



By email (response@hkex.com.hk) and by hand

8 December 2017

Our Ref.: C/RIF, BH38473

Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

[Consultation Paper on Delisting and other Rule Amendments](#)

— Please find attached a submission from the Hong Kong Institute of Certified Public Accountants on the above consultation paper. We appreciate that additional time has been allowed for us to make this submission and we are submitting our views in accordance with that extended deadline.

Broadly speaking, we agree with most of the HKEX's proposals for changes to the framework for delisting, although we consider that there should be closer alignment between the proposals relating to the Main Board and those relating to the GEM. Furthermore, we consider that specific arrangements should be made where an insolvency officeholder has been appointed to restructure a company whose shares have been long suspended. In our responses to the relevant questions in the attached questionnaire, we propose certain arrangements that provide a framework for additional time for a restructuring while preserving the objective of establishing greater certainty in the delisting process.

Should you have any questions on the submission, please contact either Mary Lam, Director of Member Support, or myself at the Institute.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

PMT/pk

Encl.

QUESTIONNAIRE ON DELISTING AND OTHER RULE AMENDMENTS

We invite interested parties to respond to the Consultation Paper on Delisting and other Rule amendments (**Consultation Paper**), which can be downloaded from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017091.pdf>

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of Respondents; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **24 November 2017** by one of the following methods:

By mail or
hand delivery to: Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Re: Consultation Paper on Delisting and other Rule amendments

By fax to: (852) 2524-0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

Re: Consultation Paper on Delisting and other Rule amendments

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited and from time to time, its subsidiaries, affiliated companies controlling it or under common control with it and its joint ventures (each such entity, from time to time, being “HKEX”, “we”, “us” or an “affiliate” for the purposes of this Privacy Policy Statement as appropriate) recognises its responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by HKEX is accurate. HKEX will use your personal data in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website, continued use by you of the HKEX website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

HKEX will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorized personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

Purpose

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

Direct marketing

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEX or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

Identity Card Number

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

Transfers of personal data for direct marketing purposes

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

Other transfers of personal data

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/or any of our affiliates in Hong Kong or elsewhere.

How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

Session Cookies: temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

Persistent Cookies: cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

Compliance with laws and regulations

You agree that HKEX and its affiliates may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEX and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Corporate reorganisation

As HKEX continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

Access and correction of personal data

Under the PDPO, you have the right to ascertain whether HKEX holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEX to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data (“**Privacy Commissioner**”) which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX’s administrative and actual costs incurred in complying with your data access requests.

Termination or cancellation

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Contact us

By Post:
Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12/F., One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Email:
pdpo@hkex.com.hk

Part A General Information of the Respondent

(1) Please state whether your response represents your personal or your company / entity's view by checking (☑) the boxes below and filling in the information as appropriate:

Company / Entity view

Company/ Entity name*:	Hong Kong Institute of Certified Public Accountants		
Company/ Entity type*:	<input type="checkbox"/> Listed Company <input type="checkbox"/> HKEX Participant <input type="checkbox"/> Investment Management Firm <input type="checkbox"/> Corporate Finance Firm <input type="checkbox"/> Law Firm <input type="checkbox"/> Accountancy Firm <input checked="" type="checkbox"/> Professional Body/Industry Association <input type="checkbox"/> None of the above (Type _____)		
Contact person*:	Mr/Ms/Mrs Mr Peter Tisman		
Title:	Director, Advocacy & Practice Development		
Phone no.*:	2287 7084	Email address:	peter@hkicpa.org.hk

Personal view

Respondent's full name*:	Mr / Ms / Mrs _____		
Phone no.*:	_____	Email address:	_____
Among the following, please select the one best describing your position*:			
<input type="checkbox"/> Listed Company Staff <input type="checkbox"/> HKEX Participant Staff <input type="checkbox"/> Individual Investor			
<input type="checkbox"/> Investment Management Staff <input type="checkbox"/> Corporate Finance Staff <input type="checkbox"/> Lawyer			
<input type="checkbox"/> Accountant <input type="checkbox"/> None of the above (Type: _____)			

Important note: All fields marked with an asterisk (*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should check the box below:

I/We do not wish to disclose my/our identity to the members of the public.

Signature (with Company/ Entity Chop if the response represents company/ entity view)

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017091.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree with our proposed MB Rule amendment to add a fixed period delisting criterion?

