



Hong Kong

April 2019

HKEX LISTING RULE AMENDMENTS TAKE EFFECT ON 1 MARCH 2019

Amendments to the Listing Rules of the Stock Exchange of Hong Kong Limited (**HKEx**) took effect on 1 March 2019 changing the documentary requirements for listing applicants and listed companies and making other minor housekeeping amendments. HKEx published its Consultation Conclusions on Proposed Changes to Documentary Requirements and other Minor Rule Amendments¹ (**Consultation Conclusions**) on 1 February 2019 which adopted most of the changes proposed in its November 2017 Consultation Paper².

The key Listing Rule changes are:

- i) the inclusion in the declaration and undertaking given by directors (and supervisors of PRC companies) of an undertaking to inform HKEx of the director's or supervisor's contact details and granting HKEx the power to obtain information from supervisors;
- ii) streamlining the filing requirements for listed issuers on the issue of new securities;
- iii) removing the filing requirements for documents which are submitted to HKEx for record only and documents whose contents are already disclosed to the public;

- iv) clarifying that disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new applicant must be for the period from the three (for Main Board) or two (for GEM) financial years immediately preceding the issue of the listing document up to the date of acquisition; and
- v) removing GEM Listing Rule 17.55 which previously extended the requirement for an auditor or reporting accountant to review a profit forecast included in a listing document or circular for a connected or notifiable transaction to *any* announcement or other document containing a profit forecast.

Unless otherwise stated, references to the Listing Rules in this update are to the Listing Rules of the Main Board, although the same changes have been made to the equivalent GEM Listing Rules. For amendments to the Main Board Listing Rules, please click here³, and for the GEM Listing Rules' changes, please click here⁴.

I Changes to Documentary Requirements for Listed Issuers

1. Directors' and supervisors' declaration and undertaking forms

1 [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2017-Minor-Rule-Amendments/Conclusions-\(February-2019\)/cp2017112cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2017-Minor-Rule-Amendments/Conclusions-(February-2019)/cp2017112cc.pdf)
2 <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2017-Minor-Rule-Amendments/Consultation-Paper/cp2017112.pdf>

3 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/u/p/Update_124_Attachment_1.pdf
4 https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/u/p/Update_59_Attachment_1.pdf

1.1 Directors' and Supervisors' Undertaking in Part 2

The Listing Rules require every new director of a listed issuer (and supervisor of a PRC issuer) to sign and lodge a declaration and undertaking in the form prescribed in Appendix 5B, 5H or 5I (**Director's Undertaking Form**) to the Listing Rules. Part 2 of the Director's Undertaking Form contains an undertaking by the director or supervisor to comply with the Listing Rules and applicable laws and regulations and to ensure the listed issuer's compliance. The Consultation Paper had proposed removing the requirement to submit a Director's Undertaking Form and to instead incorporate directors' and supervisors' obligations under Part 2 into the Listing Rules.

In view of comments from respondents to the consultation that the requirement to sign the form increases directors' and supervisors' awareness of their obligations under the Listing Rules and regulatory framework for listed companies, HKEx has however decided to keep the Director's Undertaking Form. Since the Director's Undertaking Form constitutes a legal document, respondents also considered that the signing of a standalone form improves the legal enforceability of directors' and supervisors' undertakings.

1.2 Solicitor's certification

HKEx has also decided not to adopt its proposal to remove the requirement for a solicitor to certify in Part 3 of the Director's Undertaking Form that he or she has explained to the director/supervisor all applicable requirements for completing the Director's Undertaking Form and the possible consequences of making a false declaration or giving false information to HKEx. The solicitor's certification will thus be retained in Part 3.

1.3 Sponsor's certification for IPOs

HKEx has also decided to retain the required sponsor's certification in Part 3 of the Director's Undertaking Form that it is not aware of any information that would cause enquiries as to the truthfulness, completeness or accuracy of the director's personal information submitted in the form and disclosed in the IPO listing document.

1.4 Changes to information to be disclosed for directors and supervisors

The following changes have been made to the information required to be disclosed in respect of the directors and supervisors of listed companies.

a) Former name and alias

The former name and alias (if any) of a director or supervisor must now be disclosed in the announcement of the appointment of a new director or supervisor of a listed issuer (Main Board Listing Rule 13.51(2)(a)), or on an IPO, in the listing document (Paragraph 41 of Appendices 1A and 1E to the Main Board Listing Rules).

Consequential changes have also been made to Paragraph 34 of Appendix 1B, Paragraph 46 of Appendix 1C, Paragraph 30 of Appendix 1F and Paragraph 12 of Appendix 16 to the Listing Rules to require disclosure of former names and alias of directors and supervisors in listing documents for non-IPO transactions and listed issuers' annual reports.

b) Contact information

HKEx has amended the Listing Rules to require directors and supervisors to submit the following contact information in addition to the existing requirement to provide their residential address:

- a) telephone numbers;
- b) mobile phone numbers;
- c) facsimile numbers (if available);
- d) email addresses (if available); and
- e) correspondence addresses (if different from residential addresses).

