



Hong Kong Law

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EXCHANGE PUBLISHES LISTING RULE AMENDMENTS REGARDING ANNUAL LISTING FEES AND FAQs FOLLOWING THE IMPLEMENTATION OF THE NEW COMPANIES ORDINANCE

The new Companies Ordinance of the laws of Hong Kong (Cap. 622) (**New Companies Ordinance**) came into force on 3 March 2014. The Exchange has published Listing Rule Amendments and Frequently-Asked-Questions (**FAQ**) to complement the New Companies Ordinance. Market consultations in relation to other subsequent amendments to the Listing Rules will also be conducted.

Listing Rule Amendments

One of the significant changes to be implemented by the New Companies Ordinance is the abolition of the concept of nominal (par) value. Under paragraph 2(1) of Appendix 8 to the Main Board Rules (paragraph 1(2) of Appendix 9 to the GEM Board Rules), listed issuers are required to pay an annual listing fee calculated by reference to the nominal value of the issuer's securities.

As a result, Appendix 8 to the Main Board Rules (Appendix 9 to the GEM Board Rules) will be amended effective on 3 March 2014 to provide that:

- for issuers whose shares cease to have a nominal value subsequent to their date of listing (**No-par Event**), the nominal value per share that was used to calculate the annual listing fees immediately before the No-par Event (**Notional Nominal Value Per Share**) will be used to calculate the annual listing fees from the No-par Event;

- if an issuer conducts a subdivision of shares after the No-par Event, the Notional Nominal Value Per Share will be adjusted accordingly for calculation of the annual listing fees following the subdivision, subject to a minimum of \$0.25; and
- for issuers whose shares have no nominal value on their date of listing, the nominal value per share will be deemed to be \$0.25 for calculation of the annual listing fees. This is in line with the existing Listing Rules and their application to issuers with no nominal value per share or a nominal value per share less than \$0.25.



For ease of reference, the Exchange has produced the following table indicating the calculation of annual listing fees.

Listing Date	Nominal value per share on 2 March 2014 (Notional nominal value per share)	Nominal value per share used to calculate annual listing fee on or after 3 March 2014	Effect of change on annual listing fee as compared to current regime
Before end of 2013	HK\$1.00	HK\$1.00	None
28 February 2014	HK\$0.50	HK\$0.50	None
3 March 2014	No nominal value	HK\$0.25	None
3 July 2014	No nominal value	HK\$0.25	None

Other tables indicating the calculation of annual listing fees in the event of subsequent issues, share subdivisions and share consolidations are also produced by the Exchange for ease of reference.

New Templates of the Next Day Disclosure Return Forms

The Exchange has published new templates of the Next Day Disclosure Return forms for Main Board and GEM issuers which are forms FF304M and FF304G, respectively.

Frequently-Asked-Questions (FAQ)

In connection with the New Companies Ordinance, the Exchange also published “FAQs relating to the New Companies Ordinance and its impact on issuers (Series 26)” to:

- provide further explanation of the operation of the amended Listing Rules on annual listing fees;
- address the impact of the abolition of nominal (par) value on other areas of the Listing Rules; and

- provide guidance on those Listing Rules that may be affected by other provisions of the New Companies Ordinance

The areas covered by the FAQs include:

- Abolition of nominal (par) value;
- Disclosure requirements for financial statements;
- Loans to directors and connected entities;
- Provision of financial assistance by a company;
- Common and official company seal;
- General meetings; and
- Abolition of the memorandum of association

Market Consultations

In addition, the Exchange indicated that market consultations will be conducted on amendments to the Listing Rules in relation to:

- Notice periods for general meetings;
- Disclosure of financial information;
- Updating cross-references to the existing Companies Ordinance so that they align with the New Companies Ordinance.

Abolition of Nominal (Par) Value of Shares

- Where the Listing Rules require disclosure of the nominal value of shares in an announcement or annual report, issuers whose shares have no nominal value should disclose that their shares have no nominal value (FAQ No. 1).

Relevant Listing Rules: MB Rule 13.28(2) and Appendix 16 (para 11(3)); GEM Rules 17.30(2) and 18.32(3).

