

Client Alert

August 2019

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SEHK proposes to codify general waivers and principles to streamline the listing process and approval process

Summary

On 2 August 2019, The Stock Exchange of Hong Kong Limited (SEHK) published the [Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments](#). SEHK seeks comments on the proposed codification of (i) certain general waivers in relation to IPO 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 the Listing Rules that have been granted on more than one occasion; and (iii) minor and housekeeping Listing Rules amendments. The consultation period will end on **27 September 2019**.

Background

Over the years, SEHK has been granting a significant number of waivers, including a number of general waivers which have been granted with the consent of the Securities and Futures Commission (SFC). Where appropriate, SEHK has provided guidance through guidance letters and listing decisions to inform the market on circumstances where a waiver is likely to be granted, and the conditions to which such waiver is normally subjected. In this connection, SEHK 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. SEHK 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 ongoing effort to further streamline the listing process, SEHK proposes to codify these general waivers into the Rules and invite comments from market participants. In addition, SEHK 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. SEHK proposes to codify these general principles into the Rules with a view to improve clarity and reflecting the currently acceptable standards in the market.

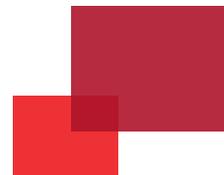
Key Proposed Codifications

Key proposed codifications are summarized below. Unless otherwise specified, the rules cited refer to the Main Board Listing Rules. The issues and proposals apply equally to the GEM Listing Rules.

Part I – Codification of General Waivers

- A. Shareholder approval requirement for bonus or capitalisation issues by PRC incorporated issuers

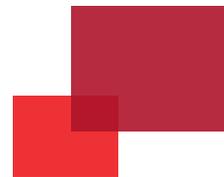
Listing Rules Requirements	General Waivers and Proposal
Rule 19A.38 sets out the relevant shareholders' approval requirement	The Mandatory Provisions has subsequently been interpreted not to



<p>for an issuance of shares by PRC incorporated issuers. In contrast to non-PRC incorporated issuers, no exemption is provided under Rule 19A.38 for a pro rata issue of shares. This rule aligns with the Mandatory Provisions for Companies Listing Overseas (“Mandatory Provisions”) governing the articles of association of PRC incorporated issuers and which provides that rights conferred on any class of shareholders in the capacity of shareholders may not be varied or abrogated by the company unless approved in separate class meetings.</p>	<p>require shareholder approval where a PRC issuer makes a bonus or capitalization issue of shares, as such issues do not involve fundraising. Accordingly, SEHK has granted a general waiver to PRC incorporated companies from the requirement to obtain shareholders’ approval and class meeting approval in bonus or capitalisation issues to align with the updated interpretation of the Mandatory Provisions.</p>
	<p>SEHK proposes to codify the existing general waiver such that bonus or capitalisation issues by PRC incorporated issuers are exempted from shareholders’ approvals in general meetings and separate class meetings.</p>

B. Calculation of the consideration ratio for PRC incorporated issuers dually listed on SEHK and a PRC exchange (“**A+H issuers**”)

Listing Rules Requirements	General Waivers and Proposal
<p>The Rules require listed issuers to classify notifiable and connected transactions based on the highest of the percentage ratios set out in Rule 14.07. The consideration ratio is one of the five percentage ratios, calculated by dividing the consideration by the total market capitalisation of the listed issuer.</p>	<p>In respect of a PRC incorporated issuer with some of its equity securities (A or B shares) listed on a PRC exchange, the market price of its shares listed on a PRC exchange may be different from the market price of its shares listed on SEHK. SEHK has modified the calculation of the market capitalisation of its A or B shares (i.e. the class listed on a PRC exchange) by referencing the market price of the A or B shares (and not the H shares of the issuer listed on the SEHK), as this would better reflect the market value of the PRC incorporated issuer.</p>
	<p>SEHK proposes to codify the existing general waiver to modify the calculation of consideration ratio for a PRC incorporated issuer whose domestic shares are listed on a PRC exchange. Such modification would only apply to a PRC incorporated issuer whose domestic shares are listed on a PRC exchange. In respect of a PRC incorporated issuer 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.</p>



