



SIDLEY AUSTIN
39/F, TWO INT'L FINANCE CENTRE
CENTRAL, HONG KONG
+852 2509 7888
+852 2509 3110 FAX

AMERICA • ASIA PACIFIC • EUROPE

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VIA ELECTRONIC SUBMISSION

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

Re: Consultation Paper – Listing Regime for Overseas Issuers

Dear Sirs,

I. Introduction

- 1.1 This is a submission by Sidley Austin (“**Sidley**” or “**we**”) in response to the consultation paper entitled “Consultation Paper – Listing Regime for Overseas Issuers” dated March 2021 (the “**Consultation**”).
- 1.2 Unless otherwise defined:
- (i) capitalized terms used herein shall have the same meanings as defined in the Consultation;
 - (ii) references to “paragraph #” and “Question #” (or “Q#”) correspond to the numbering used in the Consultation; and
 - (iii) references to “Chapter” and “Listing Rule” are to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “**Listing Rules**”).

II. General Comments

- 2.1 Subject to the specific comments set out in Part III of this response, we are in support of the Exchange’s proposal to streamline the listing regime for Overseas Issuers (including those with a center of gravity in Greater China) incorporated in a jurisdiction other than the PRC, Bermuda and the Cayman Islands. Members of our team have worked on a variety of transactions involving applicants who (i) had to qualify pursuant to the JPS, (ii) had to settle on the content of a country guide with the Exchange and the SFC, (iii) applied for a primary or dual-primary listing on the Exchange pursuant to Chapter 19, (iv) offered Hong Kong depository receipts, (v) applied for a secondary listing pursuant to Chapter 19A and/or (vi) applied for a secondary listing pursuant to Chapter 19C.

Partners | Constance Choy H.M., Desmond Ang C.K., (Christopher) Cheng C.H., Meng Ding, (Sherlyn) Lau S.Y., Linh Hue Lieu, Olivia Ngan, S.M., (Raymond) Oh C.H., Yuet Ming Tham, (Friven) Yeoh K.H., Yan Zhang
Registered Foreign Lawyers | Joy Lam (New South Wales)*, (Carrie) Li J. (New York)*, G. Matthew Sheridan (New York)*, Effie Vasilopoulos (New South Wales)*, (Renee) Xiong Y. (New York)*, (Oliver) Zhong Q. (New York)*, Damien Yeow N.W. (Singapore)*, (Julia) Zhu Q. (New York)*
Consultants | Honi Au Yeung, Anna Chow H.Y., Huberta Chow X.L., Dominic D. James, David K. Lee, (Winnie) Mak T.M., Dominic Sze C.K., Douglas Tsang C.L., (Eva) Tsui Y.W., Dominic Tsun W.L., Susan Wang S.X., Alan Wong C.K., Felicity Wong K.Y., Holly Yeung S.M., Claudia Yu K.W., Iris Yuen L.S.

* Partner of Sidley Austin Holding LLP (a Delaware Limited Liability Partnership)
* Foreign Legal Consultant / Legal Counsel

- 2.2 Applicants incorporated in an Acceptable Jurisdiction, or those who needed to qualify their jurisdiction of incorporation as an Acceptable Jurisdiction, have often found the current requirement to demonstrate that their jurisdiction of incorporation has a standard of shareholder protection which is sufficient for supporting a listing in Hong Kong to be a source of frustration and sometimes a deterrent to seeking a listing in Hong Kong. In simple terms, they often see it as an exercise which requires a lot of time, effort and expenditures, but at the same time, the underlying concepts appear to be abstract and theoretical to them. We are confident that a simplification of these requirements and grouping them together in a focused manner into one part of the Listing Rules would be welcomed by Overseas Issuers from Acceptable Jurisdictions (including any future addition to that category) and professional parties who assist them.
- 2.3 We set out in Part III below our responses to certain specific questions raised in the Consultation.

