

New Pricing Flexibility for Initial Public Offerings in Hong Kong

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2018.02.09 Corporate Finance

Pricing Flexibility for Initial Public Offerings

According to the provisions of the Hong Kong Listing Rules, an initial public offering (IPO) must disclose the offer price for shares to be listed. The prospectus may disclose a fixed price or set out the range of the indicative offer price.

According to the provisions set out in the listing decisions HKEX-LD61-1 and HKEX-LD86-1, if there is no prior disclosure in the prospectus that the offer price may change, any change in the indicative offer price is a material change. In such case, the listing applicant has two options:

(1) The applicant may elect to terminate the sale of shares and, if it deems fit, commence the IPO process again; or

(2) The applicant may choose to initiate the withdrawal mechanism. If the withdrawal mechanism is initiated, the applicant must: (a) publish a supplemental prospectus specifying changes in the IPO, including changes in the sale price and the release period, and the effect of the change on the use of the proceeds of the listing, (b) extend the offering period to ensure that investors are given enough time to consider buying shares if the sale price changes, and (c) give investors who have applied for its shares a right to withdraw their applications using an “opt-in” approach.

However, both of these approaches would result in significant additional costs and pose difficulties for listing applicants to respond.

New Guidance Letter HKEX-GL90-18 Pricing Flexibility for Initial Public Offerings

In order to solve the drawbacks of the original withdrawal mechanism and provide a more flexible pricing opportunity for listed applicants, HKEX-GL90-

18 sets out a new flexible pricing mechanism. The new mechanism includes the following principal provisions:

(1) The listing applicant is allowed to price up to 10% below the indicative offer price or up to 10% below the bottom end of the indicative offer price range disclosed in the prospectus;

(2) Where an indicative price range is used, the range must be set with the top end of the range and not more than 30% above the bottom end of the range;

(3) If a pricing flexibility mechanism is adopted, the listing applicant is required to make disclosures, including the issue of a separate pricing announcement as soon as practicable after the final offer price is determined and before the issue of the allotment results announcement; and

(4) Where the final offer price is more than 10% below the indicative offer price or more than 10% below the bottom end of the indicative offer price range, the withdrawal mechanism will apply if the applicant wishes to proceed with the IPO.

Disclosure Requirements for the Pricing Flexibility Mechanism

If a listing applicant decides to adopt a pricing flexibility mechanism, the following elements should be included in the prospectus, application forms and notices:

(1) Clear disclosure of the indicative offer price

Listing applicants must clearly disclose the indicative offer price or offer price range and the possibility of

downward adjustment of the indicative offer price or the bottom end of the offer price range.

(2) Disclosure of how the downward adjusted offer price will affect the IPO

Listing applicants need to specify how the reduced price will affect the applicant's listing, including but not limited to: (i) changes in the net proceeds from the offer and any related changes in the use of the listing proceeds, (ii) the impact on the applicant's future expansion plans, and (iii) the sufficiency of working capital, cash flow and profit forecasts, and appropriate risk factors.

(3) Make a clear statement on the application of the mechanism

The listing applicant should make a clear statement in the prospectus and other relevant documents when the relevant situation occurs. For example (1) if the final offer price is more than 10% below the indicative price or more than 10% below the bottom end of the indicative offer price range, the listing applicant must clearly state that it will initiate the withdrawal mechanism before continuing with the IPO; (2) if there is a material change in the situation, the relevant changes must be published in addition to the prospectus and the listing applicant must offer investors with a right to withdraw their applicants.

(4) Clearly state the specifics of the mechanism in the price reduction announcement

The following should be clearly stated in the price reduction announcement: (i) the downward adjusted offer price; (ii) revisions to the net proceeds, use of proceeds, and market capitalization; and (iii) confirmation from each director of the applicant that, after taking into account the downward adjusted offer price, there is no material change of circumstances after the issue of the prospectus and there is sufficient working capital for the applicant's requirements for at least 12 months from the date of the prospectus.

In addition, the Hong Kong Stock Exchange need to be satisfied with the relevant disclosure in the prospectus and related documents and that the downward adjusted offer price will not affect the listing applicant's suitability for listing. Furthermore, the applicant must disclose the reduction of proceeds and clearly state in the forecast memoranda the impact of the reduction in the proceeds from the listing.

Closing Remark

For the avoidance of doubt, listing applicants who do not choose to use the pricing flexibility mechanism can continue to adopt the current withdrawal mechanism for IPOs. If the final offer price is not the indicative offer price or is outside the indicative offer price range in the prospectus and the applicant wishes to proceed with the IPO at the final offer price, the withdrawal mechanism as aforesaid will apply

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