Freshfields' responses to the Consultation Paper on the Listing Regime for Overseas Issuers

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.**
A:	Freshfields agrees 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. Freshfield is in support of this proposal which gives clarity to the market and will make the listing regime for Overseas Issuers much more simplified and user friendly.
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out in paragraphs 79 to 137; and (b) that the existing shareholder protection standards set out in Schedule C should be repealed?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.**
A:	Freshfields agrees (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out in paragraphs 79 to 137; and (b) that the existing shareholder protection standards set out in Schedule C should be repealed. Regarding the right to convene an extraordinary general meeting (paragraph 102), as the Exchange has previously permitted certain secondary listed issuers to have a requisition threshold higher than 10% taking into consideration very specific facts and circumstances, we believe that there may be exceptional and case-specific circumstances where the rights of shareholders could be preserved by a variation to the minimum requisition threshold and this possibility ought to be preserved especially if the listing of the potential issuer would be considered to be accretive to our market due, among other things, to its quality, market profile and market capitalisation.
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.**
A:	Freshfields agrees to codify the current practice that all issuers must conform their constitutional documents to the Core Standards (except as mentioned in the responses to Questions 2 and 5) 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. Regarding members' right to remove director (paragraphs 79 and 80), some listed issuers already adopted the existing wording using the word "issuer" under the Listing Rules in their current constitutional documents (i.e. the relevant article provides that "the ***issuer*** in general meeting shall have the power by ordinary resolution to remove any director"). We suggest that the Exchange clarifies that those issuers are

	not required to amend their constitutional documents as in substance, the existing provision under the constitutional documents already satisfies the requirement. Regarding the timing of convening an annual general meeting (paragraph 86), we draw the Exchange's attention that pursuant to Note 2 to Rule 13.46(1)(b) and Rule 13.46(2)(b), a listed issuer is **already required** to convene a general meeting within the period of six months after the end of the financial year for the purpose of laying its annual financial statements before its members and a waiver has been granted by the Exchange if a listing applicant cannot satisfy this requirement (for example, Bilibili Inc.). The question is if this Core Standard is required as it seems to be already covered by an existing Listing Rule requirement. We also submit that a legal opinion from a reputable domestic law firm should be sufficient evidence of the applicability of relevant domestic laws, rules, and regulations to which the issuer is subject and its constitutional documents in combination to demonstrate the relevant shareholder protection under the Core Standards.
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.**
A:	The following issues have not been addressed in the Consultation Paper. We suggest that Exchange also considers the following issues: 1. Policy on the treasury shares As a general principle, the Exchange does not permit treasury shares. If an issuer completes a share buyback on any stock exchange, the purchased shares must be cancelled pursuant to Rule10.06(5). For a secondary listed issuer, Rule 19.43(2) states that the Exchange will be prepared to waive the requirement to cancel and destroy the documents of title of purchased shares in case of an Overseas Issuer whose primary exchange permits treasury shares. We noted that in the New Jurisdiction Application Form (Appendix I to Schedule E), the Exchange requests the applicant to explain if the new jurisdiction permits treasury shares and if permitted, the voting rights and dividend entitlement attached to such treasury shares. We believe it would be helpful for the Exchange to provide some guidance on what guiding principles would be used when considering whether to grant the Rule 10.06(5) waiver to primary listed issuers. 2. Clarity on how the Exchange would approach the differences between the rules of the home jurisdiction and those under the Takeovers Code We believe it would be helpful for the Exchange to explain more clearly in the new guidance letter how the Exchange would like the differences between the rules of the home jurisdiction and those under the Takeovers Code to be addressed by an applicant. From our experience, when there are differences between the laws and regulations of an Overseas Issuer's home jurisdiction and the Takeovers Code, the Exchange requires such Overseas Issuer to set out the differences in the jurisdiction application and the prospectus, as well as to state in

