

AMENDMENTS TO HONG KONG STOCK EXCHANGE LISTING RULES – NOTIFIABLE TRANSACTIONS EXEMPTION FOR AIRCRAFT LEASING ACTIVITIES

On 17 August 2018, The Stock Exchange of Hong Kong Limited (the Stock Exchange) published consultation conclusions (the Consultation Conclusions) to the consultation paper dated 17 November 2017 in which the Stock Exchange proposed an exemption from the notifiable transaction rules for certain qualified aircraft leasing activities by certain qualified aircraft lessors. The Stock Exchange decided to adopt, with certain modifications, the proposals set out in the consultation paper and amended Chapter 14 of The Rules Governing the Listing of Securities on the Stock Exchange (the Listing Rules) accordingly, with effect from 15 October 2018.

These amendments to the Listing Rules provided definitions of qualified aircraft lessors and their qualified aircraft leasing activities which would be exempted from specific announcement, circular and/or shareholder approval requirements applicable to notifiable transactions. Such qualified issuers would, instead, be subject to more relaxed disclosure requirements with respect to such qualified aircraft leasing activities by way of announcement and by disclosure in their interim/annual reports.

These amendments are summarised as follows:

QUALIFIED AIRCRAFT LESSORS

Pursuant to Rule 14.04(10E) of the amended Listing Rules, a "Qualified Aircraft Lessor" refers to a listed issuer actively engaged in aircraft leasing with aircraft operators as a principal business in its ordinary and usual course of business with the following three criteria:

Key issues

- Qualified aircraft lessors
- Qualified aircraft leasing activities
- Disclosure requirements for qualified aircraft leasing activities

- there is clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer's latest published annual report and financial statements (or in the case of a newly listed issuer, its listing document);
- aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the issuer's latest published financial statements according to the relevant accounting standards adopted for the preparation of its annual financial statements; and
- the lessor's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry. Individuals relied on must have a minimum of five years' relevant industry experience.

General definition of Qualified Aircraft Lessor

The conclusion of the Stock Exchange has been to provide an exemption from specific announcement, circular and/or shareholder approval requirements applicable to notifiable transactions for aircraft leasing activities in the ordinary and usual course of business of listed aircraft lessors. To avoid abuse of the exemption, the exemption does not apply to aircraft leases with non-aircraft operators. However, there are no restrictions as to the types or models of aircraft involved.

Where a Qualified Aircraft Lessor is a listed subsidiary of another listed issuer, the listed holding company would be considered to meet the qualification criteria for a Qualified Aircraft Lessor and also to be eligible for the exemption. If the listed holding company is not a Qualified Aircraft Lessor because aircraft leasing is not one of its principal activities or business areas, then the aircraft leasing activities conducted through the listed subsidiary are likely to be immaterial to the listed holding company and, as a result, unlikely to be notifiable transactions at the holding company level.

With respect to compliance with the amended Listing Rules, it is not necessary for a listed issuer to seek the Stock Exchange's confirmation as to whether it is a Qualified Aircraft Lessor. Instead, the issuer need only disclose in its announcement of the qualified aircraft leasing activity that it has fulfilled the qualification criteria and other exemption conditions. Please see below for further details.

Criteria (a) and (b) – Disclosure requirements

Under the amended Listing Rules, aircraft leasing is required to be disclosed as a current and continuing principal business activity in the annual report of the issuer and reported as a separate and continuing segment (if not the only segment) in the issuer's financial statements. Please see below for further details.

Criteria (c) – Management experience in aircraft leasing industry

Under the amended Listing Rules, the Stock Exchange stressed that a Qualified Aircraft Lessor's directors and senior management should be "taken together" when assessing their experience. It does not require all directors and senior management to have industry-specific experience; instead, it leaves the issuer the discretion to ensure that it has a sufficient number of directors and senior management possessing the relevant experience.

QUALIFIED AIRCRAFT LEASING ACTIVITIES

Pursuant to Rule 14.04(10D) of the amended Listing Rules, "Qualified Aircraft Leasing Activity" refers to the following transactions undertaken by a Qualified Aircraft Lessor in its ordinary and usual course of business:

- acquisition of aircraft;
- finance lease of aircraft to an aircraft operator, including financing arrangements in a sale and leaseback transaction;
- operating lease of aircraft to an aircraft operator; or
- disposal of aircraft.

Exemption for both finance leases and operating leases

The Stock Exchange noted that, under the then current rules, an operating lease was only notifiable to the extent that it resulted in a significant change to the issuer's business but noted also that this threshold may disproportionately affect a smaller lessor expanding its business. In addition, the Stock Exchange noted submissions to the consultation paper's proposal to extend the exemption to finance leases that both operating leases and finance leases were equally core aircraft leasing activities and should not be treated differently under the proposed exemption. In response to this, the amended Listing Rules made the exemption available to both finance leases and operating leases to aircraft operators that are conducted in the ordinary course of business of a Qualified Aircraft Lessor.

