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[online version](http://www.charltonslaw.com/recent-changes-to-the-companies-ordinance-prospectus-regime/)

# Recent Changes To The Companies Ordinance Prospectus Regime

## Introduction

The first phase of a 3 phase exercise to overhaul the regulatory regime for offers of shares and debentures has been completed.

Phase 1 comprised the following initiatives:

* SFC Guidelines permitting the issue in connection with an offer of shares or debentures made by a prospectus of (i) advertisements designed to raise investor awareness of the offer and (ii) summary prospectuses or fact sheets;
* SFC Guidelines permitting a "dual prospectus" structure for offers of shares or debentures made on a "repeat" or "programme" basis using separately registered "programme" and "issue" prospectuses;
* SFC Guidelines permitting the submission of the bulk print proof of the prospectus and a faxed copy of my expert's consent letter in an application to the SFC for authorisation for registration of a prospectus; and
* the creation of 2 new class exemptions from certain of the Companies Ordinance (**CO**) contents requirements for prospectuses offering debentures.

The above guidelines and class exemptions are all in effect. The purpose of this memorandum is to provide a summary of the relevant provisions.

As part of Phase II of updating the prospectus regime, which entails amending the CO by means of the Companies (Amendment) Bill 2003 (the **CAB**) which is still under review, it is proposed to provide a statutory basis for the matters dealt with in the Guidelines.

Each set of Guidelines covers only the SFC's treatment of the matters dealt with. Strictly speaking, the Guidelines apply only where the SFC is responsible for authorisation of a prospectus (ie. where the shares or debentures are unlisted). Where the shares of debentures are to be listed on the Stock Exchange of Hong Kong Limited (the **Exchange**), authorisation for registration of a prospectus is administered by the Exchange. Accordingly, in the case of listed issues, the Guidelines are subject to the Exchange's listing rules and practices. The Exchange has however indicated that it supports the Guidelines and proposes to apply equivalent practices.

## A. Guidelines On Use Of Offer Awareness And Summary Disclosure Materials In Offerings Of Shares And Debentures Under The Companies Ordinance

### 1. Introduction

These guidelines set out the SFC's treatment of (i) "offer awareness materials" and (ii) "summary disclosure materials' such as mini-prospectuses and fact sheets, issued to the public in connection with an offer of shares or debentures made by a prospectus.

In essence, the Guidelines provide that publicity materials qualifying as "offer awareness materials' do not constitute:

* a "prospectus" within the meaning of Section 2CO;
* "an extract from or abridged version of a prospectus" for the purposes of the prohibition on publication by way of advertisement of any extract from or abridged version of a prospectus relating to shares or debentures by a company incorporated in or outside Hong Kong in Section 38B(1) CO; or
* a prohibited advertisement for the purposes of Section 103 Securities and Futures Ordinance.

Accordingly "offer awareness materials" do not require pre-vetting by the SFC.

Disclosure materials which qualify as "summary disclosure materials" under the Guidelines are treated as an extract from o abridged version of a prospectus within the meaning of Section 38B CO, rather than a full prospectus. They are not therefore required to be registered with the Companies Registry or to comply with the contents requirements for prospectuses under the CO. They must however be expressly authorised prior to issue under Section 38B(2A)(b) CO.

### 2. Application Of Guidelines

2.1 The Guidelines apply to all publicity and disclosure materials issued to the public in Hong Kong in connection with a proposed offer of shares or debenture sin Hong Kong by a prospectus. They do **not** however apply where the issuer of the prospectus is a collective investment scheme authorised by the SFC under Section 104 SFO.

2.2 The Guidelines apply to all forms of communication media including written information (eg newspapers and correspondence), television or radio, electronic media (including the Internet, ATM services and telephone hotlines) and any form of wireless video or audio transmission. They apply irrespective of whether the communication is restricted to a particular target audience or is to the general public.

2.3 The Guidelines apply to offers of shares or debentures where a prospectus is required to be registered by the Registrar of Companies under Section 38D CO (for Hong Kong companies) or Section 342C CO (for overseas companies).

2.4 Listed Offers

As noted above, the Guidelines only cover the SFC's treatment of publicity and disclosure materials where the SFC is responsible for authorisation of a prospectus (i.e. in unlisted issues).

