

The Law Society’s response to the Joint Consultation Paper on the Proposal to allow a Companies Ordinance (CO) Offeror to issue a CO Paper Application Form for Shares in or Debenture of a Company to be listed on SEHK, and a Collective Investment Scheme (CIS) Offeror to supply a CIS Paper Application Form for interests in an SFC-authorized CIS to be listed on SEHK, with a Listing Document Displayed on Certain Websites dated April 2008.

PROPOSED REFORMS/QUESTIONS	RESPONSE
Part B – THE CLASS EXEMPTION	
<i>Question 1</i>	
<i>Do you agree with the Proposal? If not, please explain your reasons for disagreement.</i>	Agree with proposal generally. Our understanding of the key objective of the proposal is to provide the public with greater access to the listing documents without causing confusion to the public. In this connection, we are of the view that, other than the initial transitional stage, notification of the availability of the e-prospectus should not be materially different from the current public notification of availability of paper prospectuses and forms.
<i>Paragraph 30 Proposed conditions to granting the class exemption</i>	<ol style="list-style-type: none"> 1. In relation to the proposed conditions to granting the class exemption, we suggest that clear guidance be given on meeting the criteria of “display and capable of being downloaded” and, where possible, the consequences of failure to comply should also be explained. 2. We suggest that condition (d) in paragraph 30 be amended as follows:

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3. "..... the e-Prospectus is readily accessible and capable of being viewed and downloaded in its entirety in compliance with the relevant requirements set by the SEHK from time to time by the public free of charge"
4. *Timing for posting of Mixed Media Offer notification announcement (i.e. the Relevant Period):* In principle, the posting of the Mixed Media Offer notification announcement is acceptable provided that issuers are not hampered by the lead time required to make available the announcement for posting on the HKEx website and such lead time will not be significantly in advance of the actual posting time (for example, more than one business day prior to intended posting date) and content of such announcements complies with the Companies Ordinance and the regulatory authorities do not require additional opinions from issuer's counsel in relation to the issue of such announcement. We wish to point out that the Mixed Media Offer notification announcement which is expected to be issued at least prior to registration of the Hong Kong prospectus is unlike the WPIP which contains appropriate disclaimers and specifically omit information relating to offering size and details of the public offer (including timetable of the Hong Kong public offer).
- Currently, information relating to collection of application forms and printed prospectus are stated in the prospectus itself and the formal notice, both which are only available on the day of commencement of the Hong Kong Public Offer. We think the Hong Kong retail subscribers need to be informed and educated about Mixed Media Offers before the concept is launched in the market. We would expect such proposed Mixed Media Offer notification announcement to be a transitional arrangement for a limited period (until the market is informed and accustomed to Mixed Media Offers) and, ideally, in the longer term, the market is notified of the Mixed Media Offers in the same manner as the current practice (i.e. through the formal notice) as opposed to issuing an announcement prior to the actual offer period.

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Question 2	
<p><i>Do you agree:-</i></p> <p>(a) <i>that adequate disclosure can be regarded as having been made if an announcement the contents of which are as set out in paragraph 35 above is published by a CO Offeror? And</i></p> <p>(b) <i>with the timetable on an the frequency and method of making such disclosures?</i></p>	<p>Please refer to our response to Question 1.</p>
Question 3A	
<p><i>Do you agree that copies of the Paper Prospectus should be made available for collection throughout the Offer Period, free of charge, upon request by any member of the public? If not, please provide suggestions on how to assure that those prospective investors who do not have access to the Internet and those who face technological limitations can obtain copies of the Paper Prospectus before submitting an application.</i></p>	<p>We agree that copies of the Paper Prospectus should be made available for collection at locations designated or approved by SEHK (as described in paragraph 42). As there are no precedent cases, we would expect that during the initial stages of the implementation of the Mixed Media Offers, issuers would need more time to make a reasonable estimate of the number of copies of paper prospectus to be made available.</p> <p>As the introduction of the Mixed Media Approach is to address objectives set forth in paragraphs 21 and 22, and we anticipate this will be the direction which a significant number of issuers would pursue in the public offering of their shares, we should be conscious that in trying to provide access to sufficient copies of the Paper Prospectus, we do not defeat any of the objectives which the Mixed Media Approach was intended to address.</p> <p>We also suggest that copies of prospectus in CD-ROM format be made available as a permissible alternative.</p>
Question 3B	
<p><i>Do you agree with the locations at which copies of the Paper Prospectus should be made available?</i></p>	<p>Agree.</p>

