HKEx LISTING DECISION

HKEx-LD27-2012 (published in March 2012) (Updated in April 2014 and March 2018)

Parties	Company X – a company incorporated in the State of Maryland (**Maryland**), United States of America (**US**) and listed on the New York Stock Exchange (**NYSE**)
Issue	The basis for accepting Company X's incorporation in Maryland under Chapter 19 of the Main Board Rules
Listing Rules and Regulations	1. Chapter 19 of the Main Board Listing Rules and Chapter 24 of the GEM Rules **(Rules**) 2. Joint Policy Statement Regarding the Listing of Overseas Companies of 7 March 2007 (**JPS**) [1] 3. Listing Decisions: HKEx-LD65-1; HKEx-LD65-2, HKEx-LD65-3, HKEx-LD71-1, HKEx-LD80-1, HKEx-LD84-1, HKEx-LD108-1, HKEx-LD109-1, HKEx-LD110-1, HKEx-LD111-1, HKEx-LD1-2011, HKEx-LD4-2011, HKEx-LD10-2011, HKEx-LD24-2012 4. Guidance Letter HKEx-GL12-09
Decision	The Exchange considered Company X's incorporation in Maryland acceptable on its own facts and circumstances A Maryland-incorporated applicant would be considered on a case by case basis in the light of its facts and circumstances

FACTS

1. Company X was a US domestic company whose shares had been listed on the NYSE for over 10 years before it applied for a secondary listing on the Exchange.

2. To demonstrate that Maryland was an acceptable jurisdiction of incorporation for its secondary listing on the Exchange, Company X submitted a comparison table comparing the Hong Kong Companies Ordinance [2] (**HKCO**) with the corresponding US law[3] based on the JPS framework as supplemented by Guidance Letter HKEx-GL12-09.

3. Company X had been incorporated in Maryland since its shares were listed on the NYSE. The nexus requirement under the JPS was considered satisfied.

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[1] The JPS is now superseded by a new JPS issued on 27 September ~~2014~~ 2013 ***(Updated in ~~April 2014~~March 2018)***.

[2] Retitled as the Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014 ***(Updated in April 2014)***.

[3] In particular, Maryland General Corporation Law (**MGCL**).

4. Company X's home securities regulator in the US, the Securities and Exchange Commission (**SEC**), is a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. The JPS requirement for regulatory cooperation between the statutory securities regulators in Hong Kong and the issuer's home jurisdiction was therefore satisfied.

APPLICABLE RULES, REGULATIONS AND PRINCIPLES

5. All listing applicants must ensure that they are able to and will comply with the Rules, the Securities and Futures Ordinance (**SFO**) and, if they apply, the Hong Kong Codes on Takeovers and Mergers and Share Repurchases (**Takeovers Codes**).

6. Chapter 19 of the Main Board Rules and Chapter 24 of the GEM Rules provide a general framework for overseas companies to list on the Exchange. The Exchange may refuse a listing if it is not satisfied that the overseas issuer is incorporated in a jurisdiction which offers at least equivalent standards of shareholder protection to Hong Kong.

7. Where the Exchange believes that the overseas issuer's jurisdiction of incorporation does not provide shareholder protection standards equivalent to Hong Kong, it may approve the listing of the overseas issuer if it varies its constitutive documents to provide the necessary protection (see Note to Main Board Rules 19.05(1), 19.30(1) and GEM Rule 24.05(1)).

8. The JPS formalises this process by setting out a list of shareholder protection areas the Exchange takes into account.

9. The standards in the JPS were compared against the standards of different overseas jurisdictions in Listing Decisions HKEx-LD65-1, HKEx-LD65-2, HKEx-LD65-3, HKEx-LD71-1, HKEx-LD80-1, HKEx-LD84-1, HKEx-LD108-1, HKEx-LD109-1, HKEx-LD110-1, HKEx-LD111-1, HKEx-LD1-2011, HKEx-LD4-2011, HKEx-LD10-2011; HKEx24-2012.

10. Guidance Letter HKEx-GL12-09 sets out Streamlined Procedures for listing overseas companies (**Streamlined Procedures**). Under it, an applicant can benchmark the shareholder protection standards in its home jurisdiction to any one of the recognised or accepted jurisdictions, instead of benchmarking to Hong Kong as long as it ensures that its shareholder protection standards are not lower than indicated in the relevant Listing Decisions.

