



Capital Markets Quarterly Update

This quarterly update (October to December 2010) highlights recent developments in Hong Kong capital markets practices:

- **Electronic prospectus:** Electronic copies of an IPO prospectus will be permitted in Hong Kong. This is a green and cost saving initiative to reduce wastage of paper listing documents, and is expected to take effect on 1 February 2011. For more details, please see "[*Joint Consultation Conclusions on Mixed Media Offer*](#)" below.
- **PRC accounting standards and audit firms:** From 15 December 2010, Mainland China companies listed in Hong Kong may adopt Mainland China accounting and auditing standards to prepare financial statements (for IPOs, annual reports, circulars and other regulatory reports) and retain Mainland China audit firms to act as reporting accountants and auditors to reduce compliance costs and increase efficiency. Before that, on a general basis, Hong Kong listed companies were normally only permitted (subject to exceptions) to (a) use the HKFRS or the IFRS in preparing financial statements and (b) appoint members of the HKICPA with valid practising certificates as auditors or reporting accountants. For more details, please see "[*Consultation Conclusions on Acceptance of Mainland Accounting and Auditing Standards and Mainland Audit Firms for Mainland Incorporated Companies Listed in Hong Kong*](#)" below.
- **Flexibility in submitting 4-day documents:** HKEx issued a guidance letter for the purpose of providing flexibility in submitting documents which should be lodged with the SEHK four clear business days before the expected IPO hearing date in accordance with the Listing Rules. For more details, please see "[*HKEx Guidance Letter on Documentation Requirements for IPO Cases - Facilitative Procedures*](#)" below.

- ***Proposed changes to the current property valuation requirements:*** HKEx has proposed for consultation that certain unnecessary burdens on listing applicants and listed issuers be eliminated by encouraging meaningful disclosure of property valuation information to investors, depending on the size of the property interest comparing to the total assets. For more details, please see "[*Joint Consultation Paper on Proposed Changes to Property Valuation Requirements*](#)" below.
- ***Proposed changes to the current market practice of ex-entitlement trading:*** HKEx has proposed for consultation that shares of a listed issuer be traded ex-entitlement only after the relevant entitlement has been approved by shareholders so as to remove the risk of uncertainty and bring Hong Kong in-line with other leading overseas (including Mainland China) stock markets. For more details, please see "[*Consultation Paper on Ex-entitlement Trading and Shareholder Approval*](#)" below.
- ***Proposed changes to the Code on Corporate Governance Practices and certain Listing Rules relating to corporate governance:*** HKEx has proposed for consultation that certain changes be made to the Code on Corporate Governance Practices and the Listing Rules relating to corporate governance aiming to promote the development of higher corporate governance standards. Such proposed changes include promoting some Code provisions to become Listing Rules provisions, upgrading many Recommended Best Practices to become Code provisions and revising some existing Listing Rules provisions. For more details, please see "[*Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules*](#)" below.
- ***First HDR:*** Since the HDR regime was put in place in 2008, the first HDR was listed on the SEHK on 8 December 2010 - a milestones relating to this regime which is designed to provide more choices to listing applicants and investors. For more details, please see "[*First Depositary Receipt Listed on the SEHK*](#)" below.
- ***Proposed changes to the existing requirements for debt securities for professional investors only:*** HKEx has proposed for consultation that certain changes be made to the requirements under the Listing Rules for listing debt securities offered to professional investors only (currently referred to in the Listing Rules as listing by selective marketing). The proposed changes are designed to make Hong Kong more comparable to other major stock exchanges and to enhance the competitiveness of Hong Kong as a listing venue for debt securities. None of the proposals would apply to debt securities offered to retail investors in Hong Kong. For more details, please see "[*Consultation Paper on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only*](#)" below.

