

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201408.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

Chapter I: Proposed Rule amendments to align the requirements for disclosure of financial information in Main Board Rules Appendix 16 and GEM Rules equivalent with reference to the disclosure provisions in the New Companies Ordinance

1. Do you agree that all issuers (whether or not they are incorporated in Hong Kong) should include disclosures under the provisions of the New Ordinance which reflect alignment of those provisions of the Predecessor Ordinance captured in Main Board Rules Appendix 16 and GEM Rules equivalent as set out in paragraphs 70 to 73 of the Consultation Paper?

Yes

No

Please give reasons for your views.

We generally agree with the principle that all issuers (whether or not they are incorporated in Hong Kong) should include disclosures under the provisions of the new Companies Ordinance to ensure there is a level playing field for all listed issuers - wherever they are incorporated. However, there is one point that may be of concern to listed issuers incorporated in a jurisdiction outside Hong Kong. Section 390 of the new Companies Ordinance requires a company to include the names of all directors of the issuer and its subsidiaries, to the extent those subsidiaries are included in the issuer's consolidated financial statements. It is proposed that this requirement for Hong Kong companies will be included in the Listing Rules and will be applicable to all listed companies (wherever incorporated) under a new Appendix 16.28(2)(a) (as indicated in paragraph 52(b) on page 17, paragraph 57 on page 20 and page 63 of the Consultation Paper). Since a listed issuer may have a large number of subsidiaries within its group, this would be an onerous disclosure obligation in relation to the directors of subsidiaries and may not provide meaningful information to investors. We are in favour of the level playing field principle but this should only apply to the extent it results in meaningful disclosure to investors.

Chapter II: Proposed Rule amendments to streamline the disclosure requirements of financial information in the Listing Rules with reference to Hong Kong Financial Reporting Standards

2. Do you agree with the proposed revision of Main Board Rules Chapter 4 and Appendix 16 and GEM Rules equivalent in order to streamline the Listing Rules and to avoid potential duplications with the accounting standards?

Yes

No

Please give reasons for your views.

We support this proposal to streamline the Listing Rules and avoid duplication with accounting standards.

3. Do you agree with the proposed repeal of the disclosure requirements in relation to financial conglomerates in Main Board Rules Chapter 4 and Appendix 16 and GEM Rules equivalent?

Yes

No

Please give reasons for your views.

We support this proposal to streamline the Listing Rules and avoid unnecessary duplication with other provisions in Appendix 16.

4. Do you agree with the proposed repeal of Main Board Rules Appendix 15 and GEM Rules equivalent in relation to bank reporting?

Yes

No

Please give reasons for your views.

We support this proposal to repeal Appendix 15 and the GEM equivalent to avoid duplication with Appendix 16 and the relevant accounting standards.

Chapter III: Other financial information disclosures related proposed Rule amendments

5. Do you agree with the proposed Rule amendments to require an issuer to publish an announcement as soon as practicable after the directors decide to revise the published financial statements and the reason leading to the revision of the financial statements?

Yes

No

Please give reasons for your views.

Although we generally support this proposal, it may be sensible to include a materiality qualifier so as not to mislead investors as to the importance (or otherwise) of the revision.

6. Do you agree with the proposed Rule amendment to require disclosure in results announcements where an issuer has made a prior period adjustment to correct a material error?

Yes

No

Please give reasons for your views.

We agree that a prior period adjustment to correct a material error should be disclosed to the market.

7. Do you agree with the proposed Rule amendments to Main Board Rules Appendix 16 and GEM Rules equivalent to provide references to disclosure requirements relating to periodic financial reports currently required in other parts of the Listing Rules?

Yes

No

Please give reasons for your views.

We support this proposal to consolidate these requirements in Appendix 16, which will facilitate the reporting process and compliance check for listed issuers and their advisers.

Chapter IV: Proposed Rule amendments consequential to the enactment of the New Companies Ordinance

8. Do you agree that the Listing Rules should be amended to align the notice period requirements for companies incorporated in Bermuda and the Cayman Islands with the relevant requirements under the New Ordinance?

