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Companies Registry External Circular No. 3 / 2017

Registration of Prospectus

This circular seeks to remind companies to avoid some common errors found in prospectuses and related documents delivered for registration pursuant to sections 38D and 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“the Ordinance”), with a view to facilitating timely registration of prospectuses.

Statutory requirements

2. A company issuing a prospectus offering to the public, or calculated to invite offers by the public, to subscribe for or purchase its shares or debentures should ensure that the prospectus complies with the requirements of the Ordinance.
3. Section 38D(1) of the Ordinance provides that no prospectus shall be issued by or on behalf of a company formed and registered under the Companies Ordinance (Cap. 622) or a former Companies Ordinance unless the prospectus complies with the requirements of the Ordinance and, on or before the date of its publication, its registration has been authorized under section 38D and a copy thereof has been registered by the Registrar of Companies (“the Registrar”).
4. Section 342C(1) of the Ordinance provides that no prospectus offering for subscription or purchase of shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) shall be issued, circulated or distributed in Hong Kong unless the prospectus complies with the requirements of the Ordinance and, on or before the date of its publication, circulation or distribution in Hong Kong, its registration has been authorized under section 342C and a copy thereof has been registered by the Registrar.
5. Sections 38D and 342C of the Ordinance provide, among others, that the Registrar shall not register a prospectus unless the prescribed requirements are satisfied.

Common errors found in prospectuses and related documents

6. Some common errors have been found in some of the prospectuses and related documents delivered for registration. Examples include the omission to include the reference to section 38D or 342C of the Ordinance pursuant to which the prospectus has been registered, incorrect translation of the term “Registrar of Companies” in the Chinese version of the prospectus and inaccurate description of a material contract in the prospectus. The **Annex** to this circular contains a table summarising and describing the more common errors found in prospectuses and related documents delivered to the Registrar for registration. Suggestions on how to avoid such errors with reference to the relevant statutory provisions are also provided.

7. It is noted that prospectuses and related documents are sometimes delivered to the Registrar for registration within a very tight time frame before it is scheduled to be published. To facilitate a smooth and timely registration of prospectuses, companies issuing prospectuses and their advisers are strongly advised to avoid the errors set out in the Annex and ensure that the prospectuses and related documents delivered to the Registrar for registration are duly prepared in accordance with the statutory requirements.

Enquiries

8. Enquiries concerning the contents of this circular may be directed to Mr Tim Chung, Senior Solicitor, at (852) 2867 4706 or timchung@cr.gov.hk.

9. For any legal issues relating to the preparation and registration of prospectus, companies are advised to seek legal advice as they see fit.

Ms Ada LL CHUNG
Registrar of Companies

c.c.: CR HQ/8-7/5

**Some common errors in prospectuses and related documents
delivered to the Registrar of Companies for registration**

Item	Document(s)	Common error(s)	Relevant provisions/ Remarks
1	Prospectus and application forms	<p>In the Statement (as defined in the next column) in the prospectus and the application forms:</p> <ul style="list-style-type: none"> • Incorrect translation of the term “Registrar of Companies” in the Chinese version of the prospectus (Examples : “公司註冊處”, “公司註冊處長”). <ul style="list-style-type: none"> ✓ <i>The correct translation of “Registrar of Companies” should be “公司註冊處處長”.</i> • “Registrar of Companies” is incorrectly stated or spelt (Examples : “Companies Registry”, “Registrars of Companies”, “Registrar Companies”) <ul style="list-style-type: none"> ✓ <i>“Registrar of Companies” should be correctly stated in the Statement.</i> • Incorrect title of the Ordinance There are occasions where the title of the Ordinance pursuant to which the prospectus is required to be registered is wrongly 	<p>Sections 38D(2)(a) and 342C(2)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“the Ordinance”) require, among others, that every prospectus shall on the face of it, state that a copy has been registered as required by section 38D or 342C and, immediately after such statement, state that neither the Commission (<i>as defined in section 2(1) of the Ordinance</i>) nor “the <u>Registrar</u>” takes any responsibility as to the contents of the prospectus (“the Statement”).</p> <p>The documents required to be registered with the prospectus may include application forms (“the application forms”).</p>

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		<p>stated as the “Companies Ordinance” or otherwise incorrectly stated, spelt or described.</p> <p>✓ <i>The title of the Ordinance should be stated as <u>the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)</u>.</i></p> <ul style="list-style-type: none"> • Missing/ incomplete Statement <p>There are occasions where certain information required to be stated in the Statement (e.g. the reference to section 38D or 342C of the Ordinance pursuant to which the prospectus has been registered) is/ are missing.</p> <p>Examples :</p> <p>(a) it is only stated that a copy of the prospectus has been registered, but the statement that “Neither the Commission nor the Registrar of Companies takes any responsibility as to the contents of the prospectus” is omitted;</p> <p>(b) the reference to section 38D or 342C of the Ordinance is stated in the Statement in the prospectus, but omitted in the Statement in the application forms.</p>	

