



HKEX Consults on Expanding the Paperless Listing Regime

The Hong Kong Stock Exchange (**HKEX**) has published a [Consultation Paper](#)¹ on its proposals to expand the paperless listing regime. This follows the HKEX's adoption of various paperless initiatives in 2021 aimed at improving efficiency and lowering costs for issuers. The latest proposals aim to further simplify the HKEX's administrative procedures and reduce the use of paper. The requirements under the proposals are applicable to equity securities, debt securities and other classes of securities. The proposals apply to both the Main Board and GEM Listing Rules.

The deadline for responding to the Consultation Paper is 28 February 2023. The key proposals would:

- streamline the document submission process;
- mandate electronic dissemination of corporate communications by listed issuers;
- simplify the Appendices to the HKEX Listing Rules; and
- make other Listing Rule amendments.

2021 Introduction of Paperless Listing & Subscription Regime and Provisions for Online Display of Documents

The HKEX introduced a paperless listing and subscription regime on 5 July 2021 which requires:

- all listing documents for new listings of equities, debt securities and collective investment schemes (**CIS**) to be published in electronic form; and
- subscriptions for new listings to be made electronically.

A requirement for certain documents to be published online was introduced on 4 October 2021, replacing the requirement for these documents to be made physically available.

HKEX's Proposals to Streamline the Document Submission Process

Reducing the Number of Submission Documents

New listing applicants and listed issuers are currently required to submit a substantial number of documents to the HKEX. The HKEX Consultation Paper includes a number of proposals intended to reduce the number of submission documents.

Removing Unnecessary Submission Documents

The HKEX is proposing to remove the requirement to submit documents that are not essential to its regulatory objectives or are no longer required for other reasons, as listed in Table 1 of Schedule II to the Consultation Paper. The HKEX explains that some documents do not need to be submitted as they merely reiterate requirements under the HKEX Listing Rules or Guidance Materials or they overlap with other submission or disclosure requirements.

Codifying Obligations and Requirements

The HKEX proposes to codify obligations contained in various undertakings, confirmations and declarations (e.g. the declaration and undertaking by directors and supervisors set out in Form B/H/I in Appendix 5 to the Listing Rules (**Directors' Undertaking Form**)), listing agreements for issuers of debt securities (except for debt issues to professional investors), structured products and interests in CIS and investment companies, and other standalone confirmations or declarations into the HKEX Listing Rules or Guidance Materials. Those duplicated documents (as listed in in Tables 2 and 3 of Schedule II to the Consultation Paper) would then be repealed.

Consolidating Obligations of HKEX Listing Applicants and Sponsors

It is proposed that the key obligations of listing applicants and sponsors should be consolidated in Form A1. New undertakings will also be added whereby:

- listing applicants will undertake to submit or procure the submission on their behalf of accurate and complete information to the HKEX during the listing application process; and
- sponsors will give a confirmation and undertaking regarding compliance with the HKEX Listing Rules and Guidance Materials on due diligence and advice and guidance to the listing applicant and its directors on compliance with the HKEX Listing Rules and Guidance Materials.

New Personal Details Form for Directors and Supervisors

Since Directors' Undertaking Forms will no longer be required, the HKEX is proposing to integrate the requirement for personal particulars of directors/supervisors currently in Part 1 of the Directors' Undertaking Form with Form FF004 (the Contact Details Form) which will be renamed the Personal Details Form.

Removing Unnecessary Signature or Certification Requirements

As issuers and sponsors are already required to comply with the HKEX Listing Rules (and the SFC Code of Conduct in the case of sponsors) with regard to the accuracy and completeness of the documents submitted, the HKEX proposes to remove the signature and certification requirements for various documents if they only evidence the sponsor's approval of the contents or certify that the submissions are true copies of their originals. HKEX proposes to remove the sponsor's signature requirements for Form M111 – market comparable analysis; e-Form M112 – application for waiver from strict compliance with the HKEX Listing Rules; and e-Form M201 - the completed checklist on the new listing particulars of the listing applicant.