Yes

No

Please give reasons for your views.

We agree there should be a level playing field (as long as this is not in conflict with Cayman / Bermudan law).

9. Do you support the proposal to allow companies incorporated in Bermuda and the Cayman Islands to convene general meetings on shorter notice on the same terms as companies incorporated in Hong Kong (i.e. in accordance with the relevant provisions of the New Ordinance)?

Yes

No

Please give reasons for your views.

Same comment as 8 above.

Chapter V: Proposed minor Rule amendments

10. Do you agree with the proposal to amend Main Board Rule 13.45(1) and GEM Rules equivalent to require issuers to announce the expected payment dates for their dividends or other distributions as described in paragraph 143 of the Consultation Paper?

Yes

No

Please give reasons for your views.

We agree this information is helpful to investors and should therefore be disclosed.

11. Do you agree with the proposal to amend Main Board Rule 5.03 and GEM Rules equivalent to clarify that a property valuation is required for the circular of any connected transaction that involves an acquisition or disposal of any property interest or property company?

Yes

No

Please give reasons for your views.

We support this proposal, which is a helpful clarification and consistent with the spirit and purpose of Chapter 14A.

12. Do you agree with the proposal to amend Main Board Rules 14.66(8) and 14A.70(15) and GEM Rules equivalent to remove the requirement to disclose information about competing interests of directors of the issuer's subsidiaries and their close associates in transaction circulars?

Yes

No

Please give reasons for your views.

We agree with this proposal on the basis that such disclosure should not be relevant to an investor's assessment of the relevant transaction.

13. Do you agree with the proposal to amend the GEM Rules to include a new GEM Rule 17.49A to require trading suspension for issuers that fail to publish their financial results announcements as described in paragraph 153 of the Consultation Paper?

Yes

No

Please give reasons for your views.

14. The Exchange invites your comments regarding whether the manner in which (i) the proposed Rule amendments consequential to the enactment of the New Ordinance as set out in Chapter IV (see paragraphs 116 to 137 of the Consultation Paper) and (ii) the proposed housekeeping Rule amendments set out in Chapter VI, have been drafted will give rise to any ambiguities or unintended consequences.

We attach a few minor drafting comments for your consideration.

15. Do you have any other comments in respect of the matters discussed in the Consultation Paper? If so, please set out your additional comments.

Nothing else to highlight for now.

- End -

PART A – MAIN BOARD LISTING RULES

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Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

...

Major transaction circulars

...

14.67 In addition to the requirements set out in rule 14.66, a circular issued in relation to an acquisition constituting a major transaction must contain:—

- (7) a management discussion and analysis of results of the business, company or companies being acquired covering all those matters set out in paragraph 32 of Appendix 16 for the period reported in the accountants' report.

Inability to access information to compile circulars for major transactions or very substantial acquisitions

14.67A...

- (2) ...
(b) where information required for the enlarged group is not available, to include the following information regarding the issuer:
...
(iv) management discussion and analysis of results (this is applicable only to very substantial acquisitions, see rule 14.69(7));

...

Handwritten note: SandM's Comments 21.10.2014

Appendix 1

Contents of Listing Documents

Part A

Equity Securities

In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed

...

General information about the group's activities

- 28. (1) (a) the general nature of the business of the group and, in cases where two or more activities are carried on which are material in terms of profits or losses, assets employed or any other factor, such figures and explanation as are necessary to demonstrate the relative importance of each such activity and details of the main categories of products sold and/or services performed.
(b) additional information in respect of major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesaler or retailer as the case may be) and suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:
(iii) a statement of the percentage of turnover or sales revenue from sales of goods or rendering of services attributable to the group's largest customer;
(iv) a statement of the percentage of turnover or sales revenue from sales of goods or rendering of services attributable to the group's 5 largest customers combined;

...

