

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201408.pdf>.

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

Chapter I: Proposed Rule amendments to align the requirements for disclosure of financial information in Main Board Rules Appendix 16 and GEM Rules equivalent with reference to the disclosure provisions in the New Companies Ordinance

1. Do you agree that all issuers (whether or not they are incorporated in Hong Kong) should include disclosures under the provisions of the New Ordinance which reflect alignment of those provisions of the Predecessor Ordinance captured in Main Board Rules Appendix 16 and GEM Rules equivalent as set out in paragraphs 70 to 73 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Chapter II: Proposed Rule amendments to streamline the disclosure requirements of financial information in the Listing Rules with reference to Hong Kong Financial Reporting Standards

2. Do you agree with the proposed revision of Main Board Rules Chapter 4 and Appendix 16 and GEM Rules equivalent in order to streamline the Listing Rules and to avoid potential duplications with the accounting standards?

Yes

No

Please give reasons for your views.

3. Do you agree with the proposed repeal of the disclosure requirements in relation to financial conglomerates in Main Board Rules Chapter 4 and Appendix 16 and GEM Rules equivalent?

Yes

No

Please give reasons for your views.

4. Do you agree with the proposed repeal of Main Board Rules Appendix 15 and GEM Rules equivalent in relation to bank reporting?

Yes

No

Please give reasons for your views.

Chapter III: Other financial information disclosures related proposed Rule amendments

5. Do you agree with the proposed Rule amendments to require an issuer to publish an announcement as soon as practicable after the directors decide to revise the published financial statements and the reason leading to the revision of the financial statements?

Yes

No

Please give reasons for your views.

6. Do you agree with the proposed Rule amendment to require disclosure in results announcements where an issuer has made a prior period adjustment to correct a material error?

Yes

No

Please give reasons for your views.

7. Do you agree with the proposed Rule amendments to Main Board Rules Appendix 16 and GEM Rules equivalent to provide references to disclosure requirements relating to periodic financial reports currently required in other parts of the Listing Rules?

Yes

No

Please give reasons for your views.

We generally agree with this proposal as this will facilitate issuers in checking and ensuring their due compliance with the relevant disclosure requirements.

For the sake of completeness, we suggest adding reference to Rule 21.12(1) in note 6.3 to paragraph 6 of Main Board Rules Appendix 16 and Rule 21.12(2) in note 40.3 to paragraph 40 of Main Board Rules Appendix 16.

We note that the Exchange regularly reviews issuers' annual reports to monitor their compliance with the Listing Rules and publishes reports on its findings and recommendations from such review, and that issuers are expected to note and follow the guidance discussed in the Exchange's review reports. We note, however, that in some areas, issuers may not necessarily appreciate whether the guidance provided in the Exchange's review reports is an elaboration of how an existing specific disclosure requirement under the Listing Rules is considered by the Exchange to be complied with or is merely a recommendation of enhanced disclosure which the issuers may choose not to adopt without breaching the relevant disclosure requirements. In order to further facilitate and enhance issuers' compliance with the relevant disclosure requirements for their annual reports, we suggest the guidance in the Exchange's review reports be further provided or elaborated in Main Board Rules Appendix 16 (say, in the form of notes to the relevant paragraphs setting out the specific disclosure requirements).

Chapter IV: Proposed Rule amendments consequential to the enactment of the New Companies Ordinance

8. Do you agree that the Listing Rules should be amended to align the notice period requirements for companies incorporated in Bermuda and the Cayman Islands with the relevant requirements under the New Ordinance?

Yes

No

Please give reasons for your views.

9. Do you support the proposal to allow companies incorporated in Bermuda and the Cayman Islands to convene general meetings on shorter notice on the same terms as

companies incorporated in Hong Kong (i.e. in accordance with the relevant provisions of the New Ordinance)?

Yes

No

Please give reasons for your views.

If the intention is to ensure that Bermuda or Cayman Islands incorporated issuers are subject to the same notice period requirements as Hong Kong incorporated issuers, we believe Bermuda or Cayman Islands incorporated issuers should be allowed to convene general meetings on shorter notice on the same terms as provided in the Companies Ordinance (Cap. 622), which, in light of the requirement of having a high threshold of shareholders' consent, should offer sufficient protection to shareholders.

Chapter V: Proposed minor Rule amendments

10. Do you agree with the proposal to amend Main Board Rule 13.45(1) and GEM Rules equivalent to require issuers to announce the expected payment dates for their dividends or other distributions as described in paragraph 143 of the Consultation Paper?

Yes

No

Please give reasons for your views.

11. Do you agree with the proposal to amend Main Board Rule 5.03 and GEM Rules equivalent to clarify that a property valuation is required for the circular of any connected transaction that involves an acquisition or disposal of any property interest or property company?

Yes

No

Please give reasons for your views.

We agree that property valuation should be required if the subject property interest or property company involved in the transaction is to be acquired by or disposed to a connected person or a person who is not a connected person as defined in Cap. 14A of Main Board Rules (or Cap.20 of GEM Rules) but who is otherwise connected with a connected person of the issuer at the issuer level where the connection is of such an extent that may confer benefits on that connected person.

However, if the transaction involves the acquisition or disposal of a property interest or property company from or to a third party who has no relationship with a connected person at the issuer level ("Independent Third Party"), e.g. formation of joint venture with a connected person at the issuer level to acquire a property interest or property company from an Independent Third Party, we believe a property valuation report may not be necessary.

Therefore, instead of deleting "from or to a connected person", we propose to amend Main Board Rule 5.03 and GEM Rules equivalent by adding "or a commonly held entity as defined in rule 14A.27" after "from or to a connected person".

