Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:
https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2020-MB-Profit-Requirement/Consultation-Paper/cp202011.pdf

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

Capitalised terms have the same meaning as defined in the Consultation Paper unless otherwise stated.

1. Do you agree that the Profit Requirement should be increased by either Option 1 (150%) or Option 2 (200%)? Please give reasons for your views.

   ☐ Yes

   ☐ No

   You may provide reasons for your views.

1. Not the right time

We agree that as a matter of principle, the Profit Requirement should be increased to align it with the current increased Market Capitalisation Requirement of HK$500 million. However, we are of the view that considering the political unrest in Hong Kong since 2019 and the ongoing COVID-19 pandemic and Sino-US trade war/ tension, it is not the appropriate time to implement such change unless and until Hong Kong's economy is no longer adversely affected by such and other similar events.

It was mentioned in paragraph 10 that the Exchange is mindful that the proposed change will affect companies at an early development stage or small or mid-sized companies, and suggested that they can still access the capital market by listing on GEM. We submit that as matters currently stand, GEM is not a good fund-raising platform as compared with the Main Board and small or mid-sized companies should not be denied access to the Main Board to satisfy their fund-raising needs, unless GEM board will be restructured or a new listing platform is introduced to cater for the listing needs of these small to mid-sized companies.

Hong Kong's unemployment rate continues to be high and is expected to increase further as the COVID-19 pandemic continues. We are of the view that implementing the increase in the Profit Requirement now will only worsen the situation by denying access to Hong Kong's equity capital markets to certain local businesses. This will also have a domino effect, since market participants (including sponsors, auditors, lawyers and other advisers) will consequentially be adversely affected. The Hong Kong Government has taken the lead by adopting various measures to support the local economy. We submit that to fulfil its own corporate social responsibility, the Exchange should likewise defer implementation of the proposed change.

2. Maintain competitiveness

If, despite the above, the Exchange decides to implement this change soon, we are of the view that neither Option 1 nor Option 2 should be adopted. The main reason is that in order for the Exchange to remain competitive as a listing venue, its aggregate profit requirement during the track record period should not be the highest in the world. Our proposal is that the Exchange can consider increasing the aggregate profit requirement to not more than HK$80 million (i.e. lower than NYSE and NASDAQ Global Select Market), e.g. HK$30 million in the most recent financial year and HK$50 million in aggregate in the two preceding financial years.

3. ESG / green economy companies

Companies with good environmental, social and governance compliance records or are otherwise green economy enterprises, usually invest significant capital expenditure over a long period of time, during which their profitability will suffer as a result. We note that the Exchange has recently launched the "STAGE" trading platform for green and sustainable enterprises. In support of such new initiative, we propose that such companies be exempted from the increased Profit Requirement.

4. Additional market capitalisation test

If the Profit Requirement is increased, we propose that an additional market capitalisation test be added in Rule 8.05, so that companies (e.g. new economy companies) that cannot meet the increased Profit Requirement but can meet a higher market capitalisation requirement (e.g. HK$1 billion) can still be eligible to list on the Main Board. The same rationale shall also be reflected in the revenue/ cashflow listing requirements in line with Rule 8.05(2) and (3).

2. Besides the proposed increase in the Profit Requirement, is there any other alternative requirement that should be considered? Please give reasons for your views.

☐ Yes

☐ No

You may provide reasons for your views.

1. Extend the lock-up period

We note from paragraph 5 that one reason for the proposed increase is to avoid the manufacture of shell companies. This we understand is referring to the controlling shareholder of a newly listed company selling its controlling stake at a premium soon after the lock-up period mentioned in Guidance Letter HKEX-GL68-13A ("GL68-13A"). In this regard, we are of the view that the most direct and effective method to achieve this policy goal is to increase this post-listing share lock-up period. We propose extending the period after listing during which the controlling shareholder must maintain its controlling stake by an additional 6 months.

2. Withdraw GL68-13A

If the Exchange decides to increase the Profit Requirement (whether or not it accepts our proposal above to extend the lock-up period), we are of the view that GL68-13A should be withdrawn, for the following reasons:
- it is highly speculative for the Exchange to guess the intentions of the controlling shareholder in achieving a listing;
- to remove uncertainty by avoiding subjective decisions by the Exchange;
- there are other means to achieve the same policy goal, e.g. legislative changes to improve the SFC's enforcement powers to prevent market manipulation, insider dealing or other types of market misconduct; and
- the Listing Rules relating to reverse takeover/ backdoor listing were revised in October 2019 to tighten up the conduct of reverse takeover in the market.

3. Do you agree that the Exchange should consider granting temporary relief from the increased Profit Requirement due to the challenging economic environment? Please give reasons for your views.

☑ Yes

☐ No

You may provide reasons for your views.

4. If your answer to Question 3 is yes, do you agree with the conditions to the temporary relief as set out in paragraph 55? Please give reasons for your views.

☐ Yes

☐ No

You may provide reasons for your views.

We are of the view that:

(1) even if the increase in the Profit Requirement is not implemented, temporary relief should be granted to all listing applicants affected by the COVID-19 pandemic. On the other hand, if the Exchange decides to increase the Profit Requirement, temporary relief should also be given to applicants who have submitted their applications before the Rule Amendment Effective Date. We do not see any policy reason for granting temporary relief only to applicants which are subject to the increased Profit Requirement;

(2) imposing an additional requirement that the Aggregate Profit Threshold during the three-year track record period must be met is contrary to the notion of any genuine temporary relief. The condition set out in paragraph 55(a) should therefore be removed. Alternatively, we propose giving more leeway to listing applicants, e.g. consistent with the approach taken for spin-off applications under Practice Note 15, allowing an applicant to meet the Aggregate Profit Threshold during any three of the five immediately preceding financial years (see paragraph 3(c) of Practice Note 15); and

(3) since the COVID-19 pandemic is ongoing and might in fact last until the end of year 2021, the Exchange should expressly state that the condition set out in paragraph 55(d) will be amended to also include the calendar year 2021, if the COVID-19 pandemic continues during most part of that year.

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