



Capital Markets Quarterly Update

This quarterly update (October to December 2011) highlights recent developments in Hong Kong capital markets practices:

- ***The first business trust listing in Hong Kong:*** The first business trust listing in Hong Kong was debuted on SEHK on 29 November 2011. The listing structure involved the listing of (1) the HKT Trust and HKT Limited as "listed issuers" under the Listing Rules; and (2) share stapled units, which were jointly issued by the HKT Trust and HKT Limited. For more details, please see "[The First Business Trust Listing in Hong Kong](#)".
- ***Guidance for granting Rule 4.04(1) waivers:*** HKEx published an updated guidance letter on 10 November 2011 to set out the revised conditions for granting a waiver from strict compliance with Rule 4.04(1) of the Listing Rules. Rule 4.04(1) requires a listing applicant to include in the accountants' report its consolidated results for each of the three financial years immediately preceding the issue of the prospectus. The updated guidance letter sets out two sets of conditions which apply to listing applicants which issue their prospectuses (1) within two months after the latest year end; and (2) in the third month after the latest year end respectively. Before then, one set of conditions applied to all listing applicants. This updated guidance applies to listing applicants with annual accounting periods ending on or after 31 December 2011. For more details, please see "[Guidance for Granting Rule 4.04\(1\) Waivers](#)".
- ***Guidance for filing first draft listing document:*** HKEx published a revised guidance letter on 2 December 2011 to update its administrative practices on accepting early filings of listing applications for the purpose of facilitating IPO filings at different times of the year. Newly updated administrative practices are included for, among others, (1) listing applicants which fail to include in their IPO applications financial figures in the third financial year in audited or advanced draft form; and (2) listing applications with the latest financial period being reported on exceeding six months

respectively. The revised guidance letter is particularly relevant to the submission of the first draft listing documents for vetting. For more details, please see "[Guidance for Filing First Draft Listing Document](#)".

- ***Contractual arrangements would not result in unsuitability for listing:*** HKEx published a listing decision on 25 November 2011 in which it decided that the legal questions relating to certain contract-based structures arrangements would not render the listing applicant unsuitable for listing. For more details, please refer to "[Contractual Arrangements would not result in Unsuitability for Listing](#)".
- ***New Listing Rules for listing of debt issues to professional investors only:*** HKEx published its "Consultation Conclusions on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only" on 21 October 2011 in response to the corresponding consultation paper published on 17 December 2010. The major purposes of the consultation were to eliminate requirements which were not appropriate for offers of debt securities to professional investors only and to align Hong Kong with other leading markets by offering comparable processing times. The corresponding Listing Rules amendments became effective on 11 November 2011. For more details, please see "[New Listing Rules for Listing of Debt Issues to Professional Investors Only](#)".

In this Update, the following terms have the following meanings:

"CO"	Companies Ordinance (Cap 32 of the Laws of Hong Kong)
"GEM"	Growth Enterprise Market operated by SEHK
"HK"	Hong Kong Special Administrative Region of the PRC
"HK\$"	Hong Kong Dollars
"HKEx"	Hong Kong Exchanges and Clearing Limited (also referring to its subsidiaries, including SEHK, as appropriate)
"IPOs"	Initial public offerings
"Listing Rules"	Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Main Board Listing Rules) or Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (GEM Listing Rules) or both, as the case may be
"PRC"	People's Republic of China
"SEHK"	The Stock Exchange of Hong Kong Limited
"SFC"	Securities and Futures Commission
"SFO"	Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong)
"Takeovers Code"	Code on Takeovers and Mergers

The First Business Trust Listing in Hong Kong

QUICK READ

The first business trust listing in Hong Kong was debuted on SEHK on 29 November 2011. The listing structure involved the listing of (1) the HKT Trust and HKT Limited as "listed issuers" under the Listing Rules; and (2) share stapled units, which were jointly issued by the HKT Trust and HKT Limited. The business trust listing was a spin-off and separate listing of the telecommunications business ("**Telecommunications Business**") of PCCW Limited (a listed issuer of SEHK).

