

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.

The existing requirement to prepare an accountants' report on the issuer's group:

- does not provide directly relevant information to shareholders (financial information on the disposal target itself together with pro forma financial information on the remaining group should be sufficient);
- is costly and lengthy to prepare with limited additional benefit to shareholders;
- is particularly onerous where it needs to cover a stub period after the end of the issuer's financial year, in which case the work would equate to an audit on the results of the issuer's group for the stub period.

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 that issuers should be allowed to provide the financial information of the disposal target only and that such financial information be reviewed by the auditors or reporting accountants in accordance with standards on engagements to review financial statements. We consider that the most relevant financial information in a disposal is the financial information on the disposal target itself together with pro forma financial information on the remaining group.

We note that under the proposals issuers will be provided with a choice either to provide (a) financial information of the listed group with the disposal target shown separately as a disposal group or discontinued operation; or (b) financial information of the disposal target. We also note from the proposals that issuers will be provided with a choice either (i) to have such financial information reviewed by the auditors or reporting accountants in accordance with standards on engagements to review financial statements; or (ii) to include an accountants' report on such financial information.

However, we would like to clarify the applicability of the proposals in a situation where an issuer opts for options (a) and (i) – i.e., to provide financial information of the listed group with the disposal target shown separately as a disposal group or discontinued operation, and to have such financial information reviewed by the auditors or reporting accountants. The 3-year financial information for the listed group would have been subject to previous annual audits and therefore should have been covered by audit opinions. If an issuer chooses to have the financial information under option (a) reviewed, does it mean that the 3-year audited financial information of the listed group and the stub period figures (if any) may also be covered by this subsequent review opinion? Or would it be the case that only the financial information of the disposal target (shown separately as a disposal group, which is the more common scenario) and the stub period figures (if any) for the listed group will be covered by the review opinion whilst the 3-year financial information of the listed group will be covered by an audit opinion (i.e., one accountants' report setting out audit opinion as well as review opinion)?

It appears from paragraph 15 of the Consultation Paper that the Stock Exchange is expecting that issuers may only prefer option (a) where the reporting period end coincides with the issuer group's financial year end and where the accountants' report option (i.e., option (ii)) is to be elected. If the Stock Exchange envisages that the combination of (a) and (i) is not entirely feasible, we wonder whether this choice should be offered in the proposed rule amendments. That is, we wonder whether it is more appropriate to:

- just offer a choice between inclusion of (A) an accountants' report on the listed group with the disposal target shown separately as a disposal group or discontinued operation; or (B) financial information of the disposal target which must be reviewed by the auditors or reporting accountants. Issuers may still have the choice to include an accountants' report on the financial information of the disposal target; or
- not offer option (A) at all.

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.

Yes, subject to our comments in Question 2 above and additional comments in the paragraphs below.

It is mentioned in paragraphs 14 and 15 of the Consultation Paper that the review by auditors or reporting accountants should be conducted according to the standards published by HKICPA or IASB on engagements to review financial statements (similar to a review of interim financial information).

The proposed draft rule amendments in Appendix I only refer to the financial information to be “reviewed by the auditors or reporting accountants”. The Stock Exchange may wish to make it clear in the proposed draft rule amendments that the financial information will have to be “reviewed by the auditors or reporting accountants in accordance with relevant standards published by the HKICPA or IASB on engagements to review financial statements”.

Furthermore, the Stock Exchange may wish to clarify that the content requirement of the financial information should comply with the relevant accounting standards. For example, the Stock Exchange may consider adopting the following revised wording: “The financial information must comprise income statements, balance sheets, cash flow statements and statements of changes in equity of [the issuer’s group, or] the business, company or companies being disposed of [(as the case may be)] and other information required by the relevant accounting standards published by the HKICPA or IASB, together with any additional notes that the directors consider necessary for a reasonable appreciation of the results for the financial period”.

(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 that the accountants' report requirements for an acquisition target in a major acquisition or very substantial acquisition should be less stringent than those for a listing applicant which has to meet the trading record requirement. We agree that the purpose of providing relevant information to shareholders is achieved when the accountants' report contains the target's results for three financial years and, if necessary, a stub period with the latest financial year/period ended not more than six months before the circular date; and that the despatch of circular should not be delayed merely because of the time required to produce the target's audited accounts for the latest financial year.

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.

Having considered the views and facts set forth in paragraphs 27 to 31 in the Consultation Paper, we are neutral as to whether the requirement should be retained or not.

(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.

It is market practice that the working capital statement takes into account the effect of the proposed transaction.

We note that the Stock Exchange has not proposed a corresponding clarification in respect of the working capital statement in a reverse takeover listing document. A reverse takeover also involves an acquisition by a listed issuer.

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.

(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.

The financial information about the listed group is extracted from published accounts or an accountants' report in a published circular which are available at both the Stock Exchange's and the listed issuer's website. We agree that there is no need to reproduce such information in the circular itself. The proposal will help listed issuers save resources.

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 agree that this old requirement conflicts with rule 4.29 regarding pro forma financial information.

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.

N/A. Please refer to our cover letter.

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.

N/A. Please refer to our cover letter.

(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.

N/A. Please refer to our cover letter.

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. Please refer to our cover letter.

(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 that it is unduly burdensome to require both the acquisition and the disposal to comply with the more stringent disclosure requirements by reference to the larger of the acquisition or disposal. We agree that the proposal will help avoid situations where an accountants' report on the company being acquired is required even though the acquisition is in itself immaterial to the issuer.

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.

N/A. Please refer to our cover letter.

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. Please refer to our cover letter.

(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.

N/A. Please refer to our cover letter.

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. Please refer to our cover letter.

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.

It is common for listed issuers to require more than 21 days to prepare their circulars, particularly when an accountants’ report is required. We agree that the proposal will provide more flexibility for listed issuers to plan their transaction timetable when a physical shareholders’ meeting is involved.

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.

N/A. Please refer to our cover letter.

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.

Yes, in respect of those parts covered by our comments in Question 23 above.

(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.

N/A. Please refer to our cover letter.

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. Please refer to our cover letter.

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

Yes

No

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

- End -