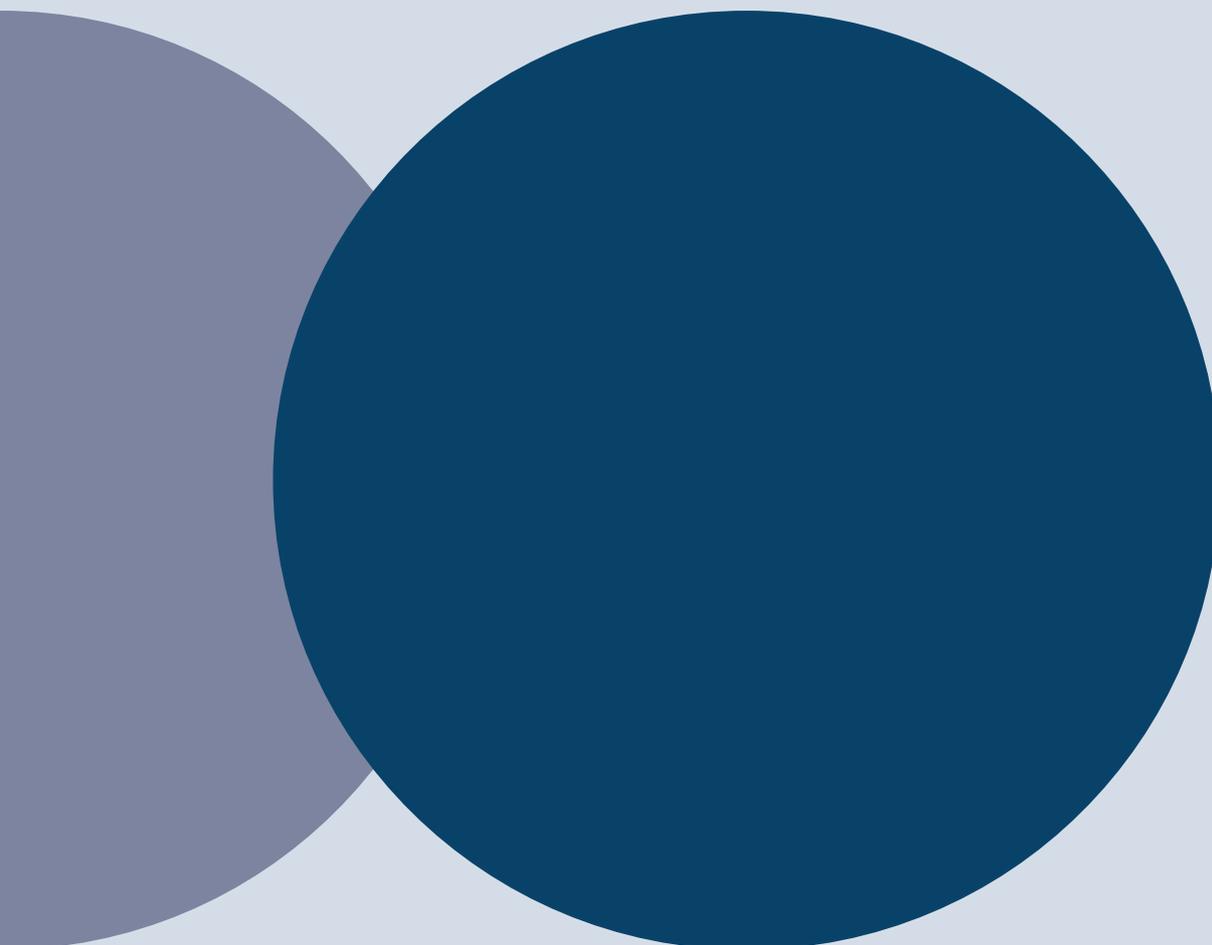


August 2018

**CONSULTATION CONCLUSIONS**

**PROPOSED EXEMPTION FOR  
AIRCRAFT LEASING ACTIVITIES**



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## EXECUTIVE SUMMARY

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1. This paper presents the results of the consultation conducted by the Exchange on the proposed Rule exemption for aircraft leasing activities.
2. As stated in the consultation paper, we proposed to amend the notifiable transaction Rules to provide an exemption for Qualified Aircraft Leasing Activities conducted in the ordinary and usual course of business of Qualified Aircraft Lessors. Under the proposal:
  - Qualified Aircraft Lessors are defined to be listed issuers that are actively engaged in aircraft leasing with aircraft operators as their principal activities. The issuer must also satisfy the following qualification criteria: a) there is a clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer's latest published annual report (or in the case of a newly listed issuer, its listing document); b) aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the latest published financial statements; and c) the issuer's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry, and the individuals relied on must have a minimum of five years' relevant industry experience;
  - Qualified Aircraft Leasing Activities include acquisitions or disposals of aircraft, or finance leases of aircraft with aircraft operators, that are conducted in the ordinary and usual course of business of Qualified Aircraft Lessors; and
  - Qualified Aircraft Leasing Activities are exempt from the specific disclosure and/or shareholders' approval requirements applicable to notifiable transactions. The issuers are required to provide alternative disclosure by way of announcements and in their interim/annual reports.
3. We received 16 responses<sup>1</sup> from professional parties, market practitioners, listed issuers and individuals. Our proposals received support from a majority of the respondents.
4. Having considered the responses, we will expand Qualified Aircraft Leasing Activities to include operating leases of aircraft with aircraft operators and the leasing of aircraft to aircraft operators structured through intermediate lessors. We will also modify some disclosures required in announcements and interim/annual reports.
5. We will implement the proposals outlined in the consultation paper with the modifications described in paragraph 4. The amended Main Board and GEM Rules are set out in **Appendix II**. They will take effect from 15 October 2018.