In this Update, the following terms have the following meanings:

"CO"	Companies Ordinance (Cap 32 of the Laws of Hong Kong)
"CO Notice"	Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap 32L of the Laws of Hong Kong)

"HDRs"	Depository receipts listed on the SEHK
"HKEx"	Hong Kong Exchanges and Clearing Limited
"HKFRS"	Hong Kong Financial Reporting Standards
"HKICPA"	Hong Kong Institute of Certified Public Accountants
"IFRS"	International Financial Reporting Standards
"IPOs"	Initial public offerings
"Listing Rules"	Rules Governing the Listing of Securities on the SEHK and/or the Rules Governing the Listing of Securities on the Growth Enterprise Market of the SEHK, as the case may be
"SEHK"	The Stock Exchange of Hong Kong Limited
"SFO"	Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong)
"SFC"	Securities and Futures Commission

Joint Consultation Conclusions on Mixed Media Offer

QUICK READ

The SFC and the SEHK jointly released their "*Joint Consultation Conclusions on the Proposal to allow a Companies Ordinance (CO) Offeror to issue a CO Paper Application Form for Shares in or Debentures of a Company to be listed on the SEHK, and a Collective Investment Scheme (CIS) Offeror to supply a CIS Paper Application Form for Interests in an SFC-authorized CIS to be listed on the SEHK, with a Listing Document Displayed on Certain Websites*" (**MMO Consultation Conclusions**) on 26 November 2010 in response to the joint consultation paper issued on 1 April 2008 in relation to proposals to allow public distribution of paper application forms for shares or debentures or interests in SFC-authorized collective investment schemes (**CIS**) without the associated paper listing documents¹, provided that the conditions stipulated in a class exemption are satisfied (**Mixed Media Offer**).

CLASS EXEMPTION NOTICE

In essence, the MMO Consultation Conclusions contained proposed exemptions and waivers so as to allow:

- (a) a company conducting a public offering of shares or debentures to be listed on the SEHK (**CO Offeror**) to issue paper application forms with electronic copies of the relevant prospectus (**CO Proposal**); and
- (b) a CIS conducting a public offer of interests in the CIS to be listed on the SEHK (**CIS Offeror**) to issue paper application forms with electronic copies of the relevant offering document (**CIS Proposal**).

Pursuant to the MMO Consultation Conclusions, the SFC will incorporate a new class exemption (**Class Exemption Notice**) under the CO Notice so as to implement the CO Proposal, subject to the fulfilment of certain conditions.

In this connection, CIS Offerors will also be granted a similar waiver so as to implement the CIS Proposal, subject to similar conditions as imposed under the Class Exemption Notice.

The Class Exemption Notice will, subject to negative vetting by the Legislative Council, come into effect on 1 February 2011. The corresponding amendments to the Listing Rules will take effect when the Class Exemption Notice becomes effective.

CONDITIONS

The major conditions specified in the Class Exemption Notice which must be satisfied by a CO Offeror or a CIS Offeror (as the case may be) before a Mixed Media Offer would be allowed are summarised as follows:

¹ "Listing documents" refer to (a) a prospectus issued under the CO in relation to a public offer of shares or debentures; or (b) an offering document issued in relation to a public offer of interests in an SFC-authorized collective investment scheme.

The public should be informed

- (a) During the period of five business days before the commencement of the offer period, adequate disclosure (meaning the publication of an announcement in compliance with the specified requirements) is made to inform the public that a printed application form will be issued without a corresponding printed form prospectus.

Printed form prospectus should still be available

- (b) Throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public.
- (c) Throughout the offer period, at least three copies of the printed form prospectus are available for inspection at every location where the printed application forms are distributed.
- (d) For printed application form, certain specified information should be stated in a prominent place.

Specific requirements for the electronic form prospectus

- (e) Throughout the offer period, the electronic form prospectus relating to the offer is in a form which is reasonably tamper-resistant.
- (f) The typeface, format and contents of the electronic form prospectus should be identical to those of the printed form prospectus.
- (g) Each of the electronic form prospectus and the printed form prospectus should contain a clear and legible statement containing the specified contents.

Electronic form prospectus accessible from designated websites

- (h) The electronic form prospectus is readily accessible by the public from the company's designated website and/or the SEHK 's designated website (as the case may be) as stipulated.
- (i) The electronic form prospectus that is on the company's designated website is directly linked from the homepage or another webpage directly linked from the homepage.
- (j) The relevant webpage (other than the homepage) within the company's designated website should not contain any promotional information about the offeror or the offer.
- (k) When the electronic form prospectus is accessed from the company's designated website, a notice is to be displayed stating that the securities are being offered solely on the basis of the information provided in the prospectus.