	the prospectus that any investor contemplating a take-over needs to make sure that it complies with all the relevant laws and consults with the relevant regulators. 3. Clearance system of Hong Kong Under Hong Kong's current clearance system, the legal ownership of securities is held by the HKSCC Nominees Limited, while the beneficial ownership is held by HKSCC's clearing participants. The Exchange requires a legal opinion on whether beneficial ownership is recognised by the overseas jurisdiction of an Overseas Issuer which is incorporated in a recognised jurisdiction. Some dual-listed issuers may experience delay on the Hong Kong side (because of the CCASS issue) when contemplating share repositioning between different exchanges, which is not in the interest of potential issuers or the investing public. We believe in the long run the Exchange needs to look into how the clearance system can migrate into a true scripless securities system. The current clearance system in Hong Kong does not cater for Overseas Issuers which have multiple listings. 4. Time commitment for clearance of new jurisdictions We believe it would be helpful for the Exchange to make some commitment in terms of time for clearance of a new jurisdiction application. 5. Country Guides We agree that existing country guides should be retained and no new country guides will be published as and when new jurisdictions are approved. We would suggest that the Exchange sets out this position in the new guidance letter clearly and specify whether the Exchange would update the existing country guides and at what interval and if not, how is the public to be appraised of the latest applicable rules and regulations where an overseas issuer in the new jurisdiction has not been listed on the Exchange. This is clearly not an issue if the overseas issuer in the new jurisdiction has listed on the Exchange since that issuer will publish a company information sheet.
Question 5:	**Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.**
A:	For those existing listed issuers who have been granted waivers in relation to provisions under the JPS or Listing Rules concerning provisions to be consolidated under the Core Standards as part of their new listing, those positions should be grandfathered. This is consistent with the general rule that laws/rules should not be applied retroactively. For future applicants, the Exchange should require them to comply with the Core Standards subject to our comments in relation to Question 2.
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.**

A:	Not applicable
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?**
A:	Freshfields agrees with the principles set out in paragraph 155 regarding the considerations for waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong. Freshfields has noted that there have been varying practices in the Exchange regarding the applicability of the Common Waivers and conditions under the JPS to Overseas Issuers (with a distinction being made between listing applicants incorporated in Recognised Jurisdictions and Acceptable Jurisdictions). The current proposal (that there be no distinction between Recognised and Acceptable Jurisdictions) and common underlying principles for the grant of such waivers will help simplify the listing application process. However, for such principles to be instructive to listing applicants and market participants, Freshfields would suggest that further clarification and guidance be provided to explain what would constitute "unduly burdensome or unnecessary". For example, where a domestic law firm of repute representing the applicant can opine on a local legal impediment, or a legal impossibility, it should be sufficient evidence to demonstrate that compliance of the relevant rule would be regarded as "unduly burdensome".
Question 8:	**Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158 of the Consultation Paper?**
A:	Freshfields agrees with the codification of certain Common Waivers and the prescribed conditions and principle of granting waivers, which would provide additional transparency and certainty for listing applicants in assessing the likelihood of such waivers being granted. Under the current operation of the JPS, Freshfields noted that the grant of Common Waivers to dual primary listing applicants, such as that in relation to Rule 2.07C(4)(a), is in practice subject to additional considerations and conditions of the Exchange which are not included in the prescribed conditions in the JPS or in any other published guidance. Freshfields would therefore suggest, to the extent the conditions currently prescribed under the JPS for Common Waivers do not reflect all of the Exchange's common considerations for such waivers, that such additional conditions be included as part of the codification exercise to increase transparency. Freshfields would also welcome the clarification of Common Waivers in the JPS for Listing Rules 10.07(1) and 10.08 (which are not proposed to be included in the codification based on the current proposal). While the JPS sets out conditions for the grant of Common Waivers for Rules 10.07(1) and 10.08 to dual primary listing applicants, we understand that there is unpublished guidance on the grant of these waivers, such as a limitation that such waivers are granted only to listing applicants seeking listing by introduction (and therefore not conducting an offering of shares during their initial listing on the Exchange).

