

Part B Consultation Questions

Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/July-2020-Paperless-Listing/Consultation-Paper/cp202007.pdf>. Please indicate your preference by ticking the appropriate boxes.

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

We encourage you to read all of the following questions before responding.

1. Do you agree with our proposal to amend the Listing Rules to require (i) all listing documents in a new listing ("**New Listing**")¹ to be published solely in an online electronic format and cease printed form listing documents; and (ii) except for Mixed Media Offers², all New Listing subscriptions, where applicable, to be made through online electronic channels only?

Yes

No

Please give reasons for your views.

¹ "New Listing" refers to an application for listing of equities (including stapled securities and depositary receipts), debt securities and collective investment schemes ("**CIS**") on the Exchange by a new applicant where a listing document is required under the Listing Rules but excludes a Mixed Media Offer. For the purpose of the Consultation Paper, debt securities refer to debt securities (including debt issuance programmes) listed pursuant to chapters 22 to 36 of Main Board Listing Rules and chapters 26 to 29, 32 to 35 of GEM Listing Rules.

² "Mixed Media Offer" refers to an offer process whereby an issuer or a CIS offeror can distribute paper application forms for public offers of certain securities without a printed prospectus, so long as the prospectus is available on the HKEX website and the website of the issuer/CIS offeror and it makes printed prospectuses publicly available free of charge upon request at specified locations (which do not have to be the same locations as where the printed application forms are distributed).

Freshfields strongly agrees with the proposal to amend the Listing Rules to require (i) all listing documents in a New Listing to be published solely in an online electronic format and cease printed form listing documents; and (ii) except for Mixed Media Offers, all New Listing subscriptions, where applicable, to be made through online electronic channels only.

There is a pressing need to preserve natural resources amid the escalating climatic crises. According to the Summary for Policymakers of the IPBES Global Assessment Report on Biodiversity and Ecosystem Services published in 2019 by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 32 million hectares of primary or recovering forest were lost between 2010 and 2015. A fully paperless listing and subscription regime reduces carbon footprint and is environmentally friendly and more cost and time efficient. This also accords with the increasing global focus on sustainability and ESG.

The Alibaba secondary listing has set a good example of how going paperless can be achieved successfully. Going paperless would also help to standardise Hong Kong's approach in this area and lessen the operational burden of the Exchange, as it would no longer need to accept and consider applications for waivers from strict compliance of the requirement in respect of making a listing document available in printed form.

The current paper-based practice is out of step with the practice of other regulators, both in Hong Kong and overseas. As one of the world's leading IPO markets, it is paramount for Hong Kong to align its practice with other markets including the UK and the US.

Given the high Internet penetration rate in Hong Kong, the vast majority of the public has been submitting applications through online electronic channels. It is encouraging to see that the Exchange takes initiative to explore a more sustainable way of operating the financial market in Hong Kong, fulfilling the UN Sustainable Development Goals.

2. As a consequence of our proposal in Question 1, do you agree with our proposal to amend the Listing Rules to remove the requirement for listed issuers to make available physical copies of listing documents to the public at the address(es) set out in a formal notice?

Yes

No

Please give reasons for your views.

Freshfields agrees that the Listing Rules should be amended to remove the requirement for listed issuers to make available physical copies of listing documents to the public at the address(es) set out in a formal notice. The fact that the market responded positively to the recent paperless listings demonstrates a readiness to go paperless on listing documents.

3. Do you agree with our proposal to require issuers to only post documents³ online on both the Exchange's e-Publication System and the issuer's website ("**Online Display Documents**") and to remove the requirement for their physical display?

Yes

No

Please give reasons for your views.

Freshfields supports the proposal to require issuers to only post documents online on both the Exchange's e-Publication System and the issuer's website and to remove the requirement for their physical display as this ensures that the Listing Rules align with international best practice. Having hard copies on display at designated locations in Hong Kong also serves no practical purpose for overseas investors who account for over 40% of the trading value on the Exchange's cash market in 2018 according to the HKEX's Cash Market Transaction Survey 2018 (Full Report).

The proposal will make documents on display more widely accessible, thereby allowing investors to make informed decisions.

The proposal would have minimal impact on issuers as many of the documents proposed to be displayed online are already required to be made available online by other Hong Kong regulators, while the Listing Rules already contain a limited online publication requirement for certain issuer documents.

4. Do you agree that Online Display Documents should be displayed online for a specified period⁴ except for those documents that are required by the Listing Rules to be made available on an ongoing basis?

Yes

No

Please give reasons for your views.

