

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink:

[http://www.hkex.com.hk/consul/paper/cp200909cr\\_e.pdf](http://www.hkex.com.hk/consul/paper/cp200909cr_e.pdf)

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

### A. Financial information in circular or listing document

#### (1) Accountants' report on the listed group for very substantial disposals (VSD)

1. Do you agree with our proposal to remove the current accountants' report requirements for VSD?

Yes

No

Please provide reasons for your views.

We agree that the accountant's report on either the issuer group or the Disposal Target covering 3 years' financial periods and a stub period provides limited informational value to the issuer's shareholders and should be removed as a requirement.
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2. If your answer to question 1 is "Yes", do you agree with our proposal to require a VSD circular to disclose financial information described in paragraph 15 of the Consultation Paper?

Yes

No

Please provide reasons for your views.

>We support the Exchange’s proposal to require disclosure of financial information described in Q15 to a certain degree, i.e. the “watershed” requirement structure under the UK listing rules is more cost-effective and reasonable, such that to the extent audited accounts exist, they should be disclosed (and it should not be couched in alternative terms and be left to be determined at the issuer’s discretion). It is only when such audited accounts have not been prepared will financial information of the Disposal Target need to be extracted from the issuer’s consolidated accounts for the entire reporting period or the target’s accounting records if the target has not been owned by the issuer for the entire reporting period. Requiring a mandatory review by issuer’s auditor or reporting accountant is neither cost-effective nor necessary. This will also address the practical difficulty faced by issuers in collating financial information of Disposal Target which was not controlled by issuers prior to the disposal (e.g. associates and joint ventures)

> Issuer group should be allowed to adopt consistent accounting policies as those prepared under local GAAP for the Disposal Target or the financial information under the same GAAP as adopted by the issuer group

> Although it is not apparent from the UK model whether the financial information should cover not just 3 financial years with the latest financial year or period ended not more than 6 months before the circular date (as in the current Rules), in the case of a VSD (as opposed to an acquisition), arguably providing Disposal Target’s most updated information (as opposed to such information as is available to be extracted) should suffice. The pro forma financial information on the remaining group is the key and this will remain to be prepared in accordance with Chapter 4 of the Rules. As an alternative to the above, the Exchange might consider limiting the reporting period to two years plus, where applicable, a stub period instead. This will reflect the dynamic environment under which a majority of companies are operating and the extra value the issuer’s shareholders are expected to derive from the third year financial information required is most likely to be outweighed by the delay factor, and the extra efforts required to produce such report and comply with such requirement.

3. If your answers to questions 1 and 2 are “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A

**(2) Reporting period of accountants’ report in major acquisition or very substantial acquisition circular**

4. Do you agree with our proposal to remove the requirement in Rule 4.06 that the reporting period of an accountants' report in a major transaction or very substantial acquisition circular must cover the financial year immediately before the circular date?

Yes

No

Please provide reasons for your views.

> We agree with the Exchange proposal to remove the requirement in Rule 4.06 that the reporting period of an accountants' report in a major transaction or very substantial acquisition circular not only in respect of the financial year it covers but the very requirement of an accountants' report for the following reasons:  
=> full co-operation of the Target to enable the accountants' report to be prepared is more often than not unlikely to be forthcoming  
=> in performing financial due diligence into the Target, an accountants' report prepared in accordance with Rule 4.04 and the Companies Ordinance is only rarely prepared in our experience  
=> the stated purpose of disclosing information to enable shareholders to assess the Target's performance and financial position and decide how to vote on the transaction is of doubtful value especially in the case of major transactions where written shareholders' approval has been sought in circumstances permitted under LR14.44

5. If your answer to question 4 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A

**(3) Indebtedness statement in a notifiable transaction circular**

6. Do you consider that the requirement for disclosing an indebtedness statement in a notifiable transaction circular should be retained?

Yes

No

Please provide reasons for your views.

We consider the requirement for disclosing an indebtedness statement in a notifiable transaction circular should be removed for the following reasons:  
=> the historical financial information presented together with the working capital statement should provide issuer's shareholders with (i) adequate historical financial position of the issuer group; and (ii) assurance on the overall picture of the issuer group's forecast financial position  
=> if there is a material adverse change since the latest reporting date, the issuer's directors would be obliged to inform shareholders of the relevant details in the statement of material adverse change  
=> the fact that there is no equivalent requirement in the UK and Singapore reinforces the significance (or lack thereof) placed on information to be derived from an indebtedness statement in and of itself. In the case of a substantial issuer group, verifying an indebtedness statement is a seriously onerous task, which is not justified by the limited informational value which it offers

**(4) Working capital statement in a notifiable transaction circular**

7. Do you agree with our proposal to amend Rule 14.66(10) to clarify that the working capital statement in a notifiable transaction circular must take into account the effect of the proposed transaction?

Yes

No

Please provide reasons for your views.

