



Stevenson, Wong & Co. 史蒂文生黃律師事務所

In Association With | AllBright Law Offices | 锦天城律師事務所

Our Ref :

Your Ref :

Reply Email :

Reply Fax :

Direct Line :

Date : 27 February 2023

Reply to :

Partners:

Willy Y.P. Cheng**
Hank H.F. Lo*
Wendy W.S. Lam*
Lai S. Lam*
Cornelia W.C. Chu*
Heidi H.Y. Chui**
Rodney Y.F. Teoh*
Milly Y.K. Hung*
Osbert Y. Hui*
Janice L.H. Chin
Erica Y.Y. Cheng
Calvin K.F. Lo*
Gordon H.Y. Tsang
Dominic C.M. Lau*

鄭炎潘
勞恒晃
林穎詩
林麗嫦
朱憲潛
徐凱怡
張源輝
洪玉暉
許 懿
陳麗卿
鄭鈺茵
羅啟峰
曾浩賢
劉俊明

Senior Consultant:

Catherine K.G. Por**

傅景元

* Notary Public of Hong Kong
香港國際公證人

o China-Appointed Attesting Officer
中國委托公証人

o Civil Celebrant of Marriages
婚姻監禮人

BY EMAIL ONLY (response@hkex.com.hk)

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor
Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sirs,

Consultation Paper on Proposals to Expand the Paperless Listing Regime and Other Rules Amendments on 16 December 2022 (the “Consultation Paper”)

We refer to the captioned matter. We hereby submit the comments thereto for your consideration. Unless otherwise defined herein, capitalised terms used in this submission shall have the same meanings as those defined in the Consultation Paper.

Should you have any questions on our responses or proposals or would like to discuss any of our comments, please feel free to contact our [REDACTED]

Yours faithfully,

STEVENSON, WONG & CO.

香港中環皇后大道中15號置地廣場告羅士打大廈39樓
39/F, Gloucester Tower, The Landmark, 15 Queen's Road Central, Hong Kong
香港中環皇后大道中28號中滙大廈501室
501, Central Tower, 28 Queen's Road Central, Hong Kong
锦天城律師事務所 AllBright Law Offices:
香港 廣州 上海 北京 杭州 深圳 蘇州 南京 成都 重慶 太原 青島 廈門 天津 濟南 合肥 鄭州 福州 南昌 西安 長春 武漢 烏魯木齊 海口 長沙 倫敦 西雅圖 新加坡 東京
Hong Kong Guangzhou Shanghai Beijing Hangzhou Shenzhen Suzhou Nanjing Chengdu Chongqing Taiyuan Qingdao Xiamen Tianjin Jinan Hefei Zhengzhou Fuzhou Nanchang Xi'an Changchun Wuhan Urumqi Haikou Changsha London Seattle Singapore Tokyo

電話 Tel: +852 2526 6311

傳真 Fax: +852 2845 0638

電郵 Email: info@sw-hk.com

www.sw-hk.com Member of Interlaw since 1982

CHAPTER 1: PROPOSALS TO REDUCE SUBMISSION DOCUMENTS AND MANDATE SUBMISSION BY ELECTRONIC MEANS

A. Reducing submission documents

(1) Removing unnecessary submission documents

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.

Reply

We generally agree that the submission documents identified in Table 1 in Schedule II can be removed given that they reiterate or overlap existing or proposed requirements under the Listing Rules or Guidance Materials.

However, we do not agree to impose additional disclosure requirements on top of the current Listing Rules and Guidance Materials, such as the analysis of age group of major categories of inventory and subsequent usage/sale (item 5 of Form M104) and basis of provision for/write-off of trade receivables and inventory (item 6 of Form M104).

(2) Codifying obligations and requirements

(2A) Codifying undertakings, confirmations and declarations

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.

Reply

We agree that codifying the relevant obligations into the Listing Rules or Guidance Materials to provide sponsors, directors and supervisors with a uniform source for reference and compliance.

We also agree to repeal the undertakings, confirmations and declarations as set out in Table 2 Schedule II, given that the gathering of DU Forms has always been practically inefficient exercise.

(2B) Codifying listing agreements

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.

Reply

With the previous repeal of the listing agreements for issuers of shares and debt securities (to professional investors only) and incorporation of such obligations into the Listing Rules, we agree taking the similar approach to the listing agreements as set out in Table 3 in Schedule II to be appropriate.

(2C) Authorisation and consents

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.

Reply

The documents as set out in Part (3) of Table 1 in Schedule II are key resolutions or authorisations for listing and/or offering of securities. Issuers, sponsors, guarantors, and their respective legal advisers should be well aware of the importance of obtaining such authorisations and their typical wordings thereof. Therefore, we agree it is not necessary to submit such authorisation documents to the Exchange and the incorporation of the obligations of the issuers and guarantors in the Listing Rules should be sufficient.

(3) Consolidating requirements

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.

Reply

We agree that incorporating a consolidated set of overarching obligations to be undertaken by new applicants and sponsors can serve as a warm reminder of their various obligations under the Listing Rules at the early stage of the listing application, which is more preferable than the scattered various submission documents.

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.

Reply

The particulars requested in Part 1 of the DU Form are mostly duplicated with those of Form FF004, therefore we agree it is appropriate to consolidate the two and rename the form as the Personal Details Form.

B. Removing unnecessary signature or certification requirements

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.

Reply

The documents involved removal of signature requirement are Forms M111, M112 and M201, all of which should be signed by sponsors. Sponsors, as licensed corporations under the Securities and Futures Ordinance, should be well aware of their duties and responsibilities to ensure accuracy and completeness of documents submitted to the Exchange and the criminal liability of recklessly failing to do so. Also, for the certification requirements, issuers, sponsors and their legal advisers should know that all documents submitted to the Exchange have to be true copies of the original documents. Therefore, we agree with the removal of the signature and the certification requirements.

