Cooley

‘More Transparent and Efficient’: SFC and HKEX Release Joint Statement on Enhanced Time Frame for New Listing Application Process

October 31, 2024

Key points/Q&A

Over the years, the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (HKEX) have made continuous efforts to enhance the application process for new listing[1] applications, offering guidance, clarity and transparency to the market. To further elevate Hong Kong’s attractiveness as the leading international listing venue, the SFC and the HKEX issued the Joint Statement on Enhanced Timeframe for New Listing Application Process (Joint Statement) on October 18, 2024, announcing an enhanced time frame for the new listing application process (Enhanced Application Time Frame).

Based on our understanding of the Joint Statement, we have briefly summarized and commented on the noteworthy points therein in the form of Q&A for reference.

1. When will the Enhanced Application Time Frame take effect?

According to the Joint Statement, the Enhanced Application Time Frame will be applicable to new listing applications filed after the date of the Joint Statement (i.e., after **October 18, 2024**). Please note that the Enhanced Application Time Frame was issued in the form of a “joint statement” and is not currently reflected in the Listing Rules or guidance issued by the SFC and the HKEX. At this stage, it is more akin to the policies, principles and objectives relating to the listing approval practices of the SFC and the HKEX.

The SFC and the HKEX have been exploring a more transparent and enhanced listing approval process, especially after their adoption of the new sponsor regime in 2013.

2. In what ways is the Enhanced Application Time Frame transparent and efficient?

Although the condition of “Applications Fully Meeting Requirements” is attached, this is the first time that the SFC and the HKEX formally and explicitly introduced the concepts of “a maximum of two rounds of regulatory comments” and “40 business days” for vetting and approval. Taking into account the estimated times given in the table below, “**1 – 2 – 40 – 60**” can be used as a benchmark for assessing the vetting process and time.

From date of filing listing application	First comment letter (1CL)	Response to 1CL	Second comment letter (2CL)	Response to 2CL
HKEX	15 business days		15 business days	
SFC	20 business days		10 business days	
Response from applicant/ sponsor		25 business days		25 business days

- **1**: First, "**a condition precedent**" must be satisfied – that is, whether a new listing application and related materials submitted by an applicant and its sponsor can be regarded as an "**Application Fully Meeting Requirements**", i.e., whether such materials meet all applicable requirements and guidance under the Securities and Futures Ordinance (SFO), the Securities and Futures (Stock Market Listing) Rules (SMLR) and/or the Listing Rules.
- **2**: Next, the SFC and the HKEX will, after close communication to avoid duplication of comments, individually assess and indicate any material regulatory concerns (regulators' assessment) **after a maximum of two rounds of regulatory comments**.
- **40**: In this scenario, the time taken by each of the SFC and the HKEX to confirm whether there are any material regulatory concerns will be **no more than 40 business days**. The SFC's "no comment letter" and the HKEX's "hearing bundle letter" (HBL) are two new concepts. A no comment letter should mean exactly what it says. According to the Joint Statement, an HBL is intended to "**set out the matters to be dealt with or addressed by the applicants and their sponsors to finalise the disclosure in the listing document**". In light of current vetting practice, an HBL may be used as a marker to confirm that there is "no material regulatory concern," and to address disclosure amendments requiring further follow-up from the issuer by the HKEX prior to the hearing (usually "disclosure issues" other than "major issues").
- **60**: The applicant and its sponsor are expected to take a total of around **60 business days** to satisfactorily address regulators' comments. Subject to obtaining approvals from the Listing Committee and other authorities or regulators, the application process would be completed **within the six-month application validity window**.

3. What is meant by 'the time taken by each regulator to confirm whether there are any material regulatory concerns will be no more than 40 business days'?

There are usually two types of issues raised by the HKEX in reviewing a listing application. One type are "major issues", which mainly include listing eligibility and suitability issues – such as the applicant's business model, profitability path, financial sustainability, material non-compliances, etc. The other type are "disclosure issues", which, as the name suggests, are mainly related to disclosure details in the prospectus.

