalent document and details of any corporate shareholder holding 5% or more of the issued equity shares if so requested by the UKLA;
  - ⇒ in the case of debt securities, a letter of compliance in respect of the trust deed and if the securities are bearer securities, any certificates required;
  - ⇒ a letter from the sponsor or listing agent confirming that any deferred settlement arrangements have been formally agreed with a recognised investment exchange on which the securities are to be admitted to trading; and
  - ⇒ a copy of the issuer's application for admission to trading in the appropriate form issued by the relevant recognised investment exchange signed by a duly authorised officer of the issuer for each recognised exchange to which the issuer is applying for admission to trade;
- at least 2 business days before the expected date of the consideration of the application for admission to listing, publish the listing particulars and shelf documents by making them available to the public for inspection at the Document Viewing Facility and in printed form free of charge in sufficient numbers to satisfy public demand at the issuer's registered office in the UK (if any) and the offices of any paying agent of the issuer in the UK<sup>164</sup>. A formal notice must also be inserted in at least one national newspaper no later than the next business day following publication of the listing particulars unless the securities for which application is being made are of a class already listed. In the case of

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<sup>163</sup> Rule 7.5 of the Listing Rules of the LSE.

<sup>164</sup> Rule 8.4 of the Listing Rules of the LSE.

an offer for sale or subscription the issuer may elect instead to insert an offer notice, mini-prospectus or full listing particulars in a national newspaper<sup>165</sup>;

- lodge the following with the UKLA no later than 9.00am on the day of the consideration of the application for admission to listing<sup>166</sup>:
  - ⇒ the appropriate listing fees;
  - ⇒ where no prospectus has been published, a letter, signed by the issuer and any offeror of those securities to the UKLA confirming that it has not offered and will not offer the securities to the public in the UK for the first time prior to listing; and
  - ⇒ a duly completed shareholder or pricing statement in the appropriate form issued by the UKLA.

The listing particulars must include<sup>167</sup>:

- details of each of the persons responsible for the listing particulars, the auditors and any relevant advisers;
- details of the securities sought to be listed;
- details of the issuer and its capital structure;
- details of the issuer's management team;
- any recent developments and prospects concerning the group/issuer.

The UKLA will then review the documents and announce its decision whether or not to admit the securities to listing. If the listing is accepted, the following documents must be lodged with the UKLA as soon as practicable and in any event, no later than 5 business days after they become available<sup>168</sup>:

- in an intermediaries offer, the details of each intermediary to whom securities were allocated;
- in an introduction, a statement of the price at which dealings in the securities opened and payment of any consequential increase in, or written request for reimbursement of part of, the charges due;
- in an issue pursuant to a right of offer or to buy out minority shareholders, a copy of that notice;

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<sup>165</sup> Rule 8.7 of the Listing Rules of the LSE.

<sup>166</sup> Rule 7.7 of the Listing Rules of the LSE.

<sup>167</sup> Chapter 6 of the Listing Rules of the LSE.

<sup>168</sup> Rule 7.8 of the Listing Rules of the LSE.

- a statement of the number of securities which were in fact issued and, where different from the number which were the subject of the application, the aggregate number of securities in that class in issue;
- a written request for reimbursement of listing fees if the number of securities issued is less than the number which was the subject of the application;
- where only a final draft of a formal notice has been lodged with the UKLA, a copy of the formal notice;
- a declaration in the form issued by the UKLA given by a duly authorised officer of the issuer;
- if requested by the UKLA, a declaration from the security printers responsible for production of any bearer documents of title.

However, at any time either before or after the admission to listing, the UKLA may require the issuer to produce the following<sup>169</sup>:

- any agreement to acquire any assets, business or shares in consideration for or in relation to which its securities are being issued;
- any letter, report, valuation, contract or other documents referred to in the listing particulars or other circular or document issued in connection with those securities;
- a copy of its memorandum and articles of association;
- its annual report and accounts and that of any guarantor, for each of the periods which form part of its financial record (if any) contained in the listing particulars;
- any interim accounts made up since the date to which the last annual report and accounts were made up and prior to the date of admission;
- in the case of debt securities, a copy of any temporary and definitive document of title;
- in the case of an application in respect of securities issued pursuant to an employee's share scheme, a copy of the scheme document; and
- where listing particulars or another document are published in connection with any scheme requiring court approval, a copy of any court order and of the certificate of registration issued by the Registrar of Companies; and
- a copy of a court order approving the scheme if required.

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<sup>169</sup> Rule 7.9 of the Listing Rules of the LSE.

