



Hong Kong

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HKEX CONSULTS ON PAPERLESS LISTING AND SUBSCRIPTION AND ISSUES NEW IPO GUIDANCE

The Hong Kong Stock Exchange (**HKEx**) is consulting on paperless listing and subscription, online document display and reducing the documents required to be displayed for notifiable and connected transactions. Guidance Letter HKEX-GL86-16¹ has also been updated to require listing document disclosure relating to the applicant's compliance culture and INEDs holding seven or more listed company directorships.

The deadline for responding to the Consultation Paper² is **24 September 2020**. The key proposals would:

- i) require listing documents to be published in electronic form only. This would apply to all new listing applications which require the issue of a listing document including applications for the listing of equities (including stapled securities and depositary receipts), debt securities and CIS;
- ii) require subscriptions for new listings to be made only through online electronic channels;
- iii) replace the current requirement for certain documents to be physically displayed with a requirement that these documents are made available online on the websites of HKEx and the issuer; and

¹ <https://en-rules.hkex.com.hk/node/5041>

² HKEx. July 2020. Consultation Paper: Proposals to introduce a paperless listing & subscription regime, online display of documents and reduction of the types of documents on display. Available at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/July-2020-Paperless-Listing/Consultation-Paper/cp202007.pdf>

- iv) reduce the types of documents which must be put on display for notifiable and connected transactions.

The updates to Guidance Letter HKEX-GL86-16³ emphasise the need for the board of Hong Kong listing applicants to incorporate corporate governance (**CG**) and environmental, social and governance (**ESG**) into the listing process so that the applicant is in a position to comply with HKEx's requirements on listing. New listing document disclosure requirements are a statement of the applicant's compliance culture and the board's rationale for believing that an independent non-executive director (**INED**) holding seven or more listed company directorships will be able to devote sufficient time and attention to the listing applicant.

Consultation Paper: Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display

1. Paperless Listing Document Proposals

Current Listing Document Requirements

The Listing Rules currently require issuers of equities, debt securities and CIS to make printed listing documents available at designated places during the offer period, except for mixed media offers. The Companies (Winding Up and Miscellaneous Provisions) Ordinance requires application forms to be issued

³ <https://en-rules.hkex.com.hk/node/5041>

with a prospectus which means that application forms are also made available in printed form for issue with related prospectuses.

Electronic Listing Document Proposal

HKEx is proposing to adopt more environmentally friendly, cost effective and efficient measures under which listing documents for the following listings will only be published online in electronic format:

- IPOs of equity securities, stapled securities, depository receipts and CIS (except in “mixed media offers” – i.e. offers whereby an issuer/a CIS offeror can distribute paper application forms for public offers of certain securities without a printed prospectus, provided the prospectus is available on the websites of HKEX and the issuer/CIS offeror and the printed prospectus is publicly available free of charge upon request at specified locations);
- Public offerings of debt securities;
- Listings by introduction; and
- Reverse takeovers.

The existing requirement for publication of an electronic version of the listing document on the websites of HKEx (through EPS) and the issuer under Main Board Listing Rule 2.07(1)(b)(ii) and GEM Rule 16.17(2)(b) will continue. The electronic version will be required to be accessible during and after the public offer period or for the period of a listing by way of introduction. Listing documents will not be removed from the HKEx website once published.

The existing requirements for listing documents to be made available to the public at the address(es) notified in the formal notice will be removed.

No Change to Prospectus Registration Requirement

The proposal will not affect the requirement for issuers to present a printed copy of the prospectus and other required documents for registration by the Registrar of Companies under section 38D and section 342C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.

2. Paperless Subscription Proposals

In public offerings of equities (except Mixed Media Offers) and CIS, applications for subscription will only be allowed through:

- i) an eIPO service provider’s online platform; or
- ii) the CCASS⁴ eIPO service, either by instructing brokers or custodians to give electronic application instructions or by giving electronic application instructions to HKSCC through CCASS.

