

## 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.

(i) It is already established in HKEX-LD99-5 that no separate class meetings are required under the Mandatory Provisions for the proposed bonus issue or capitalisation of a PRC issuer which is listed on the Main Board or a stock exchange in the PRC.

(ii) The proposed codification does not violate the general principle that a shareholder is able to protect his/her proportion of interest in the company by subscribing for any new issue of equity securities.

(iii) The scope of the proposed codification is exactly the same as that of the current waiver.

We agree with the proposed codification.

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.

We agree that market price of A or B shares can better reflect the market value of the PRC incorporated issuer if A or B shares represent the substantial portion of total issued shares and thus the calculated consideration ratio can be more meaningful to reflect the significance of the consideration to the market value of the issuer.

However, there are some PRC issuers of which H shares represent significant part of total issued shares. Our suggestion is to add a condition that the relevant rule is applicable only when the percentage of A or B shares exceed a certain portion of total issued shares (i.e. 50%).

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.

Given that (i) the purpose of Main Board Rule 13.51A would also be served by displaying the issuer stock code prominently other than on the cover page; and (ii) the General Waiver has been granted on a regular basis, we agree that the proposed codification should be adopted.

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.

(i) If the size of an acquisition is immaterial, its financial result and position are normally of limited value to (potential) investors;

(ii) To limit the acquisition to be financed by IPO proceeds ensures that the working capital sufficiency of the issuer would not be negatively influenced due to the acquisition; and

(iii) The feasibility and cost-effectiveness should be taken into account when we prepare the financial information of the acquired business.

Having considered the above, we agree with the proposed codification.

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.

- (i) Banking Disclosure Guidelines are not applicable to overseas banking companies; and
- (ii) The proposed alternative disclosures should fulfill the purpose that potential investors can obtain sufficient information of the issuer to make a fully informed investment decision.

Having considered the above, we agree with the proposed codification. Our suggestion is to highlight that the alternative disclosures should meet the requirements of relevant overseas regulators to banking companies.

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.

(i) The update would not create any loophole for listing applicants to manipulate the profits and required disclosures during the track record period; and

(ii) It can relieve the issuer's burden of preparing consolidated financial information in the annual report after listing.

Having considered the above, we agree with the proposed codification.

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.

As the reasons or grounds for the waivers for Rules 13.46, 13.48(1) and 13.49(1) are generally similar to that of exception for the Publication and Distribution Requirement in paragraph 3 of PN10, we are of the view that it is proper to codify the waivers to avoid those disclosure requirements which does not seem to add any value.

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.

Given that (i) the disclosure of the aircraft purchase price is normally prohibited based on industry practice; and (ii) the proposed alternative disclosure requirements should be sufficient for potential investors to make a properly informed assessment of the issuers, we agree with the proposed codification.

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.

The purpose of Scheme Limit is to limit the dilution effect on the existing shareholders' interests due to the exercise of share options. It is obvious that the Scheme Limit is meaningless and impractical for a SpinCo of which reorganisation has not yet completed at the date of approval of the option scheme.

We agree with the proposed codification and are of the view that determining SpinCo's Scheme Limit with reference to SpinCo's shares in issue as at the date of SpinCo's listing can meet the primary purpose of Scheme Limit.

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.

N/A

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.

Please refer to Appendix for our reasons.

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.

(i) The rationale of working capital statement in prospectus is similar to that in the circulars; and  
(2) The proposed alternative disclosures are sufficient and more meaningful when compared to working capital statement for (potential) investors.

Having considered the above, we agree to extend the exemption to listed issuers with additional disclosures.

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.

This proposal codification further clarifies and assists market practitioners to better meet HKEx's expectation regarding resubmission.



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.

The proposed codification would not impact on current practice regarding listing fee calculation yet could better help make easy reference for new listing applicants.

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.

N/A

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.

As market practitioners are familiar with the proposed codification, there are merits to codify the procedures in the Listing Rules.

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.

The proposed codification could improve the clarity of the Rule.

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.

Market practitioners are fully familiar with such practice and there are merits to codify such procedures in the Listing Rules.

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.

The proposed codification further clarifies and helps market practitioners to better meet HKEx's expectation regarding the completeness of the AP.

