HK私投募資VCA
Hong Kong Venture Capital and Private Equity Association
香港創業及私募投資協會
The Association for Private Capital in Asia

16th June, 2021

Re: Listing Regime for Overseas Issuers CP

By email to: [redacted]

Dear Sir/Madam,

Response to the Exchange's Consultation Paper on Listing Regime for Overseas Issuers issued in March 2021 (the "Consultation")

The HKVCA generally supports the Exchange's proposal to consolidate and streamline the listing regime and listing requirements for Overseas Issuers as we agree that the current requirements lack consistency and transparency in some areas. A clearer and more easily understood set of requirements that apply to potential listing applicants with similar attributes would certainly encourage more qualified companies looking to the Exchange as a listing venue (whether for primary or secondary listing). We believe that this is one of the important factors for attracting more high-quality companies to come to Hong Kong for listing. In some cases, the cumbersome listing process, high listing costs and perceived difficulties in navigating around the Exchange's requirements (in terms of suitability and disclosures, etc.) have steered the preference of good quality listing applicants (whether or not they are Overseas Issuers) to other listing venues (most often the United States). Hence, continuous regulatory efforts to improve the listing regime in Hong Kong is imperative for the Exchange to maintain its competitiveness as a listing venue.

We set out below specific comments in response to certain areas covered by the Consultation:

1. The proposed adoption of a common set of Core Standards is welcomed as this ensures consistency and provides a common basis for investors to assess investment risk in terms of shareholders protection for making investments in companies.
    - Generally, this change will be helpful to the private equity community as it will provide a common set of reference criteria when a PE investor implements improvements to corporate governance and investor protection measures to prepare its investee companies for a potential listing.
    - The Exchange should consider carefully the proposed case-by-case approach to determine the applicability of the "Core Standard – Removal of Directors" for issuers with Non-compliant WVR Structures, together with its proposals that (i) issuers with Non-compliant WVR Structures may apply directly for dual primary listing; and (ii) issuers with secondary listing on the Exchange to retain their Non-compliant WVR Structures if they de-list from their primary listing venue.
    - The proposed "Core Standard – Notice of Annual General Meeting" is welcoming, especially considering the increased ease of communications by listed companies with their shareholders with the help of technology. The effectiveness of convening and participation in a general meeting will be further increased if the Exchange were to consider specifying

that listed issuers could convene general meetings by (and accept voting through) electronic means so long this does not contravene the law of the place of jurisdiction of the issuer.

- The proposed "Core Standard – Right to Convene an Extraordinary General Meeting" may create different levels of minimum shareholding for shareholders to requisite a general meeting for different issuers and increase the divergence amongst listed issuers in this regard. This may lead to less certainty to investors and may potentially lead to the setting of a specific percentage to suit a particular existing shareholder. A consistent threshold will help to increase certainty for investors and equality amongst issuers (e.g. the threshold should be 10% unless local law requires a lower threshold).
- Regarding the proposed "Core Standard – Amendment of Constitutional Documents", it is unclear how a higher quorum requirement could lower the voting threshold to simple majority (as opposed to super-majority). In order for the two thresholds to give a similar level of protection, the quorum requirement will need to be very high. We suggest the Exchange giving further guidance on this. Should a minimum threshold (namely, two-thirds) be set as otherwise the issuers may be inclined to argue for a lower threshold, e.g. simple majority.
- It is noted that paragraph 4(4) of the current Appendix 3 refers to the notice period for members to propose candidate for election as director. Would the Exchange consider clarifying that there shall be a right given to shareholders to propose candidate for electron as director? PE investors sometimes consider helpful to propose qualified candidates for election as directors with a view to increase board diversity and to broaden representation.
- Whilst it would further increase equality if existing listed issuers were to be required to comply with the Core Standards, implementing the relevant changes would necessitate amendments to constitutional documents of the listed issuers. At the end of the day, it would depend on whether the listed issuers could obtain the requisite level of shareholder approval at general meeting to approve the amendments.

2. The proposed codification of the Common Waivers will create certainty and consistency, hence facilitate proposed listing applicants in their listing applications.
   - To the extent applicable, the principle should also include the listing applicant demonstrating that the granting of the Common Waivers will not materially affect the interest and protection of minority shareholders in Hong Kong and there are substantially similar measures required by the overseas regulations to afford similar protection and provide similar information to shareholders.

