

By email [REDACTED] and by hand

28 May 2021

Hong Kong Exchange and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sir,

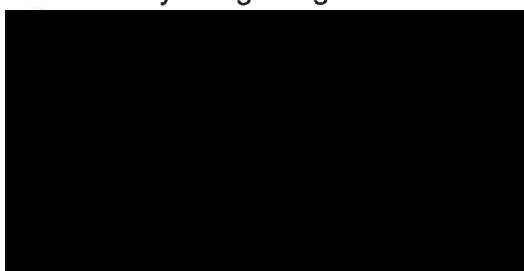
CONSULTATION PAPER – LISTING REGIME FOR OVERSEAS ISSUERS

The Advocacy Committee of the CFA Society Hong Kong has reviewed the abovenamed consultation paper and summarized our comments in the attached questionnaire for your reference.

By and large, we agree to the proposals though we have reservation on a few proposed amendments/measures that affect shareholders' protection proposed in questions 9 and 10 and the special treatment for those issuers with the primary listing done by reverse takeovers in question 16. Please refer to the duly completed questionnaire for more details.

Should you have any questions, please do not hesitate to contact the undersigned at [REDACTED] or [REDACTED].

Yours faithfully,
For and on behalf of
CFA Society Hong Kong



Encl.



Responses of CFA Society Hong Kong to the Consultation Paper: Listing Regime for Overseas Issuers

Question 1

Do you agree that the Equivalence Requirement and the concept of “Recognised Jurisdictions” and “Acceptable Jurisdictions” should be replaced with one common set of Core Standards for all issuers? Please give reasons for your views.

We agree.

Having one common set of Core Standards would ease the implementation process and promote consistency.

As mentioned in paragraph 72, the Core Standards should be sufficient to cover the most fundamental shareholders’ rights relating to the notice and conduct of shareholders’ meetings, approval of important matters, members’ right to requisition a meeting, remove directors, vote, speak and appoint proxies/corporate representatives, auditors, appointment of directors to fill causal vacancies and inspection of shareholders’ register, etc.

In addition, PRC issuers will need to comply with the requirements under Chapter 19A of and Part D of Appendix 13 to the Listing Rules as well as the Core Standards. As market capitalization of PRC issuers represents a substantial part of the Hong Kong capital market, it is important that we set out clear rules to cater for the differences between the PRC and Hong Kong issuers.

The purpose of Chapter 19A is to clarify that the Listing Rules apply as much to PRC issuers as they do to Hong Kong and Overseas Issuers, subject to the additional requirements, modifications and exceptions. Among such requirements are that

- (a) PRC issuers are expected to present their annual accounts in accordance with HKFRS, IFRS or CASBE;
- (b) the articles of association of PRC issuers must contain provisions which will reflect the different nature of domestic shares and overseas listed foreign shares (including H shares) and the different rights of their respective holders; and
- (c) disputes involving holders of H shares and arising from a PRC issuer’s articles of association, or from any rights or obligations conferred or imposed by the Company Law and any other relevant laws and regulations concerning the affairs of the PRC issuer, are to be settled by arbitration in either Hong Kong or the PRC at the election of the claimant.

Whereas, Part D of Appendix 13 to the Listing Rules is related to additional required provisions for articles of association and modifications and additional requirements for PRC Issuers.

The Overseas Issuers, especially those from non-common law jurisdictions, may need to comply with additional requirements that are not commonly seen in common law jurisdictions. The Exchange should have an efficient mechanism to deal with these

differences without compromising shareholders' protection and the chance that outstanding Overseas Issuers get listed in Hong Kong.

Question 2

If your answer to Question 1 is "Yes", do you agree: (a) with the proposed Core Standards set out in paragraphs 79 to 137; and (b) that the existing shareholder protection standards set out in Schedule C should be repealed? Please give reasons for your views.

The Exchange had summarised the reasons for repealing the existing shareholder protection standards set out in Schedule C in the fifth column of the same Schedule and the reasons for repealing most standards seem to be logical. One should bear in mind that shareholders' protection under the Listing Rules is not the same as those under the articles of association of the issuers.

We do not have strong objection to repeal most of the standards mentioned in Schedule C. Please also see our reply to Question 4.

Question 3

Do you agree to codify the current practice that all issuers must conform their constitutional documents to the Core Standards or else demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the Core Standards? Please give reasons for your views.