ANALYSIS

11. An applicant may adopt any method (e.g. by amending its constitutive documents or administrative procedures) to address all shortfalls in shareholder protection identified in the relevant Listing Decisions to achieve equivalence. The Exchange does not prescribe the method used but recommends that the applicant first consider

the protection expected under the JPS. The applicant must give reasons for not passing a shareholders' resolution amending its constitutive documents to provide for changing its constitutive documents and the Exchange will assess them on a case by case.

12. After reviewing the comparison table submitted, with respect to items 1(c), 2(a), 2(d), 2(f), 3(a), 4(c) and 4(d) of the JPS, the Exchange was satisfied that Maryland law is comparable with or even stricter than Hong Kong law.

13. The **Appendix** shows those JPS items which the Exchange considered Company X had addressed satisfactorily based on the legal and regulatory framework to which it was subject and/or the undertakings provided to the Exchange.

14. With regard to the remaining JPS items, the Exchange identified differences in shareholder protection under Maryland laws and Hong Kong laws where the Exchange would usually expect the overseas applicant to amend its constitutive documents or provide alternative arrangements or undertakings to the Exchange to bridge the differences. However, Company X was unwilling to deviate from its existing practices of its primary listing venue for the purpose of its secondary listing in Hong Kong. The Exchange considered the facts and circumstances of Company X's case and considered that its incorporation in Maryland was acceptable on a case specific basis. The analysis is discussed in paragraphs 15 to 25**.**

Item 1(a) of the JPS – Voting threshold for change of constitutive documents

15. Under the HKCO, changes to a company's constitutive documents must be approved by a three-quarter majority of the share capital present in the general meeting. Under the Streamlined Procedures, the Exchange regards a voting threshold of two-thirds as acceptable though not strictly equivalent.

16. Company X's Bylaws were part of its constitutive documents. Under Maryland law, the power to amend the bylaws is vested in shareholders except to the extent that the charter or bylaws vest such power in the board of directors. In Company X's case, its Bylaws provided the Board of Directors with the exclusive power to adopt, alter or repeal any provision of the Bylaws.

17. Company X submitted that its current framework was similar to that of many publicly traded Maryland corporations. While it would be possible for the Board to amend the Bylaws to vest in shareholders the exclusive power to adopt, alter or repeal any provision of the Bylaws, it would not and did not consider it necessary for it to take such action on the basis that:

    a. under Maryland law, directors are prohibited from amending the bylaws in a manner that the directors believe is not in the best interest of the corporation. Shareholders who believe that a board's actions violate their duties have recourse and protections under Maryland law;

    b. shareholder rights would be safeguarded through the combined effect of the provisions in the Charter, the Bylaws, the MGCL, US securities laws and the charter of the corporation and a bylaw that violates the charter the MGCL,

NYSE Rules. Maryland law requires that bylaws be consistent with law and other applicable statutes or case law would be invalid;

c. many of its Bylaws provisions were procedural in nature;

d. any amendment to the Bylaws made by its directors would be required to be publicly disclosed and filed with the SEC (i.e. a Form 8-K filing). Like other companies listed on a national securities exchange in the US, Company X was closely monitored by institutional investors, analysts, proxy advisors, self-regulatory bodies, the SEC and plaintiff's attorneys. If a US public corporation were to adopt bylaws that deviate from market practice, it would face pressure to rescind such action and could face litigation risks, analyst downgrades and unfavourable recommendations from proxy advisory firms (including recommendations to vote against directors at shareholders meetings).

18. The Exchange considered Company X's submission and noted in particular the following:

a. there were limits to the scope of changes that could be made to the Bylaws;

b. Company X was applying for a secondary listing and it would be important for it to adhere to the current practices of its primary listing venue;

c. Company X's primary listing venue (NYSE) would provide a reasonable oversight of directors' performance through (i) a public disclosure system which would enable shareholders to be aware of any changes made to the Bylaws, (ii) a functional court system which would expose directors to genuine litigation risk if the amendments did not meet generally acceptable corporate governance standards and (iii) pressure from external scrutiny bodies;

d. Company X's compliance record in its primary listing venue and its corporate governance practices.

