

Hong Kong Capital Markets Update

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HKEX's consultation on the Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Listing Rule Amendments

On 2 August 2019, the Stock Exchange of Hong Kong Limited (the Exchange) published a [consultation paper](#) (Consultation) seeking market views on the proposed codification of general waivers and principles relating to IPOs and listed issuers and minor Listing Rule amendments. The deadline for submissions is 27 September 2019.

Highlights

- The Exchange is seeking comments on its proposed codification of: (i) a number of General Waivers in relation to IPOs and listed issuers whose basis and conditions are unlikely to change or evolve in the foreseeable future; (ii) the principles and conditions underpinning a number of waivers from strict compliance with Listing Rules that have been granted by the Exchange in relation to IPOs and listed issuers on more than one occasion; (iii) minor Listing Rule amendments; and (iv) housekeeping Listing Rule amendments.
- The deadline for submissions of responses is 27 September 2019.

Background

New applicants and listed issuers have applied to the Exchange from time to time for waivers from strict compliance with certain Listing Rules based on their circumstances. The Exchange would assess each waiver application based on the facts and circumstances presented to determine if a waiver should be granted. Over the years, the Exchange has granted a significant number of waivers, including a number of General Waivers granted with the consent of the Securities and Futures Commission (SEC). Where appropriate, the Exchange has provided guidance through guidance letters and listing decisions to inform the market of circumstances where a waiver is likely to be granted, and the conditions to which such waiver is normally subjected.

The Exchange reviews the Listing Rules and guidance from time to time with a view to keeping them relevant and up-to-date in light of changing market conditions. In this connection, the Exchange has undertaken a comprehensive review of the General Waivers as well as specific waivers, which have been granted on more than one occasion in the last three years, and proposed to codify them in the respective Listing Rules.

Appendix I summarises the proposed Listing Rule amendments considered in the Consultation, and the key proposals are set out below.

Key proposals

General Waivers for Codification

The Exchange observed that the basis and conditions for some of the General Waivers in relation to IPOs and listed issuers are unlikely to change and evolve in the foreseeable future. As part of the Exchange's ongoing effort to further streamline the listing process, the Exchange proposes to codify these General Waivers into the Listing Rules.

The Exchange proposes to codify the General Waivers relating to the following:

- Publication and distribution of annual results and reports (see "*General Principles for Codification – Financial disclosure*" below)

- Shareholder approval requirements for bonus or capitalisation issues by PRC incorporated issuers

The Exchange proposes codifying the existing General Waiver to specifically exempt bonus or capitalisation issues by PRC issuers from shareholder approvals in general meetings and separate class meetings.

- Calculation of the consideration ratio for PRC incorporated issuers dually listed on the Exchange and a PRC exchange

The Exchange proposes to codify the modification (that only applies to PRC incorporated issuers whose domestic shares are listed on a PRC exchange) provided by the General Waiver into the Listing Rules. In respect to PRC incorporated issuers with unlisted domestic shares, the market capitalisation of these unlisted shares will continue to be calculated by reference to the average closing price of the H shares for the five business days preceding the transaction since there is no alternative market price for such domestic shares.

- Inclusion of stock code in documents

The Exchange proposes to add a new note to Main Board Listing Rule 13.51A to state that it would consider the Listing Rules to be satisfied if the listed issuer's stock code is displayed prominently in the corporate or shareholder information section of financial reports.

General Principles for Codification

The Exchange has identified a number of waivers which have been granted on more than one occasion to IPOs and listed issuers on the basis of similar general principles. The Exchange proposes to codify these general principles into the Listing Rules with a view to improve clarity and reflect currently acceptable standards in the market.

The Exchange proposes to codify General Principles relating to the following:

Financial disclosure

- Disclosure of financial information of subsidiaries and businesses acquired or to be acquired after trading record period

Main Board Listing Rules 4.04(2) and 4.04(4) require the new applicant to include in its accountants' report the financial results and financial positions of any subsidiary or business acquired or to be acquired after the trading record period. The Exchange proposes to codify the conditions set out in paragraph 4.12 of the Guidance Letter GL32-12 as exceptions to the requirement under Main Board Listing Rules 4.04(2) and 4.04(4).

- Disclosure of financial information by overseas banking companies

The Exchange proposes to codify its practice of granting waivers for overseas banking applicants from strict compliance with the banking disclosure guidance to new applicants that are banking companies organised outside Hong Kong and primarily regulated by a regulator which has functions similar to the Hong Kong Monetary Authority, provided that they can demonstrate to the Exchange's satisfaction that the foreign regulator provides adequate supervision to the new applicant and the alternative disclosure in the listing document is sufficient for potential investors to make a fully informed investment decision.

Hong Kong Capital Markets Update

- Change of financial year period

Main Board Listing Rule 8.21(1) limits the new applicant from (i) changing the financial year period during the latest complete financial year immediately preceding the proposed listing; or (ii) changing the financial year period during the period of the profit forecast, if any, or the current financial year, whichever is the longer period. The Exchange proposes to codify the waivers set out in Listing Decision LD50-2 as an exception to the requirement under Main Board Listing Rule 8.21(1).

- Publication and distribution of interim results and reports

The Exchange proposes to (i) codify the modification provided by the General Waivers into Main Board Listing Rules 13.46 and 13.49(1) subject to the new applicant meeting Annual Results and Reports Waivers Conditions¹; (ii) codify similar exceptions to the Main Board Listing Rule 13.48(1) and GEM Listing Rules 18.66 and 18.79 with respect to the distribution and publication of quarterly report and preliminary results for the first three and nine months period of each financial year; (iii) align the conditions for interim results exemption with the Audit Results and Reports Waivers Conditions; and (iv) repeal Practice Note 10 and consolidate the guidance with the relevant Main Board Listing Rules.

