

## Client Alert

### Corporate Finance

27 April 2022

## Listing Rule amendments to complement SFC's new Code of Conduct requirements on bookbuilding and placing activities in ECM transactions

On 29 October 2021, the Securities and Futures Commission (**SFC**) released the "Consultation Conclusions on (i) the Proposed Code of Conduct on Bookbuilding and Placing Activities in Equity Capital Market and Debt Capital Market Transactions and (ii) the 'Sponsor Coupling' Proposal", and announced that the new requirements of the Code of Conduct for Persons Licensed by or Registered with the SFC (**New Code Requirements**) will come into effect on **5 August 2022** (see our [previous legal alert](#)).

On 22 April 2022, The Stock Exchange of Hong Kong Limited (**Exchange**) published an [information paper](#) outlining the consequential amendments (**Rule Amendments**) to the Rules Governing the Listing of Securities on the Exchange (**Listing Rules**) which will complement the New Code Requirements. The Rule Amendments will apply to **listing applications to be submitted (or re-filed) on or after 5 August 2022 (Effective Date)** for the same types of offerings<sup>1</sup> of *equity* securities or interests as those covered in the New Code Requirements. No specific amendments will be made to the Listing Rules relating to the placing of *debt* securities.

In addition to the information paper, the Exchange also published a series of [Frequently Asked Questions No. 077-2022 \(FAQs\)](#) to help market participants understand their respective responsibilities and obligations under the Rule Amendments.

The key Rule Amendments are highlighted below:

#### Written agreement for the appointment of a capital market intermediary (CMI) including an overall coordinator

The appointment by an issuer of a CMI (or an overall coordinator) must be made under a written engagement agreement before the CMI / overall coordinator conducts any specified activities under the New Code Requirements.	Rule Amendments	Corresponding / relevant New Code Requirements
<p>The written engagement agreement must at least specify the following:</p> <ul style="list-style-type: none"> <li>• the CMI's / overall coordinator's roles and responsibilities;</li> <li>• the fee arrangement (including the fixed fees to be paid to the CMI / overall coordinator as a percentage of the total fees to be paid to all syndicate CMIs);</li> <li>• the time schedule for payment of the fees to the CMI / overall coordinator; and</li> <li>• (for placing in connection with a new listing) the obligations of the new applicant and its directors to provide certain assistance to the syndicate CMI / overall coordinator (see further details in the section "Associated obligations of issuers and their directors" below).</li> </ul>	<p><i>For CMI:</i> Rules 3A.33, 3A.34 (GEM Rules 6A.40, 6A.41)</p> <p><i>For overall coordinator:</i> Rules 3A.35, 3A.36</p>	<p><i>For CMI:</i> Paragraph 21.3.2</p> <p><i>For overall coordinator:</i> Paragraph 21.4.1(a)</p>

<sup>1</sup> The types of offerings to which the Rule Amendments apply include:

- (a) a placing of equity securities or interests to be listed on the Exchange, including:
  - (i) a placing in connection with a new listing (whether by way of a primary listing or secondary listing, including, without limitation, a reverse takeover of a listed issuer which is a deemed new listing under Rule 14.54 (GEM Rule 19.54) and a transfer of listing from GEM to the Main Board under Chapter 9A); and
  - (ii) a placing of equity securities or interests of a class new to listing or new equity securities or interests of a class already listed under a general or specific mandate; and
- (b) a placing of listed equity securities or interests by an existing holder of equity securities or interests if it is accompanied by a top-up subscription by the existing holder of equity securities or interests for new equity securities or interests in the issuer.