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		<p>✓ <i>The Statement in the prospectus and the application forms should contain the information required to be stated pursuant to section 38D(2)(a), or 342C(2)(a), of the Ordinance, including the reference to “section 38D” or “section 342C” as the case may be.</i></p>	
2	Statement of certification on the prospectus and application forms pursuant to section 342C	<ul style="list-style-type: none"> • Missing/incorrect statement of certification in the prospectus and the application forms <p>Examples:</p> <p>(a) “Certified as having been approved by <u>a resolution of the Company</u> dated []” (instead of by a resolution of the <i>governing body</i> of the company;</p> <p>(b) “Certified as having been approved by a resolution of the board of directors of the Company” (missing the <u>date of the resolution</u>).</p> <p>✓ <i>The prospectus and the application forms should be certified by <u>2 members of the governing body of the company as having been approved by a resolution of the governing body on a certain date.</u></i></p>	<p>Section 342C(3) of the Ordinance requires, among others, that the prospectus should be <u>certified by 2 members of the governing body of the company or by their agents authorized in writing</u> as having been approved by resolution of the governing body.</p> <p>Section 342C(7)(a)(i) of the Ordinance provides that the Registrar shall not register a prospectus unless, among others, it has been certified in the manner required by section 342C.</p>

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		<p><i>Sample</i></p> <p><i>Certified as having been approved by a resolution of the board of directors of the Company passed on [date]</i></p> <p><i>(Signature)</i> <i>(Signature)</i> <i>(State name)</i> <i>(State name)</i> <i>(State capacity)</i> <i>(State capacity)</i></p> <ul style="list-style-type: none"> • The prospectus and the application forms are certified by one or more person(s) who is/are not (a) member(s) of the governing body of the company <p>Example : the secretary of the company who/which is not a member of the governing body of the company certified the prospectus as having been approved by a resolution of the governing body of the company.</p> <p>✓ <i>Unless the prospectus and the application forms are certified by 2 members of the governing body of the company, appropriate authorization document, e.g. power of attorney, from the member of the governing body who authorized the non-member to certify the relevant documents should be provided.</i></p>	

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3	Documents required to be registered with the prospectus : expert's consent, translation certificates and material contracts	<p>The documents required to be registered are specified in the Commission's Certificate (as defined in the next column). However, certain documents specified in the Commission's Certificate are not delivered to the Companies Registry ("the CR") for registration and certain documents delivered to the CR for registration do not tally with the description of the documents specified in the Commission's Certificate :</p> <p>Examples:</p> <ul style="list-style-type: none"> (a) certain material contracts are missing; (b) the Commission's Certificate refers to the <i>original</i> of a consent letter/ translation certificate but only a <i>certified copy</i> of the consent letter/ translation certificate is delivered to the CR for registration, and vice versa; (c) the name of the expert giving the consent as stated in the Commission's Certificate is different from that as stated in the expert's consent delivered to the CR for registration. <p>✓ <i>All the documents delivered to the CR for registration as specified in the Commission's Certificate should tally with the description of the documents as specified in the Commission's Certificate.</i></p>	<p>Sections 38D(5) and 342C(5) of the Ordinance provide that the certificate issued by the Commission ("the Commission's Certificate") specifies the documents which are required to be endorsed on or attached to the copy of the prospectus to be registered. These may include an expert's consent, translation certificates and material contracts.</p> <p>Sections 38D(7)(a)(iii) and 342C(7)(a)(iii) of the Ordinance provide that the Registrar shall not register a prospectus unless, among others, it has endorsed thereon or attached thereto all the documents specified in the Commission's Certificate.</p>

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4	Expert's consent	<p>There are occasions where the final proof of the prospectus initialed by the auditor and stated as enclosed with the auditor's consent is not so enclosed with the auditor's consent delivered to the CR for registration.</p> <p>✓ <i>The enclosures stated in the expert's consent should be included in the expert's consent delivered to the CR for registration.</i></p>	<p>An expert's consent may be required to be registered with the prospectus, see Item 3 above. Sections 38C and 342B set out the provisions as regards an expert's consent.</p> <p>The expert's consent may be given by an auditor.</p>
5	Translation certificates	<ul style="list-style-type: none"> • Inaccurate information in translation certificates <p>Example : the Hong Kong identity card number of the translator as stated in the translator's certificate is different from that as stated in the certificate on the competency of the translator given by the sponsor.</p> <p>✓ <i>The information in the translation certificates should be correct and tally with each other.</i></p> <ul style="list-style-type: none"> • Omission of translation certificates <p>Example : the translation certificate issued by the translator certifying the accuracy of the translation of the prospectus and the application forms is missing, only the translation</p>	<p>Sections 38(1) and 342(1)(b) of the Ordinance provide, among others, that a prospectus must either be in the English language and contain a Chinese translation or be in the Chinese language and contain an English translation.</p>

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		<p>certificates issued by the sponsor and the translation firm both certifying the competency of the translator are provided.</p> <p>✓ <i>All of the translation certificates should be delivered to the CR for registration.</i></p>	
6	Material contracts	<p>The prospectus delivered to the CR for registration contains information in relation to material contract which does not tally with the information contained in the material contract delivered to the CR for registration</p> <p>Example : the name of the party to the material contract as stated in the prospectus does not tally with that as stated in the material contract delivered to the CR for registration.</p> <p>✓ <i>The information stated in the prospectus in relation to material contract should be correct and tally with the information contained in the material contract delivered to the CR for registration.</i></p>	<p>Sections 38D(3)(b)(i) and 342C(3)(b)(i) of the Ordinance provide that in the case of a prospectus issued generally, a copy of any material contract is required to be registered with the prospectus.</p>

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7	Incomplete documents	<p>Incomplete documents delivered to the CR for registration</p> <p>Examples:</p> <ul style="list-style-type: none"> (a) all the even numbered pages of the prospectus delivered to the CR for registration are missing; (b) certain execution pages in the material contract delivered to the CR for registration are missing. <p>✓ <i>Complete documents with no missing pages should be delivered to the CR for registration.</i></p>	