Charltons - Hong Kong Law Newsletter - 06 February 2012

[online version](http://www.charltonslaw.com/hong-kong-stock-exchange-repeals-listing-rule-ban-on-inclusion-of-profit-forecasts-in-pre-listing-research-reports-unless-also-included-in-listing-document/)

# Hong Kong Stock Exchange Repeals Listing Rule Ban On Inclusion Of Profit Forecasts In Pre-Listing Research Reports Unless Also Included In Listing Document

## Introduction

The Hong Kong Stock Exchange has published on its website an amendment to the Main Board Listing Rules repealing Rule 8.21B with effect from 1 February 2012. Rule 8.21B, which was introduced in 2004, provided that pre-listing research reports issued by the sponsor or underwriters or their related parties must not include any profit forecast or other forward looking statement unless such statement is included, in substantially the same form in the applicant’s listing document. There is no equivalent provision to Rule 8.21B in the GEM Rules.

## Background

The repeal follows the implementation of new Securities and Futures Commission (**SFC**) requirements relating to pre-listing research reports which came into effect on 31 October 2011. The new requirements are contained in the SFC’s Code of Conduct for Persons Licensed by or Registered with the SFC (the **Code of Conduct**) and Corporate Finance Adviser Code of Conduct (the **CFA Code**). For further information on the background to, and nature of, the new SFC requirements please see our newsletters on the SFC’s [Consultation Paper](/newsletters/hklaw/en/2010/101/nl-hklaw-20101210-101.html) and [Consultation Conclusions on the Regulatory Framework for Pre-Deal Research Reports](/newsletters/hklaw/en/2011/130/nl-hklaw-20110716-130.html).

The new requirements aim to ensure analysts’ independence and objectivity in relation to pre-IPO research reports. In particular, they seek to ensure that pre-IPO research reports may only be prepared by reference to information reasonably expected to be contained in the listing document and information in the public domain. The amendments to the Code of Conduct and CFA Code have therefore imposed new obligations on sponsors, firms licensed or registered by the SFC employing research analysts preparing pre-IPO research reports and research analysts.

## Key Changes To The SFC Regulatory Framework For Pre-IPO Research Reports

The principal changes to the regulatory framework governing pre-IPO research reports are summarised below.

### 1. Sponsors' Responsibility to Ensure Material Information Provided to Analysts is Contained in the Listing Document

On a listing application, a sponsor is required to take reasonable steps to ensure that all material information, including forward-looking information (whether quantitative or qualitative), disclosed or provided to analysts is contained in the relevant prospectus, listing document, offering circular or similar document (paragraph 5.10 of the CFA Code).

### 2. Paragraph 16 of the Code of Conduct Extended to Pre-IPO Research Reports

The requirements of Paragraph 16 of the Code of Conduct (**Paragraph 16**) regulating the conduct of analysts and their employers (which previously applied only to analysts covering companies listed on the Exchange) have been extended to apply also to analysts covering:

1. companies that are about to list their securities on the Exchange for the first time;
2. proposed listings of and listed SFC-authorized REITS on the Exchange; and
3. entities established to conduct business operations (constituted in a form other than that of a company or REIT) which propose to list or are listed in Hong Kong.

Accordingly, the issue of pre-IPO research reports is now subject to all the requirements of Paragraph 16. The following requirements in particular should be noted.

#### Requirement for Firms to Disclose Financial Interests in and Business Relationships with a Listing Applicant

The following interests and relationships must be disclosed in research reports:

1. where the firm has a financial interest of an amount equal to or more than 1% of the listing applicant’s issued share capital (or issued units);
2. where the firm makes, or will make, a market in the listing applicant’s securities;
3. where the firm has an individual employed by or associated with the firm serving as an officer of the listing applicant;
4. where the firm has an investment banking relationship with the listing applicant (any compensation or mandate for investment banking services received within the previous 12 months is taken to constitute an investment banking relationship);
5. where an analyst or his associate serves as an officer of the new listing applicant or has any financial interests in the listing applicant; and
6. where the listing applicant or other third party has provided or agreed to provide any compensation or other benefits in connection with the investment research.

In relation to (iv) above, an “investment banking relationship” includes when a firm is involved in an IPO as a sponsor or when it acts as a corporate finance adviser. These relationships should be disclosed in pre-IPO Research Reports and as a matter of good practice, the firm should explain its conflict of interest, including potential benefits from the investment banking relationship.[[1]](#footnote-31)

#### Quiet Periods

A firm that acts as a manager, sponsor or underwriter of a public offering must not issue any investment research covering the listing applicant at any time within 40 days immediately following the day on which the securities are priced (i.e. the day when the specific price of the offering is determined) unless the firm has been issuing investment research on the listing applicant with reasonable regularity in its normal course of business, or on occurrences of major events that would affect the price of securities and the events are known to the public.

### 3. Compliance systems regarding non-prospectus information

Paragraph 16.7(b) of the Code of Conduct requires firms employing research analysts preparing pre-IPO research reports to establish written policies and control procedures to ensure that these analysts are not provided by the firm with any material information, including forward-looking information (whether qualitative or quantitative) concerning the new listing applicant, that is not:

1. reasonably expected to be included in the prospectus; or
2. publicly available (**Non-prospectus Information**).

The test for determining whether information is “material” is whether the information is material to an investor in forming a valid and justifiable opinion of the listing applicant and its financial condition and profitability.[[2]](#footnote-34)

This amendment to the Code of Conduct codifies the existing practice for sponsors and other firms involved in the listing process to establish, maintain and enforce independence and impartiality between their investment function and research function.

### 4. Prohibition on Analysts seeking Non-prospectus Information

Paragraph 16.11(c) of the Code of Conduct prohibits research analysts preparing pre-IPO research reports from seeking from the listing applicant or its advisers any Non-prospectus Information (as defined above). In this connection, the expectation that an analyst only uses information that is reasonably expected to be included in the prospectus or that is publicly available does not prohibit an analyst from conducting his own due diligence such as undertaking site visits.

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

**Charltons - Hong Kong Law Newsletter - Issue 145 - 06 February 2012**

1. See the SFC’s Consultation Conclusions on the Regulatory Framework for Pre-Deal Research (at paragraph 21). [↑](#footnote-ref-31)
2. See the SFC’s Consultation Conclusions on the Regulatory Framework for Pre-Deal Research (at paragraph 38). [↑](#footnote-ref-34)