



By email [REDACTED]

31 May 2021

Our Ref.: C/CFAP, M130145

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

Dear Sirs,

Re: Consultation Paper on Listing Regime for Overseas Issuers

The Hong Kong Institute of CPAs' Corporate Finance Advisory Panel ("CFAP") has considered the proposals in Consultation Paper on Listing Regime for Overseas Issuers. The Institute generally supports Hong Kong Exchanges and Clearing Limited's aim to address inconsistencies in the various regulatory requirements for different kind of overseas issuers and, among other things to:

- (i) Streamline requirements with a single set of shareholder protection standards to ensure consistent protection is provided to all investors
- (ii) Expand the secondary listing regime for overseas-listed Greater China companies from traditional sectors without weighted voting rights ("WVR")

However, we have concerns about the proposals to allow eligible overseas issuers to dual primary list while keeping their existing non-compliant WVR and variable interest entity structures ("VIE") and to allow them to retain their on-compliant WVR and/ or VIE structures, even if they are de-listed from the exchange on which they have a primary listing. In our view, this will, in effect, set up parallel and distinct regulatory regimes for issuers with a primary listing in Hong Kong, in which those starting out with a primary listing only in Hong Kong will have to comply with a more stringent set of rules and investor protection measures than those with a dual primary listing, or those which start out with secondary listing in Hong Kong and later migrate their primary listing to Hong Kong.

----- Our detailed views on the proposals are provided in the Appendix which reproduces the questions contained in the consultation paper.

Should you have any questions on the Institute's submission, please do not hesitate to contact me at [REDACTED] or [REDACTED].

Yours faithfully,

[REDACTED]

Encl.

Consultation Paper on Listing Regime for Overseas Issuers

Core shareholder protection standards

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, generally. This proposal may help to streamline the requirements with a single set of shareholder protection standards. It could reduce the complexity of Hong Kong’s listing regime and, at the same time, ensure that consistent shareholder protection standards apply to all listed companies. However, this also depends on the scope of the Core Standards and the extent to which variations from them are permitted.

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.

We do not have particular views on these questions, given that most of the Core Standards set out in paragraphs 79 to 137 are proposed based on the Companies Ordinance (Cap. 622) and Listing Rules (“LRs”). However, with regard to our response to Question 1, we note that variations from some Core Standards will be allowed (e.g. regarding the definition of “super-majority vote”, which, for some issuers, will mean at least three-fourths of the voting rights of members present and voting in person or by proxy at a relevant general meeting, while, for PRC issuers, it will mean at least two thirds of the members present and having voting power (as provided for under the Mandatory Provisions for Companies Listing Overseas). In some cases, the Core Standards arguably result in adopting a lowest common dominator, such in the proposed notice period for meetings where the proposed requirement is only “to give members reasonable written notice, albeit an additional note will indicate that this “normally means at least 21 days for an annual general meeting and 14 days for other general meetings”. Furthermore, we note that this proposed Core Standard is less exacting than the current “comply or explain” standard in Code Provision E.1.3 of the Corporate Governance Code, namely, 20 clear business days for an annual general meeting and 10 clear business days for other general meetings, which it is proposed to repeal.

As regards the repeal of existing shareholder protection standards set out in Schedule C, while we note the justification for repealing provisions currently in Appendix 3, i.e., that they overlap with other LR requirements, some of these requirements relate to basic minority shareholder protections (e.g., item 8 of Schedule C - directors voting on contracts, etc. in which they or their associates have a material interest). Enforcement purely through the LRs will not provide the same level of shareholder protection as would the combination of the LRs and inclusion in the issuers’ constitutional documents, as it will reduce shareholders’ opportunities for private actions. Therefore, there is an argument for retaining a “belt and braces” approach in relation to certain of the requirements, provided that the scope/ wording of the requirements in different locations is consistent.

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, although it would be better to make clear that the level of shareholder protection in both cases should be of an equivalent standard. See also our response to Question 2.

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.

We have no specific view on this question.

