

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

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 support the proposal to remove the current accountants' report requirement for very substantial disposal circulars and the rationale put forward by the Exchange in the Consultation Paper.

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 agree with the rationale put forward by the Exchange in the Consultation Paper.

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.

(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 strongly support the 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 and the rationale put forward by the Exchange in the Consultation Paper.

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.

(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 support the retention of the requirement to include an indebtedness statement in a notifiable transaction circular, subject to a change to the requirement as recommended below. An indebtedness statement, compared with a working capital statement or a statement on material adverse change, provides quantitative, rather than qualitative, information for shareholders and investors to better comprehend the impact of the proposed transaction on the listed group.

We note there are concerns that this requirement may prolong the preparation of circulars due to reasons beyond the control of issuers, such as internal procedures of banks to issue confirmations. We respectfully submit that in some cases this may be a result of the requirement that the latest practicable date of an indebtedness statement in a circular or listing document may not be earlier than 8 weeks from the date of the issue of the circular ("8-week requirement"). We note it is common for issuers to prepare financial information for a period ending on the last day of a month rather than on a date falling exactly at the beginning of the 8-week period. If this is the case and if the proposed timetable slips for any reason, the information in the indebtedness statement may no longer satisfy the 8-week requirement and an issuer may update the information for the entire immediate following month, which in turn will lead to a delay of the despatch of the circular.

We recommend that the Exchange re-considers the 8-week requirement and extends the period to say 12 weeks. This should allow issuers a longer buffer for minor timetable slips. The Listing Rules permit the effective date of a property valuation report to be not more than three months from the date of the circular and it makes sense for the preparation of indebtedness statements to follow the same principle.

(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.

We support this proposal and the rationale put forward by the Exchange in the Consultation Paper.

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.

We note that Appendix 1B paragraph 30 in the Listing Rules does not specify the period for which the directors have to give their opinion on the sufficiency of the working capital of the listed group. The rule currently says “A statement by the directors that in their opinion the working capital available to the group is sufficient or, if not, how it is proposed to provide the additional working capital thought by the directors to be necessary.” For IPO listing documents, a 12 month period has been included in Appendix 1A paragraph 36. We note it is common for directors to give an opinion on working capital sufficiency for a 12-month period and suggest the Exchange considers adding a minimum period in Appendix 1B paragraph 30, for say 12 months, to codify the common practice if this is indeed the intention.

(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 strongly support the proposal to allow an issuer to make references in its circulars or listing documents to its published documents as set out in paragraph 31(3) of Appendix 1B.

We recommend the Exchange to consider whether there are circumstances when an issuer should not be permitted to “incorporate by reference” its published financial information in its circulars or listing documents, for instance when it is required to make prior period adjustments to its published financial information.

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.

(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.

We support this proposal and the rationale put forward by the Exchange in the Consultation Paper.

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.

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 respectfully submit that if the statement suggested by the Exchange is introduced in circulars and listing documents, it may potentially disproportionately increase the liability of the directors and an issuer against the need to protect the investing public.

The liabilities of an issuer and its directors with respect to prospectuses and "corporate communications" are defined and subject to the defences and limitations set out in sections 40 to 41A of the Companies Ordinance, Part IV and sections 390 and 391 of the Securities and Futures Ordinance. To a certain extent, investors can also seek compensation under tort and other ordinances (such as the Misrepresentation Ordinance).

These investor compensation avenues are determined by and subject to case law, defences, mitigation and judicial interpretation. The statement proposed to be added to listing documents or circulars of listed issuers or new issue applicants is very broad in nature and wide in scope and may increase the potential liability of directors and issuers under common law. We respectfully submit that legislation and common law remedies are a more appropriate means to determine directors' and prospectus liability than the Listing Rules.

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.

Not applicable.

(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 support this proposal and the rationale put forward by the Exchange in the Consultation Paper.

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.

(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 support this proposal and the rationale put forward by the Exchange in the Consultation Paper.

Should the proposal be adopted it would be useful if the Exchange would publish written guidance on how the new rules should be implemented in order to ensure that the market will be ready to implement the new approach.

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.

(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 support this proposal and the rationale put forward by the Exchange in the Consultation Paper.

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.

(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 support this proposal and the rationale put forward by the Exchange in the Consultation Paper.

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.

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 in principle with the Exchange that an issuer should be allowed to plan its transaction timetable and to notify and update the market the anticipated schedule (and any changes) for the despatch of its circular. The proposal of the Exchange offers flexibility to an issuer to manage its transaction timetable and aligns with the policy of the Exchange to shift away from over regulation. We agree with the observation of the Exchange that 21 days is often not enough for an issuer to produce its circular or listing document, in particular when much disclosure such as accountants' report or other expert report is required to be included.