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Question 4	
<p><i>Do you agree that ready accessibility to, and the ability to download by the public free of charge, the e-Prospectus on and from the company's website and the HKEx website, together with availability of copies of Paper Prospectus for collection at specified locations, also free of charge, upon request by any member of the public as discussed in paragraphs 38 to 42 above, are sufficient for access purposes by prospective investors?</i></p>	<p>Please see responses to Questions 1 and 10A and our comments to paragraph 69.</p>
Question 5	
<p><i>Do you anticipate any problems with the requirement to provide a written confirmation to SEHK, prior to the commencement of the Offer Period, that the typeface, format and contents of the e-Prospectus are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK? If so, please explain what these may be.</i></p>	<p>We do not anticipate issuers will have difficulty complying with this requirement.</p>
Question 6	
<p><i>Do you agree that an e-Prospectus should contain in a prominent place on the face of it the statements and information discussed in paragraph 50 above?</i></p> <p><i>Should any other statement and/or information be included on the face of the e-Prospectus to ensure genuine access?</i></p>	<p>Agree.</p> <p>We agree with the proposed inclusion of additional statement and/or information as described in paragraph 50.</p>
Question 7	
<p><i>Do you anticipate any systemic and/or logistical problems with the requirement to publish revised CO Paper Application Forms in the event an addendum or a replacement prospectus is issued? If so, please explain what these may be.</i></p>	<p>We do not agree that every addendum or replacement prospectus requires a revised CO Paper Application Form. This requirement seems unusually onerous if the content of the application form does not require to be changed. We anticipate that only in very limited circumstances where the amended information in the addendum to the prospectus or the replacement prospectus affect the information stated on the CO Paper Application Form, the</p>

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	<p>application form should be revised and replaced entirely. In the event where revised Paper Application Forms are required to be issued, clear guidance needs to be provided in relation to the distribution and collection of the completed revised Paper Application Forms. Also, consideration needs to be given to circumstances where revised Paper Application Forms are issued, but subscriber has already made an application using the “old” application form, and how is the issuer expected to treat those applications. For reasons and difficulties mentioned above, the general preference is not to require mandatory replacement of application forms should addendum or replacement prospectus are to be issued.</p> <p>Issuers can include in the terms and conditions of the public offer that if any addendum or supplement is issued, applicant who has already submitted an application will be informed in the addendum or supplement whether they may or may not withdraw their applications. Generally, withdrawal is permitted if the addendum or supplement contains a material change to the original prospectus. Otherwise, an application once made is irrevocable and applicants are deemed to have applied on the basis of the prospectus, as amended or supplemented.</p>
Part C – THE UNIT TRUSTS CODE AND THE REITS CODE	
<i>Question 8</i>	
<p><i>Do you agree with the Proposal being implemented in the manner described in paragraphs 55 and 56 above in respect of a CIS Offeror making a public offer of interests in an SFC-authorized listed CIS using the Mixed Media Approach? If not, please explain what your views are and suggest alternative manner(s) in which the Proposal may be implemented for such purposes.</i></p>	<p>Agree.</p>
Part D – AMENDING THE EXCHANGE LISTING RULES	
<p><i>Paragraph 65c</i></p>	<p>We suggest that the language in paragraph 65(c) be changed to "capable of being <u>viewed</u> and downloaded <u>in its entirety</u>.....".</p>

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<i>Question 9</i>	
<p><i>Do you agree that each of the aforementioned Exchange Listing Rules should be amended in the manner described above? Should any other Exchange Listing Rules be amended in light of the Proposal?</i></p>	<p>Agree. Please also note our comment that the Mixed Media Offer notification announcement should only be an announcement issued during a transition period.</p> <p>Please see our detailed comments on proposed amendments of the Listing Rules.</p>
Part E – INACCESSIBILITY OF ELECTRONIC LISTING DOCUMENTS FOR DOWNLOADING	
<p><i>Paragraph 68</i></p>	<p>We suggest that the language should be “..... contemporaneous inaccessibility of the electronic listing document for <u>viewing and/or</u> downloading in its entirety”.</p> <p>Does the SEHK or SFC anticipates that the contingency plan be approved or vetted by the SEHK and/or the SFC prior to the launch of the Mixed Media Offer?</p> <p>The SEHK and/or the SFC should provide guidance on testing for continuous inaccessibility.</p>