The clarification proposed is desirable as the main purpose of producing a working capital statement in such circular is to demonstrate what effect the proposed transaction has on the issuer's working capital position

8. If your answer to question 7 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A

**(5) Reproducing published financial information in circular or listing document**

9. Do you agree with our proposal to allow issuers to make references in their circulars or listing documents to published documents set out in paragraph 31(3) of Appendix 1B, instead of reproducing the same information?

Yes

No

Please provide reasons for your views.

We agree with the reasons set out in paragraph 40 of the Consultation Paper.

10. If your answer to question 9 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A

**(6) Combined financial information of the enlarged group under paragraph 31(3)(b) of Appendix 1B to the Rules**

11. Do you agree with our proposal to remove the requirement for disclosure of a combined statement from paragraph 31(3)(b) of Appendix 1B to the Rules?

Yes

No

Please provide reasons for your views.

This will have the effect of standardising the requirement of pro forma financial information in issuer’s document and clarifying any contradiction in the requirements under paragraph 31(3)(b) of Appendix 1B and LR 4.29.

12. If your answer to question 11 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A

**B. Other disclosure requirements for circular or listing document**

**(1) Directors’ statement on the accuracy and completeness of information in notifiable or connected transaction circular and listing document**

13. Do you agree with our proposal to modify the directors’ responsibility statement to include a confirmation that the information in the document is accurate and complete in all material respects and not misleading or deceptive?

Yes

No

Please provide reasons for your views.

We agree the responsibility statement in paragraph 2 of Appendix 1B and LR2.13 should be made consistent. We have the following comments on the contents of the statement introduced in 2004 as follows:-  
=> whereas the following sentence “The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document” implies unqualified responsibility on the part of the directors if any information contained in the document turns out to be inaccurate, the rest of the sentence allows the directors to a lesser degree of accuracy so long as all reasonable enquiries have been made and the accuracy “in all material respects” is ascertained to the best of the directors’ knowledge and belief  
=> whereas the following sentence “there are no other facts the omission of which would make any statement herein misleading” is an absolute statement, the earlier sentence offers directors the “defence” so long as all reasonable enquiries have been made by the directors and completeness is qualified in “all material respects” to the best of the directors knowledge and belief

14. If your answer to question 13 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

For the reasons stated in our answer to Q13 above, we would propose the following revised statement which is intended to address the inconsistencies identified:  
“This document includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually (i) confirm that, having made all reasonable enquiries and to the best of their knowledge and belief, the information contained in this document is accurate and complete in all material respects and there are no other facts the omission of which would make any statement herein misleading or deceptive in any material respects, and (ii) accept full responsibility for the foregoing confirmation.”

**(2) Information in board minutes for connected transactions**

15. Do you agree with our proposal to remove the filing requirement for the board minutes approving connected transactions and instead, require issuers to disclose the information contained therein (i.e. whether any directors have a material interest in the transaction and have abstained from voting) in their connected transaction circulars (or if no circular is required under the Rules, their announcements)?

Yes

No

Please provide reasons for your views.

We agree with the proposal to remove the filing requirement for the board minutes approving connected transactions. Our reasons for such removal and the proposal as to the information to be disclosed in the connected transaction circulars (or announcements) are as follows:-  
=> LR14A.55(3) prescribes the disclosure requirements as to the views of the directors and independent non-executive directors on the terms of the transaction in the issuer's announcement. The previous requirement of supplying the minutes to the Exchange creates unnecessary work for the Exchange to verify the accuracy of such disclosure in the announcement, a matter which the issuer and its directors will have to assume the primary responsibility for. The Exchange will not e.g. verify the accuracy of the description of the terms of the underlying agreements by requiring the submission of copies of such documents  
=> Whether any directors have a "material interest" in the transaction or have abstained from voting should be of limited informational value to the shareholders, especially when they expect the issuers directors to abide by any constitutional restrictions or requirements which are applicable in the circumstances. To require a disclosure in the circulars/announcements of whether the issuer's directors have complied with any constitutional restrictions or requirements e.g. declaring the existence of "material interest" and abstaining from voting when abstention is required is being overly prescriptive and asserting too extensive monitoring over compliance with the issuer's internal governance rules - a responsibility which is best left to the issuers and of limited interest or value to the shareholders or investors generally

16. If your answer to question 15 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A

**(3) Circular content requirements for a notifiable transaction involving an acquisition and a disposal**

17. Do you agree with our proposal that the circular content requirements for each of the acquisition and the disposal under a transaction should be determined by their respective transaction classification?

Yes

No



Please provide reasons for your views.

We agree with both the proposal and the reasoning in support therefor.

18. If your answer to question 17 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A

**(4) Disclosure in listing documents of listed overseas or PRC issuer regarding provisions in constitutional document and regulatory provisions in the relevant jurisdiction**

19. Do you agree with our proposal to remove the disclosure and document inspection requirements regarding provisions in constitutional documents and regulatory provisions for listing documents for subsequent issue of securities by PRC issuers and overseas issuers (other than in connection with an introduction or a deemed new listing under the Rules)?