	To achieve the objectives set out in paragraph 158, Freshfields would therefore suggest the publication of further guidance and clarity in the new guidance letter on the prescribed conditions for granting such waivers.
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?**
A:	Freshfields agrees 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. The proposal will simplify and streamline the current "two-step" route as described in paragraph 152 of the Consultation Paper, and at the same time, ensure such issuers are subject to the Listing Rules requirements applicable to an issuer with primary or dual primary listing in Hong Kong (unless specifically waived).
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?**
A:	Freshfields agrees that Grandfathered Greater China Issuers and Non-Greater China Issuers referred to in Question 9 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. This helps ensure that the business operation of relevant issuers will not be unduly disrupted as those issuers have been operating under their respective WVR/VIE structures for many years. In addition, a Grandfathered Greater China Issuer or Non-Greater China Issuer listed under Chapter 19C must demonstrate that it is an innovative company, by referencing to a variety of factors set out under the Exchange's guidance letter. The majority of those companies are in the "new economy" sector and the WVR structure is in place to ensure, among other things, the founders and management are able to maintain control over the strategic direction of the relevant companies and the relevant companies are focused on the long-term growth, which in turn is in the interest of the shareholders. The VIE structure was adopted primarily for addressing foreign investment controls. Accordingly, it would be unduly burdensome or practically impossible for an issuer to amend its Non-compliant WVR and/or VIE structures. The Hong Kong market faces greater risks of international competition and increasingly our market has to strike a balance between shareholders protection and the global competitive landscape in which our market operates.

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?**
A:	Freshfields agrees with the proposal to codify **all** the requirements 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. The co-existence of two secondary listing regimes is causing confusion to prospective listing applicants. The scattered requirements relating to secondary listing are complex, and difficult to navigate for prospective listing applicants. Concurring with the Exchange's view that more US listed issuers will seek a secondary listing on the Exchange, consolidating the two regimes and moving **all** the requirements relating to secondary listing from Chapter 19 to in Chapter 19C will provide clearer guidance to prospective listing applicants (including US listed issuers) and reduce the complexity of the requirements relating to secondary listings.
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?**
A:	Freshfields agrees 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. The proposals in paragraphs 199 and 201 are constructive, incremental changes in the secondary listing regulatory structure rather than the introduction of a far-reaching new system. To be suitable for secondary listings which may entail extensive waivers from the Listing Rules, a company must normally have a large market capitalisation and a long track record of regulatory compliance on its primary market on a stock exchange with high shareholder protection and corporate governance standards. However, the level of the listing requirements should be commensurate with the level of risk to shareholders' interests that these applicants pose. While the proposed criteria will make the secondary listing requirements less restrictive for issuers with a centre of gravity in Greater China and without WVR structure compared to the current requirements, we believe that the proposed criteria is reasonable because such proposed criteria do not pose higher risks than those posed by issuers with a centre of gravity outside Greater China and without WVR structures. In addition, the requirements relating to market capitalisation, listing compliance track record and the Trading Migration Requirement stated in paragraph 213 of the Consultation Paper can mitigate the risk of a proliferation of secondary listings on the Exchange, including by issuers with a centre of gravity in Greater China.

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?**
A:	Freshfields agrees that an exemption from the listing compliance record requirement be introduced 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. The proposed exemption is less restrictive compared to the one currently provided in the JPS. The track record of regulatory compliance requirement for secondary listing applicants to be exempted under Criteria B stated in paragraph 199 of the Consultation Paper is two full financial years which is shorter than the track record compliance requirement of five full financial years provided by the JPS and the Criteria A stated in paragraph 199 of the Consultation Paper; and the applicant needs to have a market capitalisation that is significantly larger than HK$10 billion which is higher than US$400 million (approximately HK$3 billion) provided by the JPS. To harmonise the exemption to be provided under Criteria A and Criteria B stated in paragraph 199 of the Consultation Paper, it is reasonable to introduce the proposed exemption. In the case where an exemption from the listing compliance record requirement is available to a secondary listing applicant, such listing applicant still needs to follow the regulations of its home jurisdiction and primary market. When considering whether such exemption can be provided to a listing applicant on a case-by-case basis, the Exchange may take into consideration the degree of reliance that can be placed on regulations in and enforcement by its home jurisdiction and primary market.
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"?**
A:	Freshfields agrees 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". Requiring a listing applicant without WVR structure to demonstrate that it is an "Innovative Company" goes beyond the regulatory intention of such requirement. The purpose of the "Innovative Company" requirement was to prevent WVR structures from becoming commonplace in the Hong Kong market by "ring-fencing" them to new economy issuers. For a listing applicant without WVR structure, there is no clear regulatory objective to require it to demonstrate that it is an "Innovative Company". In addition, Chapter 19C is currently the only route to secondary listing for issuers with a centre of gravity in Greater China. The "Innovative Company" requirement under the current Chapter 19C regime prevents good quality issuers with a centre of gravity in Greater China operating in traditional industries from being able to secondary list on the Exchange. It is consistent with the interests of Hong Kong's