Given the proposed Listing Rule amendment to require listing documents to be published only online and the requirement of the Companies (Winding Up and Miscellaneous Provisions) Ordinance that application forms must be made available with the related listing document, application forms will need to be made available in electronic format only.

There will be no change to the current subscription channels for preferential offerings which lack established electronic channels such as employee offerings and assured entitlement offerings to qualified shareholders. The proposal will also not affect existing established channels for:

- i) subscription of publicly offered debt securities through placing banks and/or HKSCC; and
- ii) investments in structured products listed under Chapter 15A of the Main Board Listing Rules.

3. Documents to be Displayed Online

Current Display Requirements on Listing and for Notifiable and Connected Transactions

Listing applicants are required to display various documents for physical inspection under the current Listing Rules including material contracts, certain directors’ service contracts, experts’ consents and statements of adjustments. Listed issuers must also put documents on display when they propose to enter into notifiable or connected transactions which require shareholders’ approval.

HKEx is proposing to replace the requirement for physical display of certain documents with a requirement for issuers to

⁴ Central Clearing and Settlement System established and operated by the Hong Kong Securities Clearing Company Limited (**HKSCC**)

post the documents online on the websites of the HKEx (via EPS) and the issuer for the same period of time as is currently required for physical inspection.

The documents currently required to be displayed for notifiable and connected transactions are summarised in the table below:

Notifiable Transactions: Major Transactions, Very Substantial Acquisitions and Disposals	Connected Transactions
All material contracts	All contracts referred to in the connected transaction circular
Issuer's constitutional documents	Directors' service contracts (unless expiring or determinable by the employer within 1 year without payment of non-statutory compensation)
Issuer's audited accounts for 2 financial years	
Notifiable and connected transaction circulars issued since latest published audited accounts	
Expert reports, letters or valuations extracted or referred to in the circular and statements of adjustments signed by the reporting accountants (expert reports)	

Reduction of Number of Documents Displayed for Notifiable Transactions

HKEx is proposing to remove the requirement for issuers proposing a notifiable transaction to display documents which are already required to be posted online by other Listing Rule provisions, namely their constitutional documents, previous two financial years' audited accounts and notifiable and connected transaction circulars issued by the issuer since the date of its latest published audited accounts.

It is also proposing to:

- i) require issuers to display contracts pertaining to the notifiable transaction;
- ii) remove the requirement to display all material contracts entered into by the issuer over the previous 2 years although a summary of the material contracts will still need to be included in the transaction circular; and
- iii) retain the requirement to display expert reports.

Revised Display Documents for Connected Transactions

HKEx's proposals in relation to the documents required to be displayed for connected transactions subject to shareholders' approval are:

- i) to make clear that issuers are required to display the contracts pertaining to the transactions (rather than contracts referred to in the connected transaction circular); and
- ii) to remove the requirement for issuers to display relevant directors' contracts, although a summary of these contracts will still be required in the transaction circular.

Redaction of Documents on Display

The Consultation Paper acknowledges that making documents on display more accessible may lead to more requests for redaction. HKEx notes that issuers may make redaction requests where they believe it is not in their interest for certain information contained in the documents to be made public.

Requests for disclosure relief are apparently rare and are decided by HKEx case-by-case based on its consideration of the following factors set out in its guidance on waiving disclosure⁵:

- i) whether the information is of minor importance only and will not influence the assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects and, where relevant, the impact of the transaction in question;

⁵ Paragraph 8 (Application for disclosure relief) of the Guide on Applications for Waivers and Modifications of the Listing Rules (28 November 2008)

- ii) whether disclosure would be (a) contrary to the public interest or (b) seriously detrimental to the issuer and the omission of the information is not likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the informed assessment of the listed issuer's securities; and
- iii) whether alternative disclosure (if any) will enable shareholders and the investing public to make a properly informed assessment of the listed issuer's securities or the relevant transaction and/or to make an informed voting decision.

