



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

By email (response@hkex.com.hk)

28 February 2023

Our Ref.: C/CFC, M137393

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

Dear Sirs,

[Re: Consultation Paper on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments](#)

The Hong Kong Institute of Certified Public Accountants has considered the Consultation Paper on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments, which was referred to our Corporate Finance Committee. Our views on the proposals are contained in the Appendix.

If you have any questions on this submission, please feel free to contact me at the Institute by telephone on 2287 7084 or email <peter@hki CPA.org.hk>.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

PMT/NCL/pk

Encl.

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HKEX Consultation Paper on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments:

Response from the Hong Kong Institute of CPAs

Q1 - Do you agree with our proposal to remove the documents identified in Table 1 in Schedule II and that doing so will not jeopardise market quality? Please give reasons for your views.

We agree with the proposal, on the basis that it could improve efficiency and lower costs to issuers in company administration and reduce the use of paper. At the same time, the proposal will not change the fundamental responsibilities of listing applicants nor sponsors. Hence, we consider that the proposal will not compromise the Exchange's regulatory objectives or jeopardise market quality.

Q2 - Do you agree with our proposal to codify the relevant obligations into the Listing Rules or Guidance Materials and repeal the undertakings, confirmations and declarations as set out in Table 2 in Schedule II? Please give reasons for your views.

We agree with the proposal. Please refer to our response to Q1 for details.

Q3 - Do you agree with our proposal to repeal the requirement for listing agreements for listing of debt securities (except for debt issues to professional investors), structured products and interests in CIS and investment companies by codifying the relevant obligations as set out in Table 3 in Schedule II? Please give reasons for your views.

We agree with the proposal. Please refer to our response to Q1 for details.

Q4 - Do you agree with our proposal to incorporate in the Listing Rules an issuer's obligation to obtain necessary authorisations and consents for its actions set out in Part (e) of Table 1 in Schedule II? Please give reasons for your views.

We agree with the proposal for the reasons given in the consultation paper (CP).

Q5 - Do you agree with our proposal to require the submission of the overarching undertakings from new applicants and sponsors in the Form A1 referred to in paragraph 38? Please give reasons for your views.

We agree with the proposal for the reasons given in the CP.

Q6 - Do you agree with our proposal to consolidate the requirement for personal particulars of directors/ supervisors in Form FF004? Please give reasons for your views.

We agree with the proposal for the reasons given in the CP.

Q7 - Do you agree with our proposal to remove signature and/or certification requirements for documents set out in Table 5 in Schedule II? Please give reasons for your views.

We agree with the proposal for the reasons given in the CP.

Q8 - Do you agree with our proposal to remove from the Listing Rules any requirement for submission of multiple copies of the same document and to require submission of one electronic copy only in respect of the documents set out in Table 6 in Schedule II? Please give reasons for your views.

We agree with the proposal. Please refer to our response to Q1 for details.

Q9 - Do you agree with our proposal to mandate electronic means as the only mode of submission to the Exchange unless otherwise specified in the Listing Rules or required by the Exchange? Please give reasons for your views.

We agree with the proposal. Please refer to our response to Q1 for details.

Q10 - Do you agree with our proposal to mandate the digitalisation of the prospectus authorisation and registration processes? Please give reasons for your views.

We agree with the proposal, in principle, provided that it is permitted under the applicable laws and regulations and that an efficient and user-friendly online platform is established for electronic submissions.

Q11 - Do you agree with our proposal to amend the Listing Rules to mandate that listed issuers must disseminate corporate communications to their securities holders electronically if this is permitted by their applicable laws and regulations and their constitutional documents? Please give reasons for your views.

This is the inevitable direction of travel in the long run and so we do not have any particular difficulty with the proposal. However, the Exchange should clarify why it wishes to mandate electronic communications between issuers and their securities holders at this juncture, when other markets appear only to permit such communications and, in some cases, to provide for implied consent. In other words, in those markets, it remains, fundamentally, a decision for the issuer. Given the additional costs involved in printed communications, it seems likely, anyway, that, where they have the opportunity to so, issuers will choose to switch primarily to electronic communications.

At the same time, we acknowledge that it has become increasingly convenient for most investors to access listing documents online, as we noted in our response of 24 September 2020 to the Exchange's previous consultation paper on proposals to introduce a paperless listing and subscription regime. As indicated above, it is also more cost effective for issuers to disseminate corporate communications electronically instead of printed materials and, at the same time, it is a better option from the environmental point of view.

The proposal should not have a significant impact on market participants in Hong Kong, as the vast majority of investors nowadays already access listing documents through electronic channels. However, some retail investors, particularly elderly investors, may prefer receiving these corporate communications in a more traditional way, so, for the time being, accommodation should continue to be made for this group of investors.

Q12 - Do you agree with our proposal to allow the consent of holders of a listed issuer's securities to be implied for the electronic dissemination of its corporate communications, to the extent permitted under applicable laws and regulations and its constitutional documents? Please give reasons for your views.

We agree, generally, with the proposal, with the caveats set out in the CP (in paragraphs 85 and 89). Please refer to our response to Q11 for details.

Q13 - Do you agree with our proposal to state in the Rules that Actionable Corporate Communications must be sent to the securities holders individually and in electronic form if the holders provide functional electronic contact details? Please give reasons for your views.

