



HKEx Consultation on Codifying Waivers and Principles for HKEx IPOs and Listed Issuers

Summary

Proposed waivers codification

- Stock code to be displayed prominently rather than on the cover or first page (13.51A*)
- Disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period (4.04(2), 4.40(4))
- Change of financial year period (8.21)
- Publication of preliminary results announcements and distribution of annual reports and interim reports (13.46, 13.49(1))
- Shareholder approval requirement for bonus or capitalisation issues by HKEx-listed PRC incorporated issuers (19A.38)
- Calculation of the consideration ratio for PRC incorporated issuers dually listed on the HKEx and a PRC exchange (19A.38A)
- Determination of exercise price of options under a share option scheme adopted by HKEx issuers dually listed on the HKEx and a PRC exchange (17.03(9), 19A.39C)
- Aircraft acquisitions by airline operators (14.58(4))
- Overseas banking companies (4.10)
- Banking companies or insurance companies - working capital statement in listing documents and transaction circulars of Main Board issuers (8.21A(2), 11.09A, 14.66(10))
- HKEx listed issuer's subsidiary spun-off for separate listing - share option scheme limit (17.03(3))
- Experience and qualification of company secretary (3.28)

Proposed codification of existing guidance letters, listing decision and other minor HKEx 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), 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, 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 Rule Amendments

- Amendment of the Chinese version of the Listing Rules to address inconsistencies with the English version and rectification of clerical errors
- Repeal of outdated transitional arrangements
- Requirement of adequate market in the securities for which listing is sought
- Consequential changes to the GEM Rules following the changes to documentary requirements relating to listed issuers becoming effective

***all rules above refer to the Main Board Rules**

I. General

1. Inclusion of HKEx stock code in documents (Main Board Listing Rule 13.51A)

Main Board Listing Rule 13.51A requires a listed issuer to set out its stock code in a prominent position on the cover page or, if there is no cover page, the first page of all announcements, circulars and other documents published under HKEx's Listing Rules.

HKEx is proposing to add a new note to Main Board Rule 13.51A stating that HKEx will consider the rule to be satisfied, if the listed issuer's stock code is displayed prominently in the corporate or shareholder information section of annual or interim financial reports.

2. Disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period

Main Board Listing Rules 4.04(2) and 4.04(4) require an applicant seeking to list to include in its accountants' report the financial results and financial positions of any subsidiary or business acquired, agreed to be acquired or proposed to be acquired, irrespective of the size of the subsidiaries or businesses acquired/to be acquired.

The HKEx recognizes that listing applicants may encounter difficulties in disclosing the historical financial information of subsidiaries or businesses acquired/to be acquired, and that in cases where the financial information of these subsidiaries or businesses is not material to the listing applicant, its disclosure will be of limited value to investors. It proposes to codify waivers from strict compliance with Main Board Listing Rules 4.04(2) and 4.04(4) under the following conditions:

- a. the acquisition is not material (i.e. all percentage ratios for each acquisition are less than 5% by reference to the most recent audited financial year of the listing applicant's trading record period);
- b. where the acquisition will be financed by the proceeds raised from the IPO, the HKEx listing applicant has obtained a certificate of exemption from the SFC from the relevant requirements under paragraphs 32 and 33 of the Third Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance which governs the use of IPO proceeds and requires an accountants' report on such proposed acquisitions; and



c. with respect to:

- A. new HKEx listing applicants whose principal activities involve the acquisition of equity securities, the new listing applicant:
 - i. is not able to exercise any control and does not have any significant influence over the underlying company or business (this means the new applicant is not able to exercise or control the exercise of 30% or more of the voting power at general meetings of the underlying company or business, or in a position to control the composition of a majority of the board of directors of the underlying company or business); and
 - ii. has disclosed in its listing document the reasons for the acquisition and a confirmation that the counterparties and their respective ultimate beneficial owners are independent of the new applicant and its connected persons; or
- B. the acquisition of a business or a subsidiary:
 - i. the historical financial information of the business or subsidiary is unavailable, and it would be unduly burdensome for the new applicant to obtain or prepare such financial information; and
 - ii. the new applicant has disclosed in its listing document information required for the announcement for a discloseable transaction under Main Board Listing Rules 14.58 and 14.60 on each acquisition.

