
QUESTIONNAIRE ON PROPOSED CHANGES TO THE LISTING RULES

The purpose of this questionnaire is to seek views and comments from market users and interested parties regarding the issues discussed in the Combined Consultation Paper on Proposed Changes to the Listing Rules (the “Combined Consultation Paper”) published by The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), in January 2008.

Amongst other things, the Exchange seeks comments regarding whether the current Main Board Listing Rules and Growth Enterprise Market Listing Rules should be amended.

A copy of the Combined Consultation Paper can be obtained from the Exchange or at <http://www.hkex.com.hk/consul/paper/consultpaper.htm>.

Please return completed questionnaires on no later than **7 April 2008** by one of the following methods:

By mail or hand delivery to: Corporate Communications Department
Re: Combined Consultation Paper on Proposed Changes to the Listing Rules
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

By fax to: (852) 2524-0149

By email to: cvw@hkex.com.hk

The Exchange’s submission enquiry number is (852) 2840-3844.

Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages as necessary.

Issue 1: Use of websites for communication with shareholders

Question 1.1: Do you agree that the Rules should be amended so as to remove the requirement that all listed issuers must, irrespective of their place of incorporation, comply with a standard which is no less onerous than that imposed from time to time under Hong Kong law for listed issuers incorporated in Hong Kong with regard to how they make corporate communications available to shareholders (as proposed in paragraph 1.20(a) of the Combined Consultation Paper)?

- Yes
 No

Please provide reasons for your views.

*We agree to dispense with 'hard copies' in certain cases [e.g. annual report, interim report] but are unclear as to how this would work in practice, particularly in relation to notices of meetings or any communications requiring shareholders' actions.
Suggest to abolish the Listing Rules requirements to submit printed copies of all announcements, circulars, interim reports & annual reports.*

Question 1.2: Do you agree that the Rules should be amended so as to allow a listed issuer to avail itself of a prescribed procedure for deeming consent from a shareholder to the listed issuer sending or supplying corporate communications to him by making them available on its website?

- Yes
 No

Please provide reasons for your views.

Nil

Question 1.3: In order for a listed issuer under our proposal to be allowed to send or supply corporate communications to its shareholders by making them available on its website, its shareholders must first have resolved in general meeting that it may do so or its constitutional documents must contain provision to that effect. Do you concur that, as in the UK, the listed issuer should also be required to have asked each shareholder individually to agree that the listed issuer may send corporate communications generally, or the corporate communications in question, to him by means of the listed issuer's website and to have waited for a specified period of time before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer's website?

- Yes
 No

Please provide reasons for your views.

Nil

Question 1.4: If your answer to *Question 1.3* is “yes”, do you agree that:

- (a) the specified period of time for which the listed issuer should be required to have waited before the shareholder is deemed to have consented to a corporate communication being made available to him solely on the listed issuer’s website should be 28 days;

- Yes
 No

- (b) where a shareholder has refused to a corporate communication being made available to him solely on the listed issuer’s website, the listed issuer should be precluded from seeking his consent again for a certain period of time; and

- Yes
 No

- (c) if your answer to (b) is “yes”, should the period be 12 months?

- Yes
 No

Please provide reasons for your views.

Nil

Do you have any other comments you consider necessary to supplement your reply to this *Question 1.4*?

Notwithstanding our agreement that an issuer cannot seek consent again within 12 months if a shareholder has refused to allow communication to be made available to him on the website, we believe that allowance should be made for a shareholder to change its instructions voluntarily to revoke its refusal if it wishes.

Question 1.5: Do you consider that the Rules should be amended to remove the requirement for express, positive confirmation from a shareholder for the sending of a corporate communication by a listed issuer to the shareholder on a CD?

- Yes
 No

Please provide reasons for your views.

Nil

Question 1.6: Do you agree that the draft Rules at Appendix 1 will implement the proposals set out in Issue 1 of the Combined Consultation Paper?

- Yes
 No

Please provide reasons for your views.

Nil

Issue 2: Information gathering powers

Question 2.1: Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information?

- Yes
 No

Question 2.2: Do you agree that the draft Main Board Rule 2.12A at Appendix 2 will implement the proposal set out in *Question 2.1* above?

- Yes
 No

Issue 3: Qualified accountants

Question 3.1: Do you agree that the requirement in the Main Board Rules for a qualified accountant should be removed?

Yes

No

Please provide reasons for your views.

