

**CONSULTATION CONCLUSIONS
ON PROPOSED CHANGES TO FILING
AND CHECKLIST REQUIREMENTS FOR
LISTING OF EQUITY SECURITIES**

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Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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EXECUTIVE SUMMARY

1. This paper presents the results of the public consultation on our proposals to simplify the filing and checklist requirements for listing of equity securities, part of our ongoing initiatives to streamline the listing process. We did not propose any substantive changes in content requirements. We focus on shortening the timetable, lowering costs and reducing the paperwork burden.
2. An overwhelming majority of the respondents supported our proposals. In respect of the filing and checklist requirements for IPO, a few respondents commented on our proposals to move forward the timing of submission of certain financial-related document and some respondents considered that submission of certain documents is not necessary. The remainder was mainly drafting comments.
3. Having considered the responses, we decided to implement the proposals except for a few which we have modified after taking into account the views of the respondents.
4. For IPO, we note the diverse views of the respondents on the issue of whether we should extend the corresponding changes to the GEM Listing Rules. We are mindful that market practitioners may wish to adopt the simplified filing and checklist requirements as quickly as possible. We therefore decided to implement our proposals on the Main Board first and to consider putting through similar changes to the GEM Listing Rules in due course.
5. For listed issuers, given that the processes for listing of equity securities on Main Board and GEM are substantially the same in practice and the market generally supported our proposal to amend the GEM Listing Rules in a manner consistent with the changes to the Main Board Listing Rules, we will implement our proposals for both Main Board and GEM.
6. We have finalized the Rule amendments to implement the proposals. They have been approved by the Board of the Stock Exchange of Hong Kong Limited and the Securities and Futures Commission, and will become effective on 2 November 2009.

CHAPTER 1 INTRODUCTION

7. On 26 June 2009, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEx**), published a Consultation Paper on Proposed Changes to Filing and Checklist Requirements for Listing of Equity Securities. The Consultation Paper sought comments on proposals to simplify and streamline: (i) the Main Board filing and checklist requirements for IPOs and (ii) the filing requirements for listing of additional equity securities by listed issuers.
8. The consultation period ended on 31 August 2009. We received a total of 25 submissions from listed issuers, professional and industry associations, market practitioners and individuals, including one submission made on behalf of 8 investment banks and 7 law firms. A list of respondents is provided in the **Appendix**.
9. The full text of all the submissions is available on HKEx website at <http://www.hkex.com.hk/consul/response/cp200906r.htm>.
10. Of the 25 respondents, all expressed general support to our proposals. Chapter 2 summarises the major comments made by respondents as well as our responses to these comments and conclusions on how to proceed with the proposals. This paper should be read in conjunction with the Consultation Paper, a copy of which is posted on the HKEx website.
11. The Rule amendments are available on the HKEx website at: http://www.hkex.com.hk/rule/mbrule/mb_ruleupdate.htm and at: http://www.hkex.com.hk/rule/gemrule/gemrule_update.htm. They have been approved by the Board of the Exchange and the SFC, and will become effective on 2 November 2009.
12. We would like to thank all those who shared their views with us during the consultation process.

CHAPTER 2 MARKET FEEDBACK AND CONCLUSIONS

13. We set out below the proposals, major comments made by the respondents as well as our responses to these comments and conclusions on how to proceed with the proposals. Part A deals with comments relating to new listing applications and Part B deals with comments relating to listing of equity securities by listed issuers. Part C deals with other comments not directly related to the issues discussed in the Consultation Paper.

PART A – NEW LISTING APPLICATIONS

14. We proposed to condense the multi-phased submission from the current 8 stage checklists into 5 stage checklists. We also proposed to combine the advance booking form (Form A1) and the formal application form (Form C1) into one listing application form and to remove unnecessary filing requirements. An overwhelming majority of the respondents fully supported our proposals. Most of the comments received were on drafting. We set out below the major comments made by the respondents.

(i) Submission of all draft waiver applications at Form A1 stage

Comments received

15. A number of respondents, while supporting our proposal to require the submission of all draft waiver application at the time of submission of Form A1, expressed concern on whether this would preclude submitting complicated waiver applications or waiver applications arising due to new developments at a later stage.

Our response

16. We believe that our proposal to submit all draft waiver applications at A1 stage will help shorten the listing process. We understand the respondents' concern that it may be difficult to submit more complicated waivers or waiver applications arising due to new circumstances at the early stage of listing process. We will adopt a pragmatic approach so that waiver applications submitted after the A1 stage will not be rejected merely on the ground that they are not submitted at the A1 stage. In any event, executed waiver applications are only required to be submitted at least 4 clear business days before the expected hearing date.

(ii) Timing of submission of draft statement of adjustments

Comments received

17. One respondent commented that we should not move forward the submission of draft statement of adjustments from the 20-day Documents stage to the Form A1 stage as the reporting accountants may not have sufficient lead time to prepare financial figures for the latest financial year.