However, we would like to raise a couple of points regarding the removal of a deadline for the despatch of circulars ("long-stop date") (other than an information circular).

A "long-stop date" serves the purpose of maintaining an orderly market. While the proposal of the Exchange requires an issuer to publish further announcements when it expects a delay in the despatch of the circular, without a "long-stop date" it may get the impression that it is given a free rein to extend a transaction timetable indefinitely by complying only with the regulatory requirement to make further announcement(s) from time to time. There may be circumstances where an issuer may intentionally delay the despatch of its circular in order to delay the timetable. A hypothetical example is the desire of an issuer to gain more time to conduct shareholders lobbying for affirmative votes.

We encourage the Exchange to maintain a balance between allowing an issuer greater flexibility to manage its transaction timetable and the maintenance of an orderly market. We believe this could be achieved by the retention of a "long-stop date" but extending it to a period which is reasonable and likely in most cases to be sufficient for the preparation of circulars or listing documents. We believe, unless the preparation of a circular is complicated by the need to include much disclosure, 60 calendar days (or 40 business days) should be adequate for preparing most circulars or listing documents.

We suggest if the Listing Rules retain the long-stop date requirement the Exchange should also retain its ability to grant waivers where appropriate to the long-stop date requirement, in order to deal with complicated transactions which justify an extension of the long-stop date.

An issue related to the despatch of circulars:

We note that a PRC issuer is required under the Mandatory Provisions for Companies Listing Overseas (“Mandatory Provisions”) to give not less than 45 days’ notice of any general meeting. As a result, the meeting notice requirement of an H share issuer is 15 days longer than that of an A share issuer, and about 30 days longer than that of a non-PRC issuer in respect of an extraordinary general meeting (assuming the non-PRC issuer gives not less than 10 clear business days’ notice as recommended in paragraph E.1.4 in Appendix 14 of the Listing Rules). Rule 14.41 requires that a circular must be despatched to shareholders at the same time as or before the issuer gives notice of a general meeting to approve the transaction referred to in the circular. The cumulative effect of these two requirements means the extraordinary general meeting notice requirement of an H share issuer is about one month longer than that of a non-H share issuer and 15 days longer than that of an A share issuer.

This longer notice period, which is applicable only to an H share issuer, subjects parties to the relevant transaction to unnecessary market risks which are otherwise not applicable to other entities listed on the Hong Kong Stock Exchange or Shenzhen/Shanghai Stock Exchange. Fluid information contained in a circular such as the indebtedness statement could potentially be three months old (and hence stale) by the time the shareholders rely on such information to cast a vote on the relevant resolution.

We note the Mandatory Provisions have not been updated since their promulgation in the early 1990s and do not reflect the latest notice requirements imposed by the PRC Company Law. We encourage the Exchange to continue dialogue with PRC regulators to consider aligning the notice requirements contained in the Mandatory Provisions and those contained in the PRC Company Law so that H share issuers and A shares issuers are treated equally and subject to similar corporate governance requirements under PRC laws.

We note there are examples of PRC issuers who have received waivers from strict compliance with Rule 14.41 such that circulars were permitted to be despatched after the notice of general meeting had been issued. We urge the Exchange to give written guidance on the circumstances and criteria the Exchange would consider in granting such waivers.

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.

We believe, in most cases, listed issuers will need more than 15 business days to prepare their notifiable transaction circulars. This point is noted by the Exchange in paragraph 80 of the Consultation Paper. An information circular is subject to the same content requirements as a circular issued for the purpose of seeking shareholders' approval and the time required to prepare both types of circular will not be materially different.

We respectfully submit that the "long-stop date" to despatch an information circular should be extended to 40 business days as we have recommended in Issue C1.

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.

Other drafting comments

If after the consultation process the Exchange decides to remove the "long-stop date" requirement under Issue C1, we are of the view that Rule 14.67A would also require changes. Rule 14.67A refers to the requirement for listed issuers to comply with the time frame of the issue of an initial circular as stipulated in Rule 14.38A. If the proposed changes to Rule 14.38A as set out in the Consultation Paper are adopted and the reference to the time frame of despatch of a circular is removed, the mechanism in Rule 14.67A(2) will no longer operate effectively.

(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.

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.

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

Yes

No

If your answer is “Yes”, please elaborate your views.

- End -