

Submitted via Qualtrics

Latham & Watkins LLP

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.

We agree with the Electronic Instructions Proposal. This proposal enhances efficiency by allowing securities holders to send instructions electronically, reducing reliance on paper and minimizing environmental impact. It also makes it easier for securities holders to respond to corporate actions. This increased accessibility can lead to higher levels of engagement and participation, ensuring that securities holders can effectively exercise their rights.

We also agree that the securities holders should be provided an option, rather than a mandate, for sending their instructions electronically. This allows for a smoother transition to electronic communications, gives securities holders time to adapt to new technologies at their own pace, and ensures that all securities holders, regardless of their access to or comfort with technology, can participate effectively.

We also agree with the proposal to exclude instructions related to PALs from the Electronic Instructions Proposal. Instructions related to PALs are specific to a particular corporate action and their content may vary widely. The infrastructure and processes for handling PALs electronically may not yet be fully developed or standardized. However, in the USM environment where legal title to securities would be evidenced electronically, it is envisaged that PALs would no longer be issued in printed form. We urge the Exchange to provide further guidance on the handling of instructions related to PALs upon finalisation of the USM requirements.

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?

Yes

Please give reasons for your views.

Coordinating the timeline with the USM initiative minimizes duplication of efforts and costs. This alignment ensures that issuers and registrars can prepare for both changes simultaneously, streamline the transition process and reduce duplication of effort and cost. The transitional period allows issuers to make necessary arrangements, ensuring a smooth transition to electronic instructions.

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.

We agree with the Real-Time Electronic Payment Proposal. Currently, there is no specific rule in the Listing Rules governing the method issuers must use to pay corporate action proceeds. The prevalent use of paper cheques is outdated and often results in delays, as securities holders must deposit cheques and wait for clearance. With global trends moving away from cheque payments, for instance (as mentioned in the Consultation Paper), around half of the issuers on the FTSE 100 and FTSE 250 have opted to distribute dividends via CREST, Australia plans to phase out cheques by 2030, and Singapore aims to be cheque-free by 2025, with SGX issuers already required to pay certain proceeds electronically. These examples highlight the global shift towards more efficient electronic payment methods.

We agree that providing an option for securities holders to receive proceeds via CHATS, which offers real-time settlement, is a crucial first step. This method ensures timely payment and aligns with the FINI platform's adoption of CHATS for settling EIPO funds.

To accommodate all stakeholders, especially those unfamiliar with CHATS, we agree that the proposed Rule 2.07E should not prohibit issuers from offering additional payment options. This flexibility allows securities holders to choose their preferred method, whether it be CHATS, autopay, FPS, or cheques.

Depending on market reactions following the implementation of this rule, the Exchange could eventually consider phasing out cheque payments altogether. This would align Hong Kong with the practices of countries like Australia and Singapore. We suggest that the Exchange consider this as a potential future goal to enhance efficiency and sustainability further.

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.

We agree with the Electronic Subscription Monies Proposal as detailed in paragraphs 83 to 89 of the Consultation Paper. The traditional method of using paper cheques or cashier orders is outdated and often results in delays due to the time required for fund clearance. Offering an electronic payment option aligns with modern practices and enhances efficiency.

However, we agree that it should not be mandatory for securities holders to pay electronically. Many stakeholders, particularly the elderly, may not be familiar with electronic payment processes and may prefer traditional methods. Therefore, providing an option for electronic payments while still accepting paper cheques or cashier orders caters to the diverse needs of all stakeholders.

We also support the decision not to prescribe a specific electronic payment method. However, we urge the Exchange to consider listing various acceptable electronic payment methods in the Notes to the proposed Rule 2.07F. This would provide guidance to issuers while allowing securities holders the flexibility to use widely available electronic payment methods.

This balanced approach will reduce the use of paper, minimize risks associated with paper transactions, and align with global trends, while respecting the preferences of different stakeholders.

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.

We agree with the proposal to abolish MMO. MMOs were initially introduced to reduce paper wastage by allowing paper application forms to accompany electronic prospectuses. However, with the launch of the FINI platform and the shift towards a paperless listing regime, MMOs have become redundant and has not been a popular form of issuance by issuers. FINI does not support paper application forms, making it

impractical and inefficient for intermediaries and securities registrars to manually input orders from these forms. The original purpose of MMOs has been surpassed by technological advancements, and their abolition will contribute to a fully electronic IPO process, enhancing efficiency and aligning with modern practices. The removal of MMOs will also eliminate the need for exceptions to severe weather arrangements, streamlining the listing process and reducing potential delays. We believe this proposal will further enhance the efficiency of regulatory processes and support the transition to a fully electronic environment.

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.

Hybrid General Meeting and E-voting provide flexibility, convenience and efficiency in today's world and allow more securities holders to virtually participate and vote at general meetings. Hybrid General Meeting and E-voting also ensure continuity during unforeseen events such as pandemics or severe weather, allowing issuers to maintain their governance activities without interruption.

The proposal set out in paragraphs 129 to 134 of the Consultation Paper requires issuers to ensure their constitutional documents enable them to hold Hybrid General Meetings and allow E-voting (to the extent permitted by the laws and regulations applicable to them), which will provide flexibility for issuers to choose the format of their general meetings and voting mechanisms that best suits their circumstances and securities holders' needs.

Approximately 90% of issuers listed on the Exchange are incorporated in jurisdictions where Hybrid General Meetings and E-voting are either expressly allowed or not prohibited, therefore for most issuers, the implementation of these measures should not present any legal obstacles subject to passing the relevant resolution(s) to amend the constitution of the issuers.