- 15.1 In the case of a PRC issuer, reference to director under this paragraph shall also mean and include supervisor.
- 15.2 A "transaction, arrangement or contract of significance" is one where any of the percentage ratios (as defined under rule 14.04(9)) of the transaction is 1% or more.
- 15.3 Notwithstanding the percentage specified in Note 15.2, a transaction, arrangement or contract is regarded as a "transaction, arrangement or contract of significance" to a listed issuer if the omission of information relating to that transaction, arrangement or contract could have changed or influenced the judgement or decision of a person relying on the relevant information.
- 15.4 A reference to an entity connected with a director has the meaning given by section 486 of the Companies Ordinance.
- ...
24. An issuer must disclose in its financial statements details of director's and past director's emoluments, by name as follows:-
- ...
- 24.1 Sub-paragraphs (2) to (6) above inclusive require an analysis of the amounts to be disclosed in the listed issuer's financial statements under the provisions of section 161(1)383(1)(a) to (c)(inclusive) of the Companies Ordinance.
- ...
28. A listed issuer (whether or not it is incorporated in Hong Kong) shall include disclosures required under the following provisions of the Companies Ordinance and subsidiary legislation:-
- (1) ~~The Tenth Schedule;~~
 - (2) ~~S128 (details of subsidiaries);~~
 - (3) ~~S129 (details of investments);~~
 - (4) ~~S129A (details of ultimate holding company);~~
 - (5) ~~S129D (contents of the directors' report);~~
 - (6) ~~S161 (directors' remuneration);~~
 - (7) ~~S161A (corresponding figures);~~
 - (8) ~~S161B (loans to company officers);~~
 - (9) ~~S162 (directors' interests in contracts); and~~

~~(10) S162A (management contracts);~~

(1) in financial statements

- (a) Section 383 - Notes to financial statements to contain information on directors' emoluments etc.;
- (b) Schedule 4 - Accounting Disclosures; and
- (c) Companies (Disclosure of Information about Benefits of Directors) Regulation; and

(2) in directors' report

- (a) Section 390 - Contents of directors' report: general;
- (b) Section 470 - Permitted indemnity provision to be disclosed in directors' report;
- (c) Section 543 - Disclosure of management contract;
- (d) Schedule 5 - Content of Directors' Report: Business Review; and
- (e) Companies (Directors' Report) Regulation.

28.1 Directors must prepare directors' report in accordance to section 388 of the Companies Ordinance and the directors' report must be approved and signed in accordance to section 391 of the Companies Ordinance.

28A. A directors' report for a financial year must contain a business review that consists of the following:-

- (1) a fair review of the group's business;
- (2) a description of the principal risks and uncertainties facing the group;
- (3) particulars of important events affecting the group that have occurred since the end of the financial year;
- (4) an indication of likely future development in the group's business; and
- (5) to the extent necessary for an understanding of the development, performance or position of the group's business, a business review must include:-
 - (a) an analysis using financial key performance indicators;
 - (b) a discussion on -

- (i) the group's environmental policies and performance; and
- (ii) the group's compliance with the relevant laws and regulations that have a significant impact on the group; and
- (c) an account of the group's key relationships with its employees, customers and suppliers and others that have a significant impact on the group and on which the group's success depends.

28A.1 Paragraph 28A does not require the disclosure of any information about impending developments or matters in the course of negotiation if the disclosure would, in the directors' opinion, be seriously prejudicial to the issuer's interests.

28A.2 The term "key performance indicators" means factors by reference to which the development, performance or position of the issuer's business can be measured effectively.

29. A listed issuer shall include a statement of the reserves available for distribution to shareholders by the listed issuer as at the ~~balance sheet date of~~ statement of financial position:-

- (1) in the case of a Hong Kong issuer, as calculated under the provisions of sections 79B291, 297 and 299 of the Companies Ordinance; and

31. A listed issuer shall include information in respect of its major customers (meaning, other than in relation to consumer goods or services, the ultimate customer, and in relation to consumer goods or services the ultimate wholesale or retailer as the case may be) and its major suppliers (meaning the ultimate supplier of items which are not of a capital nature) as follows:-