Our response

18. As stated in the Consultation Paper, the statement of adjustments affects how the figures of the accountants' report are derived from the underlying financial statements of the listed group. Given that the accountants' report, when submitted together with Form A1, must contain financial figures for the latest financial year, we believe that the statement of adjustments in a substantially final form should already be available. Accordingly, we do not consider that our proposal to advance the timing for submission of statement of adjustments would create extra burden on the reporting accountants. Further, our proposal only requires submission of the draft version of the statement at A1 stage, which would allow time for the statement to be finalized. The finalized version could be submitted after the listing committee hearing and before issue of the prospectus.

(iii) Submission of profit forecast

Comments received

19. One respondent commented that our proposal to require submission of a profit forecast irrespective of whether the listing document contains a profit forecast is not justified based on the rationale stated in the Consultation Paper. One respondent commented that it should not be made an express requirement. Another respondent commented that the period of profit forecast is not entirely clear from the proposed new rule 9.11(10).

Our response

20. As stated in the Consultation Paper, our proposed rule amendment is to codify the existing practice of requiring submission of a profit forecast irrespective of whether the listing document contains one. This is an existing requirement in the current 15-day Checklist and has been followed by listing applicants in all previous applications. We believe that submission of draft forecast documents would provide useful information to us regarding the applicant's forecast level which is important to the vetting process. Accordingly, we will maintain the rule amendments as originally proposed. This requirement should be distinguished from the requirement under rule 11.17 which states that where the listing document contains a profit forecast, the forecast has to be reviewed and reported on by the reporting accountants. Regarding the comment on the period to be covered by the profit forecast, we have fine-tuned our original proposed amendment to rule 9.11(10) to make it clearer as to what is required in the case of an application where the listing document contains a profit forecast and in the case where the listing document does not contain a profit forecast.

(iv) Submission of resolutions authorising the issue of securities for listing

21. We proposed in the Consultation Paper to remove the requirement to submit the resolution of the Company in general meeting/ board of directors authorising the issue of all securities for which listing is sought but retain the requirement to submit certified copies of such resolutions after issue of prospectus but before dealings of the Company's shares.

Comments received

22. One respondent commented that the obligation to ensure the requisite resolutions of the listing applicant are passed in general meeting authorising the issue of all securities for which listing is sought should rest with the listing applicant and its advisors. The submission of a certified copy of these resolutions should be removed.

Our response

23. In order to ensure that all the shares traded on the Exchange have good title, it is important that their allotments are properly authorised by the board of directors and shareholders of the issuers. Therefore, while we agree with the respondent's view that the issuer and its advisers should be responsible for ensuring that the requisite resolutions are made, we consider it essential for new applicants to continue to submit to us the relevant resolutions for new listing applications.

(v) Timing of submission of working capital confirmation

Comments received

24. A group of respondents commented that the working capital confirmation letter required to be submitted by the sponsor at the 4-day stage under rule 9.12(10) would commonly be provided initially in draft form as the final form of the profit forecast and cash flow forecast memoranda would normally only be adopted by the board of directors of the listing applicant at the long board meeting held subsequent to the Listing Committee hearing. As such, the group of respondents considers that the sponsor's working capital confirmation letter should be submitted in draft form with the 4-day Documents, and only formally issued and submitted once the related memoranda have been adopted by the board of the listing applicant.

Our response

25. We agreed with the comment. We will amend the Main Board Listing Rules so that only the draft working capital confirmation letter is required to be submitted at the 4-day stage and the final letter be submitted prior to bulk-printing of the prospectus.

(vi) Submission of confirmation as to the identity of promoter and details of corporate shareholders holding more than 5 per cent of issued capital of applicant

26. We proposed in the Consultation Paper to (i) defer the submission of statutory declarations as to the identity of promoter and details of corporate shareholders holding more than 5 per cent of issued capital of the applicant from 4-day Documents to form part of documents to be submitted before bulk-printing of the prospectus; and (ii) replace the statutory declarations with directors' confirmations. The rationale was to help applicants see the importance of the disclosure.

Comments received

27. A number of respondents, including a group of respondents on behalf of 8 investment banks and 7 law firms, commented that the relevant information is already required to be included in the prospectus for promoters and substantial shareholders, respectively. In the case of substantial shareholders, the information will also be disclosed to the public shortly after the listing of the issuer's securities on the Exchange pursuant to Part XV of the Securities and Futures Ordinance. In addition, since 2003, the statutory disclosure of interests regime under the Securities and Futures Ordinance has been extended to holders of 5% or more of a listed company's shares. The respondents questioned whether the submission of the confirmations would serve any additional regulatory purpose and considered that the requirements should be removed.

