Charltons - Hong Kong Law Newsletter - 15 June 2010

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# Changes To Requirements For Circulars And Listing Documents Of Listed Issuers, Effective 3 June, 2010

The Stock Exchange of Hong Kong (HKEx) has released its consultation conclusions on its proposed amendments to the requirements for circulars and listing documents as set out in its September 2009 consultation paper. Backed by overwhelming support from the consultation paper's 34 respondents, HKEx has implemented a number of changes streamlining the Listing Rules' requirements for issuers' circulars and listing documents. The amended Listing Rules came into effect on 3 June, 2010.

It should also be noted that HKEx has published revised checklists and forms on its website (for [Main Board](http://www.hkex.com.hk/eng/rulesreg/listrules/listmain/cft_mb201005.htm) and for [GEM](http://www.hkex.com.hk/eng/rulesreg/listrules/listgem/cft_gem201005.htm)).

## A. Financial Information In Circular Or Listing Document

### 1 Accountant's report on the listed group for very substantial disposals (VSDs)

Previously, a VSD involving a disposal of a company or business required the circular to contain both: (a) an accountant's report on the issuer's group with the company or business being disposed of (the Disposal Target) shown separately as a discontinuing operation (as a note to the financial statements); and (b) pro forma information on the remaining group for the current or most recently completed financial period. It was considered that in a VSD, financial information on the Disposal Target and pro forma financial information on the remaining group should be sufficient for shareholders' consideration of the transaction. The requirement for an accountant's report was also considered to be onerous particularly where it is required to cover a stub period.

Under the amended Rules (Main Board Rule 4.06A and 14.68(2)(a)(i)):

1. The VSD circular must contain financial information of **either**:
   * The issuer group with the Disposal Target shown separately as a disposal group or discontinuing operation (as previously) (**Option A**); or
   * The Disposal Target (**Option B**),

* for 3 financial years and, if the latest financial year ended more than 6 months before the circular date, a stub period, or such shorter period as may be acceptable to HKEx.

1. The financial information must be prepared by the issuer's directors and must contain at least:
   1. the balance sheet;
   2. an income statement;
   3. a cash flow statement;
   4. a statement of changes in equity; and
   5. any explanatory notes that the directors consider necessary for a reasonable appreciation of the results.

* If Option A is adopted, the issuer group's information must include the items at a. to e. above and the separate disclosure on the Disposal Target should include at least the Disposal Target's information included in the issuer group's balance sheet, income statement and cash flow statement. If Option B is adopted, the Disposal Target's financial information must include the items at a. to e. above.

1. The financial information must be reviewed by the listed issuer's auditors or reporting accountants in accordance with the relevant standards of the HKICPA or the International Auditing and Assurance Standards Board of the International Federation of Accountants. As an alternative, issuers may include an accountants' report, prepared in accordance with Chapter 4 of the Listing Rules, on the financial statements.
2. HKEx may allow an exemption from the financial information disclosure requirement where a Disposal Target is not consolidated in the issuer's accounts before the disposal. The issuer would however still be required to provide pro forma financial information on its remaining group (see paragraph (v) below to allow shareholders to assess the effect of the disposal (Note 2 to Main Board Rule 14.68(2)(a)(i)).
3. Irrespective of whether Option A or Option B is adopted, the VSD circular must also contain a pro forma income statement, balance sheet and cash flow statement in respect of the issuer's remaining group, as previously. The pro forma financial information must comply with the requirements of Chapter 4.
4. The circular for a VSD must contain a statement by the directors of any material adverse change in the financial or trading position of the issuer's group since the latest published audited accounts or an appropriate negative statement.

### 2. Reporting period of accountants' report in major acquisition (MA) or very substantial acquisition (VSA) circular

The circular for an MA or VSA was previously required to include an accountant's report covering each of the 3 financial years immediately preceding the date of the circular. The amended Rules have removed the requirement that the latest financial year in the reporting period must be the financial year ended immediately preceding the circular date in cases where the audited accounts for that financial year have not been prepared at the date of the circular. In those cases, the circular may include an accountant's report covering the 3 financial years preceding the last completed financial year and a stub period ending not more than 6 months before the circular date. For example, if a target's financial year ends on 31 December and its audited accounts for the year ended 31 December 2009 are not available in March 2010 when the issuer's circular is to be issued, the new Rules will allow the accountant's report to cover the years ended 31 December, 2006, 2007 and 2008 with an additional 'stub' period ended 30 September 2009.

### 3. Indebtedness statement in a notifiable transaction circular

The respondents to the consultation were divided on whether or not the disclosure of an indebtedness statements should continue to be required in a notifiable transaction circular. As HKEx has no strong views on this disclosure requirement, it has decided to retain it.

### 4. Working capital statement in a notifiable transaction circular

HKEx has amended Rule 14.66(10) to clarify that the working capital statement in a circular for a major transaction, VSD, VSA or reverse takeover must take into account the effect of the proposed transaction. It has also been clarified that the working capital statement in a notifiable transaction circular should cover at least 12 months from the publication date of the circular.

### 5. Reproducing published financial information in circular or listing document

Paragraph 31 of Appendix 1B to the Listing Rules requires the disclosure of financial information of the issuer group and/or a company acquired which is extracted from published accounts or an accountant's report in a previously published circular. This information must be disclosed in major (or above) acquisition circulars or listing documents other than in connection with a capitalisation issue or an exchange or substitution of securities (e.g. a rights issue or open offer).