3. Change of financial year period

Main Board Listing Rule 8.21(1) states that the HKEx will not normally consider an HKEx listing application if the new applicant:

- a. has changed the period of its financial year during the most recent financial year (being 12 months) immediately preceding the proposed date of issue of the listing document; or
- b. intends to change the period of its financial year during the period of the profit forecast, if any, or the current financial year, whichever is the longer period.

The HKEx proposes to codify waivers for Main Board Listing Rule 8.21(1), provided that:

- a. the new applicant is an investment holding company, and the change is to allow the new applicant's financial year to be coterminous with that of all or a majority of its major operating subsidiaries;
- b. the proposed change in the financial year end date is not designed to circumvent the requirements under Main Board Rule 8.05; and
- c. the proposed change will not materially affect the presentation of financial information or result in any omission of material information that should otherwise be disclosed in the listing document, or would be relevant to the assessment of the new applicant's suitability.



4. Publication of preliminary results announcements and distribution of annual reports and interim reports

Main Board Listing Rules 13.46, 13.48 and 13.49 lay out the distribution, publication and disclosure requirements for financial results and financial reports. In particular:

- a. Annual results and reports – Main Board Listing Rule 13.49(1) requires an issuer to publish its annual results within three months after its financial year-end. Main Board Listing Rules 13.46(1) and 13.46(2) require, among other things, an issuer to send a copy of its annual report and accounts or summary financial report to its shareholders within four months after its financial year-end;
- b. Interim results and reports – Main Board Listing Rule 13.49(6) requires an issuer to publish its interim results in respect of the first six months of the financial year (the Interim Period) within two months after the end of that Interim Period. Main Board Listing Rule 13.48(1) requires an issuer to send a copy of its interim report or summary interim report to shareholders within three months after the end of the Interim Period to which it relates (together with (i) above, the Publication and Distribution Requirements).

Since their purpose is to ensure that investors are properly informed about listed issuers' financial affairs, where issuers have already disclosed their latest financial information in their listing document, its further disclosure under the Publication and Distribution Requirements may not be particularly meaningful for investors and unnecessarily burdensome for issuers. For that reason, the HKEx has granted a general waiver for Main Board Listing Rules 13.46 and 13.49(1) with the endorsement of the SFC.

An exception already exists from the requirement for issuers to file interim results under Main Board Listing Rule 13.49(6) where their latest interim results were included in the listing document submitted with their listing application (paragraph 3 of Practice Note 10 to the Main Board Listing Rules (PN10) (the Interim Results Exemption). However, there is no exception from Main Board Listing Rule 13.48(1) regarding the requirement to send interim reports to shareholders.

For new applicants who have already disclosed in their listing documents the financial information for the latest financial year and the relevant management discussion and analysis, the HKEx has imposed the following conditions for the general waivers from Main Board Listing Rules 13.46(1), 13.46(2) and/ or 13.49(1):

- i. that the new applicant has confirmed in the listing document that non-compliance with the relevant Publication and Distribution Requirements will not result in breach of its constitutional documents, laws and regulations of its place of incorporation or other regulatory requirements regarding its obligation to publish and/ or distribute annual results announcements and/ or annual reports and accounts; and
- ii. for waivers relating to the distribution of annual reports and accounts (i.e. Main Board Listing Rules 13.46(1) and/ or 13.46(2)), the new applicant has included in its listing document a statement as to whether it complies with the Corporate Governance Code in Appendix 14 to the Main Board Rules and, if not, the reason for deviation (together with subparagraph (a) above, the Annual Results and Reports Waivers Conditions).