**SECTION D**

**CONTINUING**

**OBLIGATIONS**

## 1. Hong Kong

The continuing obligations of an issuer are principally contained in Chapters 13 and 14 of the SEHK Listing Rules, and include the following:

- an issuer must notify the SEHK, members of the issuer and other holders of its listed securities as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:-
  - ⇒ is necessary to enable them and the public to appraise the position of the group; or
  - ⇒ is necessary to avoid the establishment of a false market in its securities; or
  - ⇒ might reasonably be expected to materially affect market activity in and the price of the securities<sup>170</sup>;
- a general disclosure obligation<sup>171</sup> will arise in the following circumstances:
  - ⇒ where any of the percentage ratios<sup>172</sup> of a relevant advance to an entity exceeds 8% (an advance to a subsidiary of the issuer will not be regarded as an advance to an entity)<sup>173</sup>;
  - ⇒ where any of the percentage ratios of financial assistance to affiliated companies of an issuer, and guarantees given for facilities granted to such affiliated companies together in aggregate exceeds 8%<sup>174</sup>;
  - ⇒ where the controlling shareholder of the issuer has pledged its interest in shares of the issuer to secure debts of the issuer or to secure guarantees or other support of obligations of the issuer<sup>175</sup>;
  - ⇒ where an issuer (or any of its subsidiaries) enters into a loan agreement that includes a condition imposing specific performance obligations on any controlling shareholder (e.g. a requirement to maintain a specified minimum shareholding in the issuer) and breach of such obligation will cause a default in respect of loans that are significant to the operations of the issuer<sup>176</sup>;

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<sup>170</sup> Rule 13.09 of the SHK Listing Rules.

<sup>171</sup> “**General disclosure obligation**” refers to the obligation to keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of relevant information.

<sup>172</sup> “**Percentage ratios**” refers to the assets ratio, profits ratio, revenue ratio, consideration ratio and equity capital ratio, as set out in Rules 14.04(9) and 14.07 of the SEHK Listing Rules,

<sup>173</sup> Rule 13.13 of the SEHK Listing Rules. The disclosure obligation to inform holders of the issuer's securities or the public will be satisfied by the information being published in the newspapers.

<sup>174</sup> Rule 13.16 of the SEHK Listing Rules.

<sup>175</sup> Rule 13.17 of the SEHK Listing Rules.

<sup>176</sup> Rule 13.18 of the SEHK Listing Rules.

⇒ when there is a breach of the terms of loan agreements by the issuer, such that the lenders may demand immediate repayment of the loans (and have not issued a waiver in respect of the breach)<sup>177</sup>;

Chapter 13 of the SEHK Listing Rules imposes the following additional continuing obligations on listed issuers:

- if the issue of new securities by it or the purchase by it of its listed securities will result in a change in the terms of conversion of any of its convertible securities or in the terms of the exercise of any of its options, warrants or similar rights, the issuer must publish in the newspapers an announcement as to the effect of any such change wherever practicable, prior to the new issue or as soon as possible afterwards<sup>178</sup>;
- the issuer must notify the SEHK in writing and publish in the newspapers a notice of the closure of its transfer books or register of members at least 14 days before such closure<sup>179</sup>;
- the issuer must ensure that notice of every annual general meeting is published in the newspapers<sup>180</sup>;
- the issuer must publish an announcement in the newspapers the next business day following the date on which the directors agree to issue securities for cash under the authority of a general mandate granted by the shareholders<sup>181</sup>; the issuer must send to a copy of its annual report, accounts and the auditor's report to every member of the issuer and every other holder of its listed securities at least 21 days before its annual general meeting but not more than four months after the end of the financial year to which they relate<sup>182</sup>;
- the issuer must publish in the newspapers a preliminary announcement of the results for the first 6 months of each financial year unless that financial year is of 6 months or less, the next business day after approval by or on behalf of the board but no later than 3 months after the end of that period of 6 months<sup>183</sup>;
- unless the financial year is of 6 months or less, the issuer shall send an interim report in relation to the first 6 months of the financial year of the issuer to every member or other holder of its listed securities not later than 3 months after the end of that period of 6 months and 25 copies of each of the English language version and the Chinese language version must also be sent to the SEHK<sup>184</sup>;

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<sup>177</sup> Rule 13.19 of the SEHK Listing Rules.

<sup>178</sup> Rule 13.27 of the SEHK Listing Rules.

<sup>179</sup> Rule 13.66 of the SEHK Listing Rules.

<sup>180</sup> Rule 13.37 of the SEHK Listing Rules.

<sup>181</sup> Rule 13.28 of the SEHK Listing Rules.

<sup>182</sup> Rule 13.46 of the SEHK Listing Rules.

<sup>183</sup> Rule 13.49(6) of the SEHK Listing Rules.

<sup>184</sup> Rule 13.48 of the SEHK Listing Rules.

