

Submitted via Qualtrics

Freshfields

Company/Organisation view

Law Firm

Question 1

Do you agree with the Electronic Instructions Proposal as detailed in paragraphs 29 to 45 of the Consultation Paper?

Yes

Please give reasons for your views.

The Electronic Instructions Proposal aims to further expand the paperless listing regime by allowing securities holders to send certain instructions to issuers electronically. This includes instructions related to meetings, proxy appointments, and responses to corporate communications.

Our comments to the Electronic Instructions Proposal are separated into two parts: (a) for equity securities issuers and (b) for Public Debt Issuers.

In relation to equity securities issuers, we support this proposal as it offers greater convenience for equity securities holders, who can send instructions electronically (in real-time) without the need for physical documents. It is clear to us that for companies incorporated in Hong Kong, Cayman and Bermuda, electronic communications (including proxy appointments) to the electronic address specified by the company are acceptable.

However, we would suggest the Exchange to provide specific guidance to PRC issuers in relation to instructions related to proxy appointments. For PRC issuers, if the proxy form is signed by a person authorised by the appointer, the proxy form must be accompanied by the power of attorney which must be notarised and delivered to the company's domicile or elsewhere specified in the meeting notice. There are no uniform rules as to whether the power of attorney (if required) can be delivered electronically. We believe that short of Exchange's proper guidance, companies may take a more cautious approach to avoid proxy appointments being sent electronically.

On the other hand, in relation to Public Debt Issuers, the proposed amendment to require the Public Debt Issuer to put in place a mechanism that enables bondholders to send Meeting Instructions to the Public Debt Issuer directly is unrealistic in practice and is unnecessary because the current market practice of giving meeting instructions through the clearing systems already provides sufficient protection and convenience to the bondholders. The clearing and settlement of debt securities, including retail bonds listed on the Exchange, are usually processed in the clearing systems through their electronic book-entry transfer systems. It is very rare for bondholders to hold physical bond certificates as proof of their holding. The clearing systems also provide electronic tendering platforms for issuers, bondholders and/or their custodians or agents to give notice or vote in accordance with the meeting procedures in the bond documents. The market participants are familiar with such well-established meeting procedures which have been adopted in the debt securities markets for decades. The new approach proposed by the Exchange is intended to introduce a new parallel communication channel between the issuers and the bondholders which is untested and may create confusion to the market with no additional benefit.

In addition, unlike CCASS, the major clearing houses for debt securities listed on the Exchange are Euroclear, Clearstream, Depository Trust Company (DTC) and the Central Moneymarkets Unit (CMU), most of which are located outside of Hong Kong and are independent institutions outside of the control or supervision of the Exchange. It is unrealistic to expect such clearing houses to facilitate the Electronic Instruction Proposal or share the electronic book-entry records with other parties. In practice, the ultimate beneficial bondholders are usually represented by their custodians who hold securities accounts in the relevant clearing houses. It would not be possible for a Public Debt Issuer to authenticate the identity of bondholders by itself outside of the clearing systems.

Question 2

Do you agree with the implementation timeline (including the availability of transitional arrangements) for the Electronic Instructions Proposal as set out in paragraphs 47 to 54 of the Consultation Paper?

No

Please give reasons for your views.

The Consultation Paper proposed the implementation date for the Electronic Instructions Proposal be the same date on which USM is implemented. While the intention to align the implementation timeline for the Electronic Instructions Proposal with USM is understandable, our view is that it may not be necessary and could

potentially delay the benefits of the paperless listing regime. The timeline for USM is notably lengthy (up to five years from the initial implementation date), and waiting for its completion could hinder the timely adoption of electronic instructions. Given the distinct nature and objectives of the two proposals, it would be more efficient to proceed with the Electronic Instructions Proposal independently. This approach would allow stakeholders to reap the benefits of a paperless system sooner, without being constrained by the extended timeline of the USM initiative.

Question 3

Do you agree with the Real-time Electronic Payment Proposal as detailed in paragraphs 69 to 74 of the Consultation Paper?

