

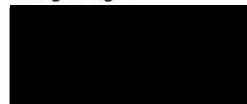


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Our ref
MEM

Date
28 February 2023

By email (response@hkex.com.hk)

Dear Sir or Madam

Re: Consultation Paper on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments

We refer to the Consultation Paper on the Proposals to Expand the Paperless Listing Regime and Other Rules Amendments (the "**Consultation Paper**") issued in December 2022 and are pleased to respond with comments. Unless otherwise defined, all capitalised terms used in this letter shall have the same meanings as defined in the Consultation Paper.

As we do not have detailed comments on all of the questions set out in the Consultation Paper we have not completed the questionnaire and prefer to respond in more general terms which we trust is acceptable.

Overall support

We are very supportive of this latest initiative by the Exchange to streamline the administrative processes for listing-related matters and to move to electronic submission of documents. We believe this will enable more efficient communication with the Exchange, as well as having significant environmental benefits through reduced hard copy filings, and thus paper wastage. We look forward to the development of the proposed new online platform in due course.

In relation to the specific proposals, we set out below our comments.

Question 1 – Do you agree with our proposal to remove the documents identified in Table 1 in Schedule II and that doing so will not jeopardise market quality? Please give reasons for your views.

We are very supportive of the proposal to remove the need for documentation to be filed where they duplicate clear obligations under the Listing Rules. However, there are a number of

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documents in Table 1 that we consider are important tools during a listing application that should still be mandated to be prepared (even if they are not filed with the Exchange). This will help ensure that listing applicants commit appropriate resources to ensuring that the relevant Listing Rule requirement has been complied with. We are concerned that, where the specific filing requirements are dispensed with, listing applicants may be reluctant to expend the costs on engaging external parties to provide the assurances that are currently required and put pressure on sponsors and legal advisers to proceed without the need for these, or with lesser evidence of compliance. For instance (using the document reference number if Table 1 in Schedule II of the Consultation Paper):

2. A signed confirmation from a legal adviser that the listing document duly complies with relevant C(WUMP)O requirements – Whilst Listing Rule 11A.01 notes the requirement for a prospectus to comply with both the Listing Rules and C(WUMP)O requirements, requiring legal advisers to the company to give a confirmation to this effect ensures that comprehensive checks have been made to ensure that the content is fully compliant. Without a confirmation letter, there may be less focus on compliance.
45. Item 11 – confirmation from Reporting Accountants – We note that sponsors are expected to continue to obtain the relevant confirmations in the format suggested in GL60-13 or GL58-13 but note that both of these guidance letters have been withdrawn. We believe it would be helpful if there was a clear and express obligation on the Reporting Accountants to provide such letters to the sponsors in either the Listing Rules or a current guidance letter to avoid any difficulties for the sponsor in obtaining these confirmations with all of the required contents from the Reporting Accountants.
46. Various checklists – We note the Exchange's comment that the sponsor must satisfy itself as to compliance and would be able to continue to prepare the same checklists or adopt such other approaches as it sees fit. However, sponsors currently take comfort from the checklists prepared and signed off by other advisors, such as the valuer and Reporting Accountants, and if these checklists are removed, there may be reluctance from such advisors to provide equivalent comfort to the sponsor. We would suggest that these checklists, whilst not filed with the Exchange, are maintained with an obligation for them to be completed and provided to the sponsors prior to the A1 filing.
47. Item 12(iii) – confirmation from Reporting Accountants in respect of segregation – We note that the Exchange expects the sponsor to continue to obtain the confirmation but that this does not need to be filed. We would encourage the Exchange to provide for this explicitly in a guidance letter so that the Reporting Accountants are clear as to the extent of its obligation.

Question 2 – Do you agree with our proposal to codify the relevant obligations into the Listing Rules or Guidance Materials and repeal the undertakings, confirmations and declarations as set out in Table 2 in Schedule II? Please give reasons for your views.