3. The proposal to introduce one-consolidated Chapter 19C will provide ease of understanding of listing criteria, hence creating more certainty for potential issuers in the consideration of, and preparation for, secondary listing in Hong Kong.
   - We support the two sets of quantitative eligibility requirements as these will allow more potential issuers to fulfill the eligibility requirements for secondary listing on the Exchange, hence creating more options for secondary fundraising by overseas listed issuers.
   - We believe that the expansion in the number of secondary-listed issuers on the Exchange will increase investors' attention and interest in this market, which may translate into an increased liquidity for trading in the shares of these secondary-listed issuers across the board (which has been a problem for many secondary listed issuers in Hong Kong).

4. The proposal in allowing Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures to dual primary list is welcoming as this will increase the choices of listing venue for this kind of proposed issuers, creating more options for IPO exit for PE investors.
   - We would however ask the Exchange to note that the proposal would allow, a Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures, to go from being an unlisted company to becoming a listed company on the Exchange with Non-compliant WVR and/ or VIE Structures so long it pursues a simultaneous dual primary listing on the Exchange and on an Qualifying Exchange. The Exchange should consider whether this is the regulatory intention.

5. The proposal in allowing secondary-listed Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures to retain their Non-compliant WVR and/ or VIE Structures if they are de-listed from the Qualifying Exchange may potentially create unfair treatment.
   - Would the Exchange consider whether this route should be opened to all issuers? What if the reason for de-listing from the Qualifying Exchange is due to a material regulatory non-compliance or there is a track record of poor regulatory compliance on the Qualifying Exchange? Should there be some exclusion in the application of this rule in cases where there have been some material issues on the listing, trading and/or compliance on the Qualifying Exchange within a specified timeframe prior to the de-listing?

6. The proposal in allowing overseas listed Greater China issuers from traditional sectors to secondary list on the Exchange is welcoming, as this will increase the choices of fundraising venue for this kind of issuers, creating more options for secondary fundraisings for PE-invested companies.
   - There are many good quality overseas listed Greater China issuers in the traditional sectors which wish to tap into the liquidity and capital from Asian investors by listing in Hong Kong. This will encourage more "homecoming" listing of Greater China issuers.
   - This will increase the choices for investors and will appeal to investors whose investment strategy/policy focuses on Asian listed issuers.
   - Further, the qualifications as, and criteria for, an "Innovative Company" is often unclear and subject to substantial regulatory discretions and hence uncertainties. This proposal will remove these discretions and uncertainties, hence creating a more level-playing field.
   - Does this mean the concept of "Innovative Company" would become redundant and what would be the attraction for existing listed issuers who are qualified as an "Innovative Company"?

7. Extension of the Regulatory Co-operation Requirement to all issuers (including those that are incorporated in Recognised Jurisdictions) may create disruption to issuers and disruption to markets.
   - Whilst it is noted that the statutory securities regulators in Bermuda, the Cayman Islands and the PRC are full signatories to the IOSCO MMOU, paragraph 241 of the Consultation seems to suggest that the scope of application would extend to overseas jurisdictions where

the issuers have core assets and operations. Such an application may potentially of a much wider scope and a listed issuer may need to review the locations of all of its core assets and operations to assess whether it is able to comply with the requirement. If the intention is that, at least for already listed issuers, the Exchange would only look at the jurisdictions of where the existing listed issuers are incorporated (and perhaps extending to the jurisdictions of where the central management and control is located), then we would agree that extending the requirement to cover existing listed issues should not, in practice, increase the compliance obligations for these issuers. The Exchange should clarify this point. Otherwise, existing listed issuers may need to be granted a grace period to be in full compliance with the requisite requirements.

8. We support the proposal that issuers adopting USGAAP to include a reconciliation with HKFRS / IFRS to provide useful information for investors.

Yours sincerely,

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About HKVCA

HKVCA is a member-based trade association which was established in Hong Kong in 1987. It currently has 480 members of whom 300 are Hong Kong based private equity managers across the full spectrum of the industry from venture capital, through growth capital and growth buyouts to institutional fund investors, fund of funds and secondary investors. HKVCA represents small teams investing in start-ups as well as the world's 10 largest private equity firms.