THE HKT TRUST AND HKT LIMITED

The HKT Trust and HKT Limited were both listed on SEHK as "listed issuers" under the Listing Rules. Accordingly, both of them are subject to the provisions of the Listing Rules. Also, the share stapled units, the HKT Trust, HKT Limited and the trustee-manager of the HKT Trust ("**Trustee-Manager**") are subject to the provisions of the SFO and Takeovers Code.

HKT Limited is the holding company of the Telecommunications Business and has two classes of shares:

- ordinary shares - which confer voting rights at general meetings of shareholders and rights to dividends and distributions; and
- preference shares - which also confer voting rights at general meetings of shareholders but have no rights to dividends or other distributions, except in the case of the winding up of the company.

The HKT Trust is a fixed single investment trust and may only invest in securities and other interests in HKT Limited. The HK Trust confers on registered holders of units a beneficial interest in specifically identifiable property (ordinary shares in HKT Limited in this case) held by the HKT Trust.

SHARE STAPLED UNITS

The share stapled units structure comprises the following:

- a unit in the HKT Trust;
- a beneficial interest in a specifically identified ordinary share in HKT Limited held by the Trustee-Manager on behalf of the unitholder, which is "linked" to the unit; and
- a specifically identified preference share in HKT Limited which is "stapled" to the unit.

"Linked" means the matching and linking of each unit in the HKT Trust with and to a specifically identified ordinary share held by the Trustee-Manager, so that the registered holder of the unit has a beneficial interest in the specifically identified ordinary share. Any transfer of the unit also transfers the beneficial interest in the ordinary share, in accordance with the trust deed constituting the HKT Trust ("**Trust Deed**").

"Stapled" means the method by which each unit in the HKT Trust is attached to a specifically identified preference share of HKT Limited so that one may not be dealt with without the other, in accordance with the Trust Deed.

You may download copies of the prospectus of the HKT Trust and HKT Limited via the link below:

<http://www.hkexnews.hk/listedco/listconews/sehk/2011/1116/LTN20111116015.pdf>

Guidance for Granting Rule 4.04(1) Waivers

QUICK READ

HKEx published an updated guidance letter "HKEx-GL25-11" on 10 November 2011 to set out the revised conditions for granting waivers from strict compliance with Rule 4.04(1) of the Listing Rules ("**Rule 4.04(1) Waivers**"). There are two sets of conditions, applicable to listing applicants which issue their prospectuses (1) within two months after the latest year end; and (2) in the third month after the latest year end respectively. Before then, one set of conditions applied to all listing applicants.

RULE 4.04(1)

Rule 4.04(1) of the Listing Rules requires a listing applicant to include in the accountants' report its consolidated results for each of the three financial years immediately preceding the issue of the prospectus.

Listing applicants usually experience difficulty in practice incorporating audited accounts for the latest financial year if they intend to issue prospectuses shortly after the year end. Also, under Rule 13.49 of the Listing Rules, listed issuers are required to publish their preliminary results announcements within three months after the end of their financial year.

LISTING APPLICANTS ISSUING PROSPECTUSES WITHIN TWO MONTHS AFTER THE LATEST YEAR END

The conditions ("**Two Months Conditions**") for granting a Rule 4.04(1) Waiver to a listing applicant which issues its prospectus within two months after the latest year end are:

- the listing applicant must list on SEHK within three months after the latest year end;
- the listing applicant must obtain a certificate of exemption from SFC on compliance with the relevant requirements under the CO;
- a profit estimate for the latest financial year (complying with Rules 11.17 to 11.19 of the Listing Rules) must be included in the prospectus or the listing applicant must provide justification why a profit estimate cannot be included in the prospectus; and
- there must be a directors' statement in the prospectus stating that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end.

LISTING APPLICANTS ISSUING PROSPECTUSES IN THE THIRD MONTH AFTER THE LATEST YEAR END

The conditions for granting a Rule 4.04(1) Waiver to a listing applicant which issues its prospectus in the third month after the latest year end are:

- the prospectus must include the financial information for the latest financial year incorporating a commentary on the financial results ("**Latest Financial Information**"). The requirements for the Latest Financial Information are basically the same as the content requirements for a preliminary results announcement under Rule 13.49 of the Listing Rules. The reporting

accountants must also agree to the Latest Financial Information following their review under Practice Note 730 of the “Guidance for Auditors Regarding Preliminary Announcements of Annual Results” issued by the Hong Kong Institute of Certified Public Accountants;

- the applicant must list on SEHK within three months after the latest year end; and
- the listing applicant must obtain a certificate of exemption from SFC on compliance with the relevant requirements under the CO.