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<sup>1</sup> Four responses were entirely identical, in content, to other responses and were not counted.

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## CHAPTER 1 : INTRODUCTION

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6. On 17 November 2017, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), published a Consultation Paper on Proposed Exemption for Aircraft Leasing Activities (the **Consultation Paper**). The Consultation Paper sought comments on proposed Rule changes to provide a general exemption for aircraft leasing activities from the specific disclosure and/or shareholders' approval requirements applicable to notifiable transactions. The consultation period ended on 22 December 2017.
7. We received a total of 20 submissions from professional parties, market practitioners, listed issuers and individuals. Of them, 4 responses were entirely identical, in content, to other responses and were not counted<sup>2</sup>.

Category	No. of responses	Percentage
<b>INSTITUTIONS</b>		
Listed issuers	9	56%
Professional body / industry association	2	13%
Market practitioner	1	6%
None of the above	1	6%
<b>INDIVIDUALS</b>	3	19%
<b>Total</b>	<b>16</b>	<b>100%</b>

8. All submissions are available on the HKEX website<sup>3</sup>. A list of the respondents (other than those who requested anonymity) is provided in **Appendix III**.
9. A majority of respondents supported our proposals in the Consultation Paper, while some respondents made suggestions about the scope of the proposed exemption and the alternative disclosure requirements. Chapter 2 summarises major comments and our responses.

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<sup>2</sup> Submissions with content entirely identical to another response were not counted. This follows our publicly stated policy.

<sup>3</sup> Submissions received to the Consultation Paper can be accessed at: [http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses\\_August\\_2018?sc\\_lang=en](http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_August_2018?sc_lang=en)

10. The amended Rules are available on the HKEX website at:

[http://en-rules.hkex.com.hk/en/display/display\\_main.html?rbid=4476&element\\_id=2](http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=2)  
(Update No.122).

[http://en-rules.hkex.com.hk/en/display/display\\_main.html?rbid=4476&element\\_id=49](http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=49)  
(Update No.57)

They have been approved by the Board of the Exchange and the Board of the Securities and Futures Commission. They will become effective on 15 October 2018.

11. We would like to express gratitude to all the respondents for their time and effort in reviewing the Consultation Paper and sharing with us their views.
12. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEX website<sup>4</sup>. All Rule references are to the Main Board Rules unless otherwise stated. The proposals apply equally to the GEM Rules.

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<sup>4</sup> The Consultation Paper published on 17 November 2017 can be accessed at: <http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2017-Exemption-for-Aircraft-Leasing-Activities/Consultation-Paper/cp2017113.pdf>

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## CHAPTER 2 : MARKET FEEDBACK AND CONCLUSIONS

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13. In this chapter, we set out the respondents' comments on the proposed exemption for aircraft leasing activities, together with our responses and conclusions.

### PROPOSED EXEMPTION FOR QUALIFIED AIRCRAFT LEASING ACTIVITIES

14. In the Consultation Paper, we proposed that Qualified Aircraft Leasing Activities carried out by a Qualified Aircraft Lessor would be exempt from the specific disclosure and/or shareholders' approval requirements applicable to notifiable transactions, provided that:
- (a) the board of directors of the Qualified Aircraft Lessor confirms that the transactions are entered into by the lessor in the ordinary and usual course of business and on normal commercial terms; and the terms of the transactions are fair and reasonable and in the interest of the lessor and its shareholders as a whole; and
  - (b) the Qualified Aircraft Lessor discloses brief details of i) the transactions by way of an announcement; and ii) its aircraft leasing activities on an aggregate basis in its next interim/annual report.

#### (1) QUALIFIED AIRCRAFT LESSORS

15. We proposed to define a "Qualified Aircraft Lessor" to be "*a listed issuer that is actively engaged in aircraft leasing with aircraft operators as a principal activity in its ordinary and usual course of business*". The issuer must also satisfy the following criteria to be eligible for the exemption:
- (a) there is a clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer's latest published annual report (or in the case of a newly listed issuer, its listing document);
  - (b) aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the issuer's latest published financial statements according to the requirements of the relevant accounting standards adopted for the preparation of the financial statements; and
  - (c) the issuer's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry. Individuals relied on must have a minimum of five years' relevant industry experience.
16. For the purpose of the proposed exemption, an "aircraft operator" refers to "*a company that carries on a business of operating aircraft as an owner or charterer for providing services for the carriage by air of passengers, cargo or mail*".

- Question 1:** Do you agree with the proposal to provide a general exemption for aircraft leasing activities?
- Question 2:** Do you agree with the proposed Rule amendments to define a Qualified Aircraft Lessor to be an issuer that is actively engaged in aircraft leasing with aircraft operators as a principal activity in its ordinary and usual course of business?
- Question 3:** Do you agree with the proposed criteria set out in paragraphs 15 (a) and (b) for determining whether an issuer is a Qualified Aircraft Lessor?
- Question 4:** (a) Do you agree with the proposed requirement that a Qualified Aircraft Lessor's directors and senior management, taken together, shall have sufficient experience relevant to the aircraft leasing industry? (b) Do you agree that the individuals relied on must have a minimum of five years' relevant industry experience?
- Question 5:** Do you recommend other criteria or factors for determining an issuer as a Qualified Aircraft Lessor?