- the issuer shall publish in the newspapers its preliminary results for each financial year the next business day after approval by or on behalf of the board but not later than four months after the date upon which the financial period ended and supply the SEHK with the names of the relevant newspapers and the date of publication<sup>185</sup>;
- the issuer must inform the SEHK at least seven clear business days in advance of the date fixed for any board meeting at which the declaration, recommendation or payment of a dividend is expected to be decided or at which any announcement of the profits or losses for any year, half-year or other period is to be approved for publication and also inform the SEHK of any resulting decision<sup>186</sup>;
- the issuer must immediately inform the SEHK of the following events<sup>187</sup>:
  - ⇒ any proposed change to its capital structure;
  - ⇒ any decision to change the general character or nature of its business;
  - ⇒ any proposed changes to its memorandum and articles of association;
  - ⇒ any changes to its directorate or supervisory committee,
  - ⇒ any changes to the rights attaching to any class of listed securities, or to the rights attaching to any shares into which any listed debt securities are convertible or exchangeable,
  - ⇒ any change in its secretary, auditors or registered address, or its financial year end;
- the issuer must inform the SEHK of the basis of allotment of securities offered to the public for subscription or sale or an open offer and the results of any rights issue and of the basis of any acceptance or excess applications by no later than the morning of the following business day<sup>188</sup>;
- the issuer must inform the SEHK as soon as possible after any purchase, sale, drawing or redemption by the issuer or any member of the group, of its listed securities<sup>189</sup>;
- the issuer must inform the SEHK as soon as possible of the appointment of a receiver or manager, the presentation of any winding-up petition, or equivalent application, the passing of any resolution by the issuer, its holding company or any major subsidiary that it be wound up, the entry into possession or of the sale by any mortgagee of a portion of

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<sup>185</sup> Rule 13.49(1) of the SEHK Listing Rules.

<sup>186</sup> Rule 13.43 of the SEHK Listing Rules.

<sup>187</sup> Rules 13.51 of the SEHK Listing Rules.

<sup>188</sup> Rule 13.30 of the SEHK Listing Rules.

<sup>189</sup> Rule 13.31 of the SEHK Listing Rules.

the issuer's assets where the aggregate value of the total assets or the aggregate amount of profits or revenue attributable to such assets represents more than 5% of any of the percentage ratios<sup>190</sup>;

- the issuer must immediately inform the SEHK if it becomes aware that the number of listed securities which are in the hands of the public has fallen below the relevant prescribed minimum percentage and if any part of the securities of the issuer or any of its subsidiaries becomes listed or dealt in on any other stock exchange<sup>191</sup>;
- except in certain circumstances, the issuer shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting shares, securities convertible into shares or options, warrants or similar rights to subscribe for any shares or such convertible shares and any major subsidiary of the issuer making any such allotment, issue or grant so as materially to dilute the percentage equity interest of the issuer and its shareholders in such subsidiary<sup>192</sup>;
- issuers are required to obtain independent shareholders' approval for the second and subsequent refreshments of a general mandate to the directors of the issuer to allot or issue securities in any one year<sup>193</sup>;
- the issuer must provide the SEHK with 25 copies of each of the English language version and the Chinese language version of all circulars to holders of securities, its annual report and accounts and summary financial report, and its interim report and summary interim report, at the same time as they are dispatched to holders of the issuer's listed securities in Hong Kong; seven copies of documents relating to takeovers, mergers and offers, notices of meetings, forms of proxy, notices by advertisement to holders of its bearer securities, reports, announcements or other similar documents and eight certified copies of all resolutions of the issuer;
- the issuer or its registrar must provide a standard securities registration service but may provide other optional registration services<sup>194</sup>;
- the issuer must obtain prior shareholder approval for directors' service contracts that may exceed three years or directors' service contracts that expressly require the issuer to give a period of notice of more than one year or to pay compensation of more than one year's emoluments on termination<sup>195</sup>;

Rule 21.12 of the SEHK Listing Rules imposes the following additional continuing obligations on investment companies:

- the annual reports and accounts must include:

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<sup>190</sup> Rule 13.25 of the SEHK Listing Rules.

<sup>191</sup> Rule 13.32 of the SEHK Listing Rules.

<sup>192</sup> Rule 13.36(1) of the SEHK Listing Rules.

<sup>193</sup> Rule 13.36(3) of the SEHK Listing Rules.

<sup>194</sup> Rule 13.59 of the SEHK Listing Rules.

<sup>195</sup> Rule 13.68 of the SEHK Listing Rules.



- ⇒ a list of all investments with a value greater than 5% of the investment company's gross assets, and at least the 10 largest investments;
  - ⇒ an analysis of any provision for diminution in the value of investments;
  - ⇒ an analysis of realised and unrealised surpluses, stating separately profits and losses between investments which are listed on a regulated, regularly operating, open stock market which is recognised by the SEHK, and those investments which are not so listed.
- the interim report and any preliminary announcement of results for the full year must include a division of income between:
    - ⇒ dividend and interest received; and
    - ⇒ other forms of income (which may be income of associated companies)
  - the investment company must publish in the newspapers a statement of its net asset value as at the end of each month within 15 days of that date.