The requirement for issuers to update HKEx of any changes to their directors' or supervisors' contact information under Listing Rule 13.77 now applies to changes to the additional contact information required to be disclosed.

1.5 Information gathering

To align the obligations of supervisors of PRC companies with those of listed issuers and their directors, the revised Supervisor's Undertaking Form (Paragraph (b) of Part 2 of Form I of Appendix F) now includes an undertaking by a supervisor of a PRC company to:

- a) provide information and documents that HKEx considers appropriate to protect investors or ensure the smooth operation of the market, and any other information and documents or explanation that HKEx may require in order to verify compliance with the Listing Rules; and
- b) co-operate in any investigation by the Listing Division and/or the Listing Committee of HKEx including by promptly answering questions, producing relevant documents and attending meetings or hearings on request.

1.6 Other changes

HKEx has aligned the provisions of the Director's Undertaking Forms for the Main Board and GEM to:

- a) include in the GEM form, the Main Board requirement for directors and supervisors to appoint the issuer as their agents for service of notices and documents by HKEx;
- b) include in the Main Board form, the GEM requirement for supervisors to inform HKEx of any change to their correspondence addresses in the 3 years after ceasing to be a supervisor of the issuer; and
- c) include in the Director's Undertaking Forms for both the Main Board and GEM, provisions requiring directors to comply with other laws and regulations with reference to the Companies Ordinance, the Companies (Winding Up and Miscellaneous Provisions) Ordinance and the Securities and Futures Ordinance (previously included only in the GEM Director's Undertaking Forms).

2. Listed issuer's declaration and board resolutions relating to issuance of securities

2.1 Removal of requirements for submission of issuers' declarations and board resolutions

HKEx has removed the requirement for listed issuers to submit a declaration in the Form of Appendix 5F and a certified copy of their board resolutions to HKEx each time they issue new securities (previously required by Listing Rule 9.23(1)). Instead, they will be required to include the confirmations previously required to be made in the Appendix F declaration in the next day disclosure return required to be submitted under Listing Rule 13.25A and/or the relevant monthly return submitted under Listing Rule 13.25B. The required confirmations are that:

- a) the board has duly authorized the issue of the securities; and
- b) any pre-conditions and requirements relating to the issue have been satisfied.

Issuers will also be required to make the following confirmations (previously included in Appendix 5F) in the relevant next day disclosure return and/or monthly return:

- a) all money due to the listed issuer in respect of the issue has been received;
- b) all pre-conditions for listing imposed by the Listing Rules under "Qualification of listing" have been fulfilled;
- c) all (if any) conditions contained in the formal letter granting listing of and permission to deal in the securities have been fulfilled;
- d) all the securities of each class are in all respects identical;
- e) all documents required by the Companies (Winding up and Miscellaneous Provisions) Ordinance to be filed with the Registrar of Companies have been duly filed and that compliance has been made with all other legal requirements;

- f) all the definitive documents of title have been delivered/are ready to be delivered/are being prepared and will be delivered in accordance with the terms of issue; and
- g) completion has taken place of the purchase by the issuer of all property shown in the listing document to have been purchased or agreed to be purchased by it and the purchase consideration for all such property has been duly satisfied.

The previous requirement for issuers to submit to HKEx a copy of the trust deed/deed poll relating to debentures, loan stock, notes or bonds has been removed since this document is not reviewed by HKEx.

2.2 Material change to a document

Where an issuer makes a material change to a document after HKEx has issued the “no further comment” confirmation (other than changes made to address comments attached to that confirmation), the issuer must resubmit the document to HKEx for further comment before issue under revised Listing Rule 13.52.

3. Other documentary requirements relating to listed issuers

Listed issuers are no longer required to submit the following documents to HKEx:

- a) a copy of HKSCC’s written notification stating the new class of securities will be eligible securities (previously required to be submitted on or before the date of issue of the listing document);
- b) a copy of the letter from the Registrar of Companies confirming registration of the prospectus (previously required to be submitted as soon as possible after the registration of the prospectus);
- c) a certified copy of the notice given under Division 4, Part 13 of the Companies Ordinance (previously submitted before dealings commenced);
- d) a certified copy of the court order and of any certificate of registration for capital reduction, scheme of arrangement or other similar proposal (previously submitted before dealings commenced);

- e) for PRC issuers only, a certified copy of the document from the State Council Securities Policy Committee (or other PRC authority) approving the issue of securities (previously submitted on or before the date of issue of the listing document); and
- f) the Company Information Sheet previously required to be submitted by GEM issuers.