Both the Main Board and the GEM Listing Rules require all publicity material released in Hong Kong relating to an issue of securities to be pre-vetted by the Exchange. The Exchange has however indicated that it supports the Guidelines and proposes to apply equivalent practices. Applicants for listing wanting to rely on the Guidelines should contact the Exchange as soon as possible to determine whether pre-vetting is required. Materials constituting an extract from or abridged version of a prospectus must always be specifically vetted and approved by the SFC under Section 38B(2A)(b) CO.

### 3. General Requirements For Offer Awareness And Summary Disclosure Materials

Both offer awareness and summary disclosure materials must meet the following general requirements:

1. The materials must not contain anything that is inconsistent with the information contained in the prospectus.
2. The materials must be in plain and clear language. The contents must not be false, biased, misleading or deceptive, and the issuer must have reasonable grounds to believe that this is the case.
3. The font size of all warning statements and legal legends in the materials must be at least 40% of the font size that predominates in the materials and must not be presented in a style that is designed to reduce their impact. Such statements and legends must be capable of being read with ease by anyone scanning the material.
4. The materials must be issued by the issuer of the prospectus. They must state their date of issue and identify the issuer. The materials must be authorised for issue by the issuer and include a statement that the issuer of the prospectus or its directors take responsibility for the contents.
5. In the case of materials designed for broadcast on a monitor or screen, or transmission by radio:
   1. the required statements listed under paragraphs 4.3.1 and 5.3.1 (as the case may be) below must be audibly read out at the end of each broadcast and (except for a radio transmission) also be in writing;
   2. for television and other screen based media, text containing the prescribed statements must be displayed for such time as to be sufficiently prominent to allow the viewer to read the entire text of the statements with reasonable ease; and
   3. for radio broadcasts, the prescribed statements must be delivered by way of a voice-over that is sufficiently distinct from the rest of the content of the broadcast to be prominent.

### 4. Further Requirements For Offer Awareness Materials

4.1 the primary requirement for qualification as "offer awareness materials" is that the publicity materials should only raise investor awareness of the occurrence of a particular public offer. Their contents must therefore be limited to the procedural and administrative arrangements for the offer. Publication must not be intended to indirectly or impliedly promote the offer or the issuer or otherwise condition the market ahead of the offer.

4.2 **Timing and Language of publication**

Offer awareness materials may be issued prior to the issue of the prospectus and/or on or after the issue of the prospectus, subject to the limits referred to below.

Where such materials are to be published ahead of the issue of the prospectus, publication must not be intended to indirectly or impliedly promote the offer or the issuer or otherwise condition the market ahead of the offer. The issuer is required to consider whether the use of offer awareness materials, when combined with "brand" marketing and/or media attention may condition the market.

The onus is one the issuer to determine how far in advance of the prospectus it is appropriate to start publishing offer awareness materials and the frequency of publication thereafter depending on the circumstances of the particular offer. However, the SFC's view is that offer awareness materials should not be issued more than 14 days before the date of the prospectus for the Hong Kong offer.

Offer awareness materials must not be used after the close of the offer period and materials displayed in public places must be removed as soon as possible thereafter.

The materials may be issued in English or Chinese or both.

4.3 **Specific Requirements**

In addition to complying with the general requirements listed under paragraph 3 above, offer awareness materials must also comply with the requirements listed below which are set out at paragraphs 4 and 5 of the Guidelines.

4.3.1 Mandatory Requirements

The material must contain the following:

1. a statement that the material is issued by the issuer of the prospectus and a responsibility statement[[1]](#footnote-29);
2. a warning statement that potential investors should read the prospectus for detailed information about the offer before deciding whether or not to invest in the shares or debentures;
3. a statement that the material does not constitute an offer or an invitation to induce an offer by any person to acquire, subscribe for or purchase the shares or debentures; and
4. a statement that no application for the shares or debentures mentioned in the material should be made by any person nor would such application be accepted without the completion of a formal application form or other application procedure that is to be issued with or in respect of the prospectus.