- (3) a statement of the percentage of ~~turnover or sales revenue from sales of~~ goods or rendering of services attributable to the largest customer;
- (4) a statement of the percentage of ~~turnover or sales revenue from sales of~~ goods or rendering of services attributable to the 5 largest customers combined;

32. In addition to a business review in the directors' report as set out in paragraphs 28 and 28A, aA listed issuer shall include in its annual report a ~~separate statement containing~~ a discussion and analysis of the group's performance during the financial year and the material factors underlying its results and financial position. It should emphasize trends and identify significant events or transactions during the financial year under review. As a minimum the directors of the listed issuer should comment on the following:-

- (6) comments on segmental information. This may cover changes in the industry segment, developments within the segment and their effect on the results of that segment. It may also include changes in the market conditions, new products and services introduced or announced and their impact on the group's performance and changes in ~~turnover~~ revenue and margins;

33. ~~Banking, insurance and shipping companies will not be entitled to avail themselves of the benefit of the provisions of Part III of the Tenth Schedule to the Companies Ordinance. [Repealed [date]]~~

Information to accompany interim reports

40. A listed issuer shall include in its interim report:-

- 40.1. ~~Leading London and Hong Kong Counsel have advised the Exchange that Section 129C(3) of the Companies Ordinance (Cap. 32) relates to the annual balance sheet once it has been audited. Section 129C(3) does not apply to any interim balance sheet. [Repealed [date]]~~

42. ~~Banking, insurance and shipping companies will not be entitled to avail themselves of the benefit of the provisions of Part III of the Tenth Schedule to the Companies Ordinance. [Repealed [date]]~~

Information to accompany preliminary announcements of Results for the financial year

45. A listed issuer shall publish a preliminary announcement of its results in accordance with rule 2.07C as required under rule 13.49(1), which has been agreed with its auditors and which includes, as a minimum, the following:

- 45.1 ~~Listed issuers are not required to include an audited balance sheet within the meaning of section 129C or other provisions of the Companies Ordinance concerning balance sheets in their preliminary results announcement for the financial year under this paragraph 45. However, the financial information included in the preliminary results announcement must have been agreed with the auditors. This does not affect the listed issuers' obligations under the Companies Ordinance concerning balance sheets as and when they are applicable. Where a listed issuer includes an audited balance sheet in its preliminary results announcement, it must comply with all applicable laws, including the relevant statutory provisions applicable in the listed issuer's place of incorporation. [Repealed [date]]~~

Appendix 1

Contents of Listing Documents

Part A

Equity Securities

In the case where listing is sought for equity securities of an issuer no part of whose share capital is already listed

Financial information about the group and the prospects of the group

33. ...
- (4) The following information in addition to ~~those~~ required under the relevant accounting standard in respect of pension schemes:—
- (a) ~~the nature of the principal scheme or schemes operated by the group (i.e. whether they are defined benefit plans or defined contribution plans);~~
 - (ab) a brief outline of how contributions are calculated or benefits funded;
 - (c) ~~the employer's pension cost charge to the profit and loss account for the period;~~
 - (bd) in the case of defined contribution schemes, details of whether forfeited contributions (by employers on behalf of employees who leave the scheme prior to vesting fully in such contributions) may be used by the employer to reduce the existing level of contributions and if so, the amounts so utilised in the course of the year and available at the balance sheet date for such use; and
 - (ce) in the case of defined benefit plans, an outline of the results of the most recent formal actuarial valuation or later formal review of the scheme on an ongoing basis. This should include disclosure of:—

Appendix 1

Contents of Listing Documents

Part E

Depository receipts

In the case where listing is sought for depository receipts of an issuer no part of whose share capital is already listed

Financial information about the group and the prospects of the group

33. ...
- (4) The following information in addition to ~~those~~ required under the relevant accounting standard in respect of pension schemes:—
- (a) ~~the nature of the principal scheme or schemes operated by the group (i.e. whether they are defined benefit plans or defined contribution plans);~~
 - (ab) a brief outline of how contributions are calculated or benefits funded;
 - (c) ~~the employer's pension cost charge to the profit and loss account for the period;~~
 - (bd) in the case of defined contribution schemes, details of whether forfeited contributions (by employers on behalf of employees who leave the scheme prior to vesting fully in such contributions) may be used by the employer to reduce the existing level of contributions and if so, the amounts so utilised in the course of the year and available at the balance sheet date for such use; and
 - (ce) in the case of defined benefit plans, an outline of the results of the most recent formal actuarial valuation or later formal review of the scheme on an ongoing basis. This should include disclosure of:—