C. Mandating electronic only submission

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.

Reply

As long as the Exchange considers the removal of the requirement for submission of multiple copies of the same documents and the requirement of submission of one electronic copy only in respect of documents as set out in Table 6 in Schedule II will not negatively affect its review process, we do not have any comments on the said proposal.

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.

Reply

Same as our stance to Question 8. However, we would like to highlight that if documents will be submitted to the Exchange through the Issuer Platform, the Exchange should ensure that the Issuer Platform to be user-friendly and provide sufficient guidelines to the issuers and their advisers. Also, we suggest that there should be a grace period, say like one year, that issuers can still submit documents to the Exchange by way of other electronic means, such as email, before the issuers

being restricted to use the Issuer Platform only. If possible, the Exchange should provide trial runs for issuers and its advisers to use the Issuer Platform so that they can familiarise with the Issuer Platform and provide feedback to the Exchange on the Issuer Platform for improvement.

D. Digitalising the process for applying for the Exchange's authorisation for prospectus registration

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.

Reply

We absolutely agree to mandate the digitalisation of prospectus authorisation and registration processes. As stated in the Consultation Paper, the two copies of prospectus and accompanying application forms are heavily paper based and the registration process involving physical delivery of those prospectus registration documents is extremely cumbersome to issuers and their advisers with the tight timeline on the registration day. Furthermore, with the previous travelling ban due to COVID-19 pandemic, it is impractical for certain listing applicants with all of its directors residing outside Hong Kong, to travel to Hong Kong to certify physical copies of the prospectus for registration. The digitalisation of the prospectus will certainly minimise the chance of the registration process being disrupted.

CHAPTER 2: PROPOSALS ON THE ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS BY LISTED ISSUERS

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.

Reply

We agree that the dissemination of corporate communications via the Internet is a commonly accepted and feasible alternative to hard copy dissemination when Internet use has become increasingly prevalent in Hong Kong. For instance, many respondents under the 2017 CG Consultation conclusions published in July 2018 supported electronic dissemination as a more efficient and environmentally-friendly means for corporate communications than hardcopy dissemination. This reflects the market trend to opt for an electronic-only dissemination which renders the previous practice of obtaining an express (or deemed) consent for receiving corporate communication by electronic means redundant and obsolete. We welcome the removal of the current consent mechanism from the Listing Rules so that listed issuers are provided with flexibility to devise their own arrangements on electronic dissemination of corporate communications provided that they are made in accordance with the applicable laws and regulations. Furthermore, this is in line with the global trend to reduce the use of paper and become more environmentally friendly.

However, we suggest that on top of disclosing on the websites of the listed issuers, before the implementation of the amendments of the corresponding Listing Rules, listed issuers have to inform their shareholders in hard copy form on the change of dissemination method and the relevant arrangements for securities holders to make hardcopy requests, to make sure all securities holders are well aware of such changes.

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.

Reply

Taking into account that (1) an implied consent regime is picking up steam in other listing venues, such as the PRC and Singapore; and (2) approximately 90% of the total number of issuers listed on the Exchange are incorporated in the jurisdictions where shareholders' consent are not prohibited from being implied for electronic dissemination of corporate communications, we agree to allow the consent of holders of a listed issuer's securities to be implied for electronic dissemination of its corporate communications, provided that the written notice as stated in our reply to Question 11 has been sent to securities holders.

However, please note that under the current Hong Kong's company law, it does not permit shareholders' consent to be implied for receiving communication by electronic means.

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.

Reply

We generally agree that Actionable Corporate Communications should be sent to securities holders individually rather than only available on the listed issuer's website and the Exchange's website, subject to the definition of "Actionable Corporate Communications with our comments setting out in our reply to Question 15 below.

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.

Reply

Despite the growing prevalence of individual using Internet, certain security holders may not be used to receiving communications in electronic form, hence do not have or did not provide his/her functional electronic contact. Accordingly, to be fair to such security holders, we agree that Actionable Corporate Communication should be sent to them in hard copy form. Also, in case some security holders may have missed previous requests, we also consider enclosing the written request for the electronic contact details to be appropriate.

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.

Reply

We consider the proposed definition of “Actionable Corporate Communications” to be relatively unclear. For instance, it is confusing how to determine what communication is considered to be seeking instructions from securities holders while proxy form is not considered as “Actionable Corporate Communication” because it does not contain express requests for instructions. We suggest an exhaustive list should be included in the Guidance Materials to avoid confusion.

CHAPTER 3: SIMPLIFICATION OF APPENDICES TO THE LISTING RULES

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.*

Reply

We consider the proposed categorisation of the Appendices to the Listing Rules as set out in Schedule IV to be appropriate.

CHAPTER 4: OTHER RULE AMENDMENTS

A. Removing the requirement for physical attendance by committee members at meetings of the Listing Committee and Listing Review Committee

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.

Reply

We generally agree to remove the requirement for physical attendance of members to meet the required quorum needed for meetings of the Listing Committee and Listing Review Committee, provided that the members who are not physically present can interact and discuss with other members and fully participate in the meeting without interference by way of video-conferencing.

B. Other minor Rule amendments

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.

Reply

We agree with the proposal to make minor changes to the Listing Rules described in paragraph 122. Following the mandate of a paperless listing, references to “bulk-printing of listing documents” in the Listing Rules shall be updated to reflect the current new practices and requirements.

We also agree with facilitating a uniform submission deadline of final proof of application form for the public subscription tranche for both the GEM Rules and the Main Board Listing Rules.