First, the "40 business days" mentioned in the Joint Statement refers to the time required for the review to "**confirm** whether there are any material regulatory concerns". We understand that **this mainly includes the time taken to review and deal with the "major issues"**, and that some additional time may be needed to address any piecemeal disclosure issues. Therefore, it is not yet possible to interpret such time period directly as the time between the submission of the listing application and the hearing.

Second, it is stated in the notes to the Joint Statement that the "40 business day" period **only includes the number of business days in the hands of the regulators and excludes the response time of the applicant and its sponsor**. As disclosed in the HKEX's Listing Committee Report 2023, it takes **an average of 12 business days**

from the date of case acceptance to the date of first comment letters issued (which is **close to the 15 business days** as set out in the Joint Statement). The Joint Statement has, on the one hand, publicly reflected the average length of time needed in the HKEX's previous regulatory practice and, on the other hand, also provided an expectation on the SFC's review time, both of which add more predictable certainty to the timeline for reviewing new listing applications.

Third, based on the projections in the Joint Statement, the applicant and its sponsor may need approximately 25 business days to respond to each round of regulatory comments, and then 10 business days to respond to the HBL, for a total of 60 business days, plus the aforementioned "40 business days" for the HKEX/SFC review, **totaling 100 business days (approximately five months)**. If the applicant can follow this indicative response timeline, the review would be completed within the six-month application validity window, which will help to improve the situation of "need to re-file the listing application if listing is not possible within six months". It should be noted that 25 business days may not be sufficient for some applicants if there would be any extra audited financial information covering a longer reporting period needs to be provided together with the response to the HKEX's regulatory comments.

Finally, **the "40 business days" does not include the time required for filing with the China Securities Regulatory Commission.**

4. Is there any change in the division of functions between the SFC and the HKEX under the existing regulatory framework?

No. To summarize:

Regulator	Role/strong>	Normative documents administered	Primary functions
SFC	Statutory regulator	SMLR and SFO	• Reviewing all new listing applications. • Engaging in targeted intervention in more serious listing matters that fall within the scope of the SMLR or the SFO.
HKEX	Frontier regulator	Listing Rules	• Making decisions under the Listing Rules on matters such as determining **suitability for listing**. • The Listing Committee considers and decides **whether to approve** new listing applications, and – where appropriate – raises comments on **eligibility and suitability for listing**, as well as on **material listing document disclosures**.

The Joint Statement not only clarifies the division of functions between the SFC and the HKEX, but also emphasizes the efforts of the two regulators to improve efficiency in two ways. First, they will **communicate closely to avoid duplication of comments**, and second, if the SFC shares **the same regulatory concerns** as those included in the HKEX's second comment letters, it will issue a letter via the HKEX to notify the applicant through its sponsor, which will be **counted as one round of comments from the SFC.**

5. Is there any possibility of accelerating the Enhanced Application Time Frame?

It is possible if the applicant is an eligible A-share listed company, the time frame may be accelerated, which will help high-quality A-share listed companies take advantage of the issuance window in a timely manner and get access to the international capital markets more quickly.

For an applicant to be considered an "eligible A-share listed company", the applicant will need to meet the following criteria when **submitting a new listing application**:

- It is expected to **have a minimum market capitalisation of HK$10 billion**, calculated with reference to:
  - The A-share market capitalisation based on the average A-share closing price for the five business days immediately preceding the date of the new listing application.
  - The expected H-share market capitalisation at the time of listing on the HKEX.
- It can confirm, with the support of legal advisers' opinions, that it has complied with all laws and regulations, **in all material respects**, applicable to its A-share listing **throughout the two full financial years** immediately preceding the new listing application and up to the date of submitting the new listing application.

If an eligible A-share listed company submits an Application Fully Meeting Requirements, the Regulators' Assessment will be completed **after one round of regulatory comments**. In this scenario, each regulator will **take no more than 30 business days to complete the Regulators' Assessment** (Accelerated Time Frame).

