



CHARTERED
SECRETARIES
特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on Backdoor Listing,
Continuing Listing Criteria and Other Rule Amendments

9 August 2018

By Email Only: response@hkex.com.hk

Hong Kong Exchanges and Clearing Limited
10th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs

Consultation Paper (CP) on Backdoor Listing, Continuing Listing Criteria and Other Rule
Amendments

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 Limited (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

Overall Support

Under the CP, the Exchange and the SFC have noted that there are market concerns as to patterns of problematic corporate behaviours of some listed issuers. HKICS agrees with the CP that while shell activities are limited to a small segment of the market, these activities invite speculative trading and could lead to opportunities for market manipulation, insider trading and unnecessary volatility in the market which are not in the interest of the investing public.

As such, HKICS as a governance institute supports the holistic review by the Exchange of regulations relating to backdoor listing, and expresses its overall support for the proposals under the CP to address

specific concerns. HKICS views it as important for Hong Kong to maintain the reputation of Hong Kong's market and quality of listed companies as a leading international financial centre.

Questions Raised

In relation to the questions raised under the CP, please find our responses thereto (with capitalised terms as defined under the CP):

Q1 Do you agree with the proposal to codify the assessment criteria under the principle based test in a Note to the proposed Rule 14.06B? If not, why?

- We agree. A principle based test under the RTO Rules is in good governance. This is preferable to an overly prescriptive approach.

Q2 Do you agree with the proposal to extend the current criterion "issue of restricted convertible securities" in the principle based test to include any change in control or de facto control of issuers? If not, why?

- We agree. These catch all provisions address the mischiefs covered under the RTO Rules.

Q3 (a) As regards the "series of arrangements" criterion, do you agree with the proposal to include transactions and arrangements that take place in reasonable proximity or are otherwise related and normally within a three-year period? If not, why?

- We have no issue with the current two-year period or extension to the three-year period as proposed under the RTO Rules.

(b) Do you agree with the proposal to amend the RTO Rule 14.06B to clarify that a series of acquisitions may include proposed and/or completed acquisitions? If not, why?

- We agree with the proposal.

Q4 (a) Do you agree with the proposal to retain the bright line tests under Rules 14.06(6)(a) and (b) in a Note to the proposed Rule 14.06B? If not, why?

- We agree with the retention of the bright line tests.

(b) Do you agree with the proposal to extend the aggregation period from 24 months to 36 months under the bright line test currently set out in Rule 14.06(6)(b)? If not, why?

- Subject to our answer in Q3(a), we have no issue with the proposal.

Q5 (a) Do you agree with the proposed changes to Rule 14.92 (proposed Rule 14.06E) as described in paragraph 56? If not, why?

- We agree with the proposed changes. Rule 8.05 is relevant for overall assessment of the situation.

(b) Do you agree with the proposal to add a Note to proposed Rule 14.06E as described in paragraph 59? If not, why?

- We agree with the proposal. This is a relevant factor for consideration under the RTO Rules.

Q6 (a) Do you agree with the proposal to add a new Rule 14.06C for "extreme transactions" as described in paragraph 62? If not, why?

- We agree with the codification and related clarifications. Listing Rules guidance should be incorporated into the Listing Rules over time, where appropriate. This is a general proposition in good governance.

(b) Do you agree with the disclosure requirements for circulars of extreme transactions set out in proposed Rules 14.53A(1) and 14.69? If not, why?

- We agree with the disclosure requirements. This is in good governance.

(c) Do you agree with the due diligence requirements for extreme transactions under proposed Rule 14.53A(2)? If not, why?

- We agree. These relate to extreme transactions where additional due diligence should be required under the proposed rule.

Q7 (a) Do you agree with the proposal to amend Rule 14.54 and to add Rule 14.06C(2) as described in paragraph 69(i)? If not, why?

- We have no issue with the application of Rule 8.05 to both the acquisition targets and enlarged group.

(b) Do you agree with the proposal to amend Rule 14.54 to impose additional requirements on RTOs proposed by Rule 13.24 issuers as described in paragraph 69(ii)? If not, why?

- We have no issue with the new listing requirements under this situation.

