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# HKEx Publishes Combined Consultation Paper On Amendments To The Listing Rules

## Introduction

The Hong Kong Stock Exchange (the **Exchange**) published its Combined Consultation Paper on Proposed Changes to the Listing Rules (the **Consultation Paper**) on 11 January seeking comments from the market on 18 substantive policy issues and various minor rule amendments. Responses to the Consultation Paper are required to be made by completing and returning the questionnaire booklet no later than **7 April 2008**. The Consultation Paper and questionnaire booklet are available on the Exchange website at [http://www.hkex.com.hk](http://www.hkex.com.hk/).

The purpose of this note is to provide a summary of the principal proposals. To view a more detailed note on the proposed amendments, please click [here](HKEX_Combined_Consultation_Paper.pdf).

## A. Significant Amendments

### 1. Public Float

**Minimum Level of Public Float**: The minimum level of public float for Main Board issuers will be set by reference to the issuer's market capitalisation as set out in the table below.

Market Capitalisation

Proposed Minimum Public Float

Not exceeding HK$10 billion

25%

Over HK$10 billion but not exceeding HK$40 billion

The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$2.5 billion (determined at the time of listing); and (ii) 15%

Over HK$40 billion

The higher of: (i) the percentage that would result in the market value of the securities to be in public hands equal to HK$6 billion determined at the time of listing; and (ii) 10%.

**Constituents of "the public"**: Shareholders with an interest of 5% or more in an issuer will be excluded from the definition of "the public" in Rule 8.24 of the Main Board Listing Rules.

**Market Float**: The Exchange will:

* set a minimum level of market float which issuers must meet at the time of listing;
* exclude shares subject to a lock up of more than 6 months from the market float.

### 2. Bonus Issues Of A Class Of Securities New To Listing

* The Exchange proposes to disapply the Main Board requirement for a minimum spread of holders at the time of listing in the event of a bonus issue of a new class of securities involving options, warrants or similar rights to subscribe or purchase shares. The exemption will not be available if there has been an announcement on high concentration of shareholding in the previous 5 five years.

### 3. Review Of The Exchange's Approach To Pre-Vetting Public Documents Of Listed Issuers

**Announcements**: The Exchange intends to cease pre-vetting all announcements within one year following amendment of the Rules.

* **During Phase 1**: only the following announcements will be pre-vetted:
  1. announcements for transactions/arrangements requiring shareholders' approval under the notifiable transaction requirements; and
  2. almost all connected transactions.
* **During Phase 2**: the Exchange will no longer pre-vet any announcements although listed issuers will be able to consult the Exchange on compliance issues before publishing an announcement.
* **Right to Require Pre-vetting**: The Exchange will retain the power to insist on pre-vetting announcements where it considers it necessary.
* **Announcements Relating to Trading Arrangements**: For announcements of matters which involve a change in, or affect trading arrangements in listed securities (including suspension or resumption of trading, and cancellation or withdrawal of listing), the Rules will require listed issuers to consult the Exchange before issuing the relevant announcement and any specific date or timetable must be agreed in advance with the Exchange.

**Circulars**: The Exchange proposes to:

* Codify the Exchange's current practice in relation to pre-vetting circulars for significant transactions or arrangements.
* Expressly require pre-vetting of the following circulars: (i) circulars relating to cancellation or withdrawal of listings of listed securities; (ii) circulars to a listed issuer's shareholders seeking their approval of: (a) issues of securities by a listed issuer or any of its major subsidiaries that require specific mandates from the shareholders; (b) transactions or arrangements that require independent shareholders' approval and the inclusion of separate letters from independent financial advisers in the relevant circulars which include, connected transactions, spin-off proposals, transactions which the Rules require to be subject to independent shareholders' approval (including rights issues, open offers, refreshments of general mandates before the next AGM, withdrawal of listings, transactions that would result in a fundamental change in the principal business activities of the issuer and issues of shares or securities convertible into equity securities within 6 months of new listing on GEM); (c) proposals to explore natural resources; or (d) warrant proposals involving shareholders' approvals and all warrantholders.
* Remove the pre-vetting requirement for circulars relating to amendments to issuer's Memorandum and Articles of Association and explanatory statements relating to issuers purchasing their own shares on a stock exchange.
* **Circulars for Discloseable Transactions**: The requirement for a separate circular to be distributed to shareholders in respect of discloseable transactions will be removed. However, where the discloseable transaction involves an acquisition of mining assets but does not fall within Main Board Rule 18.07(2), the announcement (or further announcement) must include the content of the technical adviser report as to the estimated reserves of the natural resources. Where the issuer prepares a profit forecast in respect of the discloseable transaction, the content of the reports from the reporting accountants or auditors and the financial adviser will have to be included in the announcement.

