



Hong Kong Law

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PROPOSED LISTING RULE CHANGES REFLECTING NEW CO FINANCIAL INFORMATION DISCLOSURE REQUIREMENTS

The Stock Exchange of Hong Kong (the **Exchange**) has published a consultation paper¹ on proposed amendments to the Listing Rules to reflect changes in the requirements for disclosure of financial information and other changes under the new Companies Ordinance (Cap 622) (**New CO**) which came into effect on 3 March 2014. The proposed Rule changes are set out in the appendices to the consultation paper. The Exchange has stated that none of the proposed amendments are the result of any policy shift. Responses to the consultation were required to be submitted to the Exchange by 24 October 2014.

1. Amendments in relation to Disclosure of Financial Information

1.1 Changes resulting from the new Companies Ordinance

When the New CO took effect on 3 March 2014, the previous Companies Ordinance became the Companies (Winding Up and Miscellaneous Provisions) Ordinance (**CWUMPO**) (Cap. 32), which retains only the prospectus regime in Parts II and XII and the insolvency and winding-up regime. All other provisions of the old Companies Ordinance were repealed and corresponding updated provisions are now contained in the New CO.

The Exchange now proposes to amend paragraph 28 of Appendix 16 to the Main Board Listing Rules (and the equivalent in the Listing Rules of the Growth Enterprise Market) to make them consistent with the requirements under the New CO regime.

New CO Disclosure Requirements

The Tenth Schedule and section 129A of the Old CO have been replaced by Schedule 4 of the New CO. While the Old CO regime specified all the financial disclosure requirements in its tenth schedule, the New CO refers to the disclosure requirements under Hong Kong Financial Reporting Standards (**HKFRS**) and additional requirements stated in Schedule 4. Schedule 4 includes:

- a requirement for financial statements to disclose the aggregate amount of outstanding loans made during the financial year to eligible employees to enable them to buy shares in the company;
- a requirement that, if a group produces consolidated financial statements, the notes thereto must include the holding company's statement of financial position for the financial year and a note disclosing the movement in the holding company's reserves;

¹ <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201408.pdf>

- a requirement that, if a company is a subsidiary of another company at the end of the financial year, it must disclose the parent company's name and country of incorporation (or the address of its principal place of business if it is not a corporation);
- a requirement that financial statements must state whether they were prepared in accordance with the applicable accounting standards and, if not, the particulars of, and reasons for, any material departure from those standards; and
- the requirement for financial statements to state (under a separate heading) the amount of remuneration of the auditor;

Requirements for Directors' Reports and other Disclosures Regarding Directors

The requirements for directors' reports which were previously set out in section 129D of the Old CO are now reflected in the New CO at sections 383 and 388 to 391 and Schedule 5 ("Contents of Directors' Report: Business Review"), the Companies (Directors' Report) Regulation and the Companies (Disclosure of Information about Benefits of Directors) Regulation.

Most of section 129D's disclosure requirements have been carried forward to the New CO. The following additional requirements were introduced in the New CO regime to enhance corporate governance and transparency:

- a requirement for a new business review section in all directors' reports which must comply with the requirements set out in Schedule 5 of the New CO;
- a requirement that the names of all group directors must be disclosed in consolidated directors' reports, and disclosure must be made up to the date of approval of the report;
- a requirement to disclose significant transactions, arrangements or contracts entered into by the company in which a director has a material interest, in the financial statements; and
- new disclosure requirements in respect of permitted indemnity provisions, equity-linked agreements and reasons for a director resigning or not seeking re-appointment.

It is proposed that Listing Rules A16.52(v), A16.52(vi) and A16.52(vii), which require a description of the company's principal risks and uncertainties, environmental policies and performance, compliance with laws and regulations and an account of the company's key relationships with employees, customers and suppliers, should be repealed as they are already satisfied by the inclusion of a business review in the directors' report in accordance with Schedule 5 of the New CO.

Section 161 of the Old CO has been replaced by sections 383(1)(a), (b), (c) and (f) of the New CO. These set out the information in relation to directors' emoluments that must be included in the notes to the annual financial statements.

Section 161A of the Old CO has been replaced by section 9(2) of the Companies (Disclosure of Information about Benefits of Directors) Regulation. This requires that where a figure in respect of the financial year is disclosed in the notes to the financial statements, the corresponding figure from the previous year must also be disclosed in the notes.

Section 161B of the Old CO has been replaced by section 383 of the New CO and the Companies (Disclosure of Information about Benefits Directors) Regulation. These set out the requirements for disclosing loans, quasi-loans and credit transactions in the notes to the financial statements.