- Issuers whose shares have no nominal value should calculate the equity capital ratio by comparing the number of equity shares issued by the issuer as

consideration with the issuer's total number of shares in issue immediately before the transaction (FAQ No. 2).

Relevant Listing Rules: MB Rule 14.07(5); GEM Rule 19.07(5).

- The approval threshold for written shareholders' approval for companies whose shares have no nominal value will require that the shareholders giving the written approval must together hold securities representing more than 50% of the total voting rights attaching to all securities giving the right to attend and vote at the general meeting to approve the transaction (FAQ No. 3).

Relevant Listing Rules: MB Rules 14.44 and 14A.43; GEM Rules 19.44 and 20.43(2).

- Issuers with no authorised share capital or nominal share value should disclose in their listing documents and listing application forms that they do not have an authorised share and nominal value of shares and should disclose instead their share capital structure, e.g. how many shares have been issued, including shares fully paid and shares yet to be fully paid (FAQ No. 4).

Relevant Listing Rules: MB Appendix 1A (paras 15(2)(c) and 23(1); Appendix 1B (para 22(1)); Appendix 1C (para 36); Appendix 1E (paras 23(1) and 49(2)(c)); Appendix 1F (paras 18(1)); Appendix 5 Forms; GEM Appendix 1A (para 23(1); Appendix 1B (para 22(1)); Appendix 1C (para 36); Appendix 5 Forms.

- The requirement to disclose information about any person who is interested in 10% or more of the nominal value of any class of share capital carrying rights to vote at general meetings of any other members of the group should be satisfied by disclosing information about any person who is interested in securities representing 10% or more of the voting rights attaching to any class of securities giving the right to attend and vote at the general meeting of its group companies whose shares do not have nominal value (FAQ No. 5).

Relevant Listing Rules: MB Appendix 1A (para 45(2)); Appendix 1B (para 38(2)); Appendix 1C (para 49(2)); Appendix 1E (para 45(2); Appendix 1F (para 34(2)); GEM Appendix 1A (para 45(3); Appendix 1B (para 38(3)); Appendix 1C (para 49(3)).

- The requirement for every share certificate to specify the nominal value of each class of shares of the issuer does not apply to issuers whose shares have no nominal value (FAQ No. 6).

Relevant Listing Rules: MB Appendix 2B (para 5(3)); GEM Appendix 2B (para 5(3)).

- When the New CO becomes effective, the term "fully paid" will mean that the shareholder to whom shares are issued has paid the full consideration which was agreed to be paid for those shares, i.e. the issue price (and not that the shareholder has paid the full nominal value of those shares as under the existing Companies Ordinance). "Partly paid" will mean that the full issue price has not been paid (FAQ No. 7).

Relevant Listing Rules: MB Rules 7.28, 8.11, 8.13, 10.06(1)(a)(i); Appendix 1A (paras 15(2)(d), 23(1) and 26); Appendix B (paragraphs 22(1) and 24); Appendix 1C (paragraph 34); Appendix 1E (paras 23(1), 26 and 49(2)(d)); Appendix 1F (paras 18(1) and 20); Appendix 2A (para 4(3)); Appendix 3 (para 1(2); Appendix 5 Forms; GEM Rules 10.45, 11.25, 11.27, 13.07(1); Appendix 1A (paras 23(1) and 26); Appendix B (paragraphs 22(1) and 24); Appendix 1C (paragraph 34); Appendix 2A (para 4(3)); Appendix 3 (para 1(2); Appendix 5 Forms.

- Under the New CO, "issued share capital" will be related to the total consideration paid or agreed to be paid for the shares issued, and not tied to nominal value. Hong Kong-incorporated issuers should comply with Rules that contain references to "issued share capital" by computing the percentage or change in the issued share capital based on the number of issued shares (FAQ No. 8).