### 4. Disclosure Of Changes In Issued Share Capital

* **Next Day Disclosure Returns**: Next day disclosure (on the website of the Exchange/GEM by 9.00 a.m. on the next business day) will be required:
  1. **certain categories of changes in issued share capital will always require next day disclosure**. These include placings, consideration issues, open offers, rights issues, bonus issues, scrip dividends, share repurchases, exercise of an option by a director of a listed issuer or any of its subsidiaries, capital reorganisation and any other change in issued share capital not falling within any of the categories referred to at (b) below.
  2. **the following categories of changes which will require next day disclosure in specified circumstances**: (i) exercise of an option other than by a director of the listed issuer or any of its subsidiaries; (ii) exercise of a warrant; (iii) conversion of convertible securities; and (iv) share redemption.
* The specified circumstances are: (i) where the change in issued share capital under that category reaches a prescribed de minimis threshold (to be set at 5% of the listed issuer's existing issued share capital before the relevant change) or the aggregate of all changes in issued share capital under any of the categories (except those referred to in paragraph (a) above) since the last Monthly Return or next day disclosure, whichever is the later, reaches the de minimis threshold; or (ii) the listed issuer is in any case required to disclose some other change in issued share capital under paragraph (a) above and the change in issued share capital is described in this paragraph (b) but has not yet been disclosed in either a Monthly Return or pursuant to next day disclosure (because the de minimis threshold has not been reached).
* The **percentage change** in the listed issuer's issued share capital would be calculated by reference to its total issued share capital as it was immediately before the earliest relevant event which has not yet been reported in either a Monthly Return or pursuant to next day disclosure. Whether the de minimis threshold has been reached would be calculated as follows:

aggregate change in issued share capital not yet reported

total issued share capital since last Monthly Return or next day disclosure, whichever is the later

* The Next Day Disclosure Return would include the opening issued share capital as previously disclosed, shares issued subsequent thereto and closing issued share capital as at a specific date.
* **Listed Collective Investment Schemes**: listed collective investment schemes (**CISs**) (including REITs) other than open-ended CIS will also have to submit a Next Day Disclosure Return similar to the one proposed for equity issuers.
* **Monthly Returns**: Publication of a Monthly Return will be obligatory. In addition to reporting details of changes in their authorised and issued share capital, listed issuers will have to report any **future obligation** to issue shares under options, warrants, convertible securities or any other agreement.
* The Monthly Return will have to be submitted by 9.00 a.m. on the 5th business day following the end of each calendar month and irrespective of whether there has been any change since the previous Monthly Return. All CISs listed under Chapter 20 of the Main Board Rules will be required to submit a Monthly Return setting out movements in the units during the relevant month and an opening and closing balance.
* **Disclosure Of Share Option Grants**: listed issuers will have to make an announcement as soon as possible upon the grant of any share options pursuant to a share option scheme. The announcement must include details of the date of grant, the exercise price and number of options granted, the market price of the issuer's securities on the date of the grant, the name of any grantee who is, or is an associate of, a director, chief executive or substantial shareholder of the listed issuer and the number of options granted to such person, and the validity period of the options.

### 5. Disclosure Requirements For Announcements Regarding Issues Of Securities For Cash And Allocation Basis For Excess Shares In Rights Issues

