

Cayman Islands Stock Exchange: continuing obligations for issuers with listed specialist debt securities - Chapter 14

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| Continuing obligations

This client briefing has been prepared for the assistance of directors of companies listing specialist debt securities (as defined in Chapter 1 of the listing rules (the **Listing Rules**) of the Cayman Islands Stock Exchange (the **Exchange**)) under Chapter 14 of the Listing Rules.

The briefing sets out certain of the continuing obligations which an issuer is required to observe once its securities have been admitted to listing. It is a summary only as of the date shown on the cover and should not be regarded as specific legal advice applicable to any particular circumstances.

It is a prerequisite of listing that an issuer executes an issuer's declaration, undertaking to comply with the Listing Rules and, in particular, with all relevant continuing obligations. Observance of the continuing obligations is essential to the maintenance of an orderly market in securities and to ensure that all users of the market have simultaneous access to the same information. Failure of an issuer to comply with any applicable continuing obligation may result in the Exchange taking the enforcement actions described in Chapter 3 of the Listing Rules.

The Listing Rules are available on the website of the Exchange - www.csx.ky

| General obligation for disclosure for issuers

Generally and apart from compliance with the specific requirements of the Listing Rules, the issuer must keep the Exchange, the members of the issuer and other holders of its listed securities informed as soon as reasonably practicable, by way of public announcements or

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
- is necessary to avoid the establishment of a false market in its securities or
- might reasonably be expected materially to affect market activity in and the price of its securities

The Exchange shall be entitled to require the publication of further information by, and impose additional continuing obligations on, the issuer where it considers that circumstances so justify.

However, the Exchange will notify the issuer of its intention to do so and will allow representations by the issuer before imposing any additional obligations on it which are not imposed generally by the Exchange on issuers of the same type of listed security.

Each issuer of debt securities listed pursuant to this chapter must undertake, as a condition of being granted and maintaining a listing on the Exchange, to comply with the continuing obligations set out herein.

New developments

The issuer must notify the Exchange, for release, of any new developments which are not public knowledge and which may reasonably be expected to affect materially the market activity in and the price of the listed securities, or the ability of the issuer to meet its commitments.

Matters requiring prior consultation

The issuer must ensure that transfer of its securities listed pursuant to Chapter 14 is at all times restricted to qualified investors, as defined in Chapter 1 of the Listing Rules.

Operations

If an issuer has listed under the provisions of Listing Rule 14.2(c) it must, within the first two years following admission to listing, prepare and deliver to the Exchange, for dissemination, each update of its activities for the relevant period of its financial year, subject to a minimum of one update in each financial year. The update must be delivered to the Exchange within one month of the end of each relevant period and shall contain financial and non-financial operating data relating to the business operations of the issuer and progress made towards meeting its business objectives. Financial data need not be audited but any unaudited financial data must be clearly identified as such.

The issuer must carry on, directly or indirectly, a sufficient level of operations or have tangible

assets of sufficient value or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing on the Exchange of the issuer's securities.

Equality of treatment

The issuer must ensure equal treatment of all holders of its listed securities of the same class in respect of all rights attaching to such securities.

Exercise of rights

The issuer must ensure that all the necessary information and facilities are made available to holders of the securities to enable them to exercise their rights. In particular, the issuer must notify the Exchange and publish notices or distribute circulars concerning the meetings of holders of its listed securities and the exercise of any conversion rights.

Financial statements

The issuer must prepare annual financial statements. The first set of published annual financial statements must be in respect of a period not exceeding eighteen months from the first date of issue of the securities in the issuer.

The audited annual financial statements must:

- have been prepared in accordance with International Accounting Standards, United States, United Kingdom or Canadian generally accepted accounting principles or other standards acceptable to the Exchange
- have been independently audited and reported on in accordance with International Standards on Auditing or other standards acceptable to the Exchange
- have been reported upon without qualification. Where the auditor's opinion has been qualified or modified to highlight a matter affecting the financial statements, the Exchange must be satisfied that the qualification or emphasis of matter is acceptable to the Exchange and has been adequately explained so as to enable the investors to make a properly informed assessment of the significance of the matter
- where the issuer has subsidiary undertakings, be in consolidated form, unless the Exchange otherwise agrees. The issuer's own financial statements must be published if they contain significant additional information and
- be published as soon as possible after the accounts have been approved and in any event within nine months of the end of the financial period to which they relate and not less than

fourteen calendar days before the date of the issuer's annual general meeting. In exceptional circumstances the Exchange will grant an extension to this time limit

The issuer must make available a copy of its audited annual financial statements to every holder of its listed securities as soon as they have been published and must make further copies available to investors or prospective investors upon request.

At the same time as the audited annual financial statements and any interim financial statements are published, the issuer must send one copy to the Exchange.

Where the listed debt securities may be converted into securities of another entity, or are guaranteed by another entity, the issuer must, at the same time as the audited financial statements and any interim financial statements are published by such entity, send a copy to the Exchange, unless that entity is listed or adequate information is otherwise available.

Directors

Any changes in the composition of the board of directors or significant changes to the senior management personnel of the issuer or guarantor (including any change in the chairmanship) must be notified to the Exchange.

Constitution

Any change in the constitution of the issuer, guarantor or the group or its registered or principal office must be notified to the Exchange.

General nature of the business

Any decision to change the general character or nature of the business of the issuer, guarantor or group must be notified to the Exchange.