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## Appendix

### Role of company secretary

1. It is trite that the role of company secretary (“CS”) in a newly listed company (“Listco”) is critical in promoting good corporate governance. Being at the centre of the Listco’s decision-making and documentation process, a CS is like a gatekeeper who must be clear about the legal and regulatory obligations that the Listco and its directors are subject to. An essential part of this is being familiar with, and keeping abreast of, legal, regulatory and compliance requirements applicable to the Listco.
2. The CS is also responsible for reminding the Listco's directors of their roles and responsibilities under relevant laws and regulations as well as, in particular the Listing Rules (and also relevant provisions of the Securities and Futures Ordinance, including inside information and disclosure of interests) and ensuring corporate filings are made on time and announcements and shareholders’ approval sought when appropriate in accordance with relevant Listing Rules requirements.
3. Another important role of the CS is monitoring and updating the connected parties list of the Listco and monitoring and ensuring compliance, not only with internal review and approval processes (including ensuring that independent non-executive directors are consulted at an early stage regarding proposed connected transactions) but also with the applicable requirements of the Listing Rules, including ensuring accurate and timely disclosure of proposed connected transactions.
4. It follows from the above that a key concern regarding the person who is to perform the CS role in a Listco, other than understanding the internal decision-making and approval processes of the Listco, is this: does such person (i.e. the CS) fully understand the legal and regulatory requirements (including the Listing Rule requirements) to which the Listco and its directors are subject? One way to ensure that the person has such understanding in taking on the CS role is that he/she can meet the requirements set out in Main Board Rule 3.28.

### Listing requirements

5. One of the listing requirements is that any listing applicant should familiarise itself with all the requirements in the Listing Rules. The requirement of appointing a suitably qualified CS is contained in Main Board Rule 3.28. The required qualifications for those persons wishing to act as CS are



clearly set out in Notes 1 and 2 to that rule. The requirement of appointing a suitably qualified CS is reinforced in Main Board Rule 8.17. All these requirements form part of the listing applicant's consideration in seeking a listing on the Stock Exchange, and should be complied with by the listing applicant in all the circumstances. Put simply, a listing applicant should not propose and appoint any unqualified individual within the meaning of Main Board Rule 3.28 to act as its CS.

6. It follows from the preceding paragraph that a Listco must make every reasonable effort to appoint a Qualified Person to act as its CS. This should not be unduly burdensome on a Listco as there are a large number of Qualified Persons in Hong Kong. For example, in the 5-year period between 2014 and 2018, there was an increase of 563 listed companies in Hong Kong from 1,752 to 2,315<sup>1</sup> while the number of (i) certified public accountants increased approximately from 37,198 to 42,612<sup>2</sup> (an increase of approximately 5,414 members); (ii) solicitors holding practising certificates increased approximately from 7,776 to 9,903<sup>3</sup> (an increase of approximately 2,127 members); and (iii) membership of Hong Kong Institute of Chartered Secretaries increased from approximately 5,843 to 5,971<sup>4</sup> (an increase of approximately 128 members).
7. With the supply of Qualified Persons far outstripping the increase in the number of listed companies in Hong Kong, we do not believe that any claim that there is a lack or shortage of Qualified Persons in Hong Kong could be substantiated. Neither will a Listco find it difficult to source and appoint a Qualified Person as its CS.
8. In view of the important roles that the CS performs in monitoring and promoting good corporate governance in Listcos, as described in above paragraphs 1-4, the Stock Exchange is respectfully reminded that any failure to appoint Qualified Persons to act as CS of Listcos will only weaken the governance standards of such companies, which will, in turn, tarnish Hong Kong's reputation as an international financial centre.

<sup>1</sup> Statistics compiled from HKEX Fact Book 2014 and 2018.

<sup>2</sup> Between the beginning of 2014 and the first six months of 2018. Statistics compiled from the annual reports of the Hong Kong Institute of Certified Public Accountants 2014 and 2018.

<sup>3</sup> Between the beginning of 2014 and the end of 2018. Statistics compiled from the "From the Secretariat" section of the *Hong Kong Lawyer Magazine*.

<sup>4</sup> Between the beginning of 2014 and the first six months of 2018. Statistics compiled from the annual reports of the Hong Kong Institute of Chartered Secretaries 2014 and 2018.