Section 162 of the Old CO has been replaced by section 536 of the New CO. It requires any director that has a material interest in a transaction, arrangement or contract entered into by the company (which is of significance to the company's business) to disclose the nature of that interest to the board of directors. The requirement that such interests must be included in the notes to the financial statements is now included in Section 383 of the New CO.

Section 162A of the Old CO has been replaced by section 543 of the New CO. If a company enters into a contract where any individual, firm or body corporate undertakes the management and administration of all or any substantial part of the business of the company, section 543 then requires that the directors' report should disclose the existence and duration of the contract and the name of any director interested in the contract.

1.2 Changes to Streamline Disclosure Requirements by reference to Hong Kong Financial Reporting Standards (HKFRS)

Currently, Chapter 4 and Appendix 16 to the Main Board Listing Rules set out the minimum financial information that an issuer needs to include in its financial statements. The Exchange proposes to remove the disclosure requirements in the Listing Rules that are already in HKFRS to avoid overlap.

In particular, the Exchange proposes to:

- amend Chapter 1 of the Main Board Listing Rules to align the accounting terms used in the Listing Rules with current accounting standards;
- repeal the financial disclosure requirements for financial conglomerates in Chapter 4 and Appendix 16 of the Main Board Listing Rules;
- update Chapter 4 and Appendix 16 to replace references to “Financial Disclosure by Locally Incorporated Authorized Institutions” with the HKMA’s “Guideline on the Application of the Banking (Disclosure) Rules”; and
- repeal Appendix 15 to the Main Board Listing Rules in relation to bank reporting (as well as any references to Appendix 15 of the Listing Rules).

1.3 Other Listing Rule Changes in relation to Disclosure of Financial Information

In order to make it clear to shareholders, investors and regulators as to whether an issuer has taken sufficient steps to inform the public of any revisions to its financial statements, the Exchange proposes to explicitly require issuers to publish an announcement of any such revisions as soon as practicable after the directors decide to revise the financial statements. The announcement should state that the financial statements are to be revised, provide reason(s) for the revision and state any financial impact of the revision. Accordingly, the Exchange proposes a new announcement headline category called “Revision of Published Financial Statements” under Appendix 24 to the Main Board Listing Rules.

Paragraph 49 of Hong Kong Accounting Standards (HKAS) 8 “Accounting Policies, Changes in Accounting Estimates and Errors”, requires a company’s financial statements to disclose any prior period adjustment. In order to ensure consistency with paragraph 49 of HKAS 8, the Exchange proposes to amend

Appendix 16 to the Main Board Listing Rules to require results announcements to disclose where an issuer has made a prior period adjustment to correct a material error. Additionally, the Exchange proposes a new headline category called “Prior Period Adjustments due to Correction of Material Errors” to be created under Appendix 24 to the Main Board Listing Rules for such announcements.

Lastly, the Exchange proposes to add two notes, 6.3 and 40.3, to Appendix 16 to the Main Board Listing Rules to reference disclosure requirements that are not set out in Appendix 16 but are set out in other Listing Rules.

2. Other Amendments to the Listing Rules resulting from the new Companies Ordinance

2.1 Notice Periods for General Meetings

Currently, Appendices 13A and 13B of the Main Board Listing Rules are aligned with section 114(2) of the Old CO, under which companies incorporated in Bermuda or the Cayman Islands must stipulate in their articles of incorporation that:

- a) annual general meetings (**AGMs**) and extraordinary general meetings (**EGMs**) where a special resolution is to be proposed must be convened on at least 21 days’ notice; and
- b) extraordinary general meetings where an ordinary resolution is to be proposed must be convened on at least 14 days’ notice.

However, section 571(1) of the New CO has changed these requirements so that:

- a) AGMs must be called on 21 days’ notice; and
- b) any other general meeting may be called on 14 days’ notice irrespective of whether ordinary or special resolutions will be considered at the meeting.

Also, Appendix 13 to the Main Board Listing Rules does not reflect section 571(3) of the New CO, which allows companies incorporated in Hong Kong to convene general meetings on even shorter notice if it is agreed:

- a) by all the members entitled to attend and vote at the meeting (in the case of an AGM); and
- b) in any other case, by a majority in number of the members having the right to attend and vote at the meeting, being a majority together representing at least 95% of the total voting rights at the meeting of all the members.

The Exchange therefore proposes to amend Appendix 13 to align it with section 571(1) of the New CO so that Bermuda and Cayman Islands incorporated companies are required to give 21 days' notice of an AGM whereas any other general meeting (including one to pass a special resolution) may be called on 14 days' notice.

