

Hong Kong Capital Market Developments

HKEx new guidance on acquisitions during or after track record period

The Hong Kong Stock Exchange ("HKEx") has published a new guidance letter ([GL32-12](#)) clarifying the accounting and disclosure requirements in respect of acquisition of subsidiaries or businesses ("Target") by a listing applicant during or after the trading record period ("TRP") under Listing Rules.

Rule 4.04(2) and (4) (requiring results and balance sheets of the Target for TRP):

- applies to any Target acquired or to be acquired **after the TRP**
- can be triggered by a legally binding acquisition agreement (even if **not completed by listing**) as well as an **intention to acquire** (even if there is no legally binding agreement)
- has **no materiality threshold** – disclosure is required irrespective of the size of the Target
- requires disclosure of at least the income statement and balance sheet of the Target **for the TRP**

Rule 4.05A (requiring pre-acquisition financials of a material Target):

- applies to material Target acquired **during the TRP**
- is triggered by a **material acquisition**, i.e. the assets/profits/revenue of the Target for the most recent financial year in the TRP constitutes **25% or more** of that of the listing applicant for the same financial year
- requires disclosure of full financial statements of the Target from the **start of the TRP to the date of acquisition**

HKEx new guidance on use of IPO proceeds

A listing applicant in a Hong Kong initial public offering ("IPO") must disclose an estimate of the net IPO proceeds and the intended use in its prospectus. HKEx has recently issued a new guidance letter ([GL33-12](#)) to clarify the use of IPO proceeds disclosure requirements, including the following:

- **As working capital:** where the applicant has no current or specific plans for the proceeds or 10% of more of them, the prospectus must include a statement to that effect and discuss the purpose of the offering; references to "working capital" or "general corporate purposes" are not sufficiently specific unless explained in detail
- **To acquire properties from connected persons:** the identity of the business (or nature and brief description of the relevant type of business) must be disclosed
- **To finance business acquisitions:** the identity of the business (or nature and brief description of the relevant type of business) must be disclosed
- **To discharge indebtedness:** the interest rate and maturity of the debt must be disclosed, plus the use of any borrowing (except as working capital)
- the applicant may change the use of proceeds due to certain contingencies, if they are disclosed and the alternatives clearly described; any material change of use of proceeds will generally be considered as price-sensitive

Takeovers Code amendments

In September last year The Hong Kong Securities and Futures Commission (“SFC”) launched a public consultation on certain proposals to revise the Codes on Takeovers and Mergers and Share Repurchases (“Takeovers Code”). The **consultation conclusions** introduced the following key amendments, effective from 23 March 2012:

Property valuation report in a takeover document

The existing Takeovers Code requires a property valuation report when significant property interests are involved in an offer or a securities exchange offer. Under the new rule, this requirement is limited to offers where the offeror is an “interested party”, being (i) a party holding (with its concert parties) immediately before the offer period commences or an obligation arises to make mandatory general offer, 30% of voting rights or (ii) a director of the offeree or (iii) a party acting in concert with (i) or (ii).

Independence Confirmation in a placing and top-up transaction

In a placing and top-up transaction, the obligation under the Takeovers Code to make a general offer may be waived where the shareholder who holds 50% or less of voting rights of a company places part of his holding with one or more independent persons and subscribes for new shares up to the number of shares placed at a price substantially equivalent to the placing price. In such a case, the Takeovers Code currently requires the financial adviser, placing agent or placee to verify the independence of the placee. The amendments to the Takeovers Code will clarify that it is the responsibility of the financial adviser and placing agent to confirm the independence of the placees, and the SFC may make enquiries about the independence of the placees before granting a waiver as well as after completion of the transaction.

The timing for payment of acceptances

The Takeovers Code imposes a timeframe for payment by the offeror for the offer shares, namely a maximum of 10 calendar days from the later in time of (i) the offer becoming unconditional and (ii) the receipt of a duly completed acceptance. This timeframe for payment will be amended to seven business days in order to give share registrars and receiving agents a more manageable timeframe to process payments without compromising the interests of accepting shareholders.

HKEx plain language guide to connected transactions rules

HKEx has issued a [Guide on Connected Transactions Rules](#) to assist issuers to understand and comply with the connected transaction requirements under the Listing Rules. It aims to illustrate the complicated rules in plainer language using diagrams, examples, margin notes, and covers Listing Rules requirements and the related interpretations published in the Listing Decisions and Frequently Asked Questions issued by HKEx. The Guide is the first product of its kind released by the regulator and will be a useful tool for professional practitioners and issuers alike.

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