Yes

No

Please provide reasons for your views.

We agree with the proposal and the reasoning therefor.

20. If your answer to question 19 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A

**(5) Additional disclosure requirements for listing documents of PRC issuers**

21. Do you agree with our proposal to remove the disclosure requirements under paragraphs 45, 46, 48 and 49 of Appendix 1B to the Rules for listing documents for subsequent issue of securities by PRC issuers?

Yes

No. The following disclosure requirement(s) should be retained (*please check the appropriate box(es)*):

Paragraph 45 of Appendix 1B

Paragraph 46 of Appendix 1B

Paragraph 48 of Appendix 1B

Paragraph 49 of Appendix 1B

Please provide reasons for your views.

We agree with the proposal and the reasons therefor set out in paragraphs 69 and 74 of.

22. If your answer to question 21 is “Yes”, do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is “No”, please provide reasons and alternative views.

N/A

**C. Timing for despatch of circulars**

**(1) Timing for despatch of notifiable or connected transaction circulars**

23. Do you agree with our proposal to remove the 21-day requirement for publication of a notifiable or connected transaction circular (other than information circular) and instead, require disclosure of the expected timing for despatch of circular and the reasons for any delay?

Yes

No

Please provide reasons for your views.

We agree with the proposal and the reasons given therefor and set out in paragraph 81.

24. Do you agree with our proposal to amend the timing requirement for despatch of information circular from 21 calendar days to 15 business days?

Yes

No

Please provide reasons for your views.

The amendment should make little practical difference but could potentially introduce uncertainty unless the meaning of "business day" in Chapter 1 is clarified by stating whether any day on which the Exchange is open for the business of dealing in securities for other than the full day e.g. open only for half day because of typhoon, etc. is counted as a business day.

The current timing requirement has the advantages of ensuring consistency, using the same test as for determining notice periods for meetings, and ease of determination by issuers and monitoring by the Exchange

25. If your answers to questions 23 and 24 are "Yes", do you agree that the proposed draft Rule amendment(s) in Appendix I to the Consultation Paper will implement our proposals?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A

**(2) Timing for despatch of supplementary circulars**

26. Do you agree with our proposal to amend the timing for despatch of supplementary circulars from 14 calendar days to 10 business days?

Yes

No

Please provide reasons for your views.

For the same reasons as those given to Q24, there are no particular advantages for making the proposed amendment

27. If your answer to question 26 is "Yes", do you agree that the proposed draft Rule amendments in Appendix I to the Consultation Paper will implement our proposal?

Yes

No

If your answer is "No", please provide reasons and alternative views.

N/A

28. Are there any other comments you would like to make?

Yes

No

If your answer is "Yes", please elaborate your views.

The Exchange may also wish to consider the following proposed changes to the requirements for circulars and listing documents:

**=> Removal of the disclosure and document inspection requirements applicable to “material contracts”**

The Rules could provide more clarity or some guideline as to what amounts to “material contracts”. The current explanation of “not being contracts entered into in the ordinary course of business entered into by any member of the group within the two years immediately preceding the issue of the listing document” leaves a lot of room for ambiguity. There is inevitably a degree of overlap or duplication as contracts which constituted notifiable or connected transactions for the issuer group would have made the prescribed disclosure in compliance with the Listing Rules. The need to repeat disclosure or grant access to inspection is unnecessary, burdensome (especially for issuer groups which are very active) and add little value to the investors

**=> Clarifications on inspection of documents requirement -**

The Exchange may wish to clarify whether the intention on document inspection is to allow inspection by issuer's shareholders on record only during the 14 day-period and not the public. Even on the working assumption that inspection is intended to be opened to shareholders on record only, we have experienced possible “abuse” of such inspection facility by possible competitors of the issuer who are interested in the information from any number of perspectives possible other than that of being investors in the issuers. If the document inspection requirement remains intact, the Exchange should consider amending the Rules to specify that any such document inspection may be subject to such restrictions (e.g. confidentiality limitations) as the issuer may reasonably impose and issuers are entitled to effect such redaction to the documents to be inspected on basis of commercial sensitivity (as a matter of course) or such other bases (as approved by the Exchange on a case-by-case basis).

**=> Disclosure of SFO interest regarding group companies -**

While the current Rules under Chapter 14 (i.e. LR 14.66(3) 14.68(1) and 14.69(2)) require disclosure in the circular of directors' and chief executive's SFO interests in the “listed issuer” only, the relevant circular checklists however stipulate disclosure of directors' and chief executive's SFO interests in the “listed issuer” and its “associated corporations”. The circular checklists are therefore misleading and should be amended to accurately reflect the Rules requirements.

- End -