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 with this proposal on the basis that it will help to ensure that the same Core Standards apply to all issuers and so reduce the risk of any confusion to investors.

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.

Other market participants, in particular existing issuers, will be better placed to comment on this question.

Dual primary listings

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 but, in relation to paragraph 155 of the consultation paper (“CP”), it should also be made clear that application for Common Waivers will not be considered where, due to its dual primary listing (and the assumption that the issuer will be complying with the Hong Kong LRs), the issuer is not required to comply with the relevant regulations of the other market where it is listed.

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 broadly agree with this proposal. As suggested in paragraph 158 of the CP, it could help improve the transparency of Hong Kong’s listing regime for overseas issuers and enable issuers to develop reasonable expectations and better assess the regulatory compliance requirements to list in Hong Kong.

However, as the Equivalence Requirement and the concept of “Recognised Jurisdictions” and “Acceptable Jurisdictions” will be replaced with one common set of Core Standards for all issuers, we doubt whether the codification of the common waivers should allow the use of

overseas reporting accountants by the majority of listed companies incorporated in Bermuda and the Cayman Islands, which, in substance, are not strictly “overseas issuers” given that their main business operations are carried out in Greater China and/ or Hong Kong.

Under the current arrangements, generally, the JPS does not apply to Recognised Jurisdictions and, therefore, the common waiver in the JPS allowing overseas reporting accountants to issue initial public offering (“IPO”) accountants’ reports for primary listings is currently not available to companies incorporated in Bermuda and the Cayman Islands. These listing applicants must use Hong Kong reporting accountants for their primary listings.

We are concerned, therefore, that the Exchange’s proposed codification may allow primary listing applicants incorporated in Bermuda and the Cayman Islands, with a close nexus to Greater China and/ or Hong Kong, to use overseas reporting accountants to issue their IPO accountants’ reports (subject to waivers/ recognition granted by the Exchange/ Securities and Futures Commission). From an investor protection perspective, we consider that, if these companies are, in substance, Mainland or Hong Kong companies, they should not be allowed to use overseas reporting accountants. The Exchange should allow companies to use overseas reporting accountants only with valid, concrete reasons.

In view of the above, the LRs should make it clear that only primary listing applicants without a close connection to Greater China may seek to use overseas reporting accountants for their primary or dual primary listings. We suggest that proposed LR19.59(2) (common waiver to be granted to overseas issuers) should contain a note similar to the note in the proposed revised LR19.20 (qualifications of overseas auditors), referring to note 2 to LR4.03(1) and requiring listing applicants to provide a valid reason for requesting a statement of no objection from the Exchange for the use of overseas reporting accountants.

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 disagree with this proposal as it will, in effect, set up parallel and distinct regulatory regimes for issuers with a primary listing in Hong Kong, in which those starting out with a primary listing only in Hong Kong will have to comply with a more stringent set of rules and investor protection measures than those with a dual primary listing, or those that start out with a secondary listing in Hong Kong and later migrate their primary listing to Hong Kong (see also our response to Question 23). Over time, we believe that this will lead to pressure to relax the general rules on WVRs and VIE Structures, potentially, at the expense of investor protection.

We understand the rationale for allowing overseas issuers to apply for a “secondary” listing in Hong Kong with their existing non-compliant WVR and/ or VIE Structures, on the basis mentioned in paragraph 141 of the CP, that these issuers have primary listing on another stock exchange with the majority of their listed equity securities traded outside Hong Kong, and are already subject to the regulations in and enforcement of their market of primary listing. However this does not automatically apply if the issuer has a dual primary listing.