We do not believe that the present rule, in itself, enhances the corporate governance of issuers because the rule only requires the appointment of an accountant who holds a basic level of qualification; there is no requirement for any minimum years' or relevance of experience. Therefore, we agree with the Exchange that the present rule only serves to draw a distinction between the requirements of the Exchange and other international exchanges with little practical benefit. Neither LSE nor SGX has such requirement.

In practice, rather than follow the HKEx's recommended practice and appoint a Qualified Accountant to the Board as one of its executive directors, listed issuers usually simply appoint a Qualified Accountant who also takes the role of a company secretary as required under rule 8.17 of the Listing Rules. Unless the rule is strengthened to require a Qualified Accountant with a credible level of experience to be appointed to the Board, the intention to have an executive director to monitor financial reporting obligations of listed issuers is not achieved. However, we do not think that such a strengthening of the Rule is desirable and that it should be left to the Sponsor and the Board to be satisfied that the issuer has the necessary level of management expertise.

Clearly, an issuer should have a professional accountant, lawyer or company secretary within its management who, amongst other things, should have a working knowledge of the Listing Rules. However, we do not think that imposing a simply accounting, legal or company secretarial qualification is enough to satisfy shareholders that the relevant person is competent. In practice, the necessary level of competence can only be assessed preliminarily by the sponsor and the Board and, on an on-going basis, by the Board alone. In extreme cases, the Exchange may observe incompetence on the part of the issuer's management and might be minded to make informal recommendations to the Board, as well as disciplining the issuer concerned.

Question 3.2: Do you agree that the requirement in the GEM Rules for a qualified accountant should be removed?

Yes

No

Please provide reasons for your views.

Same as above.

Issue 4: Review of sponsor's independence

Question 4.1: Do you agree that the Rules regarding sponsor's independence should be amended such that a sponsor is required to demonstrate independence at any time from the earlier of the date when the sponsor

agrees its terms of engagement with the new applicant and when the sponsor commences work as a sponsor to the new applicant up to the listing date or the end of the price stabilisation period, whichever is the later?

Yes

No

Please provide reasons for your views.

The extension seems sensible and appropriate to avoid abuses.

Question 4.2: Do you agree that the draft Rules at Appendix 4 will implement the proposals set out in *Question 4.1* above?

- Yes
 No

Please provide reasons for your views.

Nil

Issue 5: Public float

Question 5.1: Do you agree that the existing Rule 8.08(1) (d) should be amended?

- Yes
 No

Question 5.2: If your answer to *Question 5.1* is “yes”, do you agree that the existing Rule should be amended as proposed at Appendix 5?

- Yes
 No

Do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

Nil

Question 5.3: Do you have any other comments on the issue of public float? Please be specific in your views.

We suggest more progressive measures should be provided and the exchange should set out minimum market caps for each percentage level between 10%-15%, ie adopting a sliding scale rather than coarse steps.

Question 5.4: Do you agree that the existing Rule 8.24 should be amended?

- Yes
 No

Question 5.5: If your answer to *Question 5.4* is “yes”, do you agree that the existing Rule should be amended as proposed at Appendix 5?

- Yes
 No

Do you have other suggestions in respect of how the existing Rule should be amended? Please provide reasons for your views.

The present proposal (to exclude all those holding 5% or more) seems too extreme. In particular, in our view, cornerstone investors are not "public" if their shares are locked up (at least, for any material period of time). We suggest that the qualitative measures in relation to the cornerstone investors' involvement in the business of listed issuers should be maintained.

Question 5.6: Do you consider that there is the need to regulate the level of market float?

- Yes
 No

Question 5.7: If your answer to *Question 5.6* is “yes”, do you have suggestions as to how it should be regulated, e.g. in terms of percentage or value, or a combination of both? Please provide reasons for your views.

Consistent with 5B, we agree that the shares that are subject to lock-up should be excluded from the calculation of market float. However, that qualitative measures should be retained for the time being.

Issue 6: Bonus issues of a class of securities new to listing

Question 6.1: Do you agree that the requirement for a minimum spread of securities holders at the time of listing under Main Board Rules 8.08(2) and 8.08(3) should be disapplied in the event of a bonus issue of a class of securities new to listing?

- Yes
 No

Please provide reasons for your views.

We see practical difficulty in assessing the beneficial interests of shareholders after listing.

Question 6.2: Do you consider it appropriate that the proposed exemption should not be available where the listed shares of the issuer may be concentrated in the hands of a few shareholders?

