

Corporate & Commercial

Changes to the Listing Rules to Implement the New Sponsor Regime

Following the consultation conclusions published by the Securities and Futures Commission (the “**SFC**”) in December 2012, The Stock Exchange of Hong Kong Limited (“**SEHK**”) has published various amendments to the Rules Governing the Listing of Securities on the Exchange (the “**Listing Rules**” or “**LR**”) and guidance materials. Subject to some transitional arrangements, these amendments and guidance materials will come into effect on 1 October 2013. The new sponsor regime, together with SEHK’s amendments to the Listing Rules and guidance materials, is expected to strengthen market confidence and investor protection in Hong Kong.

Introduction

Key changes to the Listing Rules and guidance materials include:

1. Prescribing a minimum appointment period in which a listing applicant should formally appoint a sponsor.
2. From 1 October 2013, the new regulatory regime (except for the arrangements taking effect on 1 April 2014) will apply to all listing applications filed on or after that date.
3. From 1 October 2013 to 30 September 2014 (both dates inclusive) (the “**Transitional Period**”), SEHK will perform an initial 3-day check (the “**3-Day Check**”) of an advanced proof of the listing document submitted with the listing application under the Listing Rules (the “**Application Proof**”).
4. From 1 April 2014, SEHK will publish on its website the Application Proof for accepted listing applications and the names of the listing applicant and sponsor and the date of decision to return the listing application for returned listing applications.

Minimum appointment period

Pursuant to Main Board LR3A.02 and 3A.02B (GEM LR 6A.02 and 6A.02B), a listing applicant must appoint a sponsor under a written engagement agreement not less than 2 months before submitting its listing application. Subject to the specific circumstances of a listing applicant, this 2-month minimum appointment period aims to ensure that a sponsor has sufficient time to perform the necessary due diligence work in an IPO.

Application Proof

Application Proof must be substantially complete

Main Board LR9.03(3) (GEM LR 12.09) requires the information in the listing application form, the Application Proof and all other relevant documents specified under the relevant Listing Rules to be substantially complete except in relation to information which by its nature can only be finalized and incorporated at a later stage. Otherwise, SEHK will not continue to review those application documents.

Transitional arrangements in relation to publication of Application Proof

SEHK has also published guidance letters to provide for transitional arrangements in relation to the publication of Application Proof. From 1 October 2013 to 31 March 2014 (both dates inclusive), any Application Proof submitted to SEHK, and in the case of a listing application being returned, the name of the listing applicant and sponsor and the date of decision to return the listing application will not be published on SEHK's website.

From 1 April 2014 to 30 September 2014 (both dates inclusive), at the time of filing a listing application, a listing applicant is required to submit two Application Proofs, namely Application Proof for SEHK's vetting (the "**AP Vetting**") and Application Proof to be published on SEHK's website (the "**AP Publication**"). The AP Vetting and AP Publication should be the same, except certain information in the AP Publication may be redacted to the extent that the AP Publication will not constitute a prospectus or an invitation to the public under the relevant ordinances. The AP Publication should be in both English and Chinese. Further, a listing applicant must include appropriate disclaimer and warning statements on SEHK's website and in each AP Publication. SEHK will publish the status marks and information on SEHK's website to indicate the status of each listing application. A listing applicant may apply to waive or modify the above publication requirements for an Application Proof. If SEHK accepts a listing application for detailed vetting after the 3-Day Check, the Application Proof will be published on SEHK's website. Where a listing application is returned, the name of the listing applicant and sponsor and the date of decision to return the listing application will be published on SEHK's website.

From 1 October 2014 onwards, subject to the review of SEHK and SFC in relation to the 3-Day Check, all Application Proofs and the name of listing applicant and sponsor and the date of decision to return the application will be published on SEHK's website.

Confidential filing

If at the time of filing a listing application, a listing applicant has already been listed on a recognized overseas exchange for not less than 5 years and has a market capitalization of not less than USD200,000,000, it may apply for confidential filing of an Application Proof.

Streamlined vetting process

Through the amendments of the Listing Rules and the publication of guidance letters, SEHK has streamlined its vetting process. During the Transitional Period, SEHK will perform the 3-Day Check according to the 3-day checklist and will return listing applications which fail to include matters set out in the 3-day checklist. The 3-Day Check arrangement is subject to the review by SEHK and SFC during the first six months of the Transitional Period (1 October 2013 to 31 March 2014). Further, if an Application Proof is returned on the basis that it is not substantially complete, the listing applicant is not allowed to submit a fresh application within a 8-week moratorium. SEHK has also streamlined its commenting process by focusing on major issues such as eligibility, suitability, sustainability, compliance with the Listing Rules and other relevant legislations and any material disclosure deficiencies.

Post Hearing Information Pack (“PHIP”)

With effect from 1 October 2013, the requirement to post a Web Proof Information Pack will be replaced in its entirety with a new requirement to publish PHIP. The requirements in relation to the Application Proof as set out above will also apply to PHIP.

Other guidance materials

SEHK has also published several guidance letters and updated some existing guidance letters for the implementation of the amended Listing Rules and the new sponsor regime. Some key changes on disclosure requirements are highlighted below.

Stub period

The requirements in relation to the stub period and its financial information have been changed. Depending on whether listing is sought on the Main Board or GEM and the time of filing from the end of the required track record period, the audited and stub period financial information and comparative information and the related management discussion and analysis (“**MD&A**”) may be different.

Sponsor’s confirmation

Upon its listing application, a listing applicant is required to submit a sponsor’s confirmation that it is beyond reasonable doubt that the listing applicant will satisfy Main Board LR 8.05 (GEM LR 11.12A) or other financial standard requirements following its due diligence review under the Listing Rules.

Accountants’ report

Upon submission of the Application Proof, a listing applicant should also submit the accountants’ report on historical financial information; reporting accountants’ report on the pro forma financial information and reporting accountants’ report on profit forecast (if any) (the “**Reports**”). Further, a confirmation from the reporting accountant that no significant

adjustment is expected to be made to the draft Reports based on the work done as of the date of confirmation is required.

MD&A on historical financial information

The MD&A in a listing document should not only provide past events or information responsive to the specific requirements of the Listing Rules, but should include the management's view of the implications to the future of a listing applicant and the significance of such information. Other specific disclosures include key factors affecting the results of operations, critical accounting policies and estimates and review of historical results, financial position and cash flows and liquidity and capital resources.

Disclosure of Directors, Supervisors and Senior Management

A listing applicant should set out detailed biographies of its directors, supervisors and senior management in its listing document. Further, a sponsor is expected to verify the academic recognition disclosed. For instance, one should check whether the academic accreditation bodies are authorized by competent authorities to grant accreditation and whether the courses attended were long distance learning courses.

Conclusion

The new sponsor regime promulgated by the SFC has brought about various amendments to the Listing Rules and publication of new and updated guidance materials. As such, companies considering listing in Hong Kong and sponsors are strongly recommended to peruse the amended Listing Rules and the relevant guidance materials published by SEHK to familiarize themselves with the new sponsor regime.

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Important: The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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