



CONSULTATION ON CODIFICATION OF GENERAL WAIVERS AND PRINCIPLES RELATING TO IPOs AND LISTED ISSUERS AND MINOR RULE AMENDMENTS

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the "Exchange") has issued a consultation paper on "Codification of General Waivers and Principles Relating to IPOs and Listed Issuers and Minor Rule Amendments" on 2 August 2019 ("Consultation Paper"). The Law Society makes the following submissions on the consultation questions posed.

Unless otherwise defined, the abbreviations in this submission follow those adopted in the Consultation Paper.

Law Society's general response:

We welcome the Exchange's proposals to codify existing General Waivers¹ and general principles on which certain frequently granted waivers are based. Their codification will help ensure that the Listing Rules reflect what the Exchange regards as acceptable standards of conduct, enhance regulatory transparency, and streamline the listing application process for new applicants.

Proposed new GEM Rule 11.22A, requiring the demonstration of sufficient public interest in a GEM applicant's business and securities, duplicating Main Board Rule 8.07, is included as a "housekeeping amendment" in the Consultation Paper, and is not the subject of a consultation question. While the new GEM Rule is aligned with Main Board Rule 8.07, the extent of public interest in a GEM applicant's shares will generally be very different to the public interest in the shares of a Main Board applicant, not least because the GEM Rules only require 10% of the offered shares to be offered to the public (under GEM Rule 10.11A). According to the Consultation Paper, the aim of the February 2018 mandatory 10% public offer requirement for GEM applicants was to satisfy the Exchange "*that there would be sufficient public interest in the business of a GEM issuer and in the securities for*

¹ A waiver from the Listing Rules with general effect approved by the SFC pursuant to Rule 2.04 of the Main Board Listing Rules (Rule 2.07 of the GEM Listing Rules)

which listing is sought”.² Other Listing Rule requirements as well as guidance published by the Exchange and the SFC act to ensure the existence of an open market in the shares of GEM issuers. These include the 25% public float requirement of GEM Rule 11.23(7), the adequate spread of shareholders requirement under GEM Rule 11.23(2)(b), and the Exchange and SFC “Joint Statement Regarding the Price Volatility of GEM Stocks” (“Joint Statement”) and the SFC’s Guideline to sponsors, underwriters and placing agents involved in the listing and placing of GEM Stocks (“SFC Guideline”), both issued on 20 January 2017. Since the 10% public offer requirement is intended to ensure “sufficient public interest” and there are a number of other existing provisions aimed at ensuring an open market in GEM issuers’ shares, we consider the proposed additional requirement under new GEM Rule 11.22A for the applicant to demonstrate sufficient public interest to be redundant. Moreover, the Exchange noted in its 2017 GEM consultation paper that “*public offering is not mandatory as GEM issuers are not anticipated to have large public demand*”.³ We do not therefore agree with the introduction of proposed GEM Rule 11.22A.

If, however, the Exchange proceeds with the adoption of proposed GEM Rule 11.22A, we suggest that guidance should be provided in the form of a new note on how the Exchange will assess whether there is “sufficient interest” in the applicant’s business and shares. This will be especially necessary if meeting the requirements of GEM Rules 10.11A, 11.23(7) and 11.23(2)(b) and compliance with the Joint Statement and SFC Guideline will not be considered to satisfy the requirement for “sufficient interest” in the applicant’s business and shares.

Q1. Do you agree with the proposal to codify the existing General Waiver such that bonus or capitalisation issues by a PRC incorporated issuer are exempted from shareholders’ approvals in general meetings and separate class meetings?

Law Society’s response:

Yes.

Q2. Do you agree with the proposal 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?

Law Society’s response:

Yes.

² Consultation Paper at paragraph 98.

³ Exchange. “*Consultation Paper: Review of the Growth Enterprise Market (GEM) and Changes to the GEM and Main Board Listing Rules*”. June 2017. At page 44.

Q3. Do you agree with the proposal to codify the existing General Waiver to allow the listed issuer's stock code to be displayed prominently in the corporate or shareholder information section of financial reports as described in paragraph 30 above?