The provisions relating to notifiable transactions and connected transactions are set out in Chapter 14 and 14A of the SEHK Listing Rules. The main provisions of Chapter 14 and 14A applicable to listed issuers<sup>196</sup> are as follows:

- as soon as possible after the terms of a major transaction<sup>197</sup> and very substantial disposal<sup>198</sup> have been agreed, an issuer must inform the SEHK and send to the SEHK a draft announcement; once the announcement has been amended to take account of the SEHK's comments, the issuer must publish such announcement in the newspapers on the next business day; within 21 days of such publication, the issuer must send to shareholders and the SEHK a circular in English and Chinese which contains details of the transaction; the transaction is conditional on approval by shareholders.

In certain situations the issuer must disclose the terms of any connected transactions and obtain its shareholders' approval as soon as possible before finalising the transaction<sup>199</sup>;

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<sup>196</sup> The effect of Rule 21.13 of the SEHK Listing Rules is to exempt listed investment companies from the obligation to comply with Chapter 14, except for the rules relating to major transactions and very substantial disposals.

<sup>197</sup> A "**major transaction**" is a transaction or series of transactions by a listed issuer where any percentage ratio is 25% or more, but less than 100% for an acquisition or 75% for a disposal (Rule 14.06(3) of the SEHK Listing Rules).

<sup>198</sup> A "**very substantial disposal**" is a disposal or series of disposals of assets by a listed issuer where any percentage ratio is 75% or more (Rule 14.06(4) of the SEHK Listing Rules).

<sup>199</sup> Chapter 14A of the SEHK Listing Rules. A "**connected transaction**" is any transaction between a listed issuer or any of its subsidiaries and a connected person and an acquisition or realisation by a listed issuer or any of its subsidiaries of an interest in a company, a substantial shareholder or which is, or is proposed to be, a director, chief executive or controlling shareholder of the listed issuer acquiring or realising issuer or any of its subsidiaries or an associate of such director, chief executive or controlling shareholder of the listed issuer or any of its subsidiaries.

## 2. Bermuda

The continuing obligations of an issuer differ depending upon whether the securities are publicly traded or restrictively marketed<sup>200</sup>.

### (a) Publicly Traded Issues

The continuing obligations in relation to publicly traded issues include the following:

- the BSX and holders of listed securities must be kept informed, by way of public announcements and/or circulars, of information which is necessary to enable them to appraise the financial position of the scheme, avoid the establishment of a false market in its securities and which may affect market activity in and the price of the listed issuer's<sup>201</sup>;
- the issuer must notify the BSX of its net asset value as a whole and per security and of the issue and redemption prices per security whenever they are calculated and the percentage change in the net asset value of the issuer and per security since the previous notification<sup>202</sup>;
- the issuer must give to the BSX notice of every general meeting at the same time as such notice is sent to the holders of the issuer's listed securities<sup>203</sup>;
- the issuer must prepare audited annual accounts, which shall include a report by the directors, within six months of the end of the financial period which shall be sent to every holder of its listed securities, trading member of the BSX and the BSX<sup>204</sup>;
- the directors of the issuer must deliver to the BSX a preliminary announcement of the results for the full financial year and any interim period for which an interim financial statement will be published<sup>205</sup>;
- the issuer must consult the BSX in advance of undertaking any action which may affect the suitability of the issuer for listing or may materially adversely affect the interests of shareholders<sup>206</sup>;
- the issuer must advise the BSX if its securities cease to be listed on another stock exchange or if it is the subject of disciplinary action by another stock exchange or securities regulatory body<sup>207</sup>;

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<sup>200</sup> "Restricted marketing" means the issuer must restrict investment in its listed securities to Qualified Investors. "Qualified Investor" means an investor who has completed an investor suitability declaration and either (i) makes an investment of not less than \$100,000, or otherwise meets one of the suitability tests set out in the declaration.

<sup>201</sup> Rule 6.3 of Section IV of the BSX Listing Regulations.

<sup>202</sup> Rule 6.5 of Section IV of the BSX Listing Regulations.

<sup>203</sup> Rule 6.6 of Section IV of the BSX Listing Regulations.

<sup>204</sup> Rule 6.7 of Section IV of the BSX Listing Regulations.

<sup>205</sup> Rule 6.10 of Section IV of the BSX Listing Regulations.

<sup>206</sup> Rule 6.11(1) of Section IV of the BSX Listing Regulations.