7. ~~A listed issuer shall include in its financial statements segmental information required by the accounting standards adopted for the preparation of its annual financial statements:— [Repealed [date]]~~

~~(1) Hong Kong Financial Reporting Standards (HKFRS); or~~

~~(2) International Financial Reporting Standards (IFRS); or~~

~~(3) Generally Accepted Accounting Principles in the United States of America (US GAAP); or~~

~~(4) China Accounting Standards for Business Enterprises (CASBE).~~

10. In relation to transactions in its securities, or securities of its subsidiaries during the financial year a listed issuer shall include:—

(3) particulars of any redemption or purchase or cancellation by the listed issuer or any of its subsidiaries of its redeemable securities and the amount of such securities outstanding at the balance sheet date end of the relevant financial year; and

13. A listed issuer shall include the information relating to interests of directors, the chief executive and others as follows:—

(1) subject to sub-paragraph 13(2), a statement as at the balance sheet date end of the relevant financial year showing the interests and short positions of each director and chief executive of the listed issuer in the shares, underlying shares and debentures of the listed issuer or any associated corporation (within the meaning of Part XV of the Securities and Futures Ordinance);

(3) a statement as at the balance sheet date end of the relevant financial year, showing the interests or short positions of every person, other than a director or chief executive of the listed issuer, in the shares and underlying shares of the listed issuer as recorded in the register required to be kept under section 336 of the Securities and Futures Ordinance and the amount of such interests and short positions, or if there is no such interests and short positions recorded in the register, a statement of that fact; and

22. In relation to loans and borrowings a listed issuer shall provide in its financial statements:—

(1) ~~except where the listed issuer is a banking company, an analysis as at the balance sheet date of statement of financial position, firstly of bank loans and overdrafts and, secondly of other borrowings, showing the aggregate amounts repayable:—~~

~~(a) on demand or within a period not exceeding one year;~~

~~(b) within a period of more than one year but not exceeding two years;~~

~~(c) within a period of more than two years but not exceeding five years; and~~

~~(d) within a period of more than five years;~~

(2) ~~a statement of the amount of interest capitalised during the financial year.~~

26. A listed issuer shall include the following information in addition to those required under the relevant accounting standard in respect of pension schemes:—

(1) ~~the nature of the principal scheme or schemes operated by the group (i.e. whether they are defined benefit plans or defined contribution plans);~~

(2) a brief outline of how contributions are calculated or benefits funded;

(3) ~~the employer's pension cost charged to the income statement for the financial year;~~

(24) in the case of defined contribution schemes, details of whether forfeited contributions (by employers on behalf of employees who leave the scheme prior to vesting fully in such contributions) may be used by the employer to reduce the existing level of contributions and if so, the amounts so utilised in the course of the year and available at the balance sheet date of statement of financial position for such use; and

(35) in the case of defined benefit plans, an outline of the results of the most recent formal independent actuarial valuation (which should be as at a date not earlier than 3 years prior to the balance sheet date of statement of financial position) or later formal independent review of the scheme on an ongoing basis. This should include disclosure of:—

27. If an issuer has valued any property interests (under Chapter 5) or has valued any other tangible assets and included such a valuation in the prospectus relating to its initial public offer and those assets are not stated at valuation (or

the information

13. A listed issuer shall include the information relating to interests of directors, the chief executive and others as follows:-

- (1) ...
- (b) as otherwise notified to the listed issuer and the Exchange pursuant to the Model Code for Securities Transactions by Directors of Listed Companies Issuers (which for purposes of this sub-paragraph shall be deemed to apply to the PRC Issuer's supervisors to the same extent as it applies to directors); or

