

The Stock Exchange of Hong Kong Limited

Practice Note 3

to the Rules Governing the Listing of Securities on GEM
of The Stock Exchange of Hong Kong Limited
(the “GEM Listing Rules”)

Issued pursuant to rule 1.07 of the GEM Listing Rules

PRACTICE WITH REGARD TO PROPOSALS SUBMITTED BY ISSUERS TO EFFECT THE SEPARATE LISTING ON THE EXCHANGE OR ELSEWHERE OF ASSETS OR BUSINESSES WHOLLY OR PARTLY WITHIN THEIR EXISTING GROUPS

1. Definitions

Terms used in the Practice Note which are defined or interpreted in the GEM Listing Rules shall have the same meaning as in the GEM Listing Rules.

2. Introduction

This Practice Note is intended to set out the Exchange’s policy with regard to proposals submitted by issuers to effect the separate listing on the GEM or elsewhere of assets or businesses wholly or partly within their existing groups (“spin-offs”). This Practice Note sets out the principles which the Exchange applies when considering spin-off applications.

Issuers are reminded that they are required to submit their spin-off proposals to the Exchange for its approval.

Note: This Practice Note is normally only applicable to an issuer and entity which is a subsidiary of the issuer at the time of submission of the spin-off proposal. However, the Exchange will treat an entity as if it were a subsidiary of an issuer for the purpose of this Practice Note if such entity is at the time of submission of the issuer’s spin-off proposal, an associated company of the issuer and was, at any time during the latest completed financial year of the issuer (comprising at least 12 months) up to the date of submission of the spin-off proposal, a subsidiary of the issuer.

In such circumstances, the entity will be required to comply with the requirements of this Practice Note and will be treated as if it has remained as a subsidiary of the issuer. The issuer is required to substantiate the changes in the beneficial ownership of the entity’s issued shares in the period stated above.

3. Principles

The principles, which apply equally whether the entity to be spun off is to be listed in Hong Kong or overseas, are as follows:

(a) *Newco to satisfy basic listing criteria*

Where the entity ("Newco") to be spun-off by the existing issuer ("Parent") is to be listed on a stock market operated by the Exchange, it must satisfy all requirements of the relevant listing rules falling on new listing applicants, including the relevant basic listing criteria contained in Chapter 8 or Chapter 19A of the Main Board Listing Rules, or in Chapter 11 or Chapter 25 of the GEM Listing Rules, as the case may be.

(b) *No spin-off within three years of Parent's original listing*

In recognition that the original listing of the Parent will have been approved on the basis of the Parent's portfolio of businesses at the time of listing, and that the expectation of investors at that time would have been that the Parent would continue to develop those businesses, the Exchange would not normally consider a spin-off application within three years of the date of listing of the Parent.

(c) *The remaining business of the Parent*

The Exchange must be satisfied that, after the listing of Newco, the Parent would retain a sufficient level of operations and sufficient assets to support its separate listing status. In particular, it would not be acceptable to the Exchange that one business (Newco's) supported two listing statuses (the Parent's and Newco's). In other words, the Parent itself would be required to retain, in addition to its interest in Newco, sufficient assets and operations of its own, excluding its interest in Newco, to satisfy independently the listing requirements of Chapter 11 of the GEM Listing Rules.

(d) *Principles applied in the consideration of spin-off applications*

In considering an application for listing by way of spin-off, the Exchange would apply the following principles:

- (i) there should be a clear delineation between the business(es) retained by the Parent and the business(es) of Newco;
- (ii) Newco should be able to function independently of the Parent. As well as independence as regards its business and operations, the Exchange would expect from Newco:
 - independence of directorship and management. While common directors would not be a bar to qualification under this test, the Exchange would require to be satisfied that Newco would operate independently and in the interests of its shareholders as a general body, and not in the interests of the Parent only, where the former interests and the latter were actually or potentially in conflict;
 - independence of administrative capability. The Exchange would expect that all essential administrative functions would be carried out by Newco without requiring the support of the Parent, although the Exchange is prepared to be flexible in the sharing of administrative, nonmanagement functions, such as secretarial services; and