Similarly, the argument for allowing non-compliant ownership arrangements to continue disappear if an issuer with a secondary listing in Hong Kong later subsequently shifts its primary listing to Hong Kong by the reason of the fact that either:

- (i) the majority of trading in its listed shares migrates to the Hong Kong stock exchange on a permanent basis, and/ or
- (ii) the issuer delists from the stock exchange where it has a primary listing,

Therefore, while certain common waivers and prescribed conditions, as indicated in paragraph 158 of the CP, may apply (Questions 7 and 8 refer), we consider that these overseas issuers, as for other existing issuers, should be subject to the key LRs in Hong Kong, from regulatory compliance and investor protection perspectives. If there are particular and specific circumstances that make it problematic for an issuer to bring its WVR and/ or VIE Structure(s) into compliance, it should be required to apply for a specific waiver from the Exchange and this should, in principle, be time limited; otherwise it will give rise to the problem identified above of the existence of parallel and distinct regulatory regimes, depending upon how an issuer came to have its primary listing in Hong Kong. This could encourage issuers to game the system.

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 disagree with this proposal. See our response to Question 9.

Secondary listing

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 with this proposal as a way of improving transparency and reducing the complexity of the regime for secondary listings.

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.

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 have an expected market capitalisation at listing that is significantly larger than HK\$10 billion? Please give reasons for your views.

Generally, we do not object to this proposal, but an explanation should be given as to why, under "Criteria B" it is proposed to drop the existing requirement of having at least HK\$1 billion of revenue in the most recent audited financial year for issuers with an expected market capitalisation of HK\$10 billion at the time of secondary listing.

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 with this proposal. New secondary listing applicants with a centre of gravity in Greater China and without a WVR structure and should be treated equally with other overseas listing applicants without a centre of gravity in Greater China.

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.

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.

While applying the test for reverse takeovers may be a relevant indicator, it is not entirely clear how, in practice this test will be applied in relation to a primary listing on an overseas market. It would also be relevant know when the relevant transactions took place and how long the issuer has enjoyed a primary listing overseas; nor should this be the only test to determine whether an application for secondary listing is an attempt to avoid the LRs that apply to a primary listing.

In order to protect investors, we would expect that the Exchange will also apply the test to disallow Special Purpose Acquisition Companies (“SPACs”) from overseas to secondary list in Hong Kong, at least shortly after the acquisition of companies by such SPACs.

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.

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.

Other market participants, in particular existing issuers, will be better placed to comment on this question.

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.

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 generally agree with this proposal but please also refer to our response to Question 8.

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 agree on the basis that the current condition applies inconsistently, depending on whether the issuer is subject to a pre-emptive rights requirement outside of the LRs or not.

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.

While we have no objection to this proposal, we are unclear why this particular LR requirement is being singled out above other requirements that may be regarded as equally important (e.g., the requirement for an audit committee).

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.

Yes. As mentioned in our responses to Questions 8 and 9 above, we disagree with the proposal in paragraph 235 of the CP, that Grandfathered Greater China Issues and Non-Greater China Issuers should be permitted to retain their non-compliant WVR and/ or VIE Structures that are pre-existing at the time of their secondary listing in Hong Kong, even if they de-list from the Qualifying Exchange after their secondary listing in Hong Kong.

Codification of other requirements

Question 24 - Do you agree that the Exchange should codify the Regulatory Cooperation 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.

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 agree.

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.

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.

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.

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 do not object to this proposal. We consider that, generally, the issuer will have been preparing for de-listing for quite some time before it is confirmed. In particular, the Exchange also notes that "the issuer should already have relevant controls in place for compliance with the reconciliation statement disclosure". As such, it may not necessary to give relevant issuers a long grace period to adopt HKFRS/ IFRS.

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.

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.

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 agree.

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 agree.

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 have no particular views on this question. We note, however, that under the proposed LR 19C.11B (Common Waivers), in Schedule D of the CP, there is no reference to LR4.03.

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.

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 agree.

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.

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.

Company Information Sheets contain useful information for investors, as noted in paragraph 284 of the CP and, in principle, should be made available in relation to overseas issuers wherever possible. In our view, it should not be left entirely to the Exchange's discretion, in cases other than secondary listed issuers, to decide whether publication would be useful to Hong Kong investors. The criteria for making a decision as to whether a Company Information Sheet should be published for non-secondary listed overseas issuers should be made clear.

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.