The HKEx does not propose any change to its existing approach to redaction and proposes to allow this only in very limited circumstances. It plans to revise its waiver guide to accommodate the redaction of documents on display in respect of data privacy concerns where an issuer can demonstrate that disclosure would breach the Personal Data (Privacy) Ordinance.

Display of Material Contracts

The Consultation Paper also raises the issue of whether the online display requirement might lead to an increase in the number of enquiries as to whether contracts are "material contracts" for the purpose of the display requirement.

The Listing Rules define material contracts as not being contracts entered into in the ordinary course of business entered into by any member of the group within the two years immediately preceding the issue of the listing document. The HKEx is not proposing to make any change to the definition of material contract under the Listing Rules given that it is in line with definitions under the Takeovers Code and the Companies (Winding Up and Miscellaneous Provisions) Ordinance. It also notes that the SFC and Companies Registry require online publication of material contracts and that this does not appear to have caused problems for listed companies.

No Restriction on Downloading or Printing Documents on Display

HKEx is not proposing to restrict the ability to download and/or print documents that are published online. It points to the practices of the Companies Registry and the SFC in not restricting downloading or printing of documents made available online. While documents related to takeovers are

removed from the SFC website after the offer period has closed, they can be downloaded and printed during the period they are available online.

Access Identification

There is no proposal for HKEx to put a system in place to allow issuers to identify who has accessed their documents displayed online.

Housekeeping Changes

Minor changes will be made to Main Board Rules 13.52 and 13.52A (GEM Rules 17.53 and 17.53A) to make clear that documents required to be submitted to HKEx for pre-vetting can be submitted by electronic means and that printed documents are not required.

4. Other HKEx Paperless Initiatives

HKEx also plans to reduce its use of paper through the introduction of e-Forms, namely Announcement Forms and GM e-Forms.

Announcement Forms

Initially, announcement forms will replace three types of routine announcements, i.e. those for:

- a cash or scrip dividend;
- a bonus issue of shares or warrants; and
- the date of a board meeting.

A sample of a cash dividend announcement form is included at Appendix II of the Consultation Paper.

HKEx proposes to roll out further announcement forms in due course.

General Meeting e-Forms

HKEx will introduce a General Meeting e-Form (a sample of which is included at Appendix III of the Consultation Paper). Submission of this form will be an eligibility requirement for acceptance of Eligible Securities in CCASS.

Online Listing Rule Book

HKEx will cease production of printed versions of the Listing Rules which will be available online for free.

director holding seven (or more) listed company directorships would be able to devote sufficient time and attention to the listing applicant's affairs.

Promotion of Electronic Communication with HKEx

With the exception of certain documents which HKEx will continue to require in printed form (e.g. Form B – the Declaration and Undertaking with regards to Directors), HKEx will require all documents to be submitted using electronic means.

Updated Guidance Letter HKEx-GL86-16 on Corporate Governance and ESG Disclosure

HKEx has also revised its guidance for IPO listing documents to highlight the importance of building corporate governance (CG), and environmental, social and governance (ESG) mechanisms into the listing processes. The revised Guidance Letter⁶ contains the following additional disclosure requirements.

1. Business Section Disclosure of Compliance Culture (section E, 3.2)

Paragraph 3.2 of section E requires the "Business" section to include a statement of the listing applicant's compliance culture that should include the measures and processes adopted to ensure that the compliance culture is embedded into its everyday workflow and sets expectations for individual behaviour across the organisation.

2. Appointment of Directors and Independent Non-executive Directors (section E, 3.7(a),(b) and section H, 3.7 and 3.8)

The Guidance Letter reminds listing applicants of the importance of establishing mechanisms well in advance to enable them to comply with the HKEx's requirements on CG and ESG upon listing. Directors are expected to formulate these mechanisms and related policies. HKEx recommends appointing directors and independent non-executive directors as early as possible so that they can be involved in formulating CG and ESG mechanisms and policies.

HKEx has also added a requirement to disclose in the section on Directors, Supervisors and Senior Management the reasons why the board believes that an independent non-executive

⁶ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Archive/Guidance-Letters/gl86_16.pdf?la=en

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