Our response

28. We note the overwhelming responses of the respondents to remove this as a requirement. We have revisited our proposals and agreed that the relevant disclosure should rest with the listing applicant and its advisers. We therefore decided to remove the requirement.

(vii) Requirement to provide written undertakings from connected persons

Comments received

29. One respondent commented that the requirement to provide written undertakings from the connected persons to the Exchange before bulk-printing of the prospectus that they shall provide the Company's auditors with full access to the relevant records for the purpose of reviewing continuing connected transactions is practically difficult to comply with. This is because any such request is often met with significant resistance by connected persons.

Our response

30. Rule 14A.38 requires the auditors of listed issuers to provide a letter to the board of the listed issuers confirming certain aspects of continuing connected transactions. Rule 14A.39 requires the listed issuer to allow and procure that the counterparty to the continuing connected transactions to allow the auditors sufficient access to their records for the purpose of reporting on continuing connected transactions. We consider that requesting written undertakings from the connected persons prior to the listing of the issuer will help ascertain whether there will be any difficulties for the listed issuers in complying with their obligations under Chapter 14A of the Main Board Listing Rules, so that any potential problems can be dealt with earlier.

(viii) Submission of certified copy of written consent by expert

Comments received

31. Two respondents commented that the requirement to submit to the Exchange a certified copy of the written consent by any expert to the issue of the prospectus with inclusion therein of e.g. their recommendation (which would be referred to in the prospectus) should be removed as the responsibility to ensure the consent rests with the listing applicant and its advisors.

Our response

32. For the purpose of authorisation for registration of prospectus under Companies Ordinance, we request new applicants and listed issuers file to us the original and a certified copy of the written consent by any expert to the issue of their prospectus. We note that the certified copy of the expert's written consent is the same as that of the original required to be delivered to the Registrar of Companies for registration, we therefore agree to remove this requirement for both new applicants and listed issuers.

(ix) Confirmation from legal advisers

Comments received

33. Three respondents commented that our proposed rule 9.11(20) should be amended to specify that it would be for the legal advisers of the laws of place of incorporation, but not Hong Kong legal advisers, to confirm the applicant's articles of association being not inconsistent with the Listing Rules and the laws of place where the listing applicant is incorporated or otherwise established.

Our response

34. We note the concern of the respondents and agree to delete the reference to "Hong Kong" before "legal advisers" to mirror rule 13.51(1).

(x) Date of submission of Form A1

Comments received

35. One respondent noted that the timing of submission of Form A1 as required under Note 1(1) to Form A1 of at least 40 clear days before the date on which the listing document is to be bulk printed, is different from that required under rule 9.03(1) of not less than 25 clear business days prior to expected hearing date. That respondent suggested that the requirement should be made more consistent.

Our response

36. We agreed with the comment and decided to revise the requirement of Note 1(1) to Form A1 to make it consistent with rule 9.03(1).

(xi) Draft prospectus submitted in “anticipated final form”

37. We proposed that the draft prospectus submitted to us at the Form A1 stage should be in “anticipated final form” instead of “advanced proof” to align with the requirements of the GEM Listing Rules.

Comments received

38. Two respondents commented that the proposed wording of “anticipated final form” may impose a higher standard than the existing wording of “advanced proof”. This may require due diligence and verification exercise in respect of the prospectus to complete by the sponsors and relevant parties before the submission of Form A1.

Our response

39. Although we do not consider that our proposed wording “anticipated final form” requires a higher standard, we note the concern of the respondents and decided to drop the proposed amendment and reinstate the existing wording.

(xii) Timing to commence restricted period under rule 9.09

40. As a result of our proposed merger of Form A1 and Form C1, we proposed to amend rule 9.09 so that there must be no dealing in the securities of the issuer by connected persons from at least 4 clear business days before the expected hearing date until listing is granted.

Comments received

41. One respondent suggested that in the interests of certainty, the wording “at least” in the proposed amendments to rule 9.09 should be deleted.

Our response

42. We note the concern of the respondent and agree to delete the wording.

PART B - LISTING OF EQUITY SECURITIES BY LISTED ISSUERS

43. We proposed to streamline the documentary requirements for listing of additional equity securities by listed issuers. Our proposals include:
- a. removing unnecessary filings of documents;
 - b. revising the timeframe for submitting documents; and
 - c. placing the documentary requirements for listed issuers under separate rules.
44. All respondents supported the proposals. Some respondents also gave comments on specific proposals and/or existing requirements under the Rules.