Mandating Electronic Only Submission

Although a majority of documents can now be submitted to the HKEX electronically, the HKEX Listing Rules or relevant Guidance Materials currently still require the submission of hard copies of some documents to the HKEX (e.g. the signed original of Directors' Undertaking Forms). Therefore, the HKEX proposes to mandate that all documents must be submitted via electronic means unless otherwise specified in the HKEX Listing Rules or required by the HKEX. It also proposes to remove any requirement for submission of multiple copies of the same document as it considers it sufficient for listing applicants and listed issuers to submit the document via electronic means.

To facilitate the electronic submission of documents, the HKEX plans to launch a new online platform as a designated channel for two-way communication between the Listing Division and listing applicants/listed issuers. All documents, emails and e-Forms would be required to be submitted electronically on this platform. The platform would also enable electronic signature of the relevant submission documents and would incorporate features to ensure compliance with the requirements of the Electronic Transactions Ordinance.

Digitalising the Process for Applying for the HKEX's Authorisation for Prospectus Registration

HKEX observes that the current prospectus authorisation and registration processes are heavily paper-based and create an administrative burden for both issuers and the HKEX. Factors beyond issuers' control (e.g. extreme

weather) can also disrupt the process and delay their listing timetable. The HKEX is therefore exploring with the Companies Registry the feasibility of digitalising the prospectus authorisation and registration processes.

HKEX's Proposals on Mandating Electronic Dissemination of Corporate Communications to Securities Holders by Listed Issuers after Listing

The HKEX Listing Rules currently allow a listed issuer to send corporate communications to securities holders electronically only if it has received their express, written consent to receiving communications electronically.

Corporate communications can also be sent by publication on the issuer's website and a holder of the issuer's securities is deemed to have consented to the issuer sending corporate communications in this way if:

- the securities holders have resolved in general meeting (or the issuer's constitutional documents include a provision to the effect) that it may do so;
- the issuer has asked the securities holder for its consent to receiving corporate communications by means of the issuer's website; and
- the issuer has not received the securities holder's objection to receiving corporate communications by means of the issuer's website within 28 days.

The "deemed consent" provisions also require the issuer to separately notify its securities holders each time a new corporate communication is published on its website. If a securities holder has not provided its electronic contact details for receiving this notification electronically, the issuer must send notification to that holder by post.

To reduce printing and postage costs and facilitate effective and timely communication, the HKEX proposes to:

- (a) mandate that listed issuers must disseminate corporate communications by electronic means to their securities holders to the extent permitted by the laws and regulations that are applicable to them and their constitutional documents; and
- (b) allow listed issuers to choose the consent mechanism for the electronic dissemination of corporate communications as long as it is allowed under the applicable laws and regulations and their constitutional documents.

Under the proposals, listed issuers would be required to specify, on their websites, the manner in which corporate communications will be sent or otherwise made available to securities holders. Listed issuers would also have to disclose on their websites how securities holders can request receipt of hard copies of corporate communications and must send corporate communications in printed form to securities holders who have requested them.

The proposals apply to issuers of equity securities, debt securities and listed structured products. They would allow listed issuers to distribute corporate communications electronically with the implied consent of the holders if this is permitted under the laws and regulations applicable to them. The HKEX notes that nearly 90% of Hong Kong-listed issuers are incorporated in the Cayman Islands, Bermuda or the PRC where there is no prohibition on shareholders' consent being implied for the electronic dissemination of corporate communications. Hong Kong-incorporated issuers will not however be able to rely on holders' implied consent to receiving communications electronically as this is not currently permitted under the Hong Kong Companies Ordinance. Hong Kong issuers will therefore have to disseminate their corporate communications to their securities holders electronically in compliance with the requirements of sections 831, 833 and 837 of the Companies Ordinance. The HKEX states in the Consultation Paper that, depending on the outcome of the consultation, it will work with relevant parties to give further consideration to the issue of implied consent for electronic dissemination of corporate communications by Hong Kong issuers.