The Exchange is also seeking views on whether Bermuda and Cayman Island companies should be allowed to convene general meetings on shorter notice on the same terms as Hong Kong companies as set out above.

2.2 Nominal/Par Value

The New CO abolished the concept of nominal value (par value) for Hong Kong incorporated companies and "issued share capital" now represents the amount the company receives for issued shares. The terms "nominal value" and "issued share capital" are currently used in the Rules in the method of calculating certain percentage thresholds or changes in shareholding interests of the issuer. The Exchange proposes to reflect these changes in the Listing Rules by replacing "nominal value" or "issued share capital" with the number of, or the voting rights attached to, the issued shares as follows:

Main Board Rule no.	Description of the current requirements	Proposed amendments
Restriction on size of issue or repurchase of securities		
13.36(2)	General mandate <ul style="list-style-type: none"> • The number of securities that may be issued under a general mandate must not exceed 20% of the issuer's issued share capital. 	Replace the "issued share capital" with the "number of issued shares".
10.06(1)(c)	Repurchase mandate <ul style="list-style-type: none"> • The number of shares that may be repurchased under a repurchase mandate must not exceed 10% of the issuer's issued share capital. 	Add a note to the Rule to clarify that if the issuer conducts a share consolidation or subdivision after the approval of the mandate, the number of shares that may be issued (or repurchased) under the mandate will be adjusted accordingly.
7.19(6), 7.24(5)	Rights issue or open offer <ul style="list-style-type: none"> • The issue or offer requires independent shareholder approval if it would increase the issued share capital of the issuer by more than 50%. 	Replace the "issued share capital" / "issued equity capital" with the "number of issued shares".
15.02(1)	Warrants <ul style="list-style-type: none"> • Securities to be issued on exercise of the warrants (when aggregated with all other equity securities subject to any other subscription rights) must not exceed 20% of the issued equity capital of the issuer at the time such warrants are issued. 	

Notifiable and/or connected transactions		
14.07(5)	<p>Equity capital ratio</p> <ul style="list-style-type: none"> It means the nominal value of the issuer's equity capital issued as consideration divided by the nominal value of the issuer's equity capital immediately before the transaction. <p><i>Note: The value of the listed issuer's debt capital (if any), including any preference shares, should not be included in the calculation of the equity capital ratio.</i></p>	<p>Replace the "nominal value of the issuer's equity capital" with the "number of shares".</p> <p>Add a new note to clarify that shares issued as consideration include shares that are subject to any convertible securities or subscription rights issued as consideration.</p>
14.44	<p>Written shareholder approval</p> <ul style="list-style-type: none"> The shareholder(s) giving the approval must hold more than 50% in nominal value of the securities giving the right to attend and vote at the general meeting to approve the transaction. 	<p>Revise the Rule to require the shareholder(s) to hold more than 50% of voting rights at the general meeting.</p>
14.66(6)	<p>Circular disclosure</p> <ul style="list-style-type: none"> Where a company either becomes a subsidiary or ceases to be a subsidiary of the issuer, the circular should disclose the percentage of the issued share capital (if any) held by the issuer in that company after the transaction. 	<p>Replace the "issued share capital" with the "issued shares".</p>
Independence of independent non-executive directors (INEDs), sponsors and independent financial advisers (IFAs)		
3.13(1)	<p>For assessing an INED's independence</p> <ul style="list-style-type: none"> Whether the INED holds more than 1% of the total issued share capital of the issuer. 	<p>Replace the "issued share capital" with the "number of issued shares".</p>
3A.07(1)	<p>For assessing a sponsor's independence</p> <ul style="list-style-type: none"> Whether the sponsor or any director holds or will hold more than 5% of the issued share capital of the new applicant. 	
13.84(1) and (1A)	<p>For assessing an IFA's independence</p> <ul style="list-style-type: none"> Whether it holds more than 5% of the issued share capital of the issuer or another party to the transaction, or their connected persons. 	
Public float		
8.08(1), 19B.08, App 5E	<p>At least 25% of the issuer's total issued share capital must at all times be held by the public.</p> <p>Where an issuer has more than one class of securities, the total securities of the issuer held by the public at the time of listing must be at least 25% of the issuer's total issued share capital, and the class of securities for which listing is sought must not be less than 15% of the issuer's total issued share capital, ...</p>	<p>Replace the "issued share capital" with the "number of issued shares".</p>
Disclosure on changes in shareholdings		
13.25A	<p>Next day disclosure return</p> <ul style="list-style-type: none"> Publication of next day return in the event of changes in the issuer's issued share capital as set out in the Rules. 	<p>Replace the "issued share capital" with the "issued shares"/ "number of issued shares"</p>
PN5 – Note to 3.3(1) & (2), 3.4(1) & (2), 3.5(1) & (2)	<p>Disclosure of interests of directors, chief executives and substantial shareholders</p> <ul style="list-style-type: none"> The statement should include the percentage which the aggregate long/short position in shares represents to the issued share capital of the issuer or associated corporation. 	<p>Replace the "issued share capital" with the "issued voting shares", which is in line with the term used in Part XV of the Securities and Futures Ordinance.</p>

