Charltons - Hong Kong Law Newsletter - 29 January 2007

[online version](http://www.charltonslaw.com/hkex-releases-strategic-plan-for-2007-2009/)

# Hong Kong Law Issue 43

## 1. HKEx Releases Strategic Plan For 2007-2009

The Hong Kong Exchanges and Clearing Limited (**HKEx**) has announced its Strategic Plan for 2007-2009 which adopts the following mission statement: to be a leading international marketplace for securities and derivatives products focused on Hong Kong, Mainland China and the rest of Asia.

### Background and Challenges

The 2007-2009 Strategic Plan marks a change of course for the HKEx. The 2004-2006 Strategic Plan, adopted at a time when HKEx faced adverse market conditions and was experiencing operational difficulties while engaged in a number of global diversification initiatives, focused on cost control and quality improvement in order to establish itself as the Mainland's preferred partner. Three years later, having successfully defined Hong Kong as the home market and capital formation centre for Hong Kong and Mainland stocks, HKEx considers that it has progressed significantly in these areas.

HKEx expects that Mainland China will continue to be its primary source of new business as Mainland issuers continue to raise capital for business expansion. It also expects that Mainland domestic investors will continue to be interested in participating in the Hong Kong market, eg. under the Qualified Domestic Institutional Investor (**QDII**) scheme. HKEx further anticipates that investors' need to manage their Mainland risk exposures may lead to demand for HKEx derivative products.

HKEx is also preparing to face growing challenges from competitors. Mainland markets have become better equipped to provide capital formation services and to handle large initial public offerings. In addition, financial futures will once again be traded in a dedicated Mainland exchange, and the Mainland is expected to launch a new growth enterprise market. Further, competition for Mainland listings from overseas exchanges is intensifying and overseas exchanges and over-the-counter markets have started trading derivatives and structured products based on Mainland securities. The Strategic Plan acknowledges that HKEx's markets are constrained by certain policies and rules that hinder expansion, including the regulatory restrictions on short-selling and the legislative provisions on position limits for derivatives trading that were introduced after the 1998 Asian financial crisis.

### The Strategic Plan

In the face of these challenges, HKEx proposes to highlight its performance in capital formation to attract overseas issuers and develop an Asian-focused marketplace. It also considers that the scale and liquidity of the Hong Kong market justify a broader product range. The 2007-2009 Strategic Plan seeks to raise HKEx's performance level while continuing to improve market quality. It provides a roadmap for the next three years, along the following themes:

#### Reinforcing HKEx's position vis-à-vis the Mainland

HKEx will seek to complement Mainland domestic exchanges and position itself as China's international exchange. In order to do so, it will seek to accommodate the needs of Mainland firms and investors (such as QDII) who wish to participate in the Hong Kong market. It also acknowledges that Hong Kong's markets need to be better able to accommodate Mainland growth enterprises. HKEx also wants to position itself to trade more Mainland-related products, particularly Mainland-related derivatives and RMB-denominated products. To accomplish these objectives, HKEx aims to seek improved cooperation with the Mainland authorities.

#### Further expanding its business

HKEx will seek to expand its business by allowing issuers from more overseas jurisdictions to list in Hong Kong. It plans to promote its listing facility to selected markets in order to develop an Asian focus. HKEx further proposes to rationalise its fee structure and provide a more user-friendly market infrastructure to attract overseas security firms to its markets. It also plans to expand its range of products and will look into product areas including commodity futures, climate related products and RMB-related products such as RMB-Hong Kong dollar futures and RMB-US dollar futures.

#### Improving its service delivery and quality

HKEx will seek to offer a cost-effective and quality service and acknowledges that this requires internal and frontline departments to develop a consistent service mind-set.

### Key Initiatives

The broad mission and goals set out in the Strategic Plan 2007-2009 are to be achieved through the following 16 key initiatives:

1. Complete GEM review and related market development

* HKEx proposes to proceed with the review of the GEM and further consult the market on its proposals. According to recent media reports, HKEx has however ruled out the possibility of turning Hong Kong's GEM into something similar to London's AIM, a possibility supported by most respondents to the 5 month consultation on GEM last year.

1. Implement Statutory backing

* HKEx is to prepare for the embodiment of key Listing Rules into statute by the Government.