	(GEM Rules 6A.42, 6A.43)	
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### Early appointment of overall coordinator(s) in a placing in connection with a new listing

<u>Early appointment</u>	<b>Rule Amendments</b>	<b>Corresponding / relevant New Code Requirements</b>
All overall coordinator(s) must be appointed <u>no later than 2 weeks</u> following the date of the submission (or re-filing, as the case may be) of the listing application.	Rule 3A.37 (GEM Rule 6A.44)	Paragraphs 21.4.1(b)(ii) and (c)
<u>Announcement of appointment / termination</u>  A new applicant will be required to publish an announcement on the Exchange's website ( <b>OC Announcement</b> ) setting out the name(s) of its overall coordinator(s) appointed on the same date as it files the listing application and publishes the Application Proof.  Where an additional overall coordinator is appointed or the engagement of an existing overall coordinator is terminated after the publication of the initial OC Announcement, the new applicant shall publish a further OC Announcement informing the investing public of such change.  New applicants permitted to make a confidential filing will be required to publish the initial OC Announcement on the same date as they publish their post hearing information packs on the Exchange's website.	Rules 3A.37, 3A.41(2) and 12.01C and Paragraphs 17A and 18 of Practice 22 of the Listing Rules (GEM Rules 6A.44, 6A.46(2) and 16.01C and Paragraphs 16A and 17 of Practice Note 5 of the GEM Listing Rules)	-
<u>Overall coordinator's declaration</u>  Overall coordinator(s) will be required to provide a declaration: <ul style="list-style-type: none"> <li>in respect of the issuer's compliance with Rules 8.08, 10.03 and 10.04 (GEM Rules 11.23 and 13.02(1)) relating to placing and allocations (which is currently provided by the sponsor prior to the commencement of dealings); and</li> <li>that a bookbuilding process was carried out to assess demand for securities and that the placing was conducted in compliance with the placing guidelines in Appendix 6 to the Listing Rules (GEM Rules 10.12 to 10.16B).</li> </ul>	Rule 9.11(36) and Appendix 5E to the Listing Rules (GEM Rule 12.26(8) and Appendix 7I to the GEM Listing Rules)	Paragraphs 21.4.2(b)(ii), 21.4.4 and 21.4.5
<u>Provision of information to the Exchange</u>  The sponsor-overall coordinator (in the case of a Main Board IPO – see details in the section below) or an overall coordinator (in the case of a GEM IPO) is required to submit the following information to the Exchange no less than four clear business days before the date of the new applicant's Listing Committee hearing: <ul style="list-style-type: none"> <li>the name of each overall coordinator;</li> <li>the fixed fees to be paid by the issuer to each overall coordinator;</li> <li>the total fees (as a percentage of the gross proceeds to be raised from the IPO) in respect of both the public subscription and the placing tranches to be paid to all syndicate CMI's; and</li> <li>the ratio of fixed and discretionary fees to be paid to all syndicate CMI's for both the public subscription and the placing tranches (in percentage terms), together with any material changes to the above information submitted and the reasons for such changes as soon as practicable.</li> </ul>	Rules 3A.39, 3A.44 and 9.11(23a) (Note 2) (Note to GEM Rule 6A.42 and GEM Rule 12.23AA (Note 2))	Paragraph 21.4.8

### Appointment of at least one sponsor-overall coordinator (i.e. sponsor coupling) in Main Board IPOs

	<b>Rule Amendments</b>	<b>Corresponding / relevant New Code Requirements</b>
A Main Board new applicant must ensure that at least one overall coordinator (or one of the companies within its group of companies) is also appointed as a sponsor independent of the new applicant and both appointments are made <u>at the same time</u> and <u>no less than 2 months before the submission (or re-filing, as the case may be)</u> of the listing application to the Exchange.	Rules 3A.02 (Note), 3A.43 and 3A.45	Paragraphs 17.1A and 21.4.1(b)(i)

<p>In the case of termination of the engagement of a sponsor-overall coordinator as an overall coordinator and/or a sponsor-overall coordinator to a new applicant after the submission of a listing application (in the case where only its role as an overall coordinator is terminated, regardless of whether it (or one of the companies within its group of companies) remains as a sponsor to the new applicant), if the sponsor-overall coordinator was the sole sponsor-overall coordinator, the new applicant shall file a new listing application not less than 2 months from the date of the formal appointment of a replacement sponsor-overall coordinator, detailing a revised timetable together with the initial listing fee, if it intends to continue with the listing application process.</p>	<p><i>(Not applicable to GEM applicants)</i></p>	
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### Associated obligations of issuers and their directors

