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Capital Group

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Question 1

Do you agree that the Equivalence Requirement and the concept of “Recognised Jurisdictions” and “Acceptable Jurisdictions” should be replaced with one common set of Core Standards for all issuers?

Yes

Please give reasons for your views.

We believe a single, common set of standards is easier to understand and use for all stakeholders,

provides legal clarity and a 'level playing field' and reduces inconsistencies for market participants. We would, however, wish to draw the attention to some areas where the Core Standards fall short, or differ significantly from the shareholders' rights' protection set out in the existing Companies Ordinance. We understand the need for convergence may justify some simplifications, it remains however important that the level of investor protection is adequately safeguarded under the new common set of Core Standards.

Question 2a

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

Yes

Please give reasons for your views.

As mentioned in our response to the previous question we agree in principle with the idea of a common set of Core Standards as a useful way to consolidate different standards and ensure clarity and level playing field.

We believe that the proposed Core Standards set out on paras 79 to 137 (removal of directors, timing of annual meeting, right to speak at AGMs, appointment of auditors, right to amend constitutional documents, winding up) generally enhance shareholder protections, and close some existing gaps between the JPS standards and the standards applicable in certain other jurisdictions.

We would note, however, that in certain instances the Core Standards represent a potential dilution of shareholder rights versus the existing Companies Ordinance, for example in relation to flexibility in the length of notice required for AGMs (Core Standard 4), and changing the threshold to requisition a meeting from 5% ISC to 10% ISC (Core Standard 7). In this context, we would suggest improvements in these specific suggested Standards to ensure that the appropriate level of shareholders' rights protection is met in a similar way with the one foreseen in the current standards.

We would also welcome clarification of the proposed Core Standard 6 in relation to voting on related-party transactions. The Companies Ordinance requires disinterested members' voting for connected transactions and various other prohibited transactions, such as loans, quasi-loans and credit transactions. Voting in relation to related-party transactions has always been problematic in this market, and it is not entirely clear whether secondary issuers will still be required to meet this stipulation (as covered in Chapter 14 (notifiable transactions) and Chapter 14A).

Question 2b

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

Please give reasons for your views.

N/A

Question 3

Do you agree to codify the current practice that all issuers must conform their constitutional documents to the Core Standards or else demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the Core Standards?

Yes

**Please give reasons for
your views.**

Requiring issuers to either apply the Core Standards, or explain why their existing documentation meets, or exceeds, the required level of shareholder protection would appear to be in the best interests of shareholders.

Question 4

Do you believe any other standards or Listing Rules requirements, other than those set out in paragraphs 79 to 137 or Schedule C of the Consultation Paper , should be added or repealed?

Please provide these other standards with reasons for your views.

Question 5

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

Yes

Please give reasons for your views.

We believe a simplified single approach, as set out in the Core Standards, would be beneficial to shareholders and improve standards in shareholder rights and shareholder protections, as compared with the varying standards existing today in certain jurisdictions.

Question 6a

Do you agree that existing listed issuers should have until their second annual general meeting following the implementation of our proposals to make any necessary amendments to their constitutional documents to conform with the Core Standards?

Yes

Please give reasons for your views.

Yes, we believe this delay would allow for the appropriate timeframe for the necessary changes and avoid imposing an undue administrative burden on companies.

Question 6b

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

Yes

Please give reasons for your views.

Please see our response to the previous question.

Question 7

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

Yes

Please give reasons for your views.

Yes, we think that the proposals set out in para 155 strike an appropriate balance. We would emphasise the importance of having robust frameworks and controls around the use of any waivers for Listing Rules. Any waivers should be fully disclosed to shareholders.

Question 8

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

Yes

Please give reasons for your views.

Please see our response to the previous question.

Question 9

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

Yes

Please give reasons for your views.

We believe that Weighted Voting Rights (WVR) violate the fundamental corporate governance principle of one-share-one-vote. We acknowledge the Consultation's dual objective to ensure shareholder protections and to attract listings and improve liquidity. In this respect, we would be in support of a sunset provision in order for WVR to expire after a certain number of years, such as 5 or 10 years. Separately, for VIE Structures, we encourage robust disclosure every annual report including all information filed with the HKEX by a company about its structure and any changes during this period.

Question 10

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

Yes

Please give reasons for your views.

Please see our response to the previous question,

Question 11

Do you agree with our proposal to codify requirements (with the amendments set out in the Consultation Paper) relating to secondary listings in Chapter 19C of the Listing Rules and re-purpose Chapter 19 of the Listing Rules as one dedicated to primary listings only?

Yes

Please give reasons for your views.

Yes, we see merits with this streamlined approach.

Question 12

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

Yes

Please give reasons for your views.

Yes. The proposals in paras 199-201 appear to be an appropriate way of consolidating the existing routes to secondary listing, by codifying the JPS requirements for issuers without WVR structures.

Question 13

Do you agree that an exemption from the listing compliance record requirement be introduced, similar to the current JPS exemption, to cater for secondary listing applicants without a WVR structure that are well-established and have an expected market capitalisation at listing that is significantly larger than HK\$10 billion?

Yes

Please give reasons for your views.

Yes. Lowering the dollar entry requirements for secondary listings would appear to align with the broader objectives of the consultation.

Question 14

Do you agree that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) should not have to demonstrate to the Exchange that they are an “Innovative Company”?

Yes

Please give reasons for your views.

Removing the requirement for a firm to demonstrate it is an 'Innovative Company' would address the inconsistency between JPS and Chapter 10C, which has barred many Greater China issuers in traditional industries from obtaining a secondary listing in Hong Kong.

Question 15

Do you agree that a Rule should be introduced to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing?

Yes

Please give reasons for your views.

Attempts to avoid standards set in the Listing Rules are not in the best interests of shareholders.