Law Society's response:

Yes.

Q4. Do you agree with the proposal to codify the R4.04(2)&(4) Conditions as an exception to Main Board 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?

Law Society's response:

Yes.

Q5. Do you agree with the proposal to codify the R4.10 Waiver as an exception to Main Board Rule 4.10 regarding the disclosure of financial information of the overseas banking companies?

Law Society's response:

Yes.

Q6. Do you agree with the proposal to codify the R8.21(1) Conditions as an exception to Main Board Rule 8.21(1) regarding the change of financial year period?

Law Society's response:

Yes.

Q7. Do you agree with the proposal to (i) codify the modification provided by the General Waivers into Main Board 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 Main Board Rule 13.48(1) as well as GEM Rules 18.66 and 18.79; (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 Main Board Rules?

Law Society's response:

Yes.

Q8. Do you agree with the proposal to codify the waiver from disclosure of actual consideration of aircrafts to be acquired by listed airline operators, as described in paragraph 58?

Law Society's response:

Yes.

Q9. Do you agree with the proposal 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?

Law Society's response:

Yes.

Q10. Do you agree with the proposal to codify the waiver of the exercise price requirement for issuers dually listed on the Exchange and a PRC exchange as described in paragraph 65?

Law Society's response:

Yes, but we note in this context that the waiver proposed to be "codified" here still has the effect of allowing the Exchange to withhold the waiver even when both provisos in Rule 19A.39C are fully satisfied. We suggest that the Exchange considers modifying Rule 19A.39C so that it is more aligned in structure and effect as e.g. Rule 19A.38A with respect to amendment of Rule 14.07(4) in order to improve clarity of the Rules and ensure that the Rules reflect the currently acceptable standards in the market.

Q11. Do you agree with the proposal to codify the waiver described in paragraph 71 in respect of the experience and qualification of company secretary into the Rules?

Law Society's response:

Yes, but the newly proposed Note 3(ii) under Rule 3.28 should set out the objective criteria based on which the HKEX will assess whether an individual is suitable to act as a company secretary for a listed company. The HKEX could, perhaps, set out relevant factors such as: (i) the individual has not less than [x] years of secretarial or related experience; (ii) the individual has similar/ relevant qualifications or academic background; and (iii) any additional in-house measures or systems in place to facilitate compliance by the individual of his/her duties as a company secretary.

Q12. Do you agree with the proposals (a) to provide an exemption for Main Board listed issuers that are banking companies or insurance companies from including a working capital statement, subject to appropriate alternative disclosures in their listing documents and transaction circulars if they are able to meet the same conditions as those set out in Main Board Rule 8.21A(2), and (b) to limit Main Board Rule 8.21A(2) so that the exemption applies only to banking companies or insurance companies, subject to alternative disclosures in their listing documents and the conditions as described in paragraph 73?

Law Society's response:

Yes.

Q13. Do you agree with the proposal to codify the guidance in Guidance Letter HKEX-GL7-09 into the Rules for new applicants' easy reference?

Law Society's response:

Yes.

Q14. Do you agree with the proposal to codify the guidance in Listing Decision HKEX-LD15-3 into the Rules for new applicants' easy reference?

Law Society's response:

Yes.

Q15. Do you agree to amend Main Board 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?

Law Society's response:

Yes.

Q16. Do you agree with the proposal to codify the guidance in Guidance Letter HKEX-GL16-09 into the Rules for completeness?

Law Society's response:

Yes.

Q17. Do you agree with the proposal to codify the guidance in Guidance Letter HKEX-GL31-12 into a new practice note to the Rules for completeness?

Law Society's response:

Yes.

Q18. Do you agree with the proposal to codify the guidance in Guidance Letter HKEX-GL58-13 into the Rules for new applicants' easy reference?

Law Society's response:

Yes.

Q19. Do you agree with the proposal to codify the guidance in Guidance Letter HKEX-GL60-13 into the Rules for new applicants' easy reference?

Law Society's response:

Yes.

**The Law Society of Hong Kong
24 September 2019**