Before publication of the revised conditions, the Two Months Conditions applied to all listing applicants.

EFFECTIVE DATE

The abovementioned conditions apply to listing applicants with annual accounting periods ending on or after 31 December 2011.

A listing applicant which has obtained a Rule 4.04(1) Waiver is still required to publish a preliminary results announcement and an annual report for the last financial year according to the requirements under the Listing Rules. However, if the listing applicant has already included the Latest Financial Information in its prospectus as discussed above, HKEx is prepared to grant a waiver from strict compliance with the preliminary results announcement requirements under the Listing Rules on a case-by-case basis.

You may download copies of the updated guidance letter via the link below:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl25-11.pdf>

Guidance for Filing First Draft Listing Document

QUICK READ

HKEx published a revised guidance letter "HKEx-GL6-09" on 2 December 2011 to update its administrative practices on accepting early filings of listing applications for the purpose of facilitating IPO filings at different times of the year. The revised guidance letter is particularly relevant to the submission of the first draft listing documents for vetting.

REVISED ADMINISTRATIVE PRACTICES

The revised administrative practices are summarised as follows:

Listing applications failing to include financial figures in the third financial year

Subject to the conditions explained below, for a listing applicant which has at least three years trading record, HKEx will generally only accept its listing application for vetting if the first draft listing document includes, at a minimum, financial results for three financial years in audited or advanced draft form.

The conditions for HKEx to accept a listing application for vetting which is submitted within 45 days after the end of the trading record period but is not able to include financial figures in the third financial year in audited or advanced draft form in the first draft listing document are:

- *Submission of a sponsor's confirmation ("Sponsor Confirmation")* - The Sponsor Confirmation should state that the sponsor is satisfied that:
 - the listing applicant and the sponsor have made a demonstrable effort in good faith to produce an advanced draft listing document;
 - HKEx will have sufficient information to commence substantive review of the listing application; and
 - it is beyond reasonable doubt that the listing applicant is able to comply with Rule 8.05 of the Listing Rules (basic conditions for listing) or other requirements in relation to financial information following its due diligence review in accordance with the Listing Rules.
- *Inclusion of the following information in the first draft listing document:*
 - the audited financial figures for the two financial years before the most recent audited balance sheet date (e.g. if a listing applicant's trading record period is from 1 January 2007 to 31 December 2009, it must include audited figures for 2007 and 2008) accompanied by related management discussions; and
 - the stub period figures as of a date within 230 days of the filing of Form A1 in audited or advanced draft form and the prior year stub period comparative figures (e.g. six months'

accounts for 2009 and accounts for the comparable period in 2008) accompanied by related management discussions. A newly updated administrative practice is that the listing applicant is not required to provide at the time of filing any prior year stub period comparatives and related management discussions if the final listing document will not include any stub period figures.

Latest financial period reported is more than six months old

HKEx generally will not accept a listing application for vetting if the latest financial period reported on in the first draft listing document is more than six months old at the date of the filing of Form A1 except where the listing applicant is able to satisfy the following conditions:

- a Sponsor's Confirmation is submitted; and
- the listing applicant includes the audited financial information for the three financial years before the most recent audited balance sheet date and related management discussions in the first draft listing document if the latest audited financial statements are of a date within 230 days of the filing of Form A1 (this is a newly updated administrative practice).

If the latest audited financial statements are of a date more than 230 days of the filing of Form A1, the listing applicant must include in the first draft listing document filed with Form A1:

- audited financial information for the three financial years preceding the most recent audited balance sheet date and related management discussions; and
- stub period figures in audited or advanced draft form that are not more than six months old at the time of filing of Form A1 and the prior year stub period comparative figures and related management discussions. The listing applicant is not required to provide at the time of filing any prior year stub period comparatives and related management discussions if the final listing document will not include any stub period figures.