* **Announcements of Issues of Securities for Cash**: The Exchange will extend the content requirements for announcements of issues of securities for cash under a general mandate to announcements for all issues of securities for cash (irrespective of whether general mandates are involved).
* Such announcements will need to include: (a) a statement on whether the issue is subject to shareholders' approval; (b) where the securities are issued under a general mandate, details of the mandate; (c) where the securities are issued by way of a rights issue or an open offer, the information relating to the rights issue or open offer specified in paragraph 18 of Appendix 1 Part B of the Listing Rules; (d) where the issue involves convertible securities or warrants, their material terms (including the conversion/subscription price and provisions for adjustments of such price) and the maximum number of shares that could be issued upon exercise of the conversion/subscription rights; and (e) where applicable, the name of the underwriting/placing agent and the principal terms of the underwriting/placing arrangements.
* Certain specific disclosure requirements (including the basis for determining the issue price, any conditions to which the issue is subject and any other material information relating to the issue) will also be included in Main Board Rule 13.28.
* **Disclosure of Allocation Basis for Excess Shares in Rights Issues**: Listed issuers will have to disclose the basis of allocation of excess securities in the announcement, circular and listing document for a rights issue or open offer.

### 6. Alignment Of Requirements For Material Dilution In Major Subsidiary And Deemed Disposal

* **Background**: 2 sets of Rule requirements currently govern a reduction in the effective equity interest of a subsidiary held by a listed issuer: the material dilution requirements in Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2) and the deemed disposal requirements in Main Board Chapter 14 and GEM Chapter 19.
* The material dilution requirements are more stringent than the notifiable transactions requirements as (a) the shareholders' approval requirement is triggered at 5% whereas it is only triggered at 25% for a major transaction; and (b) a physical shareholders' meeting must be held whereas a major transaction allows a written certificate in lieu of a physical meeting.
* The Exchange will align the requirements for material dilution and deemed disposal in the event of a subsidiary allotting shares to third parties by deleting Main Board Rule 13.36(1)(a)(ii) and GEM Rule 17.39(2). As a result (a) the requirement for shareholders' consent will be based on a size test threshold of 25% (i.e. the threshold for a major transaction); and (b) a written certificate in lieu of a physical shareholders' meeting will be acceptable.

### 7. General Mandates: To facilitate discussion, the Exchange has set out the following options as alternatives to the Rules' existing requirements:

* **As to the size of issues of securities under the general mandate:**
  1. restrict the size of the general mandate that can be used to issue securities for cash or to satisfy an exercise of convertible securities to 10% or 5% of the issued share capital at the time of the mandate. The mandate to issue securities for other purposes would be not more than 10% (or some other percentage) of the issued share capital; or
  2. restrict the size of the general mandate that can be used for any purpose, including to issue securities for cash or to satisfy an exercise of convertible securities, to 10% or some other percentage.
* **As to the calculation of the size limit for the general mandate**: Exclude from the calculation of the size limit the number of any securities repurchased by the listed issuer since the grant of the general mandate. Accordingly, the issuer's issued share capital as at the date of the general mandate will remain the reference point for the calculation of the size limit, unless the general mandate is refreshed by the shareholders in general meeting
* **As to price**: Amend the current Rules so that:
  1. the current prohibition against the placing of securities pursuant to a general mandate at a discount of 20% or more to the "benchmarked price" would apply only to placings of shares for cash;
  2. all issues of securities to satisfy an exercise of warrants, options or convertible securities would need to be made pursuant to a specific mandate from the shareholders; and
  3. for the purpose of seeking the specific mandate, the listed issuer would have to issue a circular to its shareholders containing all relevant information.

### 8. Voting At General Meetings

* **Voting by poll**: The Exchange seeks views on the following alternative proposals:
  1. Amending the Rules to require voting by poll for **all resolutions at general meetings**; or
  2. amending the Rules:
     1. to require voting by poll on all resolutions at **annual general meetings** (in addition to the current requirement for voting by poll on connected transactions, transactions that are subject to independent shareholders' approval and transactions where an interested shareholder will be required to abstain from voting); and/or
     2. so that where a resolution is decided in a manner other than a poll, the issuer is required to publish the total number of proxy votes and the number of appointments which specify that the proxy should: (1) vote for the resolution; (2) vote against the resolution; (3) abstain on the resolution; and (4) the proxy may vote at his discretion.
* **Notice of General Meetings**: The Exchange is consulting on whether the Listing Rules should provide for a minimum notice period of 28 calendar days for convening (a) all general meetings; or (b) all AGMs, but not extraordinary general meetings.