We agree.

The proposed shortfall approach provides a clear framework on the disclosure requirement of the issuers' constitutional documents. However, by repealing the relevant parts of Appendix 13, the shareholder protection framework under the issuers' constitutional document may become ambiguous.

To provide better clarity, we suggest that the Exchange reiterate the benchmark and/or expectation at the beginning of Appendix 3 (e.g., R19.18 to ensure that investors have the same protection as that afforded to them in Hong Kong or the protection standards at least equivalent to those of Hong Kong).

Question 4

Do you believe any other standards or Listing Rules requirements, other than those set out in paragraphs 79 to 137 or Schedule C, should be added or repealed? Please provide these other standards with reasons for your views.

Certain standards included in Schedule C, e.g., items 8, 11, 12 and 30, are fundamental shareholders' protection against abuse of power by the board of directors. Enforcement of the Listing Rules may not bring the same level of shareholders' protection that the issuers' constitutional documents would do.

Question 5

Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.

We agree.

Please see our reply to Question 1.

Question 6

If your answer to Question 5 is “Yes”, do you agree that: (a) existing listed issuers should have until their second annual general meeting following the implementation of our proposals to make any necessary amendments to their constitutional documents to conform with the Core Standards; and (b) the application of the Core Standards will not cause existing listed issuers undue burden? Please give reasons for your views.

We agree.

It takes time for the existing listed issuers to make necessary amendments to their constitutional documents to conform with the Core Standards.

Question 7

Do you agree with the principles set out in paragraph 155 for use when considering waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong? Please give reasons for your views.

We agree that the waivers should be granted on a case by case basis and that the Exchange makes its assessment mainly based on a common underlying principle that the issuer has demonstrated that strict compliance with both the relevant Listing Rules and the overseas regulations would be unduly burdensome or unnecessary. However, there should be clear benchmarks as to what constitute unduly burdensome or unnecessary.

Question 8

Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158? Please give reasons for your views.

We agree.

Codification of the Common Waivers would promote consistent implementation.

Question 9

Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures should be able to apply for dual primary listing directly on the Exchange as long as they can meet the relevant suitability and eligibility requirements under Chapter 19C of the Listing Rules for Qualifying Issuers with a WVR structure? Please give reasons for your views.

We have reservation on this proposal. If implementation of the proposed Listing Rules is to promote consistency and reduce redundancy, there should be strong reasons why we allow grandfathering. If the Exchange will proceed with this proposal, the Exchange should consider imposing stricter disclosure requirements when the grandfathered issuer changed its listing status from “secondary” to “primary”.

Question 10

Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers referred to in Question 9 above be allowed to retain their Non-compliant WVR and/ or VIE Structures (subsisting at the time of their dual primary listing in Hong Kong) even if, after

their listing in Hong Kong, they are delisted from the Qualifying Exchange on which they are primary listed? Please give reasons for your views.

We have reservation on this proposal.

Delisting from the Qualifying Exchange essentially removes the shareholders protection under the laws and regulations of the Qualifying Exchange's jurisdiction. Given that the primary listing in the Qualifying Exchange was a prerequisite for an issuer's dual listing in Hong Kong, the delisting may create a regulatory gap in shareholders' protection in respect of the special shareholders' structure of those issuers.

If the Exchange will proceed with this proposal, the Exchange may consider imposing stricter corporate governance and/or disclosure requirements on those issuers being delisted from the Qualifying Exchange.

Question 11

Do you agree with our proposal to codify requirements (with the amendments set out in this paper) relating to secondary listings in Chapter 19C of the Listing Rules and re-purpose Chapter 19 of the Listing Rules as one dedicated to primary listings only? Please give reasons for your views.

We agree in principle.

The proposal could result in a better structure and clarity of the relevant rules.

Question 12

Do you agree that the Exchange should implement the quantitative eligibility criteria as proposed in paragraphs 199 and 201 for all Overseas Issuers without a WVR structure (including those with a centre of gravity in Greater China) seeking to secondary list on the Exchange? Please give reasons for your views.

We agree in principle.

Raising the threshold for market capitalisation and imposing track record of good regulatory compliance would help ensure that only issuers of good quality could get the secondary listing status in Hong Kong.

Question 13

Do you agree that an exemption from the listing compliance record requirement be introduced, similar to the current JPS exemption, to cater for secondary listing applicants without a WVR structure that are well-established and have an expected market capitalisation at listing that is significantly larger than HK\$10 billion? Please give reasons for your views.