Yes

No

The HKICPA agrees with the need to maintain the quality and reputation of the market to support Hong Kong's status as an international financial centre, as well as to protect the interests of shareholders. In general, we support the proposal to establish an effective delisting framework, facilitating the timely delisting of issuers that no longer meet the existing continued listing criteria, and providing certainty to the market on the delisting process. At the same time, we recommend that the Stock Exchange (Exchange) consider requiring issuers that are subject to delisting to provide exit arrangements for minority shareholders to dispose of their shares for some value in return. We also consider that specific arrangements need to be made for companies in financial distress, where a provisional liquidator (PL) or other insolvency officeholder has been appointed by the court and is working on a proposal to enable the company's shares to resume trading. A PL or liquidator is an officer of the court and acts under the supervision of the court. In so doing, when undertaking a restructuring, he/she seeks to protect the interests creditors and shareholders (in particular the minority shareholders).

Experience demonstrates that some companies in financial distress can be turned around and there are many examples of this happening in Hong Kong. Restructuring efforts are often complex and likely to involve court procedures which could also include overseas court procedures. Seeking and obtaining court approvals to convene the requisite meetings of stakeholders, for example, can be very time consuming and the timelines of such procedures are not be fully within the control of the officeholder. While the framework as proposed in the consultation paper may allow up to 24 months after suspension before a company is delisted, in practice, this may not be sufficient time to allow for the successful completion of a scheme of arrangement. There are various examples that we can provide of cases where a PL was appointed and the shares in the company resumed trading after more that 24 months.

It is also anticipated that a bill to implement a statutory framework for corporate rescue in Hong Kong will be introduced into the Legislative Council in 2018. This was first proposed by the Law Reform Commission 20 years ago and, in the intervening time, other jurisdictions have introduced and/ or refined a range of formal procedures for corporate rescue or administration of companies in financial distress. Hong Kong is lagging behind, as is can be seen from the recent news that Hong Kong has dropped down a place in the World Bank's "ease of doing business" 2018 rankings, due to a lower score in the area of "resolving insolvency". Hong Kong (ranked 43) is significantly lower than Singapore (ranked 23), for example. Singapore meanwhile has recently introduced new restructuring laws on rescue financing and is marketing itself as as the restructuring hub of Asia, so as to create a better business environment to attract investors and initial public offerings. The listed company sector is an important part of the economy in Hong Kong and if Hong Kong does not have practical procedures for dealing with listed companies in financial distress, this will also have an impact on our reputation and the perception that investors have of Hong Kong's all-round business environment.

The new proposals should be considered in the wider context of alternatives in Hong Kong for distressed restructurings and corporate rescue and, at this moment, the options are few and far between. Therefore, as indicated above, we propose specific arrangements to cater for such situations and, we would add, arrangements that should also provide a greater degree of certainty for all parties than the current arrangements under Practice Note 17.

If your answer is “No”, please explain why.

2. Do you think the appropriate period under the fixed period delisting criterion should be:

12 months

18 months

24 months

Other 24 months subject to the exception explained below (please state)

Please also explain why.

Based on the data provided in the consultation paper on long suspended issuers whose securities resumed trading between 2012-2016, we wonder why the option of a 36-month fixed period has not also been offered. This is the same fixed period as adopted by the Australian Securities Exchange and 36 months would have covered 92% of the issuers whose securities resumed trading between 2012-2016. Nevertheless, given the situation in the other markets studied (apart from Australia), and in order to reduce the period of uncertainty, we can still support a fixed period of 24 months.

The caveat is that where an insolvency officeholder has been appointed (i.e., a PL, liquidator, or, in the future, assuming the legislation is passed, a provisional supervisor overseeing a corporate rescue), more time should be allowed. If a company can be successfully restructured and resume trading, the outcome offers a better solution for creditors, shareholders and the market a whole.

We propose, therefore, that where an appointment has been made within the first 18 months after the issuer's shares have been suspended, the officeholder should be given an additional 12 months to produce a viable resumption proposal. If the first proposal is rejected by the Exchange, the officeholder should be given up to a further six months to produce an acceptable proposal. If this revised proposal is also rejected, that will be an end to the matter. This would mean that where an insolvency officeholder had been appointed within the first 18 months after suspension, in total, there would be maximum suspension period of 36 months, excluding any time taken for the Exchange to consider the resumption proposal. The timelines proposed above are based on practitioners' actual experience and should ensure, firstly, that an appointment is not made just before the expiry of the 24-month fixed period, simply to stave off delisting; and, secondly, that sufficient time is allowed for the officeholder to understand the issuer's situation and develop a viable and meaningful resumption proposal.

