



CHARTERED
SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on Capital Raisings by Listed Issuers

22 November 2017

By Email Only: response@hkex.com.hk

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

Dear Sirs

Re: Consultation Paper on Capital Raisings by Listed Issuers

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. HKICS is also a Founder Member of Corporate Secretaries International Association (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

HKICS Supports HKEX's Proposals

HKICS supports, in general, the HKEX's proposals (**Proposals**) contained under the Consultation Paper on Capital Raising by Listed Issuers (**Consultation Paper**). The general support is on the basis that the Proposals are conducive to good governance and Hong Kong's market development. As identified under the Consultation Paper, there are market concerns as to patterns of problematic corporate behaviours of some listed issuers, including questionable structures or practices undertaken by a number of listed issuers that might not afford a fair treatment of minority shareholders or an orderly market for securities trading. We agree that it is in the interest of ensuring fair and equal treatment for all shareholders and maintaining market quality that there should be (1) restrictions on highly dilutive rights issues, open offers and specific mandate placings (Chapter 2, Consultation Paper); (2) changes to specific requirements relating to other capital raising activities (Chapter 3, Consultation Paper) and; (3) other proposed Rule amendments (Chapter 4, Consultation Paper).

Consultation Paper Proposals

In relation to the specific questions raised under the Consultation Paper:

Q1. Do you agree with the proposal to disallow highly dilutive pre-emptive offers unless there are exceptional circumstances? If not, why not?

We agree with the proposal. The definition of highly dilutive pre-emptive offers at 25% or more provides the market with a working definition and transparency as to the HKEX's practice on the topic.

Q2. Do you agree with the proposed 25% threshold on value dilution? If not, what is the appropriate percentage threshold and the reasons for this threshold?

We agree with the proposal. The materiality of the dilution is significant as illustrated under the table under paragraph 36 of the Consultation Paper. This level of dilution warrants regulatory attention and consideration of wider interests of shareholders, especially minority shareholders.

Q3. Do you agree that the proposed requirements should also apply to share issuance under a specific mandate? If not, why not?

We agree with the proposal for consistency of regulatory objective. Further in practice, the empirical data in paragraph 41 of the Consultation Paper shows that the market impact of the proposal on listed issuers in general is limited, and as such worth considering.

Q4. Do you agree with the proposal to aggregate rights issues, open offers and specific mandate placings within a rolling 12-month period? If not, why not?

We have no issue with the 12-month period, which as explained under paragraph 47 of the Consultation Paper, is in line with the current HKEX requirements in restricting ownership dilution in large scale pre-emptive offers.

Q5. Do you agree with the proposed method of calculating cumulative value dilution? If not, what is the appropriate method?

We have no issue with the calculations as illustrated under Appendix III of the Consultation Paper should these be adopted.

Q6. Do you agree with the proposal to extend the minority shareholder approval requirement to all open offers (unless the new securities are issued under the general mandate)? If not, why not?

We agree with the proposal. As identified under paragraph 52 of the Consultation Paper, there is less protection under open offers, and non-subscribing shareholders would lose the value of their subscription rights which makes regulation of open offers appropriate.

Q7. Do you agree with the proposal to remove the underwriting requirement for pre-emptive offers? If not, why not?

We have no issue as this approach represents an alignment with international practice in UK, Australia and Singapore as set forth under paragraph 65 of the Consultation Paper.

Q8. Do you agree with our proposal to require underwriters to be licensed persons independent from the issuers and their connected persons?

We have no strong views on the proposal, and recognise the mitigation of the full rigours thereof under paragraph 72 of the Consultation Paper where the controlling shareholder's support is permitted under an underwriting.

Q9. In view of paragraphs 72 and 73 of the Consultation Paper:

(a) do you agree that controlling shareholders should be allowed to act as underwriters? If so, why?

We agree with the proposal and the reasons articulated under paragraph 72 of the Consultation Paper.

(b) do you think that substantial (but not controlling) shareholders should be allowed to act as underwriters? If so, why?

We have no views on the matter, but defer to market consensus, if any.

Q10. Do you agree that compensatory arrangements should be mandatory when pre-emptive offers are underwritten by connected persons?

We have no views on the matter, but defer to market consensus, if any.

Q11. Do you agree with the proposal to remove the connected transaction exemption for underwriting (including sub-underwriting) of pre-emptive offers by connected persons? If not, why not?

We have no views on the matter, but defer to market consensus, if any.

Q12. Do you agree with the proposal to make it mandatory for issuers to adopt either the excess application arrangement or the compensatory arrangement in rights issues and open offers? If not, why not?

We have no views on the matter, but defer to market consensus, if any.

Q13. Do you agree with the proposal to limit the excess applications by a controlling shareholder and his/her/its associates to a maximum number equivalent to the offer shares minus their pro rata entitlements? If not, why not?

We have no views on the matter, but defer to market consensus, if any.

Q14. Do you agree with our proposal to disallow the use of general mandate for placing of warrants and options for cash consideration? If not, why not?

We agree with the proposal in view of the empirical evidences set out under paragraph 95 of the Consultation Paper.

Q15. Do you agree with the proposal to disallow any price discount of the initial conversion price of convertible securities to be placed under general mandate? If not, why not?

We have no issue with the proposal which is in line with UK and US practices as set out under paragraph 102 of the Consultation Paper.

Q16. Do you agree with the proposal to require disclosure of the use of proceeds from all equity fundraisings in interim and annual reports? If not, why not?

We agree with the proposal. The disclosure requirement is in line with good governance, and represents a codification of existing practice as explained under paragraph 109 of the Consultation Paper.

Q17. Do you agree with the proposal to impose a minimum price requirement on subdivision or bonus issue of shares? If not, why not?

We have no views on the matter, but defer to market consensus, if any.

Q18. Do you agree with the proposed minimum adjusted price of HK\$1? If not, what is the threshold you consider appropriate: (a) HK\$0.5; or (b) other?

We have no views on the matter, but defer to market consensus, if any.

Q19. Do you support a demonstration period of six months? If not, please specify the period you consider appropriate.

We have no views on the matter, but defer to market consensus, if any.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at 2881 6177 or research@hkics.org.hk.

Yours faithfully,

Ivan Tam FCIS FCS
President
The Hong Kong Institute of Chartered Secretaries