## HKEX's rationale for the proposed codification

9. Given the abundant supply of Qualified Persons to act as CS (see above paragraph 6), we fail to see the rationale behind the Main Board Rule 3.28 waiver, let alone the proposed codification of it. That said, we are reminded by paragraphs 68-70 of the Consultation Paper of the situations under which the Stock Exchange may consider granting Main Board Rule 3.28 waivers to listing applicants such as a senior management member of the Listco who has performed similar roles in the listing applicant for a period of time but lacks the necessary qualification or experience to be appointed as the CS in Hong Kong.
10. We do not doubt the circumstances cited by the Stock Exchange under which Main Board Rule 3.28 waivers might be justified. Nevertheless, the grant of Main Board Rule 3.28 waiver must be the exception rather than the rule, which, in our view, is consistent with the Stock Exchange's original intention in making available Main Board Rule 3.28 waivers to listing applicants in genuine need of such waivers. It therefore follows from this and above paragraphs 5 and 6 that the listing applicant must first seek to appoint a Qualified Person to act as its CS, and if it has genuine difficulty in appointing such a person, it may appoint a Proposed Company Secretary ("PCS") after seeking and obtaining a Main Board Rule 3.28 waiver from the Stock Exchange. The proposed codification, however, contradicts the Stock Exchange's original intention by formalising an exception and should be objected to in light of the large number of Qualified Persons in Hong Kong.

## The proposed codification

### *Paragraphs 70 and 71(iii) of the Consultation Paper*

11. Turning to the contents of the proposed codification, paragraph 70 of the Consultation Paper states that "the Exchange considers that the Period should not be longer than three years as the Proposed Company Secretary is ... able to acquire the relevant qualification or experience required..." With respect, this is too sweeping a claim and we do not agree with it. For example, if the listing applicant is registered in a non-common law jurisdiction and has a totally different way of running its business from ours, the 3-year period serves only as the minimum period of time for the PCS to acquire necessary knowledge and skill set to discharge the duties of CS.



12. Furthermore, it is noted that the current Rule 3.28 waiver may be subject to a second waiver period if the Stock Exchange is not satisfied with the progress of the PCS to acquire the relevant qualification or experience by the end of the first waiver period which usually lasts for 3 years. Paragraph 71(iii) of the Consultation Paper, however, says that “whether the Proposed Company Secretary will be assisted by a Qualified Person throughout a period of not more than three years ...” (our emphasis), which does not appear to contemplate and support a second waiver period for the Stock Exchange to assess the PCS progress in obtaining the necessary CS’ qualifications/experience.
13. If the current wording of paragraph 71(iii) is not changed, it is possible for the PCS to be regarded as a Qualified Person as soon as the waiver period of three years is completed even though by that time he or she may still lack the full extent of the relevant qualification or experience required to be a Qualified Person. Accordingly, by setting only a 3-year period under which the PCS is required to acquire the relevant qualification or experience to become a Qualified Person is, in our view, too limiting, and may run the risk of turning unqualified PCS into Qualified Person as soon as the waiver period is over as described above.

### *Paragraph 71(ii) of the Consultation Paper*

14. Under this sub-paragraph, the Stock Exchange may grant a Main Board Rule 3.28 waiver to a Listco taking into account the reasons why the Listco’s directors consider an individual is suitable to act as the issuer’s CS. It is respectfully submitted that in granting the Main Board Rule 3.28 waiver, the Stock Exchange should also take into consideration the following two additional factors:
  - (a) evidence showing the listing applicant has exhausted all reasonable efforts to appoint a Qualified Person as the PCS before seeking a Main Board Rule 3.28 waiver (see above paragraph 10). Without such evidence, it is possible that the listing applicant might, for its own reason, choose not to make any effort to identify and appoint a Qualified Person as the PCS, and immediately seek a Rule 3.28 waiver from the Stock Exchange. This defeats the Stock Exchange’s original purpose of granting Rule 3.28 waivers to listing applicants which have found it genuinely difficult to appoint a Qualified Person as the PCS; and



- (b) whether or not the PCS has undertaken any relevant training in the Listing Rules and related legal and regulatory compliance before he or she is appointed to the post. That the PCS has undergone such training before being appointed shows the relevant individual's determination to perform the CS role, which should be viewed favourably by the Stock Exchange.
15. All things considered, while there may well be a need to deal with the listing applicant's extenuating and exceptional circumstances as cited by the Stock Exchange by way of the Main Board Rule 3.28 waiver, there is little basis, however, to codify the Main Board Rule 3.28 waiver for the reasons we have referred to in the above paragraphs.
16. In the event that the Stock Exchange decides to proceed with the proposed codification, it is respectfully submitted that at least the following amendments to paragraph 71 of the Consultation Paper should be made.
- 71(ii) see above paragraph 14.
- 71(iii) whether the Proposed Company Secretary will be assisted by a Qualified Person for a period of at least three years, the length of which may depend on factors as discussed in paragraph 70 above; and
- 71(iv) evidence that the issuer has exhausted all reasonable efforts to appoint a Qualified Person to act as company secretary, but no appropriate appointment could be made.

(Our emphasis)