Acquisition of a company or business

Where a listing applicant has acquired or intends to acquire a company or business after the latest audited (or advanced draft) accounts have been made up and the acquisition falls within the ambit of Rule 4.28 of the Listing Rules, HKEx will generally require pro forma information of the enlarged group to be included in the first draft listing document. However, a newly updated administrative practice provides an exemption. The requirement will not apply if financial information in the final listing document is updated to include the pre-acquisition financial information relating to the acquired company or business in accordance with the requirements under the Listing Rules.

General points to note

Other general points to note:

- Sponsors are not required to apply separately to HKEx for acceptance of an early filing of listing application if the matters contained in this guidance letter are properly complied with (this is a newly updated administrative practice).

- The administrative practices mentioned above also apply to a listing applicant whose trading record is less than three years and who intends to apply for listing under Rules 8.05(3) and 8.05A of the Listing Rules based on a shorter trading record. In this case, the audited financial information which must be included in the listing applicant's first draft listing document will be for the period since the beginning of the shorter trading record period.
- In order to avoid delay of the listing hearing, listing applicants must allow enough time for HKEx to review the final year-end financials or latest stub period financials.
- The administrative practices set out in the guidance letter only apply to the filing of listing applications after the end of the trading record period.

You may download copies of the revised guidance letter via the link below:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/documents/gl6-09.pdf>

Contractual Arrangements Would Not Result in Unsuitability for Listing

QUICK READ

HKEx published a listing decision "HKEx-LD-43-3" on 25 November 2011 in which it decided that the legal questions relating to certain contract-based structures arrangements ("**Structured Contracts**") would not render the listing applicant unsuitable for listing.

BACKGROUND

The listing applicant, Company A (together with its subsidiaries collectively referred to as the "**Listing Group**") was an overseas company incorporated outside Hong Kong. The PRC regulations applicable to the industry sector in which the Listing Group conducted business only allowed limited foreign investment. The Listing Group did not have the relevant licenses or permits to conduct its business in PRC.

Therefore certain Structured Contracts were entered into by the following parties:

- Company A;
- its PRC subsidiaries ("**PRC Subsidiaries**") - with substantially all operations in PRC;
- certain controlling shareholders of Company A ("**Registered Owners**") - who were PRC nationals; and
- certain companies incorporated in PRC and owned by the Registered Owners ("**OPCOs**") - owners of all the operating licenses and permits required to conduct the Listing Group's business.

The Structured Contracts were entered into for the purposes of giving the Listing Group the following rights:

- The right to enjoy all the economic benefits of the OPCOs, to exercise management control over the operations of the OPCOs and to prevent access of the assets and values by shareholders of the OPCOs.
- The right to all intellectual properties through assignments from the OPCOs.
- The right to consolidate the financial results of the OPCOs as if they were wholly-owned subsidiaries of the Listing Group under prevailing accounting principles.
- The right to acquire, if and when permitted by PRC law, the equity interests in or assets or both of the OPCOs for a nominal price or a pre-paid amount.
- A first priority security interest in the OPCO shares owned by the Registered Owners, as security for the proper performance of the Structured Contracts.

PROFESSIONAL CONFIRMATIONS

The Listing Group had obtained confirmations from the following professional parties:

- The sponsor - confirming that Company A had fulfilled all the relevant conditions for listing under the Listing Rules (except waivers sought) and the confirmation needed not be changed because of the Structured Contracts. The sponsor also intended to disclose all the relevant details of the Structured Contracts in the prospectus.
- The PRC legal advisers - confirming that the Structured Contracts complied with the relevant PRC law, rules and regulations and the articles of association of the PRC Subsidiaries.
- The reporting accountants of Company A - confirming that Company A had the right to consolidate the financial results of the OPCOs as if they were wholly-owned subsidiaries of the Listing Group under prevailing accounting principles.

ISSUE

Whether Company A was unsuitable for listing due to legal questions relating to the Structured Contracts.

LISTING DECISION

HKEx adopted its established practice of using a disclosure-based approach in considering the listing application of Company A. Under this approach, the sponsor and the directors of Company A had to demonstrate that the Listing Group had complied in fact and in good faith with all the relevant PRC law and regulations and had the ability to ensure the sound and proper operation of the Structured Contracts.

