

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




31 May 2021

Dear Sir / Madam

**Consultation Paper on Listing Regime for Overseas Issuers**

On behalf of ACCA (the Association of Chartered Certified Accountants) Hong Kong, we would like to submit our response to the captioned consultation paper.

ACCA Hong Kong is supportive of the reforms to enhance and streamline the listing regime for overseas issuers. We understand the key principles behind the proposed amendments to the Listing Rules and agree that the Exchange will be better positioned to attract more overseas and Chinese companies to list in Hong Kong under the enhanced regime.

Enclosed please find our detailed responses to the questions set out in the consultation paper. Should there be any questions, please do not hesitate to contact   
, at .

Yours faithfully

  
ACCA Hong Kong

# HKEX CONSULTATION PAPER ON LISTING REGIME FOR OVERSEAS ISSUERS

Submitted by: ACCA Hong Kong

## 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?

Yes

No

Please give reasons for your views.

The adoption of one common set of Core Standards would eliminate the differential treatment of overseas issuers and make it easier for overseas issuers to navigate the rules.

Please refer to our answer to Question 8.

### Question 2(a)

Do you agree with the proposed Core Standards set out in paragraphs 79 to 137 of the Consultation Paper?

Yes

No

Please give reasons for your views.

**Question 2(b)**

Do you agree that the existing shareholder protection standards set out in Schedule C of the Consultation Paper should be repealed?

Yes

No

Please give reasons for your views.

Focusing on the key protection standards that apply to all issuers and eliminating duplicate requirements will make it easier to understand and comply with the rules.

**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?

Yes

No

Please give reasons for your views.

**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 of the Consultation Paper , should be added or repealed?

Yes

No

Please give reasons for your views.

**Question 5**

Do you agree that existing listed issuers should be required to comply with the Core Standards?

Yes

No

Please give reasons for your views.

**Question 6(a)**

Do you agree that 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?

Yes

No

Please give reasons for your views.

**Question 6(b)**

Do you agree that the application of the Core Standards will not cause existing listed issuers undue burden?

Yes

No

Please give reasons for your views.

**Dual Primary Listing**

**Question 7**

Do you agree with the principles set out in paragraph 155 of the Consultation Paper for use when considering waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong?

Yes

No

Please give reasons for your views.

### Question 8

Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158 of the Consultation Paper?

Yes

No

Please give reasons for your views.

The “yes” answer is subject to adding an explicit waiver condition (c) to the proposed rule 19.59(2) (set out in Schedule D-32 of the consultation paper) that primary listing applicants must demonstrate that they do not have a centre of gravity in Greater China.

The rationale for our suggestion is set out below:

Currently, companies incorporated in Bermuda and the Cayman Islands must use HK CPA firms to issue accountants’ reports for their primary listings because the Joint Policy Statement (JPS) makes it very clear that the principles and waivers in the JPS (including the waiver on using HK CPA firms in section 3 of the JPS) do not apply to Recognised Jurisdictions (i.e., Bermuda and the Cayman Islands).

See extract of the JPS below.

#### ***Application of requirements***

|  | <b>Primary Listing</b> | <b>Secondary Listing</b>     |
|--|------------------------|------------------------------|
| <b>Overseas companies incorporated outside a Recognised Jurisdiction</b>   |                        |                              |
| <b>Main Board</b>  | Sections 1 to 4        | Sections 1 to 5 <sup>6</sup> |
| <b>GEM</b>   |                        | <i>Not applicable</i>        |
| <b>Overseas companies incorporated in a <b>Recognised Jurisdiction</b></b> |                        |                              |
| <b>Main Board</b>  | <i>Not applicable</i>  | Sections 3 to 5 <sup>7</sup> |
| <b>GEM</b>   | <i>Not applicable</i>  | <i>Not applicable</i>        |

This makes sense as the majority of the HK-listed companies are incorporated in Bermuda and the Cayman Islands. Bermuda and the Cayman Islands are rarely the principal place of operations for such companies.

