

Hong Kong Capital Markets Update

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HKEX's consultation on review of listing regime for Overseas Issuers

On 31 March 2021, the Stock Exchange of Hong Kong Limited (the "Exchange") published a [consultation paper](#) ("Consultation") to seek market feedback on proposed amendments to the Listing Rules on streamlining the listing regime for overseas issuers (including those with a centre of gravity in Greater China, together "Overseas Issuers"). The deadline for submissions is 31 May 2021.

Key Proposals

Core shareholder protection standards

- **Streamline shareholder protection standards** into one set of "**Core Standards**" for **all issuers**.

Dual primary listings

- **Allow** Grandfathered Greater China Issuers and Non-Greater China Issuers with **non-compliant WVR and/or VIE structures** to apply for a **direct dual primary listing** using the **same eligibility and suitability requirements** under the existing Chapter 19C.
- **Allow** Grandfathered Greater China Issuers and Non-Greater China Issuers (including both dual-primary listings and secondary listings) to **retain non-compliant WVR and/ or VIE Structures** if they are **de-listed** from their **Qualifying Exchange**.

Secondary listings

- Re-purpose **Chapter 19C** as **one dedicated chapter for secondary listings** as a whole.
- **Two sets of eligibility requirements for secondary listing of non-WVR structure issuers:**

	Good regulatory compliance record	Minimum market capitalisation upon listing
Criteria A	At least five full financial years	HK\$3 billion
Criteria B	At least two full financial years	HK\$10 billion

- **Allow a non-WVR structure issuer** with **centre of gravity in Greater China** to **secondary list** by meeting either **Criteria A or Criteria B** and **removing the "innovative company" requirement**.
- Provide **guidance** on **trading migration** requirement and **de-listings** from overseas exchanges for secondary listed issuers.

Codification of the JPS requirements

- **The JPS will be withdrawn** with **relevant guidance either codified** in the Listing Rules **or consolidated into a new guidance letter** for Overseas Issuers.
- **Require all issuers** to (i) **demonstrate a reason for adopting US GAAP**; and (ii) **provide a statement reconciling** any material differences between **US GAAP and HKFRS/ IFRS** financial statements.

Background

Developing Hong Kong into a listing and capital raising hub for major global and regional companies, either on a primary or secondary basis, has always been one of the strategic objectives of the Exchange.

In this context, the Exchange has recently carried out a holistic review of the current Hong Kong listing regime for Overseas Issuers. Following this holistic review, several issues were identified:

- (a) Complexity of requirements for Overseas Issuers;
- (b) Inconsistent shareholder protection standards for Recognised Jurisdictions and Acceptable Jurisdictions;
- (c) Co-existence of two secondary listing regimes;
- (d) Secondary listing requirements for Greater China Issuers are more restrictive;
- (e) Need for guidance on trading migration requirement and de-listings from overseas exchanges for secondary listed issuers;
- (f) Grandfathered Greater China Issuers and Non-Greater China Issuers cannot apply for a direct dual primary listing and retain their non-compliant WVR and/or VIE structures; and
- (g) Common waivers and automatic waivers for issuers (other than those automatic waivers for Qualifying Issuers under Chapter 19C of the Listing Rules) are not codified in the Listing Rules.

In light of the above issues, the Exchange sets out proposals in this Consultation to amend the existing listing regime for Overseas Issuers, aiming to strike a balance between market development and investor protection for the benefit of the market as a whole. The proposals cover requirements in the following four areas:

- (1) Core shareholder protection standards
- (2) Dual primary listings
- (3) Secondary listings
- (4) Codification of other JPS requirements¹.

Core shareholder protection standards

The Exchange proposes to (i) streamline the shareholder protection standards that issuers are required to provide into one set of “Core Standards” for all issuers and, as a result, repeal the “Equivalence Requirement” in the current Listing Rules; and (ii) repeal some existing shareholder protection standards in the Listing Rules and the JPS which do not concern fundamental shareholder rights commonly found in the company laws / listing rules of leading stock markets. Consequently, the “Core Standards” will be set out in the revised Appendix 3 to the Listing Rules and the JPS will be withdrawn with the concepts of “Recognised Jurisdictions” and “Acceptable Jurisdictions” removed.

Also, the Exchange proposes existing listed issuers should apply the “Core Standards” and make any necessary amendments to their constitutional documents to conform with the “Core Standards” by their second annual general meeting following the implementation of the proposal considering it will not cause them an undue compliance burden.

Dual primary listings

The Exchange proposes to (i) allow Grandfathered Greater China Issuers and Non-Greater China Issuers with non-compliant WVR and/or VIE structures to apply for a direct dual primary listing as long as they meet the eligibility and suitability requirements of Chapter 19C for Qualifying Issuers with a WVR structure; and (ii) codify the common waivers for dual primary listed issuers and the underlying principle in the Listing Rules.

Furthermore, the Exchange proposes to allow Grandfathered Greater China Issuers and Non-Greater China Issuers (including both dual-primary listings and secondary listings) to retain non-compliant WVR and/ or VIE Structures if they are de-listed from their Qualifying Exchange (as defined in Chapter 19C) with guidance provided on requirements that would apply when a Grandfathered Greater China Issuer’s majority of trading migrates to the Exchange’s market or if it de-lists from its overseas exchange of primary listing.