3. Do you agree with our proposed MB Rule amendment to allow the Exchange to delist an issuer under any applicable delisting criteria in MB Rule 6.01 immediately, or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting?

Yes

No

If your answer is "No", please explain why.

4. Do you agree with our proposal to remove Practice Note 17 and to delist issuers without sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01?

Yes

No

If your answer is "No", please explain why.

5. Do you agree with our proposal to add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24?

Yes

No

If your answer is "No", please explain why.

6. Do you agree with our proposal to remove MB Rule 6.01(1)?

Yes

No

If your answer is "No", please explain why.

7. Do you agree with our proposal to clarify in MB Rule 2B.07(5) the applicable procedures for reviewing decisions to suspend or cancel a listing under MB Rule 6.01?

Yes

No

If your answer is "No", please explain why.

8. Do you agree with our proposed MB Rule amendment to require suspended issuers to announce quarterly updates?

Yes

No

If your answer is "No", please explain why.

9. Do you agree with the proposed transitional arrangements described in paragraph 52 of the consultation paper, and the proposed commencement dates of the fixed period under different situations?

Yes

No

If your answer is “No”, please explain why.

We are of the view that, rather than drawing a line arbitrarily, the same commencement date of the fixed period criterion should be applied to all suspended securities.

In order to minimise confusion to the market, it is more appropriate that the Main Board and the GEM adopt the same transitional arrangements, i.e., the fixed period should commence from the effective date of the proposed fixed period criterion (as proposed for the GEM transitional arrangements, at paragraph 59 of the consultation paper). This will also align the Main Board and the GEM listing rules regarding the delisting framework.

10. Do you agree with our proposed GEM Rule amendment to add a fixed period delisting criterion?

Yes

No

If your answer is “No”, please explain why.

11. Do you think the appropriate period under the fixed period delisting criterion should be:

6 months

12 months

Other 24 months (please state)

Please also explain why.

This suggested period aligns with the corresponding Main Board Listing Rules (see our response to Q2).

12. Do you agree with the proposed transitional arrangement described in paragraph 59 of the consultation paper?

Yes

No

If your answer is "No", please explain why.

See also our response to Q9.

13. Do you agree with our proposal to align the wording of GEM Rule 9.15 with MB Rule 6.10?

Yes

No

If your answer is "No", please explain why.

14. Do you agree with our proposal to remove GEM Rule 9.04(5)?

Yes

No

If your answer is "No", please explain why.

15. Do you agree with our proposal to clarify in GEM Rule 4.07(6) the applicable procedures for reviewing decisions to suspend or cancel a listing under Chapter 9 of the GEM Rules?

Yes

No

If your answer is "No", please explain why.

16. Do you agree with our proposed GEM Rule amendment to require suspended issuers to announce quarterly updates?

Yes

No

If your answer is "No", please explain why.

17. Do you agree with our proposal to remove MB Rule 14.37(1) / GEM Rule 19.37(1)?

Yes

No

If your answer is "No", please explain why.

We prefer to keep this bright line trading halt requirement in the Listing Rules to provide clarity to the market.

18. Do you agree with our proposal to remove MB Rule 14.37(2) / GEM Rule 19.37(2)?

Yes

No

If your answer is "No", please explain why.

See our response to Q17.

19. Do you agree with our proposed MB / GEM Rule amendment to delegate authority to the Listing Department to direct resumption of trading and to provide for an accelerated review procedure?

Yes

No

If your answer is "No", please explain why.

The existing listing rule requirement, stating that the Exchange's power to direct a resumption of trading of halted or suspended securities cannot be exercised without first giving the issuer the opportunity of being heard by the Listing Committee, prevents concentration of power within the Listing Department and provides checks and balances.

While we support the intention to provide for an accelerated review procedure for reviewing a decision to direct the resumption of trading of securities, we consider that requiring the listed issuer concerned to serve a review notice (including grounds for the review together with reasons) within 2 business days of receipt of the written decision from the Exchange would be too rushed for the listed issuer.

Therefore, instead of the normal 7 business days notice period for reviewing of decisions (Main Board rule 2B.08(1)), we would suggest requiring the review notice to be served within 3 business days of receipt of the written decision from the Exchange or, similarly to a request for reviewing a Return Decision, allow a notice period of 5 business days (Main Board rule 2B.08(2)).

- End -