

# SLAUGHTER AND MAY

**RESPONSE FROM SLAUGHTER AND MAY  
REGARDING THE CONSULTATION PAPER ON  
PROPOSALS TO INTRODUCE A PAPERLESS LISTING AND SUBSCRIPTION REGIME,  
ONLINE DISPLAY OF DOCUMENTS AND  
REDUCTION OF THE TYPES OF DOCUMENTS ON DISPLAY**

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We refer to the Consultation Paper on Proposals to Introduce a Paperless Listing and Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display (the “**Consultation Paper**”) issued by the Hong Kong Exchanges and Clearing Limited (“**HKEX**”), which seeks market feedback on the proposals discussed in the Consultation Paper.

The comments of Slaughter and May on the questions raised are set out below for the HKEX’s consideration. Unless otherwise specified, defined terms shall have the meaning given to them in the Consultation Paper.

**1. Do you agree with our proposal to amend the Listing Rules to require (i) all listing documents in a new listing (“New Listing”) to be published solely in an online electronic format and cease printed form listing documents; and (ii) except for Mixed Media Offers, all New Listing subscriptions, where applicable, to be made through online electronic channels only?**

We agree with HKEX’s proposal to require all listing documents in a New Listing to be published solely in an online electronic format. In view of the widespread availability and use of the Internet, most Hong Kong investors have been accessing listing documents electronically in recent years. The paperless approach was recently tested and adopted in the secondary listings of Alibaba Group, NetEase, Inc. and JD.com, Inc. on the Hong Kong Stock Exchange. The paperless approach will increase HKEX’s competitiveness by bringing HKEX in line with the up-to-date practice adopted by other major stock exchanges, including New York Stock Exchange, Nasdaq and London Stock Exchange. In addition, the paperless approach would benefit Hong Kong from a sustainability perspective and would be a positive step taken by the HKEX to develop the Listing Rules towards sustainability objectives as a signatory to the commitment letter for the Sustainable Stock Exchanges Initiative by the United Nations. The proposal is also likely to be welcomed by new listing applicants due to lower printing costs and improved efficiencies in the listing process.

We consider HKEX’s proposal for all New Listing subscriptions to be made through online electronic channels as logical as we note only approximately 0.5% of the total number of IPO retail applications was made by printed application forms in 2019. The HKEX may consider to issue publications on how to subscribe through online electronic channels for the benefit of certain investors who might not be familiar with the online electronic channels.

We note that MMO (i.e. mixed media offers where printed application forms can be distributed without a printed prospectus) is proposed to remain as an option for listing applicants and will not be affected by the paperless proposal. MMO does not appear to be heavily used since its introduction in 2011. This could be due to the perceived risks associated with an MMO, as it requires issuers to satisfy certain conditions imposed under the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (the “**MMO Conditions**”). In addition, the adoption of the paperless proposal is likely to supersede the future need for MMO. In light of the above, we suggest HKEX consult market participants on whether it is necessary to retain MMO and if so, how listing applicants and sponsors can be encouraged to adopt MMO and evaluate whether the MMO Conditions should be amended.

**2. As a consequence of our proposal in Question 1, do you agree with our proposal to amend the Listing Rules to remove the requirement for listed issuers to make available physical copies of listing documents to the public at the address(es) set out in a formal notice?**

Please refer to our response to Question 1 above. We agree with HKEX’s proposal to remove the requirement to make available physical copies of listing documents to the public at the addresses set out in a formal notice.

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**3. Do you agree with our proposal to require issuers to only post documents online on both the Exchange's e-Publication System and the issuer's website ("Online Display Documents") and to remove the requirement for their physical display?**

We agree with the HKEX's proposal. From our experience, potential investors rarely visit the office of a listing applicant/issuer or their legal advisers to physically inspect the documents on display. Posting the documents online would give potential investors' or shareholders' easier access to such documents and would enable viewing of such documents by overseas investors or shareholders. The proposed approach is also consistent with the current practice of the SFC under the Takeovers Code regarding documents on display in public takeovers.

**4. Do you agree that Online Display Documents should be displayed online for a specified period except for those documents that are required by the Listing Rules to be made available on an ongoing basis?**

Except for those documents that are required by the Listing Rules to be made available on an ongoing basis (for instance, constitutional documents and audited financial accounts), our view is that, as online display does not have cost or storage issues as for physical display, Online Display Documents should be required to be displayed online for at least a year or longer for the benefit of the shareholders and the public.

