

# Client Alert

## Corporate Finance

7 July 2023

### Mandatory electronic dissemination of listed issuers' corporate communications to their securities holders effective from 31 December 2023

On 30 June 2023, The Stock Exchange of Hong Kong Limited (**Exchange**) published [conclusions](#) to its consultation launched last December on its proposals to expand the paperless listing regime and other Listing Rule amendments. The Exchange will adopt all the proposals with a few minor modifications.

One of the key proposals that will be adopted is to mandate electronic dissemination of listed issuers' corporate communications to their securities holders to the extent permitted by their applicable laws and regulations. This client alert discusses this new requirement which will become effective on **31 December 2023**.

#### What are the current requirements?

Under the current Listing Rules, a listed issuer may send corporate communications to a holder of its securities using electronic means only where the listed issuer has previously received from this holder an express, positive confirmation in writing that the holder wishes to receive the corporate communication by the means and in the manner proposed by the listed issuer.

In respect of communications by means of a website, a holder of the listed issuer's securities is deemed to have given consent that the issuer may send such communications by means of its own website, provided that: (a) the holders have resolved in a general meeting (or its constitutional documents contain a provision to the effect) that it may do so; (b) the holder has been asked individually by the issuer for such consent; and (c) the issuer has not received a response indicating the holder's objection within 28 days. The listed issuer is required to send a separate notification to the holder each time there is a new document or information available on the website. If a holder has not provided electronic contact details for receiving this notification by electronic means, the listed issuer must notify that holder by non-electronic means.

#### What are the new requirements that will become effective on 31 December 2023?

##### ***Mandating electronic dissemination of corporate communications***

Effective from 31 December 2023, all listed issuers must disseminate corporate communications to their securities holders electronically to the extent permitted by their applicable laws and regulations.

A listed issuer may only send corporate communications in printed form to a securities holder upon the request of that holder. Each listed issuer must disclose, on its website, the relevant arrangements for its securities holders to make such a hard copy request.

##### ***Removing existing Listing Rule provisions on the arrangements a listed issuer must make to avail itself of the consent mechanism for disseminating corporate communications electronically***

The current Listing Rules concerning the mandatory arrangements a listed issuer must make to avail itself of the consent mechanism for disseminating corporate communications electronically will be removed.

That means, listed issuers may rely on implied consent for electronic dissemination of corporate communications if this is permitted by their applicable laws and regulations.

The respective company laws of the Cayman Islands and Bermuda generally allow shareholders' consent to be implied for the purpose of dissemination of corporate communications provided that certain requirements are satisfied. In the

PRC, there is no specific restriction against the dissemination of corporate communication by electronic means. In Hong Kong, implied consent is not allowed under the Hong Kong Companies Ordinance. The Exchange will work with relevant parties to consider the issue of implied consent for the corporate communications of Hong Kong-incorporated listed issuers.

**Mandating “actionable corporate communications” to be sent to securities holders individually and in electronic form**

A listed issuer will be required to send “**actionable corporate communications**” (i.e. corporate communications that seek instructions from an issuer’s securities holders on how they wish to exercise their rights or make an election as the issuer’s securities holders) to securities holders individually and in electronic form if functional electronic contact details have been provided to the issuer. Issuers would not be able to satisfy this requirement by publishing actionable corporate communications on their websites and the Exchange’s website only.

Where a listed issuer does not have functional electronic contact details of a securities holder, an actionable corporate communication must be sent to the holder in hard copy form (including a request for the security holder’s electronic contact details to facilitate electronic dissemination of actionable corporate communications in the future).

It is expected that the Exchange will publish guidance materials in due course to facilitate listed issuers to duly comply with the above new requirements.

**Will listed issuers or listing applicants be required to amend their constitutional documents in light of the new requirements?**

Listed issuers and listing applicants must ascertain whether their constitutional documents contain any provision that may prohibit them from disseminating corporate communications to their securities holders electronically.

These issuers will be required to amend their constitutional documents only if their constitutional documents contain any restriction to that effect (e.g. any provision that mandates hard copy dissemination as the only means of dissemination of corporate communications).

If any such restriction is due to a requirement under the applicable laws and regulations the issuer is subject to, the issuer will be required to amend its constitutional documents to facilitate its compliance with the relevant Listing Rules, if and when, the relevant restriction is removed from the applicable laws and regulations.

The following **transitional arrangements** will apply to issuers that are listed on the Exchange before 31 December 2023:

	<b>Deadline for amending the constitutional documents</b>
Issuers that are not prohibited by applicable laws and regulations from disseminating corporate communications to their securities holders electronically	Their first annual general meeting following 31 December 2023
Issuers that are unable to comply with the amended Listing Rules due to any restriction under any applicable laws and regulations	Their first annual general meeting following the date on which the relevant restrictions are removed from the applicable laws and regulations

Listing applicants that are to be listed on the Exchange on or after 31 December 2023 will be required to comply with the amended Listing Rules upon listing to the extent permitted under their applicable laws and regulations.

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