Yes

Please give reasons for your views.

The Real-time Electronic Payment Proposal aims to enhance the efficiency and security of payment processes by enabling real-time electronic payments for transactions related to securities.

We support this proposal as stakeholders can benefit from the convenience of instant payments, aligning with global trends and keeping the market competitive with its peers. We also agree that it is fair for issuers to bear outward charges and securities holders to bear inward charges.

Question 4

Do you agree with the Electronic Subscription Monies Proposal as detailed in paragraphs 83 to 89 of the Consultation Paper?

Yes

Please give reasons for your views.

The Electronic Subscription Monies Proposal aims to allow existing securities holders to pay subscription monies for offers electronically.

We support this proposal as it offers greater convenience for securities holders, allowing them to make payments electronically without the need for physical cheques or bank visits. It also reduces the time and effort required by issuers to deposit paper cheques and wait for fund clearance.

Question 5

Do you agree that MMOs should no longer be available to issuers as set out in paragraph 99 of the Consultation Paper?

Yes

Please give reasons for your views.

Based on the Exchange's statistics, no equity securities issuer has adopted MMOs since the paperless reform to have listing documents only be published in electronic format in July 2021. Accordingly, we agree that MMOs should be abolished.

For Professional Debt Issuers, the offer and subscription of their bonds is made through financial intermediaries via Bloomberg and the clearing systems to the professional investors who are well equipped to receive information and place orders in the electronic system. The abolition of MMO would not have any substantial impact on them.

Considering the impact on a public offer of debt securities, given subscription of a public offer of debt securities will continue to be conducted through the placing banks or other financial institutions as the current practice, as long as the placing banks and/or such financial institutions continue to provide necessary assistance to the subscribers who need support with the electronic application form, the interests of subscribers would not be substantially harmed by abolishing application forms in printed form.

Question 6

Do you agree with the Hybrid General Meeting and E-voting Proposal as detailed in paragraphs 129 to 134 of the Consultation Paper?

Yes

Please give reasons for your views.

The Hybrid General Meeting and E-voting Proposal aims to allow securities holders to participate in general meetings online and vote electronically.

We support this proposal as it ensures that all stakeholders (regardless of their physical location) can participate fully without the need to travel. We believe this is the necessary next step in line with global trends as businesses and markets worldwide increasingly embrace the use of technology to enable video conferences. Given 90% of issuers are incorporated in jurisdictions that either expressly allow or

do not prohibit hybrid general meetings and E-voting, we do not envisage significant push-backs from stakeholders.

Question 7

Should issuers be required to provide securities holders with an option to attend general meetings remotely and vote via electronic means (as set out in paragraph 135 of the Consultation Paper)?

Yes

Please give reasons for your views.

We support this proposal to align with our support for the Hybrid General Meeting and E-voting Proposal in Question 6.

Question 8

Should web accessibility guideline(s) (e.g. WCAG) be incorporated into, or referred to, in the Listing Rules (for example, the CG Code) or the Exchange's guidance, such that any corporate communications made available on issuers' website under the Rules should conform to such guideline(s), as set out in paragraph 146 of the Consultation Paper?

Yes

Please give reasons for your views.

We agree that incorporating web accessibility guidelines into the Listing Rules or Exchange's guidance is a forward-thinking step that aligns with global trends and promotes a more inclusive and accessible market environment.

We also note that in the consultation conclusion on promoting paperless corporate communications for Hong Kong companies published by the Financial Services and the Treasury Bureau (FSTB) dated 25 September 2024, upon the new arrangement to facilitate electronic dissemination of communications to shareholders, FSTB will remind companies to enhance the accessibility of their websites to facilitate access by people with disabilities. We welcome the incorporation of web accessibility guidelines to align with the Government's commitment to providing an accessible environment for people with disabilities.

In terms of implementation, we suggest incorporating such requirement as a recommended best practice in the CG Code at the initial stage with an aim to upgrade it to a Code Provision in the future depending on market feedback.

