



Hong Kong Capital Markets Update

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HKEX's Consultation Conclusion on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments

On 28 August 2020, the Stock Exchange of Hong Kong Limited (the Exchange) published the [conclusion](#) of its consultation on proposed codification of general waivers and principles relating to IPOs and listed issuers and minor Listing Rule amendments. The related Listing Rules amendments will take effect on 1 October 2020.

Highlights

- **The Exchange decided to adopt most of the proposals in the consultation paper with minor modifications.**
- **The related Listing Rules amendments will take effect on 1 October 2020.**
- **The Exchange also issued a new guidance letter on experience and qualification requirements of a company secretary to provide clarifications and guidance on the policy rationale.**

Background

On 2 August 2019, the Exchange published a consultation paper that sought comments on the proposed codification of general waivers and principles relating to IPOs and listed issuers and minor Listing Rule amendments (for a summary of the consultation, please refer to our [Capital Market Update Issue 2019-06](#)).

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; and (iii) minor Listing Rule amendments.

The Exchange, after considering the comments from the respondents, decided to adopt most of the proposals in the consultation paper with minor modifications. The related Listing Rules amendments will take effect on 1 October 2020.

The only proposal that has not been adopted was related to the waiver of experience and qualification requirements of a company secretary since there were concerns over the negative impact on the corporate governance standards in Hong Kong and career development of existing qualified professionals. Alternatively, the Exchange has published a new guidance letter to provide clarifications and guidance on the policy rationale of Main Board Listing Rule 3.28 (GEM Listing Rule 5.14), and factors the Exchange considered when granting a waiver to this rule, and the relevant conditions.

Key changes

General Waivers for codification

Codification of a number of waivers with general effect previously approved by the Securities and Futures Commission in relation to (i) publication and distribution of annual results and reports; (ii) shareholder approval requirement for bonus or capitalisation issues by PRC incorporated issuers; (iii) calculation of the consideration ratio for PRC incorporated issuers dually listed on the Exchange and a PRC exchange; and (iv) inclusion of stock code in documents.

General Principles for codification

Codification of general principles underpinning a number of waivers which have been granted to new applicants and/or listed issuers relating to financial disclosure matters, acquisition of aircrafts by airline operators, incentive schemes, and working capital statement in listing documents and transaction circulars of Main Board issuers that are banking companies or insurance companies.

Minor Listing Rule amendments

Minor amendments to the Listing Rules for the purpose of providing greater clarity to the Listing Rules and codifying several administrative guidance that is currently provided in guidance letters or listing decisions.

Appendix 1 sets out a summary of the original proposals and the modifications after consultation.

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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 1: Summary of conclusions on proposals

The following table sets out a summary of the original proposed codification of general waivers and principles relating to IPOs and listed issuers and minor Listing Rule amendments in the consultation paper and the modifications after the consultation.

Original proposal	Results	Modifications
General Waivers		
To codify the General Waiver to exempt bonus or capitalisation issues by a PRC incorporated issuer from shareholders' approvals in general meetings and separate class meetings	Adopted	
To codify the General Waiver in relation to the modification of the calculation of consideration ratio for a PRC incorporated issuer whose domestic shares are listed on a PRC exchange	Adopted	
To codify the General Waiver to allow the listed issuer's stock code to be displayed prominently in the corporate or shareholder information section of financial reports	Adopted	
General Principles		
To codify the conditions in granting waivers from the requirements under Listing Rule 4.04(2)&(4) regarding the disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period	Adopted with modifications	To include in the Listing Rules the clarification of certain terms and relevant guidance in GL32-12, and clarify in the Listing Rules that a new applicant must submit a waiver application, and the Exchange will consider factors including those in the Listing Rule 4.04(2)&(4) Conditions
To codify the conditions in granting waivers from the requirements under Listing Rule 4.10 regarding the disclosure of financial information of the overseas banking companies under the Guideline on the Application of the Banking (Disclosure) Rules issued by the HKMA	Adopted with modifications	To clarify in the Listing Rules that an applicant must submit a waiver application demonstrating its need for such waiver
To codify the conditions in granting waivers from the requirements under Listing Rule 8.21(1) regarding the change of financial year period	Adopted with modifications	To clarify in the Listing Rules that (a) the relevant requirements under Main Board Rule 8.05 include management continuity and ownership continuity and control requirements as well as the financial tests thereunder, and (b) a new applicant must submit a waiver application demonstrating its need for such waiver