Based on the material facts, submissions of the sponsor supported by the professional opinions from the PRC legal advisers and the reporting accountants, HKEx was of the view that Company A had demonstrated that it had satisfied the above requirements. HKEx determined that Company A was suitable for listing if there were appropriate disclosures of the Structured Contracts and the associated risks in the prospectus.

SUBSEQUENT GUIDANCE

After this listing decision, HKEx established further guidelines for considering listing applications involving arrangements similar to the Structured Contracts:

- Applications will be considered on a case-by-case basis after considering the reasons for adopting the arrangements.
- If non-restricted businesses are involved, the cases will be referred to the Listing Committee.
- The listing applicant and its sponsor should:
 - provide reasons for using the Structured Contracts in its business operation;

- unwind the Structured Contracts as soon as possible once the law allows operation of the business without them;
- include a power of attorney in the Structured Contracts by which the listing applicant's directors and their successors are empowered by the OPCO's shareholders to exercise all the rights of the OPCO's shareholders;
- include appropriate dispute resolution clauses in the Structured Contracts; and
- ensure that the Structured Contracts encompass dealing with the OPCO's assets and not only the right to manage its business and the right to revenue.

You may download copies of the listing decision via the link below:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listdec/Documents/ld43-3.pdf>

New Listing Rules for Listing of Debt Issues to Professional Investors Only

QUICK READ

HKEx published its "Consultation Conclusions on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only" ("**Debt Issue Consultation Conclusions**") on 21 October 2011 in response to its "Consultation Paper on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only" published on 17 December 2010. The major purposes of the consultation were to eliminate requirements which were not appropriate for offers of debt securities to professional investors only and to align Hong Kong with other leading markets by offering comparable processing times.

PROPOSALS ADOPTED

The major proposals adopted as stated in the Debt Issue Consultation Conclusions are summarised as follows:

- ***Presentation***

Adopting plainer language for the purpose of presenting the relevant Listing Rules provisions in a more accessible language. The expression "Debt Issues to Professional Investors Only" has been adopted as the title to Chapter 37 of the Listing Rules to more clearly indicate the scope of the Listing Rules.

- ***Eligibility requirements***

- Aligning the definition of "professional investor" contained in the Listing Rules with the definition contained in the SFO. The Listing Rules have been amended to (1) exclude high net worth individuals so that it is based primarily on institutions; and (2) accommodate offerings made outside Hong Kong. A minimum board lot of HK\$500,000 has also been introduced for the purpose of ensuring that securities are not generally available to retail investors.
- Removing provisions relevant only to retail investors from the eligibility requirements for listing applicants.

- ***Listing approval***

Authorising the Executive Director - Listing (i.e. Head of Listing) to approve all offers of debt securities to professionals and allow that authority to be delegated within the Listing Division.

- ***Listing documents***

- Replacing the current detailed disclosure requirements with an obligation to include information that is customary for offers of debt securities to professionals.
- Retaining the requirements to include responsibility and disclaimer statements in prescribed forms and a statement limiting distribution of the offering circular to professionals.

- ***Application vetting***

- Vetting applications for compliance with the relevant listing eligibility criteria.
- Vetting listing documents for compliance with the obligations to include disclaimer and responsibility statements in prescribed forms and a statement limiting distribution of the document to professionals only.

- ***Application procedures***

Streamlining the application procedures such as providing greater flexibility on when information may be submitted to HKEx and indicating that an application may be submitted in draft so that HKEx can consider eligibility issues.

- ***Continuing obligations***

Removing provisions relevant only to retail investors from the continuing obligations.

- ***Other issues***

Amending the relevant GEM Listing Rules to bring them into line with the changes made to the Main Board Listing Rules. Eligibility under the GEM Listing Rules is limited to companies which are listed on GEM (or will be at the time the debt issue is listed).

EFFECTIVE DATE

The corresponding Listing Rules amendments became effective on 11 November 2011.

You may download copies of the Debt Issue Consultation Conclusions via the link below:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010122cc.pdf>

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