19. Given the facts and circumstances of the case, the Exchange did not require Company X, on a case specific basis, to change its Bylaws to bridge the JPS difference.

Item 2(b) of the JPS – Shareholders' request to convene an extraordinary general meeting and circulate a resolution

20. Under the HKCO, shareholders holding not less than 5% of the paid up capital may require the company to convene an extraordinary general meeting and may request the company to circulate a resolution proposed by the requisitionists.

21. There is no equivalent provision under Maryland law that provides shareholders with a right to request circulating a proposed resolution.

22. Company X's Bylaws provided that shareholders holding not less than a majority of all of the votes entitled to be cast at a meeting could require it to call a special

meeting. This threshold could be reduced (to as low as holders of 5% of paid up capital) by amending the Bylaws. Company X indicated that it would not and did not consider it necessary to reduce the threshold because requiring the same percentage of shareholders as that required for a quorum (i.e., at present, holders of a majority of all of the votes entitled to be cast at a meeting) would ensure there would be sufficient interest in a special meeting to hold a meeting and approve a matter. This practice was in line with many Maryland companies listed in the US.

23. However, the SEC proxy rules (to which Company X was subject) provide that any record holder owning at least US$2,000 of the corporation's shares who has held such shares for at least one year may have a proposal placed alongside management proposals in the corporation's proxy materials for presentation to a vote at an annual or special meeting of shareholders. Such a proposal can cover almost any topic subject to certain specific substantive exclusions.

24. The Exchange would not normally consider the SEC proxy rules provide shareholders with the same right to request an extraordinary general meeting that shareholders of Hong Kong companies have. Further, the Exchange noted that Company X's Bylaws also required a shareholder to provide long advance notice of the nature of the business to be brought before a general meeting.[4]

25. Based on the considerations in paragraph 18 above and the rights of shareholders under the SEC proxy rules on requisition for a general meeting, the Exchange accepted, on a case specific basis, that no change to its constitutive document would be required to address the question of shareholders' right to request an extraordinary shareholders meeting. However, Company X must provide clear and detailed disclosure in the listing document regarding the operation of SEC proxy rules and the Bylaws in this regard.

Shareholder Rights Plan

26. The JPS requires the overseas applicant to draw the attention of the Exchange to matters that may have a material and negative impact on the value and rights of the shares being offered.

27. The Exchange noted that Company X reserved the ability to adopt a future shareholder rights plan (**Rights Plan**), also known as a "poison pill", although it currently did not have such a plan in place.

28. Under a typical plan, a corporation issues rights to its shareholders that (i) may be exercised under specified circumstances to purchase shares or other securities of a company and (ii) may become void if owned by a designated person or classes of persons under specified circumstances. This deters the unauthorised acquisition of a corporation's shares by virtue of the significant dilution suffered by any shareholder who acquires shares in excess of a specified ownership threshold (usually 10% to

[4] Such notice must reach Company X not more than 150 days and no less than 120 days prior to the first anniversary of the date of the proxy statement relating to the previous year's annual meeting.

20%) without prior approval of the board of directors. The board of directors generally retains the power to redeem the rights issued under the Rights Plan at a nominal price per right, thereby removing the Rights Plan and preserving the right of the corporation to negotiate a transaction with a potential acquirer on terms acceptable to the board of directors. Rights Plans are generally used by US companies as a defensive measure to, among other things, maximize value for all shareholders by encouraging a potential acquirer to negotiate the terms of a potential takeover transaction with a company's board of directors.

29. The Exchange noted that a Rights Plan could be misused by directors to entrench management and to hinder an active market for corporate control, thereby depriving shareholders of the opportunity to realise a return on their investment. On the other hand, directors could equally face legal claims from shareholders if they did not take sufficient action, say by adopting a Rights Plan, to forestall the adverse impact of a hostile takeover bid.

30. It was submitted that the US legal system has procedures in place to adjudicate on the legality of a Rights Plan and the reasonableness of directors' actions or inactions over the adoption and exercise of a Rights Plan. To ensure compliance with the law, Company X submitted that its directors would follow certain principles when evaluating the adoption of a future shareholders Rights Plan.