Question 16

Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210 of the Consultation Paper, if the Exchange suspects that an issuer's secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing?

Yes

Please give reasons for your views.

Please see our response to the previous question,

Question 17

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

Please give reasons for your views.

We have no strong views, but we note that such an extension would address existing inconsistencies.

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.

Question 19

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

Yes

Please give reasons for your views.

Yes, the principles set out in para 215 appear to strike an appropriate balance.

Question 20

Do you agree to codify the Automatic Waivers and conditional Common Waivers in the Listing Rules for all issuers with, or seeking, a secondary listing?

Yes

Please give reasons for your views.

We agree that this gives the market greater clarity and certainty as to the requirements applicable to issuers.

Question 21

Do you agree with the removal of the current condition for granting a waiver from the shareholders' consent requirement relating to further issues of share capital for secondary listed issuers as described in paragraphs 218 and 219 of the Consultation Paper?

Yes

Please give reasons for your views.

As with WVR versus OSOV, we believe the right of pre-emption is a fundamental ownership right for shareholders. We acknowledge that different approaches to these issues are being considered in

markets globally; thus, imposing such a condition can create a gap between secondary listed issuers that are subject to pre-emptive right requirements outside the Listing Rules and those that are not.

We also acknowledge the Consultation's dual objective to ensure shareholder protections and to attract listings and improve liquidity.

Given the effort to provide converging standards there is a need to strike the appropriate balance that doesn't disregard shareholders' pre-emption rights.

Question 22

Do you agree that secondary listed issuers should comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports (for the reasons set out in paragraph 223 of the Consultation Paper)?

Yes

Please give reasons for your views.

We strongly agree that companies should be obliged to disclose their policy on diversity. They should disclose that policy, and progress made against it, in the Annual Report. We believe the issue of diversity goes beyond the issue of gender. Companies should endeavour to have the right mix of skills, background and experience in their boards, such that it matches the footprint of the business. For international businesses with a global footprint, this should have due regard to diversity of ethnicity, matching the global markets in which they operate.

Question 23

Do you have any comments on the content of the Guidance Letter in relation to trading migration and de-listing of secondary listed issuers from their overseas exchanges of primary listing set out in Schedule E of the Consultation Paper?

Yes

Please give reasons for your views.

We note with caution that companies subsequently de-listing from their qualifying exchange will be allowed to retain their WVR arrangements (therefore not complying with Chapter 8A).

Question 24

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

Yes

Please give reasons for your views.

We agree that this approach is of added value.

Question 25

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

Yes

Please give reasons for your views.

Yes, we are satisfied that the 7 sets of alternative standards set out in paragraph 249 are acceptable, and comparable to that 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?

Yes

Please give reasons for your views.

Using accounting standards different from IFRS is also efficient. In that case and in order to efficiently model and compare companies we need material differences between IFRS and alternative financial reporting standards tied to lines of the financial rather than aggregated and netted results which show minimal bottom line difference, as this is not useful. It's low cost and transparent to provide this information in a simple table that shows lines impacted to ensure investors know the differences and can adjust.

Question 27

Do you agree to retain, as guidance, the list of acceptable alternative financial reporting standards that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations on their use as set out in Table 7 (see Schedule E of the Consultation Paper)?

Yes

Please give reasons for your views.

Yes. These standards are understood by the market and appear reasonable.

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?

No

Please give reasons for your views.

No, we believe such a switch isn't necessary if the company will reconcile its financial statements under alternative financial reporting standards to HKFRS or IFRS.

Question 29a

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

Yes

Please give reasons for your views.

Question 29b

Do you agree that this grace period should end on the issuer's first anniversary of its de-listing?

Yes

Please give reasons for your views.

This appears to strike an appropriate balance as a timeline to adopt the new standard(s).

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)?

No

Please give reasons for your views.

Investors need disaggregated disclosure by line of the financial statements reconciling the accounts under US GAAP to under IFRS or HKFRS.

Question 31

Do you agree that any issuer that wishes to adopt US GAAP for the preparation of its annual financial statements must include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS?

Yes

Please give reasons for your views.

Having a reconciliation allows for global peer comparisons and enhances transparency.

Question 32

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

Yes

Please give reasons for your views.

Yes if this increases audit firm accountability and oversight by HK regulators, and in turn investor protection.

Question 33

Do you agree to amend the Listing Rules to codify the requirement that an issuer normally appoint a firm of practising accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO to prepare an accountants' report that constitutes a PIE Engagement under the FRCO?

Yes

Please give reasons for your views.

Yes if this increases audit firm accountability and oversight by HK regulators, and in turn investor protection.

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.

Question 35

Do you agree to amend the Listing Rules to codify the JPS requirement that, in relation to the PIE Engagements and notifiable transactions, overseas audit firms must normally fulfil the characteristics described in paragraph 271 of the Consultation Paper?

Yes

Please give reasons for your views.

Yes, if such amendment will strengthen oversight of auditors engaged by HK listings.

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?

Please give reasons for your views.

Question 37

Do you agree to codify the JPS requirement for Company Information Sheets as described in

paragraphs 283 to 288 of the Consultation Paper?

Yes

Please give reasons for your views.

Shareholders have the right to understand and easily locate information on the differences between the overseas requirements to which an Overseas Issuer is subject and the Hong Kong requirements.

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?

No

Please give reasons for your views.

We agree with (a), that Company Information Sheets requirement should be applied to secondary listed issuers. This request appears reasonable.

We disagree with (b), however, whereby Company Information Sheets may only have to be issued, where it would be “useful” to Hong Kong investors. We do not think these should be optional, especially if such sheets set out the full the details of waivers or exemptions to listing requirements.

Question 39

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

Yes

Please give reasons for your views.

Yes, we see merits with this proposal.

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