



Charltons - Hong Kong Law - 12 January 2021

[online version](#)

Charltons Responds to HKEX Consultation on Main Board Profit Requirement on behalf of 10 Sponsor Firms

Charltons responded on 11 January 2021 to the Hong Kong Stock Exchange's Consultation Paper: The Main Board Profit Requirement (summarised *here*) on behalf of a group of 10 Hong Kong sponsor firms who are concerned that the proposals to raise the profit requirement for listing by either 150% or 200% will leave many Hong Kong and Chinese SMEs without access to a viable fund-raising platform in Hong Kong. By the HKEX's own reckoning, the proposals would have prevented the listings of 59% or 65% of the companies which listed under the profit test between 2016 and 2019. This not only adversely affects these potential issuers, but also the local financial advisers, legal practices and accounting firms who act for them, as well as other businesses such as printers and translators. The HKEX Consultation Paper appears to suggest that the GEM market offers an alternative for SMEs. In practice this is not so. Listing on GEM is expensive and time-consuming. As a result, few companies list on GEM – just 8 companies listed on GEM in the 11 months to 30 November 2020. The consultation response thus advocates a holistic review of the HKEX's markets and the consideration of proposals to create a diversified and inclusive market. These should, in particular, include an overhaul of GEM's listing process and procedures to make it an attractive SME board. Further, given the ongoing impact of COVID-19, this is not the time to increase the financial requirements for listing. Any review of the HKEX listing requirements should be delayed until Hong Kong's economy has recovered to pre-pandemic levels.

The full text of Charltons' response to the HKEX Consultation Paper on the Main Board Profit Requirement on behalf of 10 Hong Kong sponsors can be viewed *here* and can be downloaded *here*.

For a summary of the Consultation Paper's proposals, please see *Charltons' November 2020 newsletter*.

HKEX Publishes Conclusions on Paperless Listing & Subscription Regime

On 18 December 2020, the Stock Exchange of Hong Kong Limited (the **HKEX**) published its Consultation Conclusions on Proposals to Introduce a Paperless Listing & Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display (the **Consultation Conclusions**). Having received a number of positive responses, the HKEX decided to adopt all the proposals outlined in the July 2020 Consultation Paper (the **Consultation Paper**) with minor modifications.

The original Consultation Paper was published on **24 July 2020** with the consultation period closing on **24 September 2020**. For an overview of the Consultation Paper, please see Charltons' August 2020 newsletter.

Key points to note:

- i) starting from **1 January 2021**, listed issuers, listed debt issuers and market practitioners (including sponsors) are required to submit Listing e-Forms through HKEX's E-Submission System (**ESS**) only. The list of Listing e-Forms and guidelines for their completion is available at: https://www.hkex.com.hk/Listing/Rules-and-Guidance/eForm-Corner?sc_lang=en;
- ii) amended rules relating to the new headline categories for debt issuance programmes are effective from **1 March 2021**;
- iii) all new listing documents must be published solely in an electronic format and new listing subscriptions, where applicable, must be made through online electronic channels only (**Paperless Listing and Subscription Regime**) with effect from **5 July 2021**;
- iv) the requirement for certain documents to be put on physical display will be replaced with a requirement for those documents to be published online (**Online Display of Documents**) with effect from **4 October 2021**; and
- v) the types of documents that it is mandatory for an issuer to put on display for notifiable transactions and connected transactions will be reduced (**Reduction of Documents on Display**).

1. HKEX Paperless Listing and Subscription Regime

The HKEX adopted the proposal to implement the Paperless Listing and Subscription Regime in order to enhance the efficiency of the listing process, save issuers' time and cost in handling IPO subscriptions and minimise paper consumption.

A significant percentage (71%) of the institutional respondents supported the proposal, especially taking into account the challenges brought by the recent pandemic. While agreeing with it, some suggested granting listing applicants an option to publish printed form listing documents and application forms to accommodate investors with special needs, implementing in phases to facilitate adaption, and retaining white application forms or physical share certificates. Those who were not supportive expressed concerns about discriminating against investors who have no access to the Internet or prefer to read documents in printed copies.

On the other hand, an overwhelming majority (98%) of the individual respondents opposed the proposal on the basis that printed copies are easier to read and locate, more convenient to retrieve, whereas viewing online documents may cause eye problems and the proposal would discriminate against retail investors who would then have no access to issuers' information.

The HKEX is of the view that the proposal will cause minimal inconvenience and is outweighed by the benefits including enhanced market efficiency, improved cost effectiveness and positive environmental impact. It therefore adopted the proposal without amendment.