31. When deciding whether to allow Company X to retain the ability to adopt a future Rights Plan, the Exchange took into account the following:

    a. Company X was applying for a secondary listing;

    b. the specific purpose for which a Rights Plan is adopted in the US. The US court system would provide scrutiny on directors' conduct regarding the adoption and exercise of a Rights Plan to guard against abuse of power;

    c. while the Securities and Futures Commission (**SFC**) confirmed that the Takeovers Code would not apply to Company X for the time being (to the effect that the adoption and exercise of any Rights Plan of Company X would continue to be primarily subject to scrutiny under the US legal system), should the SFC in the future rule that the Takeovers Code applies to Company X, the SFC would at that time consider the treatment of any Rights Plan adopted by Company X.

32. The Exchange permitted Company X to retain the ability to adopt in the future a Rights Plan that is in accordance with the laws and regulations of its home jurisdiction and primary listing venue.

CONCLUSION

33. The Exchange considered Company X's incorporation in Maryland did not prevent its secondary listing on the Exchange on the basis that:

    a. its listing document would disclose (i) the shareholder protection items identified in the JPS and (ii) the mechanics and impact of any adoption of a Rights Plan on shareholders and steps the directors would take to ensure that any Rights Plan would comply with the law; and

    b. Company X would duly inform the Exchange and make announcements in accordance with the Rules if there were major changes in Maryland law or its corporate practices which would significantly worsen the shareholder protection standards compared to those in Hong Kong. The Exchange would impose conditions as appropriate.

34. Maryland law does not provide comparability with all the JPS items. To demonstrate comparability with Hong Kong law, a Maryland applicant needs to amend its constitutive documents or give appropriate undertakings or demonstrate that, based on its own facts and circumstances, comparability with Hong Kong law is attained. A Maryland applicant may approach the Exchange for advice on how to satisfy the jurisdiction requirement.

NOTES TO ISSUERS AND MARKET PRACTITIONERS

For any questions relating to this Listing Decision, please feel free to contact the Listing Division.

Appendix

This table shows how those JPS items which the Exchange considered Company X had addressed satisfactorily by reason of the US legal or regulatory regime and/or undertakings Company X agreed to provide to the Exchange

<table>
<tr><td>1</td><td colspan="2">Item 1(a) of the JPS – Voting threshold for change of constitutive documents</td></tr>
<tr><td></td><td>HKCO</td><td>Maryland Company Law</td></tr>
<tr><td></td><td>Changes to a company's constitutive documents must be approved by a three-quarter majority of the share capital present in the general meeting. Under the Streamlined Procedures, where the HKCO requires a three-quarter majority vote, the Exchange regards a voting threshold of two-thirds as acceptable though not strictly equivalent.</td><td>Amendments to the charter must be advised by the board of directors and require approval by at least a simple majority vote of the issued share capital entitled to vote at a general meeting, except for certain minor amendments which only require board approval (Maryland Threshold).

Maryland law provides for a stricter quorum requirement at a shareholders meeting (i.e., one half of the issued share capital which may be further reduced to one-third of the issued share capital if the corporation has at least three independent directors), whereas Hong Kong companies require only 2 persons present at a meeting to form a quorum.</td></tr>
<tr><td></td><td colspan="2"><u>Exchange's view:</u>
The Exchange considered the overall shareholder protection under Maryland law with respect to changes to constitutive documents acceptable based on the combined effect of the Maryland Threshold and stricter quorum requirement under Maryland law.</td></tr>
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2	**Items 1(b), 1(d) and 4(b) of the JPS – Voting threshold for variation of share class rights, voluntary winding-up and share capital reduction**	
	HKCO	**Maryland Company Law**
	The following matters must be approved by a three-quarter majority of the share capital present in the general meeting: ● variation of share class rights (Item 1(b) of the JPS); ● voluntary winding-up (Item 1(d) of the JPS); and ● share capital reduction (Item 4(b) of the JPS).	Each of these items are treated in the same manner as amendments to the charter, that is resolved by a simple majority vote of the issued shares entitled to vote at a general meeting.
	Exchange's view: As discussed in item 1 above, although difference existed in the voting threshold required for Items 1(b), 1(d) and 4(b), the overall shareholder protection under Maryland law would be comparable to that of Hong Kong due to the manner in which voting thresholds are calculated and stricter quorum requirements under Maryland law.	

