



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

30 November 2017

By email < response@hkex.com.hk > and by post

Our Ref.: C/CFAP, M114203

Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Dear Sirs,

Re: [Consultation Paper on Capital Raisings by Listed Issuers](#)

--- The Hong Kong Institute of Certified Public Accountants has considered the above consultation paper and our comments are set out in the questionnaire attached to this letter.

If you have any questions on this submission or wish to discuss it further, please contact me at the Institute by phone on 2287 7372 or email <chris@hki CPA.org.hk> or Mary Lam, Director, Member Support by phone on 2287 7086 or email <mary@hki CPA.org.hk>.

Yours faithfully,

Chris Joy
Executive Director

Encl.

QUESTIONNAIRE ON CAPITAL RAISINGS BY LISTED ISSUERS

We invite interested parties to respond to the Consultation Paper on Capital Raisings by Listed Issuers (**Consultation Paper**), which can be downloaded from the HKEX website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017092.pdf>

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of Respondents; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **24 November 2017** by one of the following methods:

By mail or
hand delivery to: Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Re: Consultation Paper on Capital Raisings by Listed Issuers

By fax to: (852) 2524-0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

Re: Consultation Paper on Capital Raisings by Listed Issuers

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

Privacy Policy Statement

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We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website, continued use by you of the HKEX website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

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Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

Purpose

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

Direct marketing

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEX or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

Identity Card Number

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

Transfers of personal data for direct marketing purposes

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

Other transfers of personal data

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/or any of our affiliates in Hong Kong or elsewhere.

How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

Session Cookies: temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

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The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

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You agree that HKEX and its affiliates may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEX and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Corporate reorganisation

As HKEX continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

Access and correction of personal data

Under the PDPO, you have the right to ascertain whether HKEX holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEX to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data (“**Privacy Commissioner**”) which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX’s administrative and actual costs incurred in complying with your data access requests.

Termination or cancellation

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Contact us

By Post:
Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12/F., One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Email:
pdpo@hkex.com.hk

Part A General Information of the Respondent

- (1) Please state whether your response represents your personal or your company / entity's view by checking (☑) the boxes below and filling in the information as appropriate:

Company / Entity view

Company/ Entity name*:	Hong Kong Institute of Certified Public Accountants		
Company/ Entity type*:	<input type="checkbox"/> Listed Company <input type="checkbox"/> HKEX Participant <input type="checkbox"/> Investment Management Firm <input type="checkbox"/> Corporate Finance Firm <input type="checkbox"/> Law Firm <input type="checkbox"/> Accountancy Firm <input checked="" type="checkbox"/> Professional Body/Industry Association <input type="checkbox"/> None of the above (Type _____)		
Contact person*:	Mr/Ms/Mrs Mary Lam		
Title:	Director, Member Support		
Phone no.*:	<u>2287 7086</u>	Email address:	<u>mary@hkicpa.org.hk</u>

Personal view

Respondent's full name*:	Mr / Ms / Mrs _____		
Phone no.*:	_____	Email address:	_____
Among the following, please select the one best describing your position*:			
<input type="checkbox"/> Listed Company Staff <input type="checkbox"/> HKEX Participant Staff <input type="checkbox"/> Individual Investor			
<input type="checkbox"/> Investment Management Staff <input type="checkbox"/> Corporate Finance Staff <input type="checkbox"/> Lawyer			
<input type="checkbox"/> Accountant <input type="checkbox"/> None of the above (Type: _____)			

Important note: All fields marked with an asterisk (*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should check the box below:

I/We do not wish to disclose my/our identity to the members of the public.

Signature (with Company/ Entity Chop if the response represents company/ entity view)

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.

As mentioned in the consultation paper, one of the reasons for making specific provisions in the Listing Rules to prohibit certain capital raising activities which currently require minority shareholders' approvals for doing so is because of the very low turnout rates at shareholders' meetings, which makes the Exchange believe that voting results might not fairly reflect minority shareholders' support of such activities. To address this situation, we recommend that the Exchange should consider also stepping up its work in relation to investor education.

We note that at the moment, there is no requirement for intermediaries (e.g., brokers, CCASS, etc.) to disseminate shareholders' meetings information to their clients, and they are also not obliged to obtain voting instructions from shareholders and cast votes at shareholders' meetings. We suggest the Exchange look further into this matter and consider working with the Securities and Futures Commission to impose rules requiring the intermediaries to actively disseminate company information to shareholders and seek voting instructions from them to cast votes at shareholders' meetings. We believe that the above measures would, to certain extent, encourage shareholders/investors more actively exercise their rights through the casting of votes at shareholders' meetings.