2.3 Company Seal

Since the New CO makes it optional for Hong Kong incorporated issuers to have a company seal, the Exchange proposes to amend paragraph 2(1) of Appendix 3 to the Main Board Listing Rules so that Hong Kong companies without a seal may state in their articles of association that “certificates for capital must be executed under signature of appropriate officials with statutory authority”.

2.4 References to share warrants to bearer and memorandum issued by Hong Kong issuers

The Exchange proposes to repeal the rule that requires share warrants to bearer issued by Hong Kong incorporated issuers to be under seal, as the New CO has removed their ability to issue them. The Exchange also proposes to remove all references to the memorandum of Hong Kong issuers in the Listing Rules, as the New CO no longer requires Hong Kong issuers to have one.

2.5 Definition of “Holding Company”

The current definition of “holding company” in the Listing Rules refers to the Old CO’s definition of the same, and is linked to the Listing Rules’ definition of “subsidiary”, which has a wider scope than the Old CO’s definition of “subsidiary”. To maintain the status quo despite the enactment of the New CO, the Exchange proposes to:

- change the Listing Rules’ definition of “holding company” by setting out the meaning (i.e. a holding company, in relation to a company, means another company of which it is a subsidiary) in the Rule instead of referring to the New CO; and
- retain the current definition of “subsidiary” in the Listing Rules, but with amendments to update the reference to “subsidiary undertaking” under the New CO.

2.6 Threshold value for Lost Share Certificates

Under the Listing Rules, issuers may not charge more than HK\$200 to replace share certificates that are less than HK\$20,000 in value. The Exchange proposes to amend Main Board Listing Rule 13.60(5) and Appendix 7 to increase the threshold value from HK\$20,000 to HK\$200,000 in order to be consistent with the HK\$200,000 threshold stated in the New CO.

3. Minor and Housekeeping Amendments

Lastly, the Exchange also proposes the following minor and housekeeping amendments:

- amending Main Board Listing Rule 13.45(1) to require announcements of board decisions on any dividend or other distribution to include and state the expected payment date of that distribution;
- amending Main Board Listing Rule 5.03 to clarify that a property valuation is required for the circular of any connected transaction that involves an acquisition or disposal of any property interest or property company;
- amending Main Board Listing Rules 14.66(8) and 14A.70(15) so that listed issuers are no longer required to disclose information on competing interests of directors of the listed issuer’s subsidiaries and their close associates in transaction circulars;
- adding a new GEM Listing Rule 17.49A as a counterpart to Main Board Listing Rule 13.50 to require a suspension of trading of the securities of listed issuers that fail to publish their financial results announcements;
- changing all references to the Securities and Futures Commission’s (SFC) Code on Share Repurchases to its current name, the Code on Share Buy-backs;
- defining the terms, “Code on Share Buy-backs” and “Share Buy-backs Code” to mean the SFC’s Code on Share Buy-backs;
- defining the terms “Code on Takeovers and Mergers” and “Takeovers Code” to mean the SFC’s Code on Takeovers and Mergers;
- amending Main Board Listing Rule 15A.29 to refer to Rule 5 of the Code on Share Buy-backs instead of Rule 10 of the Code on Share Repurchases;
- amending Main Board Listing Rules 19.05(2), 19.30(2) and 19A.13(2) to require process agents for overseas and Mainland listed issuers to provide their contact emails instead of a telex and removing all references to “telex” in Practice Note 1 to the Main Board Listing Rules;

- removing the address, telephone and fax numbers of the Listing Division in Practice Note 1 to the Main Board Listing Rules so that “informing the Exchange” would mean delivery of the relevant information regardless of method;
- amending Main Board Listing Rule 9.11(20) to clarify that a new listing applicant’s articles of association must comply with the requirements under Appendix 3 to the Main Board Listing Rules; and
- creating a new GEM Listing Rule 17.26A to require periodic announcements to be published by suspended GEM listed issuers.

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