Freshfields agrees that Online Display Documents should be displayed online for a specified period except for those documents that are required by the Listing Rules to be made available on an ongoing basis. This will make sure that investors have access to the documents while they are relevant and, at the same time, minimise the burden of issuers to keep the Online Display Documents available indefinitely.

5. Do you agree that the Exchange should continue to allow redaction of Online Display Documents in only very limited circumstances?

Yes

³ Such documents are listed in Appendix I to the Consultation Paper, save for the changes proposed in respect of notifiable transactions and connected transactions as set out in Section G of the Consultation Paper.

⁴ The time frames are set out in Appendix 1 to the Consultation Paper.

No

Please give reasons for your views.

Freshfields agrees that the Exchange should continue to allow redaction of Online Display Documents in only very limited circumstances, but it is important to provide more guidance in respect of redaction of certain categories of information such as personal data, trade secrets and privileged information.

We understand that the Waiver Guide has set out general circumstances where the Exchange will not grant waivers. We suggest that the Exchange issue more specific guidance on the issue of redaction, such as giving past examples where redaction requests have been refused and the rationale behind such refusals.

6. Do you agree that the current definition of "material contract" remains fit for purpose and that the Exchange should continue to apply it under our proposals?

Yes

No

Please give reasons for your views.

Freshfields agrees that the current definition of "material contract" remains fit for purpose and that the Exchange should continue to apply it as this is in line with the definitions in the C(WUMP)O and the Takeovers Code. It may be helpful for the Exchange to issue guidance on the scope of material contracts for the purpose of the Listing Rules, such as giving examples of material contracts which are considered by the Exchange to fall within such definition on a non-exhaustive basis to reduce uncertainty amongst practitioners in our market and reduce the number of future enquiries.

7. Do you agree that restrictions should not be placed on downloading and/or printing Online Display Documents?

Yes

No

Please give reasons for your views.

Freshfields agrees that restrictions should not be placed on downloading and/or printing Online Display Documents. We are of the view that should restrictions be placed, it will not be a meaningful exercise as it will not be possible for the Exchange or issuers to monitor downloading or access-related activities.

8. Do you agree with our proposal not to put in place a system that would enable issuers to record and verify the identity of a person who accesses Online Display Documents?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal not to put in place a system that would enable issuers to record and verify the identity of a person who accesses Online Display Documents. From a practical perspective, it is very difficult to put in place a system that would enable issuers to verify the identity of such person.

Given that issuers are publicly listed companies, they should not be too concerned about the identity of a person who accesses documents made available to the public under the Listing Rules.

9. In respect of a relevant notifiable transaction⁵, do you agree with our proposal to:
- i) require the issuer to display the contracts pertaining to the transaction only; and
 - ii) remove the requirement to display all material contracts entered into by the issuer within the last two years before the issue of the circular?

Yes

No

Please give reasons for your views.

Freshfields supports the proposal to require the issuer to display the contracts pertaining to the proposed notifiable transaction only; and remove the requirement to display all material contracts entered into by the issuer within the last two years before the issue of the circular.

We consider it a sensible approach to focus on documents that are most relevant to the transactions concerned. Streamlining documentary requirements is unlikely to compromise investor protection as it is not necessary to provide investors with information not directly related to the proposed transaction.

For the non-transactional material contracts, the Exchange should clarify whether there is still the need to provide a summary of them in the transaction circular if they are not relevant to the transaction in question.

10. In respect of a connected transaction that is subject to the shareholders' approval requirement, do you agree with our proposal to:
- i) require the issuer to display the contracts pertaining to the transaction only; and
 - ii) remove the requirement to display contracts referred to in the circular and directors' service contracts⁶?

Yes

No

Please give reasons for your views.

⁵ A relevant notifiable transaction refers to a major transaction, a very substantial disposal or a very substantial acquisition as defined in the Consultation Paper.

⁶ Excluding contracts that are expiring or determinable by the employer within one year without payment of compensation (other than statutory compensation).

Freshfields agrees with the proposal to require the issuer to display the contracts pertaining to the proposed connected transaction only; and remove the requirement to display contracts referred to in the circular and directors' service contracts.

Streamlining documentary requirements is unlikely to compromise investor protection as it is not necessary to provide investors with information not directly related to the proposed connected transaction. Furthermore, the relevant directors' contracts that require the prior approval of shareholders should have been disclosed in previously published circulars.

For the relevant directors' contracts, the Exchange should clarify whether there is still the need to provide particulars of them in the transaction circular even though if they are not relevant to the transaction in question.

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