### **Comments received**

17. (Question 1) All respondents were supportive of the proposal to provide a general exemption for aircraft leasing activities.
18. The proposed requirements relating to Qualified Aircraft Lessors also received support from a majority of respondents:
- (Question 2) 88% of the respondents supported the proposed definition of Qualified Aircraft Lessor, and 12% opposed;
  - (Question 3) 94% of the respondents supported the proposed criteria for determining Qualified Aircraft Lessors as set out in paragraphs 15(a) and (b) above. The remaining 6% did not indicate a view;
  - (Question 4(a)) 69% of the respondents supported the proposal to require sufficient management experience in the aircraft leasing industry, and 25% opposed. The remaining 6% did not indicate a view;

- (Question 4(b)) eight respondents<sup>5</sup> (50%) agreed with the proposal to require the individuals relied on to possess a minimum of five years' relevant industry experience. Of the seven respondents opposing the proposal, one suggested a longer period of eight years; two considered that a minimum of three years' experience would be sufficient; one considered that it should be up to the issuer to decide what level of experience is sufficient for its own purpose; and three did not support any minimum period. One respondent did not indicate a view.
19. The comments given by respondents who opposed the proposals in questions 2 and 4 include:

*Definition of Qualified Aircraft Lessors*

- (a) A respondent considered that Qualified Aircraft Lessors should not be confined to those issuers that are engaged in aircraft leasing with aircraft operators. The proposal should also exempt aircraft leasing with non-aircraft operators, and cover the leasing of civil planes, business jets and any other types of aircraft.
- (b) Another respondent considered that the proposed exemption should also apply to aircraft leasing with aircraft operators via intermediate lessors. This comment was also made by some respondents supporting the proposal, who pointed out that it is common in the aviation industry for an aircraft lessor to lease its aircraft to an aircraft operator indirectly through an intermediate lessor (which may be owned by the aircraft lessor or aircraft operator) for commercial reasons. These types of aircraft lease arrangements may also be eligible for profit tax concessions under the new tax regime for aircraft leasing activities in Hong Kong<sup>6</sup>.

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<sup>5</sup> One respondent who opposed the proposal stated that the requirement of a minimum five years' experience is acceptable if it only applies to some of, and not all, directors and senior management.

<sup>6</sup> A legislative amendment giving profit tax concession to qualifying aircraft lessors and qualifying aircraft leasing manager came into effect in July 2017. In the Departmental Interpretation and Practice Notes (DIPN No. 54) issued by the Inland Revenue Department (paragraph 22), it states that: "Aircraft leasing activity is defined in section 1(1) of Schedule 17F as leasing an aircraft by a corporation to an aircraft operator. The aircraft must be leased to an aircraft operator, whether in Hong Kong or elsewhere. In commercial practice, an intermediate lessor may be interposed between the corporation and the aircraft operator for various reasons, such as meeting requirements on aircraft registration. The intermediate lessor may be a related company of either the corporation or the aircraft operator. The Commissioner would carefully examine the facts, including any tax motives to avoid taxes, to ascertain whether such an arrangement should be eligible for the profits tax concessions."

*Requirement on management experience in aircraft leasing industry*

- (c) A number of respondents considered that it is not necessary to require directors and senior management of Qualified Aircraft Lessors to have expertise in the aircraft leasing industry because i) the current Rules, particularly Rules 3.08 and 3.09, already require every director to have the experience and be able to demonstrate a standard of competence commensurate with his position as a director of an issuer; ii) there is no similar management experience requirement for exemptions available to qualified property acquisitions under the current Rules; iii) the proposed exemption should apply as long as aircraft leasing is a current and continuing principal business activity of the listed issuer and the relevant transactions are entered into by the issuer in its ordinary and usual of business; and iv) apart from the experience in the aircraft leasing industry, it is also important for the directors and senior management of aircraft lessors to have solid experience in financial management.
20. In response to question 5, some respondents suggested other criteria for determining whether an issuer is a Qualified Aircraft Lessor, including i) a minimum threshold for the volume of aircraft leasing business of the issuer, ii) the issuer having been engaged in aircraft leasing for a certain number of years; and iii) the issuer having been engaged in the provision of value-added services relating to aircraft leasing (such as fleet planning, fleet replacement package deals, aircraft disassembling, component sales, financing management, aircraft management and other leasing related activities).

*Other comments and suggestions*

21. Some respondents sought to clarify that the proposal would only require a sufficient number of (and not all) directors and senior management to possess the relevant industry experience. They also queried whether there is a minimum requirement.
22. A respondent asked whether an issuer is required to seek the Exchange's confirmation that it has fulfilled the criteria for a Qualified Aircraft Lessor.
23. Another respondent commented that where a Qualified Aircraft Lessor is exempt from the disclosure and/or shareholders' approval requirements in respect of its aircraft leasing transactions, its listed holding company should also be exempt from those requirements.