III. Specific Comments on the Consultation

Chapter 2 of the Consultation

- Q1.** *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.*

As a general matter, we 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 and they should be set out in one part of the Listing Rules. The requirements would then be a lot easier to understand from an applicant’s perspective, both in terms of content as well as where to find that content. From our own experience, however, there are bound to be situations where the applicant cannot satisfy all of the requirements contained in the set of Core Standards. As the Exchange noted in paragraph 8, no two jurisdictions have identical shareholder protection standards. We would therefore urge that the concept of “equivalence” be retained while assessing an applicant’s inability to satisfy one or more aspects of the Core Standards as there might be ways that the applicant can offer alternatives that can substantially cover the relevant aspect or aspects that it cannot fully comply with. In other words, the Core Standards should be a common starting point, but not necessarily always the end result for every listed issuer.

- Q2.** *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.*

Subject to our comment on “equivalence” in Question 1, we agree with both parts (a) and (b) of this Question 2. We also wish to note though that perhaps the Core Standards are skewed towards protection of minority shareholders in situations where the listing applicant has a controlling shareholder within the meaning of the Listing Rules. Not all of the Core Standards may afford the desired protection in situations where the shares of the listing applicant are widely held by the public.

- Q3.** *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 are of the view that existing listed issuers, and particularly those with a secondary listing in Hong Kong, shall be grandfathered and not be required to change their constitutional documents to conform with the Core Standards. Their shareholders and other investors have been trading on the basis of their existing shareholder protection standards and it would not be appropriate to require existing listed issuers to align their standards as reflected in their constitutional documents to the Core Standards just for the sake of aligning.

Leaving aside the issue of grandfathering, we are of the view that listing applicants as well as existing listed issuers must be given the opportunity to demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the applicant or the issuer is subject and its constitutional documents, in combination, already provide a similar type of relevant shareholder protection as under the Core Standards.

- Q5.** *Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.*

Please refer to our response to Question 3. In particular, we are of the view that existing listed issuers with a Chapter 19C listing shall not be required to comply with the Core Standards. Chapter 19C is a concessionary route to achieving a secondary listing in Hong Kong and any attempt to move the goalposts shortly after the introduction of Chapter 19C is neither necessary nor desirable and might send the wrong signals about the Exchange to the international markets and investors.

Chapter 3 of the Consultation

- Q7.** *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 are of the view that in addition to the grounds of “unduly burdensome” or “unnecessary”, the grounds of granting a waiver should also include (a) contradiction with applicable laws and regulations and (b) Hong Kong requirements not delivering the intended shareholder protection given the circumstances of the listing applicant. There will be situations where strict compliance with a Core Standard would result in a breach of applicable local laws or regulations. We also repeat our comment in Question 2 on how some of the Core Standards may not achieve the desired shareholder protection if the applicant is a widely-held company that does not have a controlling shareholder.

- Q8.** *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 with the proposal and the rationale set out in paragraph 158. Greater clarity upfront would be welcomed by both listing applicants as well as professional parties.

- Q11.** *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 with the proposed repositioning of Chapters 19 and 19C. The category of applicants that are eligible to use Chapter 19C should be broadened as the Exchange has proposed in Chapter 3 of the Consultation and, again, it would be sensible and efficient to group like-for-like in the same part of the Listing Rules.

Chapter 5 of the Consultation

- Q31.** *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 disagree with the proposal contained in this Question 31. FAQ 043-2018 published by the Exchange around the time of the introduction of Chapter 18A and Chapter 19C already dealt with this point and the guidance has been no such reconciliation is required. Contrary to the statement in paragraph 263 that Hong Kong investors have a general unfamiliarity with US GAAP, investors are, and have been, trading in shares of Hong Kong listed issuers which adopt US GAAP for their financial statements and there is no reason to go back on the position stated in the FAQ.

Thank you for your attention. If there is any aspect of this response which you would like to discuss, please contact our [REDACTED] or [REDACTED].

Your faithfully,

[REDACTED]