Yes

No

If so, do you consider the five-year time limit to be appropriate?

Yes

No

Please provide reasons for your views.

As mentioned above, we envisage difficulties in ascertaining beneficial ownership of the shares. In respect of a bonus issue of shares to all shareholders *pari passu*, we do not think there should be any material concerns.

If, however, a time limit on a concentration announcement is required, we think that five years is too long. It should be reduced to three years or, if earlier, the time when the issuer satisfies the Exchange that there is no longer any concentration.

Question 6.3: Do you agree that the draft Rules at Appendix 6 will implement the proposals set out in *Questions 6.1 and 6.2* above?

Yes

No

Please provide reasons for your views.

Nil

Issue 7: Review of the Exchange's approach to pre-vetting public documents of listed issuers

Question 7.1: Do you agree that the Exchange should no longer review all announcements made by listed issuers?

Yes

No

Please provide reasons for your views.

No fundamental problem with post-vetting system provided that a system is put in place where the Exchange is required to respond promptly to enquiries regarding content of documents, classification of transactions and interpretation of the Listing Rules.

Question 7.2: Do you have any views on the proposed arrangements and issues the Exchange should consider in order to effect an orderly transition from the current approach to the new approach with a further reduction in the scope of pre-vetting of announcements?

Refer to 7.1

Question 7.3: Do you support the proposal to amend the pre-vetting requirements relating to:

(a) circulars in respect of proposed amendments to listed issuers' Memorandum or Articles of Association or equivalent documents; and

Yes

No

(b) explanatory statements relating to listed issuers purchasing their own shares on a stock exchange?

Yes

No

Please provide reasons for your views.

Clarify (a) the meaning of 'unusual features' which seems somewhat vague, and (b) confirmation as to whom the legal opinion is to be addressed to and who may rely on this opinion. Our view is that the opinion should only be addressed to the issuer and only the issuer should be able to rely on the opinion, although a copy of the opinion may be provided to the Exchange for its information but without the Exchange being able to rely on the opinion.

Question 7.4: Do you agree that the Exchange should continue to pre-vet (pursuant to a new requirement in the Rules) the categories of documents set out in paragraph 7.50 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

A system should be in place where listed issuers can submit draft documents to the Exchange for comment on a voluntary basis.

Question 7.5: Do you support the proposal to amend the circular requirements relating to discloseable transactions including the proposal regarding situations where the Rules currently require that expert reports are included in a circular?

Yes

No

Please provide reasons for your views.

However, subject to the caveat that additional information such as expert reports can be issued in a subsequent announcement because the report may not be available at the time of the initial announcement and it may be a condition precedent of the announcement to obtain such a report.

Question 7.6: Do you have any comments on the proposed minor Rule amendments described at paragraphs 7.59 to 7.63 of the Combined Consultation Paper? Please provide reasons for your views.

Nil

Question 7.7: Do you agree that the draft (Main Board and GEM) Rules at Appendix 7 will implement the proposals set out in Issue 7 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Nil

Issue 8: Disclosure of changes in issued share capital

Question 8.1: Are there any other types of changes in issued share capital that should be included in the Next Day Disclosure Return?

Yes

No

If so, please provide reasons for your views, together with the types of changes.

Nil

Question 8.2: Have the various types of changes in a listed issuer's issued share capital been appropriately categorised for the purpose of next day disclosure, bearing in mind the need to strike a balance between promptly informing the market on the one hand and avoiding the creation of a disproportionate burden on listed issuers on the other?

Yes

No

Question 8.3: Is 5% an appropriate *de minimis* threshold for those categories of changes to which it applies?

Yes

No

Please provide reasons for your views.

Nil

Question 8.4: Do you have any comments on the draft of the Next Day Disclosure Return for equity issuers?

Nil

Question 8.5: Do you have any comments on the draft of the Next Day Disclosure Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?

Nil

Question 8.6: Is 9:00 a.m. of the next business day an achievable deadline for the Next Day Disclosure Return?

Yes

No

Please provide reasons for your views.

Nil

Question 8.7: Do you have any comments on the draft of the revised Monthly Return for equity issuers?

Nil

Question 8.8: Do you have any comments on the draft of the revised Monthly Return for CISs listed under Chapter 20 of the Main Board Rules, other than listed open-ended CISs?

Nil

Question 8.9: Do you have any comments on the draft of the revised Monthly Return for open-ended CISs listed under Chapter 20 of the Main Board Rules?

