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[online version](http://www.charltonslaw.com/hkex-incorporates-listing-decision-ld45-3-regarding-conditions-for-waiver-from-strict-compliance-with-gem-listing-rules-into-guidance-letter-gl25-11/)

# HKEx Incorporates Listing Decision LD45-3 (Regarding Conditions For Waiver From Strict Compliance With GEM Listing Rules 7.03(1) and 11.10) Into Guidance Letter GL25-11

Hong Kong Exchanges and Clearing Limited (the **Exchange**) has withdrawn [Listing Decision LD45-3](http://www.hkex.com.hk/eng/rulesreg/listrules/listarchive/listarc_listdec/Documents/ld45-3.pdf) [[archived copy](ld45-3.pdf)] and incorporated its conclusion into [Guidance Letter GL25-11](http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/Documents/gl25-11.pdf) [[archived copy](gl25-11.pdf)]. GL25-11 now sets out the conditions under which a waiver from strict compliance with GEM Listing Rules 7.03(1) and 11.10 (**Waiver**) may be obtained.

## Listing Decision LD45-3

### Background

Listing applicants usually experience practical difficulty in producing audited accounts for the latest financial year if they intend to issue prospectuses shortly after the year end due to the strict restrictions of GEM Listing Rules 7.03(1) and 11.10.

### Facts

Company A proposed to be listed in February of a certain year (**Year T**). Its financial year ended on 31 December. The accountants’ report that was included in Company A’s prospectus included the combined results of the group covering the two years ended 31 December of Year T minus 2 (**Year T-2**) and the nine months ended 30 September of Year T minus 1 (**Year T-1**).

Company A would be in compliance with GEM Listing Rule 11.11 which requires that the latest financial period reported on by the reporting accountants must not have ended more than six months before the dated of the prospectus. However Company A would not be in compliance with GEM Listing Rules 7.03(1) and 11.10.

### Issue

Whether Company A would be granted a Waiver so that the accountant’s report that was included in its prospectus would not be required to include the financial information up to its latest financial year end?

### Applicable Rules

GEM Listing Rules 7.03(1) and 11.10 require that, in the case of a new applicant, the accountants’ report must include the results in respect of each of the two financial years immediately preceding the issue of the listing document.

GEM Listing Rule 11.11 requires in the case of a new applicant, the latest financial period included in the accountant’s report must not have ended more than 6 months before the date of the listing document.

GEM Listing Rule 18.03 requires the listed issuer to despatch to its shareholders its annual report no later than three months after its financial year-end.

### Decision

The Exchange granted a Waiver provided that the latest financial period reported on by the reporting accounts would not have ended more than six months before the date of the prospectus and the maximum allowable time between the latest financial period reported on and the proposed listing date was not more than two months.

This was based on the fact that GEM Listing Rule 18.03 requires the listed issuer to dispatch its annual report to its shareholders no later than three months after its financial year end. Therefore the Exchange determined that the cut-off line for granting a Waiver should be one month before the due date on which the first audited reports after listing must be despatched.

## Guidance On Conditions For Waivers From Strict Compliance With GEM Listing Rules 7.03(1) And 11.10

The conditions on which Waivers may be obtained are now set out in Guidance Letter 25-11 as follows:-

1. the applicant must list on the Exchange within two months after the latest financial year end;
2. the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance Requirements;
3. a profit estimate for the latest financial year (which complies with GEM Rules 14.29 to 14.31) must be included in the prospectus or the applicant must provide justification why a profit estimate cannot be included in the prospectus; and
4. there must be a directors’ statement in the prospectus that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end.

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