## **Our response**

### *Definition of Qualified Aircraft Lessors*

24. Our proposal is to provide an exemption for aircraft leasing activities in the ordinary and usual course of business of listed aircraft lessors. We consider that the proposed exemption should apply only to those issuers that are actively engaged in aircraft leasing with aircraft operators<sup>7</sup> as we understand this to be the common operating model for aircraft leasing companies. We will not adopt the suggestion to exempt aircraft leases with non-aircraft operators as the exemption should be narrowly defined to avoid abuse. However, there is no restriction on the types of aircraft involved.
25. We note comments made by a number of respondents that it is a market practice to conduct aircraft leasing through intermediate lessors owned by aircraft lessors or aircraft operators. We will modify the proposed Rules to make the exemption available to aircraft leases through intermediate lessors related to aircraft operators. Where the intermediate lessor is owned by a listed aircraft lessor, it is part of the listed issuer's group and already eligible for the proposed exemption.

### *Requirement on management experience in aircraft leasing industry*

26. In light of the unique characteristics of the aircraft leasing industry as noted in the Consultation Paper, the proposed exemption is intended to apply to listed aircraft lessors whose management has adequate experience and technical expertise in this industry. This received support from a majority of respondents.
27. We clarify that the proposed Rules would require the issuer's directors and senior management, taken together, to have sufficient experience relevant to the aircraft leasing industry. It is the issuer's responsibility to ensure that it has a sufficient number of directors and senior management possessing the relevant experience. The proposal is not intended to require all directors and senior management to have industry-specific experience and in our view, would not impose significant compliance burden on listed aircraft lessors.
28. We will adopt the proposal to require a minimum of five years' experience in the aircraft leasing activities. This five-year period is most supported by the respondents.

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<sup>7</sup> This is in line with the new tax regime for aircraft leasing activities in Hong Kong where "aircraft leasing activity" is defined as leasing an aircraft by a corporation to an aircraft operator (see also footnote 6).

### *Other comments and suggestions*

29. In response to other comments received, we clarify that:
- (a) It is not necessary for a listed issuer to seek the Exchange's confirmation as to whether it is a Qualified Aircraft Lessor. Instead, the issuer should disclose in its announcement that it has fulfilled the qualification criteria and other exemption conditions (see paragraphs 39(d) and 45 below).
  - (b) Where a Qualified Aircraft Lessor is a listed subsidiary of another listed issuer, we envisage that the listed holding company would also meet the qualification criteria for a Qualified Aircraft Lessor and be eligible for the proposed exemption. If the listed holding company is not qualified because aircraft leasing is not one of its principal activities or business segments, then the aircraft leasing activities conducted through the listed subsidiary are likely to be immaterial to the listed holding company and would unlikely be notifiable transactions at the holding company level.
30. We have not adopted the suggestions to impose additional criteria for Qualified Aircraft Lessors. As noted in the Consultation Paper, the proposed criteria set out in paragraphs 15(a) and (b) would define Qualified Aircraft Lessors narrowly and accordingly provide safeguards against potential abuse of the exemption by newly established aircraft lessors.

### **Conclusion**

31. In light of market support, we will adopt the proposed definition and criteria relating to Qualified Aircraft Lessors, with a modification to proposed Rules 14.04(10D) and 14.04(10E) as discussed in paragraph 25.

### **(2) QUALIFIED AIRCRAFT LEASING ACTIVITIES**

32. In the Consultation Paper, we proposed to define "Qualified Aircraft Leasing Activities" to include the following transactions that are undertaken by Qualified Aircraft Lessors in their ordinary and usual course of business:
- (a) acquisitions or disposals of aircraft; or
  - (b) finance leases of aircraft with aircraft operators (including financing arrangements in sale and leaseback transactions).

33. Under Rule 14.04(1)(d), operating leases are subject to notifiable transaction requirements if they have a significant impact on operations of the issuer (i.e. representing an increase of 200% or more in the scale of the issuer's existing operations conducted through operating lease arrangements). This Rule applies to operating leases that would result in a significant change to listed issuer's business. As operating leases are not otherwise subject to notifiable transaction requirements, we did not propose to include operating leases of aircraft in the definition of Qualified Aircraft Leasing Activities.

**Question 6:** Do you agree with the proposed Rule amendments to define Qualified Aircraft Leasing Activities to include acquisitions, disposals and finance leases of aircraft?

**Question 7:** Do you agree that we should limit the exemption for finance leases of aircraft to only those entered into by the aircraft lessors with aircraft operators?

**Question 8:** Do you agree that the proposed exemption should not apply to operating leases of aircraft?

#### **Comments received**

34. The proposals received support from a majority of respondents:
- (Question 6) 88% of the respondents agreed with the proposed definition of Qualified Aircraft Leasing Activities, and 12% disagreed;
  - (Question 7) 56% of the respondents supported the proposal to exempt finance leases entered into by aircraft lessors with aircraft operators. 38% of the respondents opposed, and the remaining 6% did not indicate a view; and
  - (Question 8) 75% of the respondents agreed with the proposal to exclude operating leases from the definition of Qualified Aircraft Leasing Activities, and 25% disagreed.