Nil

Question 8.10: Is 9:00 a.m. of the fifth business day following the end of each calendar month an achievable deadline for publication of the Monthly Return?

Yes

No

Please provide reasons for your views.

Listed issuers have been updating the changes in their issued share capital from time to time and the change from the tenth business day to the fifth business day following the end of each calendar month for publication of the Monthly Return does not appear to particularly onerous to listed issuers.

Question 8.11: Should the Exchange amend the Rules to require listed issuers to make an announcement as soon as possible when share options are granted pursuant to a share option scheme?

- Yes
 No

If so, do you have any comments on the details which we propose to require listed issuers to disclose in the announcement?

We are of the view that to ease the administrative burden of listed issuers, the Exchange may consider providing listed issuers with a standard template in a form which is similar to the level of disclosure required in the Next Day Disclosure Return.

Question 8.12: Do you agree that the draft Rules at Appendix 8A will implement the proposals set out in Issue 8 of the Combined Consultation Paper?

- Yes
 No

Please provide reasons for your views.

Nil

Issue 9: Disclosure requirements for announcements regarding issues of securities for cash and allocation basis for excess shares in rights issue

Question 9.1: Do you support the proposal to amend Main Board Rule 13.28 and GEM Rule 17.30 to extend the specific disclosure requirements to other categories of issues of securities for cash and to include additional items of information in the amended Rule?

- Yes
 No

Please provide reasons for your views.

The proposal will align the disclosure requirements for issues of securities for cash whether under the general mandate or not, which are not currently set out in the Listing Rules for issues of securities for cash under specific mandates.

Question 9.2: Do you agree that the draft Rules at Appendix 9 will implement the proposal set out in *Question 9.1* above?

Yes

No

Please provide reasons for your views.

Nil

Question 9.3: Do you support the proposal to amend Main Board Rules 7.21(1) and 7.26A(1) and GEM Rules 10.31(1) and 10.42(1) to require listed issuers to disclose the basis of allocation of the excess securities in the announcement, circular and listing document for a rights issue/open offer?

Yes

No

Please provide reasons for your views.

We believe that the proposal will not create any extra burden on listed issuers as it simply codifies the existing practice of the Exchange.

Issue 10: Alignment of requirements for material dilution in major subsidiary and deemed disposal

Question 10.1: Should the Rules continue to impose a requirement for material dilution, separate from notifiable transaction requirements applicable to deemed disposals?

Yes

No

Please provide reasons for your views.

Please see our response to Question 10.2 below.

Question 10.2: Do you agree that the requirements for material dilution under Main Board Chapter 13 and GEM Chapter 17 should be aligned to those for deemed disposal in Main Board Chapter 14 and GEM Chapter 19?

Yes

No

Please provide reasons for your views.

The proposal will remove the existing anomalous treatments applicable to dilution in a major subsidiary and a deemed disposal, which has long been the subject of concern amongst market practitioners because it is inconsistent for a material dilution to be subject to more stringent requirements than a deemed disposal. In both cases, the issuer's percentage equity interest in the subsidiary concerned is reduced. A consistent approach should be used and we therefore agree that the notifiable transaction requirements under MB Chapter 14 or GEM Chapter 19 should be applied to both cases.

Question 10.3: Do you agree that the draft Rules at Appendix 10 will implement the proposals set out in *Question 10.2* above?

Yes

No

Please provide reasons for your views.

Nil

Issue 11: General mandates

Question 11.1: Should the Exchange retain the current Rules on the size of issues of securities under the general mandate without amendment?

Yes

No

If yes, then please provide your comments and suggestions before proceeding to *Question 11.3* below.

We recommend that the existing Rules (i.e. that the listed issuer should be allowed to use its 20% general mandate to issue securities for any purpose) be retained since the whole purpose of the general mandate to issue securities is to provide a listed issuer with the required flexibility such that it can respond to the market and carry out fundraising exercises, or acquisitions in consideration for shares, swiftly.

Question 11.2: Should the Exchange amend the current Rules to restrict the size of the general mandate that can be used to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities to: (*choose one of the following options*)

10%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If yes, then what should be the percentage of the issued share capital for issuing securities for such other purposes?

5%, with the mandate to issue securities for other purposes retained at not more than 10% (or some other percentage) of the issued share capital? If yes, then what should the percentage of the issued share capital be for issuing securities for such other purposes?

10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)?

a percentage other than 10% for any purpose (including to issue securities for cash or (subject to your response to *Question 11.4*) to satisfy an exercise of convertible securities)? If you support this option, then please state the percentage you consider appropriate. _____

Please provide your comments and suggestions.