4.3.2 Discretionary Particulars

The advertisement may also contain the following discretionary particulars only[[2]](#footnote-30)

1. the name and place of incorporation of the issuer;
2. a description of the shares or debentures offered or proposed to be offered;
3. the date on which and locations at which the prospectus is or will be available to the public;
4. details of the administrative procedures relevant to retail investors that are likely to assist their participation in the offer;
5. if a listing is being applied for on the Exchange and/or elsewhere, a statement that the company is seeking a listing of the shares or debentures on the Exchange and/or any other applicable stock exchanges; and
6. legends designed to clarify the legal nature of the material, provided that the legends are consistent with the material not being a prospectus nor a document prohibited under Section 103(1) SFO or 38B(1) CO.

### 5. Further Requirements For Summary Disclosure Materials

5.1 The provisions relating to "summary disclosure materials" are intended to cover mini-prospectuses or fact sheets which summarise or highlight key information about an offer of shares or debentures.

5.2 **Timing and Language of Publication**

Materials qualifying as "summary disclosure materials" may be made available **from the time of issue of a prospectus** complying with requirements of the CO provided that they have been authorised by the SFC (in the case of unlisted offers) or the Exchange (in the case of listed offers).

Summary disclosure materials must be issued both in English and Chinese but may be distributed in separate language versions. If separate language versions are used, a statement must be included in the other language in a prominent place on the front page or cover that a version is available in the other language and where copies can be obtained. Sufficient copies of both language versions must be available for the duration of the offer. Alternatively, application may be made to the SFC for an exemption under Section 38A or 342A CO to permit publication in one language only, in which case publication must be in that language only.

5.3 **Specific Requirements**

5.3.1 In addition to satisfying the general requirements listed at paragraph 3 above, summary disclosure materials must not contain any substantive information not contained in the prospectus and must include the following:

1. a statement that the prospectus, which alone contains full details of the issuer and offer, has been published and is available for collection at specified locations;
2. the date of the prospectus;
3. in the case of summary disclosure material that is intended to provide a fair summary of the information in the prospectus (such as a mini-prospectus that summarises the information in the prospectus), a statement that it is an extract from or abridged version of the prospectus and the directors of the issuer of the prospectus are satisfied that it contains a fair summary of the material information in the prospectus and does not omit anything which the directors consider to be material in the context of the offer;
4. in the case of summary disclosure material that is not intended to provide a fair summary of the information in the prospectus (such as a fact sheet containing offer statistics and procedural information relating to applications), a statement that it is an extract from or abridged version of the prospectus and does not contains a fair summary of the material information in the prospectus;
5. a statement that the directors of the issuer of the prospectus have authorised the issue of the summary disclosure material and take responsibility for its contents;
6. a warning statement that potential investors should read the prospectus for detailed information about the issuer and the offer before deciding whether or not to invest in the shares or debentures being offered;
7. a statement that the summary disclosure material does not constitute an offer or an invitation to induce an offer by any person to acquire, purchase or subscribe for the shares or debentures being offered; and
8. where an application form is issued with the prospectus or an application procedure is described in the prospectus, a statement that no application for any shares or debentures mentioned in the summary disclosure material should be made by any person nor would such application be accepted by the issuer of the prospectus without the completion of the formal application form or other application procedure that is issued with or in respect of the prospectus.

5.3.2 When approving summary disclosure material the SFC will wish to be satisfied that the following requirements will be met, that:

1. the summary disclosure material will only be made available or distributed from the time of issue of the prospectus;
2. any application form issued by the issuer of the prospectus will state that any application for or purchase of the shares or debentures referred to in the summary disclosure material can only be made on the basis of the full prospectus identified by its date of publication; and
3. in an offering structure that does not require potential investors to complete an application form prescribed by the issuer of the prospectus, the issuer of the prospectus will require that all locations at which summary disclosure material is distributed and where application or purchase instructions for the shares or debentures from investors are received shall have administrative procedures in place (i) to inform interested persons that the application for or purchase of the shares or debentures referred to in the summary disclosure material can only be made on the basis of the prospectus relating to the offer identified by its date of publication and that they should refer to the prospectus, (ii) to make the prospectus readily available to potential investors free of charge prior to receipt of application or purchase instructions, or refer them to a location where they may obtain it with ease and free of charge, and (iii) to provide that any application or purchase instruction from an investor will not be accepted without obtaining the investor’s prior confirmation that he or she has read or had access to the prospectus.

