

March 2024

From print to digital: Advancing corporate communications for listed issuers in the digital age



Introduction

The Stock Exchange of Hong Kong Limited (the "**Exchange**") has amended the Listing Rules to streamline listed issuers' communications with the Exchange and their shareholders, and most of the amended Listing Rules became effective on 31 December 2023.

Under the amended Listing Rules:

- (a) Listed issuers must distribute their corporate communications to **shareholders** electronically;
- (b) Listed issuers must submit documents to the **Exchange** by electronic means, subject to certain exceptions; and
- (c) Certain documents and undertakings are no longer required to be submitted to the Exchange for the assessment of listing applications or the regulation of listed issuers.

Background

On 16 December 2022, the Exchange published a consultation paper on proposals to expand the paperless listing regime (the "**Consultation Paper**"). The consultation period ended on 28 February 2023. On 30 June 2023, the Exchange published conclusions to its consultation on Proposals to Expand the Paperless Listing Regime and other Rule Amendments (the "**Consultation Conclusions**"). This newsletter primarily focuses on the electronic dissemination of corporate communications.

Electronic dissemination of corporate communications by listed issuers

Corporate communications

Corporate communications is defined as "any document issued or to be issued by a listed issuer for information or action of holders of any of its securities or the investing public, including but not limited to: (a) the directors' report, its annual accounts together with a copy of the auditors' report and, where applicable, its summary financial report; (b) the interim report and, where applicable, its summary interim report; (c) a notice of meeting; (d) a listing document; (e) a circular; (f) a proxy form; (g) an Application Proof; and (h) a Post Hearing Information Pack".

Before the amendments to the Listing Rules, listed issuers may distribute corporate communications (i) in printed form or (ii) electronically, if they have sought and obtained consent from shareholders. This can be in the form of (a) an express and positive confirmation in writing (the "**Express Consent**"); or (b) a deemed consent after the listed issuers have asked each shareholder individually for a consent to communicate through their websites and have not received an objection within 28 days (the "**Deemed Consent**").

The amended Listing Rules have been effective since 31 December 2023. Under the amended Listing Rules and subject to the laws and regulations of their places of incorporation, listed issuers **must** disseminate corporate communications to their shareholders electronically, and **may do so without the need to seek individual shareholder consent** but simply by relying on an **implied consent** from shareholders (the "**Implied Consent**").

In other words, after the amendments to the Listing Rules, what listed issuers should do depends on how they previously disseminated corporate communications:

Before 31 December 2023	Starting from 1 January 2024
Dissemination in printed form	(a) Listed issuers must transition to electronic communication. (b) They (i) may rely on an Implied Consent if such consent mechanism is permitted by laws and regulations of their relevant place of incorporation (e.g. the Cayman Islands, Bermuda, the PRC and Singapore) or (ii) obtain an Express Consent or Deemed Consent from shareholders to disseminate electronically if an Implied Consent mechanism is prohibited by laws and regulations of their jurisdiction of incorporation (e.g.

Before 31 December 2023	Starting from 1 January 2024
	Hong Kong) ¹ .
Dissemination in electronic form (under Express Consent or Deemed Consent)	Listed issuers should continue electronic dissemination by either (a) maintaining their existing consent mechanism (i.e. Express Consent or Deemed Consent) or (b) adopting an Implied Consent mechanism if permitted by laws and regulations of their place of incorporation.

A listed issuer may disseminate electronically under the Listing Rules by:

- (a) sending the document to its shareholders using electronic means (e.g. by email with the relevant document or weblink to that document on the listed issuer's website); or
- (b) making the document available on the listed issuer's and the Exchange's websites.

Actionable corporate communications

Actionable corporate communication is defined as "any corporate communication that seeks instructions from issuer's securities holders on how they wish to exercise their rights or make an election as the issuer's securities holders". Listed issuers must send actionable corporate communications to shareholders **individually**. Making them generally available on the listed issuer's and the Exchange's websites will not meet the Listing Rules requirement.

Specifically, the following items are regarded as "actionable corporate communications":

- (a) Election forms in connection with a dividend payment (e.g. choice of scrip or cash dividend, currency);
- (b) Excess application forms in connection with a rights issue or open offer;
- (c) Application forms for assured entitlement under an open offer;
- (d) Blue application forms for a preferential offering;
- (e) Pink application forms for employee reserved shares;
- (f) Acceptance forms in connection with takeovers, mergers and share buy-backs (including acceptance forms in general offers and acceptance and approval form in partial offers); and
- (g) Provisional allotment letters in connection with a rights issue.

¹ The laws and regulations of Hong Kong, the UK and the US prohibit the use of an Implied Consent for electronic dissemination. Listed issuers incorporated in these jurisdictions can adopt or continue to adopt an Express Consent or a Deemed Consent mechanism.

Request for hard copies of corporate communications

Securities holders may request hard copies of corporate communications.

A listed issuer must send corporate communications in printed form to a securities holder upon the request of a holder. Where a listed issuer receives instructions indicating a securities holder's preference to receive hard copies of the listed issuer's corporate communications (or refusal to receive them by electronic means), such instructions should be regarded as a request for hard copy unless such instructions have been revoked, superseded or have expired.