Copies of the MMO Consultation Conclusions can be downloaded via the link below:

http://www.sfc.hk/sfc/doc/EN/speeches/public/consult/conclusions_mmo_eng.pdf

Consultation Conclusions on Acceptance of Mainland Accounting and Auditing Standards and Mainland Audit Firms for Mainland Incorporated Companies Listed in Hong Kong

QUICK READ

The HKEx released its "*Consultation Conclusions on Acceptance of Mainland Accounting and Auditing Standards and Mainland Audit Firms for Mainland Incorporated Companies Listed in Hong Kong*" on 10 December 2010 (**Mainland Accounting Consultation Conclusions**) in response to the consultation paper published on 28 August 2009 on proposals to accept Mainland China accounting and auditing standards and Mainland China audit firms for Mainland China incorporated companies listed in Hong Kong (**Mainland Accounting Consultation Paper**).

PROPOSALS ADOPTED

The HKEx has decided to adopt the proposals as stated in the Mainland Accounting Consultation Paper as follows:

- (a) ***Using Mainland accounting standards*** - Mainland China incorporated listed issuers are allowed to prepare their financial statements (for IPOs, annual reports, circulars and other regulatory reports) using Mainland China accounting standards, namely the China Accounting Standards for Business Enterprises and to audit their accounts using Mainland China auditing standards.
- (b) ***Using Mainland audit firms*** - Mainland China audit firms approved and registered by the Ministry of Finance of China and the China Securities Regulatory Commission are allowed to act as auditors and reporting accountants of Mainland China incorporated listed issuers. In this connection, the HKEx maintains a list of approved Mainland China audit firms on its website.
- (c) ***Using Hong Kong accounting standards and audit firms*** - As a reciprocal arrangement, companies incorporated or registered in Hong Kong and listed in Mainland China are allowed to prepare their financial statements using the HKFRS or the IFRS and be audited by Hong Kong audit firms registered with the HKICPA using the Hong Kong Standards on Auditing or the International Standards on Auditing.

It remains to be seen, however, whether or not where domestic Mainland China audit firms will be accepted as the sole reporting accountants in a global offering.

PREVIOUS REQUIREMENTS

Previously, on a general basis, Hong Kong listed companies were normally only permitted (subject to exceptions) to (a) use the HKFRS or the IFRS in preparing financial statements and (b) appoint members of the HKICPA with valid practising certificates as auditors or reporting accountants.

LISTING RULES AMENDMENTS

The corresponding Listing Rules amendments to implement the proposals became effective on 15 December 2010.

Copies of the Mainland Accounting Consultation Conclusions can be downloaded via the link below:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp200908cc.pdf>

HKEX RESPONDED TO MARKET COMMENTS

After the release of the Mainland Accounting Consultation Conclusions, the HKEx noted that there were mixed comments in media reports and elsewhere on its decision. Accordingly, it issued a statement on 23 December 2010 to clarify certain misperceptions and to further explain the rationale behind the new regime. The questions answered by the HKEx in the statement are:

- (a) Why did the HKEx choose to adopt Mainland China accounting standards?
- (b) Is Hong Kong the only market outside Mainland China that has accepted Mainland accounting standards?
- (c) Has the HKEx's decision to accept Mainland China accounting and auditing standards and Mainland China audit firms been taken lightly or done in haste?
- (d) Why was there such a long delay between the original proposed implementation date (i.e. 1 January 2010) and the implementation of the new framework?
- (e) Is the HKEx's decision aimed at winning more Mainland China business? Is there a "quality versus quantity" issue?
- (f) Does the framework mean that Hong Kong has handed over part of its regulatory authority to Mainland China?
- (g) How can Hong Kong regulators, like the Financial Reporting Council and the HKICPA, carry out investigations on Mainland China audit firms?
- (h) Is the HKEx concerned about investor trust and regulatory credibility in Mainland China accounting and governance standards?