**5. Do you agree that the Exchange should continue to allow redaction of Online Display Documents in only very limited circumstances?**

The proposed change from physical to online display of documents should not affect the Exchange's approach to redaction and the Exchange should continue to allow redaction of Online Display Documents in only very limited circumstances to ensure sufficient information is provided to potential investors or shareholders. The HKEX may consider to publish more detailed guidance on scenarios where redaction may be considered as justifiable for the information of new listing applicants and/or listed issuers.

**6. Do you agree that the current definition of "material contract" remains fit for purpose and that the Exchange should continue to apply it under our proposals?**

The current definition of "material contract" under the Listing Rules is in alignment with the definitions of "material contract" under the C(WUMP)O and the Takeovers Code. The proposed change from physical display to online display of material contracts should not affect how the Exchange defines material contracts under the Listing Rules.

**7. Do you agree that restrictions should not be placed on downloading and/or printing documents that are published online in accordance with the proposals set out in this paper?**

We do not object to the HKEX's proposal. We understand that downloading and/or printing restrictions are currently not placed on documents required to be displayed online by the Companies Registry and the SFC and the HKEX's proposal is in line with their current practice.

**8. Do you agree with our proposal not to put in place a system that would enable issuers to record and verify the identity of a person who accesses Online Display Documents?**

We do not object to the HKEX's proposal. Although issuers can currently request viewers at physical display to present their official identity cards and verify their identity, we recognise that it might be technically more difficult to establish an online system to record and verify viewers' identities for online display given that the documents can be accessed by any person worldwide. In addition, we note that viewers' identities are not required to be recorded and/or verified in order to view documents required

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to be displayed online by the Companies Registry and the SFC and the HKEX's proposal is in line with their current practice.

**9. In respect of a relevant notifiable transaction, do you agree with our proposal to:**

- (i) require the issuer to display the contracts pertaining to the transaction only; and**
- (ii) remove the requirement to display all material contracts entered into by the issuer within the last two years before the issue of the circular?**

The proposal streamlines the documentary requirements for public display and suggests to focus on the key documents which might affect the shareholders' assessment of the current notifiable transaction.

We agree with the proposal that documents which the issuer has made available on HKEX's website previously, for instance, its constitutional documents, audited accounts for the last two financial years and prior notifiable and/or connected transaction circulars issued since the latest audited accounts, should not be required to be reproduced as documents for public display. This can enhance efficiencies for the issuers and can also allow the shareholders to focus on key documents pertaining to the current transaction.

In relation to material contracts entered into within the last two years before the issue of the circular which are related to the current notifiable transaction (for instance, the prior material contracts are in relation to earlier phases of the same project or subject matter as the current notifiable transaction), please clarify whether such material contracts shall constitute "contracts pertaining to the transaction" and are therefore required to be publicly displayed for the shareholders' information.

The HKEX may consider to publish further guidance on the interpretation of "contracts pertaining to the transaction only" to assist issuers in preparing its notification/connected transaction circulars.

**10. In respect of a connected transaction that is subject to the shareholders' approval requirement, do you agree with our proposal to:**

- (i) require the issuer to display the contracts pertaining to the transaction only; and**
- (ii) remove the requirement to display contracts referred to in the circular and directors' service contracts?**

We agree the same streamlined approach should be adopted in respect of both connected transaction circulars and notifiable transaction circulars (i.e. requiring issuers to display contracts pertaining to the transaction only). As noted in our response above, the HKEX may consider to publish further guidance on the interpretation of "contracts pertaining to the transaction only" to assist issuers in preparing its circulars. In pre-vetting the circulars, the HKEX may also need to pay attention to any contract referred to in the circular but not listed as a contract for public display and determine whether it is indeed not pertaining to the transaction.

We agree with the proposed removal of the requirement to display directors' service contracts if they are not directly related to the subject matter of the connected transaction circulars. Under the current disclosure requirements in Chapter 14A, issuers would have to include a summary of the relevant directors' service contracts in the connected transaction circular, which would offer sufficient information for the shareholders even if a copy of the directors' service contracts are not publicly displayed.

18 September 2020