

## Part B Consultation Questions

Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Consultation-Paper/cp202008.pdf>. Please indicate your preference by ticking the appropriate boxes.

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

**We encourage you to read all of the following questions before responding.**

1. We propose to amend the existing threshold for imposing a PII Statement and to make it clear that a PII Statement can be made whether or not an individual continues in office at the time of the PII Statement. Do you agree?

☐ Yes

☒ No

If your answer to the above question is “no”, please provide reasons for your views.

The proposed responsibility is onerous and unreasonable for a director who acts reasonably with good faith. Under the proposed amendments, a PII Statement may still be issued to a director if the HKEx is of the view that the retention of office by the director is prejudicial to the interest of investors despite the case is neither of willful intention nor is persistent.

Despite a director has acted with professional due care, the director’s judgment eventually may turn out to be regarded as prejudicial to the interest of investors, as result of market and business situations and changes that are beyond his control, which is contradictory to a director’s duty, for merely a wrong judgment after due consideration. We do not encourage the above but it will be unreasonable and unjust to increase the level of responsibility tremendously under R2A.09(7) without provision of reasonable defense to balance the interest of directors at the same time. Such strict liability will give negative impact to the market, for example, such strict liability (which is difficult or may not be able to discharge) may deter professionals to accept invitation of appointment as an independent non-executive directors for contributing their fruitful experience to listed issuers from an independent perspective. Contribution from independent non-executive directors always forms a material part of the existing corporate governance structure of listed issuers. The discouragement may affect the current corporate governance structure which lowers the protection of public investors.

We are of the view that the existing R2A.09(7) has already provided sufficient power to the HKEx to regulate the wrongdoing of directors and the HKEx also has other tools to handle a breach of duty situation. The threshold of “willful” or “persistent” is meaningful to be kept for providing a reasonable test for judging a director’s actions under a real market situation.

2. We propose to extend the scope of a PII Statement to include directors and senior management of the relevant listed issuer and any of its subsidiaries. Do you agree?

☐ Yes

☒ No

If your answer to the above question is “no”, please provide reasons for your views.

The proposal has widespread implications to directors at subsidiary level and senior management (including CFO and company secretary) and “all” professional advisers (including financial advisers, legal advisers and accountants) as the case may be.

We are of the view that the proposed extension of scope under R2A.10 is not desirable. If the proposed amendment in Question 1 implements, the proposal as stated in Question 2 will ramp up the responsibility of subsidiary directors, senior management and professional advisers. Having considered the proposal in Question 1 regarding taking out the threshold of “willful or persistent”, the responsibility will be extremely onerous to subsidiary directors, senior officers and professional advisers and may not be pragmatic for subsidiary directors, senior management and professional advisor to discharge their duties in commercial operation. We reiterate that the regulation should function as a gate to protect public interest (including but not limited to minority shareholders) with reasonable flexibility, and balance the interest of other stakeholders (such as directors and officers of the listed issuers, and advisory firms) at a reasonable and acceptable standard.

3. We propose to enhance follow-on actions where an individual continues to be a director or senior management member of the named listed issuer after a PII Statement has been made against him. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

Please refer to our views for Question 1 and Question 2. We are of the view that the withdrawal of threshold and extension of scope may not be desirable for the market. As such, we do not agree the proposed amendment as mentioned in Question 1 and Question 2. Accordingly, we are against the proposed amendment regarding the follow on actions in Question 3.

4. We propose that, after a PII Statement with follow-on actions has been made against an individual, the named listed issuer must include a reference to the PII Statement in all its announcements and corporate communications unless and until that individual is no longer its director or senior management member. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

As we do not agree the amendments mentioned in Questions 1 and 2, we object the amendment on Question 4 as well.

5. We propose to extend the current express scope of disclosure in listing applicants' listing documents and listed issuers' annual reports in respect of their directors and members of senior management (current and/or proposed, as the case may be) by requiring provision of full particulars of any public sanctions made against those individuals. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

6. We propose to remove the existing threshold for ordering the denial of facilities of the market. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

The denial of facilities should remain unchanged with the current power and scope. We are of the view that the current power with the threshold is already sufficient to maintain a fair or orderly market and provide reasonable defense for listed issuers.

7. We propose to include fulfilment of specified conditions in respect of the denial of facilities of the market. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

We are of the view that the current power under the Listing Rules which has set a specified period is sufficient. If there is any further breach of the Listing Rules, the HKEx can take further actions or impose further penalty, where appropriate, on a case by case basis. Therefore, the current punishment has sufficient protection for a fair and orderly market and it will provide more flexibility for the HKEx to handle certain cases in which some situations may not have necessary needs to ask the listed issuers to demonstrate to the satisfaction of the HKEx.

8. We propose to introduce the Director Unsuitability Statement as a new sanction. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

9. We propose that the follow-on actions and publication requirement in respect of PII Statements also apply to Director Unsuitability Statements. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

We do not agree the proposal under Question 8. As such, we do not think that a publication requirement is applicable.