Copies of the HKEx's statement can be downloaded via the link below:

<http://www.hkex.com.hk/eng/newsconsul/hkexnews/2010/1012232news.htm>

HKEx Guidance Letter on Documentation Requirements for IPO Cases - Facilitative Procedures

QUICK READ

The HKEx published its "HKEx Guidance Letter on Documentation Requirements for IPO Cases - Facilitative Procedures" (**Guidance Letter**) on 24 December 2010 for the purpose of providing flexibility in submitting documents which should be lodged with the SEHK four clear business days (**4-day documents**) before the expected hearing date in accordance with the Listing Rules.

LISTING RULES REQUIREMENTS

Pursuant to the Listing Rules, a listing applicant should submit, among others, the following documents four clear business days before the expected hearing date:

- (a) copies of the final proof of the listing document; and
- (b) for a Mainland China listing applicant - a certified copy of the document issued by the State Council Securities Policy Committee or other Mainland China competent authority expressly approving the listing application (**CSRC Approval**).

GUIDANCE LETTER

In order to strike a balance between facilitating a listing applicant in submitting the 4-day documents and giving the Listing Committee sufficient time to consider the listing application, the SEHK will allow the following flexibility in relation to compliance with the 4-day documents submission requirements:

- (a) Copies of the final proof of the listing document must be sent to the SEHK not less than three clear business days (by 6:00 p.m.) before the expected hearing date.
- (b) Although the CSRC Approval should be sent to the SEHK not less than four clear business days (by 6:00 p.m.) before the expected hearing date as explained above, this requirement may be relaxed under special circumstances. If the SEHK considers it justifiable to extend the time for submission e.g. if the SEHK is satisfied that the listing applicant's financial information will become out-of-date (in breach of Rule 8.06) if the application is not heard forthwith. In such cases, conditions may be imposed by the SEHK as it deems appropriate.

If the above conditions are not satisfied, the SEHK will not bring the case to hearing for that week.

Listing applicants and their sponsors are encouraged to consult the Listing Division if they have any questions about the Guidance Letter.

Copies of the Guidance Letter can be downloaded via the link below:

<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl23-10.pdf>

Joint Consultation Paper on Proposed Changes to Property Valuation Requirements

QUICK READ

The SFC and the SEHK jointly released their "*Joint Consultation Paper on Proposed Changes to Property Valuation Requirements*" (**Property Valuation Consultation Paper**) on 3 December 2010 on proposed changes to the property valuation disclosure requirements to be complied by listing applicants and listed issuers respectively.

PROPOSALS FOR LISTING APPLICANTS

In relation to listing applicants, the Property Valuation Consultation Paper contained proposals which are applicable to property activities and non-property activities respectively.

Property activities

"Property activities" are proposed to be defined as "*holding (directly or indirectly) and/or development of properties for letting and retention as investments, or the purchase or development of properties for subsequent sale, or for retention as investments. It does not include holding of properties for own use*" and so would include holding property interests for development, sale and/or rental income.

In this connection, the regulators are of the view that valuation information is significant to investors and the relevant proposals are summarised as follows:

- (a) ***For all property interests generally*** - The listing applicant would be required to obtain property valuation reports and disclose valuation information for all property interests in relation to its property activities. However, if a property interest has a carrying amount below 1% of the listing applicant's total assets, such property interest would not be subject to the valuation requirements. The exemption is subject to a cap pursuant to which the total carrying amount of exempted property interests must not exceed 10% of the listing applicant's total assets.

In this regard, the listing applicant should identify the carrying amount of each property interest (which is below 1%) and sum up from the lowest values until the 10% limit is reached. Property interests comprising the lowest 10% would be exempted and the remaining property interests would be subject to the valuation requirements. Full text of the valuation reports should be disclosed in the listing document except where summary disclosure is allowed.

- (b) ***For a property interest valued at less than 5% of the listing applicant's total valued property interests*** - Summary disclosure of the relevant valuation report in prescribed form (as specified in the Property Valuation Consultation Paper) would be allowed if the market value of a property interest is less than 5% of the listing applicant's total property interests that are required to be valued under property activities. The detailed valuation report would be required to be made

available for public inspection.