3	**Item 1(b) of the JPS – Court petition for cancellation of class rights variation**	
	HKCO	**Maryland Company Law**
	When a resolution to vary class rights is proposed, members holding not less than 10% of the nominal value of the issued shares of that class may petition the court to cancel the variation.	**S**uch petition is generally not available in a Maryland court.
	Exchange's view: An objecting shareholder could bring an action in court under certain limited circumstances such as fraud, misrepresentation or other misconduct. The Exchange considered this JPS item satisfactorily addressed.	

4	**Item 1(e) of the JPS – Appointment, removal and remuneration of auditors**	
	HKCO	**Maryland Company Law**
	Appointment, removal and remuneration of auditors must be approved by a majority vote of shareholders present in a general meeting.	Appointment, removal and remuneration of auditors do not require shareholder approval.
	Exchange's view : Company X adopted, and would continue to follow, the practice of seeking shareholder ratification of the appointment of its auditors at each annual general meeting. Company X believed that seeking shareholder ratification in the event of any removal or remuneration decisions would be costly and unduly burdensome and that its current practice in respect of auditors is similar to that of other publicly traded Maryland corporations and familiar to the investor community. It was submitted that as a US public company, Company X is subject to the Sarbanes-Oxley Act and the related NYSE, SEC and other corporate governance practices. Accordingly, there is a framework to ensure auditor independence and sufficient oversight of auditors by (i) the audit committee of the board of directors (whose members must be independent and include an audit committee financial expert) which is responsible for the appointment, compensation, retention and oversight of the auditors; and (ii) the Public Company Accounting Oversight Board (a public body established to oversee the audits of public companies in order to protect the interests of investors). The Exchange considered that Company X's proposal would provide acceptable shareholder protection.	

5	**Item 1(f) of the JPS – Availability of shareholders' register**	
	HKCO	**Maryland Company Law**
	Shareholders' register must be open to inspection by shareholders upon a reasonable charge, subject to closure under specific terms.	Shareholders who individually or together have held, for at least 6 months, 5% or more of the issued shares may inspect and copy the shareholders' register.
	Exchange's view: Company X would set up a shareholders' register in Hong Kong upon listing which would be open to inspection by all its shareholders upon payment of a fee in line with that specified in the HKCO. The Exchange considered that Company X would provide comparable shareholder protection as that under Hong Kong law.	

6	**Item 2(c) of the JPS – Notice of general meetings**	
	HKCO	**Maryland Company Law**
	Notice of annual general meetings must not be less than 21 days, and that of extraordinary general meetings must not be less than 14 days.	Notice of general meetings must be sent not less than 10 days nor more than 90 days before the meeting. However, a US public company is also subject to the SEC's "E-Proxy Rules" which require a company using a Notice Only Option[5] to mail a notice of meeting to shareholders not less than 40 days before the annual general meeting.
	Exchange's view: In order to comply with the Notice Only Option, Company X would mail all notices of shareholders meetings at least 40 days before the meeting. Prior to implementation of the Notice Only Option, Company X historically mailed notices to shareholders at least 30 days before the meeting (as recommended by the NYSE). The Exchange considered that Company X's practice would provide comparable shareholder protection as that under Hong Kong law.	

[5] Companies using the Notice Only Option cease sending hard copies of proxy materials to shareholders and instead mail a notice to shareholders stating that proxy materials can be found on a specified website.

7	**Item 3(b) of the JPS – Declaration of directors' material interest in contracts**	
	HKCO	**Maryland Company Law**
	Directors must declare any material interest in any contract with the company at the earliest meeting of the board of directors.	Directors' material interest in a contract or transaction with the company must be disclosed to the board of directors or shareholders approving the contract or transaction, although there is no requirement as to when such interest must be disclosed.[6]
	Exchange's view: Company X's corporate governance guide would require directors to promptly inform the CEO and the lead independent director if an actual or potential conflict of interest arises and to recuse themselves from any discussion or decision affecting their personal, business or professional interests. Breach of the guide would expose directors to a lawsuit for breach of interests. In addition, the SEC Rules require corporations to annually disclose any transaction or proposed transaction it participates in involving an amount exceeding US$120,000 in which a related person (which includes directors) has or will have a direct or indirect material interest. The Exchange considered the adoption of the guide and Company X's continued observance of the principles set forth in it would provide comparable shareholder protection as that under Hong Kong law.	

