

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.

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.

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.

Although we agree three- year period is a reasonable time to review whether issuers' transactions shall aggregate as a “series of arrangement” to evaluate its RTO obligation, we would like to propose that the amendment of the RTO Rule 14.06B shall expressly allow normal business development of the issuer due to change of market conditions.

- (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.

We do not agree to include the proposed transaction which have not yet completed as part of the series of acquisitions/arrangement. Since legally speaking the proposed transaction is not complete, and we cannot see the logics on how to deem those non-completed transactions as part of series of transactions.

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.

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.

(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.

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.

We agree with the PN21 due diligence requirements. Further, we would like to propose to SEHK to have the exception for the investment property, since the due diligence for the investment properties may not be meaningful.

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.

The existing Rule 14.54 already requires the acquisition of Target Business under extreme very substantial acquisition ("EVSA") need to qualify for the profit requirements under Rule 8.05. The proposed change in the paragraph 69 (i) of the consultation paper further requires the enlarged group (combined the listed group and the Target Business) upon completion of the EVSA also needs to fulfill the Rule 8.05 requirements. If that is the case, it will come up to a harsh result that the profitability requirements of the Target Business by a loss making listed company under the EVSA will further increase.

The acquisition of the Target Business which qualifies for the IPO profit requirements already serves the purpose to ensure the asset quality and profitability. Other than generating difficulties/limiting the choice of Target Business, we cannot see how the new proposed Rule 14.54 can benefit the general investment public. The amendment will further detriment the interests of the general investment public which holds shares of a loss making listed companies that undergoes EVSA and has a chance to change.

- (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.

Listed companies under the challenge in Rule 13.24 (“13.24 Companies”) are already classified with insufficient operation. In order to protect the interest of the general investment public, 13.24 Companies shall improve their business operation and profitability for their shareholders.

If 13.24 Companies intend to acquire a profitable business (“Target Business”) through a very substantial acquisition (“VSA”), the current Rule 14.06 treats the Target Business as an RTO, then Rule 14.54 applies to require the Target Business to comply with the three-year profits requirements equal to a new listing application (“IPO Profits”). The current requirements already ensure the Target Business is qualified for a new listing with IPO Profits, the RTO of the Target Business into a 13.24 Company is permissible. It is already a stringent requirement, but currently works quite well with restructuring practitioners and listed companies.

Under the proposed changes of the new Rule 14.54(2), 13.24 Companies undertaking an RTO not only must have the Target Business met the IPO Profits, the Target Business must cover all past losses of the listed companies in the past three years in computing the IPO Profits to be approved for acquisition. That means, even if the Target Business can meet the IPO Profits, so long as the 13.24 Company made a loss in any of the past three years, its RTO profit requirements for the Target Business will substantially increase.

Evidence shows that the RTO under the existing Listing Rules undertaken by suspended companies performed well in both short and long term upon resumption of trading, and we do not foresee there is any extra benefits from the introduction of the New Rule 14.54 (2). (details please refer to the appendix 1)

We estimate there are about 100 issuers currently not fulfilling Rule 13.24, or on the verge of failing it. Under the current Listing Rules, through the acquisition of Target Business which satisfies IPO Profits, they can save themselves from delisting. Under the proposed changes, the chance to acquire qualify Target Business will reduce substantially.

The number of shareholders affected will be in hundreds of thousands, and the degree of impact on HKEx’s reputation, general investment market, and the social instability caused should not be under-estimated. We understand HKEx is not responsible to protect the interests of minority shareholders of any particular listed company. However, the 13.24 Companies’ shareholders already represent a small group of general investment public in Hong Kong which should not consider expendable.

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.

- (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.

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.

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.

Some of the business operations do not require substantial asset to support, such as financial advisory, asset management, hotel management, medical service and the property agent operations. Normally all the service based business operation will not require a substantial asset to back their business operation, since the major asset of those service base companies are their human resource. As there is no accounting policy able to give a fair value for the human resource of the business operation. Hence the induction of the new change of the Rule for the 13.24 Company 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 will eliminate the business development on service base business operations even those are sustainable and profitable service base business.

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.

The proposed Note to be added in the proposed Rule 13.24(1) is to introduce a qualitative test, however there is not clear about what is the definition about the view of the HKEx. Based on the proposed wording on Rule 13.24 (1) it is unclear to understand what is a business has substance and/or that is viable and sustainable.

Commercial market changes from time to time. Technologies can be outdated overnight and replaced by new technologies. Certain sunset business after alternation of business model remains active and sustainable (such as certain newspaper media, and phonograph record). We believe the role of HKEx is providing a health and regulated stock exchange platform for the investors and we agree certain measure need to be placed to avoid those "Shell" company with no real business operation. However, to avoid unclear definition of Rule 13.24 (1), a clear guideline on the qualitative test is needed for the general investment public and the listed issuers.

(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.

Principally we agree with the spirit of this propose changes in Rule13.24, however we would like to propose 2 suggestions when considering the sufficiency of the issuer's operations and assets

(i) to include (a) security dealing business operators, and (b) asset management company in the exclusion clause currently it is stated (other than a Chapter 21 company).

(ii) the definition of the investment activities shall exclude the property investments

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.

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.

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.

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.

- End -