

Public Consultation on Promoting Paperless Corporate Communication for Hong Kong Companies

FOREWORD

1. This consultation document is issued by the Financial Services and the Treasury Bureau (“FSTB”) for seeking views on proposals relating to promoting paperless corporate communication for Hong Kong companies.
2. FSTB welcomes written comments on or before 26 January 2024 by email or by mail –

By email: e-comm-consult@fstb.gov.hk
By mail: Division 6, Financial Services Branch,
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway, Hong Kong
3. FSTB may, as appropriate, reproduce, quote, summarise and publish the written comments received, in whole or in part, in any form and use without seeking permission of the contributing parties.
4. Names of the contributing parties and their affiliations may be referred to in other documents we publish and disseminate through different means after the consultation. If any contributing parties do not wish to have their names or affiliations disclosed, please expressly state so in their written comments. Any personal data provided will only be used by FSTB and other government departments/agencies for purposes which are related to this consultation.

Promoting Paperless Corporate Communication for Hong Kong Companies

Purpose

The Government plans to introduce legislative proposals with a view to further facilitating Hong Kong companies to communicate with their shareholders via electronic means. This paper sets out key features of the legislative proposals.

Background

Revised Listing Rules on Electronic Dissemination of Corporate Communications

2. The Hong Kong Exchanges and Clearing Limited (“HKEX”) conducted a public consultation on further progressing to a paperless listing regime from 16 December 2022 to 28 February 2023. One of the initiatives put forward by the HKEX is to mandate listed companies to disseminate corporate communications to shareholders electronically to the extent permitted under their applicable laws and regulations. Given the majority support received from stakeholders in the consultation exercise, the HKEX concluded to implement the initiatives¹ and the amended Listing Rules (other than certain minor and housekeeping amendments²) will take effect on 31 December 2023.

3. The Listing Rules of HKEX currently allow listed companies to disseminate corporate communications to shareholders by publishing them on their websites, provided that express consent in writing or deemed consent³ has been received from shareholders. In addition, listed companies are required to notify shareholders each time when new corporate communication is uploaded. This will unavoidably lead to paper

¹ Apart from mandating electronic dissemination of corporate communications, other key initiatives include mandating digitalisation of prospectus authorisation and registration process and restructuring the Appendices to the Listing Rules.

² The minor and housekeeping amendments to the Listing Rules came into effect on 8 July 2023.

³ Under the deemed consent mechanism, the following conditions should be met, i.e. (a) the shareholders have resolved in a general meeting (or its constitutional documents contain a provision to the effect) that it may do so; (b) the shareholder has been asked individually by the listed company for such consent; and (c) the listed company has not received a response indicating the shareholder’s objection within 28 days.

consumption as the notifications will be delivered in hard copy if electronic contact details of shareholders are not provided for receiving the notifications.

4. To promote paperless corporate communication for listed companies, the HKEX will remove from the Listing Rules mandatory requirements for listed companies to make use of the existing consent mechanisms (i.e. express or deemed consent) for disseminating corporate communications electronically including through publication on their websites. Under the revised Listing Rules, a listed issuer will be able to use the consent mechanism of its choice for disseminating corporate communications electronically provided that the chosen mechanism is permissible under the laws and regulations applicable to it. Hence, listed companies may choose to rely on **implied consent**⁴ for disseminating corporate communications by means of website without the need to seek consent from each shareholder individually and send separate notifications to shareholders each time when new corporate communication is published on the websites, subject to the applicable laws and regulations as well as the articles of associations of the companies concerned.

5. The revised Listing Rules will put in place sufficient safeguards to protect the interest of shareholders. Listed companies will be required to specify, on their websites, the manner in which corporate communications will be sent or otherwise made available to their shareholders, including the arrangements under which shareholders may make hard copy requests. To ensure that shareholders are fully aware of the new arrangements on electronic dissemination of corporate communications by means of website, including any change to the mode of dissemination and the consent mechanism, all listed companies will be required to send a **first-time notification** to inform each shareholder individually in hard copy or electronically⁵ of the new arrangements before implementation and solicit their electronic contact details (if applicable). If any shareholder requests to receive corporate communications in hard copy, he/she may raise such a request with the listed companies accordingly anytime. Actionable corporate communications⁶ that seek instructions from shareholders will

⁴ Under the implied consent mechanism, shareholders receive corporate communications via electronic means where the articles of association of the company state so.

⁵ For cases where the shareholders have previously agreed to be notified by a particular electronic means.

⁶ Some examples of actionable corporate communication are (a) provisional allotment letter and excess application form in connection with a rights issue or open offer; (b) application form for assured entitlement under an open offer; (c) blue application form for a preferential offering; (d) pink application form for employee reserved shares; and (e) acceptance forms in connection with takeovers, mergers and share buy-backs.

continue to be sent to shareholders individually⁷. Separately, shareholders will be encouraged to make use of the News Alert service on the HKEX’s website to receive instant notification of listed companies’ information by way of email or mobile alerts.

