

31 May 2021

BY HAND AND BY EMAIL

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sirs,

Consultation Paper on Listing Regime for Overseas Issuers

Ernst & Young is pleased to respond in this letter to the request of The Stock Exchange of Hong Kong Limited for feedback on the captioned consultation paper. Terms used in this letter shall have the same meaning as defined in the consultation paper.

We welcome the Exchange's efforts in streamlining and enhancing its listing regime to attract more international and Mainland companies to list in Hong Kong and developing Hong Kong as a listing and capital raising hub for major companies.

Listing requirements for Overseas Issuers are scattered in various places in the Listing Rules, the JPS and Country Guides, making it complex and difficult to navigate. We have also found it difficult to follow the different secondary listing regimes in the JPS and Chapter 19C. As such, we agree to the overall objective of the proposals to streamline and consolidate the rules and guidance for the listing of Overseas Issuers.

We would like to set out in this letter our comments on proposals relating to accounting and auditing matters only, as we believe that legal professionals and listed issuers are in a better position to comment on other detailed proposals such as those relating to shareholder protection standards.

Common waiver allowing the use of overseas accountants in primary listings

We note from the Introduction section of the JPS that the JPS does not apply to overseas companies incorporated in a Recognised Jurisdiction seeking a primary listing on the Exchange. As such, common waivers set out in the JPS, including the common waiver from strict compliance with rule 4.03 which requires the use of Hong Kong reporting accountants, are currently not available to primary listing applicants incorporated in Bermuda and the Cayman Islands. Should the relevant proposals be adopted, such a common waiver will also be available to primary and dual primary listing applicants incorporated in Bermuda and the Cayman Islands, and will be codified into Listing Rule 19.59(2) under a section entitled "Common Waivers". As an

overwhelming majority of the companies listed in Hong Kong are incorporated in Bermuda and the Cayman Islands and listing vehicles in such jurisdictions continue to be widely used by primary listing applicants, we wonder whether the proposals may give an impression of a relaxation in the regulators' position in respect of the location of reporting accountants in primary listings, which we believe may not be the intention.

Whilst we agree that such a common waiver should continue to be made available to Overseas Issuers in order to maintain the competitiveness of the Hong Kong IPO market, we suggest that appropriate wording be included in the Listing Rules to provide clarity and avoid the impression that the obtaining of such a waiver will be readily available to any issuers incorporated in an overseas jurisdiction, without valid justification.

We understand that the proposed note 2 to rule 4.03(1) seeks to codify the requirement for Overseas Issuers seeking the FRC's recognition of overseas accountants to provide specific reasons to support their requests for a Statement of No Objection (SNO) from the Exchange. Examples of specific reasons mentioned in this proposed note include: (i) such firm has a geographical proximity and familiarity with the businesses of that issuer or the target; (ii) that issuer or the target is listed on a Recognised Stock Exchange, and such firm is the auditor of that issuer or the target; and (iii) such firm is the statutory auditor of that issuer or the target. Note 2 to rule 4.03(1) also includes a statement that the Exchange retains the discretion to accept or reject an application for an SNO and reserves the right to withdraw the SNO for the use of overseas accountants in PIE Engagements in general. We believe that the Exchange can provide further clarity to Overseas Issuers by including in rule 19.59(2) a note cross-referencing to note 2 to rule 4.03(1) and highlighting the Exchange's discretion to reject a waiver application in cases where the circumstances do not warrant such a waiver, e.g., when the overseas primary listing applicant has a centre of gravity in Greater China. Please refer to our suggested amendments (underlined) below:

"Common Waivers

19.59 The Exchange will consider, under rule 2.04, applications for waivers of the following rules from overseas issuers with, or seeking, a listing under this chapter. The Exchange will consider these applications on individual merit based on all relevant facts and circumstances including compliance with the prescribed conditions:

.....

- (2) rule 4.03 for primary and dual primary listings, subject to the conditions that:
 - (a) the SFC grants a certificate of exemption from strict compliance with the relevant Companies (Winding Up and Miscellaneous Provisions) Ordinance requirements; and
 - (b) the reporting accountants is a firm that has an international name and reputation, is a member of a recognised body of accountants and is subject to independent oversight by a regulatory body of a jurisdiction that is a full signatory to the IOSCO MMOU.

Note: In relation to an application for the recognition of an overseas firm of practising accountants under the FRCO, on a request made by an overseas issuer, the Exchange may provide a statement of no objection to that issuer for appointing an overseas firm of practising accountants to carry out a PIE Engagement for that issuer under section 20ZF(2)(a) of the FRCO (see note 2 to rule 4.03(1)). The Exchange reserves the right to reject a waiver application if, in the opinion of the Exchange, the circumstances do not warrant such a waiver, for example, the issuer has a centre of gravity in Greater China."

Common waiver allowing the use of overseas accountants in secondary listings

The proposed rule 19.59(2) deals with the common waiver for qualifications of reporting accountants in primary listings. However, we could not locate a similar common waiver for secondary listings in the proposed rule 19C.11B under the section "Common Waiver". Such a common waiver is also available to secondary listing applicants under the JPS.

