

諾頓羅氏

 NORTON ROSE FULBRIGHT

諾頓羅氏香港
香港中環康樂廣場一號
怡和大厦三十八樓

Norton Rose Fulbright Hong Kong
38/F Jardine House
1 Connaught Place
Central
Hong Kong

電話 +852 3405 2300
傳真 +852 2523 6399

Tel +852 3405 2300
Fax +852 2523 6399
Interchange DX-009198 Central
nortonrosefulbright.com

24 September 2020

電話直線/Direct line

By email: response@hkex.com.hk

電子郵件/Email
michelle.poon@nortonrosefulbright.com

貴公司函件編號/
Your reference

本公司函件編號/
Our reference
PCCT/MKYP/Office

Dear Sir / Madam

Re: Consultation Paper on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display

We are writing in response to the Consultation Paper on "Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display" (the **consultation paper**) issued by The Stock Exchange of Hong Kong Limited (**Exchange**) in July 2020.

Question 1. *Do you agree with the Exchange's 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 MMOs, all New Listing subscriptions, where applicable, to be made through online electronic channels only?*

Response:

We welcome the Exchange's initiative in introducing a listing regime that is more environmentally friendly, cost-efficient and in line with modern practices and we support the substance of the proposal.

We also note that a number of recent large public offerings (e.g. Alibaba, NetEase, JD.com, Yum China) have successfully used a fully electronic application process for their public subscription tranche, indicating that a large number of retail investors in Hong Kong are readily receptive to a paperless subscription regime.

We are, however, mindful that some investors and market participants may consider hard copy prospectuses to have their own intrinsic value and that having a printed prospectus may be more conducive to their review and analysis of the information embedded therein. A fully paperless subscription regime may arguably also pose some degree of unfairness to those with difficulty accessing the internet or personal computers.

Norton Rose Fulbright Hong Kong is a Hong Kong partnership regulated by the Law Society of Hong Kong. Resident partners: Etelka Bogardi, Margie Chan, Winnie Chan, Justin Davidson, Emma de Ronde, Anna Gamvros, Peter Haslam, Camille Jojo, Vicky Lam, Terence Lau ^, David Milligan, Doris Ng, James Parker, Psyche Tai, Harold Tin, Alfred Wu. Senior Consultant: David Stannard. Consultants: Jim James, Philip Nunn, Allan Yee. Foreign Legal Consultant: Marc Waha (Belgium). Norton Rose Fulbright Hong Kong is an affiliate of Norton Rose Fulbright LLP.

Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at nortonrosefulbright.com.

^ China-Appointed Attesting Officer

24 September 2020

To cut down on hard copy printing whilst also addressing the concerns noted above, it may be worth providing issuers with the option of an alternative form of “mixed media offer” (**MMO**) – (e.g.) a MMO that allows for both the listing documents and the subscription applications to be made in *electronic form*, while also permitting the issuers to publish a number of listing documents and application forms in *printed form* and allowing acceptance of hard copy applications submitted by the public subscribers.

This should provide more flexibility than the existing form of MMO, which remains to require the issue of *paper* application forms as a prerequisite to the use of an electronic prospectus, and which has not yet envisioned combining the use of an *electronic and/or a paper* application together with an *electronic and/or a paper* prospectus simultaneously.

It should also be helpful to public investors with difficulties accessing the electronic application channels – albeit this may be a small section of the community, it may appear unfair if some public investors are deprived of the opportunity to participate in an IPO because they are unable to submit their applications online.

As noted in the consultation paper, because the Listing Rules currently requires the listing documents to be in printed form, it follows that under the law, both the application forms and the listing documents have to be issued in the same medium (i.e. in printed form). Hence, if flexibility is built into the Listing Rules such that instead of mandating all listing documents to be made *solely* in *electronic form* (as is proposed in the consultation paper), issuers may also publish some of its listing documents in *printed form* under the Rules, then the “alternative” form of MMO proposed above would seem feasible – and the flexibility it entails should be favourable to both the issuers and the public subscribers.

To help reduce paper wastage, such form of MMO can also be made subject to certain “printed copies conditions” similar to those set out in Guidance Letter HKEX-GL81-5 (e.g.) issuers are to issue a *reasonable number* (based on reasonable estimation) of printed prospectus / application forms only, which are to be made available for collection only upon request during the offer period – and that the issuers will be considered as meeting the requirements if they can provide a stapled, black and white copy of the prospectus / application form within a reasonable time upon request.

Question 2. *As a consequence of the Exchange’s proposal in Question 1, do you agree with the Exchange’s 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?*

Response:

Subject to our observations in our response to Question 1, we agree that the mandatory “sufficient copies” requirements should be removed on the basis that it will (i) benefit the environment; (ii) modernise Hong Kong’s listing regime; and that (iii) the listing documents will continue to be available on the Exchange’s and the issuer’s website.

In view of the security risks and vulnerabilities inherent in the cyberspace, however, it would be helpful if the Exchange could provide some guidance on any “downtime” allowance for complying with the online publication requirement, in case an issuer’s website is disrupted by malicious cyber-attacks or other technical anomalies.

24 September 2020

Question 3. *Do you agree with the Exchange's proposal to require issuers to only post online on both EPS and the issuer's website the documents listed in Appendix I (save for the changes proposed in Section G below) and to remove the requirement for their physical display?*

Response:

We agree with the proposal on the basis that it can (i) make the documents more easily accessible to local investors, saving them the time and expenses in travelling to a specific location just to view the documents; (ii) remove impracticalities for overseas investors in accessing the documents if they are only placed on physical inspection in Hong Kong; and (iii) help reduce costs and improve efficiencies for issuers.