Changes in rights

The issuer must notify the Exchange for announcement of any change in the rights of holders of any class of listed securities. Where the listed securities are convertible, this requirement will also apply to any change in the rights of any class of securities into which the listed securities are convertible.

Holdings

The issuer must notify the Exchange of any significant changes in the holdings or identity of

those holders of equity securities holding in aggregate more than five per cent. of the issuer's shares, so far as the directors are aware.

New issues

Any new issues of debt securities, including any further issues of securities of a class already listed on the Exchange, and any guarantee or surety in respect thereof must be notified to the Exchange.

Auditor

Any change in the issuer's or guarantor's auditor must be notified to the Exchange.

Material litigation

Any involvement in material litigation proceedings (where the amount involved is equal to or greater than twenty per cent. of the book value of the existing net assets of the issuer.

Other stock exchanges

The issuer must notify the Exchange if the issuer's securities cease to be listed on another stock exchange or if it is the subject of disciplinary action by another stock exchange or any other securities regulatory body.

Interest

The issuer must notify the Exchange for announcement of any decision in relation to any listed securities not to make any interest payment contemplated by the terms of the issue of such securities.

Decision to purchase

The issuer must notify the Exchange for announcement of any decision to call, purchase, redeem or cancel any of the issuer's listed securities and the total amount thereof.

Notification of purchases

The issuer must notify the Exchange immediately where any purchase, redemption or cancellation of securities of an aggregate of ten per cent. of the initial nominal amount of the listed securities has been made. Once this threshold has been crossed, the issuer must notify the

Exchange of any further purchases, redemptions or cancellations of each additional five per cent. or more of the initial nominal amount of such securities.

Such notification must state the nominal amount of the securities purchased or redeemed, whether such securities are to be cancelled and the nominal amount of the securities remaining outstanding.

Paying agent

Unless derogated at the time of listing, the issuer must maintain a paying agent in the Cayman Islands or other financial centre acceptable to the Exchange until the securities are finally redeemed. The Exchange must be notified of any change of such paying agent. The issuer may itself perform this function if it can demonstrate to the Exchange that it is capable of doing so.

Public announcement

The Exchange will upon notification of any of the above matters make a public announcement with respect to such matters. This is usually done via the relevant "Listing Agent" (i.e. a representative of Ogier Corporate Finance Limited) providing the Exchange with the relevant information.

Clearance and settlement

The issuer must make arrangements acceptable to the Exchange to facilitate the efficient clearance and settlement of all trades and, where applicable, the registration of all transfers of its listed securities.

Conversion information about other companies

Where listed debt securities carry rights of conversion or exchange into or subscription for the share capital of another company, or are guaranteed by another company, the issuer must ensure that adequate information is at all times publicly available about the other company and about any changes in the rights attaching to the shares to which such rights of conversion, exchange or subscription relate. This must include the availability of the annual report and financial statements of the other company together with any interim financial reports and any other information necessary for a realistic valuation of such listed debt securities to be made.

Equivalent information

Where securities listed on the Exchange are also listed on another stock exchange, the issuer must ensure that copies of all documents required to be filed and information required to be

notified to the Exchange are promptly made available to such other stock exchange.

Distribution of documents

The issuer must send to the Exchange a copy of every circular sent to shareholders, all documents relating to take-overs, mergers, consolidations and offers, notices of meetings, forms of proxy, any reports, announcements or other similar documents at the same time as they are issued.

Subsequent listings

The issuer must apply to the Exchange for the listing of any further securities of the same classes as securities already listed on the Exchange prior to their issue and must not issue such securities unless it has applied for their listing and the Exchange has approved the application.

Annual fee

Issuers are required to pay an annual fee to the Exchange in accordance with the schedule of fees published on the Exchange's website, as updated from time to time. The current annual fee for a standalone issue is US\$3,500.

Exception

Where, in the opinion of any issuer, disclosure of any matter required by the listing rules would be unduly detrimental to the issuer, the issuer may apply for a waiver from the relevant requirement. The information, together with a statement of the reasons why the issuer believes the information should not be disclosed at that time, must be provided to the Exchange. The Exchange will deal with the information on a strictly confidential basis. However, the Exchange may at any time order that an announcement be delivered to it for dissemination by the Exchange.

Enforcement actions

If the Exchange considers that an issuer has contravened the Listing Rules it may do one or more of the following:

- suspend trading or cancel the listing of all or any of the issuer's securities where the Exchange considers it necessary for the protection of investors or the maintenance of an orderly market
- censure the issuer and publish the fact that the issuer has been censured for failing to

comply with the Listing Rules and

- where the Exchange considers that a contravention of these listing rules by an issuer is due to a failure by all or any of its directors to discharge their responsibilities it may censure the relevant directors and publish the fact that the directors have been censured and state publicly that in its opinion the retention of office by or appointment of certain directors is prejudicial to the interests of investors

There may be cases where a listing is cancelled without first being suspended.

Where the Exchange considers that an issuer or its business is no longer suitable for a listing, after notification to the issuer, the Exchange will issue an announcement naming the issuer and specifying the period within which the issuer must have remedied those matters which have rendered it unsuitable for a listing. Where appropriate the Exchange may suspend trading in the securities of the issuer. If the issuer fails to remedy those matters within the period set out in the announcement, the Exchange will cancel the listing.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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