

# HONG KONG EXCHANGES AND CLEARING LIMITED

## GUIDE ON INTERPRETATION OF LISTING RULES AND REQUESTS FOR INDIVIDUAL GUIDANCE

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### **Purpose of this Guide**

1. This guide describes the Exchange's procedures on giving guidance to listed issuers on interpretation and application of the Listing Rules, including the information required to be provided by the listed issuer requesting individual guidance.

### **Introduction**

2. In carrying out its main duties, the Exchange provides guidance on the Listing Rules and listing-related matters to assist listed issuers and their directors in meeting their obligations under the Listing Rules and encourages them to consult at an early stage.

### **Individual Guidance**

3. Individual guidance is normally given to one particular listed issuer and relates to its own particular circumstances or proposals.
4. Depending on the nature of the guidance requested and the specific set of facts and circumstances presented, in some cases the guidance given by the Listing Division will have the effect of a decision. Under these circumstances the listed issuer has the right to request a review of the decision or ruling of the Listing Division in accordance with the review procedure set out in the Listing Rules. In other circumstances the Listing Division may provide informal guidance, for example, by making references to particular Listing Rules which may apply to the circumstance described, or by highlighting factors which the listed issuer should consider in its analysis on compliance with Listing Rules. In those circumstances, the Listing Division would not make a ruling or decision and the guidance given by the Listing Division would not have a binding effect.

## **How to Make a Request for Individual Guidance**

### **Written or Oral Requests**

5. Requests for individual guidance may be made by a listed issuer or its advisers in writing or orally. The requests should be addressed to the Listing Division officers responsible for monitoring the listed issuer. Relevant information can be found on the HKEx website under “Contact Persons in the Listing Division of HKEx for Listed Companies” on the “Contact, Enquiry and Complaint” page.
6. The Listing Division may provide verbal guidance in the following situations (which are not exhaustive):
  - The subject transaction is in its early stages and the listed issuer is only seeking directional guidance.
  - The enquiry is general in nature and the Listing Division’s guidance involves directing the enquirer to specific Listing Rules or published interpretations.
  - The enquiry is made in respect of straight forward matters where an established set of precedents exists and the facts and circumstances of the cases are consistent with the precedent cases.
7. If oral questions raise complex or significant issues or involve exercise of the Exchange’s discretion or in other circumstances where the Listing Division considers it preferable, the Division may invite the party to submit details of the request in writing so that it may be considered more thoroughly. In appropriate circumstances staff of the Listing Division may provide general commentary by way of verbal guidance and advise the listed issuer to submit a written request if the listed issuer requires a more definitive view or a ruling from the Exchange.
8. Where a request for guidance has been made in writing, the Exchange will ordinarily provide its guidance in writing in order to create a clear record of its views for future reference.

### **Information that need to be submitted to the Exchange**

9. The person requesting an individual guidance is responsible for providing all material information that the Exchange will require to properly evaluate the situation and respond to the request.
10. Material information that the person requesting an individual guidance should provide include, but is not limited to:

- (1) a description of the transaction/matter and the factual circumstances underlying the request;
  - (2) the Listing Rule(s) in relation to which the guidance is sought;
  - (3) the listed issuer(s) and other person(s) to whom the Listing Rule(s) in relation to which guidance is being sought apply, or will apply; and
  - (4) the listed issuer's views of the application of the Listing Rule(s) in the particular circumstances of its case, including the listed issuer's analysis of the rule(s) in light of the material facts.
11. The Exchange may request further information that it considers necessary.

