



Listed Issuer Regulation Newsletter

Highlights

- Consultation conclusion on listing regime for overseas issuers
- Revised Corporate Governance Code & related Listing Rules
- Directors' responsibilities when assessing transactions
- Planning ahead for upcoming financial reporting season
- Updates on the Exchange's paperless initiatives

Consultation conclusion on listing regime for overseas issuers

Last month, we published conclusions for our "[Listing Regime for Overseas Issuers](#)" market consultation. We proposed to streamline and standardise shareholder protection standards for all listed issuers, irrespective of their place of incorporation.

Before the proposed Listing Rule amendments take effect, to list in Hong Kong, an issuer incorporated outside Hong Kong must demonstrate that they are subject to the same shareholder protection standards at least equivalent to those of Hong Kong. Issuers incorporated in Cayman Islands, Bermuda, the PRC are required to meet the equivalent standards by conforming their constitutional documents with the Listing Rules¹, while overseas issuers incorporated outside these jurisdictions must demonstrate the laws and regulations to which they are subject and their constitutional documents, in combination, meet the standards set out in the Joint Policy Statement Regarding the Listing of Overseas Companies ([JPS](#)) and the respective Country Guides².

With effect from 1 January 2022, we will streamline these standards and amend the Listing Rules to:

- Adopt a uniform set of 14 "Core Standards" for shareholder protections for issuers regardless of their place of incorporation; and
- Require certain issuers to publish "Company Information Sheets" in order to enable investors to easily locate specific information on the differences between the applicable overseas and the Hong Kong requirements (see below).

These requirements apply to both listing applicants and existing listed issuers.

These Core Standards relate to:

- Notice and conduct of general meetings (**Core Standards 3 and 4**).
- Members' right to remove directors, vote, speak and requisition a meeting, and appoint proxies or corporate representatives (**Core Standards 1, 5, 7, 11 and 12**).
- Reserving (i) approval of appointment, removal and remuneration of auditors to a majority of the members or other body independent of the board; and (ii) other material matters to super-majority votes by shareholders (**Core Standards 8, 9, 10 and 14**).
- Restrictions on the term of a director appointed to fill a casual vacancy (**Core Standard 2**).
- Availability of the shareholders' register for inspection (**Core Standard 13**).
- Restrictions on shareholder voting on certain matters required by the Listing Rules (**Core Standard 6**).

¹ Appendix 13 to the MB Rules / Appendix 11 to the GEM Rules

² There are currently 28 of these "acceptable jurisdictions", for example, Singapore, British Virgin Islands, Japan and Australia

³ New Appendix 3 to MB Rules / New Appendix 3 to GEM Rules

Conformation to core standards

Listed issuers are advised to assess whether their constitutional documents, in combination with the applicable laws, rules and regulations of their place of incorporation, conform to these Core Standards and, where applicable, make necessary amendments to the constitutional documents **by the second annual general meeting following 1 January 2022** to bring the issuers to conformation.

Areas to note:

Issuers incorporated in Cayman Islands and Bermuda should note that some of the Core Standards may not be currently provided for under the Listing Rules⁴, or the respective laws, rules and regulations. These issuers should assess whether their constitutional documents have provided for the required protections under the following Core Standards in particular:

Cayman Islands:

- **Core Standard 5:** an issuer is required to provide its members the right to speak at a general meeting.
- **Core Standard 7:** minority shareholder of an issuer should be entitled to convene an extraordinary general meeting and propose resolution. The threshold for such minority stake should not be higher than 10% of the voting rights in the share capital of the issuer.
- **Core Standard 10:** an issuer is required to approve the appointment, removal and remuneration of auditors by a majority of its members or other body that is independent of the board of directors.
- **Core Standard 14:** an issuer is required to approve its voluntary winding up by a super-majority vote of the issuer's members in a general meeting.

Bermuda:

- **Core Standards 5 and 14:** see above.

Other jurisdictions under the JPS:

Issuers incorporated in other overseas jurisdictions should note that the following Core Standards are not currently provided for under the Listing Rules⁵ or the JPS. These issuers should assess whether the respective overseas laws, rules and regulations, or their constitutional documents have provided for the required protections:

- **Core Standard 11:** every member of an issuer is entitled to appoint a proxy who need not be a member of the issuer; and every shareholder being a corporation is entitled to appoint a representative to attend and vote at any general meeting.
- **Core Standard 13:** The branch register of members in Hong Kong of an issuer shall be open for inspection by members.