## B. Guidelines On Using A "Dual Prospectus" Structure To Conduct Programme Offers Of Shares Or Debentures Requiring A Prospectus Under The Companies Ordinance

### 1. Introduction

The Guidelines set out a ‘dual prospectus’ structure for offers of shares or debentures on a "repeat" or "programme" basis using separately registered "programme" and "issue" prospectuses.

The use of the dual prospectus structure will always require the grant of a certificate of exemption under Section 38A or 342A CO in respect of certain of the contents requirements for prospectuses. The power to grant such exemption is vested only in the SFC whether the issue is listed or unlisted: accordingly any offering using this structure will entail an application for exemption to the SFC. In the case of listed issues, the practice is for the Exchange to recommend the grant of an exemption to the SFC.

Although the Guidelines apply only to unlisted issues, the Exchange has indicated that it supports the Guidelines and proposes to implement equivalent practices in authorising registration of prospectuses and recommending the grant of exemptions to the SFC.

### 2. Key Features Of The "Dual Prospectus" Structure

Key features of the new structure are:

1. Constituent Documents

* The "dual prospectus" structure may involve (i) a programme prospectus, (ii) one or more issue prospectuses, and (iii) addenda, if necessary, updating the information in the programme or any issue prospectus. Each must be signed or certified in accordance with the relevant CO requirements (Section 38D(3) or 342C(3));

1. Separate Authorisation and Registration

* The programme prospectus and any addendum to it and the issue prospectus(es) will be separately authorised for registration by the SFC (for unlisted issues) or the Exchange (for listed issues) and registered by the Registrar of Companies on a stand-alone basis.

1. Adequacy of Disclosure

* The SFC will treat constituent prospectuses collectively for the purposes of determining the adequacy of disclosure generally and compliance with the CO prospectus contents requirements under Sections 38(1) and 342(1). Accordingly, at the time of issue of an issue prospectus, the constituent prospectuses must collectively satisfy paragraph 3 of the Third Schedule, which requires a prospectus to contain sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company ‘at the time of issue of the prospectus’. With respect to the programme prospectus only, it may be appropriate to apply for an exemption from the paragraph 3 requirement.

1. Certificates of Exemption

* As each constituent prospectus is treated as a prospectus in its own right, the issuer will need to apply to the SFC for a certificate of exemption for the prescribed contents requirements not appearing in that prospectus. In the case of the programme prospectus, which will normally contain only generic information about the issuer and the programme (eg. a description of the issuer and its business, its financial statements and other relevant financial information, risk factors, terms and conditions of the programme etc.), a certificate of exemption will be required for the content requirements of the Third Schedule relating to a specific offer. Conversely, as the issue prospectus will normally only contain offer-specific information, a certificate of exemption will be required for the content requirements relating to general information about the issuer and the programme.

1. Application for Exemption

* Applications for exemption should be made to the Corporate Finance Division of the SFC. The statutory grounds for exemption are that compliance with a particular requirement is "irrelevant" or "unduly burdensome" (Sections 38A and 342A CO). The CAB proposes to add a new ground for exemption: that the exemption ‘will not prejudice the interest of the investing public.
* If a content requirement is not in one constituent prospectus because it will be included in another prospectus which will be available with that prospectus, this should be made clear in the application. The ground for exemption will be that inclusion of the information is irrelevant.

1. Validity of Programme Prospectus

* A programme prospectus will be valid for 12 months from its date of issue or until publication of the issuer’s next annual report and accounts, whichever is the earlier. Thereafter, it should be revised and republished. In addition, before each new offering, the issuer is required to consider whether it would be better to revise and republish its programme prospectus rather than detail changes in an addendum or the issue prospectus to avoid confusing potential investors.

1. Warning Statement

* Each prospectus and any application form must contain a warning statement that the issue prospectus relating to the particular offer should be read in conjunction with the programme prospectus (and any addendum) before making an application for the shares or debentures.

1. Directors' Responsibility Statement

* An issue prospectus must state that the issuer's directors take responsibility for the contents of the constituent prospectuses and that such documents collectively satisfy the contents requirements of the CO. Exemptions granted by the SFC for the prospectuses collectively should be listed in the issue prospectus.