- the issuer must notify the BSX, and unless otherwise directed by the BSX send to shareholders a report setting out details of, the following y discloseable events<sup>208</sup>:
  - ⇒ any material change in its investment policies, objectives, restrictions or borrowing restrictions;
  - ⇒ the incurring of any significant debt;
  - ⇒ any significant trading or non-trading losses;
  - ⇒ any significant changes to the composition of the board of directors or senior management personnel;
  - ⇒ any involvement in significant litigation proceedings;
  - ⇒ any agreement to acquire or dispose of an investment to or from one of its directors or a family member of one of its directors or a substantial shareholder, unless the related party transaction has been itemised as a central part of its usual policy;
  
- the issuer must consult with and notify the BSX of any changes to<sup>209</sup>:
  - ⇒ its constitution;
  - ⇒ the rights attaching to any class of listed securities;
  - ⇒ the general character or nature of the scheme;
  - ⇒ its investment policies, objectives, restrictions or borrowing restrictions;
  - ⇒ the way in which net asset value or issue and redemption prices are calculated;
  - ⇒ the trustee or custodian, manager, investment adviser, administrator or auditor;
  - ⇒ the control of the trustee or custodian, manager or investment adviser;
  - ⇒ the registrar or any sub-custodians;
  - ⇒ the status of the scheme for taxation purposes;
  - ⇒ the board of directors;
  - ⇒ its registered address.

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<sup>207</sup> Rule 6.11(2) of Section IV of the BSX Listing Regulations.

<sup>208</sup> Rule 6.12 of Section IV of the BSX Listing Regulations.

<sup>209</sup> Rule 6.13 of Section IV of the BSX Listing Regulations.

- the issuer must submit to the BSX for review, copies of drafts (before they are issued) of any announcements or advertisements relating to a change in or affecting arrangements regarding trading in its listed securities on the BSX<sup>210</sup>;
- the issuer must maintain a complete file of all advertising and other materials issued with a view to marketing the scheme and its listed securities<sup>211</sup>;
- any decision by the issuer to declare, recommend or pay any dividend or other distribution must be reported to the BSX at least five business days prior to the record date for the payment<sup>212</sup>;
- the issuer must adopt by board resolution and enforce an internal code of dealing for directors and executive officers which proscribes their ability to trade on the basis of unpublished price sensitive information<sup>213</sup>;

*(b) Restricted Marketing*

The continuing obligations of a an issuer in relation to restricted marketing of securities are similar to those relating to publicly traded issues. However , in the case of an restricted marketing issue, the issuer is not required to send a report to shareholders setting out details of any discloseable events.

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<sup>210</sup> Rule 6.16 of Section IV of the BSX Listing Regulations.

<sup>211</sup> Rule 6.25 of Section IV of the BSX Listing Regulations.

<sup>212</sup> Rule 6.19 of Section IV of the BSX Listing Regulations.

<sup>213</sup> Rule 6.29 of Section IV of the BSX Listing Regulations.

### 3. Cayman Islands

A listed company must comply with the following continuing obligations<sup>214</sup>:

- appoint either a listing agent or authorised representative to communicate with the CSX<sup>215</sup>;
- keep the CSX, members of the issuer and other holders of its listed securities informed by way of public announcements and circulars, of any information relating to the group that is necessary to enable them and the public to appraise the financial position of the group, avoid the establishment of a false market or materially affect market activity and the price of its securities;
- notify the CSX immediately of any price sensitive information, material new developments or operational changes and any material change in performance or financial position for dissemination by the CSX;
- notify the CSX of net asset value, whenever calculated ;
- prepare financial statements annually and send audited annual reports and accounts to shareholders and the CSX within six months of the period to which they relate; the annual report and accounts and any interim financial accounts published by the fund must be made available on request either in the Cayman Islands or at a place otherwise acceptable to the CSX;
- pay an annual fee in accordance with the CSX's fee schedule;
- maintain a complete file of all marketing materials which must be produced to CSX authorised representative on demand;
- have at least 25% of its listed securities in the hands of the public at all times;
- include in its constitution a provision that it will obtain the prior approval of its voting security holders before taking certain material actions;
- disclose the names of any substantial shareholder(s);
- notify the CSX of any of the following:
  - ⇒ any change in the identity of any controlling shareholders;
  - ⇒ any material change in its constitution;
  - ⇒ any change in the rights of any class of listed securities;

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<sup>214</sup> Rules 9.58 to 9.70 of the CSX Listing Rules.

<sup>215</sup> Rule 2.9 of the CSX Listing Rules.