Existing Requirements under the Companies Ordinance

6. Electronic communication with shareholders by companies has been introduced in the Companies Ordinance (Cap. 622) (“CO”) since 2010. At present, options are available under the CO for companies to communicate with shareholders electronically, i.e. by electronic form or website, with the following consent requirements.

	Communication in electronic form	Communication by means of website
Existing consent requirements	<ul style="list-style-type: none"> • Prior express consent must be obtained from its shareholders. <p>(c.f. section 831 of the CO)</p>	<ul style="list-style-type: none"> • Prior express or deemed consent⁸ must be obtained from the shareholders. • The company should notify the shareholders each time new corporate communication is made available on its website. • The notification above should be made in hard copy or electronically (with shareholders’ agreement obtained). <p>(c.f. section 833 of the CO)</p>

⁷ Actionable corporate communication must be disseminated individually in hard copy only if functional electronic contact details are not provided or if the issuer’s applicable laws and regulations do not allow electronic communication.

⁸ Under section 833 of the CO, there is a **deemed consent** mechanism for electronic communications by means of website. A company may individually request a shareholder to agree that the document or information be supplied to him/her by means of website, and such request clearly states that the shareholder is deemed to have given consent if he/she fails to respond within 28 days of the company’s request.

7. In addition, shareholders may request companies to provide hard copy form of document or information under section 837 of the CO. There is, however, no implied consent mechanism in the CO for disseminating corporate communications to shareholders by electronic form or website.

International Practice

8. As at end-September 2023, there are 2 603 listed companies in Hong Kong, among which 209 (8.0%) are incorporated in Hong Kong, while 90% of the listed companies are incorporated in three jurisdictions, namely the Mainland (325 or 12.5%), Bermuda (463 or 17.8%) and Cayman Islands (1 558 or 59.9%).

9. In the Mainland, Bermuda and Cayman Islands, there is no restriction under their respective local company law for listed companies to adopt implied consent mechanism for disseminating corporate communications by means of website. Furthermore, in the Mainland and Cayman Islands⁹, listed companies are not required to send separate notification to shareholders when disseminating corporate communications by means of website.

Legislative Proposals

10. As mentioned in paragraph 6 above, the CO already provides for electronic communication made by companies to shareholders individually or by means of website. To further promote paperless corporate communications through website for both listed and non-listed companies incorporated in Hong Kong, we **recommend** amending the CO by introducing an implied consent mechanism and streamlining the notification requirement. Suitable safeguard measures will also be put in place to protect shareholders' interest. Details are set out in the ensuing paragraphs.

(A) Implied consent mechanism

11. We propose allowing both listed and non-listed companies incorporated in Hong Kong to choose to rely on **implied consent** (i.e. where the articles of the association state so, hence no need to seek consent from

⁹ For Cayman Islands, no separate notification is needed if it is agreeable between company and shareholders.

shareholders individually) for disseminating corporate communications by means of website, having regard to their specific needs and circumstances.

(B) Separate notification requirement

12. Regarding the separate notification requirement, we propose obviating the need for listed companies to send separate notifications to shareholders when new corporate communication is uploaded to website if the companies concerned choose to adopt the implied consent mechanism.

13. We are mindful that the News Alert service provided by the HKEX is not available to non-listed companies. If the non-listed companies choose to adopt the implied consent mechanism, we propose requiring the companies concerned to obtain **one-off prior express consent** from shareholders for obviating the need for them to send separate notifications to shareholders when new corporate communication is uploaded to website. This will ensure that the new arrangement is agreeable to the shareholders and that their interest will be protected.

14. The proposal to remove the existing requirement of issuing separate notification whenever corporate communication is disseminated by means of website will help reduce paper consumption.

(C) Safeguards to protect interest of shareholders

15. We also propose to put in place sufficient safeguards in the CO to protect the interest of shareholders. Specifically, both listed and non-listed companies which would like to adopt the implied consent mechanism will be required to issue a **first-time notification** to each shareholder individually in hard copy or electronically¹⁰ to inform them of the new arrangements regarding electronic dissemination of corporate communication by means of website before implementation and to solicit their email addresses (if applicable). The shareholders may also request hard copy of corporate communications anytime under section 837 of the CO.

Advice Sought and Next Steps

16. Promoting paperless corporate communication will improve the efficiency and cost effectiveness of companies and establish an environmentally-friendly business environment in Hong Kong. Members

¹⁰ For cases where the shareholders have previously agreed to be notified by a particular electronic means.

of the public are invited to offer views and suggestions on the legislative proposals set out above.

17. We will take into account the comments received in finalising the proposals, with a view to introducing an Amendment Bill to the Legislative Council in the second half of 2024.

**Financial Services Branch
Financial Services and the Treasury Bureau
November 2023**