



CHKLC's Response to HKEX Consultation Paper on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments

香港上市公司商會對香港交易所
有關借殼上市、持續上市準則及
其他規則修訂諮詢文件的回應

The HKEX published a consultation in June 2018 regarding backdoor listing (“backdoor listing consultation”). It seeks to raise the threshold for backdoor listing, making it difficult for assets or businesses that do not fulfil the listing requirements to get listed via this channel, and to prevent issuers that are not suitable for listing from being used as “shells” or be maintained as such as the vehicle for backdoor listings.

The Chamber supports a just and reasonably-regulated market to the extent that it would not interfere with company capital market’s activities and restructuring and expansion moves. And in our view, backdoor listing itself is not evil in nature and has its functions in the market and should not be targeted indiscriminately. On the other hand, eliminating companies that do not fulfil continued listing obligations poses threats to the interests of the many minority shareholders of those companies. We urged the Exchange to carefully weigh the pros and cons of their proposals.

The Chamber has made an official submission outlining our position towards the above two named issues, as explained in detail in the following:

In principle we could agree that backdoor listings that attempt to circumvent the listing requirements be restricted and that they be treated as reverse takeover (RTO) and be subjected to a proper listing application process. However, there is one area that we disagree with and that is to do with the proposed rule changes dealing with issuers that have failed to comply with Rule 13.24 (13.24 issuers). This rule requires an issuer to carry out, directly or indirectly, 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 Exchange to warrant the continued listing of the issuer’s securities.

Proposal A (6) (a) suggests to amend Rule 14.54 to impose additional requirement that for a 13.24 issuer to undertake an RTO and extreme transactions, each of the acquisition target(s) and the enlarged group must meet all the new listing requirements in Chapter 8 of the Listing Rules. In many instances, a 13.24 issuer would resort to asset injection, be it RTO or not, as a means to revive their business in order to re-comply with Rule 13.24. Under the new proposed rule, this has become more challenging as it is no longer sufficient for the injected assets themselves to meet the listing requirements, but they must have big enough profits to cover existing losses, if any. This is a tall order. Given the main objective of the backdoor listing consultation is to prevent assets or businesses that are not suitable for listing from getting listed, if the injected assets themselves can fulfil the listing requirements, such worry does not exist. Although the enlarged group after the injection may still fall short of the full listing requirements, particularly Rule 8.05, the asset injection signifies an important first step towards corporate recovery and should not be hindered.

If this proposed rule is to stand, many 13.24 issuers would not be able to come up with an asset injection proposal that could salvage them from their present situation and they would face the eventual fate of delisting. That would not be in the best interests of their

香港交易所於2018年6月就借殼上市刊發諮詢文件（「借殼上市諮詢」）。建議旨在提高借殼上市的門檻，令不符合上市要求的資產或業務難以透過此管道上市，並防止沒能符合持續上市要求的發行人被用作「空殼」或「養殼」作為借殼上市的工具。

只要不干擾公司資本市場的活動、重組及擴張，商會支持一個公平而合理監管的市場。我們認為，借殼上市本身並非壞事，在市場上有其功能，不應不分情由加以針對。另一方面，取消未能履行持續上市責任的公司的上市地位對該等公司許多少數股東也構成威脅。我們促請香港交易所仔細權衡建議的利弊。

商會已正式提交意見書，闡述我們對以上兩點的立場，詳情如下：

原則上，我們同意企圖繞過上市規定的借殼上市應受限制，應被視為反收購，遵從適當的上市申請流程。然而，我們不同意建議規則變動中的一點，即對於未能遵守第13.24條規定的發行人（簡稱“13.24發行人”）的處理方法。該規則要求發行人須有足夠的業務運作（不論由其直接或間接進行），或擁有相當價值的有形資產及／或無形資產（就無形資產而言，發行人須向交易所證明其潛在價值），其證券才得以繼續上市。

建議書A(6)(a)提出修訂第14.54條，對第13.24條所述的發行人進行反收購及極端交易施加額外要求，即每個收購目標和經擴大集團必須滿足《上市規則》第八章中所有新上市要求。很多情況下，第13.24條所述的發行人不論是否進行反收購均會注入資產，以恢復其業務以再度遵守第13.24條。在新建議規則下，此方式變得更為困難，因為單單注入的資產本身符合上市要求已不足夠，其利潤更需要足以填補原來發行人的虧損（如有）。這要求非常高。鑒於借殼上市諮詢的主要目的是防止不適合上市的資產或業務上市，如果注入的資產本身能夠滿足上市要求，則不存在此憂慮。雖然注入資產後的經擴大集團可能仍未符合所有上市規定，尤其第8.05條，但注入資產象徵邁向企業復甦的重要第一步，不應受到阻礙。

