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BY EMAIL ONLY

26 May 2021

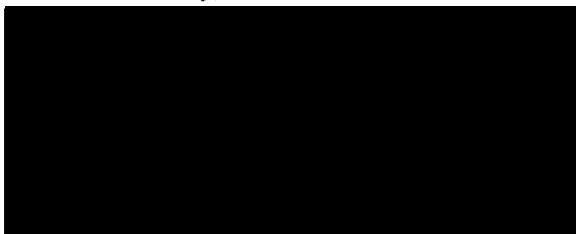
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Dear Sirs,

Consultation Paper on Listing Regime for Overseas Issuers

I refer to the captioned Consultation, and I enclose the Law Society's Submissions on the subject matter for your attention.

Yours faithfully,



Encl.

Consultation Paper on Listing Regime for Overseas Issuers

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (“Exchange”) on 31 March 2021 issued a consultation paper on “Listing Regime for Overseas Issuers” (“Consultation Paper”).

In response thereto, the Law Society provides the following submissions on the questions posed. The same abbreviations and definitions appearing in the Consultation Paper are used in the submission below.

In addition to our following responses to the questions set out in the Consultation Paper, by way of general comments, we wish to highlight that amendment of the Listing Rules alone may not be the best way to deal with the changes in the Hong Kong securities market occasioned by the migration of listings to Hong Kong from other jurisdictions, especially the United States. We consider that the non-statutory nature of the Listing Rules is ill-equipped to deal with the challenges posed by these listings. We urge the Exchange to consider enhanced shareholder protection mechanisms, such as class action.

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.

Law Society's response:

We agree. This will impart clarity to the relevant requirements and will make it easier for the market to understand.

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shareholder protection standards set out in Schedule C should be repealed?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.

Law Society's response:

- (a) We agree. For notice of annual general meeting (paragraphs 90 to 96 of the Consultation Paper), we suggest assessing (if this has not already been done) whether “upgrading” the notice period requirement to a Rule requirement (from the current “comply or explain” provision) and adding a reference to the specific number of days would make it more stringent for dual-listed companies to comply with.
- (b) We agree, as (i) some requirements overlap with existing Rule requirements, (ii) some are obsolete, and (iii) others do not directly offer any fundamental shareholder protection.

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.

Law Society's response:

We agree, as this would give more weight to the Core Standards and give more clarity to the market on the requirements under a single set of 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.

Law Society's response:

We do not have any comment.

Question 5 Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.

Law Society's response:

We agree, as this would ensure all listed issuers are treated equally.

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.*

Law Society’s response:

- (a) We agree. The proposed timing should be able to give listed issuers sufficient time to ensure compliance with the Core Standards.
- (b) We generally agree. Amendments to constitutional documents by listed issuers are not uncommon. Also, the proposed changes to companies incorporated in the same jurisdiction should largely be the same and procedural in nature. Yet, we note that listed issuers would need to review their current internal controls and, if necessary, put in place additional safeguards to ensure compliance with the Core Standards, which may cause additional burden to them.

Question 7 *Do you agree with the principles set out in paragraph 155 for use when considering waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong? Please give reasons for your views.*

Law Society’s response:

We agree.

Question 8 *Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158? Please give reasons for your views.*

Law Society’s response:

We agree, as it will generally give more clarity and increase the transparency of the Hong Kong listing regime. However, it is unclear why certain Common Waivers are not codified.

Question 9 *Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures should be able to apply for dual primary listing directly on the Exchange as long as they can meet the relevant suitability and eligibility requirements under Chapter 19C of the Listing Rules for Qualifying Issuers with a WVR structure? Please give reasons for your views.*

Law Society's response:

We agree. Apparently, the proposal would mean that Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/or VIE Structures (the "**Relevant Companies**") would be treated differently from other issuers generally with Non-compliant WVR and/or VIE Structures seeking a primary listing on the Exchange – where the latter group of issuers would be subject to more stringent vetting requirements. While this creates a situation where the Relevant Companies are treated differently from the rest, we assume that the Exchange is treating the Relevant Companies as a high priority target group due to strategic policy reasons and is therefore permitting a slightly different treatment for these companies in order to attract them to list themselves in Hong Kong.

Question 10 *Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers referred to in Question 9 above be allowed to retain their Non-compliant WVR and/ or VIE Structures (subsisting at the time of their dual primary listing in Hong Kong) even if, after their listing in Hong Kong, they are delisted from the Qualifying Exchange on which they are primary listed? Please give reasons for your views.*

Law Society's response:

Please see our reply to Question 9 above.

Question 11 *Do you agree with our proposal to codify requirements (with the amendments set out in this paper) relating to secondary listings in Chapter 19C of the Listing Rules and re-purpose Chapter 19 of the Listing Rules as one dedicated to primary listings only? Please give reasons for your views.*

Law Society's response:

We agree, as the current co-existence of two secondary listing regimes is complex and confusing to the market.

