

HONG KONG EXCHANGES AND CLEARING LIMITED

GUIDE ON APPLICATIONS FOR WAIVERS AND MODIFICATIONS OF THE LISTING RULES

28 November 2008 (amended on 4 October 2021)

Purpose of this Guide

1. This guide describes the Exchange's approach in handling listed issuers' applications for waivers and modifications of Listing Rules ("**Waivers**") and how such applications should be made by the issuers.

Introduction

2. The principal function of the Exchange is to provide a fair, orderly and efficient market for trading of securities. In discharging the regulatory duties, the Listing Division administers and interprets the Listing Rules as they apply to listed issuers. From time to time the Listing Division may under Main Board Listing Rule 2.04 (GEM Listing Rule 2.07) waive, modify or not require compliance with the Listing Rules in individual cases to suit the circumstances of a particular case.

Assessment of Waiver Applications

General principles

3. Listed issuers are expected to exercise all reasonable care to ensure full compliance with the Listing Rules¹.
4. The Listing Division will not grant Waivers to listed issuers, except where the Listing Rules already contemplate the granting of Waivers under certain circumstances or where the Listing Division is satisfied that there are exceptional and justifiable circumstances warranting the grant of a Waiver.
5. Generally the Exchange will not grant Waivers in the following circumstances:
 - (a) the listed issuer structures transactions or makes arrangements which would result in non-compliance with the relevant Listing Rules, where either there is no acceptable mechanism for rectifying the non-compliance with the Listing Rules or non-compliance with the Listing Rules will pose a significant regulatory concern. For example, a listed issuer requests a Waiver from the

¹ The entering into a confidentiality agreement between the listed issuer and the counterparty should not fetter the listed issuer's obligation to comply with the Listing Rules. Accordingly the confidentiality obligation would not itself be a reason for granting a Waiver.

minimum public float requirement arising from a contemplated transaction involving issue of new shares to connected persons; and/or

- (b) the Waiver is applied for by the listed issuer in respect of a Listing Rule obligation which has crystallised. For example, by the listed issuer entering into a transaction. A Waiver will not apply retrospectively.
6. When deciding whether to grant a Waiver, the Listing Division will take into account the circumstances and reasons outlined in the Waiver application and all other relevant information supplied by the listed issuer.
7. When assessing the merits of the Waiver application, the Exchange will generally consider the following factors (which are not exhaustive):
- (a) whether the listed issuer is able to meet all the Waiver conditions where such conditions are specified under the Listing Rules or the listed issuer falls under the specific circumstances expressly provided for in the Listing Rules;
 - (b) whether compliance by the listed issuer with the Listing Rules in their unmodified form would be unduly burdensome, impractical (e.g. due to legal restriction, time constraint and/or inaccessibility of information) or would not achieve the regulatory purpose for which the Listing Rules were made;
 - (c) whether compliance with the Listing Rules would be prejudicial or seriously detrimental to the listed issuer's interests;
 - (d) whether the Waiver would result in undue risks to shareholders and investors whose interests are among those which the Listing Rules are intended to protect; and
 - (e) whether the grant of Waivers would be repugnant to, or conflict with the duties of, the Exchange under the Securities and Futures Ordinance in full or the general principles under Main Board Listing Rule 2.03 (GEM Listing Rule 2.06).

Application for a disclosure relief

8. In relation to an application for a specific disclosure relief, the Listing Division will also have regard to the following in its assessment:
- (a) whether the information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the listed issuer and, where relevant, the impact of the subject transaction;

- (b) whether disclosure would be (i) contrary to the public interest; (ii) seriously detrimental, or competitively harmful, to the issuer (e.g. the information is a trade secret) and the omission of information is not likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the informed assessment of the listed issuer's securities; or (iii) in violation of the Personal Data (Privacy) Ordinance (Cap. 486) or other applicable privacy laws; and
- (c) whether the alternative disclosure (if any) will enable shareholders and the investing public to make a properly informed assessment of the listed issuer's securities or the subject transaction and/or to make an informed voting decision.