Listed issuers should disclose on their websites the arrangements for making such requests, and these arrangements must not be unduly burdensome for shareholders².

Other practical considerations

Change of dissemination arrangements

A listed issuer desiring to make a change (e.g. from Deemed Consent to Implied Consent, or from printed form to electronic communication) should send a one-time notification to its shareholders individually and by the method that the shareholders have opted for (electronic or printed). It should also ask shareholders for their functional electronic contact details (if not already received) and explain the purpose of such request.

Listed issuers are reminded that a change in the consent mechanism for electronic dissemination will not make the existing requests for printed communications invalid. For example, if a listed issuer changes from Deemed Consent to Implied Consent, it should continue sending printed corporate communications to shareholders who have made these requests previously, until these requests are revoked, suspended or expired.

Handling unsuccessful deliveries

If a listed issuer attempts to send a corporate communication electronically and receives a non-delivery message, it should send the document to the shareholder using other electronic means or in printed form. In the case of an actionable corporate communication, the listed issuer must send the document in printed form together with a request for functional electronic communication details of the shareholder.

Listed issuers incorporated in Hong Kong

Under the Companies Ordinance (Cap. 622) ("**CO**"), companies incorporated in Hong Kong are required to obtain prior Express or Deemed Consent from shareholders for communications by means of a website. Implied Consent is currently not recognised under the CO. Therefore, as mentioned, listed issuers incorporated in Hong Kong may rely on Express Consent or Deemed Consent from shareholders to disseminate communications electronically.

To further promote paperless corporate communications for both listed and non-listed companies incorporated in Hong Kong, the Financial Services and the Treasury Bureau ("**FSTB**") has issued a consultation paper proposing reforms to the CO and such consultation concluded on 26 January 2024. The

² For example, the need to request printed form communications on a per document basis would be considered unduly burdensome to shareholders.

FSTB proposes to allow **both** listed and non-listed companies incorporated in Hong Kong to choose to rely on Implied Consent for disseminating corporate communications via their websites.

It is expected that an Amendment Bill will be introduced to the Legislative Council in the second half of 2024. If passed, it would enable listed issuers incorporated in Hong Kong to rely on Implied Consent for the future dissemination of corporate communications.

Revision of constitutional documents

In respect of the amended Listing Rules in relation to the electronic dissemination of the corporate communications by listed issuers, existing listed issuers and listing applicants seeking to list on the Exchange **must ascertain whether their constitutional documents contain any provision that prohibit them from disseminating** corporate communications to their securities holders **electronically** in accordance with the relevant Rules.

1. Transitional arrangements for amendments to constitutional documents

Where there is an **express** provision in the constitutional documents that prohibits disseminating corporate communications to their securities holders electronically (e.g. any provision that mandates hardcopy dissemination as the only means of dissemination of corporate communications), we should ascertain whether such prohibition exists due to a requirement under the applicable laws and regulations that the listed issuer is subject to.

If it is necessary for listed issuers to amend their constitutional documents under the circumstances specified above, the following **transitional arrangements** will apply to listed issuers that are listed on the Exchange **before 31 December 2023**:

- (a) Listed issuers that are **not prohibited by applicable laws and regulations** from complying with the relevant amended Listing Rules will have until their **first annual general meeting following 31 December 2023** to make necessary amendments (if any) to their constitutional documents to facilitate electronic dissemination of corporate communications in accordance with the relevant Rules; and
- (b) Listed issuers that are **unable to comply** with the requirements set out in the amended Listing Rules **due to any restriction under any applicable laws and regulations** would have until their **first annual general meeting following** the date on which the relevant **restrictions are removed** from the applicable laws and regulations to make the necessary amendment to their constitutional documents to facilitate their compliance with the relevant Rules.

2. Other inconsistencies between the constitutional documents and the amended Listing Rules

In practice, we have seen cases where there are **no express** provisions in the constitutional documents that prohibit the electronic dissemination of corporate communications, but there may still be inconsistencies between the constitutional documents and the amended Listing Rules. These situations, with a few examples set out below, warrant careful consideration and special attention:

- (a) Some constitutional documents of listed issuers, often prepared based on previous listing rules, stipulate that listed issuers can only rely on (i) Express Consent or (ii) Deemed Consent for electronic dissemination of corporate communications while Implied Consent is not explicitly provided as an option under the constitutional documents.

- (b) The constitutional documents typically require listed issuers to send a separate notification to shareholders each time a new Corporate Communication is published on their websites, which is not required under the mechanism of Implied Consent.

Key takeaways

The amendments to the Listing Rules regarding the electronic dissemination of corporate communications by listed issuers aim to enhance efficiency, reduce costs, and align with the prevalent use of the internet in Hong Kong. By mandating electronic dissemination, the Exchange seeks to streamline communications between listed issuers and their shareholders. Listed issuers should familiarise themselves with the amended rules and ensure compliance with the new requirements.

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