6. Under what scenarios will the application take longer to complete?

The timeline of the application process may be lengthened under the following scenarios:

- The SFC and/or the HKEX have **material regulatory concerns** regarding an applicant's compliance with the SFO, the SMLR and/or the Listing Rules. If the SFC and/or the HKEX indicate that they have material regulatory concerns over the new listing application of an eligible A-share listed company, the Accelerated Time Frame will **no longer apply**.
- **Poor quality** of listing document preparation.
- **New material developments** of the applicant.
- **Incomplete responses** to regulators' comments.

7. What measures will the regulators take if the scenarios in Question 6 arise?

The SFC and the HKEX will proactively engage with the applicant and its sponsor to enhance their understanding of the relevant regulatory concerns. Possible measures include:

- **After issue of the first comment letter (1CL)**, the SFC and/or the HKEX will, where necessary, **engage with** key representatives of the applicant and its sponsor, as well as other advisers, to **facilitate their understanding** of the material regulatory concerns and **outline the regulators' expectations** on their subsequent response.

  This communication mechanism is being formalized for the first time (although it already happens in practice). It may mean that the SFC and HKEX reviewers will discuss the regulatory concerns with the applicant and its sponsor by telephone. This approach is expected to be very useful in helping the SFC and the HKEX to understand the applicant's situation (e.g., industry specifics, new business model), and in helping the applicant and its sponsor to understand the regulatory disclosure requirements, which will minimize "misunderstandings" and the time spent on repeated clarifications, thus improving efficiency and shortening the time taken for the listing review.
- If any subsequent responses to the regulatory comments are **materially incomplete**, the SFC and/or the HKEX will **inform** the applicant and its sponsor of the deficiency and **suspend** the vetting process until a complete and satisfactory reply is received.

  In order to minimize the frequency of comments to achieve the regulatory objectives, it is possible that the SFC and the HKEX may – upon receipt of the response to a particular round of regulatory comments – request the applicant and its sponsor to continue to provide additional responses to some of the comments, instead of directly conducting a new round of regulatory comments.

- If the applicant and its sponsor **do not adequately address** the material regulatory concerns raised by the SFC and/or the HKEX **after two rounds of regulatory comments** (or one round under the Accelerated Time Frame for eligible A-share listed companies), the SFC and/or the HKEX will **issue a direct requisition letter** under the SMLR (SMLR letter) and/or a **major concerns letter** (MCL), as appropriate. The progress of the application will then be subject to the applicant and its sponsor satisfactorily addressing the material regulatory concerns set out in the SMLR letter and/or the MCL.

8. How to 'save' time?

Assuming that the regulators' concerns, commenting methods and disclosure requirements remain the same, how can we "save" time under the Enhanced Application Time Frame? We understand that some **enhancement of process details** (e.g., avoiding duplication of comments, consolidation of second-round comments) and communication (e.g., more phone calls or clarifications between the listing reviewers and the applicant and its sponsor) would certainly be very helpful. At the same time, efforts to **improve the quality of listing document preparation (especially the prospectus)** by professional parties to the listing are necessary, and achieving improved efficiency also will require brainstorming among the various players.

In a nutshell, we believe that the Joint Statement and the Enhanced Application Time Frame will make the Hong Kong listing application process more transparent and efficient. In addition, they will provide greater certainty to listing applicants and various professional parties by giving clearer objectives to all parties involved in the listing project, which is conductive to a more comprehensive evaluation of listing in Hong Kong as a major business decision by all stakeholders. We look forward to the opportunities that the Enhanced Application Time Frame will bring to the industry and welcome companies interested in listing in Hong Kong to seek our professional guidance and advice.

[1] "New listing" has the meaning ascribed to it (but excluding any new listing of interests in a real estate investment trust or any reverse takeover of a listed issuer that is deemed a new listing under the Listing Rules) in Rule 1.01 of the Listing Rules.

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