35. The reasons given by the respondents who opposed the proposals include:
- (a) *Operating leases* - A number of respondents considered that the proposed exemption for Qualified Aircraft Leasing Activities should also apply to operating leases of aircraft as they are very common in the aircraft leasing industry. Although the current Rule 14.04(1)(d) provides an exemption for operating leases generally, some respondents were concerned that aircraft lessors (particularly those with a smaller size) may trigger the limit set out in the Rule when they are expanding their aircraft leasing business through operating leases. Some commented that both finance leases and operating leases are core aircraft leasing activities of aircraft lessors and should not be treated differently under the proposed exemption.
  - (b) *Finance leases* - Respondents provided comments similar to those set out in paragraphs 19(a) and (b) above. Some did not see the reason to treat finance leases with aircraft operators and non-aircraft operators differently so long as they are entered into in the ordinary and usual course of business of a Qualified Aircraft Lessor.

### **Our response**

36. We note the respondents' comments that both operating leases and finance leases are common forms of aircraft leases in the market, and the proposed exemption should equally apply to operating leases of aircraft that are conducted in the ordinary course of business of Qualified Aircraft Lessors. We will modify the proposed definition of Qualified Aircraft Leasing Activities to include operating leases of aircraft with aircraft operators, which is with in line the policy intent of providing an exemption for aircraft leasing activities as discussed in the Consultation Paper.
37. For the reasons stated in paragraph 24, we will not adopt the suggestion to exempt aircraft leases with non-aircraft operators.

### **Conclusion**

38. In light of market support, we will adopt the proposed definition of Qualified Aircraft Leasing Activities, with a modification to proposed Rule 14.04(10D) as discussed in paragraph 36.

## **(3) DISCLOSURE REQUIREMENTS FOR QUALIFIED AIRCRAFT LEASING ACTIVITIES**

### **(i) Announcement**

39. In the Consultation Paper, we proposed that a Qualified Aircraft Lessor should issue an announcement containing the following information in respect of an exempted aircraft leasing activity:

- (a) the date of the transaction;
  - (b) the identity and a description of the principal business activities of the counterparty to the transaction, and a confirmation that the counterparty and its ultimate beneficial owner(s) are third parties independent of the issuer and its connected persons;
  - (c) a description of the transaction and the aircraft which is the subject of the transaction; and
  - (d) information to demonstrate that the exemption conditions have been met, in the form of a confirmation by the issuer's board that (1) the issuer has fulfilled the qualification criteria for a Qualified Aircraft Lessor; (2) the transaction is entered into by the issuer in its ordinary and usual course of business and on normal commercial terms; and (3) the terms of the transaction are fair and reasonable and in the interests of the lessor and its shareholders as a whole.
40. We also proposed not to require information circulars for the exempted transactions.

<p><b>Question 9:</b> Do you agree with the proposed disclosure requirements for announcement of exempted aircraft leasing activities?</p>
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### **Comments received**

- 41. 94% of the respondents supported the proposal, and the remaining 6% opposed.
- 42. A respondent opposing the proposal considered that it would be onerous to require Qualified Aircraft Lessors to disclose the identities of the counterparties to the exempted transactions as other listed issuers are not required to make such disclosure in respect of their transactions with independent third parties under the current Rules. The respondent also suggested that, in case of an acquisition of new aircraft from an aircraft manufacturer, the list price should be disclosed in the announcement.

### **Our response**

- 43. As noted in the Consultation Paper, the proposed announcement requirement is intended to keep investors informed of material transactions conducted by Qualified Aircraft Lessors. We consider that the disclosure of the identity of the counterparty would enhance the transparency of aircraft leasing activities.
- 44. We have not adopted the suggestion to require disclosure of the list prices of aircraft purchased as there is usually a substantial difference between the list price and the actual consideration for the aircraft. Issuers may disclose the information on a voluntary basis.

## Conclusion

45. In light of market support, we will adopt the proposed announcement requirement, with modifications to proposed Rule 14.33D(1) to make clear that the announcement should contain (i) a confirmation by the issuer's board as described in paragraph 39(d); and (ii) where the exempted transaction involves an acquisition of aircraft, the expected year of delivery of the aircraft as described in paragraph 51.

### (ii) Interim and annual reports

46. In the Consultation Paper, we proposed that where a Qualified Aircraft Lessor has conducted any exempted Qualified Aircraft Leasing Activity during a financial period/year, it should disclose the following information in its interim/annual report for that financial period/year:
- (a) the aggregate number of aircraft purchased in the reporting period and committed to purchase as at the end of the reporting period, with a breakdown by aircraft model and expected year of delivery;
  - (b) the aggregate purchase price of aircraft purchased in the reporting period, and commitment amounts for future commitments as at the end of the reporting period with a breakdown of the commitment amounts by years;
  - (c) the aggregate number of aircraft sold in the reporting period;
  - (d) the aggregate net book value and the aggregate net gain or loss on disposal of aircraft in the reporting period; and
  - (e) the average lease rental yield related to the Qualified Aircraft Lessor's aircraft fleet for the reporting period.

**Question 10:** Do you agree with the proposed disclosure requirements for annual and interim reports to provide information about aircraft leasing activities on an aggregated basis?

### Comments received

47. 56% of the respondents supported the proposal. 38% of the respondents disagreed with one or more of the disclosure items under the proposal. The remaining 6% did not indicate a view.