	capital markets to welcome good quality issuers with a centre of gravity in Greater China to secondary list on the Exchange. The relevant regulatory arbitrage risk can be addressed by the proposal stated in paragraph 209 of the Consultation Paper, which is discussed in our response to Question 15 below.
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?**
A:	Freshfields agrees 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. Secondary listing and the Automatic Waivers should not be used by applicants to achieve regulatory arbitrage. The Exchange needs to be able to prevent certain issuers from using the secondary listing route to avoid the full rigour of the primary listing requirements. As stated in paragraph 175 of the Consultation Paper, to mitigate the risks of regulatory arbitrage and safeguard the quality of secondary listings, Overseas Issuers with a centre of gravity in Greater China are currently prohibited from secondary listing through the JPS route and must instead meet the higher quantitative eligibility criteria of Chapter 19C. However, if the consolidated 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) are implemented by the Exchange, Overseas Issuers with a centre of gravity in Greater China may utilize the lower quantitative eligibility criteria currently provided by the JPS route. We have to accept that increasingly applicants are looking to list in what will be considered to be their most attractive venue for their businesses and this is also perhaps the right opportunity for the Exchange to address how it views regulatory arbitrage (e.g. list in US first to take advantage of its disclosure base regime, then come back to list in Hong Kong via a secondary or a dual primary route) and parallel or dual track preparation (e.g. trade sale and an IPO or IPO and de-SPAC being prepared at the same time, respectively) as the more information potential applicants understand how regulators view these approaches, the more helpful it will be for them. Since there are good reasons to support such consolidated quantitative eligibility criteria as discussed in our response to Question 12, the Exchange should have the discretion to reject an application for secondary listing if it believes that an issuer is seeking regulatory arbitrage. But the Stock Exchange must provide more certainty to the market by providing a guidance as to when such discretion may be exercised, e.g. effectively a backdoor listing via a secondary listing or disclosure standards which is substantially below what we normally expect in Hong Kong.
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?**

A:	Freshfields agrees with the proposal that the Exchange should apply the test for a reverse takeover, if the Exchange suspects that an issuer's secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing. The current Rule requirements regarding reverse takeovers and the proposal to introduce a Rule to give the Exchange 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 target to regulate similar mischief, i.e., circumvention of the Listing Rules. The Exchange has been applying the principle based test together with the bright line tests since as early as in 2014 in determining whether a transaction and/or arrangement or series of transactions and/or arrangements constitute an attempt to achieve a listing of the acquisition targets and a means to circumvent the requirements for new applicants under the Listing Rules. Given the test for a reverse takeover has been widely tested and applied in many transactions and/or arrangements conducted or proposed to be conducted by primary listed issuers, applying the same test to determine whether an issuer's secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing will offer more certainty and clarity for a listing applicant to evaluate, together with professional parties, its suitability to be listed under Chapter 19C.
Question 17:	**Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing?**
A:	Freshfields supports the proposal that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing (except as mentioned in the response to Question 18 below). The current regime which only requires the Trading Migration Requirement to apply to Greater China Issuers but not to Overseas Issuers that secondary list through the JPS route nor to Non-Greater China Issuers that secondary list through the Chapter 19C route not only imposes more stringent requirement to Greater China Issuers without sufficient justifications, but also creates more confusion on applicability of the Trading Migration Requirement. Extending the scope of the Trading Migration Requirement to cover all issuers with a secondary listing will ensure all issuers with a secondary listing to receive equal treatment as well as provide a fairer application of the Trading Migration Requirement.
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?**
A:	We are of the view that retrospective application of the extension of the Trading Migration Requirement to the secondary listed issuers that are not currently subject to this requirement would be unnecessary and unduly burdensome, given that