10. We propose to impose secondary liability on Relevant Parties if they have 'caused by action or omission or knowingly participated in a contravention of the Listing Rules'. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

We disagree the scope of the liability as stated in the Consultation Paper but agreed in principle for imposing secondary liability but suggest the HKEx to make further consultation with a more precise scope of liability of the Relevant Parties. In view of the new responsibility under the proposed amendments, the HKEx may list out the responsibilities of the Relevant Parties (such as CFO, COO and company secretary) and make further market consultation on such new responsibilities with more real life examples. We are of the view that the current actions as stated in the Consultation Paper may not be appropriate and may be too onerous for the Relevant Parties (such as CFO be liable for obtaining auditors' agreement before publication of preliminary results announcement and Board Secretary be liable for material inaccuracy of issuer's announcement regarding its controlling shareholder's transfer of shares. These matters might not be under the control of CFO and Company Secretary). Having said that, we agree that imposing a reasonable duty is good for market regulation in general.

11. We propose to include an explicit provision permitting the imposition of a sanction in circumstances where there has been a failure to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee of the Exchange. Do you agree?

☒ Yes

☐ No

If your answer to the above question is “no”, please provide reasons for your views.

12. We propose that sanctions may be imposed on all Relevant Parties through secondary liability where a party has failed to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee. Do you agree?

☐ Yes

☒ No

If your answer to the above question is “no”, please provide reasons for your views.

Please see our view in questions 10 and we suggest the HKEx to make further consultation on the responsibilities of each Relevant Party. We believe that a more precise scope will facilitate the market to fully understand more about the proposed amendment and provide more fruitful feedback to the HKEx.

13. We propose to explicitly provide in the Rules the obligation to provide complete, accurate and up-to-date information when interacting with the Exchange in respect of its enquiries or investigations. Do you agree?

☒ Yes

☐ No

If your answer to the above question is “no”, please provide reasons for your views.

14. Do you agree with the proposed definition of ‘senior management’?

☒ Yes

☐ No

If your answer to the above question is “no”, please provide reasons for your views.

We agree in principle the proposal and the rationale as stated in the Consultation Paper. Having said that, we suggest the HKEx to give a longer notice period of adoption to the market after issuing the consultation conclusion and provide more seminars as well as materials to the market to raise the awareness and understanding of the new definition of “senior management” before the implementation of new rules.

15. We propose to include employees of professional advisers of listed issuers and their subsidiaries as a Relevant Party under the Rules. Do you agree?

☐ Yes

☒ No

If your answer to the above question is “no”, please provide reasons for your views.

We agree in principle the proposal and the rationale as stated in the Consultation Paper but do not agree the employees should bear same level of responsibility as a professional advisory firm. We suggest the HKEx to make further consultation detailing the scope of responsibilities and to provide more seminars as well as materials to the market to raise the awareness of the responsibilities of Relevant Party before further consultation.

16. We propose to include guarantors of structured products as a Relevant Party under the Rules. Do you agree?

☐ Yes

☒ No

If your answer to the above question is “no”, please provide reasons for your views.

We do not agree putting guarantors of structured products as a Relevant Party. The guarantor (for example, a fellow subsidiary of the issuer under the same listed issuer group of companies) may not process sufficient information to discharge its duty as a Relevant Party and the directors of the listed issuer should take the responsibility if the guarantor is a subsidiary of the listed issuer. The proposed amendment also give negative impact on business operation, for example, if a guarantor is a non-wholly owned fellow subsidiary of a listed issuer, the increase in responsibility will become a hurdle for business negotiation amongst the shareholders of the non-wholly owned fellow subsidiary (i.e. the guarantor) for the provision of guarantee which, in turn, affects the business of listed issuer.

17. We propose to include guarantors for an issue of debt securities as a Relevant Party under the MB Rules. Do you agree?

☐ Yes

☒ No

If your answer to the above question is "no", please provide reasons for your views.

We do not agree putting guarantors of debt securities as a Relevant Party for the same reason as stated in our reply to Question 16.

18. We propose to include parties who give an undertaking to, or enter into an agreement with, the Exchange as Relevant Parties under the Rules. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

19. We propose to extend the ban on professional advisers to cover banning of representation of any or a specified party. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

20. We propose to include express obligations on professional advisers when acting in connection with Rule matters. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

21. We propose that 'business day' be used as the benchmark for counting the periods for filing review applications, and for requesting or providing written reasons for decisions. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

22. We propose that all review applications must be served on the Secretary. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

23. We propose that the counting of the period for filing review applications be from the date of issue of the decision or the written reasons. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

24. We propose that the counting of the period for requesting written reasons be from the date of issue of the decision. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

25. We propose that the counting of the period for providing written reasons be from the date of receipt of the request. Do you agree?

☒ Yes

☐ No

If your answer to the above question is "no", please provide reasons for your views.

- End -