<u>Assessment of investors</u>	Rule Amendments	Corresponding / relevant New Code Requirements
<p>To facilitate each syndicate member to meet its obligations and responsibilities under the New Code Requirements and the Listing Rules in a placing in connection with a new listing, the written engagement agreement with each syndicate member must contain the obligations of the new applicant and its directors to provide the syndicate member with, among other things, a list of the directors and existing shareholders of the new applicant, their respective close associates and any nominees engaged by any of the foregoing persons for the subscription or purchase of equity interests, as soon as practicable and in any event at least four clear business days before the date of the new applicant's Listing Committee hearing.</p>	<p>Rule 3A.46 (GEM Rule 6A.48)</p>	<p>Paragraph 21.4.5</p>
<p><u>Pricing and allocation</u></p> <p>An issuer should document the rationale behind its decision on allocation and pricing, in particular where the decision is contrary to the advice, recommendation(s) and/or guidance of the overall coordinator(s).</p> <p>The overall coordinator(s) shall inform the Exchange if decisions made by the issuer amount to non-compliance with the Listing Rules related to, among other things, the placing activities conducted by the overall coordinator(s) or the issuer.</p>	<p>Paragraph 19 of Appendix 6 (GEM Rule 10.16B)</p>	<p>Paragraph 21.4.2(c)</p>
<p><u>Confirmation of no rebate</u></p> <p>The announcement of the allotment results of a placing in connection with a new listing should include a confirmation from the new applicant's directors that no rebate has been, directly or indirectly, provided by the issuer, its controlling shareholder(s), directors or syndicate members to any placees or the public (as the case may be) and the consideration payable by them for each share of the issuer subscribed for or purchased by them is the same as the final offer price determined by the issuer, in addition to any brokerage, Financial Reporting Council (<b>FRC</b>) transaction levy, SFC transaction levy and trading fee payable.</p> <p>All overall coordinators, any other syndicate members and any other distributors involved must certify in writing to the Exchange that the consideration payable by each placee directly or indirectly to the issuer for each share of the issuer subscribed for or purchased by them is the same as the final offer price determined by the issuer, in addition to any brokerage, FRC transaction levy, SFC transaction levy and trading fee payable.</p>	<p>Note 2 to Rule 12.08 and Form D in Appendix 5 to the Listing Rules (Note 3 to GEM Rule 16.13 and Form D in Appendix 5 to the GEM Listing Rules)</p>	<p>Paragraph 21.3.7(a)</p>
<p><u>Disclosures in the listing document regarding fee arrangements</u></p> <p>A new applicant will be required to disclose in the listing document the aggregate of the fees (as a percentage of the gross amount of funds proposed to be raised in the subscription tranche and/or the placing tranche) and the ratio of fixed and discretionary fees paid or payable to all syndicate members.</p> <p>A similar existing requirement in HKEX Guidance Letter GL56-13 on the disclosure of the sponsor's fee in the listing document will be codified.</p>	<p>Paragraphs 3A and 3B of Appendices 1A and 1E to the Listing Rules (paragraphs 3A and 3B of Appendix 1A to the GEM Listing Rules)</p>	<p>-</p>

<p><u>Declaration regarding allocation of discretionary fees</u></p> <p>A new applicant will be required to declare in the form of Form F in Appendix 5 to the Listing Rules (Form E in Appendix 5 to the GEM Listing Rules), which is to be submitted to the Exchange as soon as practicable after the issue of the listing document but before dealings commence, that the allocation of discretionary fees, that is, the absolute amount to be paid, and the time schedule for the payment of the total fees payable to each syndicate CMI have been determined and communicated in writing to each syndicate CMI.</p>	<p>Paragraph 10A of Form F in Appendix 5 to the Listing Rules (Paragraph 10A of Form E in Appendix 5 to the GEM Listing Rules)</p>	<p>-</p>
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### Effective date and transitional arrangements

As mentioned above, the Rule Amendments will apply to listing applications to be submitted (or re-filed) on or after 5 August 2022 (i.e. the Effective Date).

New applicants which have submitted listing applications prior to the Effective Date will not be required to comply with the new requirements before their applications lapse, are withdrawn or otherwise terminated, even if their bookbuilding, placing or allocation activities conducted in connection with their proposed offerings take place on or after the Effective Date.