- (c) ***For all property interests that have been exempted from the valuation requirements*** - An overview should be included in the listing document describing the exempted property interests containing relevant information such as geographical location, number, approximate size range, intention of use and how the property interests are held (i.e. owned or leased) (**Relevant Information**).

Non-property activities

Property interests of a listing applicant's non-property activities normally refer to properties owned and occupied for its own use and the relevant proposals are summarised as follows:

- (a) ***For a property interest with a carrying amount of 15% or above of the total assets*** - A full text of the valuation report would be required if the carrying amount of a property interest is or is above 15% of the listing applicant's total assets. The listing applicant should also include a statement stating that no other single property interest of its non-property activities has a carrying amount of 15% or above of its total assets.
- (b) ***For all property interests which have been exempted from the valuation requirements*** - An overview containing the Relevant Information should be included in the listing document describing the exempted property interests.

Mining activities

Valuation of property interests ancillary to mining activities, such as buildings and other properties around the mining site, would not be required.

General disclosure obligations

Listing applicants should note that the above specific proposals are only minimum requirements and there are general disclosure obligations in relation to property valuations under the CO and the Listing Rules which might require greater disclosure beyond such minimum proposed requirements.

The general disclosure obligations as mentioned above are:

- (a) Under the CO, a prospectus must contain "*sufficient particulars and information to enable a reasonable person to form...a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus...*"².
- (b) Similarly, the Listing Rules provide that a listing document must "*contain such particulars and information which...is necessary to enable an investor to make an informed assessment of the*

² Paragraph 3 of the Third Schedule to the CO, "Matters to be specified in prospectus and reports to be set out therein".

activities, assets and liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the rights attaching to such securities.”³

PROPOSALS FOR LISTED ISSUERS

In relation to listed issuers, there is no distinction between property activities and non-property activities and the relevant proposals are summarised as follows:

- (a) ***For a major transaction or above in relation to acquisition or disposal of a property*** - The listed issuer would be subject to the property valuation requirements.
- (b) ***For an acquisition or disposal of an interest in a company listed on the SEHK*** - The listed issuer would not be subject to the property valuation requirements and only an overview of those property interests not covered by a valuation report would be required to be disclosed in the relevant circular. However, property valuation would still be required if it is a connected transaction.
- (c) ***For a major transaction or above in relation to acquisition or disposal of an unlisted company whose assets consist solely or mainly of property*** - The listed issuer would be subject to the valuation requirements save as those with a carrying amount below 1% of the listed issuer’s total assets. However, the total carrying amount of property interests not valued must not be more than 10% of the listed issuer’s total assets. Summary disclosure of the relevant valuation report in prescribed form would be allowed if the market value of a property interest is below 5% of the listed issuer’s total valued property interests and the detailed valuation report should be available for public inspection. An overview of those property interests not covered by a valuation report would be required to be disclosed in the relevant circular.

Also, for property interests ancillary to mining activities, valuations would not be required if the relevant circular includes a valuation report by an independent professionally qualified valuer of the associated mineral or petroleum assets or resources.

- (d) ***For a very substantial acquisition*** - The existing properties of the listed issuer making the acquisition would not be subject to the valuation requirements.

CLASS EXEMPTION NOTICE

Subject to the results of the Property Valuation Consultation Paper, the SFC proposes to issue a class exemption notice under the CO Notice for the purpose of giving effect to the proposals relating to property valuation requirements for listing applicants. The class exemption notice would be subject to negative vetting by the Legislative Council.

In conjunction with the class exemption notice, the SEHK intends to amend the Listing Rules to reflect the relevant proposals. In this connection, the SEHK and the SFC will co-operate to develop the consultation conclusions and the corresponding Listing Rules amendments, although the Property

³ See Main Board Listing Rule 11.07.

Valuation Consultation Paper does not contain any proposed timetable in relation to the Listing Rules amendments.

Comments in response to the Property Valuation Consultation Paper should be submitted by 11 February 2011.