Nil

Question 11.3: Should the Exchange amend the current Rules so as to exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the granting of the general mandate? (In other words, the listed issuer's issued share capital as at the date of the granting of the general mandate would remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting.)

Yes

No

If yes, please provide your comments and suggestions.

We maintain a neutral view on this issue since the usage of the top-up mandate amongst listed issuers is not common. Thus we do not object to the proposed rule change which will abbreviate the mandate and explanatory statement.

Question 11.4: Should the Exchange amend the current Rules such that:

- (a) the application of the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the “benchmark price” would apply only to placings of shares for cash;
- (b) all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and
- (c) for the purpose of seeking the specific mandate, the listed issuer would be required to issue a circular to its shareholders containing all relevant information?

Yes

No

Question 11.5: Do you have any other comments or suggestions in relation to general mandates? Please specify.

We disagree that a distinction be made as regards the level of discount allowed between (a) the placings of shares for cash (i.e. up to a 20% discount to the benchmarked price); and (b) the issue of shares to satisfy an exercise of convertible securities (i.e. a specific mandate from shareholders is required). We consider that the grant of convertible securities such as warrants and convertible bonds is a legitimate means for listed issuers to raise funds from the investors. If listed issuers are required to obtain a specific mandate for the issue of securities to satisfy an exercise of convertible securities, this would have the same effect as requiring the listed issuers to obtain a specific mandate for the grant of convertible securities. This would hinder the ability of listed issuers to raise funds from the market and cause delays in legitimate fundraising exercises.

Issue 12: Voting at general meetings

Question 12.1: Should the Exchange amend the Rules to require voting on all resolutions at general meetings to be by poll?

Yes

No

Question 12.2: If your answer to *Question 12.1* is “no”, should the Exchange amend the Rules to require voting on all resolutions at annual general meetings to be by poll (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders’ approval and transactions where an interested shareholder will be required to abstain from voting)?

Yes

No

Question 12.3: If your answer to *Question 12.1* is “no”, should the Exchange amend the Rules so that, where the resolution is decided in a manner other than a poll, the listed issuer would be required to make an announcement on the total number of proxy votes in respect of which proxy appointments have been validly made together with: (i) the number of votes exercisable by proxies appointed to vote for the resolution; (ii) the number of votes exercisable by proxies appointed to vote against the resolution; (iii) the number of votes

exercisable by proxies appointed to abstain on the resolution; and (iv) the number of votes exercisable by proxies appointed to vote at the proxy's discretion?

Yes

No

Question 12.4: In the case of listed issuers other than H-share issuers, the Rules currently require 14 days notice for the passing of an ordinary resolution and 21 days notice for the passing of a special resolution. 21 days notice is also required for convening an annual general meeting. In the case of H-share issuers, 45 days notice of shareholder meetings is required under the “Mandatory Provisions for Companies Listing Overseas” for all resolutions. Should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all general meetings?

Yes

No

If so, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the “comply or explain” principle)?

Nil

Question 12.5: If your answer to *Question 12.4* is “no”, should the Exchange amend the Rules to provide for a minimum notice period of 28 clear calendar days for convening all annual general meetings, but not extraordinary general meetings (or, depending on the listed issuer’s place of incorporation, special general meetings)?

Yes

No

If the answer is “yes”, should the provision be set out in the Rules (as a mandatory requirement) or in the Code on Corporate Governance Practices as a Code Provision (and therefore subject to the “comply or explain” principle)?

Nil

Question 12.6: Do you have any other comments regarding regulation by the Exchange on the extent to which voting by poll should be made mandatory at general meetings or the minimum notice period required for convening shareholders meetings?

28 calendar days notice period seems unnecessarily long especially for ordinary resolutions, which could have the potential impact of delaying the completion time for commercial transactions and potentially causing loss of business opportunities for listed issuers. Since it is now a mandatory requirement for all listed issuers to maintain a company website, shareholders therefore have ample opportunity to obtain real time access to company information and there does not appear to be any particular reason justifying the need for an additionally longer notice period in order for shareholders to make their judgement on matters to be considered at the general meetings.

If the concern, in fact, is that materials (eg notices of meetings and circulars) do not reach shareholders in sufficient time - mainly due to them having to be transmitted through nominees - then we think the issue should be addressed by using modern technology (eg allowing notice of meetings to be given on websites - see Issue 1 - and not by extending the notice period). This would be a retrograde step.