We also agree with the Exchange's proposal to allow issuers to choose the format of their general meetings and voting mechanisms as set out in paragraph 132 of the Consultation Paper. Not mandating Hybrid General Meetings or E-voting allows issuers to avoid unnecessary costs if their shareholder base does not require these options. This approach allows for a gradual transition to Hybrid General Meetings

and E-voting, giving issuers time to assess their needs, test technologies, and implement changes at a manageable pace.

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)?

No

Please give reasons for your views.

Providing securities holders with an option to attend general meetings remotely and vote via electronic means would impose a mandatory requirement for the issuers to hold Hybrid General Meetings and adopt E-voting, which conflicts with the Exchange's proposal set out in paragraph 132 of the Consultation Paper. Please see our response to Question 6 where we support the Exchange's proposal set out in paragraph 132 to allow issuers to choose the format of their general meetings and voting mechanisms, rather than mandating them to hold Hybrid General Meetings and adopt E-voting.

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 with the proposal for several reasons, particularly from an Environmental, Social, and Governance perspective which has been a key focus for the Exchange in recent years. As highlighted in the Consultation Paper, persons with disabilities represent a significant portion of the population in Hong Kong, with approximately 534,200 individuals having one or more disabilities, including those with seeing and hearing difficulties. Ensuring that corporate communications are accessible to all stakeholders is not only a matter of compliance but also a commitment to inclusivity and equal access.

We agree that aligning with WCAG would enhance accessibility for persons with disabilities, allowing them to exercise their rights as securities holders effectively. However, we recognize that some issuers may face challenges in conforming to these guidelines. Therefore, we propose that WCAG conformance be added as a

recommended best practice in the Corporate Governance Code rather than a mandatory requirement.

Additionally, clear guidance should be provided regarding the level of conformance required, whether it be Level A, AA, or AAA, to ensure issuers understand the expectations and can implement the necessary changes effectively.

We believe this approach balances the need for accessibility with the practical considerations of implementation, ultimately fostering a more inclusive environment for all stakeholders.

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 this proposal as it aligns with the intentions outlined in paragraphs 48 to 55 of the Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments. The conditions for granting waivers should indeed apply to all newly listed issuers, including overseas issuers, PRC issuers, and other issuers. Adding Note 5 to Rule 13.46 ensures that the same waiver conditions are applied consistently across all issuer categories, reflecting the original intention of the abovementioned consultation paper. This clarification will enhance transparency and provide clear guidance to all issuers regarding the waiver conditions.

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.

The proposed amendments align the requirements and ensure consistency across the rules.

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.

The proposed amendments align the requirements and ensure consistency across the rules.

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.

The proposed amendments align the requirements and ensure consistency across the rules and those between the requirements of the Main Board and the GEM.

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.

The proposed amendments align the requirements and ensure consistency across the rules and those between the requirements of the Main Board and the GEM.

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.

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 agree with amending “audited accounts for two years” to “audited accounts for two financial years”. This change provides greater clarity by specifying that the requirement pertains to financial years, not calendar years, thereby eliminating any potential confusion.

We agree with amending MB Rule 37.06 to allow the submission of audited interim financial statements because of:

- (1) Increased flexibility: This provides applicants with greater flexibility. This amendment helps applicants balance the need to meet eligibility requirements with their scheduling constraints, thereby facilitating a smoother listing process; and
- (2) Alignment with equity securities practices: According to paragraph 13 of the Guide For New Listing Applicants, with respect to a listing application filed after the end of the most recent financial year of its trading record period, the Exchange accepts accountants’ report including a stub period of less than a full financial year under prescribed circumstances.

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)?

Yes

Please give reasons for your views.

We 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 because this would remove the gap between the Listing Rules and the practice of

the Exchange and provide clear guidance to the market of the expectation of the Exchange.

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 proposal to clarify the scope of Professional Debt Issuers' continuing obligation to submit annual and interim financial statements to the Exchange minimizing the gap between the MB Rules and the practice of the Exchange and provide clarity to the market on their continuing obligation.

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.

We agree with the proposed revision to require Public Debt Issuers to inform and submit drafts to the Exchange regarding their proposals to amend trust deeds and other documents governing the rights of the holders of the listed debt securities. Any amendments to these documents may significantly impact the rights of investors and requiring these to be submitted and reviewed by Exchange, investor protection could be better safeguarded.

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 proposal to clarify the one-year validity period of a debt programme under MB Rule 37.41 (GEM Rule 30.34) to run from the date of the listing document rather than the date of publication.

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 proposal to revise the definition of supranationals under the MB Rules. The current drafting allows room for interpretation and causes uncertainties in practice and by referencing the list of multilateral agencies in the SFO, it provides clarity and certainty to the market.

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 proposal to require all Public Debt Issuers (except States and supranationals) to publish the English and Chinese versions of their financial statements. The amendments will bring banks and state corporations be subject to the same requirements as other Public Debt Issuers (except States and supranationals), thereby enhancing investor protection.

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 proposal to replace references to “general meeting” with “meeting of holders of the debt securities” to minimize confusion as the term “general meeting” is typically associated with shareholders’ meetings, which can lead to confusion when applied to meetings of debt security holders. By replacing it with “meeting of holders of the debt securities,” the proposed amendment clarifies the terminology is relevant and specific to the context of debt securities.