With reference to paragraphs 188 and 189 of the Consultation Paper, we note that there was a case in the past where the majority of trading in a secondary listed company migrated to the Exchange - South Gobi, a Mongolian mining company listed on the Toronto Stock Exchange, obtained a secondary listing on the Exchange. Paragraph 19 of the Takeover Panel's Decision in respect of South Gobi states:

"...since late 2012, there has been a distinct shift in trading in SouthGobi's shares to Hong Kong (with the exception of three months) and over the past five months

the total monthly trading volume in Hong Kong ranged between 80% and 96% of total trading in SouthGobi's shares, with an average of 84%."

We suggest the Exchange to consider providing that all issuers which become "primarily" listed on the Exchange in the sense that the majority of the trading in the shares has shifted to the Exchange should be treated as issuers with a primary listing on the Exchange, and accordingly be required to comply with the relevant rules. The Exchange's stated reason for not doing this is that it assumes this is unlikely to happen (see paragraph 189 of the Consultation Paper). The fact is that it has happened in the past and one would think that the Exchange should regulate this situation to protect the Hong Kong market.

Question 12 Do you agree that the Exchange should implement the quantitative eligibility criteria as proposed in paragraphs 199 and 201 for all Overseas Issuers without a WVR structure (including those with a centre of gravity in Greater China) seeking to secondary list on the Exchange? Please give reasons for your views.

Law Society's response:

We agree. Consolidating (and therefore simplifying) the requirements gives more clarity to the market. The proposed Criteria A in paragraph 199 of the Consultation Paper would enable more qualified issuers with a centre of gravity in Greater China to secondary list on the Exchange, which is in line with market trend and would enable further development of the Hong Kong capital markets.

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? Please give reasons for your views.

Law Society's response:

We generally agree, but we believe "significantly larger" is a bit ambiguous and suggest, if possible, setting a clear quantitative threshold instead of using such vague language in the Listing Rules.

Question 14 Do you agree that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) should not have to demonstrate to the Exchange that they are an "Innovative Company"? Please give reasons for your views.

Law Society's response:

We agree. We should open up the secondary listing regime to issuers operating in traditional industries.

Question 15 *Do you agree that a Rule should be introduced to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.*

Law Society's response:

We agree. While we are opening up the secondary listing regime to the market, the current proposal could serve as a safeguard to maintain the integrity of the market. However, it is advisable for the Exchange to issue a guidance letter setting out the factors it would consider when assessing whether there is an attempt by an issuer to avoid Listing Rules that apply to primary listing.

Question 16 *Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210, if the Exchange suspects that an issuer's secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.*

Law Society's response:

It is unclear whether and why all the factors the Exchange would assess under the test for a reverse takeover are directly relevant to a secondary listing applicant attempting to avoid the Listing Rules that apply to primary listing. Apparently, there is a lack of analysis for us to draw a definitive conclusion.

Question 17 *Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing? Please give reasons for your views.*

Law Society's response:

We agree, as extending the Trading Migration Requirement to all issuers with a secondary listing would be consistent with the principle of equality.

Question 18 *In your opinion, will the extension of the Trading Migration Requirement to all secondary listed issuers be unduly burdensome for those that are not currently subject to this requirement? Please give reasons for your views.*

Law Society's response:

This will certainly cause administrative burden for those listed issuers which are not currently subject to this requirement, but we believe this is essential if we aim to standardize the requirements for all secondary listed issuers and ensure consistency of the principles on which Automatic Waivers are granted.

Question 19 *Do you agree with the codification of the principles set out in paragraph 215 on which exemptions/ waivers are granted to secondary listed issuers? Please give reasons for your views.*

Law Society's response:

We generally agree. However, as the forum on which the majority of trading in any issuer's shares may change over time, it is unclear how we can definitively conclude whether trading takes place on the Exchange's markets "on a permanent basis" (as set out in paragraph 215(c) of the Consultation Paper).

Question 20 *Do you agree to codify the Automatic Waivers and conditional Common Waivers in the Listing Rules for all issuers with, or seeking, a secondary listing? Please give reasons for your views.*

Law Society's response:

We agree, as this could impart greater clarity and certainty to the relevant requirements.

Question 21 *Do you agree with the removal of the current condition for granting a waiver from the shareholders' consent requirement relating to further issues of share capital for secondary listed issuers as described in paragraphs 218 and 219? Please give reasons for your views.*

Law Society's response:

We agree based on the reasons set out in paragraph 219 of the Consultation Paper.

Question 22 *Do you agree that secondary listed issuers should comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports (for the reasons set out in paragraph 223)? Please give reasons for your views.*

Law Society's response:

We agree based on the reasons set out in paragraph 223 of the Consultation Paper. Board diversity is a global corporate governance trend that a number of other overseas jurisdictions advocate for.

Question 23 *Do you have any comments on the content of the Guidance Letter in relation to trading migration and de-listing of secondary listed issuers from their overseas exchanges of primary listing set out in Schedule E of this paper? Please give reasons for your views.*

Law Society's response:

We do not have any comment.