The proposal to abolish the distinction between Recognised Jurisdictions and Acceptable Jurisdictions as part of the consolidation of the listing rules and withdrawal of the JPS means that the SFC and the HKEX will now consider granting waivers, allowing the use of overseas CPA firms to issue IPO accountants' reports for the primary listing of listing applicants incorporated in Bermuda and the Cayman Islands.

This particular proposal in the consultation paper effectively opens the door for overseas CPA firms to issue IPO accountants' reports for almost all primary listings.

Whilst the use of overseas CPAs for primary listing is still subject to waivers from the SFC and the HKEX and the recognition of the FRC, the proposal will:

(i) Explicitly write into the Listing Rules the possibility of using overseas CPAs; and

(ii) Extend such an explicit waiver to primary listings of Bermuda and the Cayman companies which made up 78% of listed companies as at 31/12/2020 (the majority of those have a Greater China nexus).

Any waiver in (ii) above is not possible in practice (under the JPS) at the moment.

We understand that the proposed revision to rule 4.03(1) requires overseas applicants to provide reasons for such a waiver application, e.g., geographical proximity, an overseas listing and use of statutory auditors.

We suggest adding an explicit waiver condition (c) to the proposed rule 19.59(2) that primary listing applicants must demonstrate that they do not have a centre of gravity in Greater China (borrowing the term from the secondary listing rules) in order to justify the use of overseas CPAs.

We believe that the additional condition serves the purpose of maintaining the status quo regarding the use of overseas accountants in primary listings and therefore provides better protection to investors as it would be much more efficient and effective for local regulators to monitor and investigate local accounting firms. Whilst we believe that the regulators will not grant these waivers without thoroughly considering the reasons provided by the overseas applicants, the additional condition conveys a clear message to overseas applicants and market practitioners that such a "common" waiver is only available to overseas applicants with overseas operations and compelling reasons to use overseas accounting firms, instead of overseas applicants with a close nexus to China such as the many listed issuers incorporated in Bermuda and the Cayman Islands.



**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?

Yes

No

Please give reasons for your views.

**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 de-listed from the Qualifying Exchange on which they are primary listed?

Yes

No

Please give reasons for your views.

No, as a matter of principle, these companies should comply with Hong Kong WVR/VIE rules if they choose to delist elsewhere.

### **Secondary Listing**

#### **Question 11**

Do you agree with our proposal to codify requirements (with the amendments set out in the Consultation 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?

Yes

No

Please give reasons for your views.

It would make them easier to read.

#### **Question 12**

Do you agree that the Exchange should implement the quantitative eligibility criteria as proposed in paragraphs 199 and 201 of the Consultation Paper 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?

Yes

No

Please give reasons for your views.

Secondary listings only make sense for issuers with a large market capitalisation.

**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?

Yes

No

Please give reasons for your views.

**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”?

Yes

No

Please give reasons for your views.

This would facilitate homecoming IPOs of companies with traditional business models.

**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?

Yes

No

Please give reasons for your views.

**Question 16**

Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210 of the Consultation Paper, if the Exchange suspects that an

issuer's secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing?

Yes

No

Please give reasons for your views.

Yes, if the HKEX means that in the event that the reverse takeover was treated as a new listing application on the overseas exchange on which the secondary listing applicant is primary listed, then the HKEX would allow a secondary listing in HK as the business has already been subject to full scrutiny on the overseas exchange.

#### Question 17

Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing?

Yes

No

Please give reasons for your views.

It makes sense not to differentiate between Greater China issuers or non-Greater China issuers.

#### 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?

Yes

No

Please give reasons for your views.

Most heavily traded secondary listed stocks are of companies with a centre of gravity in Greater China listed under the current Chapter 19C and already subject to this requirement anyway.

**Question 19**

Do you agree with the codification of the principles set out in paragraph 215 of the Consultation Paper on which exemptions/ waivers are granted to secondary listed issuers?

Yes

No

Please give reasons for your views.

