

Corporate Finance

Listing Rules amendments to codify general waivers and principles relating to IPOs and listed issuers

Introduction

On 28 August 2020, the Stock Exchange of Hong Kong Limited (the “**Stock Exchange**”) published conclusions to the consultation paper on “Codification of General Waivers and Principles relating to initial public offerings (the “**IPOs**”) and Listed Issuers and Minor Rule Amendments”. Amendments will be made to both the Main Board Listing Rules and the GEM Listing Rules to, among others, codify the waivers from the Main Board Listing Rules and the GEM Listing Rules which were approved by the Securities and Futures Commission of Hong Kong (the “**SFC**”) pursuant to Rule 2.04 of the Main Board Listing Rules or Rule 2.07 of the GEM Listing Rules (the “**General Waivers**”) and waivers which have been granted on multiple occasions to new applicants and/or listed issuers on the basis of similar principles and conditions (the “**General Principles**”). The proposed amendments will take effect from 1 October 2020.

Codification of General Waivers

The key changes to the Listing Rules include the codification of some General Waivers to:

1. exempt bonus or capitalisation issues by People’s Republic of China (the “**PRC**”) incorporated issuers from shareholders’ approvals in general meetings and separate class meetings, if the issuers make bonus or capitalisation issues to existing shareholders on a pro rata basis;
2. modify the calculation of consideration ratio for a PRC incorporated issuer whose domestic shares are listed on a PRC exchange, where the market capitalisation of the PRC listed domestic shares will be determined based on the average closing price of those shares for the five business days immediately preceding the transaction; and
3. allow the listed issuer’s stock code to be displayed prominently in the corporate or shareholder information section of its financial reports.

Codification of General Principles

Disclosure of financial information of acquisition of businesses after the Track Record Period

After the amendment, application for waivers from the requirements regarding the disclosure of financial information of subsidiaries or businesses acquired or to be acquired after track record period may be made by a new applicant if:

1. all of the percentage ratios for the acquisition are less than 5%;
2. where the acquisition will be financed by the proceeds from the IPO, the new applicant has obtained the requisite exemption from the SFC; and
3. where the new applicant's principal activities involve acquisition of equity securities, the new applicant does not have control or significant influence over the underlying company or business. Alternatively, where a business or a subsidiary is acquired by a new applicant, the historical financial information is unavailable and it would be unduly burdensome to obtain it, and the new applicant has disclosed the information required for the announcement for a discloseable transaction in its listing document.

Disclosure of financial information of the overseas banking companies

Waiver will be added for overseas banking companies from strict compliance of the requirements under Rule 4.10 of the Main Board Listing Rules (Rule 7.11 of the GEM Listing Rules) regarding the disclosure of financial information, if the applicant can demonstrate that (1) it is regulated by a foreign regulator similar to the Hong Kong Monetary Authority, which provides adequate supervision, and (2) alternative financial disclosure in its listing documents regarding capital adequacy, loan quality, loan provisioning and guarantees, contingencies and other commitments has been made in listing document, which is sufficient for potential investors to make a fully informed investment decision.

Publication of preliminary results announcements and distribution of annual or interim reports

After the amendment, it is clarified that newly listed issuers are required to publish results announcement and distribute financial reports when they would ordinarily be required to publish or distribute under the Main Board Listing Rules (or GEM Listing Rules). It is codified that a waiver regarding the publication and distribution requirements of results announcement and financial reports under Main Board Listing Rules (or GEM Listing Rules) will only be granted if a new applicant has disclosed the same level of financial information as that required under the relevant rules in the listing document.

Other General Principles

Codification of other General Principles include:

1. the waiver from the requirements regarding the change of financial year period;
2. the waiver from disclosing actual consideration of aircrafts acquired by airline operator;
3. in the case of a spin-off of a listed issuer's subsidiary (the "**SpinCo**"), allowing the issuer to determine the share option scheme limit of the SpinCo with reference to the SpinCo's shares in issue as at the date of the SpinCo's listing;
4. the waiver of the exercise price requirement for issuers dually listed on the Stock Exchange and a PRC exchange; and

5. exempting banking or insurance companies from including a working capital statement, subject to appropriate alternative disclosures in listing documents and circulars.

New Guidance Letter regarding requirements of a company secretary

Under Rule 3.28 of the Main Board Listing Rules (Rule 5.14 of the GEM Listing Rules) (“**R3.28**”), a listed issuer is required to appoint as its company secretary an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Stock Exchange, capable of discharging the functions of company secretary. In short, the Stock Exchange generally considered a Hong Kong certified public accountant, a Hong Kong solicitor or barrister or a chartered secretary is a person holding an acceptable qualification. The Main Board Listing Rules (as well as the GEM Listing Rules) also set out exhaustive criteria in assessing the relevant experience of an individual as company secretary. The Stock Exchange has in the past granted R3.28 waivers to allow issuers’ existing employees who are familiar with their operations and boards to be the issuer’s company secretary for a specified period.

After considering the comments received, the Stock Exchange decided not to proceed with the proposed amendment. Instead, the Stock Exchange has published a new guidance letter HKEX-GL108-20 (the “**Guidance Letter**”) to provide clarifications and guidance on the application of R3.28 waivers. According to the Guidance Letter, factors that will be considered by the Stock Exchange when granting a R3.28 waiver include:

1. whether the issuer has principal business activities primarily outside Hong Kong;
2. whether the issuer is able to demonstrate the need to appoint a person who does not have the acceptable qualification nor relevant experience as a company secretary; and
3. why the directors consider the person to be suitable to act as the issuer’s company secretary.

A R3.28 waiver, if granted, will be for a fixed period of time and on the conditions that the proposed company secretary must be assisted by a person who possesses the qualifications or experience as required under R3.28 and is appointed as a joint company secretary throughout the waiver period. The Stock Exchange has also tightened the waiver condition whereby a R3.28 waiver will be revoked if the issuer has committed material breaches to the rules.

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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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