Copies of the Property Valuation Consultation Paper can be downloaded via the link below:

<https://www.sfc.hk/sfcConsultation/EN/sfcConsultFileServlet?name=PropertyValuation&type=1&docno=1>

Consultation Paper on Ex-entitlement Trading and Shareholder Approval

QUICK READ

The HKEx published its "*Consultation Paper on Ex-entitlement Trading and Shareholder Approval*" (**Ex-entitlement Trading Consultation Paper**) on 17 December 2010 to seek public views on proposed changes to the current market practice of ex-entitlement trading so to determine whether shares of a listed issuer should be traded ex-entitlement only after the relevant entitlement has been approved by shareholders.

ENTITLEMENTS

Many entitlements are benefits (i.e. cash, securities or other benefits) distributed by a company to its shareholders. Some entitlements are announced and then distributed to registered shareholders directly (e.g. an interim dividend). On the other hand, some entitlements are “proposed” by the board of directors and still require shareholders' approval at general meeting in accordance with statutory or Listing Rules requirements (i.e. they are conditional entitlements). Examples of such conditional entitlements are a final dividend and any rights issue or open offer which will lead to an increase of issued share capital or market capitalisation by more than 50 percent on its own or when aggregated with any other rights issue or open offer announced within the 12-month period immediately before the corporate action.

CURRENT MARKET PRACTICES

At present, there is no restriction on the timing of the record date for a conditional entitlement in Hong Kong. A listed issuer has the discretion to set the record date before or after the date of the shareholders' approval. A record date is a date set by a listed issuer to determine who is entitled to receive the relevant entitlement. An ex-date is usually the business day before the record date (when there is no book closure) or the last registration date (when there is a book closure). Those who are registered shareholders on the record date will receive the entitlement.

This practice is quite inconsistent with the market practices of other leading overseas exchanges (including Shanghai and Shenzhen, New York, Australia and Singapore) which require that a share not go ex-entitlement until after the shareholders' approval.

PROPOSAL

For a conditional entitlement, how a listed issuer determines its record date for the entitlement will have an impact on the orderly trading of its stocks. If the record date (and thus the ex-date) is set before the date of the general meeting, sellers on the ex-date will be subject to a risk of uncertainty pursuant to which they may not receive the entitlement as expected if the distribution is blocked by shareholders at the general meeting. Similarly, if the distribution is blocked at the general meeting, buyers on or after the ex-date may receive a windfall gain. If the record date (and thus the ex-date) is set after the general meeting at which the entitlement is approved, sellers on the ex-date will not be exposed to such risk of uncertainty and the trading of stocks would be conducted in a fair manner to both buyers and sellers.

In this connection, the Ex-entitlement Trading Consultation Paper aims to gather comments from the public on whether the Listing Rules should be amended to prevent a share from trading ex-entitlement before the shareholders' approval.

Comments in response to the Ex-entitlement Trading Consultation Paper should be submitted no later than 28 February 2011.

Copies of the Ex-entitlement Trading Consultation Paper can be downloaded via the link below:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010123.pdf>

Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules

QUICK READ

The HKEx published its "*Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules*" (**Code Consultation Paper**) on 17 December 2010 to propose changes to the Code on Corporate Governance Practices (**Code**) and certain Listing Rules relating to corporate governance. Such proposed changes include promoting some Code Provisions (**CPs**) to become Listing Rules provisions, upgrading many Recommended Best Practices (**RBP**s) to become Code Provisions and revising some existing Listing Rules provisions.

CPS AND RBPS

The difference between CPs and RBPs is that although listed issuers have the flexibility to decide whether to comply with a CP, they must explain the reasons for not doing so in their corporate governance reports. On the other hand, although listed issuers are encouraged to adopt RBPs, they are not required to state whether they have done so or not.

PROPOSALS

The major proposals contained in the Code Consultation Paper are summarised as follows:

(a) Directors' duties and time commitments

- To expand the Listing Rules provisions on directors' duties, provide guidance to directors and revise the Code to recommend greater disclosure of time commitments by directors, particularly independent non-executive directors (**INEDs**). In summary, these include:
 - a director should keep the listed issuer informed of his other professional commitments, restrict those commitments and acknowledge to the listed issuer on appointment that he will have sufficient time to meet his obligations as a director;
 - the letter of appointment should specify the time commitment expected of a director; and
 - a non-executive director (**NED**) should confirm to the nomination committee on an annual basis that he has spent sufficient time on the listed issuer's business.
- To gather views on whether a Listing Rules provision or a CP should be introduced to limit the number of INED positions which an individual may hold and if so, what is the maximum number.