For Main Board new applicants:

- (A) which have submitted listing applications prior to the Effective Date and will re-file their listing applications on or after the Effective Date; or
- (B) which have appointed sponsors before 22 April 2022 (i.e. the date of publication of the Rule Amendments) (**Rule Amendments Publication Date**) and will submit listing applications for the first time on or after the Effective Date (and in respect of their subsequent re-filings),

the Exchange provides for transitional arrangements (detailed in item No. 21 of the FAQs and summarised below), under which it would accept an existing independent sponsor (or its group company) being appointed to discharge the role of a sponsor-overall coordinator even though its appointment as an overall coordinator was not made at the same time as its appointment as a sponsor under the Rule Amendments, provided that certain conditions are met.

#### Transitional arrangements for (A)

Conditions:

- (i) The existing independent sponsor has been appointed before the Effective Date and at least two months before the re-filing, and the Exchange has been notified of the sponsor engagement before the Effective Date;
- (ii) such independent sponsor (or its group company) has also been appointed as an overall coordinator before the Effective Date and at least two months before the re-filing;
- (iii) the engagements of such sponsor and overall coordinator remain valid and effective as at the time of the re-filing; and
- (iv) the re-filing is made within three months from the lapse of the last listing application.

*Illustrations:*

	Date of lapse of the last listing application	Date of appointment of the existing independent sponsor as the sponsor-overall coordinator	Do the transitional arrangements apply? If so, when is the earliest date of re-filing in order to comply with condition (ii)?
Scenario 1:	5 May 2022	5 June 2022	Yes (5 August 2022)
Scenario 2:	4 July 2022	4 August 2022	Yes (4 October 2022)
Scenario 3:	4 July 2022	5 August 2022	No – Condition (ii) is not met
Scenario 4:	4 May 2022	5 June 2022	No – In order to meet condition (ii), the re-filing cannot be made before 5 August 2022, but this would result in condition (iv) not being met

#### Transitional arrangements for (B)

Conditions:

- (i) The new applicant has already appointed an independent sponsor before the Rule Amendments Publication Date, and the notification of the sponsor engagement has been submitted to the Exchange before the Rule Amendments Publication Date;
- (ii) such independent sponsor (or its group company) has also been appointed as an overall coordinator before the Effective Date and at least two months before the submission of the initial application or re-filing (where applicable);
- (iii) the engagements of such sponsor and overall coordinator remain valid and effective as at the time of the submission of the initial application or re-filing (where applicable); and

(iv) where applicable, the re-filing is submitted within 3 months from the lapse of the last listing application.

*Illustrations:*

	<b>Date of appointment of the existing independent sponsor</b>	<b>Date of appointment of the existing independent sponsor as the sponsor-overall coordinator</b>	<b>Do the transitional arrangements apply? If so, when is the earliest date of the first submission in order to comply with condition (ii)?</b>
Scenario 1:	21 April 2022	5 June 2022	Yes (5 August 2022)
Scenario 2:	21 April 2022	4 August 2022	Yes (4 October 2022)
Scenario 3:	22 April 2022	4 August 2022	No – Condition (i) is not met
Scenario 4:	21 April 2022	5 August 2022	No – Condition (ii) is not met

## Want to know more?

**Ronny Chow**  
Partner

ronny.chow@deacons.com  
+852 2825 9435

**Alexander Que**  
Partner

alexander.que@deacons.com  
+852 2825 9770

**Rhoda Yung**  
Partner

rhoda.yung@deacons.com  
+852 2825 9624

**Sabrina Fung**  
Partner

sabrina.fung@deacons.com  
+852 2825 9478

**Kevin Tong**  
Partner

kevin.tong@deacons.com  
+852 2825 9229

**Kelvan Cheung**  
Partner

kelvan.cheung@deacons.com  
+852 2825 9279

**Gary Wong**  
Partner

gary.wong@deacons.com  
+852 2825 9798

**Maynard Leung**  
Partner

maynard.leung@deacons.com  
+852 2825 9415

**Peter Cheng**  
Partner

peter.cheng@deacons.com  
+852 2826 5390

**Icarus Yuen**  
Partner

icarus.yuen@deacons.com  
+852 2825 9797

**Canny Lau**  
Partner

canny.lau@deacons.com  
+852 2826 5346

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