### 9. Review Of Model Code For Securities Transactions By Directors Of Listed Issuers: the 4 proposals are:

* **Expanding the list of exceptions to the definition of "dealing" in 7(d)** to include (a) dealing where the beneficial interest(s) in the relevant security of the listed issuer do not change; (b) a director shareholder who places out his existing shares in a "top-up" placing where the number of new shares subscribed by him pursuant to an irrevocable, binding obligation equals the number of existing shares placed out and the subscription price after expenses is the same as the price at which the existing shares were placed out; and (c) bona fide gifts to a director by a third party.
* **Clarifying the meaning of "price sensitive information" in the context of the Model Code**;
* **Extending the "black out" periods**: they would end on the date the issuer publishes the relevant results announcement.
* **Introducing a deadline of 5 business days** within which (a) an issuer must respond to a request clearance to deal; and (b) the deal must take place after the grant of clearance.

## B. Other Amendments

1. **Qualified Accountants**: the requirement for listed issuers to employ a qualified accountant will be removed from the Main Board and GEM Rules.
2. **Sponsor's Independence**: A sponsor's independence will need to be demonstrated throughout the entire listing process (rather than only on the date of submission of the Sponsor's Declaration).
3. **Disclosure Of Information About Directors**: The information required to be published in an announcement of the appointment or re-designation of a director or supervisor will need to be made available throughout the time a person is a director, and not only on appointment. Directors will have to keep issuers informed of relevant information.
   * **Clarifying Amendments to Main Board Rule 13.51(2) and GEM Rule 17.50(2)**: to confirm that the information referred to in those paragraphs need not be disclosed if such disclosure is prohibited by law.
   * **Amendments to Require Issuers to Disclose Directors' and Supervisors' Current and Past directorships in all Companies Listed in Hong Kong or Overseas**.
   * **Convictions which must be disclosed will include convictions under Ordinances referred to in GEM Rule 17.50(2)(m)(ii) which are not currently included in Main Board Rule 13.51(2)**.
4. **Codification Of Waiver To Property Companies**: The proposal is to codify an existing exemption for listed issuers actively engaged in property development as a principal business activity from the shareholders' approval requirement for certain acquisitions of land or property development projects in Hong Kong from the Government or Government-controlled entities.
5. **Self-Constructed Fixed Assets**: The Rules will be amended to exclude from the definition of "transaction" in the notifiable transactions Rules any construction of a fixed asset, such as property, plant or machinery, by a listed issuer for its own use in the ordinary and usual course of its business.
6. **Disclosure Of Information In Takeovers**: The Exchange proposes to codify its current practice of granting waivers to listed issuers of the Rules requiring publication of prescribed information on target companies in certain situations such as hostile takeovers.
7. **Review Of The Director's And Supervisor's Declaration And Undertaking**: the proposals relate to:
   * **Streamlining Disclosure of Director's and Supervisor's Information through an Issuer's Announcement**
   * **Granting the Exchange express general powers to gather information from directors**
   * **Amend the form of Main Board director's undertaking** to include an undertaking to inform the Exchange of his residential address while he is a director of a Main Board issuer and for three years after ceasing to be director. If a director fails to notify the Exchange of his new address, any document delivered to his last known address will be deemed validly served.
   * **Require listing documents of new applicants** to contain no less information about directors and proposed directors (or supervisors) as is required to be included in the Appointment Announcement.
8. **Use Of Websites For Communication With Shareholders**: The Exchange is consulting on proposals to allow greater use of listed issuers' websites and electronic rather than physical copies of documents for making corporate communications available to shareholders.

* The proposed relaxations will not confer any immediate benefit on Hong Kong issuers as Hong Kong law currently requires Hong Kong companies to obtain the consent of the shareholder to the sending of corporate communications by electronic means. Overseas listed issuers will be able to benefit from the amendments if there is no restriction under the law of their home jurisdiction.

1. **Information Gathering Powers**: New provisions are proposed giving the Exchange an express general power to gather information.
2. **Exchange Disclaimer Statement**

* Note 7 to Main Board Rule 13.52 will be amended to require issuers to include the Exchange's disclaimer statement in all listing documents, circulars, announcements and notices issued pursuant to the Rules.

This note is intended as a summary only of the proposals set out in the Exchange's Combined Consultation Paper on Proposed Changes to the Listing Rules, a copy of which is available on the Exchange's website at [http://www.hkex.com.hk](http://www.hkex.com.hk/). Specific advice should be sought in any particular situation.

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