HKEx LISTING DECISION
Cite as HKEx-LD65-1 (March 2009)
Withdrawn, superseded by Singapore Country Guide in December 2013

Summary	
Name of Party	Company X - a company incorporated in the Republic of Singapore proposing to list on the Main Board
Subject	Whether the Exchange would consider Singapore an acceptable jurisdiction of Company X's incorporation under Chapter 19 of the Listing Rules for the purpose of its proposed primary listing? How should the Exchange conduct the vetting process relating to future applicants incorporated in Singapore for the purpose of primary and secondary listings on the Exchange?
Listing Rules	Chapter 19 of the Listing Rules; Joint Policy Statement Regarding the Listing of Overseas Companies issued jointly by the Securities and Futures Commission and the Stock Exchange of Hong Kong Limited on 7 March 2007
Decision	Following the principles set out in the Joint Policy Statement, the Exchange determined that, subject to Company X making certain revisions to its constitutional documents, Singapore, in principle, could be considered an acceptable jurisdiction of Company X's incorporation for the purpose of its proposed primary listing. In order to facilitate the vetting process regarding future applicants incorporated in Singapore applying for a primary or a secondary listing on the Exchange, the Exchange indicated that it would, in principle, consider any such applicant to have satisfied the requirements set out in the Joint Policy Statement for the purpose of demonstrating that Singapore is an acceptable jurisdiction of incorporation of such applicant without the need to complete a detailed line-by-line comparison of the shareholder protection matters therein upon the applicant satisfactorily demonstrating (normally with the support of legal opinions and sponsor's confirmation) to the Exchange that: - a. all areas of shareholder protection as set out in the Joint Policy Statement have been duly considered and examined in the light of Singapore laws as supplemented by the applicant's constitutional documents;

	b. there are no matters that should be brought to the attention of the Exchange that may render the applicant not satisfying the shareholder protection matters set out in the Joint Policy Statement, or the applicant's standards of shareholder protection afforded under Singapore laws falling short of those under Hong Kong laws; and c. the constitutional documents of the applicant are consistent with the requirements of the Listing Rules, the Securities and Futures Ordinance-Disclosure of Interests, Code on Takeovers and Mergers and Code on Share Repurchases. Where a secondary listing is sought, the Exchange would need to be satisfied that the regulatory oversight offered by the regulator of the applicant's primary listing venue is of a standard that is at least equivalent to that of the Exchange.

SUMMARY OF FACTS

1. Company X was incorporated in the Republic of Singapore ('**Singapore**') and its principal place of business and market was in Mainland China. Company X was considering a primary listing on the Exchange and made an inquiry with the Exchange prior to filing a formal listing application seeking guidance with respect to the acceptance of Singapore as its place of incorporation under Chapter 19 of the Listing Rules.

Shareholder protection in Singapore

2. The sponsor of Company X submitted a comparison table of the shareholder protection provisions ('**Comparison Table**') under the Singapore Companies Act (the '**SGCA**') and the Hong Kong Companies Ordinance ('**HKCO**') in accordance with the Joint Policy Statement Regarding the Listing of Overseas Companies issued jointly by the Securities and Futures Commission ('**SFC'**) and the Exchange on 7 March 2007 (the '**Joint Policy Statement**').

3. Based on the Comparison Table, the Exchange noted certain areas that the Exchange considered that the SGCA might not offer standards of shareholder protection that are at least equivalent to those in Hong Kong (the '**Shortfalls**') as follows:

Item in Comparison	**Matters**

Table[1]	
1(b)	Amendments to the constitutional document are only permitted in the circumstances provided under the HKCO. The requirement is not present in Singapore
1(b)	The SGCA does not provide for any default provisions if the constitutional documents are silent on the variation of rights with respect to a class of shares
2(b)	The shareholding threshold entitling members to require a company to convene an extraordinary general meeting under the SGCA is higher than that stipulated under the HKCO
2(b)	The threshold under the SGCA is higher than that stipulated under the HKCO in respect of the minimum shareholding or the minimum number of shareholders for shareholders to require the company to (i) circulate a notice of any resolution to be moved at an annual general meeting, or (ii) in the case of any other meeting, circulate a statement regarding the matter referred to in any proposed resolution or the business to be dealt with at that meeting
3(c)	Singapore laws do not require an overseas company to include in notices of intention to move a resolution at a general meeting or class meeting particulars of the relevant interests of directors in the matter dealt with by the resolution
3(d)	Under the HKCO the prohibition on a company granting loans to its directors extends to the trustee of any trust which includes a director or his family members as beneficiaries. There is no such extended prohibition under the SGCA
4(c)	In Hong Kong, redemption of issued share capital may only be out of distributable profits or a new issue of shares. This requirement is not present in Singapore

