



19 April 2018

Corporate Finance Division
The Securities and Futures Commission
35th Floor, Cheung Kong Center
2 Queen's Road Central
Hong Kong

BY E-MAIL AND BY POST

Dear Sirs,

**Submission to Consultation Paper on proposed amendments to the
Codes on Takeovers and Mergers and Share Buy-backs**

The Chamber of Hong Kong Listed Companies is pleased to submit its views towards the consultation paper on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs.

Our views expressed here as spelled out in the following are related to those questions where we have opinions on. For questions that we do not address here, we are in general agreement.

Q1. Do you agree with the proposals regarding parties' dealings with the Executive, Panel and Takeovers Appeal Committee? If not, please give reasons.

The wordings in the new section 5.2 read, "A person dealing with the Executive or to whom enquiries or requests are directed must provide true, accurate and complete information." We agree to the spirit of this but the devils are in the details and in how the wordings are interpreted. When a person responds to enquiries or requests from the Executive, his responsibility should be fulfilled once he provides the information that is pertained to the specific enquiries and requests and that is true, accurate and complete at that time. Particularly for the completeness requirement, it is only reasonable that the person is expected to provide information within the realm of the specific enquiries or requests but not in an open-ended manner. To require the person to perform the latter would be impractical. Indeed, even statutory obligations normally have clear-cut time limit. Besides, the aforesaid ongoing obligation shall be subject to the carve-out of the legal privileged information and other secrecy information preserved by law.

Q2. Do you agree with the proposal to add new sections 7.2 and 13.12 to the Introduction to the Codes and to amend section 13.10 to the Introduction to the Codes? If not, please give answers.

Q3. Do you agree with the new proposal regarding compensation rulings? If not, please give reasons.

While we appreciate the intents and purposes of these additions, we just want to share our views that any compliance or compensation rulings made under the Takeovers and Mergers Code, which is a voluntary code, are non-enforceable. Non-compliance of those rulings would not result in an infringement of the law, and so the effects of these rulings are doubtful. The Executive may need to resort to the Securities and Futures Ordinance for any rulings to be enforceable.

Q.5 Do you agree with the proposal to amend the definition of associate and the consequential amendments? If not, please give reasons.

We agree that the definition of associates should be reasonably narrowed and made consistent with that of “persons acting in concert”. Activities conducted by persons acting in concert would have to be disclosed in any event and that would ensure activities undertaken by associates under the new definition would be disclosed as well. As such, the level of transparency would not be compromised. We also note that the main purpose of defining “Associates” is for disclosure of dealing and if so, we propose to align the definition of “Associates” with that of “persons acting in concert” so that only the offerors and persons acting in concert with the offerors are required to disclose their dealings under the Takeovers Code but not other Associates as currently defined. As regards the options and if our proposal is not accepted, we support option (1).

Q.7 Do you agree that the voting threshold for whitewash waivers should be increased from 50% to 75%? If not, please give reasons.

We do not agree that this threshold be raised to 75% as that would be a far too stringent requirement, making it too easy for independent shareholders to veto the whitewash waivers, thus presenting difficulties for change-in-control transactions to proceed, and discouraging genuine transactions. We believe that instead of imposing a hard and fast rule, the Securities and Futures Commission can continue to act as a gatekeeper to monitor the nature of the change-of-control transactions and reserve the right to withhold the issue of a whitewash waiver, as it presently does, even if it is approved by 50% of independent shareholders. As for the potential abuse mentioned in paragraph 43, the Stock Exchange is addressing the whole issue of shares offer at steep discount and there would be various remedies set in place to protect independent shareholders’ interests.

Q.8 Do you agree that separate resolutions should be required for each of the underlying whitewash transaction(s) and the whitewash waiver? If not, please give reasons.

We agree.

Q.9 Do you agree that the 75% voting threshold should apply to each resolution for the underlying whitewash transaction(s) and the whitewash waiver? If not, please give reasons.

In light of our views that whitewash waivers’ voting threshold be maintained at 50%, the voting threshold of the underlying whitewash transactions should be kept at 50% for consistency.



Q.19 Do you agree with the proposed new Notes 4 and 5 to Rule 12 an the consequential changes relating to the new Note to Rue 8.6 and the new Note 6 to Rules 9.3 and 9.4? If not, please give reasons.

We accept that accuracy of translations, either from English to Chinese or from Chinese to English, is very important and needs to be assured. But as more and more Mainland Chinese companies are listed in Hong Kong, many documents might first be written in Chinese and then translated into English. In such cases, the Mainland Chinese directors however might not be in a good language position to confirm the accuracy of the English translation. (The reverse would apply to an entirely non-Chinese board.) We therefore suggest instead of holding directors responsible for the accuracy of a language that they are not capable of, the Executive can accept a confirmation by a professional translator given that the directors will ultimately be responsible for all information as contained in announcement and circular and such requirement shall only applicable to scalable transactions e.g. Very Substantial Acquisition or Disposal and Reverse Takeover. Some members further take the view that given that the directors are responsible for all announcements and circulars anyway, it is not necessary to impose this requirement in particular, no such requirement is required for announcements and circulars that are issued under the Listing Rules.

The above are views the Chamber has towards specific questions of the Consultation Paper. We are happy to further discuss them with the SFC should it be necessary.

Yours sincerely,
For and on behalf of
The Chamber of Hong Kong Listed Companies

A handwritten signature in black ink, appearing to read 'Mike Wong', written in a cursive style.

Mike Wong
Chief Executive Officer