Information to accompany interim reports

40.3 An interim report shall contain information required under other parts of the Listing Rules, such as:

- (a) advance to an entity under rule 13.20;
- (b) pledging of shares by the controlling shareholder under rule 13.21;
- (c) loan agreements with covenants relating to specific performance of the controlling shareholder under rule 13.21;
- (d) breach of loan agreement by an issuer under rule 13.21;
- (e) financial assistance and guarantees to affiliated companies of an issuer under rule 13.22;
- (f) provision of information in respect of and by directors, supervisors and chief executives under rule 13.51B(1);
- (g) share option schemes under rules 17.07 and 17.08;
- (h) for a Mineral Company, continuing disclosure obligation arises under rule 18.14; and
- (i) disclosure of interests information under Practice Note 5.

Information to accompany preliminary announcements of Results for the financial year

45. A listed issuer shall publish a preliminary announcement of its results in accordance with rule 2.07C as required under rule 13.49(1), which has been agreed with its auditors and which includes, as a minimum, the following:

- (7) where the auditors' report on the listed issuer's annual financial statements is likely to be qualified or modified (whether or not it is also likely to be qualified), details of the qualification or modification; ~~and~~

(8) where there are any significant changes in accounting policies, a statement to that fact must be made; and

45.2 *A listed issuer should apply the accounting policies consistently except where the change in accounting policy is required by an accounting standard which came into effect during the financial year.*

(9) where there are prior period adjustments due to correction of material errors, a statement to that fact must be made.

45.3 *The term financial year refers to the period covered by a listed issuer's financial statements even where the period is not a calendar year.*

Information to accompany preliminary announcements of Interim results

46. A listed issuer shall publish a preliminary announcement of its results in accordance with rule 2.07C for the first six months of each financial year as required under rule 13.49(6), which shall include, as a minimum, the following information:-

(8) where the accounting information contained in a preliminary interim results announcement has been audited by the listed issuer's auditor and the auditors' report in the listed issuer's interim financial statements is qualified or modified (whether or not it is also qualified), details of the qualification or modification; ~~and~~

(9) where there are any significant changes in accounting policies, a statement to that fact must be made; and

46.2 *A listed issuer should apply the same accounting policies in its interim financial statements as are applied in its annual financial statements, except where the change in accounting policy is required by an accounting standard which came into effect during the interim period.*

(10) where there are prior period adjustments due to correction of material errors, a statement to that fact must be made.

Summary interim reports

51. Summary interim reports of listed issuers shall include, as a minimum, the following information in respect of the listed issuers:

- (1) the information required under paragraphs 46(1) to (9)10);

Noting that "to" is used elsewhere

of

Appendix 24
Headline Categories

...
Schedule 1
Headline Categories for Announcements and Notices
...

Financial Information

Advance to an Entity
Date of Board Meeting
Delay in Results Announcement
Dividend or Distribution
Final Results
Financial Assistance and/or Guarantee to Affiliated Company
Interim Results
Net Asset Value
Profit Warning
Prior Period Adjustments due to Correction of Material Errors
Qualified and/or Modified Audit Report
Quarterly Results
Results of a Subsidiary
Revision of Information in Published Preliminary Results
Revision of Published Financial Statements
...

PART B – GEM LISTING RULES

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Chapter 17
EQUITY SECURITIES
CONTINUING OBLIGATIONS

Changes

17.50 An issuer must publish an announcement as soon as practicable in regard to:—

- ...
- (4) any change in its auditors or financial year end, the reason(s) for the change and any other matters that need to be brought to the attention of holders of securities of the issuer (including, but not limited to, information set out in the outgoing auditors' confirmation in relation to the change in auditors); ~~and~~
 - ...
 - (5) any change in its registered address or registered office or (as applicable) its registered place of business in Hong Kong or agent for the service of process in Hong Kong; ~~and~~
 - ...
 - (6) any revision of interim reports or annual reports, the reason leading to the revision of published financial reports, and the financial impacts, if any.
- ...