4. For the purpose of demonstrating that the standards of shareholder protection afforded by Company X's place of incorporation would be at least equivalent to those available in Hong Kong, Company X proposed to amend its constitutional documents to make up the Shortfalls, *except* on two matters which are set out below:

   a. Item 2(b) of the Comparison Table - under the HKCO, a holder of 5% shareholding can require the directors of the company to convene an extraordinary general meeting ('**EGM**'); whereas under the SGCA, the minimum threshold is 10% shareholding;

   b. Item 2(b) of the Comparison Table - in Hong Kong, members with an aggregate shareholding of 2.5% in a company or a minimum of 50 members can require a company to circulate a notice of any resolution or circulate a statement to other members of the company. This was

[1] *Same item number as appears in the Comparison Table attached to the Joint Policy Statement.*

considered to be more favourable to minority shareholders than that provided under the SGCA where the threshold is 5% shareholding or 100 members; (matters referred to in 4a. and 4b. are referred to as the '**Relevant Provisions**').

5. In light of the differences between the SGCA and the HKCO, Company X submitted that:

   a. it would be in contravention of the SGCA if its constitutional documents were amended to incorporate thresholds for the Relevant Provisions which were different from those provided under the SGCA; and

   b. with the exception of the Relevant Provisions, upon incorporation of the new provisions in Company X's constitutional documents, Company X would provide broadly equivalent standards of shareholder protection as that provided by a public company incorporated in Hong Kong.

6. The sponsor of Company X confirmed that it agreed with the conclusions of Company X mentioned in paragraph 5 above.

Co-operation and information gathering arrangements between Hong Kong and Singapore

7. It was submitted that Singapore is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information ('**IOSCO MMOU**') for the purpose of ensuring reasonable regulatory co-operation between the SFC in Hong Kong and its counterpart regulator in Singapore.

Nexus with Singapore

8. For the purpose of demonstrating a reasonable nexus between Company X's place of incorporation and its operations, it was submitted, among other things, that:

   a. Company X had been incorporated in Singapore for over 10 years. While its principal operation had been in China since its incorporation, Company X comprised entities incorporated in other jurisdictions; and

   b. Company X was chosen as the vehicle for the proposed listing on the Exchange because Company X had issued certain bonds listed on the Singapore Stock Exchange ('**SGX**') and Company X's holding company had pledged 80% issued shares of Company X as security for the bonds. The directors of Company X considered that it was not feasible to use another vehicle for the proposed listing, since the transfer of Company X's shares by its holding company to a newly proposed listing vehicle would require unanimous bondholders consent under the terms of the bond agreement. Obtaining unanimous bondholder consent for the listed bonds

would be time-consuming and would be difficult to achieve. It was expected that the abovementioned pledge of 80% issued shares of the Company X would be released upon the listing of Company X.

THE ISSUES RAISED FOR CONSIDERATION

9. Whether the Exchange would consider Singapore an acceptable jurisdiction of Company X's incorporation under Chapter 19 of the Main Board Listing Rules for the purpose of its proposed primary listing?

10. How should the Exchange conduct the vetting process relating to future applicants incorporated in Singapore for the purpose of primary and secondary listings on the Exchange?

APPLICABLE LISTING RULES OR PRINCIPLES

For primary listings

11. Currently, four jurisdictions of incorporation are formally recognised under the Listing Rules, namely Hong Kong, the PRC, Bermuda and the Cayman Islands (**'Recognised Jurisdictions'**). Under Rule 19.05(1)(b) of the Listing Rules, when approving the primary listing on the Exchange of securities of an overseas issuer, the Exchange must be satisfied that the overseas issuer is incorporated in a jurisdiction which offers equivalent standards of shareholder protection to those provided in Hong Kong.

12. Where the Exchange believes that the jurisdiction in which the overseas issuer is incorporated is unable to provide standards of shareholder protection at least equivalent to those provided in Hong Kong, the Exchange may approve the listing of securities of the overseas issuer subject to such overseas issuer making such variations to its constitutional documents as the Exchange may require (see note to Rule 19.05(1) of the Listing Rules).