II. Companies Dually Listed on Hong Kong and PRC Exchanges

1. Shareholder approval requirement for bonus or capitalisation issues by HKEx-listed PRC incorporated issuers (Main Board Listing Rule 19A.38)

The proposed codification of the existing general waiver will specifically exempt bonus and capitalisation issues by PRC issuers from shareholder approvals in general meetings and separate class meetings.

2. Calculation of the consideration ratio for PRC incorporated issuers dually listed on the HKEx and a PRC exchange (Main Board Listing Rule 19A.38)

Listed issuers must classify notifiable and connected transactions based on the highest of the percentage ratios (including consideration ratio, revenue ratio, assets ratio and equity capital ratio). The consideration ratio is calculated by dividing the consideration by the total market capitalisation of the listed issuer. The HKEx, with the SFC's endorsement, has granted a general waiver modifying the calculation of the market capitalisation of A or B shares listed on a PRC exchange by referencing the market price of the A or B shares and not the issuer's H shares listed on the HKEx, since this would better reflect the PRC issuer's market value.

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

The exercise price of options granted under a listed issuer's share option scheme should be at least the higher of:

- a. the closing price of the securities as stated in the HKEx's daily quotations sheet on the date of grant, and
- b. the average closing price of the securities as stated in the HKEx's daily quotations sheets for the five business days immediately preceding the date of grant (exercise price requirement).

HKEx proposes that it may waive the exercise price requirement for issuers dually listed on the HKEx 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 it is satisfied that:

- a. the scheme involves only shares listed on the PRC exchange; and
- b. the scheme contains provisions to ensure that the exercise price of the share options is no less than the prevailing market price of the relevant shares on the PRC exchange at the time of grant of the options.

III. Aircraft acquisitions by airline operators

Main Board Listing Rule 14.58(4) requires a notifiable transaction announcement to include the aggregate value of the consideration and certain other information, which must also be included in the notifiable transaction circular.

Confidentiality provisions prohibiting the disclosure of aircraft purchase prices are common in contracts between aircraft manufacturers and purchasers. HKEx therefore proposes that it may waive the requirement of disclosing the aggregate value of the consideration, where an HKEx listed issuer engaged in airline operations acquires an aircraft from an aircraft manufacturer if: (a) the acquisition is made in the issuer's ordinary and usual course of business; and (b) there are contractual confidentiality restrictions on disclosing the actual consideration for the aircraft. In this case, the issuer must disclose:



1. the reasons for its waiver application and provide alternative disclosure (including the aircraft's list price, a description of any price concession received and whether that price concession is comparable to that obtained on previous purchases and has any material impact on the issuer's future operating costs as a whole) in the announcement and, where applicable, the transaction circular; and
2. the following information in its next interim report (where applicable) and annual report:
 - a. the aggregate number of aircraft owned as at the end of the reporting period with a breakdown by aircraft model, and the aggregate net book value of the aircraft; and
 - b. the aggregate number of aircraft it is committed to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments.

IV. Overseas banking companies

Main Board Listing Rule 4.10 requires that the financial information to be disclosed in respect of Main Board Listing Rules 4.04 to 4.09 must be in accordance with best practice, which is at least that required to be disclosed in respect of those specific matters in the accounts of a company under the Hong Kong Financial Reporting Standards, International Financial Reporting Standards or China Accounting Standards for Business Enterprises, and, in the case of banking companies, the Guideline on the Application of the Banking (Disclosure) Rules issued by the HKMA (the Banking Disclosure Guideline).

The HKEx has in the past granted waivers from strict compliance with the Banking Disclosure Guidelines (the R4.10 Waivers) to new listing applicants on the following conditions:

1. that they are banking companies organised outside Hong Kong and primarily regulated by a regulator with functions similar to the HKMA, and the HKEx is satisfied that the foreign regulator provides adequate supervision to the new applicant; and
2. alternative disclosure has been made in the listing document with regards to: (a) capital adequacy; (b) loan quality (including non-performing loans, restructured loans and overdue loans); (c) loan provisioning; and (d) guarantees, contingencies and other commitments, and this is sufficient to enable potential investors to make an informed investment decision.

