

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/eng/newsconsul/mktconsul/Documents/cp2017092.pdf>

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

1. Do you agree with the proposal to disallow highly dilutive pre-emptive offers unless there are exceptional circumstances?

☒ Yes

☐ No

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

We agree that highly dilutive pre-emptive offers should be regulated, but they should not be disallowed. See our comments below.

2. 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?

☐ Yes

☒ No

(Please specify the appropriate percentage threshold _____)

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

We believe the 25% threshold may appear fair and reasonable for a lot of issuers. However, for issuers of shares with low trading volume, the market price of such shares may not be a good reference point. The calculation of value dilution based on market price could be too restrictive for some of these issuers (e.g. if the market price of its shares stays at a relatively high level, but with a low trading volume).

3. Do you agree that the proposed requirements should also apply to share issuance under a specific mandate?

☐ Yes

☒ No

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

Issuance under a specific mandate is already subject to shareholders' approval (or in the case of connected issuance, subject to independent shareholders' approval and IFA opinion). Issuers (especially smaller companies) should be given a higher flexibility to develop their business through equity issuance.

4. Do you agree with the proposal to aggregate rights issues, open offers and specific mandate placings within a rolling 12-month period?

☐ Yes

☒ No

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

We consider it more appropriate to aggregate rights issues and open offers (excluding specific mandate placings) within a rolling 12-month period.

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

☒ Yes

☐ No

(Please specify the appropriate method _____)

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

We agree with the methodology, and we agree that this methodology can be applied to set different levels of regulation. However, we do not believe the 25% threshold should be used as an absolute bright-line to disallow all equity issuances exceeding that threshold.

6. 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)?

☐ Yes

☒ No

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

There appears no pressing need to change the current open offer / rights issue practice if they are not highly dilutive. However, if an open offer is highly dilutive (e.g. the 25% threshold is exceeded), the Exchange may require the issuer to change the open offer into a rights issue so that the minority shareholders who will not participate in the fund raising activity can sell the nil-paid rights in the market.

7. Do you agree with the proposal to remove the underwriting requirement for pre-emptive offers?

☒ Yes

☐ No

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

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

☐ Yes

☒ No

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

In principle, controlling shareholders should be allowed to support an issuer's fund raising activity.

The practice of allowing a connected person to be an underwriter allows an issuer to complete a rights issue / open offer within a shorter timeframe to meet its funding need, yet also providing certainty of fund raising with no underwriting cost. Other measures (as discussed below) may be put in place to minimize the chance of any unfair treatment to minority shareholders. With such measures in place, there is no need to entirely disallow controlling shareholders to be underwriters.

9. 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?

☒ Yes

☐ No

If your answer is "Yes", please give reasons for your views.

See our response to question 8 above.

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

☒ Yes

☐ No

If your answer is "Yes", please give reasons for your views.

See our response to question 8 above.

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

☒ Yes

☐ No

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

This can help to address concern that controlling shareholder may deliberately price the offer shares low so as to increase their stakes at low cost.

11. Do you agree with the proposal to remove the connected transaction exemption for underwriting (including sub-underwriting) of pre-emptive offers by connected persons?

☒ Yes

☐ No

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

12. 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?

☒ Yes

☐ No

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

13. 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?

☐ Yes

☒ No

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

HKEx may wish to consider also limiting the excess application by all shareholders by a fair formulation. Otherwise it could be unfair to the controlling shareholder in some circumstances. For example, if there are one 30% controlling shareholder and one 29% substantial shareholder, and each putting in a large excess application, the latter will receive a much larger number of unsubscribed offer shares than the former.

14. Do you agree with our proposal to disallow the use of general mandate for placing of warrants and options for cash consideration?

☐ Yes

☒ No

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

HKEx may wish to consider coming up with a "standard" formulation that practitioners can follow when proposing to issue warrants/options for cash. Specific mandate may be required when warrants/options are issued "undervalue" as determined by such "standard" formulation (or if a deviation from the "standard" formulation is required to determine the fair value of the warrant/options given their terms are special). HKEx may also wish to specify that the restriction does not apply to an issue of warrants/option as part of the consideration for a transaction.

15. 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?

☐ Yes

☒ No

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

The current practice on the pricing of convertible bonds does not appear problematic and there is no pressing needs to follow other jurisdiction's practice.

HKEx may wish to clarify whether this rule (if adopted) would apply to both convertible debt securities (e.g. convertible bonds) and convertible equity securities (e.g. convertible preference shares). HKEx may also wish to clarify, for this purpose, whether the effective conversion price should be used if the convertible securities are issued at a discount/premium (e.g. For illustrative purpose, let us assume that the shares of an issuer are traded at HK\$1.05. If a convertible bond is issued at 105% of its face value, and its conversion price is HK\$1.00, the effective conversion price would be HK\$1.05. Can the general mandate be used for the issue of this convertible bond?)

16. Do you agree with the proposal to require disclosure of the use of proceeds from all equity fundraisings in interim and annual reports?

☒ Yes

☐ No

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

17. Do you agree with the proposal to impose a minimum price requirement on subdivision or bonus issue of shares?

☒ Yes

☐ No

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

18. 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?

☐ HK\$1

☐ HK\$0.5

☒ Other (Please specify the appropriate threshold case-specific)

If your answer is "Other", please give reasons for your views.

We agree to set a minimum adjusted price, but the threshold should be different for large-scale issuers and small-scale issuers.

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

☐ Yes

☒ No
(Please specify the appropriate demonstration period _____)

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

There appears no pressing need to impose a demonstration period. If HKEx considers that a share subdivision is not justified, they can exercise discretionary power to reject the corporate action. In the absence of any guidance on the remedial action, imposing a demonstration period seems to be too restrictive for most normal issuers.

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