



Hong Kong Imposes New Restrictions on Capital Raisings by Listed Companies



The Stock Exchange of Hong Kong Limited (“**HKSE**”) recently released the “Consultation Conclusions on Capital Raisings by Listed Issuers” and announced corresponding changes to Listing Rules. The changes, which will become effective on 3 July 2018, include:

- prohibition of capital raisings that would result in “value dilution” of 25% or more;
- removal of underwriting requirement for rights issues and open offers;
- imposition of mandatory minority shareholders’ approval for open offers;

- restriction on placing of warrants or convertible securities under general mandate; and
- prohibition of subdivision or bonus issue of shares if the share price after adjustment is less than HK\$1.

The consultation paper was released last September (see our [Legal Update](#) on 26 September 2017). Below are highlights of the Listing Rules requirements on capital raisings after the changes.

	SPECIFIC MANDATE PLACING (1)	RIGHTS ISSUE	OPEN OFFERS
Shareholders’ approval	Requires approval of shareholders in general meeting.	Requires <i>minority shareholders’ approval</i> (2) if number of issued shares will increase by more than 50%.	Mandatory <i>minority shareholders’ approval</i> (2) for all open offers save for issue under a general mandate. 
Independent financial adviser (IFA)	N/A	Must engage IFA to opine on the terms of the offer if <i>minority shareholders’ approval</i> (2) is required.	
Value dilution ≥25%	Prohibited if the issue would, either individually or aggregated within a rolling 12-month period, result in a <i>cumulative material value dilution</i> (3) of 25% or more, save in exceptional circumstances agreeable to HKSE. 		
Use of proceeds	Must disclose in the circular to shareholders and subsequent annual/interim reports detailed breakdown and description of the proceeds for each issue, purposes of use (or intended use) and reasons for any material change or delay.		

	SPECIFIC MANDATE PLACING (1)	RIGHTS ISSUE	OPEN OFFERS
Underwriting	N/A	<p>No longer mandatory. If underwritten, only independent licensed/regulated persons or controlling/substantial shareholders could act as underwriters.</p> <p>The underwriting by controlling/substantial shareholders will, from the effective date, be regarded as a connected transaction, which may require independent shareholders' approval and appointment of independent financial adviser.</p>	
Arrangement for unsubscribed offer shares	N/A	<p>Mandatory. Must adopt either excess application arrangements (available to all shareholders on fair basis) or compensatory arrangement (by offering to independent places for benefit of renounees).</p> <p>For excess application allocation purpose, applications by controlling shareholders (and their associates) will be capped at the remainder of the total number of shares on offer minus their pro-rata entitlement.</p> <p>Must adopt compensatory arrangement if controlling/substantial shareholders act as underwriters.</p>	

Note (1) Placing

Under the new Listing Rules, placings of securities will be allowed only in the following circumstances:

- where the placing falls within any general mandate given to the directors of the listed issuer by the shareholders; or
- where the placing is specifically authorised by the shareholders of the listed issuer in general meeting (“**Specific Mandate Placing**”).

However, placings of warrants or convertible securities under general mandate are restricted:

- no issue of convertible securities for cash consideration pursuant to a general mandate is allowed *unless* the initial conversion price is not lower than the market price of the shares at the time of the placing; and
- no issue of warrants, options or similar rights to subscribe for (i) any new shares of the issuer or (ii) any securities convertible into new shares, for cash consideration pursuant to a general mandate, will be allowed.

Note (2) Minority Shareholders' approval

Minority shareholders' approval means approval by shareholders in general meeting by resolution on which any controlling shareholders and their associates (or where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive and their respective associates) shall abstain from voting in favour.

Note (3) Cumulative Value Dilution

Value dilution is referred to as “Theoretical Dilution Effect” under the new Listing Rules, which takes into account of *both* the price discount and offer ratio. The cumulative value dilution can be calculated by the following formula (see *HKSE - Frequently asked questions on calculation of value dilution FAQ No.026-2018*):

$$\frac{(C_1 \times Y_1) + (C_2 \times Y_2) + \dots + (C_n \times Y_n)}{Sh + C_1 + C_2 + \dots + C_n}$$

Sh = Number of issued shares immediately before the 1st offer or placing

C1 = Number of shares to be issued in the 1st offer or placing

C2 = Number of shares to be issued in the 2nd offer or placing

Cn = Number of shares to be issued in the nth offer or placing

Y1 = Price discount of the 1st offer or placing

Y2 = Price discount of the 2nd offer or placing

Yn = Price discount of the nth offer or placing

For placing of convertible bonds (or warrants), the theoretical dilution effect should be computed on an as-converted basis, i.e., applying the initial conversion price (or the sum of the initial placing price and the exercise price) and the corresponding number of conversion shares (or subscription shares) for the computation.

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