1. Availability of Constituent Prospectuses

* The SFC will need to be satisfied that all constituent prospectuses (and addenda) for an offer are readily available to investors throughout the offer period. The safeguards necessary to ensure accessability of programme documentation will vary depending on the offer mechanism, but are likely to include the following requirements:
  + that the issue prospectus and any application form shall only be made available if the issuer has made adequate arrangements for the programme prospectus (with any addendum) to be made available with the issue prospectus or accessible by or distributable to potential investors with ease, free of charge and as soon as practicable following a request. These arrangements must continue for the duration of the offer period. Statements as to the availability of the programme prospectus should be included in the issue prospectus and any application form; or
  + where the offer structure does not involve completion of an application form, the issuer should ensure that all locations at which the issue prospectus is distributed and where application or purchase instructions may be received have the following administrative procedures in place.
    1. to inform interested persons that application for or purchase of shares or debentures the subject of the issue prospectus will be taken to have been made on the basis of the constituent prospectuses for the offer (identified by their dates of publication) and that they should refer to all such prospectuses; and
    2. to make the constituent prospectuses readily available to potential investors free of charge prior to receipt of application or purchase instructions, or refer them to a location where they may obtain them with ease free of charge; and
    3. to provide that any application or purchase instruction will not be accepted without the investor's prior confirmation that he or she has read or had access to the constituent prospectuses;

1. Continuing Availability of Programme Documentation  
     
   The SFC considers that all constituent prospectuses should be available to the public for so long as the relevant shares or debentures exist. This does not however require that the documentation is kept permanently up-to-date, so long as it is up-to-date at the time of each offering. The documentation may be made available:
   1. by display on the issuer's website, and, in the case of a listed issue, on the Exchange's website; and
   2. by making the documentation available for collection free of charge by anyone who requests it; and
2. Filing of Expert's Consent and Material Contracts

* If the requirements for filing an expert’s consent and any material contracts (under Sections 38D and 342C CO) have been complied with in relation to the programme prospectus, they do not have to be complied with again in relation to the programme prospectus on the issue of any issue prospectus.

## C. Guidelines On Applying For A Relaxation From The Procedural Formalities To Be Fulfilled Upon Registration Of A Prospectus Under The CO

### 1. Introduction

These guidelines set out the circumstances in which it is possible to submit a bulk print proof of a prospectus and a faxed copy of an expert's consent letter in an application to the SFC for authorisation of the prospectus for registration under the CO (Sections 38D and 342C).

Previously a prospectus could only be registered if it satisfied the Registrar of Companies' Requirements for Documents Guidelines issued under S346 CO in 2001 (the **Registrar's Guidelines**). Those guidelines required, among other things, that a prospectus was printed on A4 paper of a certain thickness and weight. Past practice was therefore to submit the "definitive" prospectus (ie. the version of the prospectus that is distributed to the public) and the original of any expert's consent. The Registrar's Guidelines have now been revised to permit registration of bulk print proof prospectuses.

Although these guidelines only apply to unlisted issues where the SFC is responsible for authorising registration, the Exchange has indicated that it intends to apply equivalent practices when authorising registration of prospectuses for listed issues.

### 2. Requirements For Submission Of Bulk Print Proof Prospectus

In cases where the issuer or its adviser satisfies the SFC that administrative difficulties will otherwise result, the issuer is allowed to deliver to the SFC 2 bound copies of the bulk print proof prospectus (being the version of the prospectus approved by the issuer for bulk printing into the definitive prospectus) which is identical to the proposed definitive prospectus except that, if circumstances so require, the text and images can be in black and white or grey-scale rather than colour (the **Permitted Dispensation**). The following requirements must be met:

1. The bulk print proof must be accompanied by a letter from the issuer which:
   1. states that the issuer wishes to take advantage of paragraph 2.02 of the Guidelines and its reason for wishing to do so;
   2. confirms that the copy of the prospectus submitted for authorisation complies with the Registrar's Guidelines (as amended or supplemented from time to time) and is identical to the proposed definitive prospectus save for the circumstances falling within the Permitted Dispensation which are detailed in the letter; and
   3. undertakes to deliver the definitive prospectus in accordance with paragraph (d) below;
2. the bulk print proof prospectuses delivered to the SFC must be signed or certified and endorsed in accordance with Section 38D(3) or 342(C) CO;
3. the letter from the SFC to the Registrar authorising any bulk print proof prospectus for registration must specify that the authorisation relates to a bulk print proof and provide brief particulars of any circumstances falling within the Permitted Dispensation;
4. the definitive prospectus (which need not be signed or certified by the directors) must be delivered to the SFC as soon as practicable after it becomes available in Hong Kong, and no later than the date on which it is made available to the public in Hong Kong. It must be accompanied by a letter from the issuer or its legal advisers confirming that the definitive prospectus is identical to the bulk print proof prospectus authorised for registration except for any matters falling within the Permitted Dispensation.