- ⇒ any change in the general character and nature of the fund;
  - ⇒ the creation of any additional classes of security in the fund (whether such will be listed or not);
  - ⇒ any material change in its investment policies, objectives or restrictions;
  - ⇒ any changes in its directors or in directors of the investment manager;
  - ⇒ any change in its service providers or auditors;
  - ⇒ any changes in the manner of calculating its net asset value or issue or redemption prices, any change in the frequency of calculation of net asset value or the frequency of subscriptions or redemptions, or any suspension in the calculation of net asset value or of subscriptions or redemptions;
  - ⇒ any agreement to acquire or dispose of an investment to a member of the fund family, or to acquire or dispose of an asset in which a director or member of the fund family is materially interested (unless such transactions have been disclosed in the listing document);
  - ⇒ the incurring of any material debt (unless disclosed as an investment objective or policy);
  - ⇒ any involvement in material litigation proceedings;
  - ⇒ if its securities cease to be listed on another stock exchange, or if its subject to disciplinary action by another stock exchange.
- send 6 copies to the CSX of the annual financial statements, any interim financial statements and every circular sent to holders of its listed securities at the same time as they are issued, resolutions of holders of its listed securities, documents relating to takeovers, mergers and offers, notices of meetings, forms of proxy or other similar documents;
  - maintain a complete file of all advertising and other materials issued with a view to marketing the listed securities.

#### 4. Ireland

The following continuing obligations apply to an issuer:

- it must issue and circulate to unitholders an annual report and accounts<sup>216</sup> which were independently audited and reported on<sup>217</sup>;
- it must issue an interim report<sup>218</sup> on its investment activities and profit or loss for the first six months of each financial year which must be published within four months of the end of the period by either circulating the report to the unitholders or inserting the report as a paid advertisement in at least one international newspaper<sup>219</sup>;
- it must notify the Companies Announcement Office of the ISE (“**the CAO**”) of the following<sup>220</sup>:
  - ⇒ any information which is necessary for the unitholders and the public to appraise the financial position of the listed fund and to avoid the creation of a false market in its listed units;
  - ⇒ any major new developments in its activities which are not public knowledge and may effect the financial position or general course of business of the listed fund, substantially vary the price or net asset value of its units or affect its ability to meet its commitments;
  - ⇒ information relating to proposed changes to the capital of the listed fund;
  - ⇒ proposed changes relating to interests in the listed units;
  - ⇒ any information relating to the operation of the listed fund (for example, material changes in investment policies and objectives, material changes in borrowing or leverage restrictions, net asset value and changes in frequency of calculation of net asset value, material changes in tax status, changes in service providers or directors, changes in dividend policy, any dividend paid and to be paid when determined, changes in constitution, change in open-ended or closed-ended status, notice of AGMs and EGMs);
  - ⇒ any change in the holding of listed units of directors of the listed fund, any of their connected persons and the investment manager and the nature of such transactions;

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<sup>216</sup> Rule 5.23 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>217</sup> Rules 5.24 and 5.26 to 5.27A of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>218</sup> Rule 5.23 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>219</sup> Rules 5.24 and 5.28 to 5.34 of the ISE Listing Requirements and Procedures for Investment Funds.

<sup>220</sup> Rules 8.1 to 8.15 of the ISE Listing Requirements and Procedures for Investment Funds.

- ⇒ it must ensure equality of treatment for all unitholders who are in the same position and notify the CAO of any proposal or development which may vary the class rights of unitholders;
  - ⇒ it must ensure that all the necessary facilities and information are available to enable unitholders to exercise their rights;
  - ⇒ it must adopt rules governing dealings by any interested persons in the listed units which will preclude them from dealing at a time when they are in possession of price sensitive information; and
  - ⇒ it must make available for inspection, copies of any directors' service contracts.
- the listed fund must notify the CAO of the following interests in listed units, and where such interests vary, such information should be updated at least on a six monthly basis:
    - ⇒ in the case of a closed-ended listed funds, any person (other than a director or investment manager) who is interested in 10% or more of any class of capital carrying a right to vote at a general meeting;
    - ⇒ any controlling unitholder (i.e. a unitholder entitled to exercise, or to control the exercise of 30% or more of the rights to vote at general meeting);
    - ⇒ any interest of any director of the listed fund, including any connected person<sup>221</sup>;
    - ⇒ any interest of the investment manager in the units of the listed fund.
  - the following matters require the prior approval of the ISE:
    - ⇒ any proposal to vary the class rights of unitholders;
    - ⇒ any material changes in investment policy or objective;
    - ⇒ any material changes in investment policy or objective (if made within three years of commencement of operations);
    - ⇒ any proposal to terminate or to renew or extend the life of the fund (where unitholder approval is not being sought);
    - ⇒ any change in the minimum subscription (where the change may affect the fund's suitability for listing);
    - ⇒ any change in any investment manager or custodian;

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<sup>221</sup> For the purposes of the ISE Listing Requirements and Procedures for Investment Funds, a person is connected with a director if he is (i) the director's spouse, parent, brother, sister or child, (ii) a person acting as a trustee of any trust, the principal beneficiaries of which are the director, his spouse or any of his children or any body corporate which he controls or (iii) a partner of the director. A company will be deemed to be connected with a director if it is controlled by that director.



