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From: [redacted]
Sent: Monday, 31 May 2021 11:27 am
To: [redacted]
Subject: HKEX consultation: Listing Regime for Overseas Issuers

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Dear HKEX,

We note that the Consultation Paper only envisages a response being submitted using their web-based questionnaire, but given that some of the things we want to cover in the preamble and closing paragraphs of our response, and the additional matter we want to raise, are not really catered for in the questionnaire, we would like to submit it as a written response addressed for your attention.

Below is our response:

Consultation Paper on Listing Regime for Overseas Issuers ("Consultation Paper")

As previously stated by this Chamber in response to consultations, as a business chamber in Hong Kong we are supportive of measures that enhance the position of Hong Kong as a leading global financial centre. This is good for Hong Kong and good for our members as a part of the business community there. In this regard we fully support the intention to address the Issues identified by the Exchange, including some of the complexities of the current requirements, and believe that the proposals if implemented will undoutedly enhance Hong Kong's attractiveness as a listing venue to overseas issuers.

The Chamber is in agreement with all the matters set in the Questionnaire relating to the Consultation Paper other than as follows:

Question 1 – there is a concern that the benefit of abolishing the Equivalence Requirement may be largely negated by the statement in para 75 of the Consultation Paper that an Overseas Issuer must notify the Exchange of matters not covered by the Core Standards that may be "materially detrimental to the interests of shareholders as a whole (as notification is consistent with the principle that information provided to the Exchange must be accurate and complete in all material respects". It is unclear what this means and if the starting point were to be that all matters the Exchange previously required to be addressed when looking at equivalence were material then it seems the proposal will not, in reality, save any of the considerable time and expense associated with the current requirement. We would suggest that given the overriding requirements for a prospectus not to omit any material information that there is no need to include a separate notification obligation in the manner alluded to.

Question 12 - (i) for Criteria A, notwithstanding what is stated in paragraph 205 of the Consultation Paper, we do wonder whether it might be appropriate now to accept that an Overseas Issuer with a centre of gravity in Greater China could be listed on a Recognised Exchange and not only a Qualifying Exchange as it is not obvious why there is any greater chance of regulatory arbitrage being sought just because the primary listing in on the latter, and in any event the Exchanger proposes to have the ability to refuse a secondary listing if it thinks the issuer is seeking to use this for regulatory arbitrage (ii) for Criteria B we would similarly question whether it is necessary to restrict this to issuers who are primary listed on a Qualifying Exchange.

Question 13 – we would urge that greater guidance be given as to what is meant by "significantly larger". This can be done without having to provide a firm "line in the sand". We would also suggest that the ability for a company that has a market capitalisation significantly greater than HK$10bn to secondary list should apply at any time and should effectively be an additional Criteria C – it seems somewhat perverse that this criteria could apply if a company was secondary listing on the Exchange at the same time as it was primary listing elsewhere but would cease to be

able to apply on such grounds as soon as it had gained any compliance track record (albeit short of two years) on its primary exchange.

Question 14 – we would supplement our general agreement with the proposal with the observation that what is an "innovative company" test is self-evidently very subjective and that there is considerable merit in restricting the use of this test as much as possible.

Question 16 – we would supplement our general agreement with the proposal with the observation that the Exchange may wish to clarify further the position of a company that had initially listed as a SPAC as all such companies would appear, perhaps unintentionally, to fall within the described concern.

Question 25 - we would supplement our general agreement with the proposal with the observation that it is unclear why there is the difference as regards an accountants' report and annual accounts referred to in paragraphs 247 and 248 of the Consultation Paper.

Question 34 - we would supplement our general agreement with the proposal with the observation that at the time of listing it should be mandatory that the accountants' report must be signed or co-signed by certified public accountants who are qualified under the PAO given the significant involvement that the reporting accountants need to have in the listing process beyond producing the accountants' report and which requires familiarity with the HK listing process and market practices.

Question 37 – consistent with our comment on Question 1, with the move to placing reliance on the Core Standards we would question whether keeping the ongoing obligation to maintain Company Information Sheets is unnecessarily burdensome.

We would also like to raise an additional matter:

- *Currently, as a result of the cut-off date for grandfathering a Greater China Issuer with corporate WVRs being extended from 15 December 2017 to 30 October 2020 (by the Consultation Conclusions paper on the Consultation Paper on Corporate WVR Beneficiaries), the arguably perverse position has been reached that, if a Greater China Issuer has corporate WVRs and a VIE structure that is not compliant with all the listing rules requirements for such a structure then it can still secondary list on the Exchange provided it was primary listed on a Qualifying Exchange on or before 30 October 2002. However if such a company had a non-compliant VIE structure but no corporate WVRs then it would not be able to secondary list here if it had primary listed after 17 December 2017.*
- *Also currently, if a Non-Greater China Issuer wishes to secondary list in HK then it can do so with a non-compliant VIE structure. The policy paper itself however is silent on what the position of such companies would be under a revised Ch 19C (the matter is only explicitly covered by a footnote in Guidance Letter GL 94-18)*
- *We would accordingly suggest that under the revised Chapter 19C: (i) the current position for Non-Greater China issuers with non-compliant VIE structures should be confirmed as continuing unchanged, and (ii) consistent with the overall idea that there should be a level playing field for all issuers listing under the revised Chapter 19C a Greater China Issuer secondary listing under that Chapter should be able to do so notwithstanding it having a non-compliant VIE structure. Paragraph 3.32 of the draft Guidance Letter in Schedule E to the Consultation Paper touches on the point and, while it appears to be confirming that what is suggested in (1) is the intention (but an express statement on this would be helpful), it does not appear to be saying what is proposed in (ii).*

In closing, we wish to repeat our strong support for addressing the Issues identified by the Exchange and thereby further reinforcing Hong Kong's position as a global financial centre and attractive listing venue for overseas companies. We sincerely hope that our comments above will help in the refining of the optimal arrangements for the future.

Thank you so much.

Best regards,

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