Failure to comply with the provisions of paragraph (d) is regarded as a failure to comply with the Guidelines and the prospectus is treated as having been issued in breach of relevant provisions of the CO (Section 38D or 342C).

### 3. Conditions For Acceptance Of Faxed Version Of Expert's Consent

Subject to the SFC being satisfied that administrative difficulties would otherwise result, a faxed image of an expert's consent letter may be delivered to the SFC together with the prospectus to be authorised for registration if:

1. it is accompanied by a letter from or on behalf of the issuer which:
   1. states that the issuer wishes to take advantage of paragraph 2.03 of the Guidelines;
   2. confirms that the faxed image of the expert's consent letter was received by the issuer with a cover fax from the expert stating that the original expert's consent letter was being faxed with that cover, and that the original has not yet been received by the issuer; and
   3. undertakes to deliver the original to the SFC in accordance with paragraph (b) below; and
2. the original expert's consent letter must be delivered to the SFC as soon as practicable and no later than 7 days after registration of the prospectus. It must be accompanied by a letter from the issuer or its legal advisers confirming that the original is identical to the faxed image sent earlier in accordance with paragraph (a) in terms of contents.

Failure to comply with the provisions of paragraph (b) is regarded as a failure to comply with the Guidelines and the prospectus is treated as having been issued in breach of relevant provisions of the CO.

## D. New Class Exemptions For Prospectuses Offering Debentures

### 1. Introduction

The Companies Ordinance (Exemption of Companies and Prospectuses From Compliance with Provisions) (Amendment) Notice 2003 (the **Notice**) creates 2 new class exemptions for prospectuses offering debentures (ie. bonds, notes and other instruments creating or acknowledging debt). The exemptions are from certain of the contents requirements for prospectuses set out in the 3rd Schedule of the CO. The Notice became effective on 23 May 2003.

### 2. Details Of Exemptions

The New class exemptions operate so that:

1. prospectuses relating to offers of unlisted debentures are exempted from the contents requirements of the 3rd Schedule which the SFC considers to be:
   1. irrelevant for an investor in debentures making an informed investment decision; and/or;
   2. unduly burdensome; and
2. prospectuses relating to offers of listed debentures (i.e. listed on the Exchange’s Main Board or GEM) which are regulated as debt securities under the relevant listing rules are exempted from those contents requirements of the 3rd Schedule:
   1. that are the same as or similar to the content requirements of the relevant listing rules (provided that no waiver, modification or other dispensation has been granted from those requirements); and
   2. that the SFC considers to be irrelevant for an investor in debentures making an informed investment decision and/or unduly burdensome.

A summary of the exempted requirements is set out in Annex A.

There is no need to apply to the SFC for an exemption from any of the requirements referred to in the class exemptions where the prospectus complies with the specified conditions.

## Prospectus To State Exemptions Relied Upon

The Notice introduces a new requirement that the prospectus must include a statement specifying any one or more class exemptions in the Notice that the issuer of the prospectus has relied upon.

## Annex A

### Summary of Exempted Requirements

Exempted Pragraph No.(Third Schedule)

Brief description of the requirements

Applicability of the exemption (and specific conditions attached to the exemption)

1

Business description of the company and a breakdown of each material business activity

Applicable to prospectuses relating to offers of listed debentures

2

Authorised, issued and paid upshare capital, and description andnominal value of the shares

Applicable to prospectuses relating to offers of listed debentures

4

Details of founders, management or deferred shares and holders’interest in property and profits ofthe company

Applicable to prospectuses relating to offers of listed orunlisted debentures

5

Directors’ share qualificationrequirement and provision in thearticles of association regarding remuneration

Applicable to prospectuses relating to offers of listed orunlisted debentures

8

Date and time of the opening of the subscription list

Applicable to prospectuses relating to offers of listed debentures

10

Details of options to subscribe forshares and debentures

Applicable to prospectuses relating to offers of listed debentures

11

Details of shares and debenturesissued for non-cash considerationin the preceding 2 years