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.

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.

While we appreciate that the purpose of the Stock Exchange introducing the proposed requirements is to ensure that share issuances are conducted in a fair and orderly manner and structured for the benefit of the listed issuer and all its shareholders, we consider that there should be appropriate balance between shareholder protection and listed issuers' genuine capital needs. Too restrictive rules on secondary market fund raising activities would not be good to the development of the Hong Kong capital market.

With sufficient information and better disclosures in shareholders' circulars, including clearly explained commercial rationale as well as the justification for the need of a specific mandate placing to meet the issuer's capital need, for shareholders to make an informed decision in exercising their voting rights, we believe that shareholders' interest would be safeguarded.

In the case that the Exchange considers that a share issuance activity of a listed issuer is very highly dilutive and lacks demonstrable commercial rationale which would be detrimental to shareholders, it may still withhold the granting of listing approval for dealing in the new shares.

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.

Referring to our response to Q3 above, we consider that the rolling 12-month period should be applied to aggregate rights issues and open offers (i.e., exclude specific mandate placings).

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.

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.

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.

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.

As mentioned in paragraph 72 of the consultation paper, there may be legitimate reasons for controlling shareholders to underwrite pre-emptive offers. For example, some listed issuers may prefer the certainty of underwriting, but are unable to find independent licensed persons to underwrite their offers, or may find it undesirable to pay a high underwriting fee to commercial underwriters.

Also, commercial underwriters might dispose of the underwritten shares quickly after the completion of the offer, leading to significant price volatility after the offer, whereas there would be an alignment of shareholders' interest in general where a controlling shareholder acts as the underwriter.

(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.

We are of the view that listed issuers should be given the flexibility to engage substantial shareholders to underwrite pre-emptive offers for reasons similar to those described in Q9(a) above.

As regards the concerns that the underwriting arrangement may provide an opportunity for substantial shareholders to acquire or consolidate control of the issuers at a discount or without paying a control premium, it is noted that the change in control issue may raise the concerns of the Securities and Futures Commission under the Takeovers Code, and is governed by the "Whitewash procedure" of the Takeovers Code. The substantial shareholders concerned would have to seek whitewash waivers from the SFC's Executive under Note 1 on dispensations from Rule 26 of the Takeovers Code.

From the shareholder protection perspective, the SFC's Executive would not normally grant a whitewash waiver if the SFC's Executive has concerns that the arrangement is oppressive to the minority shareholders or otherwise contrary to the General Principles of the Takeovers Code. This could serve as a check against the potential abuse.

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.

We do not agree to make compensatory arrangements a mandatory requirement.

As compensatory arrangements require unsubscribed shares first be offered to independent investors at market price (in the situation when the market price is at a premium to the offer price) and the premium will be paid to the non-subscribing shareholders, we are concerned that such offer of shares to the market might affect the share price. This arrangement to compensate non-subscribing shareholders would be at the expense of the shareholders who have subscribed for the shares in the pre-emptive offers, which is not desirable.

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.

Under the general principles of the existing Listing Rules (rule 2.03(4)) that all holders of listed securities are treated fairly and equally, we are of the view that the proposal to limit the excess applications to a maximum number equivalent to the offer shares minus their pro rata entitlements should be applied to all shareholders and their associates.

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.

We consider that it is not desirable to rule out the possibility of genuine commercial need for placing of warrants and options under general mandate. Therefore, instead of a strict prohibition, we suggest that consideration should be given to allow a certain percentage, for example, not more than 25%, of the general mandate used for placing of warrants and options for cash consideration.

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 initial conversion price of convertible securities should be allowed to be determined by the parties concerned at arm's length, taking into account many relevant factors such as the capital market condition and the interest rate trend. Also, the proposed clarification to the general mandate rules set out in paragraph 103 of the consultation paper would deal with the price discount issue.

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.

No strong view on this proposal.

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 _____)

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

No strong view on this proposal.

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 3
months)

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

Our proposed demonstration period of 3 months is benchmarked against the equivalent requirement in Singapore, which is a potential competitor to Hong Kong among the Asian exchanges.

Singapore requires a demonstration period of only 1 month. Our proposed 3-month period is already three folds of the period adopted by Singapore, as we have taken into consideration that Singapore has more stringent rules which require listed companies to take remedial actions if their shares trade below a minimum price of SG\$0.5 over a period.

- End -