## **The Exchange's Response to a Request for Individual Guidance**

### **Formal Guidance**

12. A listed issuer may request a formal guidance on its case and a ruling or decision may need to be made by the Exchange. This is normally the case where the Exchange's prior consent / confirmation is required under the Listing Rules before the listed issuer may proceed with its proposal. The listed issuer may also request formal guidance in circumstances where it requires certainty on the application of the Listing Rules in a particular case.
13. In cases where substantial guidance is warranted to be given to the listed issuer requesting a ruling or decision from the Exchange, the Exchange's response to the listed issuer's request will usually contain:
  - the guidance given by the Exchange, including a brief analysis of the relevant Listing Rules in light of the materials presented by the listed issuer and the basis for the Exchange's view or decision;
  - where there is a difference in views between the Exchange and the listed issuer, brief reasons for the Exchange's decision; and
  - limitations applied to the guidance given to the listed issuer.
14. Formal guidance is given to the listed issuer based on particular facts and circumstances of the individual case. Where the listed issuer making the request for guidance has provided all material information, the listed issuer is generally entitled to rely upon it. The ruling or decision given by the Exchange will be binding on the listed issuer (unless it requests a review of the decision).
15. If the listed issuer does not accept the ruling or decision given by the Exchange, it may request a review of the ruling or decision according to the

procedures set out in Chapter 2B of the Main Board Listing Rules / Chapter 4 of the GEM Listing Rules.

### **Informal Guidance**

16. In some circumstances, the Listing Division may decide to respond to an enquiry by giving informal guidance on such terms and conditions as the team considers reasonable based on the information provided by the enquirer. This is usually the case where:
  - (1) the enquirer is unwilling or unable to specify to whom the advice relates;
  - (2) the enquirer is seeking guidance on interpretation of particular Listing Rules without referring to any specific circumstances or cases;
  - (3) the enquiry is made in respect of a preliminary proposal where a listed issuer wishes to consult the Listing Division about the interpretation and application of certain Listing Rules in order to clarify the basis on which the proposal may properly proceed; and/or
  - (4) the enquiry is made in respect of a specific transaction/matter but the enquirer has not submitted all material information to allow the Exchange to make a ruling or decision on the particular case.
17. Informal guidance given to a listed issuer may include references to the principles on which the particular Listing Rules are based, and the preliminary views and comments of the Listing Division on the issues raised by the enquirer. Any such views or comments expressed by the Listing Division will not be binding.

### **When will the Listed Issuer get a Response**

18. The Listing Division will need sufficient time to consider a listed issuer's request for guidance and make an appropriate response to it. Nevertheless, the time taken to respond in each individual case will necessarily depend upon the complexity and novelty of the issues involved and whether sufficient information is provided by the listed issuer when it makes the request. In addition, the process may take longer if the particular request for guidance involves novel, controversial or sensitive matters with general policy implications which require consideration by the Listing Committee or the Listing Division wishes to seek the Listing Committee's guidance on the matter.
19. The Listing Division will endeavour to respond to any requests for guidance

on a timely basis. In general, oral enquiries relating to routine or straightforward matters will be dealt with on the same day. For written enquiries, the Listing Division will ordinarily provide an initial response within 5 business days upon the receipt of the enquiry.

## **Status of the Individual Guidance given to a Listed Issuer**

20. Guidance is usually given to a listed issuer based on particular facts and circumstances which exist when the guidance is given. If the facts and circumstances change or there is found to be an omission of facts which are material to the analysis, the guidance will cease to be effective.

## **~~Disputes as to Interpretation~~**

- ~~21. From time to time, the view of Compliance & Monitoring Department staff on interpretation of a Listing Rule or how it should be applied is not accepted. The majority of such disputes are settled between the Compliance & Monitoring Department staff members and the issuer, its directors or professional advisers. Where an issuer does not accept the view of Compliance & Monitoring Department staff members, they can seek to have their initial view reviewed at a staff level without prejudice to the issuer's rights of review under the Listing Rules.~~
- ~~22. This staff level review will usually take the form of either a meeting of senior staff within the Listing Division or a consultation with senior staff within the Listing Division. This process usually involves the Head of Listing. At such a meeting the request for guidance on the application of the Listing Rules in the particular circumstances involved will be discussed. The decision of this review meeting should be taken to be the Listing Division's considered view on the matter.~~