Question 4. *Do you agree that documents listed in Appendix I should be displayed online for the periods set out in that appendix except for those documents that are required by the Rules to be made available on an ongoing basis?*

Response:

We agree with the proposal on the basis that these documents are to be displayed online for the same period of time as that they are currently required to be on physical display under the Listing Rules, which should allow investors access to the documents as they remain relevant. With regard to contracts in a notifiable transaction (not listed in Appendix I as there is no existing requirement for them to be displayed publicly) or a connected transaction, however, given their potential commercial sensitivities, it would be advisable if they are automatically removed from the HKEX website after being displayed for 14 days.

Question 5. *Do you agree that the Exchange should continue to allow redaction of documents on display in only very limited circumstances?*

Response:

Whilst we note that there is already a procedure for issuers to apply for a disclosure relief, the Exchange's "Waiver Guide" has not been updated since 2008 and only sets out some general factors to be considered – to provide the market with greater clarity on document redactions, it would be helpful if the Exchange could standardise or provide examples of the types of disclosures where redactions will be allowed / had been allowed in the past.

In this regard, as an example of circumstances where paragraph 8(b)(ii) of the Waiver Guide may apply, we would suggest it be clarified that the Exchange may allow an issuer to redact contract provisions and terms which would likely cause competitive harm if publicly disclosed, *provided that* any redaction made should include no more information than necessary to prevent serious competitive harm to the issuer. This should protect the legitimate interests of the issuer without prejudicing shareholders' access to information required for assessing a proposed transaction.

We noticed it was mentioned that the Exchange had not received many redaction requests in the past – as acknowledged in the consultation paper, however, the new regime will make the issuer's documents on display more widely accessible. Given the ease of internet access and market's familiarity with the Exchange's website (and correspondingly, a higher chance of competitors accessing the information), significant competitive harm and detrimental effect are also more likely to be caused if commercially sensitive information is not redacted and (as per the proposal in Question 7) is made freely downloadable from the Exchange's website. The proposed new requirement for contracts pertaining to a notifiable transaction to be displayed publicly may also raise particular concerns over the above issues. For the issuers, therefore, it would be important for protection against competitive harm to be recognised as a circumstance where redaction will be allowed.

24 September 2020

Question 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 its proposals?*

Response:

We agree with the proposal, subject to the observations in our responses to Question 5.

In view of their potential commercial sensitivities, it would also be advisable if the material contracts are automatically removed from the HKEX website after being displayed for 14 days

Question 7. *Do you agree that restrictions should not be placed on downloading and/or printing documents that are published online in accordance with the proposals set out in this paper?*

Response:

We are mindful that the purpose of requiring issuers to put their contracts on display is to facilitate shareholders' assessment of their proposed transactions, and that such purpose should be sufficiently achieved by allowing the shareholders to *view* and *read* the subject contracts online.

On the other hand, we are also mindful that the risks of competitive harm and abuses are likely to be amplified by issuers' inability to trace persons who had viewed their contracts online (in light of the Exchange's proposal in Question 8), and that their exposure to such risks and abuses are likely to be heightened even further if the printing and downloading of their contracts are not restricted. Furthermore, threats of copyright infringement may also increase if the contracts made freely downloadable without restrictions.

To attain the purpose of displaying issuers' contracts online while also reducing the ensuing risks, it would seem sensible that the contracts to be published on the Exchange's website should be displayed in a “read only” mode, with functionalities for their downloading and printing being disabled.

Subject to the above, in the event that the Exchange concludes that the printing / downloading functionalities would not be disabled for the contracts to be displayed online, it would be important for warning statements to be set out on the HKEX website reminding its users that: (a) an issuer has consented to the documents being downloaded or printed by the users solely for their personal use and that; (b) any user who wishes to reproduce for or distribute to third parties any of the documents or use them for any commercial purpose must seek the prior consent of the issuer.

Question 8. *Do you agree with the Exchange's proposal not to put in place a system that would enable issuers to record and verify the identity of a person who accesses documents on display online?*

Response:

We appreciate the practical difficulties (as noted in paragraph 115 of the consultation paper) for the Exchange to implement an effective system in this regard and would therefore agree with the proposal, subject to the observations in our responses to Questions 5 and 7 above.

24 September 2020

Question 9. *In respect of a relevant notifiable transaction, do you agree with the Exchange's 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?*

Response:

Subject to our observation in our response to Questions 5 and 7 above, we agree with the proposal on the basis that: (i) for purpose of facilitating shareholders' assessment of a proposed transaction, the most relevant documents should be the contracts pertaining to the transaction; and (ii) the amendment is comparable with the requirements in other markets as noted in the consultation paper.

In line with the reasoning above, we would also propose that the Exchange remove the requirement (as highlighted in paragraph 121 of the consultation paper) for the "material contracts" to be summarised in the transaction circulars.

Question 10. *In respect of a connected transaction that is subject to the shareholders' approval requirement, do you agree with the Exchange's 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 relevant directors' contracts?*

Response:

Subject to our observation in our response to Questions 5 and 7 above, we agree with the proposal on the basis that: (i) for purpose of facilitating shareholders' assessment of a proposed connected transaction, the most relevant documents should be the contracts pertaining to the transaction; (ii) directors' contracts that require prior shareholders' approval should have been disclosed by an issuer in its previously published circulars; and (iii) the amendment is comparable with the requirements in other markets as noted in the consultation paper.

In line with the reasoning above, we would also propose that the Exchange remove the requirement (as highlighted in paragraph 121 of the consultation paper) for the directors' contracts to be summarised in the transaction circulars.

Please contact our [REDACTED] should you have any queries in relation to the above.

Yours faithfully

Norton Rose Fulbright Hong Kong