We agree in principle. However, using market capitalization and compliance records as the assessment criteria alone may be insufficient. Business size of the issuer, stock liquidity in the primary market and the shareholding structure could also be indicators of high-quality listing applicants.

Question 14

Do you agree that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) should not have to demonstrate to the Exchange that they are an “Innovative Company”? Please give reasons for your views.

We agree.

Removal of the requirements may result in good quality Greater China Issuers operating in traditional industries to be able to secondary list on the Exchange. And this could be a good move to the Hong Kong capital market.

Question 15

Do you agree that a Rule should be introduced to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.

We agree.

The proposed provision would serve deterrent for those issuers which intend to go for rule arbitrage.

Question 16

Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210, if the Exchange suspects that an issuer’s secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.

We have reservation on this proposal.

How the issuer got listed in the past may not have a direct correlation on the quality of the issuer now. The proposal seems to suggest that as long as the issuer first got listed by reverse takeover, its secondary listing application will be rejected. This proposal may filter out quality applicants with good business governance and business prospect. Therefore, the Exchange should review the applications based on the merits of the individual applicants.

Question 17

Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing? Please give reasons for your views.

We agree.

The proposal would promote consistent application of the Listing Rules.

Question 18

In your opinion, will the extension of the Trading Migration Requirement to all secondary listed issuers be unduly burdensome for those that are not currently subject to this requirement? Please give reasons for your views.

Maintaining the market integrity should be the primary and prime consideration.

Question 19

Do you agree with the codification of the principles set out in paragraph 215 on which exemptions/ waivers are granted to secondary listed issuers? Please give reasons for your views.

We agree.

Codification of the principles would provide better clarity and certainty to the market participants.

Question 20

Do you agree to codify the Automatic Waivers and conditional Common Waivers in the Listing Rules for all issuers with, or seeking, a secondary listing? Please give reasons for your views.

We agree.

Codification of the Automatic Waivers and conditional Common Waivers would provide better clarity and certainty to the market participants.

Question 21

Do you agree with the 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 as described in paragraphs 218 and 219? Please give reasons for your views.

We are indifferent to this proposal.

Question 22

Do you agree that secondary listed issuers should comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports (for the reasons set out in paragraph 223)? Please give reasons for your views.

We agree in principle.

Promotion of diversity policy is a global trend and investors are increasingly making reference to the diversity policies of the issuers before making investment decisions. Therefore, disclosures of the diversity policies of the secondary listed issuers in their annual reports would provide useful information to the investors.

We understand that the Exchange intends to impose requirements on the primary listed issuers to implement diversity policy in the near future. However, we may consider taking a more relax approach for the secondary listed issuers.

Question 23

Do you have any comments on the content of the Guidance Letter in relation to trading migration and de-listing of secondary listed issuers from their overseas exchanges of primary listing set out in Schedule E of this paper? Please give reasons for your views.

We agree in principle.

If this is intended to be a transitional arrangement, the secondary listed issuers should be required to fully comply with the Listing Rules and eventually become primary listed.

To enable the investor to better assess the risk involved, it would be helpful if the Issuer could summarize in announcements the potential impacts to investors and/or transitional shareholder protection measures during the grace period or other relevant waivers. The issuer should also indicate in the announcements when it expects to be primary listed in Hong Kong.

Question 24

Do you agree that the Exchange should codify the Regulatory Co-operation Requirement (with modification as described in paragraph 242) into Chapter 8 of the Listing Rules for all issuers? Please give reasons for your views.

We agree.

Codification of the Regulatory Co-operation Requirement will provide better clarity and certainty to the market participants and it should not increase the compliance obligations for issuers incorporated in Hong Kong or other Recognised Jurisdictions as the statutory securities regulators in all of these jurisdictions are full signatories to the IOSCO MMOU.

Question 25

Do you agree that the Exchange should retain as guidance the alternative auditing standards listed in paragraph 249 that can be used to audit the financial statements of Overseas Issuers? Please give reasons for your views.

We are indifferent.

As per Listing Rule 19.12 (for primary listing) and Listing Rule 19C.10D (for secondary listing), an accountants' report of Overseas Issuer must be audited to a standard comparable to that required by the Hong Kong Institute of Certified Public Accountants ("HKICPA") or the International Auditing and Assurance Standards Board ("IAASB"). Though Listing Rules allow Overseas Issuers to prepare their accountants' report based on two sets of auditing standards, the HKICPA auditing standards are substantially the same as those issued by IAASB.