	(i) only three secondary listed issuers (SouthGobi Resources Ltd., Manulife Financial Corporation and Fast Retailing Co., Ltd.) are not currently subject to the Trading Migration Requirement and as such retrospective application of the extension to all secondary listed issuers that are not currently subject to this requirement will not make any significant difference given the small number of the listed issuers falling into this category; (ii) all of these listed issuers were secondary listed on the Exchange long before adoption of the Trading Migration Requirement, with Fast Retailing Co., Ltd listed in 2014, SouthGobi Resources Ltd. in 2010 and Manulife Financial Corporation in 1999; and (iii) retrospective application of the proposal to extend the Trading Migration Requirement to these three secondary listed issuers will impose undue burden to them, especially considering that they did not have any expectation that they may be subject to the Trading Migration Requirement when they applied for secondary listed on the Exchange. We further propose that, in relation to those Grandfathered Greater China Issuers already subject to the Trading Migration Requirement, if the Exchange considers that, in view of their qualify, deep liquidity, strong market profile, clean compliance record and large market capitalisation, it is in the interest of the investing public in Hong Kong and the Hong Kong market, that they should be encouraged to list on a primary basis in Hong Kong earlier before the Trading Migration Requirement is triggered, then the Exchange may consider granting a waiver on an exceptional and case-by-case basis so that all the waivers and exemptions currently enjoyed by them can be retained after the conversion as long as they maintain a primary listing on the other Qualifying Exchanges and are continued to be regulated by the exchanges of the home judications. It would benefit the investing public in Hong Kong if those Grandfathered Greater China Issuers voluntarily convert their listing on the Exchange to a dual-primary listing as (i) the repositioning of the shares between different jurisdictions can be costly and take time, and (ii) transitioning Grandfathered Greater China Issuers to a primary listing in Hong Kong would facilitate these stocks to be included in the Stock Connect programs and further increase trading volumes and liquidities in the Hong Kong market.
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?**
A:	Freshfields supports the Exchange's proposal to codify the principles on which exemption / waivers will be granted to secondary listed issuers, as this would provide the market with greater certainty and clarity as to the factors taken into consideration by the Exchange in considering granting waivers / exemptions. We propose that the Exchange also takes into consideration the alternative disclosure provided / approach adopted by the listing applicant in satisfying a particular rule requirement in Hong Kong in considering whether or not to grant the waivers / exemptions. If the listing application can provide alternative disclosure / adopt alternative approach to satisfy a particular rule requirement and the interests of the public investor are not prejudiced, the Exchange may still consider granting the requested waiver/exemption.

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?**
A:	Freshfields supports the Exchange's proposal to codify the Automatic Waivers and conditional Common Waivers that are available to Overseas Issuers seeking a secondary listing, as it does not involve the expansion of the scope of waivers that are already available to those listing applicants and also increases the transparency of the listing regime in Hong Kong.
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?**
A:	Freshfields supports the Exchange's proposal to remove 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, as without imposing such condition by the Exchange, the listed issuer would still need to comply and observe other statutory and other requirements that are applicable to it, and therefore removing such condition would not have any material adverse effect on the interests of the shareholders.
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)?**
A:	Freshfields supports the Exchange's proposal that secondary listed issuers should also comply with the requirement for a diversity policy and for such policy to be disclosed in their annual reports as diversity is a governance issue which should apply to all listed issuers, regardless whether they are primary or secondary listed in Hong Kong. Diversity is an important driver of board's effectiveness. It brings unique perspectives to the board and enhances board performance. It also helps ensure that different perspectives are regularly elicited and integrated into board's work. Currently, Hong Kong is failing behind on gender diversity. Based on a report released by MSCI, in 2020, only 12.7% of Hong Kong listed companies' directorships was held by women, compared to 12.4% in 2019. By contrast, women make up approximately 33.5% of FTSE 100 board members and approximately 28.6% of S&P100 boards in the U.S. Furthermore, since the recent reform of the Hang Seng Index with WVR companies and secondary-listed companies eligible to be included in the Hang Seng Index and the Hang Seng China Enterprise Index, with a weighting cap of 5 percent as of August 2020, it makes sense that secondary listed companies are also subject to the Exchange's rules on board diversity, especially as HSI is the main indicator of the overall market performance in Hong Kong. As of May 2021, the HSI constituents have increased from 55 to 58, but apart from one, currently there are no other secondary listed constituent though this may change. Five out of 14 secondary-listed companies have all male boards. If

