HARNEYS

Harney Westwood & Riegels
3501 The Center
99 Queen's Road Central
Hong Kong
Tel: +852 5806 7800
Fax: +852 5806 7810

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[redacted]

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

Dear Sirs

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

We are very grateful to the HKEX for the opportunity to provide a response to its Consultation Paper.

This letter has been prepared by this law firm on the basis that Harneys has acted for and continues to act for a diverse Hong Kong-centric client base, encompassing leading international accountancy practices, onshore law firms, financial institutions, private equity sponsors, hedge funds, directors, shareholders and corporate debtors, all of whom are incorporated or have clients incorporated in the Cayman Islands, the British Virgin Islands or Bermuda (the ***Caribbean Jurisdictions***), such jurisdictions being prescribed by the Listing Rules as "recognised" or "acceptable" jurisdictions for the purpose of eligibility for listing to the Main Board or GEM.

Given the prevalence of Hong Kong listed companies being incorporated in the Caribbean Jurisdictions, the impact of certain aspects of the Consultation Paper, if implemented in its current form, is likely to have a significant negative influence on the manner in which Hong Kong practitioners, in conjunction with their Caribbean counterparts, seek to represent and rescue listed companies and to undertake corporate resumptions of companies incorporated in the Caribbean Jurisdictions.

Many of the proposals in the Consultation Paper are codifications of current practice and are to be supported if not applauded. However, we do have two principal concerns regarding the proposed amendments to Rule 13.24 and Rule 14.54.

1. Rule 13.24

The current language of Rule 13.24 requires that an issuer must carry out a sufficient level of operations **or** have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the HKEX to warrant the continued listing of the issuer's securities.

The Consultation Paper proposes that Rule 13.24 be amended, amongst other things, to make it clear that for transactions that are classified as a RTO and extreme transactions, a listed issuer must carry out a

business with a sufficient level of operations **and** have assets of sufficient value to support its operations to warrant its continued listing; and to exclude an issuer's trading and/or investment in securities (other than an investment company listed under Chapter 21) when considering the sufficiency of the issuer's operations and assets under Rule 13.24.

2. Amendment to Rule 14.54

Currently, a listed issuer proposing a RTO will be treated as if it were a new listing applicant. Under Rule 14.54 the enlarged group or the assets to be acquired must meet the requirements for new applicants under Rule 8.05 and the enlarged group must meet all other new listing requirements under Chapter 8 of the Rules.

The Consultation Paper proposes an amendment to Rule 14.54 to add Rule 14.06C(2) (applicable to extreme transactions) to require that i) both the acquisition targets **and** the enlarged group must satisfy Rule 8.04 (i.e. be suitable for listing); and ii) the acquisition targets must satisfy Rule 8.05 (i.e. the track record requirements) and the enlarged group must meet all the new listing requirements set out in Chapter 8 of the Rules. The Consultation Paper also proposes amendments to Rule 14.54 to require that where an issuer that has failed to comply with Rule 13.24 and proposes a RTO transaction, each of the acquisition targets **and** the enlarged group must meet all the new listing requirements set out in Chapter 8 of the Rules.

3. Impact of Proposed Amendments to Rule 13.24 and Rule 14.54

In our experience, the HKEX has taken a robust approach in applying the current language of Rule 13.24 to cases where the issuers maintain very low levels of operations. In circumstances where a listed company has insufficient operations (that is, it is in breach of or is about to breach Rule 13.24) and intends to acquire a profitable business (***Target***) through a very substantial acquisition (***VSA***), Rule 14.06 treats the Target as a RTO; the current form of Rule 14.54 applies which requires the Target to comply with the three-year profits requirement equal to a new listing application (***New Listing Profits Requirement***). The current Rules ensure that as the Target is itself qualified for a new listing, the RTO of the Target into the listed issuer is not a circumvention of new listing requirement for the Target. It is a rigorous requirement but works well with practitioners and listed companies.

The proposed amendments to Rule 14.54 is overly arduous to listed companies with insufficient operations that are trying to rescue themselves as a going concern by way of RTO. Under the proposed amendments to Rule 14.54, a listed company that fails Rule 13.24 and which undertakes a RTO must not only have the Target meet the New Listing Profits Requirement, but the Target and the listed company must also cover all past losses on a consolidated basis in the past three years in calculating the New Listing Profits Requirements. The practical impact of this is that even if the Target can meet the New Listing Profits Requirement, so long as the listed company (in breach of Rule 13.24) made a loss in any of the past three years, the company still cannot acquire the Target.

This proposed amendment is extreme and unnecessary in our view. We are not aware of any evidence to suggest that RTOs of listed companies breaching Rule 13.24 are undermining or damaging market confidence. On the contrary, evidence shows that almost all recent RTOs undertaken by suspended companies performed well in both short and long term upon resumption of trading.

Issuer (stock code)	**New asset/ business injected through RTO**	**Share price performance after resumption as compared with issue prices of securities issued as consideration for the RTO**			
		1st Day	90th Day	1st Year	As at 1 Aug 2018

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		1st Day	90th Day	1st Year	As at 1 Aug 2018
Daqing Dairy Holdings Limited (1007) *Note1*	PRC hotpot chain	182.9%	NA	NA	143.9%
Jiande International Holdings Limited (865)	PRC property developing business	82.3%	32.3%	53.8%	32.3%
China Display Optoelectronics Technology Holdings Limited (334)	LCD module manufacturing business	734.3%	288.6%	85.7%	82.9%
Fullshare Holdings Limited (607)	PRC property developer business	196.0%	420.0%	960.0%	6,480.0%
Z-Obee Holdings Limited (948) *Note2*	Reactivation of business	45.8%	109.9%	NA	93.1%
	Average	**248.3%**	**212.7%**	**366.5%**	**1,366.4%**

**Table above is courtesy of Yu Ming Investment Management Limited*

Note:

1. *Trading in the shares of Daqing Dairy Holdings Limited resumed on 6 July 2018.*

2. *Trading in the shares of Z-Obee Holdings Limited resumed on 30 November 2017 through reviving the existing business of the issuer to satisfy Rule 13.24, which did not constitute a RTO.*

Under the current Rules, if such a listed company were to acquire a Target that satisfies the New Listing Profits Requirement, it can save itself from delisting. Under the proposed amendments, most listed companies in breach of Rule 13.24 will be delisted even after a RTO of a Target that fulfills the New Listing Profits Requirements.

There is also wider concern that the proposed amendments, whether intentionally or not, are not conducive towards supporting the rescue culture that many jurisdictions rigorously uphold, both through reforms to its insolvency and companies legislation and through global judicial comity. A delisted company also serves no purpose in promoting market confidence for minority, shareholder investors. In this regard, the HKEX plays a crucial role in trying to preserve shareholder value and not disenfranchising shareholders of any residual value in their shares by virtue of not allowing a viable restructuring to occur.

Whilst there is a degree of entering the unknown, if the proposed amendments to Rule 13.24 and Rule 14.54 are implemented, we could expect to see a kneejerk reaction of increased insolvency filings in the Caribbean Jurisdictions in an attempt to preserve the value in the listing status. While such filings may be appropriate in certain circumstances, it should not become the norm and again represents the antithesis of the rescue culture and promoting global market confidence.

It would be my pleasure to answer any queries that the HKEX may have in respect of this letter. Please feel free to contact me by email [redacted] or by telephone [redacted].

Yours faithfully

[redacted]

Chai Ridgers
Partner
Harney Westwood & Riegels