Auditing standards and financial reporting standards

In general, we agree to the following proposals:

- To retain the current list in the JPS setting out the alternative auditing standards that can be used to audit the financial statements of Overseas Issuers, and to publish the list as guidance as this will provide more flexibility in terms of subsequent revision, as necessary (Question 25).

We agree that the inclusion of alternative auditing standards in a guidance letter, rather than in the Listing Rules, provides more flexibility.

- 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 (Question 26).

This has been implemented by the Exchange for many years and we agree that the codification will provide more clarity to Overseas Issuers.

- 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 of the consultation paper and the proposed guidance letter in Schedule E thereof (Question 27).

We agree that the inclusion of alternative financial reporting standards in a guidance letter, rather than in the Listing Rules, provides more flexibility.

- 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 (Question 28).

This has been implemented by the Exchange for many years and we agree that the codification will provide more clarity to Overseas Issuers.

- 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 (Question 29).

We note that the wording in the proposed note 3 to rule 19.25A (dual primary listings) is "for its second full financial year following the date of its de-listing and thereafter", whereas note 3 to rule 19C.23 (secondary listings) is "for any financial statements that fall due under the Exchange Listing Rules, and are published, after the first anniversary of the date of its de-listing". Unless there is specific reason for the use of different wording for dual primary listings and secondary listings, we suggest that the wording in note 3 to rule 19.25A be consistently adopted so that the length of the automatic grace period can be tied in with an issuer's financial year end and cater for de-listing that might take place during different times of a financial year.

- 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 de-lists from a US exchange) (Question 30).

This ensures a more consistent approach to the Exchange's acceptance of the use of alternative financial reporting standards.

- 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 (Question 31).

This ensures a more consistent approach to the Exchange's acceptance of the use of alternative financial reporting standards.

We also agree that any secondary listing applicant/issuer that wishes to adopt US GAAP for the preparation of its accountants' report in their listing document must include a similar reconciliation statement.

Qualification requirements for auditors and reporting accountants

We agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules (Question 32). This provides a clear link between the different sets of rules that a listed issuer has to comply with.

Qualification requirements for accountants' reports

We agree to the following proposals:

- 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 (Question 33).

This provides a clear link between the different sets of rules that a listed issuer has to comply with.

- 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 (Question 34).

This provides a clear link between the different sets of rules that a listed issuer has to comply with.

- 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 of the consultation paper (Question 35).

The criteria have been used by the Exchange for many years and we agree that the codification will provide more clarity to Overseas Issuers.

Amendments relating to PRC issuers

We are delighted to note that the mutual recognition agreement made between the Mainland and Hong Kong regulators in 2009 is now mentioned in the proposed rules 19A.08 and 19A.31, providing the much-needed clarity that the use of approved PRC reporting accountants/auditors is only permitted for PRC issuers adopting CASBE.

The meaning of "PIE Auditor" in section 3A of the FRCO includes a recognized PIE auditor, that is an overseas auditor recognized under Division 3 of Part 3 of the FRCO, including a Mainland auditor recognized under section 20ZT of the FRCO. Under the FRCO, only an issuer incorporated outside Hong Kong is permitted to appoint a Recognized PIE Auditor for a PIE Engagement. A Mainland auditor recognized under section 20ZT of the FRCO can only carry out a PIE engagement for a PRC issuer.

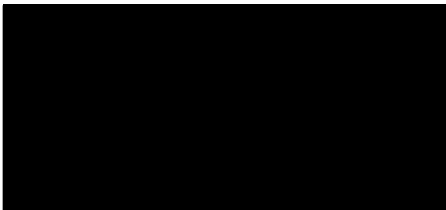
We note that rule 19A.31 allows PRC issuers to use overseas auditors for annual reporting purposes. However, rule 19A.08 that deals with accountants' reports only refers to Hong Kong and PRC reporting accountants (which makes sense for a new listing) and does not contain any similar reference to overseas reporting accountants. Does it mean that a PRC issuer that adopts IFRS must use Hong Kong reporting accountants (and is not allowed to use overseas reporting accountants) to issue IFRS accountants' reports on targets in notifiable transactions (for those that constitute a PIE Engagement as well as those that do not)?

Amendments to the general requirements for disclosure of financial information in Appendix 16

Paragraph 2.6 of Appendix 16 states that the Exchange may allow the annual financial statements of an overseas issuer to be drawn up in conformity with alternative overseas financial reporting standards. We note that the cross-references to Chapters 19 and 19C are proposed to be added to this paragraph to refer to the requirement to include a reconciliation statement, but such cross-references also include rules 19.14 and 19C.10E which deal with accountants' reports instead of annual accounts.

Should you have any questions on the above comments, please do not hesitate to contact our [REDACTED] in Hong Kong, [REDACTED] on [REDACTED].

Yours faithfully,



Hong Kong