13. The Joint Policy Statement sets out a roadmap to distil the key requirements on how companies incorporated overseas may be listed on the Exchange. Such key requirements are summarised below: -

    a. a schedule of key areas that the Exchange ordinarily expects an overseas applicant to provide submissions to demonstrate shareholder protection standards in its home jurisdiction are at least equivalent to those provided in Hong Kong. Such matters do not exonerate an overseas company from seeking a listing on the Exchange from complying with the Listing Rules, Securities and Futures Ordinance, the Hong Kong Codes on Takeovers and Mergers and Share Repurchases and other applicable laws and

regulations and are not intended to be exhaustive. Modifications may be necessary where the overseas applicant can demonstrate to the satisfaction of the Exchange that compliance with the Listing Rules is contrary to the laws of the country of its incorporation;

b. whether adequate co-operation and information gathering arrangements exist between the Hong Kong statutory securities regulator and corresponding regulator in the listing applicant's place of incorporation. Incorporation in a jurisdiction of which the statutory securities regulator is either (i) a full signatory to the IOSCO MMOU; or (ii) has entered into a bilateral agreement with the SFC which provides adequate arrangements with the SFC for mutual assistance and exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of that jurisdiction and Hong Kong will be viewed favourably; and

c. applicants may incorporate in jurisdictions that are reasonably related to their principal business operations. In certain circumstances, a jurisdiction of incorporation (other than one of the Recognised Jurisdictions) which is totally unrelated to an applicant's place of principal business operations, its principal assets and its principal executive offices, may lead the listing applicant to be considered unsuitable for listing under the Listing Rules.

For secondary listings

14. For overseas issuers which are not incorporated in an approved or recognised jurisdiction seeking a secondary listing on the Exchange, in addition to the standard of shareholder protection offered by the jurisdiction in which the overseas issuer is incorporated, the Exchange must be satisfied that the regulatory oversight offered by the regulator of the issuer's primary listing venue is of a standard that is comparable to those of the Exchange (see Rule 19.30(1)(b) of the Listing Rules).

THE ANALYSIS

Acceptance of Singapore as Company X's place of incorporation

15. The Exchange noted that the submissions of Company X and its sponsor represented the first application of the principles set out in the Joint Policy Statement since its announcement in March 2007.

16. The Exchange's approach under the Joint Policy Statement is to focus on the suitability of the overseas companies and not on the suitability of the overseas jurisdictions. Accordingly, the Joint Policy Statement does not incorporate references to admission of approved or recognised jurisdictions or the opposite notion - a blacklist of overseas jurisdictions. When considering accepting an

overseas issuer for listing on the Exchange, the Exchange noted that no two jurisdictions would offer identical levels of shareholder protection. It is not the expectation of the Exchange to see demonstration of verbatim comparison of the textual content of the HKCO provisions with those prescribed in the home jurisdiction of the overseas applicant. Where compliance with the Listing Rules or the principles underlying the Listing Rules is demonstrated to be contrary to the laws of the issuer's home jurisdiction, modification of the Listing Rules may be permitted on a case by case basis.

17. When considering approving Singapore as an acceptable jurisdiction of Company X's incorporation, the Exchange took into consideration the following:

    a. the submissions of Company X that:

        (i) with the exception of the Relevant Provisions under the SGCA, upon the amendment of Company X's constitutional documents to make up the Shortfalls of shareholder protection matters as set out in the Comparison Table, the shareholder protection afforded under the SGCA and the HKCO would be broadly equivalent;

        (ii) Company X would be in contravention of the SGCA if its constitutional documents were amended to incorporate thresholds for the Relevant Provisions different from those provided under the SGCA;

    b. the sponsor agreed with the conclusions of Company X mentioned in paragraph 17 above;

    c. Company X's submissions that, with the exception of the Relevant Provisions, Company X would arrange for amending its constitutional documents to make up the Shortfalls;

    d. the Exchange was not aware of any factors that would render Singapore an unsuitable jurisdiction of Company X's incorporation. In this connection, the Exchange noted that Singapore is a full signatory to the IOSCO MMOU and was satisfied that there was a reasonable nexus between Singapore as Company X's place of incorporation and its principal operations. There was no evidence to suggest concerns that Company X was shopping for a jurisdiction with the lowest possible shareholder protection standards which bear no relationship to its operations in order to deprive shareholders of protections that might otherwise exist.

    e. when assessing the impact of the Relevant Provisions under the SGCA on shareholder protection, the Exchange noted that the corresponding provisions under the PRC Company Law, Bermuda Companies Act, the UK Companies Act, and Australian Corporations Act 2001 contained higher thresholds for shareholders to requisition an EGM and/or to require

the company to circulate a notice or a statement of any resolution to other members than those under the HKCO; and yet the Exchange accepted companies incorporated in those jurisdictions for listing on the Exchange; and

f. certain Singaporean-incorporated companies[2] had previously been listed as secondary issuers on the Main Board with the SGX as the primary listing venue. As such, the Exchange had previously considered Singapore an acceptable jurisdiction of an issuer's incorporation and the SGX a primary listing venue of an issuer that attained an acceptable level of regulations comparable to that of the Exchange.