Application for a timing relief

- 9. In relation to an application for timing relief (e.g. temporary public float waiver and waiver application for delay in despatch of circular), the Exchange will also consider plans formulated by the listed issuer to comply with the Listing Rules.

How to Make a Waiver Application

- 10. All Waiver applications by listed issuers must be made in writing. The Waiver applications 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.
- 11. Each Waiver application should include the following:
 - (a) the name and contact particulars of the issuer requesting the Waiver;
 - (b) identify the Listing Rules which the listed issuer is seeking to be waived or modified. Where a listed issuer applies for a modification of the Listing Rules, it is required to submit details of the proposed modification (including where applicable the text of the unmodified rule and a draft of modified rule text);
 - (c) indicate whether the applicant is applying for variation of an existing Waiver, and if so provide further details of the existing Waiver;
 - (d) include relevant facts and circumstances that support the Waiver request and all other relevant information that the listed issuer reasonably believe should be brought to the Listing Division's attention; and
 - (e) contain a clear explanation, based on all relevant facts and circumstances, of whether and why the grounds stated in paragraphs 7 to 9 apply so as to enable the Listing Division to consider the Waiver application. For example:

- Where the relevant Listing Rule has already set out specific conditions for the granting of the Waiver, the listed issuer is required to submit whether and how those conditions are, or will be met.
- For application for a timing relief (e.g. temporary public float waiver and waiver application for delay in despatch of circular), the listed issuer is normally required to submit its proposed plan and timetable for re-compliance with the Listing Rules.

When will the Listed Issuer get a Response

12. The time required to process a Waiver application will depend on the complexity of the relevant issue and whether sufficient details have been provided by the listed issuer for the Listing Division to consider the Waiver application.
13. The Listing Division may make follow-up enquiry as it considers appropriate to ascertain the facts and circumstances of the case for assessing the merits of the Waiver application.
14. The process may take longer if the particular Waiver is intended to have general effect. Such Waivers require consideration by the Listing Committee and the consent of the Securities and Futures Commission.
15. Accordingly, for Waiver applications involving novel or complex issues, listed issuers are encouraged to submit their Waiver applications at the earliest possible opportunity. Where necessary, listed issuers may consider contacting the Listing Division to seek informal and confidential guidance at an early stage.
16. The Listing Division will endeavour to respond to any Waiver applications on a timely basis. In general, the Listing Division will provide an initial response within 5 business days from the receipt of the Waiver application.

Decisions relating to Waiver Applications

17. The Listing Division will communicate its decision to approve or reject a Waiver application in writing.
18. The Exchange's decision letter would normally describe the conditions (if any) upon which the Waiver is based, making reference to the information provided in the listed issuer's Waiver application. Where the Waiver is rejected, our decision letter will state the reasons for such rejection.
19. If the listed issuer does not accept the decision made by the Listing Division, it may request a review of the decision according to the procedures set out in Chapter 2B of the Main Board Listing Rules / Chapter 4 of the GEM Listing Rules.

Revoking Waiver granted to Listed Issuer

20. As one of the standard conditions to our Waiver approval, a listed issuer is obliged to promptly notify the Exchange if it becomes aware of any matter which is material to the relevance or appropriateness of the Waiver. The Listing Division has the right to revoke or modify a Waiver if there are any changes to the facts and circumstances as stated in the listed issuer's submission(s) or any specific conditions imposed by the Listing Division for granting a Waiver are no longer satisfied.
21. A Waiver granted with effect over a period of time may be revoked by the Exchange in the event of any future amendments to the Listing Rules. In such circumstances, the listed issuer must take immediate steps to establish whether the existing Waiver will survive the amendments to the Listing Rules and, if not take immediate steps to ensure compliance with the amended Rule requirements as soon as possible.
22. The Listing Division will normally give notice of its intention to revoke any Waiver and provide a reasonable period of time for the listed issuer to make representations. The Listing Division will notify the listed issuer of its decision to revoke the Waiver or not having regard to any representations made by the listed issuer.