Issuers incorporated in the above jurisdictions should make necessary amendments to their constitutional documents to address any shortfalls identified.

Publication of company information sheets

Issuers incorporated outside Hong Kong and the PRC will be required to publish Company Information Sheets on the Exchange's website to facilitate investors in understanding the differences between overseas requirements to which they are subject and the Hong Kong requirements **within three months but no later than six months after 1 January 2022**. This applies to:

- (a) all secondary listed issuers⁶; and
- (b) existing primary listed issuers and dual primary listed issuers that were:
 - (i) granted novel waiver(s)⁷;

- (ii) whose laws and regulations in their home jurisdictions and primary market are materially different⁸ from those required by the Hong Kong laws regarding:
 - securities holders' rights,
 - directors' powers and investor protection, and
 - buy-out of minority shareholders after a takeover or share repurchase; or

- securities holders' rights,
 - directors' powers and investor protection, and
 - buy-out of minority shareholders after a takeover or share repurchase; or
- (iii) subject to withholding tax on distributable entitlements or other taxes payable by shareholders⁹.

Issuers are welcomed to consult us where applicable.

⁴ Appendix 3 and Appendix 13 to the MB Rules / Appendix 3 and Appendix 11 to the GEM Rules

⁵ Appendix 3 to the MB Rules / Appendix 3 to the GEM Rules

⁶ New MB Rule 19C.24

⁷ For example, where an overseas issuer is allowed to take alternative measures to meet any of the Core Standards without providing such standards in its constitutional documents

⁸ We currently consider the laws and regulations in Cayman Islands and Bermuda regarding the aforementioned areas are not materially different from those required by Hong Kong laws

⁹ New MB Rule 19.60 / New GEM Rule 24.27

Revised corporate governance code & related listing rules

On 10 December 2021, we published consultation conclusion for the **“Review of the Corporate Governance Code (CG Code) and Related Listing Rules”**. The revised CG Code and Listing Rules focus on enhancing issuers’ corporate governance (CG) and diversity practices.

Planning ahead for the upcoming CG reporting

- Effective from 1 January 2022, issuers must:
 - Establish a nomination committee chaired by the chairman of the board or an INED and comprising a majority of INEDs¹⁰.
 - Disclose directors’ attendance at general meetings in the poll results announcements¹¹.
- **The Exchange will not consider diversity to be achieved with a single gender board¹² from 1 January 2022.** Single gender board issuers must appoint a director of a different gender no later than 31 December 2024, whereas IPO applicants are required to identify at least a director of a different gender for A1 submission filed on or after 1 July 2022.
- Where all independent non-executive directors (INEDs) have served more than nine years on the board (**Long Serving INEDs**), issuers are required to **appoint a new INED (effective for the financial year commencing on or after 1 January 2023)**.
- Issuers should include the following **additional information in the papers to shareholders for the relevant AGM or general meeting published within the financial year commencing on or after 1 January 2022:**
 - Re-electing Long Serving INEDs – the board’s considerations to justify the re-election¹⁴.
 - Where all the INEDs on board are Long Serving INEDs – the length of tenure of each Long Serving INED on a named basis¹⁵.
- Requirements under the **new CG Code will apply to CG reports for the financial years commencing on or after 1 January 2022**. Issuers should take note of the new mandatory disclosures on diversity (including targets and timelines for board gender diversity, and gender ratio for workforce¹⁶), and shareholder communication policy (including two-way communication channels and review of its effectiveness)¹⁷.

Currently, over 800 issuers either have a single-gender board or with INEDs all being Long Serving INEDs. They should kick start the process to identify suitable candidates (with the appropriate calibre, skills and experience) in light of the new requirements.

- Issuers should consider whether INEDs’ remuneration package may affect the INEDs’ objectivity and independence, and are generally recommended not to grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs generally¹³.

The Exchange has also published a [Corporate Governance Guide for Boards and Directors](#) to guide the board in carrying out their role more effectively. It should be read alongside the amended CG Code.

Publication of ESG reports

To improve timeliness of ESG information, issuers must **publish their ESG reports for the financial year commencing on or after 1 January 2022 at the same time as the annual reports**¹⁸.