(i) Timing of submission of listing application (Form C1) and notice of registration of prospectus

Comments received

45. A respondent representing a group of practitioners suggested that if no listing document is required for an issue of securities, the issuer should be allowed to submit the Form C1 2 clear business days before the proposed date of issue of securities instead of 4 clear business days as proposed in the Consultation Paper. It took the view that the proposed timing may lead to delays in the case of, for example, proposed issues of securities under general mandates.
46. If a listing document is required, the respondent suggested reducing the proposed timing for submission of Form C1 from 10 clear business days before the proposed bulk print of the listing document to a shorter timeline, for example, 2 clear business days before bulk printing, to avoid potential delays in transactions such as rights offerings. The respondent also suggested that if the listing document is a prospectus, the 14-day notice period for registration of the prospectus should be reduced.

Our response

47. Our proposal would simplify the listing process by aligning the timing requirements for submission of Form C1 and notice of prospectus registration with that for submission of the draft listing document. Our proposal would also clarify the timing for submission of Form C1 where a listing document is not required.
48. The proposed requirements ensure sufficient time for us to review the listing application and supporting documents. In view of the majority support for the proposals, we will not amend the proposed timelines. We note the respondent's concern about issuing securities where there are tight timetables. Issuers are encouraged to consult us on their proposed listing timetables and we will adopt a flexible approach to facilitate the issues of securities in those circumstances.

(ii) Submission of board resolutions authorising the issue and allotment of securities

49. We proposed that listed issuers applying for listing of additional securities will still be required to submit a board resolution authorising the issue and allotment of securities, the making of the listing application and the making of all necessary arrangements enabling such securities to be admitted into CCASS, etc.

Comments received

50. One respondent considered that this documentary requirement should be removed because the obligation to ensure that the requisite resolutions are passed should rest with the issuer and its advisors.

Our response

51. In order to ensure that all the shares traded on the Exchange have good title, it is important that their allotments are properly authorised by the board of directors of the issuers. Therefore, while we agree with the respondent's view that the issuer and its advisers should be responsible for ensuring that the requisite resolutions are made, we consider it essential for issuers to continue to submit to us the board resolutions for listing of equity securities on the Exchange.

PART C - OTHER COMMENTS RECEIVED

52. One respondent raised a general comment on listing by way of introduction especially that done in connection with spin-offs by existing issuers, whether or not falling within the ambit of PN15. To this respondent, certain of the Listing Rules requirements are clearly inapplicable because under certain circumstances, such as offering by distribution in specie of shares held by the issuer in one of its subsidiaries, no prospectus is required or involved. We note this concern. However, even though the method of listing may be by way of introduction, once the listing applicant's shares are listed on the Exchange, they will be available to be traded by the general public. As such, we consider that the same standard of requirements, irrespective of whether a prospectus is required or involved, should apply across the board. However, we encourage potential spin-off applicants to discuss with us before they submit their applications and we will take a pragmatic approach in dispensing with unnecessary documents.
53. Two other respondents provided valuable comments relating to other issues such as placing guidelines, the Listing Rules requirement to incorporate the Mandatory Provisions in the articles of association of an H share issuer and restrictions on dealings in securities of listed issuers under rule 9.09 which are beyond the scope of this consultation. We will deal with these comments in separate exercises as part of our continuing initiatives to streamline the listing process and improve the Listing Rules.

CONSULTATION CONCLUSIONS

54. Except for certain minor changes as discussed above, we have adopted our proposals and the Main Board Listing Rule amendments largely as those proposed in the Consultation Paper.
55. We have also amended the GEM Listing Rules in line with the changes to the Main Board Listing Rules in respect of the documentary requirements for listing applications of equity securities by listed issuers.

- End -

APPENDIX LIST OF RESPONDENTS

1. Ample Capital Limited
2. Baker & McKenzie
3. Cheung Kong (Holdings) Limited
4. Cheung Kong Infrastructure Holdings Limited
5. CK Life Sciences Int'l., (Holdings) Inc.
6. Clifford Chance
7. CLP Holdings Limited
8. Ernst & Young
9. Herbert Smith on behalf of
 - Citigroup Global Markets Asia Limited
 - Credit Suisse (Hong Kong) Limited
 - Deutsche Bank AG, Hong Kong Branch
 - HSBC
 - J.P. Morgan Securities (Asia Pacific) Limited
 - Merrill Lynch Far East Limited
 - Morgan Stanley Asia Limited
 - UBS AG
 - Chiu & Partners
 - Deacons
 - Freshfields Bruckhaus Deringer
 - Herbert Smith
 - Linklaters
 - Sidley Austin
 - Skadden, Arps, Slate, Meagher & Flom
10. Hutchison Whampoa Limited
11. Latham & Watkins
12. Linklaters
13. Slaughter and May
14. Suen Chi Wai, solicitor of HKSAR
15. The Chamber of Hong Kong Listed Companies
16. The Hong Kong Institute of Certified Public Accountants

The following respondents requested anonymity

17. Respondent 1
18. Respondent 2
19. Respondent 3
20. Respondent 4
21. Respondent 5
22. Respondent 6
23. Respondent 7
24. Respondent 8
25. Respondent 9

