



Yum China Holdings, Inc.
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May 31, 2021

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 and Madams,

We, Yum China Holdings, Inc. (“**Yum China**” or the “**Company**”), appreciate the opportunity to comment on the Consultation Paper – Listing Regime for Overseas Issuers, dated March 2021 (the “**2021 Consultation**”) published by Hong Kong Exchanges and Clearing Limited (“**HKEx**”). More specifically, the purpose of this letter is to address Questions 5 and 31 of the 2021 Consultation. The Company urges HKEx to consider our responses to these questions before deciding upon any further appropriate action.

I. INTRODUCTION

1.1 Yum China is a U.S. Fortune 500 company incorporated in the State of Delaware with a market capitalization of approximately \$28 billion as of the date of this letter. In October 2016, we were spun-off from Yum! Brands, Inc., a domestic issuer based in Louisville, Kentucky, and became an independent public company. Since becoming an independent public company, our shares have traded on the New York Stock Exchange (the “**NYSE**”), and starting in September 2020, on the Main Board of The Stock Exchange of Hong Kong Limited (the “**Exchange**”). Today, Yum China is China’s largest restaurant company; we have the exclusive right to operate well-known American brands – KFC, Pizza Hut and Taco Bell – in China. Including other brands in our portfolio, Yum China operates more than 10,700 restaurants in over



1,500 cities throughout China. After our separation from Yum! Brands, shares of Yum China common stock continue to be widely held and actively traded by a diverse, U.S.-centered public shareholder base. Unlike companies incorporated or operating in China and other foreign private issuers, Yum China has no controlling shareholder, and our common stock is held entirely by public investors, both retail and institutional.

- 1.2 As a U.S. domestic issuer listed on the NYSE, Yum China is subject to the highest level of disclosure, corporate governance and shareholder rights standards under U.S. state and federal laws, the rules of the Securities and Exchange Commission (the “SEC”) and the NYSE, and it complies strictly with all its disclosure obligations under these standards. As a Delaware-incorporated company, the Company’s internal affairs are governed by Delaware law, including the fiduciary duties and obligations of the Board of Directors (the “Board”) and executive officers, and the rights of the shareholders. The Company is also subject to U.S. federal securities laws as a listed domestic issuer, including the significant disclosure and shareholder protection standards under the rules of the SEC and the NYSE. The Company is a “well-known seasoned issuer” as defined by Rule 405 of the U.S. Securities Act of 1933 and is a Form S-3 registrant, both indicators of a large capitalization U.S. reporting company which is in compliance with SEC reporting requirements. Yum China’s Board is comprised of ten members, of whom nine are independent under applicable SEC and NYSE rules, a much higher percentage of independent directors compared to most foreign private issuers.
- 1.3 As the Company is a Delaware corporation and a listed issuer on the NYSE, our shareholders have many avenues for protection, including the right to bring personal actions or a class action directly against the Company and otherwise to seek remedies in the courts of the United States. Since becoming a public reporting company, the Company has been filing our required disclosures promptly and has never been the subject of any investigations by the SEC. Beyond mandatory governance standards, we have voluntarily adopted measures that give our shareholders greater rights than those compelled by law and regulation, such as proxy access. In contrast to foreign private issuers, Yum China is also evaluated by third party governance rating organizations like Institutional Shareholder Services (“ISS”) and Glass Lewis. As of

May 2021, Yum China's ISS Governance QualityScore is "1," the highest possible, indicating that our governance is best in class among U.S. public companies.

- 1.4 As of March 2021, Yum China's common stock is held by over 40,000 registered holders. A majority of Yum China's outstanding shares are held by U.S.-based investors, including large institutional holders such as Invesco, BlackRock and Goldman Sachs. Over 80 percent of our trading volume takes place on the NYSE.