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<p><i>Paragraph 69</i></p>	<p>We suggest that the language should be “an electronic listing document for <u>viewing and downloading in its entirety in compliance with the relevant requirements set by HKEx from time to time</u> from ...”</p> <p>We suggest that it be provided in the listing rules or appropriate rules that SEHK and/or the SFC be given the power and the discretion to determine whether prolonged/continuous inaccessibility or failure has occurred. The current proposed inaccessibility threshold is “at least 4 consecutive hours”. However, it is not clear if the threshold is based on a sample size of one person not being able to have continuous access or a greater number of persons not being able to have access over a 4-hour continuous period, and other than complaints received from potential subscribers through phone calls, it may be difficult to otherwise identify any other persons who may be experiencing such continuous inaccessibility. The regulators may wish to provide more detailed guidance on this.</p>
<p>Question 10A</p>	
<p><i>What are your views on the requirements to:-</i></p> <p>(a) <i>suspend a Mixed Media Offer in the event the public cannot download the electronic listing document from both (i) the HKEx website and (ii) the company's website or the CIS Offeror's website, as the case may be; and</i></p> <p>(b) <i>promptly notify prospective investors of a CO Offeror's or CIS Offeror's suspension of a Mixed Media Offer?</i></p>	<p>Please clarify whether prolonged failure is considered continuous inaccessibility to <u>either</u> or <u>both</u> websites. Paragraph 69 and question 4 do not appear to convey the same approach.</p> <p>Please see our comments to paragraph 69 above. We also suggest revising the language (as underlined) to the effect that Mixed Media Offer be suspended if the public cannot <u>view or download the electronic listing document in its entirety in compliance with the relevant</u> requirements set by HKEx from time to time from <u>either</u> [Note: only if this is the intention] of the HKEx website or company's website, or the CIS Offeror's website, as the case may be.</p>
<p>Question 10B</p>	
<p><i>Do you agree that continuous inaccessibility of an electronic listing document for downloading from the aforementioned websites for at least 4</i></p>	<p>Agree. Please note that it is potentially more damaging to investors if the prolonged failure of inaccessibility to either websites occurs on the morning</p>

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<p><i>consecutive hours constitutes a prolonged failure warranting suspension of a Mixed Media Offer?</i></p> <p><i>If not, please specify a period of time which should have lapsed when an electronic listing document cannot be downloaded from such websites before a Mixed Media Offer should be required to be suspended and your reasons therefore.</i></p>	<p>of the close of application list. We suggest that cautionary language be included in the Prospectus, Paper Application Forms, Formal Notice and Mixed Media Offer notification announcement that in the event access to either website is not or only intermittently available in the morning of the close of application list, potential investors should obtain a copy of the printed prospectus or CD ROM, if applicable, at the specified locations.</p> <p>Criteria for inaccessibility should cover <u>both viewing and/or</u> downloading the entire prospectus.</p>
Part F – PUBLICITY AND DISCLOSURE MATERIALS REFERRING INVESTORS TO AN ELECTRONIC LISTING DOCUMENT	
<i>Question 11</i>	
<p><i>Do you agree with our approach on how the Guidelines should be interpreted following implementation of the Proposal? If not, please explain what your views are.</i></p>	<p>We generally agree. However, it would be useful if the SEHK could consider providing more formal guidance on the matter.</p>
Part G – ROLE OF SPONSORS IN A PUBLIC OFFER	
<i>Question 12</i>	
<p><i>Do you consider it appropriate to give sponsors the flexibility to determine the manner in which they fulfil their responsibilities under the CFA Code of Conduct in light of the Proposal?</i></p>	<p>We agree in principle that sponsors should be given flexibility to determine the manner in which they fulfil their responsibilities under the CFA Code of Conduct. It would also be desirable and helpful to the sponsors if the SFC could provide certain non-mandatory guidelines or practice note on the matter.</p>

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<i>Comments to proposed amendments to:</i>	
I. the Main Board Listing Rules	
12.04	No comment
12.11	No comment
12.11A (1)	No comment
12.11A (2)	No comment except change (c) to "capable of being <u>viewed and</u> downloaded <u>in its entirety in compliance with the relevant requirements set by HKEx from time to time</u> by the public" For (b) & (c) please note that issuer have no control over Exchange's website. An issuer can only submit documents, suggest modify the wording to reflect this.
20.19A	No comment
25.17	No comment
25.19A	No comment
25.19B (1)	No comment
25.19B (2)	No comment except change (c) to "capable of being <u>viewed and</u> downloaded <u>in its entirety in compliance with the relevant requirements set by HKEx from time to time</u> by the public"
II. the GEM Listing Rules	
16.04C	No comment
16.04D (1)	No comment

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16.04D (2)	No comment except change (c) to " <u>capable of being viewed and downloaded in its entirety in compliance with the relevant requirements set by HKEx from time to time by the public</u> "
16.09 (3)	No comment
29.19 (4)	No comment
29.21A	No comment
29.21B (1)	No comment
29.21B (2)	No comment except change (c) to " <u>capable of being viewed and downloaded in its entirety in compliance with the relevant requirements set by HKEx from time to time by the public</u> "
<i>Comments on proposed amendments to the Companies Ordinance</i>	
9A	<p>(3)(d) "... and capable of being <u>viewed</u> and downloaded <u>in its entirety in compliance with the relevant requirements set by HKEx from time to time by the public free of charge from</u>"</p> <p>(4)(v) "and capable of being <u>viewed</u> and downloaded <u>in its entirety in compliance with the relevant requirements set by the recognised exchange company from time to time by the public</u>"</p> <p>(6) After "designated website" and before "offer period" insert a definition "<u>Technical Requirements</u>", in relation to the downloading of the electronic form prospectus, means any technical criteria set and published by the <u>recognised exchange company from time to time</u>"</p>

27 May 2008