We are supportive of the proposal to codify obligations currently set out in separate confirmations and declarations. However, we are concerned that, despite the requirement in the newly proposed Rule 3.09D for a director to obtain legal advice on his obligations under the Listing Rules prior to appointment, this may not happen in practice. As a suggested additional check on this, we suggest that a requirement to include details of this training could be added as a specific item to the mandatory disclosure in the corporate governance report in respect of newly appointed directors (in addition to the mandatory disclosure B(i) on how the directors have complied with code provision C.1.4).



Question 3. Do you agree with our proposal to repeal the requirement for listing agreements for listing of debt securities (except for debt issues to professional investors), structured products and interests in CIS and investment companies by codifying the relevant obligations as set out in Table 3 in Schedule II? Please give reasons for your views.

Yes. This proposal ensures consistency in approach for debt securities, structured products and interests in CIS and investment companies with that which already applies for shares.

Question 4. Do you agree with our proposal to incorporate in the Listing Rules an issuer's obligation to obtain necessary authorisations and consents for its actions set out in Part (e) of Table 1 in Schedule II? Please give reasons for your views.

Yes, we agree with this proposal and consider it an important safeguard to ensure that the necessary approvals have been obtained.

Question 5. Do you agree with our proposal to require the submission of the overarching undertakings from new applicants and sponsors in the Form A1 referred to in paragraph 38? Please give reasons for your views.

We note that the sponsor's undertaking in the Form A1 is being extended to confirm that the sponsor will comply with all applicable Listing Rules and guidance materials and due diligence "throughout the listing application process (or for that part of it as we continue to be engaged by the issuer as a sponsor)". We would suggest that this wording is altered to read more clearly as follows: "throughout the listing application process (or ~~for that the part of it as~~ during which we continue to be engaged by the issuer as a sponsor)".

Question 6. Do you agree with our proposal to consolidate the requirement for personal particulars of directors/ supervisors in Form FF004? Please give reasons for your views.

Yes. This will streamline the filing requirements with respect to directors' information.

Question 7. Do you agree with our proposal to remove signature and/or certification requirements for documents set out in Table 5 in Schedule II? Please give reasons for your views

Yes, we agree that the documents filed with the Exchange do not need to be signed given the obligations under both the Listing Rules and SFO to ensure the accuracy of the information submitted.

Question 8. Do you agree with our proposal to remove from the Listing Rules any requirement for submission of multiple copies of the same document and to require submission of one electronic copy only in respect of the documents set out in Table 6 in Schedule II? Please give reasons for your views.

Yes. We strongly support this proposal. It will avoid paper wastage and lead to increased efficiency for parties dealing with the Exchange.

Question 9. Do you agree with our proposal to mandate electronic means as the only mode of submission to the Exchange unless otherwise specified in the Listing Rules or required by the Exchange? Please give reasons for your views.

Yes. Again, we strongly support this proposal as it will make submission of documents to the Exchange more efficient. We look forward, in due course, to the development of the Issuer Platform which will further expedite submission of documents.

Question 10. Do you agree with our proposal to mandate the digitalisation of the prospectus authorisation and registration processes? Please give reasons for your views.



We acknowledge that for the time being the current processes for prospectus authorisation and registration must be followed. However, we very much support the Exchange's initiative to move to a digital process for the authorisation of the prospectus registration. We agree that this will alleviate the administrative process, in particular on the morning of prospectus registration which is currently made unnecessarily difficult by the need to deliver hard copy bundles. We hope that an electronic process can be agreed with the Companies Registry.

Question 11 Do you agree with our proposal to amend the Listing Rules to mandate that listed issuers must disseminate corporate communications to their securities holders electronically if this is permitted by their applicable laws and regulations and their constitutional documents? Please give reasons for your views.

Question 12 Do you agree with our proposal to allow the consent of holders of a listed issuer's securities to be implied for the electronic dissemination of its corporate communications, to the extent permitted under applicable laws and regulations and its constitutional documents? Please give reasons for your views.