¹ The “Joint policy statement regarding the listing of overseas companies” (JPS) first published jointly by the Exchange and the SFC in 2007, updated on 27 September 2013, and last amended on 30 April 2018.

Secondary listings

Firstly, the Exchange proposes to reduce the complexity of the secondary listing regime by (i) consolidating the relevant requirements to re-purpose Chapter 19C as a chapter dedicated to secondary listings as a whole; (ii) codifying the quantitative eligibility requirements of secondary listing for issuers without WVR structures as set out in the JPS (“Criteria A”) alongside the requirements of Chapter 19C (“Criteria B”); and (iii) extending the trading migration requirement to all issuers with a secondary listing.

Through codifying Section 5 of the JPS related to secondary listings (together with the amendments proposed in this Consultation) and moving those applicable requirements relating to secondary listings from Chapter 19 to Chapter 19C. Chapter 19C will become the dedicated chapter in the Listing Rules for secondary listings.

For Overseas Issuers without WVR structures (including those with a centre of gravity in Greater China), the Exchange proposes allowing them to seek a secondary listing by meeting either Criteria A or Criteria B as follows:

Criteria A – (a) A track record of good regulatory compliance of at least five full financial years on a Qualifying Exchange or on any Recognised Stock Exchange (as set out in JPS); and (b) an expected market capitalisation at the time of secondary listing of at least HK\$3 billion; or

Criteria B – (a) A track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and (b) an expected market capitalisation at the time of secondary listing of at least HK\$10 billion.

If the secondary listing applicants without WVR structures cannot meet the listing compliance record requirement in either Criteria A or Criteria B above, the Exchange proposes an exemption, on a case-by-case basis, for applicants that are well-established and have market capitalisation at listing that are significantly larger than HK\$10 billion, which is similar to the current JPS exemption.

Secondly, the Exchange proposes less restrictive requirements for Overseas Issuers with a centre of gravity in Greater China. On top of allowing non-WVR structure issuers with a centre of gravity in Greater China to secondary list on the Exchange under a lower minimum market capitalisation thresholds (i.e. Criteria A), the Exchange further proposes to dis-apply “innovative company” requirement for these non-WVR structure issuers.

At the same time, the Exchange proposes to retain the discretion to reject an application for secondary listing if, in its opinion, the listing constitutes an attempt to circumvent the Listing Rules that apply to a primary listing, including a test for reverse takeover set out in Listing Rules Chapter 14 on transactions conducted before the proposed secondary listing by the applicant.

Thirdly, regarding the waivers for secondary listings, the Exchange proposes to (i) codify the principles for granting exemptions/waivers to secondary listed issuers; (ii) codify the automatic waivers and common waivers in the Listing Rules for all issuers with, or seeking, a secondary listing; (iii) removal of the current condition for granting a waiver from the shareholders’ consent requirement relating to further issues of share capital for secondary listed issuers; and (iv) require the secondary listed issuers to comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports.

Last but not least, to provide guidance on trading migration requirement and de-listings from overseas exchanges for secondary listed issuers, the Exchange has set out the intended approach, such as those automatic waivers and specific waivers granted to the issuer based on or conditional upon its secondary listing status will cease to have effect (after any applicable grace period), to deal with these situations and seeks comments on the content of guidance from the market.

The Exchange believes that the combination of existing and proposed safeguards in this Consultation will continue to provide sufficient protection for the interests of investors whilst facilitating the secondary listing of large, good quality issuers that are primary listed overseas.

Codification of other JPS requirements

As the JPS will be withdrawn if the proposals in this Consultation are implemented, the Exchange proposes that certain matters relevant to Overseas Issuers be either codified into the Listing Rules or consolidated into a new guidance letter, including:

- (1) codifying the regulatory co-operation requirement for all issuers with modification to remove the reference to bi-lateral agreements;
- (2) retaining the alternative auditing standards listed in the JPS that can be used to audit the financial statements of Overseas Issuers in a guidance letter;
- (3) codifying the basis for determining the suitability of alternative financial reporting standards;
- (4) retaining the alternative financial reporting standards in the JPS that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations set out in a guidance letter;
- (5) codifying the requirement for dual primary and secondary listed issuers to adopt HKFRS or IFRS if they de-list from the overseas exchange of primary listing (other than those incorporated in an EU member state adopting EU-IFRS) within an automatically granted grace period ending on that issuer's first anniversary of its de-listing;
- (6) revising, for the sake of consistency, the approach in relation to the adoption of US GAAP which require all issuers to (i) demonstrate a reason for adopting US GAAP in the preparation of financial statements; and (ii) include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS;
- (7) codifying the amendments to Financial Reporting Council Ordinance that established the PIE engagement regime and those related to the collection of levies by the Exchange on behalf of Financial Reporting Council;
- (8) codifying the requirement and the existing practice on the acceptance of overseas audit firms for the preparation of accountants' reports in relation to the PIE Engagements and notifiable transactions;
- (9) codifying the requirement to prepare company information sheets for (i) secondary listed issuers; and (ii) any other Overseas Issuer at the Exchange's discretion whenever the Exchange deems it to be useful to Hong Kong investors; and
- (10) amalgamating the guidance on several practical and operational matters for Overseas Issuers in a guidance letter.

If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

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