

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2019-Codification-of-General-Waivers/Consultation-Paper/cp201908.pdf>

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

Capitalised terms have the same meaning as defined in the Consultation Paper unless otherwise stated.

1. Do you agree with our proposal to codify the existing General Waiver such that bonus or capitalisation issues by a PRC incorporated issuer are exempted from shareholders' approvals in general meetings and separate class meetings?

Yes

No

You may provide reasons for your views.

2. Do you agree with our proposal to codify the existing General Waiver to modify the calculation of consideration ratio for a PRC incorporated issuer whose domestic shares are listed on a PRC exchange?

Yes

No

You may provide reasons for your views.

3. Do you agree with our proposal to codify the existing General Waiver to allow the listed issuer's stock code to be displayed prominently in the corporate or shareholder information section of financial reports as described in paragraph 30 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

4. Do you agree with our proposal to codify the R4.04(2)&(4) Conditions as an exception to Main Board Rules 4.04(2) and 4.04(4) regarding the disclosure of financial information of subsidiaries or businesses acquired or to be acquired after trading record period?

Yes

No

You may provide reasons for your views.

5. Do you agree with our proposal to codify the R4.10 Waiver as an exception to Main Board Rule 4.10 regarding the disclosure of financial information of the overseas banking companies?

Yes

No

You may provide reasons for your views.

6. Do you agree with our proposal to codify the R8.21(1) Conditions as an exception to Main Board Rule 8.21(1) regarding the change of financial year period?

Yes

No

You may provide reasons for your views.

7. Do you agree with our proposal to (i) codify the modification provided by the General Waivers into Main Board Rules 13.46 and 13.49(1) subject to the new applicant meeting the Annual Results and Reports Waivers Conditions; (ii) codify similar exception to Main Board Rule 13.48(1) as well as GEM Rules 18.66 and 18.79; (iii) align the conditions for Interim Results Exemption with the Annual Results and Reports Waivers Conditions; and (iv) repeal PN 10 and consolidate the guidance with the relevant Main Board Rules?

Yes

No

You may provide reasons for your views.

8. Do you agree with the proposal to codify the waiver from disclosure of actual consideration of aircrafts to be acquired by listed airline operators, as described in paragraph 58 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

9. Do you agree with the proposal to allow listed issuers to determine SpinCo's Scheme Limit with reference to SpinCo's shares in issue as at the date of SpinCo's listing?

Yes

No

You may provide reasons for your views.

10. Do you agree with the proposal to codify the waiver of the exercise price requirement for issuers dually listed on the Exchange and a PRC exchange as described in paragraph 65 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

11. Do you agree with our proposal to codify the waiver described in paragraph 71 of the Consultation Paper in respect of the experience and qualification of company secretary into the Rules?

Yes

No

You may provide reasons for your views.

In responses to the CONSULTATION PAPER dated August 2019, in relation to CODIFICATION OF GENERAL WAIVERS AND PRINCIPLES RELATING TO IPOS AND LISTED ISSUERS AND MINOR RULE AMENDMENTS

For Question 11: Do you agree with our proposal to codify the waiver described in paragraph 71 in respect of the experience and qualification of company secretary into the Rules?

Issues

68. Issuers usually appoint a senior management member, or other employees that had served related roles in the new applicant for a period of time and are familiar with the affairs of the new applicant as its company secretary, given the individual's familiarity with the issuer's business and affairs. However, these individuals may not possess the academic or professional qualifications under note 1 to Main Board Rule 3.28 or the relevant experience under note 2 to Main Board Rule 3.28. In addition, issuers with principal business activities outside Hong Kong may find it suitable to appoint a candidate who fits their specific needs (e.g. someone who has special knowledge or skills in the local laws and regulations or industry-specific experience or expertise) but who lacks familiarisation with securities regulation in Hong Kong to fulfil the Main Board Rule 3.28 requirement.

Our comments to para. 68:

The Corporate Governance Code states that the company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed and therefore the academic or professional qualifications requirement should never be compromised, no matter for new applicant or issuers with principal business activities outside Hong Kong. These issuers should consider to appoint a local legal advisor to work with the company secretary to fits their specific needs instead of infringing the role of company secretary as stated in the Corporate Governance Code. Besides, more and more HKICS members with mainland education background should be considered has the special knowledge or skills in the local laws and regulations to fit their needs.

69. Recognising the above issues, the Exchange has in the past granted waivers to issuers from the requirements under Main Board Rule 3.28 in relation to a company secretary who does not have the qualification or experience required under Main Board Rule 3.28 (the "Proposed Company Secretary") for a specified period. The waiver, if granted, is on the condition that the Proposed Company Secretary must be assisted by a person who possesses the qualifications or experience as required under Main Board Rule 3.28 ("Qualified Person") throughout the waiver period (the "Period"). This arrangement enables the Proposed Company Secretary to perform the regulatory functions of a company secretary and acquire the relevant experience required under the Main Board Rules (in particular, the familiarity with the relevant regulatory requirements) over time.

Our comments to para. 69:

We admitted the Exchange has granted waivers to issuers from the requirements under Main Board Rule 3.28 in relation to a company secretary who does not have the qualification or experience required under Main Board Rule 3.28 (the "Proposed Company Secretary") for a specified period in the past. However, in view of the increasing number of HKICS members, who possesses the qualifications or experience as required under Main Board Rule 3.28, in particular with mainland background, it is questionable whether the Exchange still have strong reasons to grant waiver to issuers in the future.

Conclusion

1. Issuers with any specific needs should consider to appoint local legal advisor to work with the company secretary to fits their specific needs instead of infringing the role of company secretary as stated in the Corporate Governance Code. Besides, more and more HKICS members with mainland education background should be considered has the special knowledge or skills in the local laws and regulations to fit their needs.

2. In view of the increasing number of HKICS members, who possesses the qualifications or experience as required under Main Board Rule 3.28, in particular with mainland background, it is questionable whether the Exchange still have strong reasons to grant waiver to issuers in the future.

3. Even though the Exchange might grant waiver in some specific circumstance, we strongly disagree the factors that Exchange will consider to grant waiver be codified into Rules, as it probably will give a wrong message to the Issuer that appointing a qualified person to be a Company Secretary is no longer necessary and the Rule offers an option.

12. Do you agree with the proposals (a) to provide an exemption for Main Board listed issuers that are banking companies or insurance companies from including a working capital statement, subject to appropriate alternative disclosures in their listing documents and transaction circulars if they are able to meet the same conditions as those set out in Main Board Rule 8.21A(2), and (b) to limit Main Board Rule 8.21A(2) so that the exemption applies only to banking companies or insurance companies, subject to alternative disclosures in their listing documents and the conditions as described in paragraph 73 of the Consultation Paper?

Yes

No

You may provide reasons for your views.

13. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL7-09 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

14. Do you agree with our proposal to codify the guidance in Listing Decision HKEX-LD15-3 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

15. Do you agree to amend Main Board Rule 17.05 to state clearly that the restricted period for grant of share options would cover the trading day after the announcement is made with respect to the inside information?

Yes

No

You may provide reasons for your views.

16. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL16-09 into the Rules for completeness?

Yes

No

You may provide reasons for your views.

17. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL31-12 into a new practice note to the Rules for completeness?

Yes

No

You may provide reasons for your views.

18. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL58-13 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

19. Do you agree with our proposal to codify the guidance in Guidance Letter HKEX-GL60-13 into the Rules for new applicants' easy reference?

Yes

No

You may provide reasons for your views.

- End -