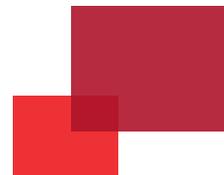
C. Inclusion of stock code in documents

Listing Rules Requirements	General Waivers and Proposal
<p>Rule 13.51A requires a listed issuer to set out its stock code in a prominent position on the cover page or, where there is no cover page, the first page of all announcements, circulars and other documents published by it pursuant to the Rules.</p>	<p>Under FAQs Series 2, No. 3, SEHK has previously granted a general waiver and accepted a modification of the strict wording of the Rule such that the Rule could be satisfied provided that the stock code is displayed prominently in the corporate or shareholder information section of financial reports with glossy cover.</p> <p>SEHK proposes to add a new note to Rule 13.51A to state that SEHK would consider the Rule to be satisfied if the listed issuer's stock code is displayed prominently in the corporate or shareholder information section of financial reports.</p>

Part II – Codification of General Principles

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

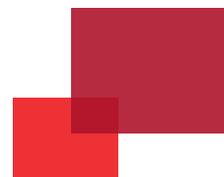
Listing Rules Requirements	General Principles and Proposal
<p>Rules 4.04(2) and 4.04(4) require a new applicant to include in its accountants' report the financial results and financial positions of any subsidiary or business acquired, agreed to be acquired or proposed to be acquired since the date to which its latest audited accounts have been made up in respect of each of the three financial years immediately preceding the issue of the listing document, or since the incorporation of such subsidiary or the commencement of such business if this occurred less than three years prior to such issue, or such shorter period as may be acceptable to SEHK.</p>	<p>Under Guidance Letter HKEX-GL32-12, SEHK has granted waivers from strict compliance with Rules 4.04(2) and 4.04(4) to new applicants under the following conditions:</p> <ul style="list-style-type: none"> (i) the acquisition is not material (i.e. all of the percentage ratios for each acquisition are less than 5% by reference to the most recent audited financial year of the new applicant's trading record period); (ii) where the acquisition will be financed by the proceeds raised from the IPO, the new 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 Ordinance; and (iii) with respect to: (a) new applicants whose principal activities involve acquisition of equity securities, the new applicant (1) is not able to exercise any control and does not have any significant influence over the underlying company or business; and



	<p>(2) 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) acquisition of a business (including acquisition of an associate and any equity interest in a company other than in the circumstances described in (iii)(a) above) or a subsidiary, (1) the historical financial information of such business or subsidiary is unavailable, and it would be unduly burdensome for the new applicant to obtain or prepare such financial information; and (2) the new applicant has disclosed in its listing document information required for the announcement for a discloseable transaction under Rules 14.58 and 14.60 on each acquisition (together, the “R4.04(2)&(4) Conditions”).</p>
	<p>SEHK proposes to codify the R4.04(2)&(4) Conditions as an exception to Rules 4.04(2) and 4.04(4) regarding the disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period.</p>

B. Disclosure of financial information by overseas banking companies

Listing Rules Requirements	General Principles and Proposal
<p>Rule 4.10 requires that the financial information to be disclosed in respect of 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 (“CASBE”) (in the case of a PRC issuer that has adopted CASBE for the preparation of its annual financial statements), and, in the case of banking companies, the Guideline on the Application of the Banking (Disclosure) Rules issued by the Hong Kong Monetary Authority</p>	<p>SEHK has in the past granted waivers from strict compliance with the Banking Disclosure Guidelines to overseas banking applicants (the “R4.10 Waiver”) on the following conditions:</p> <ul style="list-style-type: none"> (i) that they are banking companies organized outside Hong Kong and primarily regulated by a regulator which has functions similar to the Hong Kong Monetary Authority and SEHK is satisfied that the foreign regulator provides adequate supervision to the new applicant; and (ii) alternative disclosure with regards to specific items under key disclosure areas has been made in the listing document and is sufficient for potential investors to make a fully informed investment decision. Key disclosure areas include (i) capital adequacy; (ii)



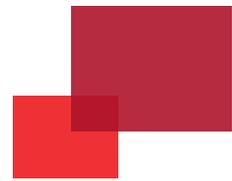
(the “Banking Disclosure Guideline”).	loan quality (including non-performing loans, restructured loans and overdue loans); (iii) loan provisioning; and (iv) guarantees, contingencies and other commitments.
	SEHK proposes to codify the R4.10 Waiver as an exception to Rule 4.10 regarding the disclosure of financial information of the overseas banking companies.