48. The reasons given by the respondents who opposed the proposed disclosure requirements included:

***i) Aircraft purchased and committed to purchase (paragraphs 46(a) and (b))***

- Some respondents considered that a breakdown by year and aircraft model may have the effect of revealing confidential information and defeat the purpose of the general exemption. For example, where the commitment to purchase aircraft in a particular year comprised only a small number of aircraft or primarily a single aircraft model/type, one might be able to derive the actual consideration of individual aircraft by dividing the commitment amount payable with the number of aircraft committed to purchase in that particular year. A respondent also commented that a breakdown by expected year of delivery for committed orders (i.e. delivery positions) is regarded as confidential by the aircraft manufacturers and such information is highly sensitive. US listed aircraft lessors are not required to disclose their delivery positions by years or their commitments by model types.
- Some respondents also pointed out that it is an industry practice to accelerate or reallocate delivery positions, so the commitment amounts by years will change from time to time. They suggested disclosing the aggregate number of aircraft committed to purchase and the total commitment amount as at the end of the reporting period, without a breakdown by years.
- Some respondents stated that the disclosure of actual purchase price of aircraft, even on an aggregated basis, could be commercially sensitive or lead to a breach of the confidentiality obligations by aircraft lessors, particularly where the purchases involved a small number of aircraft or mostly a single type of aircraft. Some suggested disclosing the aggregate list prices instead of the actual consideration.

***ii) Aggregate net book value, and aggregate net gain or loss on disposal of aircraft (paragraph 46(d))***

- A respondent commented that disclosure of the aggregate net book value of the aircraft disposed is not necessary as it could be derived from other figures disclosed in the financial statements. Another respondent suggested disclosing the aggregate net gain/loss on disposal but not the aggregate net book value.

**iii) Average lease rental yield (paragraph 46(e))**

- A respondent stated that every aircraft lessor may have its own formula or may take into account different policies (for example, depreciation policy) in arriving at its average lease rental yield, and the proposed disclosure may not be useful for investors to compare or evaluate the performance of different aircraft lessors. The respondent considered that disclosure of average lease rental yield should be made on a voluntary basis.

49. A respondent sought to clarify whether Qualified Aircraft Lessors should disclose the average lease yield of operating leases and finance leases separately, which may facilitate investors in assessing the issuers' business performance.

**Our response**

50. As noted in the Consultation Paper, the proposed disclosure requirements for annual and interim reports are intended to facilitate shareholders' assessment of the impact of the acquisitions or disposals of aircraft on the aircraft lessor's financial position on an aggregated basis, without disclosing confidential information about individual transactions.

**i) Aircraft purchased and committed to purchase (paragraphs 46(a) and (b))**

51. Having considered the respondents' comments set out in paragraph 48(i), we have decided that:

- We will adopt the proposal to require disclosure of i) the aggregate number of aircraft committed to purchase as at the reporting period end with a breakdown of the aircraft models involved; and ii) the aggregate amount for future commitments. We will adopt the respondents' suggestion not to require a breakdown by year of delivery, however, the Qualified Aircraft Lessor should disclose the expected year of delivery of the aircraft when it announces the acquisition of the aircraft under proposed Rule 14.33D(1) (see paragraph 45).

We believe that the revised proposals would serve the purpose of providing information about acquisitions of aircraft by Qualified Aircraft Lessors on an aggregated basis with details of the aircraft models involved.

- We will modify the proposal to require disclosure of i) the aggregate number of aircraft owned by the issuer as at the reporting period end with a breakdown of the aircraft models involved; and ii) the aggregate net book value of the aircraft (instead of the aggregate number and purchase price of aircraft purchased during that period).

As noted in the Consultation Paper, investors and analysts generally focus on information about the aircraft lessors' aircraft portfolio and the management of the fleet when evaluating and valuing the aircraft lessors, rather than specific information on individual transactions. We believe that the revised proposal would serve the purpose of providing information about the issuer's aircraft portfolio on an aggregated basis, together with details of the aircraft models involved. This would also address the respondents' concern about revealing the actual consideration of individual aircraft by dividing the aggregate payment amount with the number of aircraft purchased or committed to purchase in a particular period or year.

***ii) Aggregate net book value, and aggregate net gain or loss on disposal of aircraft (paragraph 46(d))***

52. We have not adopted the suggestions set out in paragraph 48(ii). We consider that the aggregate net book value of aircraft disposed is useful for investors to assess the impact of aircraft disposals on the aircraft lessor's financial position on an aggregated basis.

***iii) Average lease rental yield (paragraph 46(e))***

53. We will modify the proposal to require disclosure of the average lease rental yield of i) operating leases and ii) finance leases, in relation to the Qualified Aircraft Lessor's aircraft leasing business for the reporting period. We note that aircraft lessors may adopt different policies or formulations in calculating the average lease rental yield, and they are expected to explain the basis for calculation in the financial reports.

**Conclusion**

54. In light of market support, we will adopt the proposed disclosure requirements for annual and interim reports, with the modifications to proposed Rule 14.33D(2) as discussed in paragraphs 51 and 53 above.