Question 24 *Do you agree that the Exchange should codify the Regulatory Co-operation Requirement (with modification as described in paragraph 242) into Chapter 8 of the Listing Rules for all issuers? Please give reasons for your views.*

Law Society's response:

We agree with the proposed codification of the Regulatory Co-operation Requirement as this would give more weight to such requirement. However, there appears to be insufficient reasoning on why the reference to bi-lateral agreements with the SFC should be removed – was the absence of companies listing on the basis of a bi-lateral agreement between the SFC and an overseas statutory securities regulator difficult to achieve in practice?

Question 25 *Do you agree that the Exchange should retain as guidance the alternative auditing standards listed in paragraph 249 that can be used to audit the financial statements of Overseas Issuers? Please give reasons for your views.*

Law Society's response:

We agree, as this would provide more flexibility for issuers and could avoid fending off qualified issuers adopting those accounting standards from listing on the Exchange due to the need to prepare pro forma financial statements.

Question 26 *Do you agree to codify the JPS requirement that the suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between that body of standards and IFRS, and whether there*

is any concrete proposal to converge or substantially converge the standards with IFRS? Please give reasons for your views.

Law Society's response:

We agree, as this would give more clarity and weight to the relevant requirement.

Question 27 Do you agree to retain, as guidance, the list of acceptable alternative financial reporting standards that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations on their use as set out in Table 7 (see Schedule E)? Please give reasons for your views.

Law Society's response:

We agree.

Question 28 Do you agree to codify the JPS requirement that a dual primary or secondary listed issuer that adopts a body of alternative financial reporting standards for its financial statements (other than issuers incorporated in an EU member state which adopted EU-IFRS) must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative standards? Please give reasons for your views.

Law Society's response:

We agree, as this would give more clarity and weight to the relevant requirement.

Question 29 Do you agree that issuers that de-list from a jurisdiction of an alternative financial reporting standard should: (a) be given an automatic grace period (i.e. an application to the Exchange is not required) within which to adopt IFRS or HKFRS; and (b) that this grace period should end on the issuer's first anniversary of its de-listing? Please give reasons for your views.

Law Society's response:

- (a) We agree. We believe an automatic grace period is sensible.
- (b) We propose to extend the grace period to the end of the issuer's first full financial year immediately after its de-listing.

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 70 financial statements and the financial

statements included in its accountants' reports) and adopt IFRS or HKFRS if the circumstances underpinning those reasons change (e.g. it delists from a US exchange)? Please give reasons for your views.

Law Society's response:

We agree, as this would ensure a more consistent approach adopted by the Exchange on the use of 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? Please give reasons for your views.*

Law Society's response:

We agree, as this would provide Hong Kong investors the necessary details to understand the relevant financial statements.

Question 32 *Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules? Please give reasons for your views.*

Law Society's response:

We agree, as this would bring the Listing Rules generally in line with the latest amendments to the FRCO.

Question 33 *Do you agree to amend the Listing Rules to codify the requirement that an issuer normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO to prepare an accountants' report that constitutes a PIE Engagement under the FRCO? Please give reasons for your views.*

Law Society's response:

We agree, as this would bring the Listing Rules generally in line with the latest amendments to the FRCO.

Question 34 *Do you agree to amend the Listing Rules to allow Overseas Issuers to appoint an audit firm that is not qualified under the PAO (but it is a Recognized*

PIE Auditor of that issuer under the FRCO) for PIE Engagements to prepare an accountants' report for a reverse takeover or a very substantial acquisition circular relating to the acquisition of an overseas company? Please give reasons for your views.

Law Society's response:

We agree, as this would bring the Listing Rules generally in line with the latest amendments to the FRCO.

Question 35 *Do you agree to amend the Listing Rules to codify the JPS requirement that, in relation to the PIE Engagements and notifiable transactions, overseas audit firms must normally fulfil the characteristics described in paragraph 271? Please give reasons for your views.*

Law Society's response:

We agree. This does not depart materially from the current requirements under the JPS.

Question 36 *Do you agree to amend the Listing Rules to codify the amendments to the FRCO on the collection of levies by the Exchange on behalf of the FRC as described in paragraphs 280 and 281? Please give reasons for your views.*

Law Society's response:

We agree.

Question 37 *Do you agree to codify the JPS requirement for Company Information Sheets as described in paragraphs 283 to 288? Please give reasons for your views.*

Law Society's response:

We agree. As Company Information Sheets are quite an important source of information for investors, codifying such requirement would give more weight to it.

Question 38 *Do you agree that the Company Information Sheet requirement should be applied to: (a) secondary listed issuers; and (b) any other Overseas Issuer, at the Exchange's discretion, where it believes the publication of a Company Information Sheet would be useful to Hong Kong investors? Please give reasons for your views.*

Law Society's response:

We agree.

Question 39 *Do you agree to amalgamate the guidance described in paragraphs 289 and 290 into one combined guidance letter for Overseas Issuers (see Schedule E)? Please give reasons for your views.*

Law Society's response:

We agree, as this could eliminate the current overlapping content and it would be more “reader-friendly” to have a combined guidance letter.

**The Law Society of Hong Kong
25 May 2021**