Applicable to prospectuses relating to offers of listed debentures

12(1), 13

12(1) - Particulars of propertypurchased or proposed to bepurchased with the proceeds of theissue (e.g. names and addresses ofvendors)  
  
13 - Consideration for any propertyreferred to in paragraph 12including any goodwill

Applicable to prospectuses relating to offers of listed or unlisted debentures except that the exemption shall not have effect with respect to paragraph 12(1)(c) concerning particulars of any transaction relating to the property within the 2 preceding years in which any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company concerned had any interest

14

Commission paid or payable forsubscription of shares anddebentures in the 2 preceding years

Applicable to prospectuses relating to offers of listed orunlisted debentures

15

Details of preliminary and otherexpenses and the persons by whomthey have been paid or are payable

Applicable to prospectuses relating to offers of listed orunlisted debentures

16

Amount or benefit given to anypromoter in the 2 preceding years

Applicable to prospectuses relating to offers of listed orunlisted debentures

18

Names and addresses of theauditors of (i) the company and (ii)the guarantor (if applicable)

Applicable to prospectuses relating to offers of listed debentures

19

Directors’ interests in the promotion of, or in the property to be acquired by, the company

Applicable to prospectuses relating to offers of listed or unlisted debentures

22

Summary of the articles of the company relating to directors’ borrowing powers

Applicable to prospectuses relating to offers of listed orunlisted debentures

23-25

Various details of indebtedness ofthe issuer and its subsidiaries –bank overdrafts, materialcontingent liabilities and details ofauthorised and issued debentures

Applicable to prospectuses relating to offers of listed debentures

25

(a) the rights conferred on holders including rights to interest and redemption and particulars of the security  
  
(b) designation of debentures as secured  
  
(c) particulars of any guarantee subsisting in respect of the debentures

to prospectuses relating to offers of listed debentures  
  
to prospectuses relating to offers of unlisted debentures  
  
to prospectuses relating to offers of listed debentures

27

Gross trading income of the company during the 3 preceding years together with explanation of computation method

Applicable to prospectuses relating to offers of listed debentures

29

Details of every wholly owned or principal subsidiary

Applicable to prospectuses relating to offers of listed debentures

30

Details of substantial shareholders

Applicable to prospectuses relating to offers of listed debentures

31

Accountants’ report for the 3preceding years

Applicable to prospectuses relating to offers of unlisted debentures provided the prospectus includes the auditor’s report and audited financial statements of the company and of any guarantor corporation for the 2 financial years immediately preceding the issue of the prospectus (provided that if the auditor’s report and audited financial statements of either the company or the guarantor corporation for the financial year immediately preceding the issue of the prospectus are not available at the time of issue of the prospectus, the auditor’s report and the audited financial statements of the company and of the guarantor corporation for the 2 financial years immediately preceding that financial year shall be included in the prospectus)  
  
Applicable only to prospectuses relating to offers of listed debentures issued by a listed issuer

32, 33(1)

32 - Accountants’ report on any business purchased out of the proceeds of issue33(1) - Accountants’ report on any business purchased out of the proceeds of issue which will result in a new subsidiary of the issuer

Applicable only to prospectuses relating to offers of listed debentures issued by a listed issuer

43

The auditors reporting on the issuer’s financial statements must be qualified under the Professional Accountants Ordinance (Cap.50)

Applicable to prospectuses relating to offers of listed debentures

45

Residential address of natural persons (in relation to paragraph 6)

Applicable to prospectuses relating to offers of listed or unlisted debentures subject to the condition that the business address of the natural person is disclosed in substitution for the place of his usual residence

This note is intended as a summary only of the SFC Guidelines and class exemptions referred to in it. Specific legal advice should be sought in relation to any particular situation.

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1. The draft CAB has taken out the requirement for a responsibility statement in awareness advertisements as directors of issues will be liable for misstatements in such documents under Sections 40 and 40A of the CO. 4.3.2 Discretionary Particulars [↑](#footnote-ref-29)
2. The draft CAB proposes to allow the inclusion of additional information if authorised by the SFC on a case by case basis. [↑](#footnote-ref-30)