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BY EMAIL & BY POST

30 September 2020

Corporate and Investor Communications Department,
Hong Kong Exchanges and Clearing Limited,
8/F, Two Exchange Square,
8 Connaught Place,
Central,
Hong Kong

Dear Sirs,

Consultation Paper on Paperless Listing and Documents on Display CP

I refer to the captioned Consultation, and I enclose the Law Society's Submissions on the subject matter for your attention.

Yours faithfully,

Eileen Tam
Assistant Director, Practitioners Affairs

Encl.



CONSULTATION PAPER ON
PROPOSALS TO INTRODUCE A PAPERLESS LISTING &
SUBSCRIPTION REGIME, ONLINE DISPLAY OF
DOCUMENTS AND REDUCTION OF THE TYPES OF
DOCUMENTS ON DISPLAY

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the "Exchange") has on 24 July 2020 launched a public consultation on "Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display" (the "Consultation Paper"). In response thereto, the Law Society provides the following submission on the consultation questions posed.

The same abbreviations and the definitions appearing in the Consultation Paper are used in the submission below.

Question 1. Do you agree with the Exchange's proposal to amend the Listing Rules to require (i) all listing documents in a New Listing to be published solely in an online electronic format and cease printed form listing documents; and (ii) except for MMOs, all New Listing subscriptions, where applicable, to be made through online electronic channels only? Please give reasons for your views.

Law Society's response:

We support both limbs of the Exchange's proposal. However, we would like the Exchange to give further consideration to the following issues:

1. The integrity of issuers' websites vary and they may not be subject to the same degree of cyberattack and other security protections as the Exchange's website. It would make sense to give some guidance on what constitutes deemed satisfaction of the publication requirements giving allowance to any downtime and other technological glitches for issuers' and to a lesser extent, the Exchange's website.

2. Whilst the Consultation Paper included statistics showing the decreasing trend over the years for public offer tranche applications to be made through paper white application forms and paper yellow application forms, we think it is also relevant to consider the level and the trend of public demand for printed listing documents. It is also conceivable that professional parties engaged in a New Listing process will vouch for the fact that hard copy documents are more conducive to thorough and careful review. A fully paperless New Listing regime may result in no centralised bulk printing but more environmental unfriendly decentralised printing.
3. Whether environmental friendliness of a fully paperless New Listing regime is a strong and legitimate claim would also depend on a number of factors, including the type of printing papers used, recycling and waste disposal processes deployed by financial printers, etc., and these aspects merit further consideration. Adopting a phased approach to ultimately going fully paperless in New Listings but lessening the mandatory requirement of making available “sufficient copies” of printed and environmental friendly listing documents during public offer period in the first phase could be a reasonable and practical compromise.

Question 2. As a consequence of the Exchange’s proposal in Question 1, do you agree with the Exchange’s 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 give reasons for your views.

Law Society’s response:

Agree, subject to our observations in our response to Q1.

Question 3. Do you agree with the Exchange’s proposal to require issuers to only post online on both EPS and the issuer’s website the documents listed in Appendix I (save for the changes proposed in Section G below) and to remove the requirement for their physical display? Please give reasons for your views.

Law Society’s response:

Agree. However, we would like the Exchange to give further considerations to issues mentioned in our response to Q1 above.

Question 4. Do you agree that documents listed in Appendix I should be displayed online for the periods set out in that appendix except for those documents that are required by the Rules to be made available on an ongoing basis? Please give reasons for your views.

Law Society's response:

Agree. It should be made clear that any documents required to be displayed online may be subject to redaction as allowed by the Exchange, see further our observations in our response to Q5.

Question 5. Do you agree that the Exchange should continue to allow redaction of documents on display in only very limited circumstances?

Law Society's response:

1. We do not disagree that redaction should only be allowed in suitable and limited situations. However, we also see that it is by far easier for a regulator to err on the side of requiring full disclosures to be made, and such culture, especially when filtered down to the frontline, may create inappropriate anxiety and uncertainty for issuers and potential listing candidates who may find themselves placed unnecessarily or inappropriately into a very defensive position.
2. We would like to invite the Exchange to consider the exemptions under Freedom of Information Act 2000 (and many countries have this kind of legislation), and keep an open mind on the issue and to consult further.
3. The current Waiver Guide sets out some factors that the Exchange considers in handling applications for specific disclosure relief. However, the Waiver Guide was published in 2008 and is out-of-date. The Exchange should consider providing an updated guidance to provide more clarity to the market on document redactions, for example, setting out some previous examples where redactions of documents had been allowed.
4. Where online display of documents is to be required, the Exchange should have regard to the ease of internet access and heightened risk of exposure and abuse where disclosure of unredacted information may give rise to serious detrimental effect, major data privacy concerns, etc to the issuer.

Question 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 its proposals?

Law Society's response:

Yes. While the definition is susceptible to uncertain interpretation, it is well recognised and endorsed by a long tradition of market practice.

Question 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?

Law Society's response:

Agree. Even if there are downloading and/or printing restrictions in place, once the documents are displayed online, it is practically difficult to monitor and restrict people from downloading and/or printing the documents. This printing functionality reinforces the "decentralised printing" phenomenon referenced in point 2 of our response to Q1.

Question 8. Do you agree with the Exchange's proposal not to put in place a system that would enable issuers to record and verify the identity of a person who accesses documents on display online?

Law Society's response:

Agree. Since the documents should be made available to the general public and no specific persons are prohibited from accessing the document, it is unnecessary to record and verify the identities of persons who access documents on display online. Further, the Companies Registry and the SFC do not verify or record persons who access the documents online. We see no compelling reason for the Exchange to impose additional restrictions, but please see our observations in our response to Questions 4 and 5 above.

Question 9. In respect of a relevant notifiable transaction, do you agree with the Exchange's 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?

Please give reasons for your views.

Law Society's response:

Agree. Regarding paragraph 121 of the Consultation Paper, we agree with the Exchange that the material contracts and service contracts do not relate to the transactions in question. On that basis, we would ask the Exchange to go one step further and remove the requirement that these be summarised (see footnote 54 of the Consultation Paper).

The principle is that issuers should give all necessary information to enable an informed assessment to be made of the transaction, and if these contracts are required to be discussed, they should be disclosed, but providing a summary even if they are irrelevant would seem to go beyond this principle.

Question 10. In respect of a connected transaction that is subject to the shareholders' approval requirement, do you agree with the Exchange's 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 relevant directors' contracts?

Please give reasons for your views.

Law Society's response:

Agree but please see our comment in Q9 above.

**The Law Society of Hong Kong
29 September 2020**