8	**Item 3(d) of the JPS – Loans to a director**	
	HKCO	**Maryland Company Law**
	A public company generally shall not make loans, including quasi loans and credit transactions, to its directors and their associates, subject to certain exceptions.	Maryland law does not expressly prohibit loans by a corporation to its directors. However, US federal law (e.g. Sarbanes-Oxley-Act) generally prohibits a corporation which is a public company from making personal loans to its directors or executive officers, subject to certain limited exceptions.
	Exchange's view: Company X's legal adviser submitted that while there may be differences in the details of the exceptional circumstances under which a corporation may be allowed to extend loans to directors, the thrust of the prohibition of loans to directors would appear to be substantially comparable in both jurisdictions. The Exchange considered that Company X satisfied this JPS item.	

[6] A contract or other transaction between a company and an interested director is not void or voidable provided that disclosure of the interest has been made and the contract or transaction is either (a) approved in accordance with certain procedures by the disinterested directors or disinterested shareholders or (b) is fair and reasonable to the corporation.

9	**Item 3(e) of the JPS – compensation to directors for loss of office or retirement**	
	HKCO	**Maryland Company Law**
	Any payment to a director or a past director as compensation for loss of office or retirement from office must be approved by a majority vote of shareholders present in a general meeting.	No provisions relating to compensation of directors. A Maryland corporation would typically address these matters in its bylaws or by resolutions of the board of directors.
	<u>Exchange's view</u> Company X did not intend to change its Bylaws to provide that compensation to directors for loss of or retirement from office be approved by shareholders because: (a) Its chairman and chief executive officer was the only director who was also an employee. In accordance with SEC Rules (effective April 2011), it must provide shareholders with an advisory vote on executive compensation and golden parachute compensation arrangements at least once every three years. Such advisory vote applies to the compensation arrangements of the Company's chairman and chief executive officer. (b) Six of its seven directors were independent directors (not its employees) whose compensation packages were recommended by a committee of independent directors and approved by the Board. Company X had never granted such compensation to independent directors and undertook that going forward no such compensation would be granted to independent directors. The Exchange considered that the newly implemented SEC Rules on executive compensation and the proposed undertaking regarding compensation to independent directors would provide acceptable shareholder protection.	

10	**Item 4(a) of the JPS – Alteration of share capital**	
	HKCO	**Maryland Company Law**
	Any alteration of share capital must be approved by a majority vote of shareholders in a general meeting.	The share capital of a corporation may be altered by a majority vote of the board of directors.
	Exchange's view: The Exchange considered that an alteration of share capital on its own would not directly impact shareholders right as much as the issuance of additional shares. Since Company X was applying for a secondary listing and the Main Board Rules do not require secondary listed issuers to provide pre-emptive rights to its shareholders (see Note 2 of Rule 13.36(2)(b)), the Exchange considered this difference acceptable.	

11	**Item 4(b) of the JPS – Court's confirmation of share capital reduction**	
	HKCO	**Maryland Company Law**
	Any share capital reduction must be subject to confirmation by the court	No equivalent requirement for share capital reductions: Maryland courts do not have an established process in respect of capital reductions.
	Exchange's view: Under Maryland law a capital reduction is subject to a financial test to ensure the corporation's solvency and individual shareholders may bring a court proceeding, in the right or on behalf of the corporation (i.e. a derivative suit), to recover for the corporation any unlawful dividend or other distribution. In addition, directors may be sued for breaches of duties for any act of a director, including a reduction of share capital, that is not performed in good faith, in the best interests of the corporation or with the care of an ordinarily prudent person in a like position under similar circumstances. The Exchange considered this JPS item satisfactorily addressed.	

12	**Items 1(g) and 4(e) of the JPS – disclosure requirement under the JPS**
	Exchange's view: These JPS items require disclosure in the listing document. Company X must clearly disclose the information in its listing document.