C. Change of financial year period

Listing Rules Requirements	General Principles and Proposal
Rule 8.21(1) provides that SEHK will not normally consider a listing application if the new applicant (i) 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 (ii) 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.	<p>SEHK has granted waivers for Rule 8.21(1), provided that:</p> <ul style="list-style-type: none"> (i) the new applicant is an investment holding company and the change is to allow the new applicant’s financial year be co-terminous with that of all or a majority of its major operating subsidiaries; (ii) the proposed change in the financial year end date is not designed to circumvent the requirements under Rule 8.05; and (iii) 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 assessment of the new applicant’s suitability (the “R8.21(1) Conditions”).
	SEHK proposes to codify the R8.21(1) Conditions as an exception to Rule 8.21(1) regarding the change of financial year period.

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

Listing Rules Requirements	General Principles and Proposal
Rules 13.46, 13.48 and 13.49 set out the distribution, publication and disclosure requirements of financial	Under Guidance Letter HKEX-GL10-09, SEHK has granted general waivers from Rules 13.46(1), 13.46(2) and/or 13.49(1) to new applicants who have already disclosed in their listing documents the



results and financial reports. In particular:

- (i) Annual results and reports –Rule 13.49(1) requires an issuer to publish its annual results within three months after its financial year-end. 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.
- (ii) Interim results and reports – 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. Rule 13.48(1) requires an issuer to send a copy of its interim report or summary interim report in respect of the Interim Period to its shareholders within three months after the end of that Interim Period

(together with (i) above, the “**Publication and Distribution Requirements**”).

The Rules already provides an exception for the Publication and Distribution Requirement with respect to the issuers’ interim results - paragraph 3 of Practice Note 10 to the Rules (“**PN 10**”) states that an issuer does not need to comply with Rule 13.49(6) if the results for the latest Interim Period have been included in the listing document for the purpose of applying for a listing on SEHK (the “**Interim Results Exemption**”). However, no similar exception was provided for the Publication and Distribution Requirement under Rule 13.48(1) with respect to the issuers’ interim reports.

SEHK considers that exemption similar to those granted under general waivers for Rule 13.46 and 13.49(1) and the Interim Results Exemption should also be extended to Rule 13.48(1).

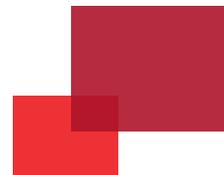
financial information of the latest financial year and the relevant management discussion and analysis under the following conditions:

- (i) that the new applicant has confirmed in the listing document that the 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 with regards to the distribution of annual reports and accounts (i.e. Rules 13.46(1) and/or 13.46(2)), the new applicant has disclosed in its listing document a statement as to whether it complies with the Corporate Governance Code in Appendix 14 to the Rules and, if not, the reason for deviation

(together with sub-paragraph (i) above, the “**Annual Results and Reports Waivers Conditions**”).

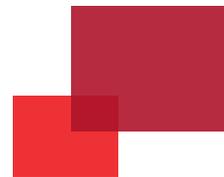
SEHK proposes to:

- (i) codify the modification provided by the general waivers into Rules 13.46 and 13.49(1) subject to the new applicant meeting the Annual Results and Reports Waivers Conditions;
- (ii) codify similar exception to Rule 13.48(1) as well as GEM Rules 18.66 and 18.79 with respect to the distribution and publication of quarterly report and preliminary results (as the case may be) for the first three and nine months period of each financial year;
- (iii) align the conditions for Interim Results Exemption with the Annual Results and Reports Waivers Conditions; and
- (iv) repeal PN 10 and consolidate the guidance with the relevant Rules.