## APPENDIX I : SUMMARY RESULT OF QUANTITATIVE ANALYSIS

Proposals in the Consultation Paper		Feedback		
		Support	Against	No view
1	To provide a general exemption for aircraft leasing activities	100%	0%	0%
2	Definition of Qualified Aircraft Lessor	88%	12%	0%
3	Criteria for determining whether a listed issuer is a Qualified Aircraft Lessor: <ul style="list-style-type: none"> <li>• there is clear disclosure of aircraft leasing as a current and continuing principal business activity in the latest published annual report (or in the case of a newly listed issuer, its listing document)</li> <li>• aircraft leasing is reported as a separate and continuing segment in the latest published financial statements</li> </ul>	94%	0%	6%
4(a)	Requirement for directors and senior management, taken together, to have sufficient experience relevant to the aircraft leasing industry	69%	25%	6%
4(b)	Requirement for the individuals relied on to have a minimum of five years' relevant industry experience	<i>Note 1</i>		
5	Any other criteria or factors for determining whether a listed issuer is a Qualified Aircraft Lessor	<i>Note 2</i>		
6	Definition of Qualified Aircraft Leasing Activities	88%	12%	0%
7	Limit the exemption for finance leases of aircraft to only those entered into by aircraft lessors with aircraft operators	56%	38%	6%
8	Exclude operating leases of aircraft from the definition of Qualified Aircraft Leasing Activities	75%	25%	0%
9	Disclosure requirements for announcement of exempted aircraft leasing activities	94%	6%	0%
10	Disclosure requirements for annual and interim reports	56%	38%	6%

*Note 1: Eight respondents agreed with the proposal to require the individuals relied on to possess a minimum of five years' relevant industry experience (including one respondent who stated that the requirement of a minimum of five years' experience is acceptable if it only applies to some of, and not all, directors and senior management). Of the seven respondents opposing the proposal, one suggested a longer period of eight years; two considered that a minimum of three years' experience would be sufficient; one considered that it should be up to the issuer to decide what number of years of experience is considered sufficient for its own purpose; and three did not support any minimum period. One respondent did not indicate a view.*

*Note 2: Three respondents suggested other criteria or factors.*

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## APPENDIX II : AMENDMENTS TO THE LISTING RULES

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### Main Board Listing Rules

## Chapter 14

### EQUITY SECURITIES

#### NOTIFIABLE TRANSACTIONS

...

#### Definitions

14.04 For the purposes of this Chapter:-

...

(10D) ~~[Repealed 1 February 2011]~~ “Qualified Aircraft Leasing Activity” means:

- (a) an acquisition of aircraft;
- (b) a finance lease in respect of the leasing of aircraft to an aircraft operator (i.e. an entity which carries on a business of operating aircraft as an owner or charterer for providing services for the carriage by air of passengers, cargo or mail), including financing arrangements in a sale and leaseback transaction;
- (c) an operating lease in respect of leasing of aircraft to an aircraft operator; or
- (d) a disposal of aircraft.

For the purpose of this rule and rule 14.04(10E), “aircraft leasing with an aircraft operator” include leases of aircraft to the aircraft operator directly or indirectly through an intermediate lessor related to the aircraft operator.

(10E) “Qualified Aircraft Lessor” means a listed issuer actively engaged in aircraft leasing with aircraft operators (as defined in rule 14.04(10D)) as a principal business in its ordinary and usual course of business. In making this determination, consideration will also be given to the following factors:

- (a) there is clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer’s latest published annual report and financial statements (or in the case of a newly listed issuer, its listing document);

- (b) aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the issuer's latest published financial statements. The format for reporting segmental information and its latest published annual financial statements have fully complied with the relevant accounting standards adopted for the preparation of its annual financial statements; and
- (c) the lessor's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry. Individuals relied on must have a minimum of five years' relevant industry experience.

(40E11) a "securities house" means ...

(4411A) a "shipping company" means ...

...

*Exemptions for Qualified Aircraft Leasing Activities  
which constitute notifiable transactions*

14.33C A Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements for notifiable transactions provided that:

- (1) it is undertaken by a Qualified Aircraft Lessor in its ordinary and usual course of business;
- (2) the Qualified Aircraft Lessor's board has confirmed that:
  - (a) the transaction is entered into by the lessor in its ordinary and usual course of business and on normal commercial terms; and
  - (b) the terms of transaction are fair and reasonable and in the interests of the lessor and its shareholders as a whole; and
- (3) the Qualified Aircraft Lessor complies with the disclosure requirements under rule 14.33D.

14.33D Where a Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements for notifiable transactions under rule 14.33C:

- (1) the Qualified Aircraft Lessor must publish an announcement as soon as possible after the terms of the transaction have been finalised. The announcement must contain:
  - (a) the date of the transaction;
  - (b) the identities and a description of the principal business activities of the parties to the transaction. The lessor must also confirm that the parties to the transaction and their ultimate beneficial owners are third parties independent of the lessor and its connected persons;

- (c) a description of the transaction and the aircraft which is the subject of the transaction (including the expected year of delivery of the aircraft in the case of an acquisition); and
- (d) a confirmation by the lessor's board of directors that the lessor has fulfilled (i) the criteria set out in rule 14.04(10E) and (ii) the conditions set out in rule 14.33C(2); and
- (2) the Qualified Aircraft Lessor must also disclose the following information in its next interim report (where applicable) and annual report:

  - (a) the aggregate number of aircraft owned by the lessor as at the end of the reporting period with a breakdown by aircraft model, and the aggregate net book value of the aircraft;
  - (b) the aggregate number of aircraft committed to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments;
  - (c) the aggregate number of aircraft sold for the reporting period;
  - (d) the aggregate net book value and the aggregate net gain or loss on disposal of aircraft for the reporting period; and
  - (e) the average lease rental yield of each of (i) the operating lease business and (ii) the finance lease business in relation to aircraft leasing for the reporting period.