II. FUNDAMENTAL PRINCIPLES

- 2.1 Chapter 19C of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the "**Listing Rules**") was implemented in April 2018. Chapter 19C has been described by the Exchange itself as a proposal "to create a new concessionary route to secondary listing for companies from emerging and innovative sectors that are primary listed on a Qualifying Exchange, referred to as "Qualifying Issuers", while preserving the most important protections for Hong Kong investors." (Paragraph 249 of Consultation Conclusions – A Listing Regime for Companies From Emerging and Innovative Sectors dated April 2018).
- 2.2 Yum China applied to the Exchange for its secondary listing status in reliance on the framework of Chapter 19C and obtained its secondary listing status in Hong Kong in September 2020.
- 2.3 The Exchange, Yum China and Yum China's advisors devoted a significant amount of time and resources to discussions that culminated in the various waivers and exemptions which were set out in Yum China's prospectus dated September 1, 2020. These waivers and exemptions took into account Yum China's very specific facts and circumstances, while also ensuring that Hong Kong investors are afforded the same or similar shareholder protection provisions afforded to investors of other companies listed on the Exchange. Yum China investors in the U.S. and Hong Kong have a parity of rights and protections.
- 2.4 The 2021 Consultation describes the proposals contained therein as "a set of proposals that aim to strike a balance between market development and investor protection for the benefit of the market as a whole" (Paragraph 6 of the 2021 Consultation). Yum China is firmly of the view that this desired balance was already struck at the time

when Yum China applied for its secondary listing status in Hong Kong. The proposal relating to core shareholder protection standards, as well as the proposal to include a reconciliation statement to HKFRS or IFRS for US GAAP accounts, contained in the 2021 Consultation are not novel; they have been considered and analysed in our particular context as a part of our secondary listing application. Nor have there been any developments in the markets that would justify revisiting such standards for an issuer with a Chapter 19C secondary listing.

- 2.5 Yum China has relied on the existing Chapter 19C and the waivers and exemptions sought and granted at the time of the secondary listing application. Likewise, the investors in Yum China's global offering that was completed concurrently with the secondary listing, as well as anyone who has traded in Yum China's shares since the secondary listing, have also relied on, or traded on the basis of, such waivers and exemptions, as well as the regulatory framework contained in Chapter 19C. There is no reason for the Exchange to change these standards within such a short period of time. Any requirement to do so may come as a surprise to Yum China's shareholders and other investors in both the Hong Kong market and the U.S. market. We also submit it would be unduly onerous and burdensome for Yum China to have to comply with the changed standards.
- 2.6 More specific arguments relating to the proposed core shareholder protection standards and the proposal to include a reconciliation statement for US GAAP financial statements are set out below.

III. CORE SHAREHOLDER PROTECTION STANDARDS (QUESTION 5 OF THE 2021 CONSULTATION)

Question 5: Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.

- 3.1 For the reasons stated in "II. Fundamental Principles" above, and the further explanations set out below, Yum China is firmly of the view that existing issuers with a Chapter 19C secondary listing status in Hong Kong should not be required to comply with the proposed core shareholder protection standards and should be entitled to continue to be afforded the relevant waivers and exemptions which were an integral part of their listing application.

- 3.2 From Yum China’s perspective, there are no new developments that justify the changes proposed in the 14 categories set out in Paragraphs 79 to 137 of the 2021 Consultation. Most, if not all, of these were canvassed, expressly or implicitly, at the time of Yum China’s secondary listing application, including the reasons why Yum China should not be required to strictly comply with certain requirements. There also has not been any legal or market developments which would justify imposing any additional requirements on an existing Chapter 19C issuer now.
- 3.3 The 2021 Consultation states “an increasing number of US-listed Greater China Issuers have sought “homecoming” secondary listings on the Exchange” (Paragraph 4 of the 2021 Consultation). In this connection, it should be noted Yum China is the only Delaware-incorporated issuer listed on the Exchange (out of 2,538 issuers as at the end of 2021) and, also, unusually for companies listed on the Exchange, Yum China does not have a controlling shareholder (as defined under the Hong Kong Listing Rules). While Yum China’s operations are in China, it is a U.S. incorporated company, and as noted in “I. Introduction” above, 80 percent of its trading is on the NYSE. The very reasonable and legitimate expectations of investors in the U.S. market should be taken into account; we expect that most of them would be more accustomed to requirements that apply to U.S. incorporated (particularly Delaware-incorporated) NYSE or Nasdaq listed issuers.
- 3.4 The 2021 Consultation seems to adopt a heavy-handed approach to achieve across the board consistency as compared to the more thoughtful and tailored concept of “equivalency,” which has traditionally been a core feature in the shareholder protection area for listings of overseas issuers (other than those incorporated in Bermuda or the Cayman Islands) in Hong Kong. From Yum China’s own secondary listing application experience, we believe some of the 14 requirements under the proposed core standards are inconsistent with Delaware law and certain U.S. federal securities laws, which would make their adoption by Yum China *ultra vires*, exposing it to potential litigation and enforcement action. For example, the proposed core standard that the appointment, removal and compensation of auditors must be subject to shareholder approval is contrary to Section 10A(m)(2) and Rule 10A-3(b)(2) of the U.S. Securities Exchange Act (which implements Section 301 of the U.S. Sarbanes-Oxley Act), which require that Yum China’s Audit Committee have the sole power