(b) Directors' training and INEDs

- To upgrade the RBP on directors' training to a CP and to further propose that directors should at least attend eight hours of training on developments in law, regulations and topics

relevant to their duties.

- To introduce a Listing Rules provision that INEDs should constitute one third of a listed issuer's board and there would be a transitional period for listed issuers to comply with such requirement.

(c) Board committees

- Remuneration committee
 - Listed issuers are required to set up a remuneration committee with specific terms of reference and the committee's chairman and a majority of the members must be INEDs.
 - Two models are proposed for consultation as to how the remuneration committee should operate. The first model is that the board delegates to the committee authority to determine the remuneration of executive directors and senior management. In the second model, the board retains that authority, with the committee taking an advisory role.
- Nomination committee
 - The current RBPs in relation to the committee's establishment, composition and terms of reference are proposed to be upgraded to CPs.
- Corporate governance committee
 - To introduce a new CP which specifies the duties of a corporate governance committee but the establishment of a corporate governance committee is proposed to be a RBP only because some listed issuers may not have sufficient resources to set up such a committee and would prefer an existing board committee to assume the functions of a corporate governance committee.
 - The composition of the committee will be a new CP.
- Audit committee
 - The committee should meet with the listed issuer's external auditor at least twice a year and should, as an RBP, set up a "whistleblowing" policy so as to provide channels to employees and those who deal with the listed issuer to raise concerns.

(d) Chairman and Chief Executive Officer

- To revise the Code to emphasise the chairman's role and responsibility in leading the listed issuer's corporate governance efforts.
- A chief executive officer (**CEO**) who is not a director must disclose his appointment, resignation, re-designation, retirement or removal and any change in such particulars in the same way as a director. The remuneration of a CEO (if he is not a director) should also be disclosed.

(e) Communication with shareholders

- To include a new Listing Rules provision to require listed issuers to publish their memoranda and articles of association or other constitutional documents on their websites and on the HKEx's website on a continuous basis.
- To introduce new CPs recommending disclosure by name to state whether individual directors have attended general meetings and whether external auditors have attended general meetings to answer questions from shareholders relating to the audit of the listed issuer.
- To introduce a new CP recommending the board to establish, and regularly review, a shareholder communication policy.

(f) Company secretary

- To revise the Listing Rules provisions on company secretaries' qualifications and experience to make them less Hong Kong focused and to propose a minimum 15-hour professional training for company secretaries.
- To introduce a new section in the Code on company secretaries' roles and responsibilities.

(g) Other Listing Rules amendments

- On voting by poll: to allow an exception for procedural and administrative matters and to clarify disclosure requirements of the poll results.
- On notification of changes to directors' and supervisors' information.
- To require shareholders to approve appointment and removal of auditors. The auditors must be allowed to make a representation at the general meeting voting for their removal before the end of their term of office.

- To remove the 5% de minimis exemption on a director's right to vote on an interested transaction.
- To include in a circular information on the competing interest of a proposed director of the listed issuer.
- On next day disclosure on exercise of an option:
 - to exclude exercise, by a director of a subsidiary, of options granted by a listed issuer; and
 - aggregating events for the 5% threshold to include options exercised by persons who are not directors of the listed issuer.
- On disclosing senior management's remuneration by band.
- On disclosing directors' attendance at board meetings.

(h) Other Code amendments

- To introduce the following new CPs:
 - management to provide monthly updates, which may take the form of management accounts or trading updates, to each director; and
 - directors to disclose long term business model in which the listed issuer generates or preserves business value.
- To upgrade the following RBPs to CPs and to revise the wording:
 - nine years' service as an INED should be taken into account in determining independence;
 - INEDs and NEDs should attend board, board committee and general meetings and make contribution to the listed issuer's strategies;
 - a circular nominating a person for election as an INED should explain his suitability for election and why he is considered independent; and
 - listed issuers should take out adequate and appropriate insurance for directors.
- To introduce a new RBP recommending listed issuers to conduct regular evaluations of the board's performance.