**Chapter 19**  
**EQUITY SECURITIES**  
**NOTIFIABLE TRANSACTIONS**

...

**Definitions**

19.04 For the purposes of this Chapter:-

...

(10D) ~~[Repealed 1 February 2011]~~ “Qualified Aircraft Leasing Activity” means:

- (a) an acquisition of aircraft;
- (b) a finance lease in respect of the leasing of aircraft to an aircraft operator (i.e. an entity which carries on a business of operating aircraft as an owner or charterer for providing services for the carriage by air of passengers, cargo or mail), including financing arrangements in a sale and leaseback transaction;
- (c) an operating lease in respect of leasing of aircraft to an aircraft operator; or
- (d) a disposal of aircraft.

For the purpose of this rule and rule 19.04(10E), “aircraft leasing with an aircraft operator” include leases of aircraft to the aircraft operator directly or indirectly through an intermediate lessor related to the aircraft operator.

(10E) “Qualified Aircraft Lessor” means a listed issuer actively engaged in aircraft leasing with aircraft operators (as defined in rule 19.04(10D)) as a principal business in its ordinary and usual course of business. In making this determination, consideration will also be given to the following factors:

- (a) there is clear disclosure of aircraft leasing as a current and continuing principal business activity in the issuer’s latest published annual report and financial statements (or in the case of a newly listed issuer, its listing document);

- (b) aircraft leasing is reported as a separate and continuing segment (if not the only segment) in the issuer's latest published financial statements. The format for reporting segmental information and its latest published annual financial statements have fully complied with the relevant accounting standards adopted for the preparation of its annual financial statements; and
- (c) the lessor's directors and senior management, taken together, have sufficient experience relevant to the aircraft leasing industry. Individuals relied on must have a minimum of five years' relevant industry experience.

(40E11) a "securities house" means ...

(4411A) a "shipping company" means ...

...

*Exemptions for Qualified Aircraft Leasing Activities  
which constitute notifiable transactions*

19.33C A Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements for notifiable transactions provided that:

- (1) it is undertaken by a Qualified Aircraft Lessor in its ordinary and usual course of business;
- (2) the Qualified Aircraft Lessor's board has confirmed that:
  - (a) the transaction is entered into by the lessor in its ordinary and usual course of business and on normal commercial terms; and
  - (b) the terms of transaction are fair and reasonable and in the interests of the lessor and its shareholders as a whole; and
- (3) the Qualified Aircraft Lessor complies with the disclosure requirements under rule 19.33D.

19.33D Where a Qualified Aircraft Leasing Activity is exempt from the announcement, circular and/or shareholders' approval requirements for notifiable transactions under rule 19.33C:

- (1) the Qualified Aircraft Lessor must publish an announcement as soon as possible after the terms of the transaction have been finalised. The announcement must contain:
  - (a) the date of the transaction;
  - (b) the identities and a description of the principal business activities of the parties to the transaction. The lessor must also confirm that the parties to the transaction and their ultimate beneficial owners are third parties independent of the lessor and its connected persons;

- (c) a description of the transaction and the aircraft which is the subject of the transaction (including the expected year of delivery of the aircraft in the case of an acquisition); and
  - (d) a confirmation by the lessor's board of directors that the lessor has fulfilled (i) the criteria set out in rule 19.04(10E) and (ii) the conditions set out in rule 19.33C(2); and
- (2) the Qualified Aircraft Lessor must also disclose the following information in its next interim report (where applicable) and annual report:
- (a) the aggregate number of aircraft owned by the lessor as at the end of the reporting period with a breakdown by aircraft model, and the aggregate net book value of the aircraft;
  - (b) the aggregate number of aircraft committed to purchase as at the end of the reporting period with a breakdown by aircraft model, and the commitment amounts for future commitments;
  - (c) the aggregate number of aircraft sold for the reporting period;
  - (d) the aggregate net book value and the aggregate net gain or loss on disposal of aircraft for the reporting period; and
  - (e) the average lease rental yield of each of (i) the operating lease business and (ii) the finance lease business in relation to aircraft leasing for the reporting period.

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## **APPENDIX III : LIST OF RESPONDENTS**

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### **INSTITUTIONS**

#### **Listed Companies**

1. Cathay Pacific Airways Limited
2. China Aircraft Leasing Group Holdings Limited
3. CK Asset Holdings Limited
4. Hong Kong Aircraft Engineering Company Limited
5. NWS Holdings Limited
6. Swire Pacific Limited
7. Swire Properties Limited
8. to 12. 5 Main Board Issuers (*names not disclosed at the respondents' request*)

#### **Professional Body / Industry Association**

13. Association of Chartered Certified Accountants
14. Hong Kong Aircraft Leasing and Aviation Finance Association Limited

#### **Market Practitioner**

15. Latham & Watkins

#### **None of the above**

16. China Securities (International) Financial Holding Company Limited

### **INDIVIDUALS**

17. William Ho
18. to 20. 3 individuals (*names not disclosed at respondents' request*)

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