The lists provided in paragraph 30 of *Schedule E – Draft guidance letters for overseas issuers* is not an exhaustive list of auditing standards that are comparable to the IAASB auditing standards.

Paragraph 31 of Schedule E further provides that:

Overseas Issuers seeking to adopt a financial reporting standard or auditing standard that is not covered by this document should consult the Exchange at the earliest opportunity.

Paragraph 31 seems to suggest that the Exchange may still accept the Overseas Issuers which have their financial statements audited by auditing standards other than those listed in paragraph 30 of Schedule E.

In view of the above, the Exchange may consider pointing the Overseas Issuers to the summary (<https://www.ifac.org/what-we-do/global-impact-map/country-profiles>) prepared by International Federation of Accountants ("IFAC") for general guidance as to what auditing standards are considered as comparable to the IAASB auditing standards. If there is

inconsistency between the knowledge of the Overseas Issuers and the IFAC summary, the Overseas Issuers should contact the Exchange for clarification.

Question 26

Do you agree to codify the JPS requirement that the suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between that body of standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the standards with IFRS? Please give reasons for your views.

We agree.

IFRS is one of the mainstreams accounting standards worldwide. Hong Kong fully adopts IFRS as the local accounting standards, i.e. HKFRS. In fact, HKFRS is in general considered as an equivalent set of accounting standards to IFRS.

Accounting standards are a wealth of knowledge, HKFRS/IFRS experts may not have in-depth knowledge of other accounting standards. Likewise, retail investors in Hong Kong would know better the financial implications of financial statements prepared under HKFRS/IFRS.

Deviation from the HKFRS/IFRS may lead to differences in the financial results, majors and minors.

Question 27

Do you agree to retain, as guidance, the list of acceptable alternative financial reporting standards that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations on their use as set out in Table 7 (see Schedule E)? Please give reasons for your views.

We agree.

The limitations set out in Table 7 and Schedule E-7 should be sufficient to avoid Overseas Issuers to cherry pick a set of accounting standards in preparing their financial statements that would lead to more favourable financial outcomes.

Question 28

Do you agree to codify the JPS requirement that a dual primary or secondary listed issuer that adopts a body of alternative financial reporting standards for its financial statements (other than issuers incorporated in an EU member state which adopted EU-IFRS) must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative standards? Please give reasons for your views.

We agree.

As mentioned in our reply to Question 26, investors in Hong Kong would likely have knowledge of HKFRS/IFRS but not the overseas accounting standards. The logic for allowing the Overseas Investors to use accounting standards other than HKFRS/IFRS to prepare their financial statements is because they have dual primary listing or secondary listing. If Hong Kong becomes the sole primary listing location due to de-listing in overseas locations, it does not seem to be reasonable to allow for special consideration on usage of accounting standards for preparing their financial statements.

Question 29

Do you agree that issuers that de-list from a jurisdiction of an alternative financial reporting standard should: (a) be given an automatic grace period (i.e. an application to the Exchange is not required) within which to adopt IFRS or HKFRS; and (b) that this grace period should end on the issuer's first anniversary of its de-listing? Please give reasons for your views.

We agree.

Preparation of financial statements under a different set of financial statements is not the same as preparation of reconciliation of GAAP difference on major items. It could be more complicated than one could image. With HKFRS/IFRS becoming more comprehensive and complicated these few years, it will take time for the Overseas Issuers to do detailed mapping of items in their financial statements. Having said that, giving one year grace period to the Overseas Issuers to adopt HKFRS/IFRS to prepare their financial statements should be sufficient.

Question 30

Do you agree that, for the sake of consistency of approach, an issuer must demonstrate a reason for adopting US GAAP for the preparation of its financial statements (including annual financial statements and the financial statements included in its accountants' reports) and adopt IFRS or HKFRS if the circumstances underpinning those reasons change (e.g. it delists from a US exchange)? Please give reasons for your views.

We agree.