Question 9

Do you agree with adding a new note to MB Rule 13.46(1) to clarify that the conditions for granting waivers from the publication and distribution requirements of annual results/reports also apply to issuers that are neither overseas issuers nor PRC issuers (see paragraph 151 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the amendments for better clarity.

Question 10(a)

Do you agree with the following proposed amendments to align requirements:

To amend paragraph 12B of Appendix D2 to the MB Rules (GEM Rule 18.39B) to remove the annual affirmation requirement for independent non-executive director (see paragraph 152 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the amendments to align paragraph 12B of Appendix D2 to Rule 3.13 of the Listing Rules for consistency.

Question 10(b)

Do you agree with the following proposed amendments to align requirements:

Amend MB Rule 9.11(33) (GEM Rule 12.25(2)) to more accurately reflect the documentary requirements for the registration of a prospectus of C(WUMP)O (see paragraph 154 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the amendments to Rule 9.11(33)(c) of the Listing Rules to align with the requirements for the registration of a prospectus of C(WUMP)O.

Question 10(c)

Do you agree with the following proposed amendments to align requirements:

To remove GEM Rule 18.50C to align the requirement on the timeframe for submission of annual report with the MB Rules (see paragraph 155 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the amendments to align the requirements between the GEM Rules and the Main Board Rules.

Question 10(d)

Do you agree with the following proposed amendments to align requirements:

To align the market capitalisation information required on Main Board and GEM listing application forms (see paragraph 157 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the amendments to align the market capitalisation information required on Main Board and GEM listing application forms for consistency.

Question 11

Do you agree with the proposal to amend MB Rule 2.07C to cover the types of announcements mentioned in paragraphs 158 and 159 of the Consultation Paper?

Yes

Please give reasons for your views.

We agree with the amendments for better clarity for Public Debt Issuers who want to publish prescribed announcements under specific circumstances during trading hours.

Question 12

Do you agree with the proposal to amend MB Rule 37.06 as mentioned in paragraphs 161 to 164 of the Consultation Paper?

Yes

Please give reasons for your views.

We are supportive of the proposed amendments to MB Rule 37.06.

First, it is more accurate to use the term “two financial years” because some applicants’ financial year cut-off date may not be the same as a calendar year. Second, the proposed amendment to include audited interim financial statements in calculating the 15-month eligibility requirement will minimise the impact of any blackout period and provide flexibility for applicants.

In addition, we have noticed from our practice that many applicants do not regularly prepare audited interim financial statements. It is more common that the applicants prepare reviewed interim financial statements only. Therefore, we would suggest the Exchange consider expanding the second amendment in relation to the 15-month eligibility requirement to include reviewed interim financial statements prepared in accordance with the accounting principles applicable to the applicant. This will provide more flexibility for applicants and make the Exchange more attractive to potential applicants compared with the other major listing venues in the Asia, such as SGX and MOX, in which the requirement for listing of debt securities, especially in relation to the requirement on the applicant’s audited/reviewed financial statements, is much more lenient than that in the Exchange.

Question 13

Do you agree with the proposal to clarify the scope of Professional Debt Issuers’ continuing obligation to notify the Exchange of their proposals to amend trust deed (see paragraphs 165 and 166 of the Consultation Paper)?

No

Please give reasons for your views.

The proposed clarification will substantially expand the number of documents that an issuer will be required to submit to the Exchange for review when an issuer intends to amend any bond document. We think the proposed clarification will create unnecessary burden to the issuers and should not be adopted.

The relationship between an issuer and their bondholders is essentially a contractual relationship. This is particularly when the bonds are offer to professional investors only. When an issuer and the trustee on behalf of the bondholders agree to amend any document securing or constituting the debt securities, they are legally entitled to make the amendment as long as the proposed amendments substantially and procedurally comply with terms of the bond documents. The issuer should not be required to notify the Exchange in advance and/or be subject to Exchange’s review or query, which is out of the contractual relationship created by the bond documents,

nor is there any legal basis for the Exchange to scrutinize the amendments on behalf of the issuer or the bondholders. The Exchange, as the listing venue, is not expected to play the role of supervising or managing the contractual relationship between the issuer and the trustee/bondholders.

