

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/June-2018-Backdoor-and-Continuing-Listing/Consultation-Paper/cp201806.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. 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?

Yes

No

If your answer is “No”, please give reasons for your views.

It is preferred to maintain principle based test as part of the guidance letter as such test is subjective to a certain extend and the measurement may vary among issuers under different circumstances. Codify the assessment criteria may discourage all takeover activities in Hong Kong stock market, which will weaken the positioning of Hong Kong as being one the of world's key financial center.

2. 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?

Yes

No

If your answer is “No”, please give reasons for your views.

The restricted convertible securities has already refrained the stakeholder from conversion that will trigger the change of control as defined under the Takeover Code. As such, it would be pre-mature for the Exchange to conclude de facto control has changed at the time when restricted convertible securities are issued but yet to exercise.

3. (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?

Yes

No

If your answer is “No”, please give reasons for your views.

The current 24 months are long enough to monitor a series of transaction/arrangement.

- (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?

Yes

No

If your answer is “No”, please give reasons for your views.

Such extension in the principal test would hinder an issuer, after being acquired, from expanding into new business segment or developing innovative business initiative. While the Exchange welcomes new technology company to listed in HK, the current proposal indeed discourage board of director or management in business innovation and expansion even after a genuine merger.

4. (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?

Yes

No

If your answer is “No”, please give reasons for your views.

(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)?

Yes

No

If your answer is “No”, please give reasons for your views.

The current 24 months is long enough already to monitor the business development of a listed issuer after it is being acquired.

5. (a) Do you agree with the proposed changes to Rule 14.92 (proposed Rule 14.06E) as described in paragraph 56 of the Consultation Paper?

Yes

No

If your answer is “No”, please give reasons for your views.

It would be unfair to impose prolonged period to the issuer in disposing its existing business after change of control, in particularly, if the disposing business has been loss making due to change in operating environment where divestment would in fact improve the overall value of the issuer. An over-regulated regime would harm the operation of an issuer after it is being acquired, or in extreme case, prevent any white knight from proposing rescue operation to a listed company with financial difficulties.

(b) Do you agree with the proposal to add a Note to proposed Rule 14.06E as described in paragraph 59 of the Consultation Paper?

Yes

No

If your answer is “No”, please give reasons for your views.

While understanding the Consultation Paper try to eliminate the shell operation, 14.06E is likely to affect genuine M&A where new controller may reallocate its resources or trim down certain operation of an issuer, especially those loss making segment or obsolete facilities. Too much restriction imposed by the Exchange over the issuers' post-acquisition strategies would affect the image of Hong Kong as being a free market in the eyes of investors and multi-national corporation.

6. (a) Do you agree with the proposal to add a new Rule 14.06C for “extreme transactions” as described in paragraph 62 of the Consultation Paper?

Yes

No

If your answer is “No”, please give reasons for your views.

(b) Do you agree with the disclosure requirements for circulars of extreme transactions set out in proposed Rules 14.53A(1) and 14.69?

Yes

No

If your answer is “No”, please give reasons for your views.

(c) Do you agree with the due diligence requirements for extreme transactions under proposed Rule 14.53A(2)?

Yes

No

If your answer is "No", please give reasons for your views.

it would be unduly burdensome for an issuer to undergo such exercise while sufficient information will be disclosed to the shareholders and public under the standard of Very Substantial Acquisition. in particularly, if the assets are acquiring from independent third parties, such due diligence requirement could be a deal breaker as the vendor would find it difficult to accommodate such request in a commercial world.

7. (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) of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

it would be too stringent for extending the requirement to enlarged group, in particularly when the issuer's existing business has experienced a downturn while incoming target can standalone fulfill all requirements under Chapter 8.

- (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) of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

Such amendment basically discourage any issuer that facing an adverse operating situation (whether temporary or fundamentally) from revising its business strategy or introducing any new strategic investor or business partners which could in fact revive their operation. Business transformation of an issuer should not be viewed as backdoor listing.

8. (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?

Yes

No

If your answer is "No", please give reasons for your views.

The concept of series of transactions/arrangement , including new business developed by the issuer is difficult enough to delineate, pro forma income statement which involve various accounting standard would not necessarily produce any meaningful figures for investors.

- (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?

Yes

No

If your answer is "No", please give reasons for your views.

same as 8(a) above

9. 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 of the Consultation Paper?

- Yes
- No

If your answer is “No”, please give reasons for your views.

That would in certain extend restrict the flexibility of an issuer in planning their fund raising activities for expanding or diversify its business, especially for those company with small asset base by its nature (such as TMT and company in servicing sector).

10. 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?

- Yes
- No

If your answer is “No”, please give reasons for your views.

11. (a) Do you agree with the proposal to add a Note to the proposed Rule 13.24(1) as described in paragraphs 107 to 109 of the Consultation Paper?

- Yes
- No

If your answer is “No”, please give reasons for your views.

- (b) Do you agree with the proposal to remove the Note to Rule 13.24 as described in paragraph 112 of the Consultation Paper?

- Yes
- No

If your answer is “No”, please give reasons for your views.

12. 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?

Yes

No

If your answer is “No”, please give reasons for your views.

13. 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”)?

Yes

No

If your answer is “No”, please give reasons for your views.

While new proposal already classified securities trading not being counted towards issuer's sufficiency in its operation, it would be meaningless to place additional restriction as to how an issuer utilises its liquid asset, whether in the form of short dated securities or cash, which indeed is just the position on a particular month/year end date.

14. 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?

Yes

No

If your answer is "No", please give reasons for your views.

15. 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?

Yes

No

If your answer is "No", please give reasons for your views.

16. 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 of the Consultation Paper)?

Yes

No

If your answer is "No", please give reasons for your views.

Making short term investment as a treasury function is quite common for an issuer and it is unduly burdensome to require analytical disclosure for an issuer.

17. Do you agree with the proposal to codify the requirements set out in Listing Decision LD75-4 (as described in paragraph 137 of the Consultation Paper) for significant distribution in specie of unlisted assets into the Rules?

Yes

No

If your answer is "No", please give reasons for your views.

Distribution in specie could be view as a disposal (but just everybody has the same interest), which should follow the same threshold as governed under notifiable transaction in Chapter 14 rather than a more stringent requirement as if it is a delisting.

18. 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 of the Consultation Paper?

Yes

No

If your answer is "No", please give reasons for your views.

19. (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?

Yes

No

If your answer is "No", please give reasons for your views.

(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?

Yes

No

If your answer is "No", please give reasons for your views.

20. 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?

Yes

No

If your answer is "No", please give reasons for your views.

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