

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink: http://www.hkex.com.hk/consul/paper/cp200906_e.pdf

Where there is insufficient space provided for your comments, please attach additional pages.

Consultation Questions on Proposed Changes to New Listing Applications

1. Do you support our proposals to streamline the filing and checklists requirements for Main Board IPO?

Yes

No

If your answer is "No", please provide reasons and alternative views.

2. Do you agree with our proposed changes to the A1 Documents on pages I-1 to I-4 of Appendix I?

Yes

No

If your answer is "No", please provide reasons and alternative views.

We agree that the requirement to provide copies of audited accounts for companies comprising the group should be removed.

3. Do you agree with our proposed changes to the 20-day Documents on pages II-1 to II-4 of Appendix I?

Yes

No

If your answer is "No", please provide reasons and alternative views.

We agree that the requirement to provide copies of draft accounts for companies comprising the group should be removed – please also see our additional comments in Question 12. We also agree to the proposal to move forward the draft statement of adjustments to become part of the A1 Documents.

4. Do you agree with our proposed changes to the 15-day Documents on pages III-1 to III-3 of Appendix I?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

We agree to the proposals to codify existing practices regarding the profit forecast and cash flow forecast memoranda – please also see our additional comments below.

We note that the existing rule 9.11(10) requires the submission of the board’s profit forecast memorandum where the listing document contains a profit forecast. There is no specification as to the length of the forecast period covered in the memorandum. It therefore implies that the memorandum may only cover the forecast period as appeared in the listing document. Rule 11.17 requires that where a profit forecast appears in any listing document, the accounting policies and calculations of the forecast must be reviewed and reported on by the reporting accountants and their report must be set out.

We note that the Stock Exchange proposes to amend rule 9.11(10) such that a profit forecast memorandum will have to be submitted irrespective of whether the listing document contains a profit forecast and that such memorandum must cover the first financial year after the date of listing (irrespective of the length of the forecast period in the listing document which will not normally cover the entire forthcoming financial year, e.g., in cases where the listing document contains a profit estimate).

For the avoidance of doubt, the Stock Exchange may wish to clarify that any report on a profit forecast required under rule 11.17 will continue to only cover the forecast period as appearing in the listing document, notwithstanding the fact that the board’s profit forecast memorandum will have to cover the first financial year after the date of listing under the proposed new rule 9.11(10).

Furthermore, under the proposed wording of rule 9.11(10), it will be a mandatory requirement that the listing applicant file a “profit forecast memorandum covering the first financial year after the date of listing”. We note that the wording in the existing Checklist III refers to a “profit forecast for the period up to the forthcoming financial year end date after listing”. We also note that the wording in the equivalent checklist for GEM applicants further distinguishes between the requirements for a profit forecast and a profit estimate. We wish to clarify the intention of the Stock Exchange using the following hypothetical scenarios:

Scenario 1

Year end date of listing applicant: December
Date of Form A1: August 2009
Intended date of listing: October 2009
Actual date of listing: November 2009
Duration covered by the profit forecast memorandum:
up to December 2009 or 2010?

Scenario 2

Year end date of listing applicant: December
Date of Form A1: October 2009
Intended date of listing: January 2010
Actual date of listing: January 2010
Duration covered by the profit forecast memorandum:
up to December 2010 or 2011?

Scenario 3

Year end date of listing applicant: December
Date of Form A1: August 2009
Intended date of listing: October 2009
Actual date of listing: January 2010
Duration covered by the profit forecast memorandum at the 15-day Documents stage: up to December 2009 or 2010? Need to file another memorandum up to December 2010 or 2011?

Whilst it appears reasonable to file a profit forecast memorandum up to December 2009 or even December 2010 (the first full financial year commencing after the date of listing (making reference to similar wording in rule 3A.19)) under Scenario 1, it may be onerous to require a profit forecast memorandum up to December 2011 in both Scenario 2 and Scenario 3 (particularly so in Scenario 3 when there is a delay in the listing process). The Stock Exchange explains in Appendix I to the Consultation Paper that, irrespective of whether a listing document contains a profit forecast, a listing applicant will need supporting information for compiling the statement regarding working capital sufficiency and such information should include a cash flow forecast memorandum and profit forecasts. We wish to bring out the fact that a cash flow forecast supporting the working capital statement is dissimilar from a profit forecast when it comes to compilation procedures and other technical aspects. In any event, the cash flow forecasts in Scenario 2 and Scenario 3 do not need to cover a period up to December 2011. It would be helpful if the Stock Exchange would (i) consider whether the proposed wording of rule 9.11(10) would actually implement its intention underlying the proposal (without creating undue difficulty for listing applicants as in Scenario 2 and Scenario 3 above); (ii) if considered necessary, make appropriate changes to the wording of the proposed rule (e.g., by making reference to the existing wording in Checklist III and/or the GEM checklist); and (iii) clarify whether there is a need to file another memorandum when there is a delay in the listing process (as illustrated in Scenario 3 above).

5. Do you agree with our proposed changes to the 10-day Documents on pages IV-1 to IV-3 of Appendix I?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A. Please refer to our cover letter.

6. Do you agree with our proposed changes to the 4-day Documents on pages V-1 to V-7 of Appendix I?

Yes

No

If your answer is "No", please provide reasons and alternative views.

We agree that the requirement to provide annual report and accounts of the company or group should be removed.