Second, amendment of bond documents is usually driven by commercial negotiations among professional investors, legal advisers and financial institutions, especially when it occurs in a distressed situation. The amendment is usually implemented by way of liability management tools such as consent solicitation or exchange offer. The market has developed a system in which legal advisers, financial institutions, intermediaries and clearing houses work together to ensure investors will receive all necessary information and will have a well-functioning platform to exchange information, tender votes and implement the amendments upon completion..

We are of the view that the current practice that the Professional Debt Issuers notify the Exchange of their proposals to amend trust deed is already burdensome to the issuers and the Exchange should consider removing it. The proposed amendment to expand the issuers' notification obligation to other bond documents will create be burdensome for the issuers and is not likely to bring any additional benefit to the bondholders or the other market participants.

Question 14

Do you agree with the proposal to clarify the scope of Professional Debt Issuers' continuing obligation to submit financial statements to the Exchange (see paragraphs 167 and 168 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the proposed amendment to change "interim report" to "interim financial statements". In practice, many Professional Debt Issuers do not prepare audited or reviewed interim financial statements. It has been the customary market practice for a long time for Professional Debt Issuers to provide their interim financial statements without any auditors' report to satisfy their continuing obligation under the MB Rule 37.53. The proposed amendment will make MB Rule 37.53 consistent with the practice which has been accepted by the Exchange.

Question 15

Do you agree with the proposal to revise the scope of Public Debt Issuers' continuing obligation to inform and submit drafts to the Exchange with respect to their proposal to amend documents that affect the rights of the holders of their listed debt securities (see paragraphs 169 to 171 of the Consultation Paper)?

Yes

Please give reasons for your views.

If the bonds were issued and subscribed by retail investors, then we would agree that the Exchange should have certain degree of involvement but this should be balanced with the need to ensure that in a debt restructuring situation, the issuer, professional investors, legal advisers and financial institutions are best placed to commercial determine the appropriate amendments to the documents as noted in our responses to question 13 above.

Question 16

Do you agree with the proposal to clarify the validity period of a debt programme under MB Rule 37.41 (GEM Rule 30.34) (see paragraphs 172 and 173 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the proposed amendment to change "publication date" to "the date of the listing document". Though the publication date of the programme offering circular is usually the same date as the date of the listing document, but since there is no clear definition of "publication date" in the programme documents, reference to this term may sometimes cause confusion. In contrast, the date of the listing document is clearly set out in the cover page of the programme offering circular, and therefore the amendment will enhance the clarity of MB Rule 37.41 (GEM Rule 30.34).

Question 17

Do you agree with the proposal to revise the definition of supranationals under the MB Rules (see paragraphs 174 and 175 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the proposed amendment. The term "supranational" is not clearly defined in the listing rules which makes some applicants feel uncertain whether they fall within that category. The proposed amendment will enhance the clarity of this definition by referring to the list of multilateral agencies in the SFO. In addition, we agree that the Exchange should reserve the power to further amend or supplement the list from time to time.

Question 18

Do you agree with the proposal to require all Public Debt Issuers (except States and supranationals) to publish the English and Chinese versions of their financial statements (see paragraphs 176 to 178 of the Consultation Paper)?

Yes

Please give reasons for your views.

We agree with the proposed amendment to clarify that the Public Debt Issuers (except States and supranational) should have the continuing obligation to publish both the English and Chinese versions of their financial statements.

Question 19

Do you agree with the proposal to replace references to “general meeting” with “meeting of holders of the debt securities” in paragraph 9 of Appendix A2 to the MB Rules (paragraph 9 of Appendix A2 to the GEM Rules) (see paragraphs 179 and 180 of the Consultation Paper)?

Yes

Please give reasons for your reviews.

We agree with the proposed amendment to replace references to “general meeting” with “meeting of holders of the debt securities” to avoid confusion.