Paragraph 31 has therefore been amended to allow the incorporation of information by reference to other documents of the issuer published under the Listing Rules.

### 6. Combined financial information of the enlarged group under paragraph 31(3)(b) of Appendix 1B to the Main Board Rules

The vast majority of respondents supported HKEx's proposal to remove the requirement for major or very substantial acquisition circulars and issuer's listing documents (other than those relating to capitalisation issues or exchanges or substitutions of securities) to disclose combined financial information of the enlarged group as it conflicted with the disclosure standards for pro forma financial information in issuers' documents under Rule 4.29.

## B. Other Disclosure Requirements for Circulars and Listing Documents

### 1. Directors' statement on the accuracy and completeness of information in notifiable or connected transaction circulars and listing documents

The following changes have been made to the directors' responsibility statement in paragraph 2 of Appendix 1B to the Rules:

"This document, for which the directors of the issuer collectively and individually accept full responsibility, includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, confirm that to the best of their knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other mattersfacts the omission of which would make any statement herein or this document misleading."

### 2. Information in board minutes for connected transactions

In place of the previous requirement for issuers to file board minutes approving connected transactions with HKEx, the Listing Rules now require issuers to disclose in their connected transaction circulars (or if no circular is required, their announcements) whether any directors have a material interest in the transaction and have abstained from voting.

### 3. Circular content requirements for a notifiable transaction involving an acquisition and a disposal

Listing Rule 14.24 requires that where a transaction involves both an acquisition and a disposal, the transaction will be classified by reference to the larger of the acquisition or disposal. The Rule amendments have clarified that the circular content requirements for each of the acquisition and the disposal should be determined by their respective transaction classification.

### 4. For listing documents of overseas and PRC issuers, removal of provisions regarding constitutional document and regulatory provisions in the relevant jurisdiction

In relation to listing documents for subsequent issues of securities by PRC issuers and overseas issuers, HKEx has removed the requirements to:

1. disclose provisions in an issuer's constitutional documents and in the relevant statutory/regulatory provisions of its place of incorporation (Rules 19.10(2) and (3) for overseas issuers and Rules 19A.27(2) and (3) and paragraph 50 of Appendix 1B for PRC issuers; and
2. offer inspection of the relevant statutes and regulations (Rule 19.10(6) for overseas issuers and Rule 19A.27(4) for PRC issuers.

### 5. Additional disclosure requirements for listing documents of PRC issuers

The consultation conclusions found that certain disclosure requirements for listing documents required on subsequent issues by PRC issuers to be no longer necessary, having been instated in 1993 and 1994. The following requirements under paragraphs 45, 46, 48 and 49 of Appendix 1B to the Rules (as expanded by Rule 19A.44) for listing documents in relation to subsequent issues by PRC issuers have been removed:

1. the quorum and voting requirements for shareholders' meetings (paragraph 45);
2. a statement of sufficiency of foreign exchange to pay dividend on H shares and to meet foreign exchange liabilities (paragraph 46); and
3. risk factors relating to investments in PRC-incorporated business and the differences in the legal, economic and financial systems between the PRC and Hong Kong and a warning statement thereof (paragraphs 48 and 49).

The above amendments do not apply to listing document issued in connection with an introduction or a deemed new listing.

## C. Timing for Despatch of Circulars

### 1. Timing for despatch of notifiable or connected transaction circulars

The following amendments have been made in relation to circulars for notifiable and connected transactions (other than information circulars):

1. the requirement for the circular to be despatched within 21 days of publication of the relevant announcement has been removed;
2. instead, issuers must disclose the expected despatch date in the initial announcement of the transaction and if this is more than 15 business days from the initial announcement, the reasons why this is the case;
3. issuers are required to publish further announcements if there is any delay in dispatch and to give the reasons for the delay.

Issuers are still required to send circulars before or at the same time as they give notice of the general meeting to approve the transaction (Rules 13.73, 14.41 and 14A.49).

In the case of information circulars, a change has been made in the timing requirements from 21 calendar days to 15 business days after publication of the relevant announcement. As to what constitutes a 'business day', HKEx clarified that 'business day' has the meaning set out in the Rules, i.e. a day on which the Exchange is open for the business of securities dealing.

### 2. Timing for despatch of circulars by PRC issuers

A listed PRC issuer is required by the Mandatory Provisions for Companies Listing Overseas to give at least 45 days' notice of any general meeting. Due to the long notice period under those provisions, PRC issuers sometimes face difficulties in despatching circulars with or before the notice of general meeting as required by the Listing Rules.

The Listing Rules have therefore been amended to codify HKEx's existing practice of allowing PRC issuers to despatch circulars after issuing notice of general meeting provided that they do so on or before the deadline for giving notice of the general meeting under the PRC Company Law (new Rules 19A.39A and 19A.39B). According to the Consultation Conclusions, the PRC Company Law requires notice of general meeting to be issued 20 days before the meeting or 15 days before a special general meeting.

### 3. Timing for despatch of supplementary circulars

The minimum timing requirement for despatch of supplementary circulars has been altered from 14 calendar days to 10 business days before the relevant general meeting.

## D. Gem Issuers

The GEM Rules have been amended in line with the amendments to the Main Board Rules.

*The purpose of this newsletter is to provide a summary only of HKEx's "Consultation Conclusions on Proposed Changes to Requirements for Circulars and Listing Documents of Listed Issuers" (May 2010). Its contents do not constitute legal advice and specific advice should be sought in relation to any particular situation.*

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