Aircraft leasing through intermediate lessors

The Stock Exchange noted the market practice to conduct aircraft leasing through intermediate lessors (which may be owned by the lessor, the aircraft operator or third parties). In response to this, the amended Listing Rules also made the exemption available to aircraft leases through intermediate lessors related to aircraft operators (but not otherwise the lessor or third parties). Where the intermediate lessor is owned by a listed aircraft lessor, it would be considered to be part of the listed issuer's group and already eligible for the proposed exemption. Structures where title is held by entities unrelated to the lessor (such as owner trust or other titleholding structures) were not specifically considered.

DISCLOSURE REQUIREMENTS FOR QUALIFIED AIRCRAFT LEASING ACTIVITIES

Pursuant to Rule 14.33C of the amended Listing Rules, a Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements applicable to notifiable transactions provided that:

- it is undertaken by a Qualified Aircraft Lessor in its ordinary and usual course of business;
- the Qualified Aircraft Lessor's board has confirmed that:
 - the transaction is entered into by the lessor in its ordinary and usual course of business and on normal commercial terms; and
 - the terms of transaction are fair and reasonable and in the interests of the lessor and its shareholders as a whole; and

- the Qualified Aircraft Lessor complies with the disclosure requirements for announcement and annual/interim report.

Announcements

Pursuant to Rule 14.33D(1) of the amended Listing Rules, the Stock Exchange requires that a Qualified Aircraft Lessor must publish an announcement as soon as possible after the terms of the transaction have been finalised, containing the following information:

- the date of the transaction;
- the identity and a description of the principal business activities of the counterparty to the transaction, and a confirmation that the counterparty and its ultimate beneficial owner(s) are third parties independent of the issuer and its connected persons;
- a description of the transaction and the aircraft which is the subject of the transaction (including the expected year of delivery of the aircraft in the case of an acquisition); and
- information to demonstrate that the exemption conditions have been met, in the form of a confirmation by the issuer's board that, (1) the issuer has fulfilled the qualification criteria for a Qualified Aircraft Lessor (see above); (2) the transaction is entered into by the issuer in its ordinary and usual course of business and on normal commercial terms; and (3) the terms of the transaction are fair and reasonable and in the interests of the lessor and its shareholders as a whole.

The intention of the Stock Exchange is to keep investors informed of material transactions conducted by a Qualified Aircraft Lessor. The disclosure of the identities of the counterparties to the transaction is considered to be enhancing the transparency of the aircraft leasing activity.

However, the Stock Exchange does not require the disclosure of the list prices of the aircraft purchased on the basis that there is usually a substantial or otherwise meaningful difference between the list price and the actual consideration for the aircraft. Issuers may disclose such information on a voluntary basis.

Circular and Shareholders' meeting

The Qualified Aircraft Leasing Activities conducted by a Qualified Aircraft Lessor are exempt from the requirements related to circulars and/or shareholders' meetings under Chapter 14 of the amended Listing Rules. However, if the transactions are conducted by a Qualified Aircraft Lessor with connected person(s) (as defined under the Listing Rules), the Qualified Aircraft Leasing Activities shall still be subject to the requirements of connected transactions under Chapter 14A of the Listing Rules.

Interim/annual reports

The Stock Exchange required disclosure for annual and interim reports so as to facilitate shareholders' assessment of the impact of the acquisitions or disposals of aircraft on the aircraft lessor's financial position on an aggregated basis, without disclosing confidential information about any particular individual transaction.

Pursuant to Rule 14.33D(2) of the amended Listing Rules, the following information is required to be disclosed in the next interim report (where applicable) and annual report:

- the aggregate number of aircraft owned by the lessor as at the end of the reporting period with a breakdown by aircraft model and the aggregate net book value of the aircraft;
- the aggregate number of aircraft subject to a commitment to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments;
- the aggregate number of aircraft sold for the reporting period;
- the aggregate net book value and the aggregate net gain or loss on disposal of aircraft for the reporting period; and
- the average lease rental yield of each of (i) the operating lease business and (ii) the finance lease business in relation to aircraft leasing for the reporting period.

CONCLUSION

In conclusion, the main amendments to the Listing Rules as a result of the Consultation Conclusions provide a more relaxed notification and reporting regime for certain qualified issuers conducting certain qualified core leasing activities.

In summary:

- a Qualified Aircraft Lessor is defined as a listed issuer that is actively engaged in aircraft leasing with aircraft operators as its principal activity. The issuer must also satisfy the following three criteria: (a) there is a clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer's latest published annual report (or in the case of a newly listed issuer, its listing document); (b) aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the latest published financial statements; and (c) the issuer's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry, and the individuals relied on must have a minimum of five years' relevant industry experience;
- Qualified Aircraft Leasing Activities include acquisitions or disposals of aircraft, or finance leases or operating leases of aircraft with aircraft operators, that are conducted in the ordinary and usual course of business of a Qualified Aircraft Lessor; and
- Qualified Aircraft Leasing Activities are exempt from the specific announcement, circular and/or shareholders' approval requirements applicable to notifiable transactions. An issuer is required to provide alternative disclosure by way of an announcement and in its interim/annual reports. However, this exemption does not apply to any connected transactions between a Qualified Aircraft Lessor with its connected person(s) (as defined under the Listing Rules).

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