Question 13 Do you agree with our proposal to state in the Rules that Actionable Corporate Communications must be sent to the securities holders individually and in electronic form if the holders provide functional electronic contact details? Please give reasons for your views.

Question 14 Do you agree that where a listed issuer does not have functional electronic contact details of a securities holder, an Actionable Corporate Communication must be sent to the holder in hard copy form including a request for the security holder's electronic contact details to facilitate electronic dissemination of Actionable Corporate Communications in future? Please give reasons for your views.

We support the Exchange's initiatives in Questions 11 to 14. We believe that the market is ready to move to an electronic-only environment for receiving communications and that there is no longer a need for hard copies to be supplied in most cases. The current requirements by which companies need to get consent from shareholders can be unduly burdensome. As such, we support the switch to mandatory electronic communications where permitted by law. Listed companies will benefit from easier administration, saving both time and costs.

We would encourage the Exchange to petition for changes to the Companies Ordinance so that Hong Kong-incorporated listed companies are also able to take advantage of the proposed new Listing Rule regime by relaxing the requirements to permit implied consent. Otherwise, listing applicants may be less likely to choose Hong Kong as a jurisdiction of incorporation for their listing vehicles, putting Hong Kong at a disadvantage.

Question 15 If your answer to Question 13 above is yes, do you agree that we should define Actionable Corporate Communications as "any corporate communication that seeks instructions from an issuer's securities holders on how they wish to exercise their rights as the issuer's securities holders"? Please give reasons for your views.

Yes. We consider this an appropriate definition for those communications that should be sent to shareholders individually for their action. The proposed definition is sufficiently broad to capture those types of communications where a shareholder would need to give a specific instruction. We agree that it is not necessary to directly send documents such as notices of meetings to shareholders as the same document is applicable to all shareholders generally.

Question 16 We invite comments on the manner in which the Appendices to the Listing Rules are proposed to be categorised/amended and whether they will give rise to any ambiguities or unintended consequences.



Whilst we do not have strong views on the proposal, we do consider it important that the mandatory provisions of the Listing Rules are clear and easily accessible. As such, we do not necessarily see the benefit of moving the "Fees Rules" out of the Appendices as it may cause confusion as to their status. We believe it is important that the mandatory provisions remain part of the Listing Rules and we are not clear why they need to be moved. In particular, given the rules are now exclusively online, we don't see any benefit in shortening them. The market needs to be clear on the mandatory provisions of the rules. In relation to the Regulatory Forms, if they are to be moved from the Appendices, we think that it may be more useful for them to be stored in the same location as the other forms for easier accessibility. On a general note in this regard in respect of the Exchange's website, we think it is unnecessary and potentially confusing to have a separate section for e-Forms as well the consolidated section on checklists and forms. We would encourage the Exchange, as part of this streamlining initiative, to only have one dedicated section with all the forms in one place only, rather than duplicating information across different sections of the website.

We agree with the proposal to delete those Appendices which are repealed, superseded or unnecessary as a result of the updates to the Listing Rules. We also support the suggestion in Schedule IV to re-structure the Appendices under the suggested themes which is a more logical layout and will be easier for the market to navigate.

Question 17 Do you agree with our proposal to remove the requirement for physical attendance by members to meet the quorum needed for meetings of the Listing Committee and Listing Review Committee? If your answer is "no", please give reasons for your views.

Yes. We agree with the Exchange that physical attendance at these meetings is not needed and that such meetings can be adequately conducted through video conferencing or hybrid methods as appropriate, for greater convenience.

Question 18 Do you agree with our proposal to make minor changes to the Listing Rules described in paragraph 122 to reflect current practices and requirements? If your answer is "no", please give reasons for your views.

Yes. These corresponding changes would be necessary to conform the language used if the paperless listing proposals set out in the Consultation Paper are adopted.

Please let us know if you have any queries in relation to the above.

We confirm that we are happy for the contents of this letter to be made publicly available as part of the consultation process.

Yours faithfully

Herbert Smith Freehills