E. Acquisition of aircrafts by airline operators

Listing Rules Requirements	General Principles and Proposal
<p>Rule 14.58(4) requires a notifiable transaction announcement to include the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangement for payment on a deferred basis. This disclosure must also be included in the notifiable transaction circular.</p>	<p>Given the oligopolistic nature of the aircraft manufacturing industry, there are normally strict confidentiality provisions in the issuers' contracts with aircraft manufacturers which prohibit disclosure of aircraft purchase price.</p> <p>SEHK has in practice granted waivers from the disclosure of actual consideration for purchases of aircrafts from the manufacturers by listed airline operators.</p> <p>SEHK proposes to add a new note to 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, SEHK 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. In this case, the issuer must disclose:</p> <ul style="list-style-type: none"> (i) the reasons for its waiver application and provide alternative disclosure (including the list price of the aircraft, a description of any price concession received and whether the price concession received is comparable to that obtained in previous purchases and whether the concession has any material impact on the issuer's future operating costs as a whole) in the announcement and, where applicable, the transaction circular; and (ii) the following information in its next interim report (where applicable) and annual report: <ul style="list-style-type: none"> (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 committed to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments.

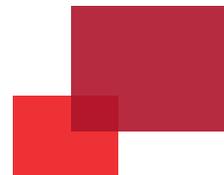


F. Share option scheme limit for a listed issuer's subsidiary to be spun-off for separate listing

Listing Rules Requirements	General Principles and Proposal
Chapter 17 of the Rules applies to share option schemes of a listed issuer or any of its subsidiaries and requires that a scheme must be approved by the issuer's shareholders in a general meeting. Note 1 to 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 ").	In the case of a spin-off of a listed issuer's subsidiary (" SpinCo ") for separate listing, SEHK has granted waivers such that the listed issuer may seek shareholders' approval for the Scheme Limit based on SpinCo's shares in issue at the time of SpinCo's date of listing, rather than as at the date of approval of the scheme. This is because, at the time of approval of the scheme, any group reorganisation to effect the spin-off may not have been completed and SpinCo's shares in issue then would be different from that on the date of SpinCo's listing. This aligns with SEHK's practice for new listing applicants whose scheme limits are based on the applicants' shares in issue as at the date of its listing.
	SEHK proposes to amend Note 1 to Rule 17.03(3) to allow listed issuers to determine SpinCo's Scheme Limit with reference to SpinCo's shares in issue as at the date of SpinCo's listing.

G. Determination of exercise price of options under a share option scheme adopted by A+H issuers

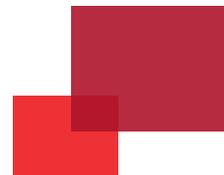
Listing Rules Requirements	General Principles and Proposal
Rule 17.03(9) requires the exercise price of options granted under a listed issuer's share option scheme to be at least the higher of (i) the closing price of the securities as stated in SEHK's daily quotations sheet on the date of grant, which must be a business day; and (ii) the average closing price of the securities as stated in SEHK's daily quotations sheets for the five business days immediately preceding the date of grant (" exercise price requirement ").	SEHK has granted waivers from the exercise price requirement to A-share option schemes adopted by A+H issuers, as the mechanism of using the A share market price to set the exercise price of A share options is in accordance with PRC laws and regulations and would better reflect the market value of the A Shares. This is in line with the underlying rationale of the exercise price requirement.
	SEHK proposes to add a new Rule 19A.39C to state that SEHK may waive the exercise price requirement for A+H issuers 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: (i) the scheme involves only shares listed on the PRC exchange; and



	(ii) 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.
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H. Experience and qualification of company secretary