Under the amended Listing Rules:

- a. all listing documents in a New Listing (including application forms) are required to be published solely in an online electronic form except in the case of a Mixed Media Offer. A New Listing is defined as an application to list equities (including stapled securities and depositary receipts), debt securities under Chapters 22-36 of the Main Board Rules (Chapters 29 and 32 to 35 of the GEM Rules), or a collective investment scheme by a new listing applicant where a listing document is required under the Listing Rules. A paperless listing document will thus be required for IPOs of equities, stapled securities, depositary receipts and collective investment schemes, public offers of debt securities, listings by introduction and reverse takeovers;
- b. all New Listing subscriptions are required to be made through electronic channels only with an exception for Mixed Media Offers; and
- c. for equity/CIS public offerings, prospective public subscribers will only be able to apply through an eIPO service provider's online platform or the CCASS EIPO service, either by instructing brokers or custodians to give electronic application instructions on their behalf or by giving electronic application instructions to HKSCC through CCASS. There is no change to the existing subscription channels for preferential offerings such as employee offerings and assured entitlements to qualified shareholders as there are no established electronic channels for these offerings. Likewise, there will be no change to the established channels for subscription of public offerings of debt securities including through placing banks and/or HKSCC or for investing in structured products listed under Chapter 15A of the Main Board Listing Rules.

The HKEX has confirmed that it will continue to allow the adoption of Mixed Media Offers to cater for those IPOs which have a high demand for printed application forms. In addition, the requirements for publishing listing documents in the newspaper under MB Rules 12.06 and 25.19 and in GEM Rules 16.11 and 29.21 will be removed.

Some respondents commented that the white application form or physical share certificates should be retained, given the significance of securities registered in investors' own names which entitle them to attend and vote at general meetings directly. The HKEX responded that the proposals will only abolish the paper application form, not physical share certificates. Investors will still be able to apply for a physical share certificate using an electronic application form.

2. Documents to be Displayed Online

Posting Online Display Documents to the HKEX and issuers' websites

The HKEX adopted the proposal to replace the requirement for physical display of certain documents with a requirement for issuers to 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 subject to two modifications.

Over two-thirds (69%) of the institutional respondents supported the proposal due to the enhanced accessibility of the relevant documents whereas 29% of them did not support the same. The latter disagreed for a similar reason given to the Paperless Listing and Subscription Regime – that it may discriminate against investors who are technologically-illiterate and/or have a preference for printed copies. Some respondents voiced concerns relating to certain

Online Display Documents which are confidential and proprietary in nature and sought clarifications on the treatment of PRC issuers and other issuers.

The HKEX acknowledged these concerns and made two modifications to the proposal:

- a. For those documents which contain sensitive information, issuers may apply to HKEX for specific disclosure relief. The HKEX will take a case-by-case approach in deciding whether to allow redaction and will refer to the HKEX's Guide on Applications for Waivers and Modifications of the Listing Rules issued by the Exchange (**HKEX Waiver Guide**), which is also being revised. The revisions to the HKEX Waiver Guide are set out in Appendix IV to the Consultation Conclusions.
- b. With a view to ensuring consistency in the treatment of PRC issuers and other issuers, PRC issuers will not be required to display their register of members online and this information will continue to be available for physical inspection.

Reduction of Number of Documents Displayed for HKEX Notifiable Transactions and Connected Transactions

The HKEX adopted the proposal 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.

The revised Listing Rules for display of documents relating to notifiable transactions:

- a. require issuers to display contracts pertaining to the notifiable transaction;
- b. 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;
- c. retain the requirement to display expert reports.

The revised Listing Rules for connected transactions that are subject to shareholders' approval:

- make clear that issuers are required to display the contracts pertaining to the connected transaction (rather than contracts referred to in the connected transaction circular); and
- remove the requirement for issuers to display relevant directors' service contracts (excluding those that are expiring or determinable by the employer within one year without payment of compensation other than statutory compensation), although a summary of these contracts will still be required in the transaction circular.

One respondent requested guidance on how "contracts pertaining to the transactions only" would be interpreted, and queried whether material contracts entered into two years previously in relation to earlier phases of the subject transaction are considered as "contracts pertaining to the transaction". The HKEX noted in response that the purpose of a notifiable or connected transaction circular is to provide shareholders with information about the transaction so that they can make an informed assessment of the transaction before they vote at general meeting. Accordingly, the relevant documents on display should be contracts pertaining to the transaction which facilitate shareholders' assessment. Material contracts in relation to earlier phases of the project referred to in a circular but that are not otherwise

related to the subject transaction would generally not be considered as “contracts pertaining to the transaction”.

Redaction of Documents on Display

The HKEX adopted the proposal to continue allowing the redaction of Online Display Documents in only very limited circumstances as set out in their Waiver Guide, which they will amend to accommodate data privacy concerns where an issuer can show that disclosure will breach the Personal Data (Privacy) Ordinance.

Most (65%) of the institutional respondents supported the proposal. There were however comments on the proposal, including suggestions that HKEX should:

- introduce flexibility to the redaction policy and be open to allowing issuers to redact commercially sensitive information;
- provide detailed guidance on the circumstances where the redaction of Online Display Documents would be considered justifiable; and
- grant a standing waiver to allow issuers to redact personal information without the need to apply for a waiver every time.