Issue 13: Disclosure of information about and by directors

Question 13.1: Do you agree that the information set out in draft new Rule 13.51B should be expressly required to be disclosed by issuers up to and including the date of resignation of the director or supervisor, rather than only upon that person's appointment or re-designation?

- Yes
 No

Please provide reasons for your views.

But a director should be required to update their information only on an annual basis, e.g. in the Annual Report.

Question 13.2: Do you agree that the relevant information should be discloseable immediately upon the issuer becoming aware of the information (i.e. continuously) rather than, for example, only in annual and interim reports?

- Yes
 No

Please provide reasons for your views.

Only in the annual report. We think it would be unduly burdensome for issuers to monitor this information on a continuing basis, especially issuers with large boards with many non-executive directors whose information may change fairly regularly.

Question 13.3: Do you agree that, to ensure that the issuer is made aware of the relevant information, a new obligation should be introduced requiring directors and supervisors to keep the issuer informed of relevant developments?

- Yes
 No

Please provide reasons for your views.

We do not think that such an obligation is necessary. The scope of "relevant developments" would need to be clarified.

Question 13.4: Do you agree that paragraphs (u) and (v) of Main Board Rule 13.51(2) and GEM Rule 17.50(2) should be amended to clarify that the disclosure referred to in those Rules need not be made if such disclosure would be prohibited by law?

Yes

No

Please provide reasons for your views.

Nil

Question 13.5: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out in *Questions 13.1, 13.2, 13.3 and 13.4* above?

Yes

No

Please provide reasons for your views.

But subject to our comments at 13.2 and 13.3 above

Question 13.6: Do you agree that the Rules should be amended to clarify that issuers should publicly disclose in the Appointment Announcements their directors', supervisors' and proposed directors' and supervisors' current and past (during the past three years) directorships in all public companies with securities listed in Hong Kong and/or overseas?

Yes

No

Please provide reasons for your views.

Nil

Question 13.7: Do you agree that Main Board Rule 13.51(2)(c) and its GEM Rules equivalent, GEM Rule 17.50(2)(c), should be amended to clarify that issuers should publicly disclose their directors', supervisors' and proposed directors' and supervisors' professional qualifications?

Yes

No

Please provide reasons for your views.

Nil

Question 13.8: Do you agree that the draft Rules at Appendix 13 will implement the proposals set out in *Questions 13.6 and 13.7* above?

Yes

No

Please provide reasons for your views.

Nil

Question 13.9: Do you agree that Main Board Rule 13.51(2)(m)(ii) should be amended to include reference to the Ordinances referred to in GEM Rule 17.50(2)(m)(ii) that are not currently referred to in Main Board Rule 13.51(2)(m)(ii)?

Yes

No

Please provide reasons for your views.

Nil

Question 13.10: Do you agree that Main Board Rule 13.51(2)(m) and GEM Rule 17.50(2)(m) should be amended so as to put beyond doubt that the disclosure obligation arises where a conviction falls under any one (rather than all) of the three limbs (i.e. Main Board Rule 13.51(2)(m)(i), (ii) or (iii) and GEM Rule 17.50(2)(m)(i), (ii) or (iii))?

Yes

No

Please provide reasons for your views.

Nil

Question 13.11: Do you agree that the draft Rules at Appendix 13 will implement the proposal set out in *Questions 13.9 and 13.10* above?

Yes

No

Please provide reasons for your views.

Nil

Issue 14: Codification of waiver to property companies

Question 14.1: Do you agree that the Proposed Relief should provide relaxation of strict compliance with the shareholders' approval requirements of the Rules only to listed issuers that are actively engaged in property development as a principal business activity?

Yes

No

Please provide reasons for your views.

We agree with the exemption only in the absence of a better solution - it is better than nothing but is not, in our view, the correct or complete way to address the problem faced by property companies.

Question 14.2: Do you agree with the proposed criteria in determining whether property development is a principal activity of a listed issuer (described at paragraphs 14.12 and 14.13 of the Combined Consultation Paper)?

Yes

No

Please provide reasons for your views.

Nil

Question 14.3: Do you agree that the scope of the Proposed Relief should be confined to acquisition of property assets that fall within the definition of Qualified Property Projects?

Yes

No

Please provide reasons for your views.

