

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/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2019-Codification-of-General-Waivers/Consultation-Paper/cp201908.pdf>

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

Capitalised terms have the same meaning as defined in the Consultation Paper unless otherwise stated.

1. Do you agree with our proposal to codify the existing General Waiver such that bonus or capitalisation issues by a PRC incorporated issuer are exempted from shareholders' approvals in general meetings and separate class meetings?

Yes

No

You may provide reasons for your views.

2. Do you agree with our proposal to codify the existing General Waiver to modify the calculation of consideration ratio for a PRC incorporated issuer whose domestic shares are listed on a PRC exchange?

Yes

No

You may provide reasons for your views.

3. Do you agree with our proposal to codify the existing General Waiver to allow the listed issuer's stock code to be displayed prominently in the corporate or shareholder information section of financial reports as described in paragraph 30 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

4. Do you agree with our proposal to codify the R4.04(2)&(4) Conditions as an exception to Main Board Rules 4.04(2) and 4.04(4) regarding the disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period?

Yes

No

You may provide reasons for your views.

We support the proposal because the disclosure of financial information regarding subsidiaries or businesses acquired or to be acquired after trading record period, in certain situations, would be of limited value to investors but unduly burdensome for the new applicant. The codification provides more specific guidance in the Rules on those situations which would be considered as exceptions to the requirement under Rule 4.04(2) and 4.04(4).

5. Do you agree with our proposal to codify the R4.10 Waiver as an exception to Main Board Rule 4.10 regarding the disclosure of financial information of the overseas banking companies?

Yes

No

You may provide reasons for your views.

6. Do you agree with our proposal to codify the R8.21(1) Conditions as an exception to Main Board Rule 8.21(1) regarding the change of financial year period?

Yes

No

You may provide reasons for your views.

7. Do you agree with our proposal to (i) codify the modification provided by the General Waivers into Main Board Rules 13.46 and 13.49(1) subject to the new applicant meeting the Annual Results and Reports Waivers Conditions; (ii) codify similar exception to Main Board Rule 13.48(1) as well as GEM Rules 18.66 and 18.79; (iii) align the conditions for Interim Results Exemption with the Annual Results and Reports Waivers Conditions; and (iv) repeal PN 10 and consolidate the guidance with the relevant Main Board Rules?

Yes

No

You may provide reasons for your views.

We agree with the proposal. The Publication and Distribution Requirements is not particular meaningful and would also be unduly burdensome for applicants listed shortly after the end of the most recent financial year as the same financial information had already been disclosed in the listing document.

8. Do you agree with the proposal to codify the waiver from disclosure of actual consideration of aircrafts to be acquired by listed airline operators, as described in paragraph 58 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

9. Do you agree with the proposal to allow listed issuers to determine SpinCo's Scheme Limit with reference to SpinCo's shares in issue as at the date of SpinCo's listing?

Yes

No

You may provide reasons for your views.

10. Do you agree with the proposal to codify the waiver of the exercise price requirement for issuers dually listed on the Exchange and a PRC exchange as described in paragraph 65 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

11. Do you agree with our proposal to codify the waiver described in paragraph 71 of the Consultation Paper in respect of the experience and qualification of company secretary into the Rules?

Yes

No

You may provide reasons for your views.

We agree with the Exchange's proposal to codify the waiver in respect of the experience and qualification of company secretary into the Rules. The underlying principles in the proposal generally aligns with those set out in HKEx-LD35-1 ("LD35-1"), which is the established approach adopted by the Exchange in granting such waiver on a number of precedent cases since LD35-1 was first issued in 2003. We are of the view the codification can provide greater clarity and transparency to market participants on the Exchange's approach to cope with this issue.

Codifying the waiver into the Rules does not necessarily mean the granting of waiver is automatic. To avoid giving market participants and investors such wrong impression, we believe the Exchange should provide sufficient clarity in the Rules, or in a separate guidance letter, to address market concerns on how the listed issuers, in the absence of a company secretary with the professional qualifications and relevant experience as required under Rule 3.28, can ensure compliance with the corporate governance standards and regulatory requirements in Hong Kong, and under what specific circumstances the waiver will or will not be granted. Notwithstanding that company secretary plays an important role in supporting the board on corporate governance matters, we believe that the primary responsibility for ensuring that good corporate governance practices and procedures are established rests with the board and the directors. Therefore, one of the key considerations the Exchange should take into account when granting the waiver is whether the listed issuer has an effective mechanism in place so that the board and the directors can have unrestricted access to all relevant information necessary for making informed decisions on compliance and corporate governance matters, regardless of whether such information is provided by the company secretary.

Given the significant judgment involved in this consideration, the granting of waiver should be considered on a case by case basis having regard to all relevant facts and circumstances. No waiver should be granted unless the Exchange is satisfied that the listed issuer has an alternative mechanism that can serve the same purpose of having a company secretary meeting the requirements of Rule 3.28. In this regard, we recommend the Exchange to provide further clarity to allow the market participants to better understand the Exchange's approach in granting the waiver, including the Exchange's principal considerations on how the proposal of having a Qualified Person to assist the Proposed Company Secretary for a period of not more than three years can achieve the Exchange's objective of upholding the standard of corporate governance and regulatory compliance for listed issuers.

12. Do you agree with the proposals (a) to provide an exemption for Main Board listed issuers that are banking companies or insurance companies from including a working capital statement, subject to appropriate alternative disclosures in their listing documents and transaction circulars if they are able to meet the same conditions as those set out in Main Board Rule 8.21A(2), and (b) to limit Main Board Rule 8.21A(2) so that the exemption applies only to banking companies or insurance companies, subject to alternative disclosures in their listing documents and the conditions as described in paragraph 73 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

We concur with the Exchange's view that the inclusion of a working capital statement for listed issuers engaged in the provision of financial services would not provide significant information for investors as these issuers are already subject to prudential supervision by regulatory bodies on solvency and capital adequacy.

13. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL7-09 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

14. Do you agree with our proposal to codify the guidance in Listing Decision HKEX-LD15-3 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

15. Do you agree to amend Main Board Rule 17.05 to state clearly that the restricted period for grant of share options would cover the trading day after the announcement is made with respect to the inside information?

Yes

No

You may provide reasons for your views.

16. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL16-09 into the Rules for completeness?

Yes

No

You may provide reasons for your views.

17. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL31-12 into a new practice note to the Rules for completeness?

Yes

No

You may provide reasons for your views.

18. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL58-13 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

19. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL60-13 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

We agree with the Exchange's proposal to codify the guidance in Guidance Letter HKEX-GL60-13 into the Rules. As reporting accountants are also a named expert for purposes of the listing document, we believe the wording of the proposed Rule 9.11(3e) should explicitly exclude the reporting accountants as their confirmation has already been covered in the proposed Rule 9.11(3d).

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