Relevant Listing Rules: MB Rules 3.13(1), 3A.07(1), 7.19(6), 7.24(5), 8.08, 8.09(2), 13.25(A)(1), 13.25(A)(2)(a)(xi), 13.25(A)(3)(a); 13.25(A)(4), 13.84(1), 14.66(6), 15.02(1), 17.09(3) and 19B.08; Note 1 to PN5; Note to PN15 Appendix 5E (para 3); Appendix 8 (paras 2(1)(c) and 4(1)-(2)); Appendix 12 (para 4(c)); GEM Rules

5.09(1), 6A.07(1), 10.29, 10.39, 11.23(6), (7) and (9), 17.27(A)(1), 17.27(A)(2)(a)(xi), 17.27(A)(3)(a); 17.27(A)(4), 17.96(1), 19.66(7), 21.02(1) and 23.09(3); Note 1 to Rules 18.17A(1)-(2), 18.17B(1)-(2), 18.58A(1)-(2), 18.58B(1)-(2), 18.71A(1)-(2), 18.71B(1)-(2), Appendix 1A (paras 45A(1)-(2) and 45B(1)-(2)); Appendix 1B (paras 38A(1)-(2) and 38B(1)-(2)); Appendix 1C (paras 49A(1)-(2) and 49B(1)-(2)); Note to PN3.

Disclosure Requirements for Financial Statements

- Appendix 16 to the Main Board Rules (and the equivalent GEM Rules) contains financial statements disclosure requirements by reference to the provisions of the existing Companies Ordinance. The FAQ state that all issuers (whether incorporated in Hong Kong or not) should include disclosures by reference to the provisions under the New CO (if any) which are equivalent to those under the existing Companies Ordinance. To the extent that the new provisions increase the disclosure requirements beyond those under the existing Companies Ordinance, non-Hong Kong-incorporated issuers are encouraged to comply with the requirements under the New CO (FAQ No. 11).

The Exchange proposes to consult the market on how the disclosure requirements for financial statements under the Rules should be amended in view of the New CO provisions.

Relevant Listing Rules: MB Appendix 16 (paras 28 and 52); GEM Rules 18.28 (directors' remuneration only), 18.83, 24.20 (for overseas issuers) and 25.32 (for PRC issuers).

Common and Official Company Seal

- Under the New CO, a Hong Kong-incorporated company has the option to have a common seal. It will no longer be a mandatory requirement as under the existing legislation. The Listing Rules currently require all certificates for capital to be under seal. The Exchange may consider amending the relevant rules in relation to Hong Kong-incorporated issuers that do not have a seal. In the meantime, it may seek the SFC's consent to grant a waiver of general effect from this requirement (FAQ No. 14).

Relevant Listing Rules: MB Appendix 3 (para 2(1)); GEM Appendix 3 (para 2(1)).

General Meetings

- Under the New CO, only 14 days' notice is required for a general meeting of a Hong Kong limited company (except in the case of an AGM which still requires 21 days' notice). For resolutions requiring special notice, such as the removal of a director, the notice which a company is required to give to members is reduced from 21 days to 14 days (section 578(3) of the New CO). The FAQs stipulate that Hong Kong-incorporated issuers may shorten the notice period for a general meeting at which a special resolution is to be proposed provided that the 14 day notice period requirement of the New CO is complied with.

In the case of issuers incorporated in Bermuda or the Cayman Islands, the requirements that their constitutional documents stipulate that 21 days' notice must be given of an extraordinary general meeting at which a special resolution will be proposed, continue to apply (FAQ No. 15).

Relevant Listing Rules: MB Appendix 13(a) (para 3) and Appendix 13(b) (para 3(1)); GEM Appendix 11(a) (para 3) and Appendix 11(b) (para 3(1)).

Abolition of the Memorandum and Articles

- Hong Kong issuers will comply with the requirement to disclose their memorandum and articles of association on the websites of the Exchange and the issuer by disclosing their articles of association (FAQ No. 17). There is no need for Hong Kong-incorporated issuers to amend or reprint their articles of association for the purposes of the Exchange's disclosure requirements (FAQ No. 18).

Relevant Listing Rules: MB Rule 13.90; GEM rule 17.102.

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Hong Kong Office

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

Tel: + (852) 2905 7888

Fax: + (852) 2854 9596

www.charltonslaw.com