The proposed codification will grant waiver to new listing applicants that fulfil the above conditions. Notwithstanding the codification, new applicants must still comply with the "best practice" standards required by Main Board Listing Rule 4.10. So the standards have not been changed but just what to be disclosed.

V. Banking companies or insurance companies - working capital statement in listing documents and transaction circulars of Main Board issuers

Listing applicants' and listed issuers' listing documents and transaction circulars shall contain a statement by the directors confirming that the applicant or issuer group would have sufficient working capital for at least 12 months (working capital statement).

HKEx is proposing 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.



It also proposes to amend the exemption under Main Board Rule 8.21A(2) to apply to listing applicants that are banking companies or insurance companies.

VI. HKEx listed issuer's subsidiary spun-off for separate listing - share option scheme limit

Chapter 17 of the Main Board Listing Rules applies to share option schemes of a listed issuer or any of its subsidiaries and requires the approval of a scheme by the issuer's shareholders in a general meeting. Note 1 to 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% of shares in issue as at the date of approval of the scheme (Scheme Limit).

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

VII. Experience and qualification of company secretary of HKEx listed issuers

Issuers must appoint a company secretary who meets the requirements of Main Board Listing Rule 3.28 to have certain academic or professional qualifications or relevant experience and familiarity with Hong Kong's securities regulation (Main Board Rule 8.17).

HKEx has granted waivers in the past for company secretaries not having the qualifications or experience required (the Proposed Company Secretary) for a specified period. The waiver is granted on condition that the Proposed Company Secretary must be assisted by a person with the requisite qualifications or experience (Qualified Person) throughout the waiver period.

The length of the waiver period will depend on:

1. the Proposed Company Secretary's experience in handling company secretarial matters, relevant professional qualifications and/or academic background;
2. the measures and systems in place to facilitate the Proposed Company Secretary in discharging his/her duties; and
3. the issuer's regulatory compliance and/or material deficiencies in internal controls.

The proposed codification of the Listing Rules will allow HKEx to grant a Main Board Listing Rule 3.28 waiver to an issuer taking into account the following:

1. whether the issuer has principal business activities primarily outside Hong Kong;
2. the reasons why the directors consider the individual to be suitable to act as the issuer's company secretary; and
3. whether the Proposed Company Secretary will be assisted by a Qualified Person throughout a period of not more than three years, the length of which may depend on the factors discussed above.



VIII. Proposed codification of existing guidance letters, listing decision and other minor HKEx Listing Rule amendments

A number of minor HKEx Listing Rule amendments are proposed to codify administrative guidance currently included in various guidance letters and listing decisions.

1. 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

Guidance Letter HKEX-GL7-09 provides guidance on the documents that are required to be submitted to the HKEx when:

- a. a listing application is resubmitted after the lapse of the previous application; or
- b. where there has been a change in sponsor.
- c. HKEx proposes to codify the guidance in Guidance Letter HKEX-GL7-09 in new Main Board Listing Rules 9.10A and 9.10B.

2. Initial listing fee for introduction

Listing Decision HKEX-LD15-3 decided that the initial listing fee for a new listing applicant listing by way of introduction should be calculated based on:

- a. the new applicant's actual market capitalisation where its shares are already listed; or
- b. the price/earnings ratio used to estimate the monetary value of the applicant's newly listed shares.

The guidance in Listing Decision HKEX-LD15-3 will be codified in paragraph 1(4) of Appendix 8 to the Main Board Listing Rules.

3. Restriction on grant of share options

Main Board Listing Rule 17.05 prohibits the grant of share options whilst an issuer is in possession of inside information and during the issuer's "black-out" periods shortly before releases of periodic financial results.