and authority to appoint, retain and oversee Yum China's auditors. The imposition of requirements that are patently inconsistent with the laws and rules of our state of incorporation would not serve the interests of Hong Kong- and U.S.-based investors alike, negating whatever benefit the Exchange seeks to achieve in implementing them.

3.5 It is Yum China's position that in the context of its governance structure and the rules that apply to it as a Delaware-incorporated, NYSE-listed company, the addition of one or several specific shareholder protection requirements does not necessarily enhance Yum China's corporate governance or shareholder protection in the way that it might do so for other issuers listed on the Exchange. Any change or new requirement introduced must be looked at in light of the overall shareholder protection package afforded to our shareholders, and Yum China respectfully submits that the changes that will be required of Yum China will not in and of themselves enhance shareholder protection. To the contrary and as noted in 3.4 above, some of the requirements might be in conflict with applicable Delaware law or other applicable requirements, or may be inconsistent with the reasonable and legitimate expectations of the investing public in the U.S., or not otherwise adopted by large U.S. public companies (for example, S&P 500 companies, to which Yum China is comparable in size and market capitalization) generally for reasons unique to the U.S. market, such as an active plaintiffs' bar for securities and derivative litigation and robust shareholder activism. It was in this context that Yum China and its advisors extensively engaged with the Exchange and discussed, for example, the adoption of a 25% requisition right, instead of a 10% requisition right. From Yum China's perspective, there is no compelling reason to reopen these discussions as the arguments advanced at the time remain true and important to Yum China.

IV. US GAAP AND RECONCILIATION

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.*

- 4.1 FAQ 043-2018 published by the Exchange contains the following:
- *“Query: Is a reconciliation statement required for a secondary listing under Chapter 19C who has adopted US GAAP for its financial reporting?”*
 - *“Response: No reconciliation is required where US GAAP is adopted for an applicant applying for a secondary listing under the Main Board Listing Rules.”*
- 4.2 We do not believe there is a reason for the Exchange to reconsider the answer in the above-quoted FAQ.
- 4.3 As a U.S. domestic issuer, Yum China has no discretion regarding what financial reporting standard to adopt –Yum China is required to file financial statements with the SEC in accordance with US GAAP.
- 4.4 We respectfully submit Yum China’s current financial reporting and accounting presentation, including the form and content of such presentation, are appropriate and sufficient. Yum China has built up a healthy trading volume on the Exchange (being approximately 20 percent of its global trading volume) on the basis of its existing disclosures, including Yum China’s US GAAP financial statements in their existing form, and we do not see any reason to require Yum China to provide a reconciliation statement. The trading volume is the best proof that there is a significant number of Hong Kong investors who are willing to make investment decisions based on US GAAP financial information alone and no additional information in the form of a reconciliation is needed or is otherwise desirable.
- 4.5 We note there has not been any developments in the markets which would support a change in the Exchange’s position at this time. In the Exchange’s announcement entitled “Acceptance of International Accounting Standards (IAS) and Generally Accepted Accounting Principles in the United States of America” issued on October 22, 2000, the Exchange already stated that “[i]n view of the widespread familiarity of international investors with US GAAP and the continuing and steady globalisation of capital markets, greater acceptance by the Exchange of US GAAP would enhance the status and credibility of the Exchange and be beneficial for its long-term development as an international capital market.” Yum China believes the Exchange’s expressed

position remains true today. It is also worth noting that the SEC issued its final rule on “Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards without Reconciliation to US GAAP” on December 21, 2007 to allow foreign companies to submit financial statements to the SEC using IFRS without having to include a reconciliation of the IFRS data to US GAAP.

If you have any questions about Yum China’s comments or would like additional information, please contact me at [REDACTED]

[REDACTED]
Yum China Holdings, Inc.