¹⁰ New Main Board Rule 3.27A / GEM Rule 5.36A

¹¹ New Main Board Rule 13.39(5A) / GEM Rule 17.47(5A)

¹² Main Board Rule 13.92 / GEM Rule 17.104

¹³ New Recommended Best Practice E.1.9

¹⁴ Include factors considered, process and the board’s discussion on why the Long Serving INED is still independent and should be re-elected (New Code Provision B.2.3)

¹⁵ New Code Provision B.2.4

¹⁶ New Mandatory Disclosure Requirement (MDR) paragraph J

¹⁷ New MDR paragraph L

¹⁸ MB Rule 13.91(5)(d) / GEM Rule 17.103(5)(d) and paragraph 4(2)(d) of the ESG Guide set out in Appendix 27 to the MB Rules and Appendix 20 to the GEM Rules

Directors' responsibilities when assessing transactions

The Exchange reviews material corporate transactions undertaken by issuers as part of its monitoring activities over issuers' compliance with the Listing Rules and the directors' discharge of their duties.

The board of directors is charged with the managerial and supervisory functions over an issuer and plays a vital role to the issuer's success. The Listing Rules promulgate high standards for directors, expecting them to fulfill their fiduciary duties, apply reasonable levels of skills, care and diligence, and act in shareholders' interests in managing the issuer's affairs.

From time to time we identify corporate transactions contemplated by issuers that lacked apparent commercial merit and/or the terms of which appeared not fair and reasonable. Examples include proposals to acquire a target company with no track record at a large consideration which was premised on some financial projections with aggressive assumptions. This casts doubt as to whether the directors have properly discharged their duties. Against this backdrop we consider it useful to set out our expectations on issuers' directors in conducting a transaction such as a business acquisition.

The directors must make their best endeavour to ensure a contemplated transaction is in the interests of the issuer and its shareholders, and the transaction terms are fair and reasonable. Specifically, the directors should:

- **Evaluate the benefits expected from the transaction** and assess whether such transaction is consistent with the issuer's business plan and direction, and how it is conducive to implementing the issuer's strategies and consistent with its overall business plan and direction. Where the issuer contemplates acquiring a business in a different industry, the directors must weigh the prospects of that industry against the associated risks and the issuer's capabilities to operate the new business;
- **Make due enquiries on the acquisition target** commensurate with the size and complexity of the transaction as well as the directors' knowledge in the relevant business and industry. The directors should consider the extent of due diligence and expert advice necessary in the circumstance;

- **Critically assess the value of the target with reference to the information obtained through the directors' enquiries to ensure the consideration is fair and reasonable.** The directors are expected to exercise their own judgment but not to overly rely on one single source or biased information, for example, a business valuation of a target without making independent assessment of the assumptions and a review of the business operation of the target; and
- **Consider the reasonableness and adequacy of all the terms of the transaction.** For example, the directors should carefully assess the settlement/ payment terms with a view to safeguarding shareholders' interests to guard against failure by the counterparties in fulfilling their contractual obligations (e.g. escrow arrangement on any deposit). Where the vendor provides warranties or guarantees on the target, directors should satisfy themselves that the vendors are in a position to fulfil such obligations. Where a target is a newly established business that lacks track record, directors are cautioned against relying on the profit guarantee to support the purported value of the target and the consideration.



The Listing Rules set out extensive disclosure requirements for notifiable transactions. These requirements aim to guide listed issuers toward presenting information that is necessary for investors to appraise the merit of the transaction and relevant terms, such as the reasons for conducting the transaction and basis of determining the consideration¹⁹. The level of details and specificity of the information to be disclosed will necessarily vary among cases. Directors are encouraged to highlight the enquiries and analysis they have performed (as mentioned above) with a view to providing sufficient information to all shareholders to assess the transaction. Boiler-plate statements should be avoided.

Directors' duties in assessing loans transactions

Directors should also take note of the above when making loans or advance payments. In our thematic review on material lending transactions conducted this year, we identified a number of cases where the issuers lent money or made advance payments that appeared to be not on normal commercial terms or lacked commercial merits. For example, making interest-free advances or substantial upfront payments for purchases, or failing to perform due diligence and eventually recording material impairments to these loans or advances.

We remind directors of their duties in overseeing lending transactions in order to safeguard shareholders' interests, with due regard to the guidelines set out above. We also suggest issuers revisit our [newsletter issued in May 2021](#) for guidance on undertaking money lending transactions and making related disclosure.