We support this proposal, in principle, subject to our further comments below, although we would also suggest that more clarification is needed as to what constitutes an “Actionable Corporate Communication” (ACC). For example, would a notice of a general meeting (GM) attaching agenda items that needed shareholders to exercise their rights as the issuer’s securities holders be considered to be an ACC?

It is stated in paragraph 90 of the CP that the Exchange proposes to define “ACC” as “*any corporate communication that seeks instructions from an issuer’s securities holders how they wish to exercise their rights as the issuer’s securities holders*”.

In paragraph 91 of the CP, it stated that an ACC would not, for example, include “*notices of general meeting as such notices only serve to inform securities holders of a future opportunity (an upcoming general meeting) at which they may exercise their rights and securities holders are not required to respond to such notices with their instructions*”. In addition, paragraph 92 makes it clear that the Exchange does not consider it necessary “*to treat proxy forms as Actionable Corporate Communications or require listed issuers to send such forms to each securities holder individually. In practice, these forms do not contain express requests for instructions from securities holders and are routinely attached to circulars for general meetings published on the websites of the Exchange and the issuer*”.

The impact of the above is that notices of annual GMs (AGMs), among other things, would no longer need to be sent to securities holders individually and may simply be posted on an issuer’s or the Exchange’s website. We consider that, at this stage of market maturity in Hong Kong, such an outcome would not be sufficient and it would be a negative development in corporate governance terms, because it would have the opposite effect to encouraging the active participation of shareholders in AGMs. It would also reduce the incentive for issuers to make efforts to obtain the electronic contact details of their securities holders to facilitate electronic dissemination of relevant communications in future. On the other hand, once an issuer has the relevant electronic contact details, we cannot see that there would be a significant problem to send notices of GMs to securities holders individually.

Therefore, while we agree that the Exchange should set out guidance on what would and would not constitute an ACC on its website, in our view, notices of GMs should either be included in the definition, which would be the simplest approach, or issuers should separately be required to send notices of GMs to securities holders individually. We may accept that, where a securities holder has been requested to provide electronic contact details on, say, three separate occasions, and has not actively opted to continue to receive printed materials, an issuer could be permitted to include a prominent notice in the most recent communication to the effect that, until such time as electronic contact details are provided (or the securities holder opts to continue to receive printed materials), individual communication of notices of GMs will not be sent in future, and the securities holder concerned will need to go to the issuer’s or the Exchange’s website for notices of GMs.

As a separate matter, the Exchange should also clarify what would constitute “electronic form” for securities holders’ contact details and whether, for example, it would include a mobile phone number (for SMS messages), WhatsApp, WeChat contacts, etc.

Q14 - Do you agree that where a listed issuer does not have functional electronic contact details of a securities holder, an Actionable Corporate Communication must be sent to the holder in hard copy form including a request for the security holder's electronic contact details to facilitate electronic dissemination of Actionable Corporate Communications in future? Please give reasons for your views.

We have no particular issue with this proposal. However, similarly to the point made above, a compromise arrangement could be considered, whereby, if a securities holder has been requested to provide electronic contact details on, say, three separate occasions, and has not actively opted to continue to receive printed materials, an issuer could include a prominent notice in the most recent communication to the effect that, until such time as electronic contact details are provided (or the securities holder opts to continue to receive printed materials), ACCs will not be sent individually in future, and the securities holder concerned will need to go to the issuer's or the Exchange's website to find ACCs.

Q15 - If your answer to Question 13 above is yes, do you agree that we should define Actionable Corporate Communications as "any corporate communication that seeks instructions from an issuer's securities holders on how they wish to exercise their rights as the issuer's securities holders"? Please give reasons for your views.

We agree, subject to either including GMs within that definition or separately requiring notices of GMs to be dealt with in a similar manner. Please refer to our response to Q13 above for details.

Q16 - We invite comments on the manner in which the Appendices to the Listing Rules are proposed to be categorised/amended and whether they will give rise to any ambiguities or unintended consequences.

We have no strong view, other than to agree that it makes sense to rearrange the Appendices so as to address duplications and inconsistencies and, more generally, to reorganise them more systematically according to themes.

Q17 - Do you agree with our proposal to remove the requirement for physical attendance by members to meet the quorum needed for meetings of the Listing Committee and Listing Review Committee? If your answer is "no", please give reasons for your views.

We have reservations about this proposal. Our view is that virtual attendance at meetings of the Listing Committee ("LC") and Listing Review Committee ("LRC") should not be treated as the norm or as an equally acceptable alternative to attending physically. Provision for non-physical attendance should be implemented primarily on a need basis, to facilitate members who are unable to attend meetings face to face. This could be to accommodate members who are currently out of town, for example, or, possibly, to allow for participation by some highly expert members who may not be based permanently in Hong Kong.

Therefore, allowing some flexibility in the requirement for physical attendance should not be seen as giving a signal that it is fine for members to attend all meetings of the LC or LRC virtually instead of physically. Members should acknowledge before accepting appointment the importance of their role and of devoting sufficient time and effort to meetings of the LC or LRC, as well as the imperative of maintaining the confidentiality of the meetings. They should endeavour to attend meetings physically, whenever possible, to stimulate a more interactive exchange of views. As a practical matter, we would also have some concern that it would be difficult to impose a strict protocol of confidentiality if many members were to attend meetings virtually.

Q18 - Do you agree with our proposal to make minor changes to the Listing Rules described in paragraph 122 to reflect current practices and requirements? If your answer is “no”, please give reasons for your views.

We agree with the proposal.