Q8 (a) Do you agree with the proposed Rule 14.57A to clarify the track record requirements for extreme transactions and RTOs that involve a series of transactions and/or arrangements? If not, why?

- We agree with the proposal.

(b) Do you agree with the proposed Rule 4.30 that sets out the requirements for preparing pro forma income statement of all the acquisition targets in the entire series of acquisitions (where applicable, would include any new business developed by the issuer that forms part of the series) for the track record period? If not, why?

- We agree with the proposal.

Q9 Do you agree with the proposal to add a new Rule 14.06D to codify, with modification, the practice under Guidance Letter [GL84-15](#) as described in paragraph 81? If not, why?

- As with our answer to Q6(a), we agree with the codification and related clarifications.

Q10 Do you agree with the proposal to require issuers to have a business with a sufficient level of operations and assets of sufficient value to support its operations to warrant the continued listing of the issuer's securities? If not, why?

- We agree and this proposal in line with other mature market approaches.

Q11 Do you agree with (a) the proposal to add a Note to the proposed Rule 13.24(1) as described in paragraphs 107 to 109; and (b) the proposal to remove the Note to Rule 13.24 as described in paragraph 112? If not, why?

- We agree with the proposal.

Q12 Do you agree with the proposal to exclude an issuer's securities trading and/or investment activities (other than a Chapter 21 company) when considering the sufficiency of the issuer's operations and assets under Rule 13.24? If not, why?

- We agree with the proposal.

Q13 Do you agree with the proposal to extend the definition of short-dated securities in the cash company Rules to cover investments that are easily convertible into cash ("short-term investments")? If not, why?

- We agree with the proposal.

Q14 Do you agree with the proposal that the exemption under Rule 14.83 shall only be confined to clients' assets relating to the issuer's securities brokerage business? If not, why?

- We agree with the proposal.

Q15 Do you agree with the proposal to confine the revenue exemption to purchases and sales of securities only if they are conducted by banking companies, insurance companies and securities houses within the listed issuers' group? If not, why?

- We agree with the proposal.

Q16 Do you agree with the proposal to require issuers to disclose in their annual reports details of each securities investment that represents 5% or more of their total assets (as described in paragraph 134 above)? If not, why?

- We agree as this is a substantial amount for the listed issuer concerned. The information disclosure is in good governance.

Q17 Do you agree with the proposal to codify the requirements set out in Listing Decision [LD75-4](#) (as described in paragraph 137 above) for significant distribution in specie of unlisted assets into the Rules? If not, why?

- As with our answer to Q6(a), we agree with the codification and related clarifications.

Q18 Do you agree with the proposal to require disclosure on any subsequent change and the outcome of any financial performance guarantee of a target acquired by the issuer in a notifiable or connected transaction as set out in paragraph 140? If not, why?

- We have no particular concerns with the proposal. However, we have Member views that if there is a financial guarantee, and it is performed, the additional disclosure requirements would not add value to the information provided to the investing public. Further, in a failure situation, where the financial guarantee is not material, there will be no inside information and there again there is no additional value to the disclosure. Please consider.

Q19 (a) Do you agree with the proposal to require disclosure on the identity of the parties to a transaction in the announcements and circulars of notifiable transactions? If not, why?

- We have Member views that while there is the nexus relating to disclosures for connected persons, for independent third party, there could be legitimate commercial and regulatory reasons that the counterparty may want the information not to be available in the public realm. This may be the case even where information as to ultimate beneficial ownership is provided for anti-money laundering/counter financing of terrorism vetting to the listed company. Please consider.

(b) Do you agree with the proposal to require the disclosure on the identities and activities of the parties to the transaction and of their ultimate beneficial owners in the announcements of connected transactions? If not, why?

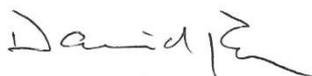
- We have no issue with this approach.

Q20 Do you agree with the proposal that if any calculation of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activities of the issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a transaction under Chapter 14 or 14A? If not, why?

- We have no issue with this approach.

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,



David Fu FCIS FCS(PE)

President

The Hong Kong Institute of Chartered Secretaries