About 150 issuers reported that they operated a money lending business as (one of) their principal businesses. We note that these issuers generally made very limited disclosure on their money lending businesses in their annual reports. Many did not

disclose information on, for example, their loan portfolios, customer base and internal controls over the business, and their management's discussions on the performance of the business and related loan impairments were generic. **We urge issuers engaged in money lending as a principal business to enhance their disclosures in their upcoming annual reports to provide investors with sufficient information to evaluate the money lending business and the associated risks.** These disclosures should include:

- the issuers' business model and credit risk assessment policy;
- major terms of loans granted (including details of the collaterals), size and diversity of clients and concentration of loans on major clients;
- management's discussion on the movements in loan impairments (and write-offs) and the underlying reasons; and
- other key internal controls in terms of, for example, credit approval, ongoing monitoring of loan recoverability and loan collection.



¹⁹ MB Rule 14.58(5) and (8) / GEM Rule 19.58(6) and (9)

Planning ahead for upcoming financial reporting season

In just a few months, issuers with a December financial year are due to publish their 2021 accounts. We invite issuers to revisit our [December 2020 newsletter](#) for recommendations to issuers and their audit committee to help them fulfill their financial reporting obligations under the Rules. In particular, we remind issuers of the following to achieve timely publication and avoid trading suspension:

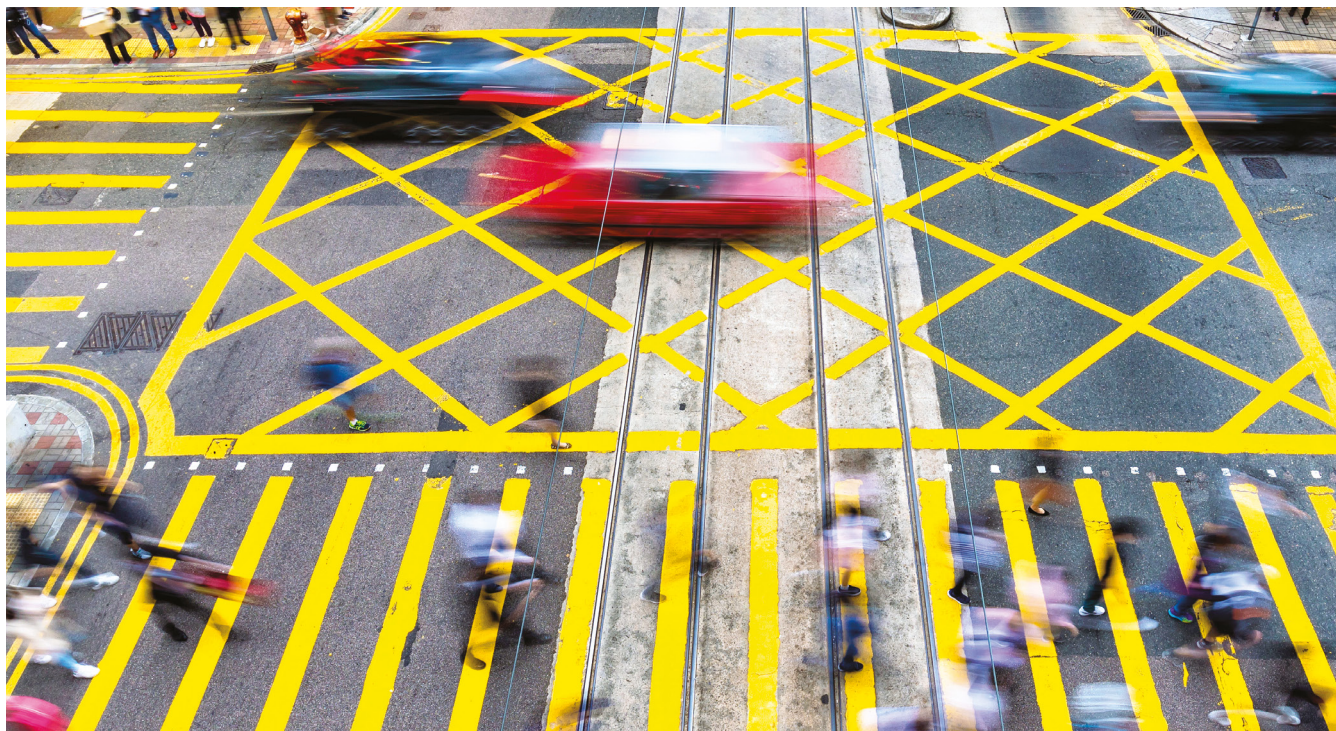
- Management should engage auditors and the audit committee at the earliest instance to plan the audit.

Over 50 issuers failed to timely publish their results before deadline last year. To better prepare for the upcoming audit, issuers should agree on the reporting timeline with their auditors during the audit planning phase. The audit committees should also ensure that the auditors have properly identified significant risks related to the audit and understand how the auditors planned to address them so as to allow sufficient time to resolve the key audit issues.