We see no reason why the Proposed Relief cannot be extended to other transaction, e.g. non-government auctions and tenders [but see our comment immediately below]

Are you aware of any examples of Hong Kong listed issuers encountering difficulties in strict compliance with the Rules when participating in other types of auctions or tenders? If yes, please specify what are the problems faced by the listed issuers in participating in these auctions or tenders.

Yes, we are aware of companies that have been unable to submit commercial tenders for property sites or participate in non-government auctions.

In most cases, the problems are experienced by property development or investment companies whose shares trade at a significant discount to their NAV. Consequently, they often breach the 25% major transaction threshold as a result of the consideration exceeding 25% of their market capitalisation, even though the assets test (and other tests) may be considerably under 25%.

We understand that LSE exempts such property companies from the consideration test and we recommend that this should be considered in Hong Kong. Such an exemption would obviate the need for the present exemption and would not be narrowly restricted to HK government auctions, etc.

Question 14.4: Do you agree that Qualified Property Projects which contain a portion of a capital element should qualify for relief from the notifiable transaction Rules set out in Main Board Chapter 14?

Yes

No

If yes, should the Proposed Relief specify a percentage threshold for the capital element within a project? Please provide reasons for your views.

See reasons given to Question 14.3

Question 14.5: Do you agree that the scope of the exemption from strict compliance with Main Board Chapter 14A in relation to the shareholders' approval requirements for property joint ventures with connected persons should be limited to scenarios where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects?

Yes

No

Please provide reasons for your views.

Such a connected person is not "connected" in the case of a joint venture. In fact, it is effectively an independent third party and deals as such with the listed issuer in relation to the joint venture.

Question 14.6: Do you agree that the General Property Acquisition Mandate is useful to confer protection on shareholders and is necessary as regards property joint ventures with connected persons where the connected person is only connected by virtue of being a joint venture partner with the listed issuer in existing single purpose property projects (Type B property joint ventures)?

Yes

No

If yes, should the General Property Acquisition Mandate include any limit on the size of the Annual Cap by reference to some quantifiable thresholds? Please provide reasons for your views.

No

Question 14.7: Are the disclosure obligations described at paragraph 14.51 of the Combined Consultation Paper appropriate?

Yes

No

Please provide reasons for your views.

Nil

Question 14.8: Do you agree that the draft Rule amendments at Appendix 14 will implement the proposals set out in Issue 14 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Nil

Issue 15: Self-constructed fixed assets

Question 15.1: Do you agree that the notifiable transaction Rules should be amended to specifically exclude any construction of a fixed asset by a listed issuer for its own use in the ordinary and usual course of its business?

Yes

No

Please provide reasons for your views.

We agree to the carve out from the Listing Rules, but we are not sure if the proposal will address the issue. In order to fall within the exception under the current definition of 'own use', one needs to demonstrate expertise. In our view, the proposal should define own use along the lines of "it should not matter whether the listed issuer is building the fixed assets itself or engages a third party to build it, as long as they have the expertise to commission the building of assets and to provide the specification".

Question 15.2: Do you agree that the draft Rules at Appendix 15 will implement the proposal set out in *Question 15.1* above?

Yes

No

Please provide reasons for your views.

Refer to 15.1

Issue 16: Disclosure of information in takeovers

Question 16.1: Do you agree that the current practice of the Exchange, i.e. the granting of waivers to listed issuers to publish prescribed information of the target companies in situations such as hostile takeovers, should be codified in the Rules?

- Yes
 No

Please provide reasons for your views.

Nil

Question 16.2: Do you agree the new draft Rule should extend to non-hostile takeovers where there is insufficient access to non-public information as well as hostile takeovers?

- Yes
 No

Please provide reasons for your views.

Nil

Question 16.3: Paragraph (3) of the new draft Rule proposes that the supplemental circular must be despatched to shareholders within 45 days of the earlier of the following:

- the listed issuer being able to gain access to the offeree company's books and records for the purpose of complying with the disclosure requirements in respect of the offeree company and the enlarged group under Rules 14.66 and 14.67 or 14.69; and
- the listed issuer being able to exercise control over the offeree company.

Do you agree that the 45-day time frame is an appropriate length of time?

- Yes
 No

Please provide reasons for your views.

The 45-day period may not be sufficient if the offeror is to prepare the accountants' report on the offeree company. We take the view that in the case where a listed issuer takes over another company listed in Hong Kong or elsewhere, the requirement for preparing an accountants' report on the offeree company should be dispensed with since the information on the offeree company is readily available to the public given its listing status. Thus preparation of the accountants' report would be unnecessarily time consuming and costly and would provide little additional benefit.