	any of these companies are included on the HSI, there is a risk that the percentage of women on board of the HSI will fall further behind other major indices of international stock exchanges. Board diversity is also demanded by international institutional investors and other stakeholders who are placing increasing pressure on their investee companies to focus on environmental, social and governance issues. Secondary listed companies with single gender boards will have to respond in order to remain sustainable and contribute to the quality of our market.
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?**
A:	Freshfields agrees in principle that in the event that a secondary listed issuer on the Exchange is de-listed from the overseas exchange on which it is primary listed, such issuer should be required to comply with all Listing Rules applicable to a primary listed issuer on the Exchange. However, as to the timing of compliance, we propose that the issuers who were involuntarily delisted from the overseas exchange should be entitled to a grace period of at least one year to fully comply with the additional applicable Listing Rules. The current draft Guidance Letter requires such issuers to comply with all Listing Rules applicable to a primary listed issuer on the Exchange "immediately," subject to limited exception in relation to financial reporting standards, unless the Exchange grants waivers and grace periods on a case-by-case basis. We are of the view that immediate compliance is impractical especially for issuers who were involuntarily delisted from the overseas stock exchange because such issuers did not have control over the timing of their delisting and could not have planned ahead to comply with the additional Listing Rules they would be subject to after the de-listing. For example, on 6 January 2021, the New York Stock Exchange (the "NYSE") announced its decision to delist a number of companies following the executive order issued on 12 November 2020. On 11 January 2021, the NYSE suspended these companies from trading. In May 2021, these three companies announced that they expected to be delisted from the NYSE after unsuccessfully appealing the move. As indicated in the foregoing timeline of events, these companies were left with little time to react to the regulators and NYSE's delisting decision. It is time-consuming for a previously secondary listed issuer on the Exchange to fully comply with additional Listing Rules applicable to a primary listed issuer. For example, to meet the shareholder protection standards in Hong Kong, the delisted issuer may need to amend its articles of incorporation and other constitutional documents, which typically require board approval and shareholder approval. This process could take up to a year. If the Guidance Letter requires immediate compliance by delisted issuers, we believe that most, if not all, delisted issuers would apply for a grace period, and the failure of obtaining which would inevitably result in their non-compliance with the Hong Kong rules and regulations and subject them to potential liabilities and legal consequences. Such requirement would create uncertainty and undue hardship for the issuers who are currently secondary listed on the Exchange or are considering a secondary listing on the Exchange. This in turn could have a chilling effect on "homecoming" listings in Hong Kong as the US-listed companies are weary of the risks of being