Having noted these comments, the HKEX concluded that they would only consider redaction requests on a case-by-case basis and insisted on allowing the redaction of documents on display in only very limited circumstances, considering the approach taken by other regulators and the need to keep investors fully-informed.

To address data privacy and commercial sensitivity concerns, the HKEX has amended their Waiver Guide to accommodate the redaction of information that is not material to the assessment of the subject transaction if an issuer can demonstrate that the disclosure would breach the Personal Data (Privacy) Ordinance or cause competitive harm to the issuer (e.g. where the information is a trade secret). Nonetheless, issuers will still need to apply for a waiver each time when they wish to redact such information.

No Restriction on Downloading or Printing Documents on Display

The HKEX adopted the proposal that no restrictions be imposed on printing and/or downloading of Online Display Documents.

64% of the institutional respondents agreed with the proposal but raised issues at the same time, which included:

- a comment that the proposal would encourage issuers to shift some terms to side letters to bypass the disclosure requirement; and
- a suggestion that Online Display Documents be displayed in a ‘read-only’ mode to reduce the potential risks of competitive harm.

In response, the HKEX emphasised that the proposal was consistent with the practice of other Hong Kong regulators and highlighted that documents related to takeovers put on display on the SFC’s website are not subject to any restrictions in relation to printing and/or downloading. Furthermore, it would be impractical to impose these restrictions in all circumstances. The HKEX adopted the original proposal without change. It also took the opportunity to clarify that side letters which form part of material contracts would still be required to be displayed online.

Recording and Verifying the Identity of Persons Accessing HKEX Online Display Documents

The HKEX adopted the proposal to not put in place a system that would allow issuers to record and verify the identity of a person who accesses their documents displayed online.

The majority (62%) of the institutional respondents supported the proposal, while some suggested that readers should provide their names and contact details to discourage the misuse of information, and that issuers should keep a record of those who have accessed the information.

The HKEX responded that they could not prevent people from accessing display documents if they refused to reveal their identity, and that it would be impractical to record the identity of every reader as online identities can easily be anonymised or spoofed. They went on to reiterate that the proposal was aligned with the approach adopted by other Hong Kong regulators. As such, the proposal was adopted unchanged.

3. Other HKEx Paperless Initiatives

Other HKEX proposals to reduce the use of paper include the following:

i) Proposals to Modernise IPO Settlement Process – Fast Interface for New Issurance (FINI)

FINI is a web-based platform which enables IPO market participants, advisers and regulators to interact during the IPO settlement process. The HKEX proposes to launch it no earlier than 2022. For further details, please see Charltons' November 2020 newsletter on the proposals.

ii) E-Forms

On **30 October 2020**, the HKEX published a webpage^[1] on Listing e-Forms which are aimed at standardising the presentation of routine information. Following a transitional period which started on **29 November 2020** and ended on **31 December 2020**, listed issuers, listed debt issuers and market practitioners are now required to submit the Listing e-Forms through ESS only from **1 January 2021**. The HKEX has made available guidelines for completion of each type of form. The Listing e-Forms include the following:

Forms relating to sponsor engagement

- Sponsor Engagement Notification

Forms relating to IPOs

- Main Board Listing Application form (for equity securities and debt securities)
- GEM Listing Application form (for equity securities of an issuer none of whose share capital is already listed)
- New Listing Particulars (Main Board and GEM)

Forms relating to Directors and Supervisors, Authorised Representatives, Company Secretaries and Compliance Officer

- Contact Details Form for Director/ Supervisor/ Authorised Representatives/ Company Secretary/ Compliance Officer (Main Board and GEM)

- Declaration and Undertaking with regard to Directors (Main Board)
- Declaration and Undertaking with regard to Directors of an issuer incorporated in the PRC (Main Board)
- Declaration and Undertaking with regard to Supervisors of an issuer incorporated in the PRC (Main Board)
- Director's Declaration, Undertaking and Acknowledgement (GEM)
- Director's Declaration, Undertaking and Acknowledgement (PRC issuer) (GEM)
- Supervisor's Declaration, Undertaking and Acknowledgement in respect of an issuer incorporated in the PRC (GEM)

Forms relating to Announcements and Trading Arrangements

- Size Tests for Notifiable Transactions for Connected Transactions
- Trading Arrangement Form

Forms relating to Application for Listing of Securities

- Formal Application (for Equity Securities)

Forms relating to Blackout Period

- Blackout Period Notification Form

iii) **New headline categories for debt issuance programmes**

The HKEX introduced new headline categories under Appendix 24 of the Main Board Rules and Appendix 17 of the GEM Rules with a view to facilitate easier searches of the relevant information, which will take effect on **1 March 2021**.

iv) **Online Listing Rule Book**

Starting from **1 January 2021**, the HKEX will cease to produce printed versions of the Listing Rules which are available online for free.

[1] HKEX Listing e-Forms. Available at https://www.hkex.com.hk/Listing/Rules-and-Guidance/eForm-Corner?sc_lang=en

This newsletter is for information purposes only.

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com