The wording of Main Board Listing Rule 17.05 currently states that "... An issuer may not grant any option after inside information has come to its knowledge until it has announced the information ...". The HKEx considers that this formulation may not achieve the intended regulatory objective where options are granted immediately after an inside information announcement but before the share price reflects the effect of that inside information.

HKEx therefore proposes to amend Main Board Listing Rule 17.05 to clearly state that the restricted period for the grant of share options covers the trading day after the announcement is made with respect to the inside information.

4. Pre-vetting documents and announcements in HKEx IPO cases and post-vetting announcements relating to price stabilisation actions

Guidance Letter HKEX-GL16-09:

- a. clarifies the publication materials from a new application requiring pre-vetting (i.e. publicity material, listing document, formal notice, allotment results and strike price announcement) or post-vetting (i.e. price stabilisation announcement); and
- b. reminds HKEx listing applicants to use legible font size and appropriate paragraph spacing in publications.

HKEx proposes to codify the guidance in Guidance Letter HKEX-GL16-09 in Main Board Listing Rule 2.07C(1)(a), 12.05 and 12.09.



5. Typhoon and rainstorm warning arrangements

Guidance Letter HKEX-GL31-12 clarifies the administrative arrangements if a no. 8 typhoon signal or above and/or a black rainstorm warning is issued during the listing approval process. These arrangements will be codified into a new practice note to the Rules.

6. Confirmations required on the accountants' report, pro forma financial information and profit forecast in Application Proofs and subsequent draft listing documents

Guidance Letter HKEx-GL58-13 requires a written confirmation to the new applicant from the reporting accountants that no significant adjustment is expected to be made to the draft accountants' reports on: (a) historical financial information; (b) pro forma financial information; and (c) profit forecast (if any) included in the Application Proof. The confirmation must be based on the work done as of the date of the confirmation, and comply with the content requirements set out in the Guidance Letter.

It is proposed that the guidance in HKEx-GL58-13 should be codified in Main Board Rule 9.11 which will set out the complete documentary requirements at the time of the listing application. A template of the confirmation will also be posted on HKEx's website.

7. Confirmations required on expert opinions in Application Proofs and subsequent draft listing documents

Under Guidance Letter HKEX-GL60-13, a new listing applicant must submit a written confirmation from each expert named in the listing document that, based on the work done as of the date of the confirmation, no material change is expected to be made to the relevant expert opinion included in the Application Proof. The content of such confirmation is set out in the Guidance Letter.

Guidance Letter HKEx-GL60-13 will be codified in Main Board Listing Rule 9.11 to set out the complete documentary requirements at the time of the listing application.

8. Adequate Market for GEM

New GEM Rule 11.22A will be added requiring an adequate market in the securities to be listed. As with the equivalent Main Board Listing Rule 8.07, the new Listing Rule will state that this requires the HKEx to be satisfied that there will be sufficient public interest in the business of the issuer and in the securities for which listing is sought.

According to the HKEx Consultation Paper, the rationale for the addition of the new GEM Rule which currently is only included in the Main Board Listing Rules, is that its absence from the GEM is due to GEM having originally been conceived as a listing venue for emerging companies whose target investors were only sophisticated investors (i.e. professional investors and knowledgeable retail investors). HKEx now describes GEM as a listing venue for small and mid-sized enterprises. In February 2018, the GEM Rules were amended and among measures aimed at ensuring liquidity in GEM issuers' shares, the HKEx imposed a public offering requirement of 10% of the total offer size.

The 2017 HKEx Consultation Paper states that "public offering is not mandatory as GEM issuers are not anticipated to have large public demand". Given that public interest in GEM issuers is unlikely to be significant, and that the GEM Listing Rules only require a 10% public offering, it would seem that "sufficient public interest" should be qualified to indicate that a significantly lesser degree of public interest is required than from the Main Board Listing Rule.