	delisted in the U.S., and the potential liabilities and consequences they face in Hong Kong upon failing to timely comply with the Listing Rules applicable to primary listed issuers.
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?**
A:	Freshfields agrees that the Exchange should codify the Regulatory Co-operation Requirement (as modified by removing the reference to bi-lateral agreements and codifying existing practice of considering an exception on a case by case basis) into Chapter 8 of the Listing Rules for all issuers. We suggest that the Exchange (in consultation with the SFC) issues more specific guidance as to the factors that would be considered under the proposed LR8.02B in assessing whether adequate arrangements are in place to enable the SFC to access financial and operational information for its investigation and enforcement purposes where the issuer's jurisdiction of incorporation or its place of central management and control is not, or ceases to be, a full signatory of the IOSCO MMOU.
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?**
A:	Freshfields agrees 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 the Overseas Issuers. Currently, Rule 19.12 and Rule 19.21 (for primary listing) and Rule 19.38 and Rule 19.48 (for secondary listing) are silent on which auditing standards are comparable to that required by the HKICPA or the IAASB. Maintaining the seven sets of alternative auditing standards as guidance minimises the need of the Overseas Issuers adopting these auditing standards to pre-consult with the Exchange. For the Overseas Issuers who have adopted other auditing standards, maintaining the seven sets of alternative auditing standards serves to clarify the factors and characteristics of an auditing standard that the Exchange takes into account in determining whether such auditing standard is comparable to those required by HKICPA or the IAASB.
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?**
A:	Freshfields agrees 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.

	Such codification provides clarity as to the basis for determining the suitability of alternative financial reporting standards. Hong Kong investors will benefit from the high quality financial reporting by all companies accessing the Hong Kong public market and the ability to compare the financial performance of similar companies regardless of their places of domicile or operation. In HKEx-LD70-1 (July 2009), in determining whether to accept Singapore Financial Reporting Standards ("SFRS") in the accountants' report and subsequent financial reports, the Exchange considered the circumstances of the company, including that the differences between SFRS and IFRS applicable to the company would be insignificant. The codification also contributes to a convergence of accounting standards in a global environment. Establishment of a high quality comprehensive set of generally accepted international accounting standards in a manner consistent with IFRS would greatly facilitate international financing activities and enhance the ability of Overseas Issuers to list in Hong Kong.
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)?**
A:	Freshfields agrees 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, which would provide additional transparency and certainty for listing applicants in assessing the likelihood of its reporting standard being deemed acceptable. Currently, Rule 19.14 of the Listing Rules states that, where the Exchange allows a report to be drawn up otherwise than in conformity with HKFRS or IFRS, the report will be required to conform with accounting standards acceptable to the Exchange. However, the rule is silent on which accounting standards other than HKFRS and IFRS are acceptable to the Exchange. Through a series of listing decisions including HKEx-LD38-2 (July 2004), the Exchange has provided guidance on the use of a number of acceptable alternative financial reporting standards, such as the US GAAP. Maintaining a list of acceptable financial reporting standards is consistent with such past guidance by the Exchange and minimises the uncertainty that may otherwise deter certain Overseas Issuers who have adopted alternative financial reporting standards from pursuing a listing in Hong Kong.
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?**
A:	Freshfields agrees 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.

	As noted in our response to Question 26, adoption of HKFRS or IFRS benefits Hong Kong investors by providing them access to high quality financial information and allowing them to better compare the performance of similar companies. Meanwhile, it is unduly burdensome for the Overseas Issuers adopting other accounting standards to prepare two sets of financial statements under different financial reporting standards. Accordingly, the existing rule strikes balance between the two consideration by accepting the use of one of the other alternative reporting standards on the basis that it is the home standard of the jurisdiction of primary listing. However, once such Overseas Issuer delists from the jurisdiction of its primary listing, it is no longer subject to any undue burden of preparing multiple sets of financial statements and should revert to adopting HKFRS or IFRS. In HKEx-LD39-2, the Exchange permitted a company to adopt US GAAP for its accountants reports on the condition that, among others, such company must revert to HKFRS or IFRS should it no longer be listed on the New York Stock Exchange. Accordingly, the codification of the above JPS requirement is beneficial to the Hong Kong investors and consistent with past guidance of the Exchange.
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?**
A:	Freshfields agrees that issuers that de-list from a jurisdiction of an alternative financial reporting standard should be given an automatic grace period within which to adopt IFRS or HKFRS but suggests the Exchange to consider if more flexibility should be given on the duration of the grace period. Changing the financial reporting standard of a company requires significant efforts from the company's management and finance team and impacts the company's operations and financial reporting. For example, companies may need to adjust their operations on a business-unit level to capture information required to be disclosed under IFRS or HKFRS, and they may need to change their internal information system and accounting system to apply the requirements of IFRS or HKFRS. To minimise the disruption to issuers' operations, they will need and should be given sufficient time to make the necessary adjustments. Giving the issuers an automatic grace period within which to make these adjustments will facilitate the implementation of the requirement set out in Question 28. Freshfields believes that while an one-year automatic grace period is reasonable as a general rule, further extension should be granted on a case-by-case basis subject to the specific circumstance of the listing applicant. The amount of time that an issuer needs to make the necessary adjustments is case-specific and will depend on, among other things, (i) the degree of conformity of their original financial reporting standard with IFRS or HKFRS; (ii) the nature of their business; (iii) the amount of changes needed to comply with the requirements of IFRS or HKFRS and (iv) implications created by the change in financial reporting standard. Some companies may need to change how their revenue is recognised, how liquidity and solvency are measured and how assets and liabilities are valued and depreciated. In addition, depending on the nature of their business, some companies may also need to plan for