- ⇒ in relation to closed-ended funds only, proposed transactions, principally acquisitions and disposals, excluding transactions which are in the ordinary course of business of a listed fund or which fall within a listed fund's stated investment policies or strategy, and the issue of securities or a transaction to raise finance which does not involve the acquisition or disposal of any fixed asset of the listed company or its subsidiaries (“**Chapter 10 transactions**”);
  - ⇒ transactions with related parties (including any investment manager), excluding transactions of a revenue nature in the ordinary course of business, the issue of new securities for cash made available to all holders of the fund's securities, employee share schemes, the granting of credit upon normal commercial terms, directors' indemnities, and small transactions (i.e. where the relevant percentage ratios are equal to or less than 0.25%) (“**Chapter 11 transactions**”);
  - ⇒ in the case of a transactions with related parties where the relevant percentage ratios are less than 5% but one or more of the ratios exceeds 0.25%, the usual requirements relating to Chapter 11 transactions do not apply and instead the issuer must, prior to completing the transaction, (i) inform the ISE in writing of the details of the proposed transaction, (ii) provide the ISE with written confirmation from an independent adviser acceptable to the ISE that the terms of the proposed transaction are fair and reasonable so far as shareholders of the company are concerned and (iii) undertake in writing to the ISE to include details of the transaction in the company's next published accounts;
  - ⇒ material changes in the constitution of the fund;
  - ⇒ any change in open-ended or closed-ended fund status (unless disclosed in listing particulars)
- The following matters require the prior approval of unitholders:
    - ⇒ any material changes in investment policy or objective (if made within three years of commencement of operations);
    - ⇒ any Chapter 10 transactions, where the transaction would require prior approval of shareholders (i.e., where the relevant percentage ratios are 25% or more)<sup>222</sup> or Chapter 11 transactions (unless details of the transaction have been provided in the listing particulars);
    - ⇒ any change in open-ended or closed-ended fund status (unless disclosed in the listing particulars);
    - ⇒ any matter which may materially adversely affect the rights attaching to the listed units in a manner not provided for in the listing particulars;

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<sup>222</sup> In the context of Chapter 10 transactions, the relevant percentage ratios refer to assets, profits, turnover, consideration to market capitalisation and gross capital.

- ⇒ any proposal to issue units at less than net asset value where those units were not offered first on a pro rata basis to unitholders;
- when, in a closed ended fund, further units are allotted of the same class as units already listed, application for listing of such units must be made not more than one month after allotment;

## 5. United Kingdom

After listing, the issuer must comply with the following continuing obligations:-

- it must notify a Regulatory Information Service (“**an RIS**”) of (i) any major new developments in its sphere of activity or (ii) information which is not public knowledge, which:
  - ⇒ may lead to a substantial movement in the price of its listed securities or affect its ability to meet its commitments<sup>223</sup>;
  - ⇒ concern a change in the company’s financial condition, the performance of its business or its expectations as to its performance which, if made public, would be likely to lead to a substantial movement in the price of its listed securities<sup>224</sup>.
- if the company considers that such disclosure may prejudice its legitimate interests, the UKLA may waive the disclosure requirement<sup>225</sup>;
- it must take all reasonable care to ensure that any statement or forecast or any other information notified to the Company Announcements Office or made available through the UK Listing Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, forecast or other information<sup>226</sup>;
- it must notify an RIS of the following information in relation to its capital<sup>227</sup>:
  - ⇒ any proposed change in its capital structure;
  - ⇒ any new issues of debt securities and any guarantee or security in respect thereof;
  - ⇒ any change in the rights attaching to any class of listed securities that are convertible;
  - ⇒ any drawing or redemption of listed securities other than purchases to meet sinking fund requirements of the current year;
  - ⇒ the basis of allotment of listed securities offered generally to the public for cash and of open offers to shareholders;
  - ⇒ any extension of time granted for the currency of temporary documents of title;

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<sup>223</sup> Rule 9.1 of the Listing Rules of the LSE.

<sup>224</sup> Rule 9.2 of the Listing Rules of the LSE.

<sup>225</sup> Rule 9.8 of the Listing Rules of the LSE.

<sup>226</sup> Rule 9.3A of the Listing Rules of the LSE.

<sup>227</sup> Rule 9.10 of the Listing Rules of the LSE.