The requirements for notification of the following matters to be made to HKEx have also been removed:

- a) notice of board meetings previously required to be given 7 clear business days in advance of the date of board meeting;
- b) any important change in the holding of an executive office;
- c) any change in the information required to be disclosed under Listing Rule 13.51(2)(h) to (v) during the term of a director, supervisor or chief executive; and
- d) any notifiable transaction.

II Minor Listing Rule amendments

The intention behind the following minor Listing Rule changes is to align the Main Board and GEM Listing Rule provisions; codify or improve certain practices; and to clarify the application of various Listing Rules.

1. Amendments relating to new listing applicants

- a) Period of disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new applicant

It was previously unclear under Main Board Listing Rule 4.05A (GEM Listing Rule 7.04A) how much pre-acquisition financial information on material businesses or subsidiaries is required to be disclosed for a new listing applicant which acquired the relevant business or subsidiary during a shorter trading period of three (for Main Board listing applicants) or two (for GEM listing applicants) years where that shorter trading period has been accepted by HKEx.

A note has been added to the Rules referred to above which clarifies that disclosure of pre-acquisition financial information on material businesses/subsidiaries acquired by a new applicant must be for the period from the three (for Main Board) or two (for GEM) financial years immediately preceding the issue of the listing document up to the date of acquisition.

- b) Time of submission of Application Proof for publication on the HKEx's website (HKEX website)

Paragraphs 9(a) and (b) of Main Board Listing Rules Practice Note 22 and paragraph 8 of GEM Listing Rules Practice Note 5 have been amended to require applicants to submit the English and Chinese versions of the Application Proof "on the same day" (rather than "at the same time").

2. Amendments relating to listed issuers

- a) Alignment of GEM Listing Rules with the Main Board Listing Rules regarding profit forecasts

The Main Board Listing Rules require a reporting accountant or auditor to review a profit forecast which is included in a listing document, or an announcement or circular relating to a notifiable or connected transaction. This requirement does not apply to other announcements such as profit warnings or alerts.

Similar review requirements for reporting on profit forecasts in listing documents and announcements and circulars for notifiable and connected transactions are included in the GEM Listing Rules. However, GEM Listing Rule 17.55 previously extended this requirement to any announcement, advertisement or other document containing a profit forecast, thus making the GEM Rules more onerous than those for the Main Board in this respect. HKEx has removed GEM Listing Rule 17.55 to align the reporting requirements for profit forecasts for GEM issuers with those for Main Board issuers.

- b) Possible waiver from the minimum profit requirement for remaining businesses under spin-off proposals

Paragraph 3(c) of Practice Note 15 to the Main Board Listing Rules previously required an existing issuer (**Parent**) to retain sufficient assets and operations of its own, excluding its interest in the entity to be spun-off (**Newco**), to independently meet the requirements of Chapter 8 of the Listing Rules. The same paragraph also enabled HKEx to grant a waiver of this requirement if the failure to meet the minimum profit requirement of Listing Rule 8.05 was due solely to an exceptional factor or a significant market downturn. The Parent was further required to demonstrate that the factor was temporary in nature and unlikely to continue or recur or that the issuer had taken appropriate measures to negate the impact of the market downturn on its profit.

The power to grant such a waiver was introduced in 2000 in the aftermath of the Asian financial crisis which adversely affected Hong Kong's economy. It was intended to be applied only where a Parent's remaining business was adversely and temporarily affected by a global market downturn. However, a number of issuers applied for a waiver based on factors specific to their businesses that they considered to be exceptional (e.g. a delay in the grant of regulatory approval of new products or impairment losses of assets due to a change in business plans).

Paragraph 3(c) has been amended to provide that HKEx may grant a waiver to a Parent which fails to meet the minimum profit requirement under Listing Rule 8.05 due solely to a significant market downturn. The reference to an "exceptional factor" has been removed.

- c) Issuer's website

HKEx has amended the Main Board Listing Rules to require listed issuers to announce any changes to their website addresses by publishing an updated company information sheet. This requirement duplicates the existing GEM Listing Rule provision. HKEx has also amended Appendix 24 to the Main Board Listing Rules to provide for a new headline category for announcing the change to website addresses.

d) Other changes

HKEx has aligned the Main Board and GEM Listing Rules so that issuers on both boards must announce the following matters:

- i) the appointment of a receiver or a manager; presentation of a winding up petition; passing of a resolution for voluntary winding up and other events as described under Main Board Listing Rule 13.25(1);
- ii) where the issuer fails to meet the public float requirement (Main Board Listing Rule 13.32(1)(a)); and
- iii) where any of the issuer's securities becomes listed or dealt in on any other stock exchange (Main Board Listing Rule 13.32(1)(b)).