**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?

Yes

No

Please give reasons for your views.

We could not find a common waiver to use overseas accountants recognized by the FRC in the proposed amendments to Chapter 4 or Chapter 19C. If it is available for primary listings, it should also be available for secondary listings.

Rule 4.03 deals with qualifications of reporting accountants in general (for primary and secondary listings).

Rules 19.20 (primary listings) and the proposed rule 19C.16 (secondary listings) deal with qualifications of auditors.

The proposed rule 19.59(2) (primary listings) deals with the common waiver for qualifications of reporting accountants. However, we could not locate a similar proposed rule in Chapter 19C (proposed to be amended to govern all secondary listings of overseas issuers) or any reference to waiver from compliance with rule 4.03 in the existing or proposed Chapter 19C.

### 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 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Removing this condition would help standardize the rules for all overseas issuers.

### 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 of the Consultation Paper)?

Yes

No

Please give reasons for your views.

The diversity requirement is quite generic.

**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 the Consultation Paper?

Yes

No

Please give reasons for your views.

**Codification of other requirements**



**Question 24**

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

Yes

No

Please give reasons for your views.

**Question 25**

Do you agree that the Exchange should retain as guidance the alternative auditing standards listed in paragraph 249 of the Consultation Paper that can be used to audit the financial statements of Overseas Issuers?

Yes

No

Please give reasons for your views.

These alternative auditing standards would be more flexible.

**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?

Yes

No

Please give reasons for your views.

**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 of the Consultation Paper)?

Yes

No

Please give reasons for your views.

Retaining this list of acceptable alternative financial reporting standards allows for more flexibility.

**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?

Yes

No

Please give reasons for your views.

**Question 29(a)**

Do you agree that issuers that de-list from a jurisdiction of an alternative financial reporting standard should be given an automatic grace period (i.e. an application to the Exchange is not required) within which to adopt IFRS or HKFRS?

Yes

No

Please give reasons for your views.

**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 de-lists from a US exchange)?

Yes

No

Please give reasons for your views.

We agree to aligning the rules for US GAAP with those for other alternative financial reporting standards.

### 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?

Yes

No

Please give reasons for your views.

We agree to aligning the rules for US GAAP with those for other alternative financial reporting standards.

### Question 32

Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules?

Yes

No

Please give reasons for your views.

Codifying the amendment to the FRCO that established the PIE Engagement regime into the Listing rules would make it easier to understand all the requirements.

**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?

Yes

No

Please give reasons for your views.

**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?

Yes

No

Please give reasons for your views.

**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 of the Consultation Paper?

Yes

No

Please give reasons for your views.

**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 of the Consultation Paper?

Yes

No

Please give reasons for your views.

An amendment to 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 of the Consultation Paper would make it easier to understand all the requirements.

### Question 37

Do you agree to codify the JPS requirement for Company Information Sheets as described in paragraphs 283 to 288 of the Consultation Paper?

Yes

No

Please give reasons for your views.

No, if it means that the codification will result in 78% of the listed issuers (the percentage of issuers incorporated in Bermuda or the Cayman Islands) having to produce company sheets going forward, and the HKEX will have to assess whether to waive the requirement in each case.

Yes, if there's a grandfather arrangement exempting existing issuers incorporated in Bermuda or the Cayman Islands.

### 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?

Yes

No

Please give reasons for your views.

The Company Information Sheet requirement should be applied to (a) secondary listing issuers; and (b) any other Overseas Issuer, at the Exchange's discretion, if there's a grandfather arrangement exempting existing issuers incorporated in Bermuda or the Cayman Islands.

**Question 39**

Do you agree to amalgamate the guidance described in paragraphs 289 and 290 of the Consultation Paper into one combined guidance letter for overseas issuers (see Schedule E of the Consultation Paper)?

Yes

No

Please give reasons for your views.

Amalgamating the guidance described in paragraphs 289 and 290 of the Consultation Paper into one combined guidance letter for overseas issues would make it easier to understand all the requirements.