	tax implications. For issuers that need to make a significant amount of adjustments, one year may not be enough to carry out these adjustments without disrupting their normal business operations. Therefore, we suggest that the Exchange should consider allowing for more flexibility in the duration of the automatic grace period.
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)?**
A:	Freshfields agrees 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). Such requirement provides clarity as to the condition for adoption of US GAAP by a listing applicant. Given the Hong Kong investors' general familiarity with HKFRS and IFRS, issuers who wish to use alternative financial reporting standards, including US GAAP, should demonstrate its reason for adopting US GAAP to the Exchange on a case-by-case basis. This will ensure that such issuers are adopting US GAAP for genuine reasons and mitigates the risk of regulatory arbitrage. Similarly, as we noted in our response to Question 28, if the circumstances underpinning the reasons for adopting an alternative financial reporting standard, such as US GAAP, change, the Exchange should require such issuer to adopt HKFRS or IFRS for the benefit of the Hong Kong investors.
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?**
A:	Freshfields agrees 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. Such requirement provides clarity as to the condition for adoption of US GAAP by a listing applicant. All companies accessing the Hong Kong public market should provide high quality financial reporting that satisfies the informational needs of Hong Kong investors. Requiring listing applicants who use US GAAP to include a reconciliation statement allows investors to better compare their financial performance with the performance of companies that use HKFRS or IFRS. Similarly, under the U.S. Securities Act of 1933 and the U.S. Securities Exchange Act of 1934, the U.S. Securities and Exchange Commission requires that a foreign private issuer using accounting standards other

	than US GAAP must provide an audited reconciliation to U.S. GAAP. Accordingly, the reconciliation requirement is beneficial to the Hong Kong investors and consistent with the standard adopted in the U.S.
Question 32:	**Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules?**
A:	No comment
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?**
A:	No comment
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?**
A:	No comment
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?**
A:	No comment
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?**
A:	No comment
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?**
A:	Freshfields agrees that the JPS requirement for Company Information Sheets should be codified so that the regulatory requirements applicable to Overseas Issuers are comprehensively set out in the Listing Rules.

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?**
A:	Freshfields agrees that the Company Information Sheet requirement should be applied to secondary listed issuers and other Overseas Issuers at the Exchange's discretion where it believes the publication of a Company Information Sheet would be useful to Hong Kong investors. We suggest that the Exchange issues more specific guidance on when its discretion would be exercised to require other Overseas Issuers to prepare a Company Information Sheet, such as a list of jurisdictions of incorporation for which a Company Information Sheet would not be required absent other special circumstances. In addition to differences between the provisions in the overseas laws and regulations to which an Overseas Issuer is subject and those in Hong Kong as noted in note 165 of the Consultation Paper, we suggest that where any novel or unusual waiver has been granted which is of continuing applicability after listing, the issuer should be required to prepare Company Information Sheet or, as a condition to such waiver, include such information in its annual report in order to allow investors to more easily locate such information.
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)?**
A:	Freshfields agrees that the guidance described in paragraphs 289 and 290 should be consolidated into one guidance letter to enable Overseas Issuers to more easily locate such guidance and, at the same time, allow the Exchange to update such guidance from time to time.