- ⇒ the effect, if any, of any issue of further securities on the terms of the exercise of rights under options, warrants and convertible securities; and
  - ⇒ the results of any new issue of listed securities other than specialist securities or of a public offering of existing securities
- it must notify an RIS of any information disclosed to it in accordance with sections 198 to 208 and 212 of the Companies Act 1985<sup>228</sup>;
  - it must notify an RIS of decisions by the board of directors on dividends, profits and other matters requiring announcement by no later than the following business day<sup>229</sup>;
  - it must inform the UKLA if it becomes aware that the proportion of any class of listed equity shares in the hands of the public falls below 25% of the total issued share capital of that class<sup>230</sup>;
  - it must inform the UKLA if its listed securities have been re-admitted to or suspended or cancelled from trading<sup>231</sup>;
  - it must notify an RIS of any Chapter 10 transactions, and must obtain prior shareholder approval in the case of transactions where the relevant percentage ratios are 25% or more;
  - it must notify an RIS of any Chapter 11 transactions and obtain prior shareholder approval for the transaction;
  - in the case of a transactions with related parties where the relevant percentage ratios are less than 5% but one or more of the ratios exceeds 0.25%, the usual requirements relating to Chapter 11 transactions do not apply and instead the issuer must, prior to completing the transaction, (i) inform the UKLA in writing of the details of the proposed transaction, (ii) provide the UKLA with written confirmation from an independent adviser acceptable to the UKLA that the terms of the proposed transaction are fair and reasonable so far as shareholders of the company are concerned and (iii) undertake in writing to the UKLA to include details of the transaction in the company's next published accounts;
  - it must notify an RIS of any change in its taxation status<sup>232</sup>;
  - it must treat all holders of securities who are in the same position, equally<sup>233</sup>;
  - unless shareholders otherwise permit, a company proposing to issue equity securities must first offer those securities to existing equity shareholders and to holders of other

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<sup>228</sup> Rules 9.11 to 9.14 of the Listing Rules of the LSE

<sup>229</sup> Rule 9.35 of the Listing Rules of the LSE

<sup>230</sup> Rule 9.37 of the Listing Rules of the LSE

<sup>231</sup> Rule 9.44A of the Listing Rules of the LSE

<sup>232</sup> Rule 21.20(f) of the Listing Rules of the LSE

<sup>233</sup> Rules 9.16 and 9.17 of the Listing Rules of the LSE

equity securities who are entitled to be offered them in proportion to their existing holdings before they can be issued for cash to others<sup>234</sup>;

- it must obtain the consent of shareholders before any major subsidiary undertaking of the company (a subsidiary undertaking representing 25% or more of the aggregate of the share capital and reserves or profits of the group) makes any issue for cash of equity securities so as to materially dilute the company's percentage interest in equity shares of that subsidiary undertaking<sup>235</sup>;
- it must ensure that there exists the necessary facilities and information available to enable holders of its securities to exercise their rights. Accordingly the company must inform holders of securities of the holding of meeting which they are entitled to attend, enable them to exercise their right to vote where applicable and publish notices or distribute circulars giving information<sup>236</sup>;
- it must pay the annual fee for listing, calculated in accordance with the scale of fees<sup>237</sup>;
- it must ensure that appropriate settlement arrangements for its listed securities are in place<sup>238</sup>;
- its listed securities must be admitted to trading at all times<sup>239</sup>;
- its annual report and accounts must include a list of all investments with a value greater than 5% of the company's investment portfolio and details of at least the 10 largest investments<sup>240</sup>.

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<sup>234</sup> Rule 9.18 of the Listing Rules of the LSE

<sup>235</sup> Rule 9.22 of the Listing Rules of the LSE

<sup>236</sup> Rule 9.24 of the Listing Rules of the LSE

<sup>237</sup> Rule 9.36 of the Listing Rules of the LSE.

<sup>238</sup> Rule 9.39 of the Listing Rules of the LSE.

<sup>239</sup> Rule 9.44 of the Listing Rules of the LSE.

<sup>240</sup> Rule 21.20(e) of the Listing Rules of the LSE.

## CONCLUSION

Currently there are 1,767 funds listed with the Irish Stock Exchange. Of that figure, 1,558 are investment companies, 195 are unit trusts and 7 are limited partnerships. There are 740 mutual funds listed with the Cayman Islands Stock Exchange with a total market capitalisation of US\$45,235,012,361. The London Stock Exchange has 313 investment companies listed, while in Bermuda there are a total of 251 funds and sub-funds listed. Hong Kong however, only has a total of 36 funds listed and of that number, 9 are unit trusts or mutual funds and 27 are investment companies.

An overview of the listing rules for each jurisdiction does not, of itself, afford an explanation for the difference in popularity of the stock exchanges for listing funds, as the listing qualifications and procedures are similar between the jurisdictions. Contributing factors however include the costs and time involved in listing the funds as well as the attitude and approach of each Exchange towards strict compliance with the listing rules. Other matters which may influence the choice of an issuer include the relevant taxation and other legislative frameworks of each jurisdiction and their relative economic performance.

## September 2005

*This note is provided for information purposes only and does not constitute legal advice. Specific advice should be sought in relation to any particular situation. This note has been prepared based on the laws and regulations in force at the date of this note which may be subsequently amended, modified, re-enacted, restated or replaced.*