

**38D. Registration of prospectus**

- (1) No prospectus shall be issued by or on behalf of a company unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, its registration has been authorized under this section and a copy thereof has been registered by the Registrar.
- (2) Every prospectus shall—
  - (a) on the face of it, state that a copy has been registered as required by this section and immediately after such statement—
    - (i) state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus;
    - (ii) where the prospectus is or is to be authorized for issue by a recognized exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognized exchange company nor the Registrar takes any responsibility as to the contents of the prospectus; or
    - (iii) where the prospectus is or is to be authorized for issue by a recognized exchange controller pursuant to a transfer order made under section 68 of that Ordinance, state that neither the Commission nor the recognized exchange controller nor the Registrar takes any responsibility as to the contents of the prospectus; (*Replaced 5 of 2002 s. 407*)
  - (b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and
  - (c) conform with such requirements as are prescribed by the Chief Executive in Council and the requirements set out in subsection (7A). (*Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920*)
- (3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing and having endorsed thereon or attached thereto—
  - (a) any consent to the issue of the prospectus required by section 38C from any person as an expert; and
  - (b) in the case of a prospectus issued generally, also—
    - (i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 38A from compliance with the requirements of section 38(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 38A(1), a copy or, as the case may be, a memorandum of that contract;
    - (ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and
    - (iii) where the persons making any report required by Part II of the Third Schedule

have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

- (4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (10) to be a correct translation. (*Amended 83 of 1995 s. 7; 30 of 2004 s. 2*)
- (5) The Commission may—
  - (a) authorize the registration by the Registrar, of a prospectus to which this section applies and where the Commission so authorizes, the Commission shall issue a certificate—
    - (i) certifying that the Commission has done so; and
    - (ii) specifying the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered; or
  - (b) refuse to authorize such registration.
- (6) The Commission shall not authorize the registration of a prospectus which relates to an intended company.
- (7) The Registrar—
  - (a) shall not register a prospectus under this section unless—
    - (i) it is dated and the copy thereof to be registered has been signed in the manner required by this section;
    - (ii) it is accompanied by a certificate issued under subsection (5);
    - (iii) it has endorsed thereon or attached thereto all the documents specified in the certificate issued under subsection (5); (*Amended 28 of 2012 ss. 912 & 920*)
    - (iv) it conforms with such requirements as are prescribed by the Chief Executive in Council and the requirements set out in subsection (7A); and (*Amended 23 of 1999 s. 3; 28 of 2012 ss. 912 & 920*)
    - (v) it is accompanied by any fee that is payable, in respect of the registration, under a regulation made under section 26 of the Companies Ordinance (Cap. 622); and (*Added 28 of 2012 ss. 912 & 920*)
  - (b) shall register a prospectus if subparagraphs (i), (ii), (iii), (iv) and (v) of paragraph (a) are complied with in respect of that prospectus. (*Amended 28 of 2012 ss. 912 & 920*)
- (7A) The following are the requirements set out for the purposes of subsections (2)(c) and (7)(a)(iv)—
  - (a) any requirement that the Registrar may specify, by notice in the Gazette, in relation to font size of prospectuses for the purposes of this section;
  - (b) any other requirements that the Registrar may specify for the purpose of—
    - (i) ensuring that documents of the same kind are of a standard form; and
    - (ii) enabling the Registrar to make copies or image records of documents and to make and keep records of the information contained in them. (*Added 28 of 2012 ss. 912 & 920*)
- (7B) For the purposes of subsection (7A)(b), the Registrar may specify different requirements for different documents or classes of documents. (*Added 28 of 2012 ss. 912 & 920*)

- (8) If a prospectus is issued without having endorsed thereon or attached thereto the required documents or without a copy thereof which has the required documents endorsed or attached having been registered under this section by the Registrar, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine and, for continued default, to a daily default fine from the date of the issue of the prospectus until a copy thereof is so registered or until the required documents are endorsed or attached, as the case may be.
- (9) Any person aggrieved by the refusal to authorize the registration of a prospectus under this section may appeal to the court and the court may either dismiss the appeal or order that the registration of the prospectus be authorized by the Commission under this section.
- (10) A translation mentioned in subsection (4) shall be—
- (a) certified by the person making the translation as a correct translation; and
  - (b) deemed to be certified in the prescribed manner if the person making the translation has been certified, by the appropriate person mentioned in subparagraph (i) or (ii), as a person believed by that appropriate person to be competent to translate it into the English or Chinese language, as the case may be, that is to say—
    - (i) if the translation be made outside Hong Kong—
      - (A) a notary public in the place where the translation is made;
      - (B) such other person as may be specified by the Commission; or
      - (C) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph;
    - (ii) if the translation be made in Hong Kong—
      - (A) a notary public in Hong Kong;
      - (B) a solicitor of the High Court of Hong Kong;
      - (C) such other person as may be specified by the Commission; or
      - (D) such other person belonging to a class of persons specified by the Commission, by notice published in the Gazette, for the purposes of this paragraph. *(Added 30 of 2004 s. 2)*
- (11) A notice published under subsection (10)(b)(i)(C) or (ii)(D) is not subsidiary legislation. *(Added 30 of 2004 s. 2)*

*(Replaced 86 of 1992 s. 5)*