

## FSTB Consults on Paperless Corporate Communication for Hong Kong Companies

On 27 November 2023, the Financial Services and the Treasury Bureau (**FSTB**) published a [Consultation Paper](#) seeking feedback on proposals aimed at promoting paperless corporate communication by Hong Kong companies. The FSTB is proposing to introduce an implied consent mechanism and streamline the notification requirement for Hong Kong-incorporated companies disseminating corporate communications by means of their website.

The FSTB is seeking public feedback on its proposals and the deadline for responding to the Consultation Paper is 26 January 2024. Submissions can be made in writing to [e-comm-consult@fstb.gov.hk](mailto:e-comm-consult@fstb.gov.hk) or by mail to Division 6, Financial Services Branch, Financial Services and the Treasury Bureau, 15/F Queensway Government Offices, 66 Queensway, Hong Kong. The FSTB intends to finalise the proposals and introduce an Amendment Bill to the Legislative Council in the second half of 2024.

## HKEX to Expand Paperless Listing Regime from 31 December 2023

Having received support for its proposal to mandate listed companies to disseminate corporate communications to shareholders electronically, if this is permitted by their applicable laws and regulations and their constitutional documents, the Hong Kong Stock Exchange (**HKEX**) will implement the proposal under the expansion of its paperless listing regime, which will be effective from 31 December 2023.<sup>1</sup> For a summary of the HKEX's June 2023 Consultation Conclusions on the Proposals to Expand the Paperless Listing Regime and Other Rule Amendments, please see [Charltons' September 2023 newsletter](#).

Under the current listing rules of HKEX (**HKEX Listing Rules**), listed companies are permitted to disseminate corporate communications to shareholders by publishing them on their websites, provided they have received shareholders' express written consent or deemed consent. Deemed consent requires that: (a) the shareholders have resolved in a general meeting (or the listed company's constitutional documents contain a provision to the effect) that corporate communications can be sent to shareholders through publication on its website; (b) the shareholder has been asked individually by the listed company for its consent; and (c) the listed company has not received a response indicating the shareholder's objection within 28 days. In addition, listed companies are obligated to notify their shareholders when new corporate communications are uploaded and to provide hard copy notifications to those shareholders who have not provided electronic contact details for receiving corporate communications.

With effect from 31 December 2023, the HKEX will remove the HKEX Listing Rules' requirements for listed companies to use the existing express or deemed consent mechanisms in order to disseminate their corporate communications electronically including by publication on their websites. The revised Listing Rules will give listed companies the flexibility to choose a consent mechanism permitted under their respective laws and regulations and constitutional documents. Accordingly, listed companies will be able to rely on implied consent to electronic distribution of their corporate communications, if it is permitted by applicable laws and regulations and their constitutional documents. The implied consent mechanism means that shareholders will receive corporate communications electronically if this is provided for in the company's articles of association (or other constitutional documents). This will enable companies to disseminate corporate communications by means of their website without having to seek consent from each individual shareholder.

To ensure shareholders' protection under the revised HKEX Listing Rules, the HKEX also introduced the following requirements:

- Listed companies are required to specify on their websites the method by which corporate communications will be made available to shareholders, including shareholders' ability to request hard copy corporate communications;
- Listed issuers are required to send a **first-time notification** (either in hard copy or electronically) to inform each shareholder about any changes in the mode of dissemination of corporate communications and the consent mechanism. This notification must also include a request for the shareholder's electronic contact details (where applicable); and
- Actionable corporate communications (i.e., communications seeking instructions from shareholders on the exercise of their rights<sup>2</sup>) will need to be sent to shareholders individually in electronic form (e.g. by email), if permitted under applicable laws and regulations and companies' constitutional documents. Listed companies will not be allowed to send actionable corporate communications to shareholders by publication on their websites. If a listed company cannot send an actionable corporate communication to a shareholder electronically because it does not have the shareholder's working electronic contact details, it must send the communication in hard copy form.

## **Electronic Communication Requirements under the Hong Kong Companies Ordinance (Cap. 622)**

Under the current Hong Kong Companies Ordinance (Cap. 622) (**CO**), Hong Kong-incorporated companies are permitted to communicate with shareholders electronically, subject to the following consent mechanisms:

- *Communication in electronic form*: The company must obtain prior **express consent** from its shareholders.<sup>3</sup>
- *Communication by means of website*: The company must obtain **prior express or deemed consent** from shareholders. The company is required to notify shareholders (either in hard copy or electronically) each time a new corporate communication is made available on its website.<sup>4</sup>

"Deemed consent" is given by a shareholder when the company has sent an individual request for the shareholder to agree to receiving information or documents by means of its website. The request must clearly state that if the shareholder does not respond within 28 days of the date the company's request was sent, it will be assumed that the shareholder has provided consent.<sup>5</sup> The deemed consent provision can only be relied on if the company's shareholders have resolved or its articles provide that documents or information can be sent to shareholders by publication on the company's website.

Shareholders can also request the company to provide a hard copy of the document or information under section 837 of the CO.

## **Legislative Proposal to Amend the Electronic Communication Requirements of the CO**

The FSTB proposes to amend the CO by introducing an implied consent mechanism and streamlining the notification requirement.

## Implied Consent Mechanism under the Legislative Proposal

The FSTB proposes to allow Hong Kong-incorporated companies to rely on implied consent for disseminating corporate communications by means of their website. Under an implied consent, the company will not be required to seek consent from its shareholders individually if the company's articles of association permit the dissemination of corporate communications by means of its website.

## Separate Notification Requirement under the Legislative Proposal

For listed issuers incorporated in Hong Kong, the FSTB proposes to remove the requirement of sending notifications to shareholders when new corporate communications are uploaded to their website, provided that the company chooses to adopt the implied consent mechanism.

For non-listed issuers incorporated in Hong Kong, the FSTB proposes to require these companies to obtain one-off prior express consent from their shareholders to the company not sending them separate notifications when new corporate communications are uploaded to their website.

## Safeguards to Protect Interest of Shareholders under the Legislative Proposal

Similar to the protections put in place by the HKEX, the FSTB also proposes a requirement for listed and non-listed companies that opt for the implied consent mechanism to issue a first-time notification to each of their shareholders in hard copy or electronically (where shareholders have previously agreed to be notified by a particular electronic means) to inform them of the new arrangements regarding electronic dissemination of corporate communications by means of website before implementation. Shareholders will still be able to request a hard copy of corporate communications at any time under section 837.

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[1] HKEX. 30 June 2023. Exchange Publishes Conclusions on Proposals to Expand Paperless Listing Regime. Available at [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2022-Expand-Paperless-Listing-Regime/Conclusions-\(Jun-2023\)/cp202212cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2022-Expand-Paperless-Listing-Regime/Conclusions-(Jun-2023)/cp202212cc.pdf).

[2] Examples of actionable corporate communications include provisional allotment letters and excess application forms for a rights issue or open offer, application forms for assured entitlement under an open offer, blue application forms for a preferential offering, pink application forms for employee reserved shares and acceptance forms for takeovers, mergers and share buy-backs.

[3] Section 831 of the CO.

[4] Section 833 of the CO.

[5] Section 833(4)(b) of the CO.

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