12. Do you agree with the proposal to amend Main Board Rules 14.66(8) and 14A.70(15) and GEM Rules equivalent to remove the requirement to disclose information about competing interests of directors of the issuer's subsidiaries and their close associates in transaction circulars?

Yes

No

Please give reasons for your views.

13. Do you agree with the proposal to amend the GEM Rules to include a new GEM Rule 17.49A to require trading suspension for issuers that fail to publish their financial results announcements as described in paragraph 153 of the Consultation Paper?

Yes

No

Please give reasons for your views.

14. The Exchange invites your comments regarding whether the manner in which (i) the proposed Rule amendments consequential to the enactment of the New Ordinance as set out in Chapter IV (see paragraphs 116 to 137 of the Consultation Paper) and (ii) the proposed housekeeping Rule amendments set out in Chapter VI, have been drafted will give rise to any ambiguities or unintended consequences.

Please see Attachment.

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

We suggest the Exchange take this opportunity to also make a housekeeping amendment to clarify whether the 3-year term requirement under Main Board Rule 14A.52 applies to a continuing connected transaction that is "fully exempt".

It was clear from the wordings of the old Main Board Rule 14A.35(1) effective before 1 July 2014 that the 3-year term requirement did not apply to continuing connected transactions that were fully exempt under the old Main Board Rule 14A.33. We note that the wordings of the current Main Board Rule 14A.52 are similar to those in paragraph 56 of the Guide on Connected Transactions issued in April 2012 which referred to the old Main Board Rule 14A.35(1).

Neither the consultation paper on review of connected transaction rules nor the consultation conclusions mentioned that amendments would be made in this regard such that even fully exempt continuing connected transactions should be subject to the 3-year term requirement. However, the wordings of the current Main Board Rule 14A.52 seem to suggest this is the case. We therefore suggest amendments be made to clarify the position in this regard.

- End -

Attachment to the submission by Deacons

Answer to Question 14 to the Questionnaire on Review of Listing Rules on Disclosure of Financial Information with reference to the New Companies Ordinance and Hong Kong Financial Reporting Standards and Proposed Minor/Housekeeping Rule Amendments (Aug 2014)

14. The Exchange invites your comments regarding whether the manner in which (i) the proposed Rule amendments consequential to the enactment of the New Ordinance as set out in Chapter IV (see paragraphs 116 to 137 of the Consultation Paper) and (ii) the proposed housekeeping Rule amendments set out in Chapter VI, have been drafted will give rise to any ambiguities or unintended consequences.

We refer to the proposed amendments to Main Board Rule 9.11(20): "a confirmation from the new applicant's legal advisers that the new applicant's articles of association are not inconsistent with Appendix 3 and the Exchange Listing Rules and the laws of place where the new applicant is incorporated or otherwise established".

The proposed amendment seems to suggest that the appendices to the Exchange Listing Rules do not form part of the Exchange Listing Rules, but this should not be the case by reference to the interpretation of the term "Exchange Listing Rules" set out in Main Board Rule 1.01. We think that the current Main Board Rule 9.11(20) clearly requires compliance with Appendix 3 and, if relevant, Appendix 13 to the Main Board Rules.

Having said, we would suggest another way of amending Rule 9.11(20) to provide clarity for the reasons below. The requirements with which new applicants'/issuers' articles of association or equivalent documents must conform are set out in Appendices 3 and 13 to the Main Board Rules only, but not the other parts of the Main Board Rules. Some of code provisions in Appendix 14 (Corporate Governance Code) also cover matters governed in the articles of association, e.g. rotation of directors. Yet, we believe that the intention of the Exchange in providing for such matters in the code provisions (but not in Appendix 3) is to allow flexibility for issuers such that issuers may choose not to reflect such code provisions in their articles of association but they may choose to comply with such code provisions or deviate from them when there is a good reason to do so, in each case, without violating any provisions of the articles of association.

Therefore, we suggest that the confirmation from legal advisers on new applicants'/issuers' articles of association should only confine to confirming conformity with the provisions in Appendices 3 and 13, instead of the whole set of the Main Board Rules. Accordingly, we propose that Main Board Rule 9.11(20) be amended as follows: "a confirmation from the new applicant's legal advisers that the new applicant's articles of association conform with Appendix 3 and, if relevant, Appendix 13 to the Exchange Listing Rules and the laws of place where the new applicant is incorporated or otherwise established.

We also suggest the confirmation required for issuers under Main Board Rule

13.51(1) be amended such that it is also confined to confirmation in respect of Appendices 3 and 13.

Further, we propose some further refinements to the wordings in Main Board Rule 13.51(1) and note 1 thereto as set out below:

Main Board Rule 13.51(1): "a letter addressed to the issuer from its legal advisers confirming that the proposed amendments are not inconsistent with the requirements under Appendix 3 and, if relevant, Appendix 13 to the Exchange Listing Rules"

Note 1 to Main Board Rule 13.51(1): "Changes to articles of association or equivalent documents must not be inconsistent with the requirements of Appendix 3 and, if relevant, Appendix 13".

We believe the revised wordings as shown above provide more clarity than the current wordings (e.g. where the proposed changes are unrelated to any of the matters covered in Appendix 3 or 13 or any other parts of the Listing Rules, it seems not that accurate to say that the changes "comply/conform with" the Listing Rules. Listed issuers' articles of association should already been in compliance with Appendix 3 and, if relevant, Appendix 13 before the proposed changes, and the concern that needs to be addressed by legal advisers' confirmation should only be whether the proposed changes are inconsistent with Appendix 3 and, if relevant, Appendix 13.