3. Amendments relating to issuers of structured products (applicable to the Main Board Listing Rules only)

a) **Form of submission of financial reports and listing documents**

HKEx has amended Listing Rules 15A.21(1) and 15A.64(3) so that issuers of structured products must submit their financial reports, supplemental or standalone listing documents to HKEx in electronic and not printed form.

b) **Liquidity provision**

Issuers of structured products are now required to provide liquidity for at least 20 (instead of 10 previously) board lots of their structured products.

c) **Entitlement ratio**

Structured products using shares (or other securities) as underlying assets are typically issued in the ratio of either (i) one, ten or 100 structured products for one share; or (ii) one, ten or 100 shares for one structured product. HKEx may allow other ratios for structured products other than derivative warrants provided that the number of structured products for one share is any integral power of ten.

The Listing Rules have been amended to provide greater flexibility by allowing entitlement ratios of five, 50 and 500 for multiple structured products for one share (or other security) in Main Board Rule 15A.40.

d) **Contents of formal announcement**

HKEx has amended Main Board Listing Rule 15A.59 to clarify that in case of a guaranteed issue, both the issuer and the guarantor are required to include the following information (where available) in the formal announcement for structured products:

- i) their full name and country of incorporation or other establishment;
- ii) a statement whether they are regulated by a body specified in Main Board Listing Rules 15A.13(2), (3) or (4);
- iii) a statement that the structured products constitute their general unsecured obligations; and
- iv) their credit rating.

e) **Number of draft listing documents to be submitted to HKEx**

HKEx now requires the submission of just one draft (instead of two drafts or proofs) of the listing document for review under revised Main Board Listing Rule 15A.63(1).

f) **Applicability of Main Board Listing Rules 15A.71-15A.74, and 15A.76 to standalone listing documents of structured products**

Main Board Listing Rules 15A.71, 15A.72, 15A.73, 15A.74, and 15A.76 have been amended to state that they apply to standalone listing documents, as well as to base, supplemental and supplementary listing documents.

4. Amendments relating to debt issuers - Publication of formal notice for debt issues to professional investors

Main Board Listing Rule 37.39 and GEM Listing Rule 30.32 have been revised to require an issuer of debt issues to professional investors only to publish a formal notice “before” (rather than “on”) listing.

5. Amendments relating to accounting and auditing matters

The audit terminology used in the Listing Rules has been updated in line with the latest revised Hong Kong Standards on Auditing (HKSA) issued by the HKICPA on 31 August 2015. HKEx has also amended relevant Listing Rules to introduce the new definitions of “modified opinion” and “modified report”.

HKEx has also introduced the defined term “modified opinion” into the Listing Rules which distinguishes the term “modified report” from “modified opinion” and clarifies the difference between the two. HKEx has also published a new FAQ (paragraph 104) indicating that “modification” is a generic term to be read in the context of the Listing Rules as follows:

a) Audit engagements

The proposed terms “modified opinion” and “modified report” defined in Main Board Rule 1.01/ GEM Rule 1.01 relate to an accountants’ report or auditors’ report containing an audit opinion. A Listing Rule that refers explicitly to a “modified opinion” or “modified report” should be read in the context of the relevant Rule and refers to a modified opinion or modified report, as the case may be.

b) Review Engagements

Where the financial information has been reviewed and a review conclusion has been expressed by the auditors/ reporting accountants, then the term “modification in the Listing Rules and FAQs should refer to:

- i) A modified review conclusion (i.e. qualified conclusion, an adverse conclusion or a disclaimer of conclusion); and/or

- ii) An emphasis of matter paragraph or a paragraph to highlight a material uncertainty related to going concern without modifying the review conclusion.

III Housekeeping Listing Rule amendments

Various housekeeping changes have been made to the Listing Rules.

1. Amendments relating to outdated references to the standard on preparation of accountants’ reports

Main Board Listing Rule 4.08 and GEM Listing Rule 7.08(3) and the Note to GEM Listing Rule 7.18 have been amended to refer to Hong Kong Standard on Investment Circular Reporting Engagements 200 “Accountants’ Reports on Historical Financial Information in Investment Circulars” (HKSIR 200) which replaced HKICPA’s Auditing Guideline 3.340 “Prospectuses and the Reporting Accountant” for engagements where the investment circular is dated on or after 1 July 2017.

2. Other housekeeping amendments

HKEx has also made the following minor amendments:

- i) replacing references to “Rule” with “rule”;
- ii) reducing repetitive language in Listing Rules 15A.56 and 15A.64; and
- iii) correcting a typographical error in GEM Listing Rule 13.02(1).

3. Change of address

GEM Listing Rule 2.21 has been amended to update the address of the Listing Department of HKEx (which relocated its offices from 12 November 2018) for delivering information in hard copy or in electronic form.

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