- The audit committees should be proactive in monitoring the audit process to ensure that management has allocated sufficient resources and takes prompt actions to resolve all audit issues in a timely manner.

Last year, 34 issuers²⁰ received modified opinions relating to asset valuation, which were mostly resulted from insufficient audit evidence provided by the management. Issuers should ensure key assumptions and estimates used in determining the asset valuations are agreed with the auditors, properly supported and documented.

- Issuers and their audit committees are also encouraged to review the [Annual Investigation and Compliance Report](#) and [Interim Inspection report](#) published by the Financial Reporting Council on 3 November 2021 when planning their financial reporting and audits. The two reports provide insights on common areas of financial reporting non-compliance in the financial statements of issuers and deficiencies and misconduct in the work of auditors.



²⁰ Excluded long-suspended issuers

Updates on the Exchange's paperless initiative

Online display of documents

Following a market consultation last year on the "Proposal to Introduce a Paperless Listing and Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display", we have amended the Listing Rules with effect from 4 October 2021 to, among other things:

- require issuers to put certain documents on display on their websites and the Exchange's website, in lieu of physical display of documents²¹; and
- reduce the types of documents to be put on display for notifiable transactions²² and connected transactions²³ to contracts pertaining to the transactions, valuation and expert reports. Documents not directly related to the transactions (such as directors' service contracts and other material contracts) or already published under the issuers' continuing disclosure obligations (including constitutional documents, audited accounts and previously published transaction circulars) are no longer required to be displayed.

New requirements for PRC issuers:

PRC issuers are subject to additional requirements to put certain documents on display²⁴. As some of these documents contain information that is already published online in documents required under other parts of the Listing Rules, the PRC issuers will be considered to meet the online display requirements in these circumstances.

See [FAQ No. 075-2021](#) (18 June 2021) for details.

Submission of documents electronically

To further cut down on use of paper, we now require all issuers' correspondence, applications and forms to be sent to us by email or through our e-submission system (ESS). All Listing e-Forms must be submitted through the ESS²⁵.

Other recent publications

We have recently published the following new guidance materials:

- [Updated GL106-19](#) (11 June 2021) to provide a framework on how the Exchange assesses issuers' compliance with Rule 13.24 and classification of our assessment of issuers' new businesses.
- [LD130-2021](#) and [LD131-2021](#) (30 July 2021) to provide guidance on the application of the reverse takeovers rules.
- [New e-learning module](#) (24 September 2021) on continuing obligations of listed issuers covering three aspects including (1) corporate governance, (2) key disclosure requirements, and (3) continuing listing requirements.
- [FAQs and training videos](#) (2 October 2021) on the Electronic Disclosure System (EDS) yearly enhancement.
- [Guidance on Climate Disclosures](#) (5 November 2021) to help companies assess their response to risks arising from climate change. The Guide also provides practical tips and step-by-step guidance to assist issuers in preparing TCFD-aligned climate change reporting.

We have also recently published the following consultation papers and conclusions on our proposals to enhance our listing regime:

- Consultation paper on [Special Purpose Acquisition Companies](#) (SPACs) (17 September 2021) on proposal to create a listing regime for SPACs in Hong Kong.
- Consultation paper on [Share Schemes of Listed Issuers](#) (29 October 2021) on proposed amendments to govern share schemes (in addition to share option schemes).

²¹ Issuers concerned about the detrimental effect disclosing certain information through online display may refer to our [Waiver Guide](#) and, if considered appropriate, may apply to the Exchange for a disclosure relief by, for example, redaction of the documents

²² MB Rule 14.66(10), 14.67A(2)(b)(viii), paragraph 43(2)(c), (3) and (4) to Appendix 1, Part B / GEM Rule 19.66(11), 19.67A(2)(b)(viii), paragraph 42(2)(c), (3) and (4) to Appendix 1, Part B

²³ MB Rule 14A.70(13), paragraph 43(2)(c) to Appendix 1, Part B / GEM Rule 20.68(13), paragraph 42(2)(c) to Appendix 1, Part B

²⁴ MB Rule 19A.50 and 19A.50A / GEM Rule 25.37 and 25.37A

²⁵ For declaration and undertaking with regard to directors and supervisors, the original signed forms should also be submitted to us

We welcome your feedback.

Please send your thoughts and comments to listingnewsletter@hkex.com.hk