Comments in response to the Code Consultation Paper should be submitted no later than 18 March 2011.

Copies of the Code Consultation Paper can be downloaded via the link below:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124.pdf>

First Depositary Receipt Listed on the SEHK

The HKEx first launched its HDR programme on 1 July 2008 and the first HDR, Vale S.A. (Stock Code: 06210), was listed on the SEHK by introduction on 8 December 2010.

Depositary receipts (**DRs**) are securities issued by a depositary representing the underlying shares of a listed issuer which have been placed with the depositary or its nominated custodian. The subject matter of listing is the underlying shares represented by the DRs. DRs are purchased by investors pursuant to the terms of the deposit agreement. The depositary is the agent of the listed issuer and acts as a channel between the DR holders and the listed issuer.

‘HDR’ is the informal name for a DR programme listed on the SEHK. On a general basis, there are no substantial changes to the listing regime. Issuers listing in HDR are still required to comply with the same listing requirements as issuers listing shares. The requirements for admission, the listing process and the continuing obligations are basically the same.

At present, the HDR framework applies to the Main Board only and not on GEM though it is subject to a strategic review to extend the programme to GEM. A specific chapter on HDR, Chapter 19B, was added to the Main Board Listing Rules to explain the HDR mechanism and that the Listing Rules will apply in the same manner as to the listing of equity securities although necessary modifications or clarifications are given.

Consultation Paper on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only

QUICK READ

The HKEx published its "*Consultation Paper on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only*" (**Debt Issues Consultation Paper**) on 17 December 2010 to amend the Listing Rules requirements for listing debt securities offered to professional investors only. None of the proposals contained in the Debt Issues Consultation Paper would apply to debt securities offered to retail investors in Hong Kong.

LISTING RULES

Chapter 37 of the Main Board Listing Rules deals with listing debt securities that are offered to professional investors only and not offered to public investors in Hong Kong. These debt securities are referred to in the Listing Rules as selectively marketed securities and such debt listings are referred to as listings by selective marketing. These debt securities are rarely traded on the SEHK and most trading are conducted off-exchange. Listing is sought so that institutional investors with investment mandates that are limited to listed debts can subscribe for these securities.

PROPOSALS

The major proposals contained in the Debt Issues Consultation Paper are summarised below:

- (a) Presentation
 - The relevant Listing Rules provisions are proposed to be presented in more accessible language and two forms of alternative presentation have been suggested to seek respondents' preference.
- (b) Eligibility requirements
 - To bring in line the definition of "professional investor" contained in the Listing Rules with the definition in the SFO.
 - To remove provisions relevant only to retail investors from the eligibility requirements for listing applicants.
- (c) Listing approval
 - To authorise the Executive Director - Listing (i.e. Head of Listing) to approve all offers of debt securities to professionals and allow that authority to be delegated within the Listing Division.

- (d) Listing documents
- To replace the current detailed disclosure requirements with an obligation to include information that is customary for offers of debt securities to professionals.
 - To retain the requirements to include responsibility and disclaimer statements in prescribed forms and a statement limiting distribution of the offering circular to professionals.
- (e) Application vetting
- To continue vetting applicants for compliance with the relevant listing eligibility criteria.
 - To only vet listing documents for compliance with the obligations to include disclaimer and responsibility statements in prescribed forms and a statement limiting distribution of the document to professionals only.
- (f) Application procedures
- To streamline the application procedures.
- (g) Continuing obligations
- To remove provisions relevant only to retail investors from the continuing obligations.
- (h) Other issues
- To amend the relevant GEM Listing Rules to bring them into line with the proposals contained in the consultation paper.

Comments in response to the Debt Issues Consultation Paper should be submitted no later than 18 February 2011.

Copies of the Debt Issues Consultation Paper can be downloaded via the link below:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010122.pdf>

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