

**HKEx GUIDANCE LETTER**  
**HKEx-GL11-09 (July 2009)**

<b>Summary</b>	
<b>Subject</b>	<b>Conditions for a waiver from strict compliance with Main Board Rule 17.02(1)(b) and paragraph 27 of Appendix 1A regarding disclosure of pre-IPO share option schemes</b>
<b>Listing Rule</b>	<b>Main Board Rule 17.02(1)(b) and paragraph 27 of Appendix 1A</b>
<b>Related Publications</b>	<b>N/A</b>
<b>Author</b>	<b>IPO Transactions Department</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis where you require an interpretation of the Listing Rules, or this letter.*

**1. Purpose**

The purpose of this letter is to facilitate waiver applications. In paragraph 3, we set out the conditions we would ordinarily expect in a waiver application from strict compliance with Main Board Rule 17.02(1)(b) and paragraph 27 of Appendix 1A.

**2. Relevant Main Board Rules, Companies Ordinance and interpretation**

Main Board Rule 17.02(1)(b) requires that a new applicant must disclose in the listing document full details of all outstanding options and their potential dilution effect upon listing as well as the impact on the earnings per share from their exercise.

Paragraph 27 of Appendix 1A requires details of the options, including their price and duration, and the name and address of the grantees, to be disclosed in the listing document.

Similar disclosure requirements are also included in paragraph 10 of Part 1 of the Third Schedule to the Companies Ordinance.

Under paragraph 1 of sections 38A and 342A of the Companies Ordinance, subject to any conditions the Commission thinks fit, an applicant can be exempted from any or all of the relevant provisions if, having regard to the circumstances, the Commission considers that the exemption will not prejudice the interest of the investing public and compliance would be irrelevant or unduly burdensome or is otherwise unnecessary or inappropriate.

### **3. Our Guidance**

We would normally grant waivers from disclosing the names and addresses of certain grantees if the applicant can demonstrate to our satisfaction that their disclosures would be irrelevant or unduly burdensome. Waiver application from disclosure of other information such as price and duration of the options is not normally granted.

Set out below are the conditions that we would ordinarily expect in a waiver application. However, each application will be considered on a case-by-case basis having regard to all relevant facts and circumstances and we may modify or add to these conditions.

- (a) The applicant should disclose in the listing document:
  - (i) for each of the pre-IPO option grantees who is (1) a director, (2) a member of the senior management of the applicant, or (3) a connected person, all the particulars required by paragraph 10(d) of the Third Schedule to the Companies Ordinance, Main Board Rule 17.02(1)(b) and paragraph 27 of Appendix 1A;
  - (ii) for the remaining grantees: on an aggregate basis, (1) their aggregate number and the number of shares underlying the options; (2) the exercise period of each option; (3) the consideration paid for the options; and (4) the exercise price of the options; and
  - (iii) the aggregate number of shares underlying the options under the pre-IPO option schemes and the percentage of the applicant's issued share capital represented by them; and the dilution effect and impact on earnings per share upon full exercise of the options under the pre-IPO option schemes.
- (b) The applicant should make available for public inspection:
  - (i) a full list of all grantees under the pre-IPO option schemes with all the particulars required under paragraph 10(d) of the Third Schedule to the Companies Ordinance, Main Board Rule 17.02(1)(b) and paragraph 27 of Appendix 1A.

\*\*\*\*\*