若此建議規則獲得通過，很多13.24發行人將未能提出有效的資產注入建議方案以挽救其目前情況，最終將面臨被除牌的命運。這並不符合少數股東的最大利益。如果沒有新資產或業務注入，無論是否反收購，這些發行人均無法自救，而少數股東亦無從挽回他們的投資。任由這些發行人除牌，意味著剝奪少數股東原有投資的任何剩餘價值。

過去我們看到暫時停牌公司（其中許多是13.24發行人）在資產注入後恢復交易，股價錄得增長，從而為少數股東提供退市機會。

粗略估計，現時約有100家發行人未能符合第13.24條或瀕臨不符合的邊沿。若全都被除牌，受影響的股東為數不少，將導致一定程度的市場不穩。

minority shareholders. Without new assets or businesses injected into them, be it RTO or not, it is difficult for these issuers to revive themselves and the minority shareholders would have no hope to recoup their investments. Allowing these issuers to go delisted would mean depriving the minority shareholders' of any residual value of their original investments.

We have seen in the past when suspended companies, many of them 13.24 companies, resumed trading after an asset injection, their share price registered a positive growth, thus provided a chance for minority shareholders to exit.

By a rough estimate, there are about 100 issuers at present not fulfilling Rule 13.24, or on the verge of being so. If they all end up being delisted, the number of shareholders affected will not be small, leading to a degree of market instability.

The Exchange has the responsibility of protecting the interests of minority shareholders, but allowing a large number of issuers to go delisted by imposing onerous requirements defies this responsibility. Any means to stop backdoor listings should not be done at the detriment of minority shareholders.

In addition, we pointed out that not all backdoor listings are evil in nature. On the contrary, quite a number of prominent listed issuers came to the Hong Kong stock market through RTO, even for state-owned enterprises, such as Sinofert Holdings Limited, CIMC Enric Holdings Limited, Shanghai Industrial Urban Development Group Limited as well as a few blue chip companies like Geely Automobile Holdings Limited, the predecessor of Citic Limited and the predecessor of PCCW Limited. They now operate substantial business without causing any market mishaps.

The consultation paper suggests that that a small number of backdoor listings and "shell" activities are manipulative and harmful to the interests of small shareholders. In these cases, we support that the Exchange deals with them with targeted enforcement. The effects will be direct and focused and will not cause collateral damage on a whole lot of other issuers that have no ill-intention.

The above sums up the Chamber's stance on the main issues of the backdoor listing consultation. We have also responded to other questions in the consultation questionnaire, which are more technical in nature. Members of the Chamber can view our full submission and the completed questionnaire in the Members' Section of the Chamber's website. [M](#)

— Mike Wong

Chief Executive Officer

The Chamber of Hong Kong Listed Companies



交易所有責任保護少數股東的利益，但施加嚴苛的規定令大量發行人被除牌，則違背這項責任。任何阻止借殼上市的方法，均不應損害少數股東的利益。

此外，我們指出並非所有借殼上市均屬壞事。相反，不少知名上市發行人均是透過反收購來港上市，當中包括國有企業，如中化化肥控股有限公司、中集安瑞科控股有限公司、上海實業城市開發集團有限公司，以及若干藍籌公司，如吉利汽車控股有限公司、中信集團有限公司的前身及電訊盈科有限公司的前身。這些公司現在經營大量業務，且沒有令市場出現任何事故。

諮詢文件指出，有少數借殼上市及「借殼」活動具操縱性，損害少數股東利益。在這些情況下，我們支持交易所採取針對性執法，其影響將直接而集中，不會對一家沒有惡意的發行人造成連帶損害。

以上總結了商會對借殼上市諮詢主要議題的立場。我們亦回應了諮詢問卷中其他較技術性的議題。商會成員可在商會網站的會員部分查看我們提交的完整意見書及填妥的問卷。 [M](#)

— 黃明偉

總幹事

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