As mentioned above, investors in Hong Kong may have knowledge in HKFRS/IFRS but not overseas accounting standards. Results reflected in the financial statements prepared under US GAAP could differ substantially with those prepared under HKFRS/IFRS. Issuers should only be allowed to use accounting standards other than HKFRS/IFRS when the situations warranted. Therefore, there should be clear explanations why an Issuer adopts US GAAP; and HKFRS/IFRS should be adopted in preparing their financial statements as soon as possible when the grounds for using US GAAP are no longer valid.

Question 31

Do you agree that any issuer that wishes to adopt US GAAP for the preparation of its annual financial statements must include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS? Please give reasons for your views.

We agree.

The reconciliation schedule would help the investors appreciate what the financial results of the issuer look like if the financial statements were prepared using HKFRS/IFRS. However, there should be clear guidance and explanation as to what constitute material differences.

Another issue is whether the auditors of the financial statements of the Issuer would express opinion on the reconciliation schedule. If yes, the auditors may need to do more work before they could express an opinion on the reconciliation schedule. If the requirements on the Issuers and the auditors are too stringent, we are effectively asking them to prepare the financial statements under HKFRS/IFRS.

Therefore, we need to strike the balance between assurance, investor protection and practicality.

Question 32

Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules? Please give reasons for your views.

We are indifferent.

FRC is the regulator for PIE engagements. Codification of the relevant provisions in FRCO in the Listing Rules may mean direct adoption of the the requirements in FRCO to the Listing Rules. Therefore, when there are changes in the relevant provisions in FRCO, there would be consequential changes to the Listing Rules if codification of these provisions were done in the Listing Rules.

Though we do not expect the relevant provisions in FRCO would be changed too frequently, the consequential changes to the Listing Rules could be avoided if we simply mention in the Listing Rules that one should refer to the requirements in the relevant provisions in FRCO for the PIE Engagement regime.

Question 33

Do you agree to amend the Listing Rules to codify the requirement that an issuer normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO to prepare an accountants' report that constitutes a PIE Engagement under the FRCO? Please give reasons for your views.

We are indifferent.

Please see our reply for Question 32.

Question 34

Do you agree to amend the Listing Rules to allow Overseas Issuers to appoint an audit firm that is not qualified under the PAO (but it is a Recognized PIE Auditor of that issuer under the FRCO) for PIE Engagements to prepare an accountants' report for a reverse takeover or a very substantial acquisition circular relating to the acquisition of an overseas company? Please give reasons for your views.

We are indifferent.

Please see our reply for Question 32.

Question 35

Do you agree to amend the Listing Rules to codify the JPS requirement that, in relation to the PIE Engagements and notifiable transactions, overseas audit firms must normally fulfil the characteristics described in paragraph 271? Please give reasons for your views.

We agree.

According to paragraph 270, an issuer is required to apply to the Exchange for, and the Exchange is required to issue, a Statement of No Objection ("SNO") before FRC would consider an application to recognise a non-Hong Kong audit firm to take up PIE

engagements. Therefore, the Exchange would be in charge of first round screening if an overseas audit firm can take up PIE engagements; whereas, FRC would be the gatekeeper.

Characteristics described in paragraph 271 appear to be the appropriate references that the Exchange should refer to when considering SNO applications.

Question 36

Do you agree to amend the Listing Rules to codify the amendments to the FRCO on the collection of levies by the Exchange on behalf of the FRC as described in paragraphs 280 and 281? Please give reasons for your views.

We are indifferent.

Please see our reply to Question 32.

Question 37

Do you agree to codify the JPS requirement for Company Information Sheets as described in paragraphs 283 to 288? Please give reasons for your views.

We agree.

Implementation of the proposed JPS requirement for Company Information Sheets as described in paragraphs 283 to 288 could be useful if the Overseas Issuer is subject to overseas laws and regulators that are unfamiliar to Hong Kong investors.

Question 38

Do you agree that the Company Information Sheet requirement should be applied to: (a) secondary listed issuers; and (b) any other Overseas Issuer, at the Exchange's discretion, where it believes the publication of a Company Information Sheet would be useful to Hong Kong investors? Please give reasons for your views.

We agree.

The additional information to be disclosed in the Company Information Sheet would allow the Hong Kong investors have a better understanding of the Overseas Issuer.

Question 39

Do you agree to amalgamate the guidance described in paragraphs 289 and 290 into one combined guidance letter for Overseas Issuers (see Schedule E)? Please give reasons for your views.

We agree.

Amalgamate the guidance would resolve the overlapping and duplication problems when the guidance is documented in different documents.