The proposals do not apply to the dissemination of corporate communications by intermediaries to beneficial holders of securities held in CCASS (other than Non Registered Holders as defined in the HKEX Listing Rules).

Actionable Corporate Communications

Corporate communications that seek instructions from an issuer's securities holders on how they wish to exercise their rights as the issuer's securities holders (**Actionable Corporate Communications**) would have to be sent to each securities holder in electronic form (e.g. by email, with weblinks to the relevant Actionable Corporate Communications on the issuer's website) to the extent permitted by the laws and regulations applicable to the issuer and its constitutional documents. If a listed issuer does not have functional electronic contact details for a securities holder, it must send Actionable Corporate Communications in hard copy form and include a request for the holder's electronic contact details.

Choice of Language

Currently, a listed issuer wishing to send or make available corporate communications only in English or Chinese must give securities holders the ability to choose the language in which they receive corporate communications and make adequate arrangements to determine their language preference. The HKEX Listing Rules give an example of an arrangement that would normally meet the requirement that involves the sending of hard copies of pre-paid forms by post. The HKEX is proposing to delete this example as it is not in line with its initiative to promote electronic dissemination of corporate communications. It proposes instead that listed issuers devise their own arrangements to determine securities holders' language preference.

The HKEX expects that if its proposals to mandate electronic dissemination of corporate communications and to remove the HKEX Listing Rules' restrictions on relying on implied consent are adopted, listed issuers will be able to disseminate most of their corporate communications electronically if permitted by applicable laws and regulations and their constitutional documents. They will be able to do so by publishing English and Chinese versions of corporate communications on the websites of the issuer and the HKEX or by sending the corporate communications in both languages by email. The HKEX therefore believes that listed issuers will not need to ascertain holders' language preference in most circumstances.

HKEX Proposal to Simplify Appendices to the HKEX Listing Rules

To streamline and improve the online experience of users of the HKEX Listing Rules, the HKEX intends to restructure the current Appendices to the HKEX Listing Rules by:

- (a) moving fee-related Appendices and certain forms from Appendices to new sections on the HKEX's website while specifying that these documents still form part of the HKEX Listing Rules;
- (b) removing Appendices that are administrative in nature and separately displaying their contents on the HKEX's website outside the Listing Rules Section;
- (c) deleting Appendices that have been superseded or repealed or do not need to be set out in the HKEX Listing Rules; and
- (d) reorganising by theme the remaining Appendices which contain significant provisions and/or mandatory requirements affecting listing applicants, listed issuers and securities holders.

HKEX's Other Proposed Listing Rule Amendments

Removing the Requirement for Physical Attendance by Committee Members at Meetings of the Listing Committee and Listing Review Committee

The HKEX proposes to remove the requirement for physical attendance by Listing Committee or Listing Review Committee members to meet the quorum required for meetings of these committees.

Other Minor HKEX Listing Rule Amendments

The HKEX is proposing the following minor changes to the HKEX Listing Rules:

- (a) References to "bulk-printing of listing documents" will be replaced by references to "finalisation of listing documents for publication" given that listing documents are now published in electronic format only; and
- (b) Under the GEM Listing Rules, the final proof of the application form for the public subscription tranche is required to be submitted together with the listing application, whereas the Main Board Listing Rules require it to be submitted before bulk-printing of the listing document. The HKEX will align the submission deadline for GEM listings with the Main Board requirement – the application form for the public subscription tranche will have to be submitted before the listing document is finalised for publication.

Responding to the Consultation

Interested parties can respond to the consultation by completing and submitting the questionnaire available on the HKEX's website at: https://surveys.hkex.com.hk/jfe/form/SV_0V5olbNiGuYZ1Q2

[1] HKEX. December 2022. Consultation Paper: Proposals to Expand the Paperless Listing Regime and Other Rule Amendments. Available at: <https://www.HKEX.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016Present/December-2022-Expand-Paperless-Listing-Regime/Consultation-Paper/cp202212.pdf>

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