Question 16.4: Do you have any other comments on the draft new Rule 14.67A at Appendix 16? Please provide reasons for your views.

Nil

Issue 17: Review of director's and supervisor's declaration and undertaking

Question 17.1: Do you agree that the respective forms of declaration and undertaking for directors and supervisors (i.e. the DU Forms) should be streamlined by deleting the questions relating to the directors' and supervisors' biographical details?

Yes

No

Please provide reasons for your views.

Nil

Question 17.2: Do you agree that the DU Forms for directors should be amended by removing the statutory declaration requirement?

Yes

No

Please provide reasons for your views.

To enhance procedural efficiency.

Question 17.3: Do you agree that the GEM Rules should be amended to align with the practice of the Main Board Rules as regards the timing for the submission of DU Forms by GEM issuers, such that a GEM issuer would be required to lodge with the Exchange a signed DU Form of a director or supervisor after (as opposed to before) the appointment of such director or supervisor?

Yes

No

Please provide reasons for your views.

Nil

Question 17.4: Do you agree that the Rules should be amended such that the listing documents relating to new applicants for the listing of equity and debt securities must contain no less information about directors (and also supervisors and other members of the governing body, where relevant) than that required to be disclosed under Main Board Rule 13.51(2) or GEM 13.50(2), as the case may be?

Yes

No

Please provide reasons for your views.

Nil

Question 17.5: Do you agree that the application procedures should be amended as discussed in paragraph 17.20 to harmonise with the proposed amendments for the purpose of streamlining the respective DU Forms?

Yes

No

Please provide reasons for your views.

Nil

Question 17.6: Do you agree that the draft Rules at Appendix 17 will implement the proposals set out in Issue 17 of the Combined Consultation Paper?

Yes

No

Please provide reasons for your views.

Nil

Question 17.7: Do you agree that a new Rule should be introduced to grant to the Exchange express general powers to gather information from directors?

Yes

No

Question 17.8: Do you agree that the draft paragraph (c) to the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.7* above?

Yes

No

Question 17.9: Do you agree that paragraph (e) of Part 2, Appendix 5B, and paragraph (d) of Part 2, Appendix 5H, of the Main Board Rules should be amended to include detailed provisions for service similar to those of the GEM Rules?

Yes

No

Question 17.10: Do you agree that the proposed amendment to paragraph (e) of the Director's Undertaking at Appendix 17 will implement the proposal set out in *Question 17.9* above?

Yes

No

Question 17.11: Do you agree that the Rules should be amended to make express the ability to change the terms of the Director's Undertaking without the need for every director to re-execute his undertaking?

Yes

No

Issue 18: Review of Model Code for Securities Transactions by Directors of Listed Issuers

Question 18.1: Do you agree with the proposed new exceptions to paragraph 7(d) of the Model Code?

- Yes
 No

Please provide reasons for your views.

We agree with the exceptions to 'dealing'.

But we do not agree with extension of the black-out period as the existing arrangement is sufficient. We think that sufficient protection is provided under the existing black out provisions together with the SFO (regarding insider dealing and market manipulation).

Question 18.2: Do you agree with the proposal to clarify the meaning of “price sensitive information” in the context of the Model Code?

- Yes
 No

Question 18.3: Do you agree that the draft new Note to Rule A.1 of the Code would implement the proposal set out in *Question 18.2* above??

- Yes
 No

Please provide reasons for your views.

Nil

Question 18.4: Do you agree that the current “black out” periods should be extended to commence from the listed issuer’s year/period end date and end on the date the listed issuer publishes the relevant results announcement?

- Yes
 No

Please provide reasons for your views.

See Question 18.1 above. We think that the extension of the blackout periods would be unnecessarily restrictive on the ability of directors to deal in shares, especially if quarterly reporting is adopted.

Question 18.5: Do you agree that there should be a time limit for an issuer to respond to a request for clearance to deal and a time limit for dealing to take place once clearance is given?

Yes

No

Question 18.6: Do you agree that the proposed time limit of 5 business days in each case is appropriate?

Yes

No

Please provide reasons for your views.

Minor Rule amendments

The Exchange invites your comments regarding whether the manner in which the proposed minor Rule amendments set out in Appendix 19 have been drafted will give rise to any ambiguities or unintended consequences.

Do you have any other comments in respect of the issues discussed in the Combined Consultation Paper? If so, please set out your additional comments.

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