18. Based on the foregoing analysis regarding the standards of shareholder protection in Singapore and noting that the principles set out in the Joint Policy Statement had been adhered to, the Exchange concluded that Singapore could be accepted as Company X's place of incorporation for the purpose of listing on the Exchange.

Primary / Secondary listing of future applicants incorporated in Singapore

19. Given the rule requirements and principles for demonstrating eligibility of an issuer's jurisdiction of incorporation are the same for both primary and secondary listings, the Exchange considers that the Joint Policy Statement and the present decision are equally applicable to a Singaporean company seeking a secondary listing on the Exchange. However, such applicant would still need to demonstrate that the regulatory oversight offered by the regulator of its primary listing venue is of a standard that is at least equivalent to that of the Exchange.

20. While there may be changes in the Singapore company laws after determining that Singapore is an acceptable jurisdiction of an issuer's incorporation, the Exchange sees it appropriate to treat Singaporean companies on the same basis as it currently affords to companies incorporated in Bermuda and the Cayman Islands, i.e. the Exchange notes that it would be unduly burdensome to issuers incorporated in Bermuda and the Cayman Islands if the Exchange were to require those companies to undertake a regular review of the law changes in their home jurisdictions. Accordingly, Singaporean issuers would not be required to provide a regular update of the development of the Singapore company laws. In the event that there should be major changes in the Singapore company laws which render the standards of shareholder protection of Singaporean listed issuers significantly worse than those in Hong Kong, the Exchange would expect such issuers to inform the market of such changes under Main Board Rule 13.09, and the Exchange would also consider imposing further conditions as appropriate, or reconsider accepting any future application where the applicant is incorporated in

[2] Haw Par Brothers International Limited was listed on 16 June 1987 and withdrew its listing on 18 August 1998. United Overseas Bank was listed in 1972 and withdrew its listing on 30 June 1998. Both companies were incorporated in Singapore and primarily listed on the SGX at the material time.

Singapore in light of the applicable laws and regulations.

THE DECISION

21. Following the principles set out in the Joint Policy Statement, the Exchange determined that, subject to Company X making certain revisions to its constitutional documents, Singapore would, in principle, be considered an acceptable jurisdiction of Company X's incorporation for the purpose of its proposed primary listing.

22. To facilitate the vetting process regarding future applicants incorporated in Singapore when applying for a primary or a secondary listing on the Exchange, the Exchange indicated that it would, in principle, consider any such applicant to have satisfied the requirements set out in the Joint Policy Statement for the purpose of demonstrating that Singapore is an acceptable jurisdiction of incorporation of such applicant without the need to complete a detailed line-by-line comparison of the shareholder protection matters therein upon the applicant satisfactorily demonstrating (normally with the support of legal opinions and sponsor's confirmation) to the Exchange that: -

    a. all areas of shareholder protection set out in the Joint Policy Statement have been duly considered and examined in the light of Singapore laws as supplemented by the applicant's constitutional documents;

    b. there are no matters that should be brought to the attention of the Exchange that may render the applicant not satisfying the shareholder protection matters set out in the Joint Policy Statement, or the applicant's standards of shareholder protection afforded under Singapore laws falling short of those under Hong Kong laws; and

    c. the constitutional documents of the applicant are consistent with the requirements of the Listing Rules, the Securities and Futures Ordinance-Disclosure of Interests, Code on Takeovers and Mergers and Code on Share Repurchases.

23. Where a secondary listing is sought, the Exchange would need to be satisfied that the regulatory oversight offered by the regulator of the applicant's primary listing venue is of a standard that is at least equivalent to that of the Exchange.

24. Upon Company X making a formal listing application for its proposed listing, the Exchange would require the following to be submitted:

    a. a confirmation from the sponsor that all material areas regarding shareholder protection have been considered and reviewed by the sponsor in connection with its due diligence review pursuant to Practice Notice 21 to the Listing Rules and that it is independently satisfied with the

conclusion that the shareholder protection offered by a company incorporated in Singapore is at least equivalent to that in Hong Kong; and

b. a legal opinion from Company X's legal advisers and a confirmation from the sponsor that the proposed constitutional documents of Company X would be consistent with the requirements of the Listing Rules, the Securities and Futures Ordinance – Disclosure of Interests, Code on Takeovers and Mergers and Code on Share Repurchases, and that execution of company affairs pursuant thereto will not violate the aforementioned Rules, Ordinance and Codes.