1. Open the equity listing regime to issuers from overseas jurisdictions
2. Improve trading rights regime
3. Address barriers to Cash Market trading
4. Address barriers to Derivatives Market trading
5. Introduce further Mainland-related and RMB-denominated products
6. Explore new product and service areas in order to diversify the product range and develop an Asian focus
7. Facilitate overseas-based Clearing Participants
8. Improve Investor Participant Account Services and Stock Segregated Account Services
9. Strengthen the accountability regime within HKEx
10. Review HKEx organisation structure and deployment of resources
11. Further develop HKEx Management Information System
12. Work towards consolidation of HKEx office and data centers
13. Review fee structure
14. Review HKEx IT systems and services for possible efficiency improvement

## 2. New Sponsor Regime Effective January 1, 2007

The new regulatory regime for sponsors and compliance advisers came into effect on January 1, 2007. According to an announcement released by the SFC on December 30th, 2006, a no-sponsor work licensing condition has been imposed on 183 of the 267 intermediaries registered for Type 6 regulated activity, restricting them from acting as sponsors or compliance advisers. The restricted intermediaries have either failed to satisfy the eligibility criteria prescribed in the Guidelines for Sponsors and Compliance Advisers or have failed to submit representations to the SFC for its assessment after the receipt of a Letter of Mindedness (**LOM**) informing them of the SFC's intention to impose the no-sponsor work licensing condition. The remaining unrestricted intermediaries have satisfied the eligibility criteria or have submitted representations after the receipt of a LOM.

Intermediaries who have submitted representations in response to a LOM must ensure that the interests of their clients are not compromised and must fully inform and explain to their client the implications of their uncertain status. The SFC recommends all prospective issuers to exercise care when selecting their sponsors and also to enquire from firms whether they have received notification from the SFC confirming their eligibility as sponsors or whether they have been issued with a LOM.

## 3. Companies Registry Adopts 5 Day Week

In its November 27, 2006 circular (No. 1/2006), the Companies Registry (**CR**) announced its Phase II implementation of a five-day week, effective as of January 1, 2007.

### New Service Hours

The overall opening hours of the CR on Monday to Friday have been extended so that it will now be from 8:30 to 17:45. The opening hours of all front-line/counter services mentioned below will be extended on weekdays:

* Information Counters (13th and 14th Floors, Queensway Government Offices) will be open from Monday-Friday 8:30 – 17:45 and will be open during lunchtime;
* The counter for the receipt of documents and registration fees will be open on Monday to Friday from 8:45 – 12:30 and 14:00 – 17:00. Limited services from 12:30 – 14:00 and 17:00 – 17:30 are available when customers can submit up to a maximum of six documents at a time;
* The counter for receipt of applications and fees in relation to Money Lenders Licences will be open on Monday-Friday from 8:45 – 12:30 and 14:00 – 17:00; and
* The counter for company searches will be open on Monday-Friday from 8:45 – 17:30 and will be open during lunchtime.

The non-counter services will be open on Monday-Friday from 8:30 – 17:45 with a one hour lunch break from 12:45 – 13:45.

### Alternative Means of Service Delivery

Alternative means of service delivery available for the public are as follows:

* Submission of documents, cheques, or applications can be sent to CR by post to 14th Floor, Queensway Government Offices, 66 Queensway Hong Kong or deposited in the Drop-in box near the information counter on the Deck Floor, High Block, Queensway Government Offices on Saturdays (except public holidays). The CR will issue official receipts or acknowledgements by post; and
* Customers can search online for company information, download forms or information pamphlets through CR's website ([www.icris.cr.gov.hk](http://www.icris.cr.gov.hk/)). They can also make enquiries at the 24-hour Enquiry Hotline at (852) 2234 9933 or by sending an email to [crenq@cr.gov.hk](mailto:crenq@cr.gov.hk) or a fax to (852) 2596 0585.

### Collection of Certificates

Customers can collect their certificates of incorporation or registration at the New Companies Section during the extended service hours on weekdays. They can also ascertain any information on a company's status using the CR Electronic Search Services website. Certificates of registration of charges can be collected from the Charges and Liquidation Section during the extended service hours.

### Compliance with Statutory Time Periods

Companies are responsible for filing all statutory returns required under the Companies Ordinance with the Registrar of Companies within the prescribed time periods. In the case of filing annual returns, if the due date for filing falls on a Saturday, the deadline for submission will remain unchanged as the Registrar does not have the power to extend the statutory time limit for the delivery of annual returns. The company should deliver its annual return by the Friday preceding the due date. Failure to do so will result in a higher registration fee. Companies may also send their annual returns by post on or before the due dates. If a company fails to register a charge within the time limit, a court order extending the time for the registration of the charge must be obtained, as the Registrar has no power to grant an extension for late delivery of a charge.

Details of the new service hours and related questions and answers on the operation of the 5-day week are available on the CR's website at <http://www.cr.gov.hk/en/contact/5day.htm>.

This note is intended as a summary only of recent regulatory developments in Hong Kong. It does not constitute legal advice and specific advice should be sought in any particular situation.

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