Original proposal	Results	Modifications
To (i) codify the conditions in granting the General Waivers to Main Board Listing Rules 13.46 and 13.49(1); (ii) codify similar exceptions to Main Board Listing Rule 13.48(1) as well as GEM Listing Rules 18.66 and 18.79; (iii) align the current exception to Main Board Listing Rule 13.49(6) in Practice Note 10 to the Main Board Listing Rules (“ PN 10 ”) with those conditions in (i); and (iv) repeal PN 10 and consolidate the guidance with the Main Board Listing Rules	Adopted with modifications	To clarify in the Listing Rules that (a) issuers are still required to comply with the ESG report publication requirement post listing; (b) new applicants meeting the relevant codified conditions do not need to submit any waiver application; and (c) newly listed issuers should publish an announcement around the time when they would be required to publish or distribute the relevant reports and results to inform the investing public that the information has been included in their listing document with appropriate references
To codify the waiver from disclosure of actual consideration of aircrafts to be acquired by listed airline operators	Adopted	
To codify the waiver to allow listed issuers to determine SpinCo’s ¹ Scheme Limit with reference to its shares in issue as at the date of SpinCo’s listing	Adopted	
To codify the waiver of the exercise price requirement for issuers dually listed on the Exchange and a PRC exchange	Adopted	
To codify the factors considered by the Exchange in granting a waiver from the requirements under R3.28 regarding the experience and qualification requirements of a company secretary	Not to adopt but will instead publish a new guidance letter to provide clarifications and guidance in relation to Main Board Listing Rule 3.28	
To exempt Main Board listed issuers that are banking companies or insurance companies from including a working capital statement, subject to appropriate alternative disclosures and conditions same as those in Listing Rule 8.21A(2), and to limit the exemption to Listing Rule 8.21A(2) to only banking companies or insurance companies	Adopted	
Minor Rule Amendments		
To codify the guidance in Guidance Letter HKEX-GL7-09 for new applicants’ easy reference	Adopted	

¹ SpinCo represents spin-off of a listed issuer’s subsidiary

Original proposal	Results	Modifications
To codify the guidance in Listing Decision HKEX-LD15-3 for new applicants' easy reference	Adopted	
To amend Listing Rule 17.05 to state clearly that the restricted period for grant of share options would cover the trading day after the announcement is made with respect to the inside information	Adopted with modifications	To modify the Main Board Listing Rule 17.05 to <i>"An issuer may not grant any options after inside information has come to its knowledge until <u>(and including)</u> the trading day after it has announced the information. ..."</i> to better reflect the policy intent of the Listing Rule amendment
To codify the guidance in Guidance Letter HKEX-GL16-09 for completeness	Adopted with modifications	To modify the notes to Main Board Listing Rules 12.05 and 12.09 to <i>"A new applicant must not publish formal notices/announcements <u>in accordance with rules...</u> until the Exchange has reviewed them."</i>
To codify the guidance in Guidance Letter HKEX-GL31-12 as a new practice note to the Listing Rules for completeness	Adopted with modifications	To cover "extreme conditions" caused by a super typhoon as described in the revised "Code of Practice in Times of Typhoons and Rainstorms" issued by the Labour Department in June 2019
To codify the guidance in Guidance Letter HKEX-GL58-13 to complete documentary requirements at the time of the listing application and post a template of the confirmation on Exchange's website	Adopted	
To codify the guidance in Guidance Letter HKEX-GL60-13 to complete documentary requirements at the time of the listing application, and post a template of the confirmation on Exchange's website	Adopted with modifications	Reporting accountants are excluded