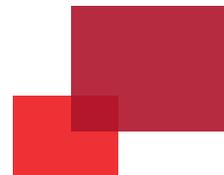
Listing Rules Requirements	General Principles and Proposal
<p>Rule 3.28 requires a company secretary of an issuer to (a) possess certain academic or professional qualifications, or relevant experience to be considered capable of discharging the functions of company secretary; and (b) be familiar with securities regulation in Hong Kong. Rule 8.17 states that an issuer must appoint a company secretary who satisfies Rule 3.28.</p> <p>The Corporate Governance Code states that the company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed. The company secretary is responsible for advising the board on governance matters and should be an employee of the issuer and have day-to-day knowledge of the issuer's affairs.</p>	<p>SEHK has in the past granted waivers in relation to a company secretary who does not have the qualification or experience required under Rule 3.28 (the “Proposed Company Secretary”) for a specified period. The waiver, if granted, is on the condition that the Proposed Company Secretary must be assisted by a person who possesses the qualifications or experience as required under Rule 3.28 (“Qualified Person”) throughout the waiver period (the “Period”).</p> <p>The length of the Period will depend on:</p> <ul style="list-style-type: none"> (i) the Proposed Company Secretary's experience in handling company secretarial matters and his/her relevant professional qualifications and/or academic background; (ii) the measures and systems in place to facilitate the Proposed Company Secretary in discharging his/her duties as a company secretary; and (iii) the issuer's regulatory compliance and/or material deficiencies/weaknesses in internal controls. <p>SEHK considers that the Period should not be longer than three years as the Proposed Company Secretary is generally expected to be able to acquire the relevant qualification or experience required under Rule 3.28 within three years.</p>
	<p>SEHK proposes to codify into the Rules that SEHK may grant a Rule 3.28 waiver to an issuer taking into account the following:</p> <ul style="list-style-type: none"> (i) whether the issuer has principal business activities primarily outside Hong Kong;



	<ul style="list-style-type: none"> (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.
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I. Working capital statement in listing documents and transaction circulars of Main Board issuers that are banking companies or insurance companies

Listing Rules Requirements	General Principles and Proposal
<p>The Rules require listing applicants' and listed issuers' listing documents and transaction circulars to 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").</p> <p>Rule 8.21A(2) provides a specific exemption from the working capital statement requirement for a new listing applicant whose business is entirely or substantially that of the provision of financial services, provided that:</p> <ul style="list-style-type: none"> (i) the inclusion of such a statement would not provide significant information for investors; and (ii) the new listing applicant's solvency and capital adequacy are subject to prudential supervision by a regulatory body. <p>At present, the exemption in Rule 8.21A(2) is only available to listing applicants but not listed issuers.</p>	<p>In the past, SEHK has granted waivers to listed issuers engaged in the provision of financial services (such as banks and insurance companies, but not licensed corporations regulated by the SFC) from including a working capital statement in their listing documents and transaction circulars provided that they are able to satisfy the relevant conditions under Rule 8.21A(2) and provide alternative disclosures on:</p> <ul style="list-style-type: none"> (i) the relevant solvency and capital adequacy requirements for financial services companies of their types; and (ii) the issuers' solvency margin ratios for the latest three financial years. <p>SEHK proposes to amend the 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.</p>



Part III - Minor and Housekeeping Amendments – Administrative Guidance

SEHK proposes to codify a number of administrative guidance that is currently provided in guidance letters or listing decisions into the Listing Rules. Amongst others, SEHK proposes the following amendment:

A. Restricted period for grant of share options with respect to inside information

Current guidance	Proposal
<p>Rule 17.05 prohibits 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 purpose of this rule is to prevent abuses where grantees of share options can gain an unfair advantage through the grant as the prevailing share price has not reflected that inside information.</p> <p>But the current formulation may not achieve the original intended regulatory objective. There were cases where the grant of options took place immediately after the announcement of the inside information but before shares traded and share price reflected the effect of the inside information. The exercise price of the options did not reflect the market price. This would still create an actual or perceived transfer of benefits to the option grantees.</p>	<p>Amend 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.</p>

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Other administrative procedures have been adopted for many years and are not new requirements, such as documentary requirements for refiling a listing application, initial listing fee for introduction, pre-vetting of documents and announcements in IPO cases and post-vetting announcements relating to price stabilization actions, typhoon and rainstorm warning arrangements, reporting accountants’ written confirmation and experts’ written confirmation.

SEHK proposes to make certain housekeeping amendments to the Rules to improve the clarity of the Rules. These Rules amendments do not involve questions of policy and include correction of clerical errors and/ or update outdated references.

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