7. Do you agree with our proposed changes to the before bulk-printing of prospectus Documents on pages VI-1 to VI-3 of Appendix I?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A. Please refer to our cover letter.

8. Do you agree with our proposed changes to the after hearing but before prospectus issuance Documents set out on pages VII-1 to VII-4 of Appendix I?

Yes

No

If your answer is "No", please provide reasons and alternative views.

We agree to the proposal to remove the requirement to provide certified copies of letters, reports, financial statements, statement of adjustments, annual report and accounts.

9. Do you agree with our proposed changes to the after prospectus issuance but before dealings Documents on pages VIII-1 to VIII-2 of Appendix I?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A. Please refer to our cover letter.

10. Do you agree that the proposed draft Main Board Listing Rules amendments in Appendix III will implement the proposals set out in Appendix I?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

Yes, in respect of those parts covered by our comments in Questions 2, 3, 4, 6 and 8 above, subject to our additional comments in Question 4.

Please also see our additional comments in Question 12.

11. If your answer to Question 10 is “Yes”, do you consider that corresponding changes to the Main Board Listing Rules should also be extended to the GEM Listing Rules?

Yes

No

If your answer is “Yes”, please elaborate your views.

Differences between the Main Board and GEM Listing Rules should be kept to a minimum.

12. Are there any other comments you would like to make?

Yes

No

If your answer is “Yes”, please elaborate your views.

We note that on 24 July 2009 the Stock Exchange published certain guidance materials on its initial public offering application process. A number of new guidance letters were released. We understand that guidance letters do not override the Listing Rules and if there is any conflict or inconsistency between any guidance letter and the Listing Rules, the Listing Rules prevail. One of the guidance letters, GL06-09, sets out the Stock Exchange’s practice on accepting early filings of listing applications at different times of the year.

Paragraphs 4.6 and 4.7 of GL06-09 deal with financial information required in the first draft listing document filed with Form A1 if the latest audited financial statements are of a date within and after 230 days of the filing of Form A1 respectively. Both paragraphs require, among other things, the inclusion of “audited figures for the three financial years before/preceding the most recent audited balance sheet date”. Whilst GL06-09 requires audited figures for the three financial years at the Form A1 stage, the existing rule 9.11(6) only requires the filing of the advanced draft accounts for companies comprising the group for the balance of the financial years (which, when read in conjunction with rule 9.11(2), may mean the third financial year and the stub period, if any) which make up the track record period at least 20 clear business days before the expected hearing date.

If the proposed removal of rules 9.11(2) and 9.11(6) (i.e., the requirements to file group accounts) is implemented, the only references to accounts being in audited or advanced draft form will be removed from the Listing Rules. Whilst the proposed new Chapter 9 requires the listing document (which contains the draft accountants’ report) submitted with Form A1 to be in anticipated final form and the chapter will contain no references to any accounts or accountants’ report or figures being audited or not, the only references as to whether the figures in the accountants’ report have to be audited or not will be found in GL06-09. The wording used in GL06-09 may imply that going forward the Stock Exchange will require audited figures for three financial years at the Form A1 stage. The Stock Exchange may be of the view that there should be sufficient time to complete the audit of the figures for all years (including the third financial year) under the circumstances.

In practice, for figures included in the draft accountants' report at the Form A1 stage, the reporting accountants should have substantially completed the relevant audit. Strictly speaking, "audited" figures means that the figures have been signed off by the auditors or reporting accountants. However, the reporting accountants will only sign off the accountants' report at the time of issue of the listing document instead of at the time of submission of Form A1. It is common for the reporting accountants to undertake an independent audit of the entire group (especially in respect of companies in Mainland China) for the preparation of the accountants' report instead of using the statutory audited accounts of the group companies and compiling a statement of adjustments. The draft accountants' report contained in the draft listing document submitted with Form A1 therefore normally contains figures in advanced draft form (or anticipated final audited figures) instead of audited figures in the literal sense. We would be grateful if the Stock Exchange would consider the practical situation and, if considered necessary, effect appropriate changes to the Listing Rules and/or GL06-09 to ensure that draft accountants' report containing anticipated final audited figures (instead of audited figures) will continue to be accepted for vetting at the Form A1 stage.

Consultation Questions on Proposed Changes to Listing of Equity Securities by Listed Issuers

13. Do you support our proposals to streamline the documentary requirements for listing applications of equity securities by listed issuers?

Yes

No

If your answer is "No", please provide reasons and alternative views.

14. Do you agree with the proposed changes to the documentary requirements for Main Board issuers in Appendix II?

Yes

No

If your answer is "No", please provide reasons and alternative views.

We agree to the proposals regarding audited accounts, draft accounts, statement of adjustments, profit forecast memorandum, letter from auditors on working capital sufficiency, and certified copies of documents.

15. Do you agree that the proposed draft Main Board Listing Rules amendments in Appendix III will implement the proposals set out in Appendix II?

Yes

No

If your answer is "No", please provide reasons and alternative views.

Yes, in respect of those parts covered by our comments in Question 14 above.

16. Do you agree with the proposed changes to the documentary requirements in the GEM Listing Rules in a manner consistent with those proposed for the Main Board Listing Rules?

Yes

No

If your answer is "No", please provide reasons and alternative views.

17. Are there any other comments you would like to make?

Yes

No

If your answer is "Yes", please elaborate your views.

- End -