Acquisition

- Acquisition of aircrafts by airline operators

The Exchange proposes to add a new note to Main Board Listing Rule 14.58(4) to state that, where a transaction involves an acquisition of an aircraft from an aircraft manufacturer by a listed issuer principally engaged in airline operations and the acquisition is in the issuer's ordinary and usual course of business, the Exchange may waive the requirement of disclosing the aggregate value of the consideration if there are contractual confidentiality restrictions from disclosing the actual consideration for the aircraft (but subject to additional disclosures in the acquisition announcement and/or transaction circular, and its next interim and annual report).

Incentive Scheme

- Share option scheme limit for a listed issuer's subsidiary to be spun-off for separate listing

The Exchange proposes to amend Note 1 to Main Board Listing Rule 17.03(3) to allow listed issuers to determine SpinCo's² Scheme Limit³ with reference to SpinCo's shares in issue as at the date of SpinCo's listing.

- Determination of exercise price of options under a share option scheme adopted by issuers dually listed on the Exchange and a PRC exchange

The Exchange proposes to add a new Main Board Listing Rule 19A.39C to state that the Exchange may waive the exercise price requirement for issuers dually listed on the Exchange and a PRC exchange such that they may determine the exercise price by reference to the market price of their shares listed on the PRC exchange, if certain conditions are being satisfied.

Others

- Experience and qualification of company secretary

The Exchange proposes to codify the waiver (an issuer can appoint company secretaries not having the qualifications or experience required by the Main Board Listing Rule 3.28) into the Listing Rules so that the Exchange may grant a waiver to an issuer taking into account (i) whether the issuer has principal business activities primarily outside Hong Kong; (ii) the reasons why the directors consider the individual to be suitable to act as the issuer's company secretary; and (iii) whether the proposed company secretary will be assisted by a qualified person throughout a period of not more than three years.

¹ The detailed conditions are set out in Chapter 3 paragraph 54 of the Consultation.

² Spin-off of a listed issuer's subsidiary.

³ Note 1 of current Main Board Listing Rule 17.03(3) provides that the shares which may be issued upon exercise of all options under the scheme must not exceed 10 percent of shares in issue as at the date of approval of the scheme.

Hong Kong Capital Markets Update

- Working capital statement in listing documents and transaction circulars of Main Board issuers that are banking companies or insurance companies

The Exchange proposes to amend the Main Board Listing Rules to provide an exemption for listed issuers that are banking companies or insurance companies from including a working capital statement in their listing documents and transaction circulars, subject to appropriate alternative disclosures. The Exchange also proposes to amend the exemption under the Main Board Listing Rule 8.21A(2) to apply to listing applicants that are banking companies or insurance companies.

Minor Listing Rule Amendments

The Exchange proposes a number of minor amendments to the Listing Rules for the purpose of providing greater clarity to the Listing Rules and to codify administrative guidance that is currently provided in guidance letters or listing decisions.

Housekeeping Listing Rule Amendments

The Exchange proposes to make a number of housekeeping amendments to the Listing Rules. These amendments are intended to improve clarity of the Listing Rules, to correct clerical errors and/or update outdated references, and do not involve questions of policy.

If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

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Appendix I - Summary the proposed Listing Rule amendments in the Consultation

	Proposed codification	Relevant Listing Rules
General Waivers for Codification	Publication and distribution of annual results and reports	13.46 and 13.49(1)
	Shareholder approval requirements for bonus or capitalisation issues by PRC incorporated issuers	19A.38
	Calculation of the consideration ratio for PRC incorporated issuers dual listed on the Exchange and a PRC exchange	19A.38A
	Inclusion of stock code in documents	13.51A
General Principles for Codification	Disclosure of financial information of subsidiaries and businesses acquired or to be acquired after trading record period	4.04(2) and 4.04(4)
	Disclosure of financial information by overseas banking companies	4.10
	Change of financial year period	8.21
	Publication and distribution of interim results and reports	13.48(1) and 13.49(6)
	Acquisition of aircrafts by airline operators	14.58(4)
	Share option scheme limit for a listed issuer's subsidiary to be spun off for separate listing	17.03(3)
	Determination of exercise price of options under a share option scheme adopted by issuers dually listed on the Exchange and a PRC exchange	17.03(9) and 19A.39C
	Experience and qualification of company secretary	3.28
	Working capital statement in listing documents and transaction circulars of Main Board issuers that are banking companies or insurance companies	8.21A(2), 11.09A and 14.66(10)
Proposed minor Listing Rule amendments	All documentary requirements for refiling a listing application (i) more than six months after the date of the original listing application; or (ii) where a sponsor has changed	9.10A(1) and 9.10B
	Initial listing fee for introduction	Paragraph 1(4) of Appendix 8
	Restriction on grant of share options	17.05
	Pre-vetting of documents and announcements in IPO cases and post-vetting announcements relating to price stabilisation actions	2.07C(1)(a), 12.05 and 12.09
	Typhoon and rainstorm warning arrangements	New practice note to the Rules
	Confirmations required on the accountants' report, pro forma financial information and profit forecast in Application Proofs and subsequent draft listing documents	9.11
	Confirmations required on expert opinions in Application Proofs and subsequent draft listing documents	9.11
Housekeeping Listing Rule amendments	Amendment of the Chinese version of the Listing Rules to address inconsistencies with the English version and rectification of clerical errors	N/A
	Repeal of outdated transitional arrangements	N/A
	Adequate market in the securities for which listing is sought	N/A
	Consequential changes to the GEM Listing Rules following the changes to documentary requirements relating to listed issuers becoming effective	N/A