- the Exchange must be satisfied that ongoing and future connected transactions between the Parent and Newco would be properly transacted under Chapter 20 of the GEM Listing Rules and/or waivers thereunder and, in particular, that the ongoing relationship would not, in the context of any waivers granted, be unduly artificial or difficult to monitor from the perspective of safeguarding the interests of the respective minority shareholders of the Parent and of Newco.
- (iii) there should be clear commercial benefits, both to the Parent and to Newco, in the spin-off which should be elaborated upon in the listing document; and
- (iv) there should be no adverse impact on the interests of shareholders of the Parent resulting from the spin-off.
- (e) *Shareholder approval of the spin-off*
- (1) At present, under the GEM Listing Rules, as well as where the connected transaction provisions are applicable, shareholder approval will be required where, under rule 19.07, any of the percentage ratios of the transaction is 25% or more.
- (2) The Exchange is of the view that the approval of shareholders of the Parent must be sought for the proposal if it falls within (1) above, and that the controlling shareholder and its associates must abstain from voting if the controlling shareholder has a material interest in the proposal.
- (3) [Repealed 1 January 2009]
- (4) In cases where the spin-off proposal requires approval by shareholders of the Parent, whether or not the controlling shareholder is required to abstain from voting, the Parent must comply with the requirements set out in rules 17.47(6) and (7). The circular to shareholders must contain full details of the spin-off and its effect on the Parent. The independent financial adviser appointed under rule 17.47(6)(b) may not also be the sponsor or co-sponsor or an underwriter of Newco.
- (5) In any case where the controlling shareholder votes through the spin-off proposal in the face of significant minority opposition, the Exchange would expect to receive a report from the independent financial adviser as to the discussions at the relevant general meeting.

(f) *Assured entitlement to shares in Newco*

The Exchange expects the Parent to have due regard to the interests of its existing shareholders by providing them with an assured entitlement to shares in Newco, either by way of a distribution in specie of existing shares in Newco or by way of preferred application in any offering of existing or new shares in Newco. The percentage of shares in Newco allocated to the assured entitlement tranche would be determined by the directors of the Parent and by its advisers, and all shareholders of the Parent would be treated equally. There would be no bar to the controlling shareholder receiving his proportion of shares under such entitlement. Where Newco is proposed to be listed elsewhere than in Hong Kong, and where shares in Newco under the assured entitlement can only be made available to existing shareholders of the Parent by way of a public offering in Hong Kong, the Exchange would consider submissions as to why the assured entitlement requirement would not be for the benefit of the Parent or its shareholders. Further, the minority shareholders of the Parent may by resolution in general meeting resolve to waive the assured entitlement, even where Newco is to be listed in Hong Kong.

Note: In case where Newco is made subject to this Practice Note by virtue of the Note to paragraph 2, the Parent should use its best endeavours to provide its shareholders an assured entitlement to the shares in Newco. Whether such assured entitlement is available will be taken into account by the Exchange when considering whether to approve the spin-off proposal.

(g) *Announcement of spin-off*

An issuer must announce its spin-off listing application by the time it lodges the Form A (or its equivalent in any overseas jurisdiction). Where an overseas jurisdiction requires a confidential filing, the matter should be discussed with the Listing Division before the filing. Until announcement of the application, strict confidentiality should be maintained and if there is a leakage of information or a significant, unexplained movement in the price or turnover volume of the Parent's securities, an earlier announcement would be required.

These are general principles to assist the market. The Listing Division should be consulted at an early stage of any spin-off proposal for clarification as to the application thereof.

4. The Exchange emphasises that it retains an absolute discretion to accept or reject a proposal submitted by an issuer to effect the separate listing of assets or businesses wholly or partly within its existing group. The principles in this Practice Note are not exhaustive and the Exchange may impose additional requirements or make a spin-off proposal subject to special conditions whenever it considers it appropriate.